



PROGRAM MATERIALS

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Slayer Statute CLE with RMO LLP

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THE SLAYER STATUTE: Texas, California, Florida, Kansas, and Missouri Laws & Nuances

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The logo for RMO LLP is displayed in a bold, blue, sans-serif font. The letters 'RMO' are large and prominent, with 'LLP' in a smaller size to the right. The logo is centered within a white circular area that is part of a larger teal and light blue geometric design at the bottom of the slide.

RMO_{LLP}

WHAT IS A SLAYER STATUTE?

Generally, it is a law or set of laws designed to prevent or restrict a murderer's right to inherit from or retain a property interest in their victim's estate.



CALIFORNIA

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SLAYER STATUTE: CALIFORNIA

What the Killer Is Not Entitled to

Probate Code § 250

(a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

- (1) Any property, interest, or benefit under a will of the decedent, or a trust created by or for the benefit of the decedent or in which the decedent has an interest, including any general or special power of appointment conferred by the will or trust on the killer and any nomination of the killer as executor, trustee, guardian, or conservator or custodian made by the will or trust.
- (2) Any property of the decedent by intestate succession.
- (3) Any of the decedent's quasi-community property the killer would otherwise acquire under Section 101 or 102 upon the death of the decedent.
- (4) Any property of the decedent under Division 5 (commencing with Section 5000).
- (5) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.



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SLAYER STATUTE: CALIFORNIA

Effect of Slayer Statute on Killer

Probate Code § 250 (Cont'd)

(b) In the cases covered by subdivision (a):

- (1) The property interest or benefit referred to in paragraph (1) of subdivision (a) passes as if the killer had predeceased the decedent and Section 21110 does not apply.
- (2) Any property interest or benefit referred to in paragraph (1) of subdivision (a) which passes under a power of appointment and by reason of the death of the decedent passes as if the killer had predeceased the decedent, and Section 673 does not apply.
- (3) Any nomination in a will or trust of the killer as executor, trustee, guardian, conservator, or custodian which becomes effective as a result of the death of the decedent shall be interpreted as if the killer had predeceased the decedent.



SLAYERS & JOINT TENANCY: CALIFORNIA

Probate Code § 251

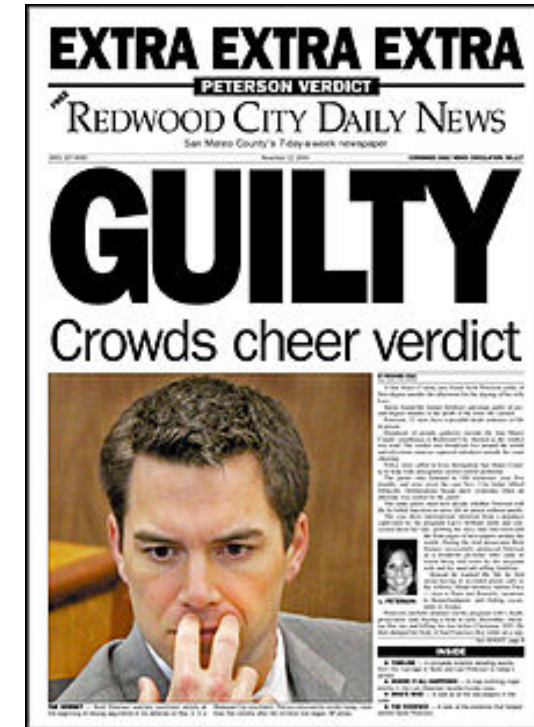
- A joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship.
- This section applies to joint tenancies in real and personal property, joint and multiple-party accounts in financial institutions, and any other form of coownership with survivorship incidents.



SLAYERS & NON-PROBATE LIFE INSURANCE POLICIES: CALIFORNIA

California Probate Code § 252

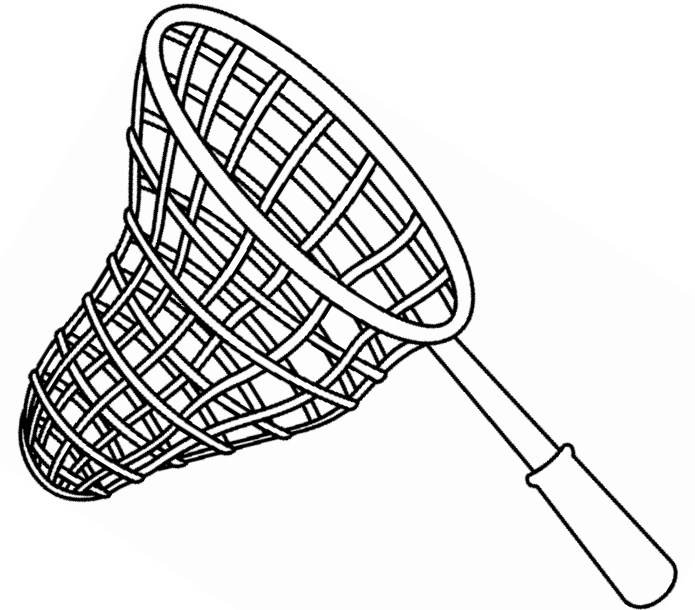
- Non-probate life insurance policies –A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.
 - Laci Peterson Case
 - *Principal Life Insurance v. Peterson*



SLAYER STATUTE “CATCH-ALL”: CALIFORNIA

California Probate Code § 253

- In any case not described in Section 250, 251, or 252 in which one person feloniously and intentionally kills another, any acquisition of property, interest, or benefit by the killer as a result of the killing of the decedent shall be treated in accordance with the principles of this part.



