

1 A bill to be entitled
2 An act relating to estates; amending s. 733.212, F.S.;
3 revising the contents of a notice of administration;
4 prohibiting an extension of time to file certain
5 objections to a notice of administration; providing an
6 exception; specifying when objections to the validity
7 of the will, venue, or jurisdiction of the court must
8 be filed; amending s. 733.2123, F.S.; requiring a copy
9 of the will to be attached to a formal notice of the
10 petition for administration; amending s. 733.3101,
11 F.S.; requiring a personal representative to resign
12 under certain circumstances; requiring a personal
13 representative to provide notice if unqualified;
14 specifying contents of the notice; authorizing
15 interested persons to petition for the removal of an
16 unqualified personal representative; defining the term
17 "qualified"; amending s. 733.504, F.S.; requiring
18 removal of a personal representative who was
19 unqualified at the time of appointment and revocation
20 of the letters of administration; providing for
21 removal of a previously qualified personal
22 representative if he or she is no longer entitled to
23 appointment; amending s. 733.817, F.S.; revising and
24 providing definitions; revising provisions for
25 allocation of the estate tax, apportionment of the net
26 tax attributable to specified interests, and

27 requirements for determining how specific interests
 28 are passed for purposes of determination of net tax;
 29 amending ss. 733.106, 736.1005, and 736.1006, F.S.;
 30 providing for payment of costs and attorney fees in
 31 probate and trust proceedings from estate and trust
 32 assets; authorizing a court to assess certain fees
 33 against the share of one or more persons in the estate
 34 or trust; authorizing the court to consider certain
 35 factors in the exercise of its discretion; providing
 36 retroactive applicability; providing an effective
 37 date.

38

39 Be It Enacted by the Legislature of the State of Florida:

40

41 Section 1. Paragraph (c) of subsection (2) and subsection
 42 (3) of section 733.212, Florida Statutes, are amended to read:

43 733.212 Notice of administration; filing of objections.—

44 (2) The notice shall state:

45 (c) That any interested person on whom a copy of the
 46 notice of administration is served must file on or before the
 47 date that is 3 months after the date of service of a copy of the
 48 notice of administration on that person any objection that
 49 challenges the validity of the will, ~~the qualifications of the~~
 50 ~~personal representative,~~ the venue, ~~or~~ the jurisdiction of the
 51 court, or as otherwise provided by subsection (3). Except for
 52 estoppel based solely on a misstatement by the personal

53 representative as to the period within which an objection must
54 be filed, the 3-month period may not be extended for any reason,
55 including affirmative representation, failure to disclose
56 information, or misconduct by the personal representative or any
57 other person. Unless sooner barred by subsection (3), all
58 objections to the validity of a will, the venue, or the
59 jurisdiction of the court must be filed no later than the
60 earlier of 1 year after service of notice of administration or
61 entry of an order of final discharge of the personal
62 representative.

63 (3) Any interested person on whom a copy of the notice of
64 administration is served must object to the validity of the
65 will, ~~the qualifications of the personal representative,~~ the
66 venue, or the jurisdiction of the court by filing a petition or
67 other pleading requesting relief in accordance with the Florida
68 Probate Rules on or before the date that is 3 months after the
69 date of service of a copy of the notice of administration on the
70 objecting person, or those objections are forever barred. Except
71 for estoppel based solely on a misstatement by the personal
72 representative as to the period within which an objection must
73 be filed, the 3-month period may not be extended for any reason,
74 including affirmative representation, failure to disclose
75 information, or misconduct by the personal representative or any
76 other person. Unless sooner barred under this subsection, all
77 objections to the validity of a will, the venue, or the
78 jurisdiction of the court must be filed no later than the

79 earlier of 1 year after service of notice of administration or
80 entry of an order of final discharge of the personal
81 representative.

82 Section 2. Section 733.2123, Florida Statutes, is amended
83 to read:

84 733.2123 Adjudication before issuance of letters.—A
85 petitioner may serve formal notice of the petition for
86 administration on interested persons. A copy of the will offered
87 for probate must be attached to the notice. A person who is
88 served with such notice before the issuance of letters or who
89 has waived notice may not challenge the validity of the will,
90 testacy of the decedent, ~~qualifications of the personal~~
91 ~~representative,~~ venue, or jurisdiction of the court, except in
92 the proceedings before issuance of letters.