BURDENS OF PROOF: CALIFORNIA

California Probate Code § 254

(a) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this part.



(b) In the absence of a final judgment of conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this part. The burden of proof is on the party seeking to establish that the killing was felonious and intentional for the purposes of this part.

PROPERTY SOLD BY SLAYER: CALIFORNIA

California Probate Code § 255

- This part does not affect the rights of any person who, before rights under this part have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this part, but the killer is liable for the amount of the proceeds or the value of the property.





TEXAS

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SLAYER STATUTE INTRODUCTION: TEXAS

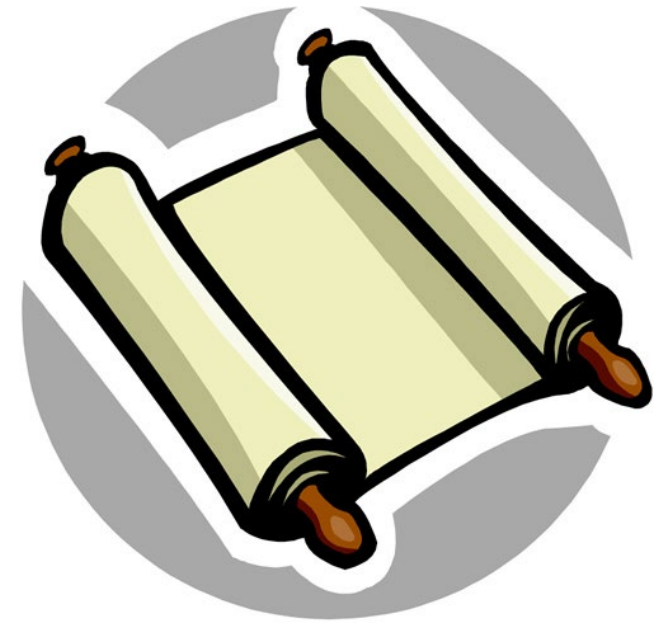
- Generally, under some state law, killers cannot inherit.
- A killer should not financially benefit from a death she or he willfully causes.
- However, when imposing or creating “slayer” laws, the legislators must consider constitutional rights and processes.



CONSTITUTIONAL PROTECTION: TEXAS

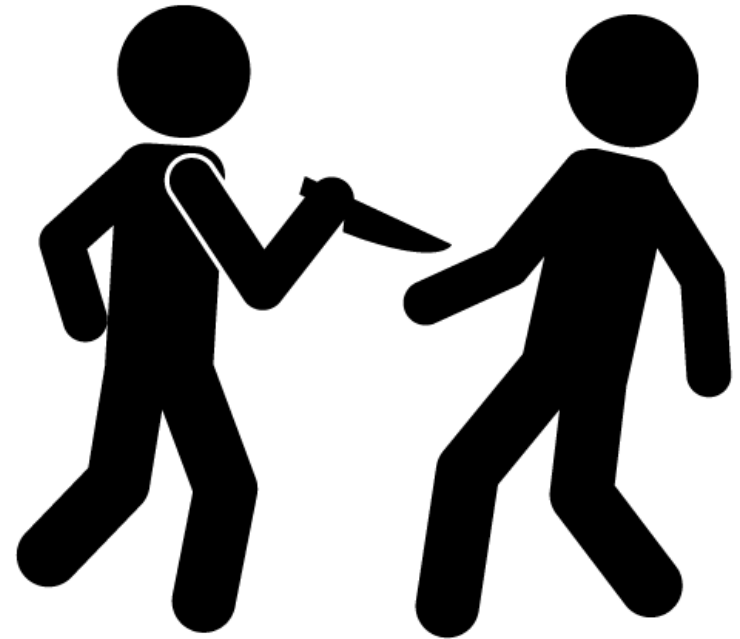
Does the Texas Constitution provide any protection that may affect slayer laws?

- The Texas Constitution states that “[n]o conviction shall work corruption of blood, or forfeiture of estate.” Tex. Const. Art. I § 21.
- Essentially, the Texas Constitution provides that just because someone is a convicted felon does not mean that they disinherit upon their conviction. However, Texas recognizes slayer laws as an exception and not a violation of the Texas Constitution.



SLAYER LAWS: TEXAS

- TEX. EST. CODE § 201.058
- TEX. EST. CODE § 201.062(a)(3)
- TEX. INS. CODE § § 1103.151 & 1103.152
- Common Law–Equitable Constructive Trust



SLAYER LAWS: TEXAS

Tex. Est. Code § 201.058

- “[N]o conviction shall work corruption of blood or forfeiture of estate except for provided.” under Section 201.058(b). If a beneficiary of a life insurance policy or contract is convicted and sentenced as a principal or accomplice in willfully bringing about the death of the insured, the insurance proceeds or contract shall be paid as provided under Texas Insurance Code Section 1103.0151. TEX. INS. CODE § 201.058(b).
- Is a person found incompetent to stand trial subject to this provision?
 - Answer: No. A finding that a criminal defendant lacks competency to stand trial means the person lacks the mental capacity to consult with an attorney or understand the proceedings such to go on trial. Further, a person who is found not guilty by insanity also fails to fall under this provision.



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SLAYER LAWS: TEXAS (cont'd)

Tex. Est. Code § 201.062(a)(3)

- A probate court may enter an order declaring the parent of a child under 18 years of age may not inherit from or through the child if the court finds by clear and convincing evidence that the parent has been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under certain provisions of the Texas Penal Code or adjudicated under Title 3 of the Family Code for conducted that caused the child's death or serious injury and that would constituted a violation of certain provision of the Texas Penal Code. TEX. EST. CODE § 201.062(a)(3).



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SLAYER LAWS: TEXAS (cont'd)

Texas Penal Code Sections Applicable to Tex. Est. Code § 201.062(a)(3)

- Murder. Tex. Penal Code § 19.02
- Capital Murder. Tex. Penal Code § 19.03
- Manslaughter. Tex. Penal Code § 19.04
- Indecency with a child. Tex. Penal Code § 21.11
- Assault. Tex. Penal Code § 22.01
- Sexual Assault. Tex. Penal Code § 22.011
- Aggravated Assault. Tex. Penal Code § 22.02
- Aggravated Sexual Assault. Tex. Penal Code § 22.021
- Injury to a child. Tex. Penal Code § 22.04
- Abandoning or endangering child. Tex. Penal § 22.041
- Prohibited sexual conduct. Tex. Penal Code § 25.02
- Sexual Performance by a child. Tex. Penal Code § 43.25
- Possession or promotion of child pornography Tex. Penal Code § 43.26



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SLAYER LAWS & UNBORN CHILDREN: TEXAS

- Tex. Penal Code § 1.07(a)(26) defines an individual as including “an unborn child at every state of gestation of from fertilization until birth.”
- Tex. Penal Code § 1.07(a)(49) further defines “death,” as applied to an unborn child, as “the failure to be born alive.”
- Abandonment of a Child or Spouse may result in the abandoning parent’s disinheritance from the deceased child’s estate.



LIFE INSURANCE & SLAYER ISSUES: TEXAS

Tex. Ins. Code § 1103.151 & 1103.152

- A beneficiary of a life insurance policy or contract forfeits the beneficiary's interest in the policy or contract if the beneficiary is principal or an accomplice in willfully bringing about the death of the insured. Once forfeited, the contingent beneficiary or if no contingent beneficiary is named or designated, the nearest relative stands to receive the proceeds. TEX. INS. CODE § 1103.152; *Lawrence v. Bailey*, No. 01-19-00799-CV, 2021 WL 2424935, at *6, *7 (Tex. App.–Houston [1st Dist.] June 15, 2021, no pet.).



LIFE INSURANCE & SLAYER ISSUES: TEXAS (cont'd)

How is this distinguishable from Texas Estates Code Section 201.058?

- Is a final conviction required? No. A final conviction is not required before a beneficiary or heir forfeits his rights to the insurance proceeds. *In Re Estate of Stafford*, 244 S.W.3d 368, 370 (Tex. App.–Beaumont 2008, no pet.) (citing Texas Estates Code Sections 1103.151 and 1103.152).
- In some instances, under Texas Insurance Code Sections 1103.151 and 1103.152, a beneficiary may not be convicted as a principal or accomplice in willfully bringing about the death of the decedent but when the beneficiary is convicted of a negligent homicide of the named insured or decedent, a constructive trust may be imposed in favor of the other beneficiaries when the beneficiary is found to have intentionally wrongfully killed the decedent in a civil proceeding. *Id.* To establish that forfeiture is appropriate, a party must show that the beneficiary had an intent to kill. *Rumbaut v. Labagbara*, 791 S.W.2d 195, 198 (Tex. App.–Houston [14 Dist.] 1990, no writ) (finding that negligence or gross negligence is not sufficient).



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LIFE INSURANCE & SLAYER ISSUES: TEXAS (cont'd)

Why is there a distinction between whether the defendant/ purported killer is found, in a civil proceeding, to have intentionally and wrongfully killed the Decedent versus a criminal proceeding?