93 Section 3. Effective upon this act becoming a law, section
94 733.3101, Florida Statutes, is amended to read:

95 733.3101 Personal representative not qualified.—

96 (1) A personal representative shall resign immediately
97 when the personal representative knows that he or she was not
98 qualified to act at the time of appointment.

99 (2) Any time a personal representative who was qualified
100 to act at the time of appointment knows or should have known
101 that he or she would not be qualified for appointment if
102 application for appointment were then made, the personal
103 representative shall promptly file and serve a notice setting
104 forth the reasons. The notice must state that any interested

105 person may petition to remove the personal representative. An
106 interested person upon whom a copy of the notice is served may
107 file a petition within 30 days after service of the notice
108 requesting the personal representative's removal.

109 (3) A personal representative who fails to comply with
110 this section ~~is shall be~~ personally liable for costs, including
111 attorney ~~attorney's~~ fees, incurred in any removal proceeding, if
112 the personal representative is removed. The liability extends to
113 any personal representative who does not know but should have
114 known of the facts that would otherwise require the personal
115 representative to resign under subsection (1) or file and serve
116 notice under subsection (2). This liability shall be cumulative
117 to any other provided by law.

118 (4) As used in this section, the term "qualified" means
119 qualified under ss. 733.302-733.305.

120 Section 4. Effective upon this act becoming a law, section
121 733.504, Florida Statutes, is amended to read:

122 733.504 Removal of personal representative; causes for
123 removal.-

124 (1) A personal representative shall be removed and the
125 letters revoked if he or she was not qualified to act at the
126 time of appointment.

127 (2) A personal representative may be removed and the
128 letters revoked for any of the following causes, ~~and the removal~~
129 ~~shall be in addition to any penalties prescribed by law:~~

130 (a) ~~(1)~~ Adjudication that the personal representative is

131 incapacitated.

132 (b)~~(2)~~ Physical or mental incapacity rendering the
133 personal representative incapable of the discharge of his or her
134 duties.

135 (c)~~(3)~~ Failure to comply with any order of the court,
136 unless the order has been superseded on appeal.

137 (d)~~(4)~~ Failure to account for the sale of property or to
138 produce and exhibit the assets of the estate when so required.

139 (e)~~(5)~~ Wasting or maladministration of the estate.

140 (f)~~(6)~~ Failure to give bond or security for any purpose.

141 (g)~~(7)~~ Conviction of a felony.

142 (h)~~(8)~~ Insolvency of, or the appointment of a receiver or
143 liquidator for, any corporate personal representative.

144 (i)~~(9)~~ Holding or acquiring conflicting or adverse
145 interests against the estate that will or may interfere with the
146 administration of the estate as a whole. This cause of removal
147 shall not apply to the surviving spouse because of the exercise
148 of the right to the elective share, family allowance, or
149 exemptions, as provided elsewhere in this code.

150 (j)~~(10)~~ Revocation of the probate of the decedent's will
151 that authorized or designated the appointment of the personal
152 representative.

153 (k)~~(11)~~ Removal of domicile from Florida, if domicile was
154 a requirement of initial appointment.

155 (l)~~(12)~~ The personal representative was qualified to act
156 at the time of appointment but would not now be entitled to

157 appointment.

158 (3) Removal pursuant to this section shall be in addition
159 to any penalties prescribed by law.

160 Section 5. Section 733.817, Florida Statutes, is amended
161 to read:

162 733.817 Apportionment of estate taxes.—

163 (1) DEFINITIONS.—For purposes of this section:

164 (a) "Fiduciary" means a person other than the personal
165 representative in possession of property included in the measure
166 of the tax who is liable to the applicable taxing authority for
167 payment of the entire tax to the extent of the value of the
168 property in possession.

169 (b) "Generation-skipping transfer tax" means the
170 generation-skipping transfer tax on direct skips at death and
171 excludes the generation-skipping transfer tax on taxable
172 distributions or taxable terminations. The terms "direct skip,"
173 "taxable distribution," and "taxable termination" have the same
174 meanings as provided in the Internal Revenue Code.