- The burden of proof in a criminal proceeding is beyond a reasonable doubt. Tex. Penal Code § 2.01.
- The burden of proof in a civil proceeding is preponderance of the evidence, i.e., more likely than not, or greater than 50%, unless the law requires clear and convincing evidence. The evidentiary standard is preponderance of the evidence and this may be proven by circumstantial evidence. *Bean v. Alcorta*, No. SA:14-CV-604-DAE, 2015 WL 4164787, at *7 (W.D. Tex. July 9, 2015) (citing *Reliastar Life Ins. Co. v. Thompson*, No. M-07-140, 2008 WL 4327259, at *2 (S.D. Tex. Sept. 16, 2008) and *Thompson v. Mayers*, 707 S.W.2d 951, 955 (Tex. Civ. App.—Eastland 1986, writ ref'd n.r.e.)).
- “Clear and convincing evidence” is that measure or degree of proof that produces in the mind of the trial of fact [jury] a firm belief or conviction that the allegations sought to be established are true. Tex. Fam. Code § 101.007.



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ERISA & SLAYER ISSUES: TEXAS

- The application of the Slayer statute(s) are a fact intensive inquiry and Texas or federal law may apply. Life insurance purchased through an employer is typically governed by federal law, ERISA, not Texas law but federal courts will apply slayer statute concepts to ERISA policies. See *Admin. Comm. for the H.E.B. Inv. & Ret. Plan v. Harris*, 217 F.Supp.2d 759, 760 (E.D. Tex. 2002) (applying 29 U.S.C.A. §§ 1001, et seq.); *Bean v. Alcorta*, No. SA:14-CV-604-DAE, 2015 WL 4164787, at *7 (W.D. Tex. July 9, 2015) (declining to determine whether ERISA preempts Texas Slayer law when the outcome is the same).



COMMON LAW EQUITABLE CONSTRUCTIVE TRUST: TEXAS

- Texas law imposes a constructive trust in equity on the property of a decedent that passes either by intestate or will if the beneficiary or heir willfully and wrongfully causes the decedent's death. *Ovalle v. Ovalle*, 604 S.W.2d 526, 528 (Tex. Civ. App.—Waco 1980, no writ); *Bounds v. Caudle*, 560 S.W.2d 925, 928-29 (Tex. 1977), modified on other grounds by *Price v. Price*, 732 S.W.2d 316, 317-18 (Tex. 1987); *Ford v. Long*, 713 S.W.2d 798, 798 (Tex. App.—Tyler 1986, writ refused n.r.e.); *Parks v. Dumas*, 321 S.W.2d 653, 655 (Tex. Civ. App.—Fort Worth 1959, no writ); *Mitchell v. Akers*, 401 S.W.2d 907, 911 (Tex. Civ. App.—Dallas 1966, writ refused n.r.e.); *Estate of Lambeck*, No. 04-17-00065-CV, 2017 WL 4655020, *3, *4 (Tex. App.—San Antonio Oct. 18, 2017, no pet.) (mem. op.); *Estate of Huffhines*, No. 02-15-00293-CV, 2016 WL 1714171, at *3, *7 (Tex. App.—Fort Worth April 28, 2016, pet. denied) (mem. op); *Pope v. Garrett*, 211 S.W.2d 559, 561 (Tex. 1948).



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COMMON LAW EQUITABLE CONSTRUCTIVE TRUST: TEXAS (cont'd)

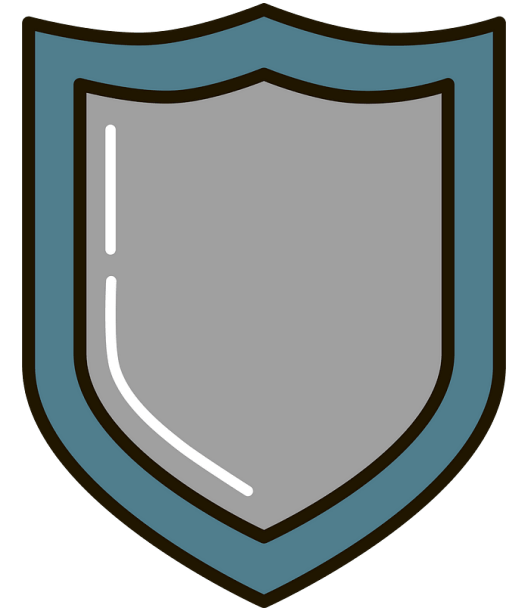
- A constructive trust is an equitable-court created remedy to prevent unjust enrichment or profit from a person's wrong doing. *Archer v. Anderson*, 556 S.W.3d 228, 236, n.49 (Tex. 2018) (citing *Kinsel v. Lindsey*, 526 S.W.3d 411, 425 (Tex. 2017) and *KCM Fin. LLC v. Bradshaw*, 457 S.W. 3d 70, 87 (Tex. 2015)). Equitable remedies are determined by the Court in its discretion. *Jackson Walker, LLP v. Kinsel*, 518 S.W.3d 1, 21 (Tex. App.–Amarillo 2015, pet. denied) (mem. op.). The court determines whether equitable relief is appropriated based on "the equity of the circumstances." *Burrow v. Arce*, 997 S.W.2d 229, 245 (Tex. 1999). A jury must resolve any contested fact issues related to the request for equitable relief when a jury trial is requested. *Id.*



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DEFENSE: TEXAS

- If a killing is legally justified, the beneficiary does not forfeit her or his right to the proceeds. *Republic-Vanguard Life Ins. V. Walter*, 728 S.W.2d 415, 421-22 (Tex. App.—Houston [1st Dist.] 1987, no writ), *disapproved on other grounds by Koral Indus. v. Security-Connecticut Life Ins. Co.*, 802 S.W.2d 650, 651 (Tex. 1990) (self-defense or defense of others).
- Protection of property
 - What about when a spouse hears a sound, thinks it's a burglar, and shoots the "intruder"?
 - Is that justified?
 - Would that fall under any of the slayer statutes?
 - Depends on the facts.
 - These type of actions or claims are very fact intensive.





MISSOURI

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SLAYER STATUTES: MISSOURI



- The state of Missouri does not have a slayer statute that prevents someone from inheriting from the estate of someone they killed.
- However, as a matter of common law, the slayer rule is enforced by the state courts. See, e.g., *In re Laspy's Estate*, 409 S.W.2d 725 (Mo. App. 1966) (felonious killing of one spouse by the other bars surviving spouse from marital rights and inheritance, stating “[a] person who feloniously and intentionally causes the death of another cannot benefit by reason of that death”).

SLAYER COMMON LAW: MISSOURI

Van Note Case

- Missouri prosecutors alleged that in 2010 Kansas City attorney Susan Van Note entered her wealthy father's lakefront home, then attacked him and his girlfriend Sharon Dickson.
- The girlfriend died at the scene. The father was transferred to a hospital.
- Van Note arrived at the hospital with a Health Care Power of Attorney, which prosecutors allege was forged, and ordered the doctors to take her father off of life support. He passed away four days later.
- The prosecution's theory was that Van Note murdered her father and his girlfriend because he had made Dickson the primary beneficiary of his will.



SLAYER COMMON LAW: MISSOURI

Van Note Case (cont'd)

- Nevertheless, Susan Van Note had been appointed as the personal representative of her father's will. Thus, for two years, she was in charge of her father's estate at which point she was indicted for the murders and removed as the personal representative.
- In the probate case, Van Note argued that since her father's will had no backup plan, and Dickson predeceased him, the rules of intestate succession should apply. Consequently, she would be the sole heir to her father's estate.
- However, Dickson, had an adult son from a previous marriage. He asked the court to apply the *slayer rule*, and exclude Van Note and her heirs, and make him the beneficiary of the estate.

LIFE INSURANCE & SLAYER ISSUES: MISSOURI

- V.A.M.S. 461.054: "A beneficiary who willfully and unlawfully causes or participates with another in causing the death of the owner, or the insured individual under a life insurance policy or certificate, is disqualified from receiving any benefit of a nonprobate transfer from the owner or any proceeds payable as a result of the death of an individual insured under a life insurance policy or certificate. The beneficiary designation shall be given effect as if the disqualified beneficiary had disclaimed it. The fact that a beneficiary willfully and unlawfully caused or participated with another in causing the death of the owner may be established by a criminal conviction or guilty plea, after the right of direct appeal has been exhausted, or determined in a proceeding pursuant to subsection 3 of this section using a preponderance of the evidence standard."



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KANSAS

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SLAYER STATUTE: KANSAS

- K.S.A. 59-513: "No person convicted of feloniously killing, or procuring the killing of, another person shall inherit or take by will by intestate succession, as a surviving joint tenant, as a beneficiary under a trust or otherwise from such other person any portion of the estate or property in which the decedent had an interest. When any person kills or causes the killing of such person's spouse, and then takes such person's own life, the estates and property of both persons shall be disposed of as if their deaths were simultaneous pursuant to the provisions of K.S.A. 58-708 to 58-718, inclusive, and amendments thereto."



SLAYER COMMON LAW: KANSAS

- *Rosenberger v. Northwestern Mut. Life Ins. Co.*, 182 F.Supp. 633 (D. Kan. 1960) (slayer statute will not apply absent conviction; slayer statute applies only to wrongdoers who intentionally cause the wrong and not to those who may have been negligent).
- *Matter of Estate of Van Der Veen*, 262 Kan. 211, 935 P.2d 1042 (1997) (slayer statute does not bar slayer's minor child from inheriting or taking under will, and slayer's share under will passes as if slayer predeceased testators).



SLAYER COMMON LAW: KANSAS (cont'd)

- *Chute v. Old American Ins. Co.*, 6 Kan.App.2d 412, 629 P.2d 734 (1981) (Where a life policy is procured by the beneficiary with predetermined intent to murder the insured, there can be no recovery, either on the part of the beneficiary or the estate of the insured, because the contract of insurance was void from inception by reason of fraud.)
- *Oberst v. Mooney*, 135 Kan. 433, 10 P.2d 846 (1932) (Where son was charged with murdering father, but jury disagreed and thereafter prosecution was dismissed without prejudice, son held entitled to inherit father's estate.)

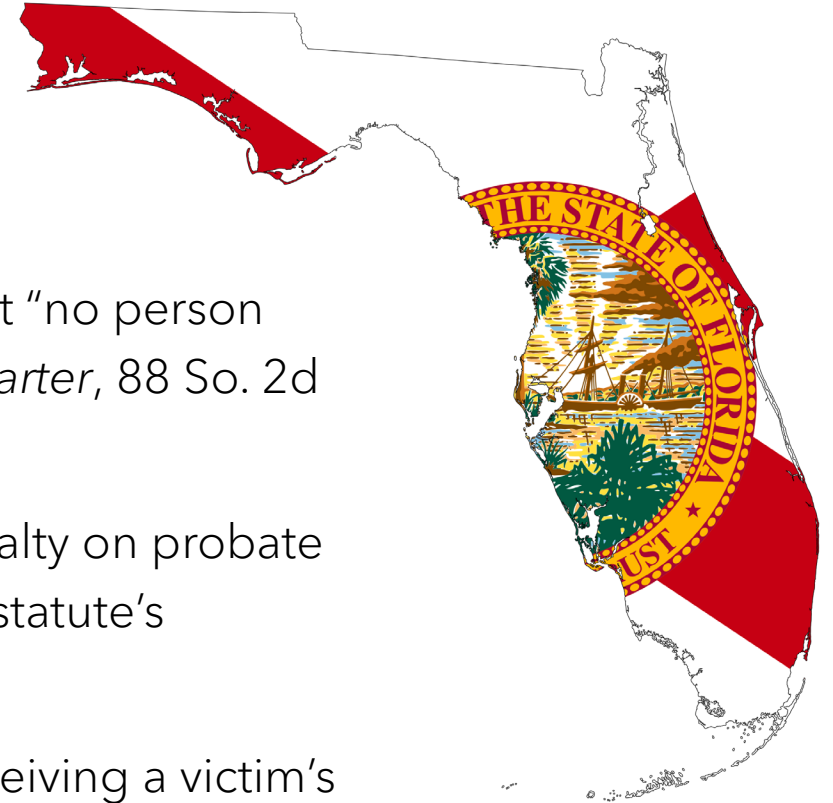


FLORIDA

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SLAYER STATUTE HISTORY: FLORIDA

- Florida's slayer statute is codified at Fla. Stat. § 732.802
- It was enacted in 1974 to cement the common law principle that "no person should be permitted to benefit from his own wrong." *Carter v. Carter*, 88 So. 2d 153, 157 (Fla. 1956).
- Originally, the Slayer Statute only imposed a disinheritance penalty on probate assets and required a criminal murder conviction to trigger the statute's applicability.
- In 1982, §732.802(2)-(4) were added to prevent a killer from receiving a victim's non-probate assets and to incorporate a civil alternative to trigger the statute's applicability in the absence of a murder conviction. See *Prudential Ins. Co. of Am. v. Baitinger*, 452 So. 2d 140, 142 (Fla. Dist. Ct. App. 1984).



SLAYER STATUTE HISTORY: FLORIDA (cont'd)

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- Originally, the Slayer Statute only imposed a disinheritance penalty on probate assets and required a criminal murder conviction to trigger the statute's applicability.
- In 1982, §732.802(2)-(4) were added to prevent a killer from receiving a victim's non-probate assets and to incorporate a civil alternative to trigger the statute's applicability in the absence of a murder conviction. See *Prudential Ins. Co. of Am. v. Baitinger*, 452 So. 2d 140, 142 (Fla. Dist. Ct. App. 1984).

SLAYER STATUTE: FLORIDA

Fla. Stat. § 732.802(1)- Forfeiture of Benefits Under Will or Probate Code

- "A surviving person who unlawfully and intentionally kills or participates in procuring the death of the decedent is not entitled to any benefits under the will or under the Florida Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent."
- "Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent."



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SLAYER STATUTE: FLORIDA

Fla. Stat. § 732.802(2)- Severance of Joint Tenancy & Forfeiture of Survivor Rights

- “Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent’s property and the killer has no rights by survivorship.”
- “This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.”

SLAYER STATUTE: FLORIDA

Fla. Stat. § 732.802(3)- Forfeiture of Bond, Life Insurance and Similar Contractual Arrangements

- A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement; and it becomes payable as though the killer had predeceased the decedent.



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SLAYER STATUTE: FLORIDA

Fla. Stat. § 732.802(4)- Forfeiture of Property or Interest Acquired by Killer

- "Any other acquisition of property or interest by the killer, including a life estate in homestead property, shall be treated in accordance with the principles of this section."



BURDEN OF PROOF: FLORIDA

Fla. Stat. § 732.802(5)



- **Criminal Conviction:** "A final judgment of conviction of murder in any degree is conclusive for purposes of this section."
- **Civil Alternative:** "In the absence of a conviction of murder in any degree, the court may determine by the greater weight of the evidence whether the killing was unlawful and intentional for purposes of this section."

Carter Case

- "The burden of proof in the first instance will rest on the party who alleges that the killing was intentional and unlawful." *Carter v. Carter*, 88 So. 2d 153, 159 (Fla. 1956).



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BURDEN OF PROOF: FLORIDA

Congleton Case

- “The...statute plainly contemplates the “absence of a conviction of murder,” and authorizes a court, in that event, to proceed independently...to “determine by the greater weight of the evidence whether the killing was unlawful and intentional.” *Congleton v. Sansom*, 664 So. 2d 276, 280 (Fla. 5th DCA 1995) (quoting § 732.802(5), Fla. Stat. (1991)).
 - Note- The current statute also precludes someone who participates in procuring the death of the decedent from receiving any benefits under the decedent’s will or the Florida Probate Code.
- “Acquittal on charges that must be proven beyond a reasonable doubt does not foreclose proof that meets the lesser civil standard.” *Id.*
- “A party invoking the slayer statute, also called the Murder Probate Statute, to prevent an unconvicted killer's acquisition of property has the burden of proving that the killing was both intentional and unlawful.” *Id.*



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BONA FIDE PURCHASER PROTECTED: FLORIDA

Fla. Stat. § 732.802(6)- Protection of Innocent Bona Fide Purchaser for Value

- “This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property.”
- “Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.”



SLAYER & TRUST INTERESTS: FLORIDA

Fla. Stat. § 736.1104(1)-(2)- Slayer's Forfeiture of Trust Beneficiary Interest

- "A beneficiary of a trust who unlawfully and intentionally kills or unlawfully and intentionally participates in procuring the death of the settlor or another person on whose death such beneficiary's interest depends, is not entitled to any trust interest, including homestead, dependent on the victim's death, and such interest shall devolve as though the killer had predeceased the victim." Fla. Stat. § 736.1104(1).
- "A final judgment of conviction of murder in any degree is conclusive for the purposes of this section. In the absence of a murder conviction in any degree, the court may determine by the greater weight of the evidence whether the killing was unlawful and intentional for purposes of this section." Fla. Stat. § 736.1104(2).



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2021 SLAYER STATUTE EXPANSION: FLORIDA

New Penalties for Abuse, Neglect, Exploitation, and Aggravated Manslaughter of Elderly Persons and Disabled Adults

- Effective July 1, 2021, the Florida Legislature enacted amendments designed to penalize those who prey on Florida's elderly and disabled population.
- This legislative overhaul was well timed, given the post-pandemic rise in abuse and exploitation of elderly and disabled persons.
- To report abuse, neglect, or exploitation of a vulnerable adult, you may call 1-800-962-2873 or go to <https://reportabuse.dcf.state.fl.us/>



2021 SLAYER STATUTE EXPANSION: FLORIDA

Fla. Stat. §732.8031- Forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult

- Section 732.8031 creates disinheritance penalties against those who abuse, neglect, exploit, or commit aggravated manslaughter against elderly or disabled persons.
- The statute provides two methods for establishing its applicability: (1) using a final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter against an elderly or disabled adult to create a rebuttable presumption that the statute applies; or (2) through a judicial determination that, by the greater weight of the evidence, a victim's death was caused by or contributed to by the abuser's, neglecter's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2). See Fla. Stat. § 732.8031(1)-(3).



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2021 SLAYER STATUTE EXPANSION: FLORIDA

Fla. Stat. §732.8031- Forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult (cont'd)

- Under §732.8031, the wrongdoer is determined to have predeceased the victim of their misdeeds.
- An abuser, neglecter, exploiter, or killer **convicted in any state or foreign jurisdiction** will not be able to benefit from their conduct against a decedent, or a person upon whose death the wrongdoer's interest depends.
- The types of assets or interests that may be forfeited by the wrongdoer are outlined in § 732.8031(1)-(3), and are virtually the same as those covered by § 732.802.
 - Assets/Interests include: Benefits under a will or the FL Probate Code, property appointed by will, jointly owned property (with or without survivorship rights), bonds, life insurance, property or interest acquired by misconduct.



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Fla. Stat. §732.8031- Forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult (cont'd)

- § 732.8031(4) requires the return of any property or interest obtained through the wrongful acts outlined in the statute.
- The statute does not affect the rights of a person who purchases property for value and without notice from the abuser, neglecter, exploiter, or killer before rights to the property have been adjudicated. Fla. Stat. § 732.8031(5)(a).
- However, the abuser, neglecter, exploiter, or killer remains liable for proceeds from the sale of such property or the value of the property. See Fla. Stat. § 732.8031(5)(b).



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Fla. Stat. §732.8031- Forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult (cont'd)

- Any insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless more than 2 business days before payment it receives at its home office or principal address written notice, or in the case of a financial institution it receives notice in accordance with s. 655.0201, of a claim under this section.



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2021 SLAYER STATUTE EXPANSION: FLORIDA

Fla. Stat. §732.8031- EXCEPTION to forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult

- Section 732.8031 does **not** apply if it can be proven by clear and convincing evidence that, after a qualifying conviction, the victim (if capacitated) ratified an intent that the convicted wrongdoer retain the rights that might otherwise be removed by the statute. See Fla. Stat. § 732.8031(7).
- The ratification must be in “a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain [the right(s) or benefit(s) otherwise removed by the statute].” *Id.*



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2021 SLAYER STATUTE EXPANSION: FLORIDA

Fla. Stat. § 736.1104(3)- Forfeiture of trust interest for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult

- "A beneficiary of a trust who was convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against a settlor or another person on whose death such beneficiary's interest depends is not entitled to any trust interest, including a homestead dependent on the victim's death, and such interest shall devolve as though the abuser, neglecter, exploiter, or killer had predeceased the victim."
- "A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies."
- "In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglecter's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section."



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2021 SLAYER STATUTE EXPANSION: FLORIDA

Fla. Stat. § 736.1104(3)- EXCEPTION to Forfeiture of trust interest for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult

- “[Fla. Stat. § 736.1104(3)] does not apply if it can be proven by clear and convincing evidence that, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, ratifies an intent that the person so convicted of abuse, neglect, or exploitation retain a trust interest by executing a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain a trust interest.” Fla. Stat. § 736.1104(3)(c).



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2021 SLAYER STATUTE EXPANSION: FLORIDA

Fla. Stat. §733.303(1)(b)- Disqualification from serving as Personal Representative for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult

- “A person is not qualified to act as a personal representative if the person has been convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in s. 825.101.”



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SLAYER CASES: FLORIDA



- “The slayer statute is not, as presently written, a forfeiture statute awarding all of a killer's property to the estate of the victim. Nor does the pre-statutory equitable principle that ‘no one shall be permitted to profit by his own wrongdoing’ include any such forfeiture of the killer's separate property.” *LoCascio v. Sharpe*, 23 So. 3d 1209, 1211 (Fla. 3d DCA 2009) (quoting *Capoccia v. Capoccia*, 505 So. 2d 624, 625 (Fla. 3d DCA 1987) (Decedent’s son and sole heir unsuccessfully argued the marital residence (the decedent's and murderer husband's homestead) passed in full to him as the mother's sole heir).
- “[A]n individual exonerated from criminal liability may nevertheless be found to have intended to cause a death [within the meaning of the slayer statute].” *Congleton v. Sansom*, 664 So. 2d 276, 280 (Fla. 5th DCA 1995) (affirming judgment disinheriting widower in wife's estate and finding criminal conviction was not required for disinheritance where evidence showed widower intentionally and unlawfully killed decedent).

SLAYER CASES: FLORIDA (cont'd)



- Slayer statute "disinherits only the slayer, or anyone who participates in the killing of the decedent..." *Fiel v. Hoffman*, 169 So. 3d 1274, 1277 (Fla. 4th DCA 2015).
- Slayer statute "does not apply to an innocent contingent beneficiary's entitlement to life insurance benefits resulting from the killing of the primary beneficiary by the insured who then commits suicide." *Chatman v. Currie*, 606 So.2d 454, 456 (Fla. 1st DCA 1992). See also *Lopez v. Rodriguez*, 574 So.2d 249, 250 (Fla. 3d DCA 1991) ("We decline to hold that the legislature intended the statute to deprive an innocent beneficiary of the trust proceeds.").
- Slayer statute did not prevent minor children of man who murdered his mother and brother from inheriting their father's share under his mother's will or their father's share of his brother's intestate estate. *In re Estate of Benson*, 548 So.2d 775 (Fla. 2d DCA 1989).

SLAYER CASES: FLORIDA (cont'd)

- Widow who was allegedly involved in planning of murder of her late husband should not have been appointed coexecutor of husband's estate. *In re Maxcy's Estate*, 240 So.2d 93 (Fla. 2d DCA 1970).
- Personal representatives were entitled to reimbursement of attorney fees and costs for defending slayer statute claim by will beneficiaries (which was later voluntarily dismissed) under statute providing that an attorney who has rendered services to an estate may be awarded reasonable compensation from the estate, where personal representatives' defense of the claim resulted in testator's will being upheld. *Estate of Shefner v. Shefner-Holden*, 2 So.3d 1076 (Fla. 3d DCA 2009).



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WRONGFUL DEATH CLAIM BY SLAYER : FLORIDA

- The right to recover damages for the wrongful death of a decedent under the Wrongful Death Act is an “interest” under the provision of the slayer statute preventing a killer from obtaining property or interests outside the decedent's estate, and thus, such right must be treated as if the killer predeceased the decedent. See *Cosman v. Rodriguez*, 153 So.3d 371 (Fla. 2d DCA 2014).



DEFENSES: FLORIDA

- "If...the evidence preponderates in favor of justification or excuse, an example of which would be self-defense, accident or insanity, then there would be no area for the application of the rule [that a person not be permitted to profit by his own wrong] that would prevent...recovery." *Carter v. Carter*, 88 So. 2d 153, 159 (Fla. 1956).



QUESTIONS?

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