175 (c) ~~(b)~~ "Governing instrument" means a will, trust
176 agreement, or any other document that controls the transfer of
177 property ~~an asset~~ on the occurrence of the event with respect to
178 which the tax is being levied.

179 (d) ~~(e)~~ "Gross estate" means the gross estate, as
180 determined by the Internal Revenue Code with respect to the
181 federal estate tax and the Florida estate tax, and as that
182 concept is otherwise determined by the estate, inheritance, or

183 death tax laws of the particular state, country, or political
 184 subdivision whose tax is being apportioned.

185 ~~(e)-(d)~~ "Included in the measure of the tax" means that for
 186 each separate tax that an interest may incur, only interests
 187 included in the measure of that particular tax are considered.
 188 The term "included in the measure of the tax" does not include:

189 1. Any interest, whether passing under the will or not, to
 190 the extent the interest is initially deductible from the gross
 191 estate, without regard to any subsequent reduction of the
 192 deduction by reason of the charge of any part of the applicable
 193 tax to the interest. If an election is required for
 194 deductibility, an interest is not "initially deductible" unless
 195 the election for deductibility is allowed. ~~The term "included in~~
 196 ~~the measure of the tax" does not include~~

197 2. Interests or amounts that are not included in the gross
 198 estate but are included in the amount upon which the applicable
 199 tax is computed, such as adjusted taxable gifts pursuant to s.
 200 2001 of the Internal Revenue Code ~~with respect to the federal~~
 201 ~~estate tax.~~ ~~If an election is required for deductibility, an~~
 202 ~~interest is not "initially deductible" unless the election for~~
 203 ~~deductibility is allowed.~~

204 3. Gift taxes included in the gross estate pursuant to s.
 205 2035 of the Internal Revenue Code and the portion of any
 206 intervivos transfer included in the gross estate pursuant to s.
 207 529 of the Internal Revenue Code, notwithstanding inclusion in
 208 the federal gross estate.

209 (f)~~(e)~~ "Internal Revenue Code" means the Internal Revenue
 210 Code of 1986, as amended from time to time.

211 (g)~~(f)~~ "Net tax" means the net tax payable to the
 212 particular state, country, or political subdivision whose tax is
 213 being apportioned, after taking into account all credits against
 214 the applicable tax except as provided in this section. With
 215 respect to the federal estate tax, "net tax" is determined after
 216 taking into account all credits against the tax except for the
 217 credit for foreign death taxes and except for the credit or
 218 deduction for state tax taxes imposed by states other than
 219 Florida.

220 (h)~~(g)~~ "Nonresiduary devise" means any devise that is not
 221 a residuary devise.

222 (i)~~(h)~~ "Nonresiduary interest" in connection with a trust
 223 means any interest in a trust which is not a residuary interest.

224 (j)~~(i)~~ "Recipient" means, with respect to property or an
 225 interest in property included in the gross estate, an heir at
 226 law in an intestate estate, devisee in a testate estate,
 227 beneficiary of a trust, beneficiary of a life ~~an~~ insurance
 228 policy, annuity, or other contractual right, surviving tenant,
 229 taker as a result of the exercise or in default of the exercise
 230 of a general power of appointment, person who receives or is to
 231 receive the property or an interest in the property, or person
 232 in possession of the property, other than a creditor.

233 (k)~~(j)~~ "Residuary devise" has the meaning set forth in s.
 234 731.201.

235 (l)~~(k)~~ "Residuary interest," in connection with a trust,
236 means an interest in the assets of a trust which remain after
237 provision for any distribution that is to be satisfied by
238 reference to a specific property or type of property, fund, sum,
239 or statutory amount.

240 (m)~~(l)~~ "Revocable trust" means a trust as described in s.
241 733.707(3).

242 (n) "Section 2044 interest" means an interest included in
243 the measure of the tax by reason of s. 2044 of the Internal
244 Revenue Code.

245 (o)~~(m)~~ "State" means any state, territory, or possession
246 of the United States, the District of Columbia, and the
247 Commonwealth of Puerto Rico.

248 (p)~~(n)~~ "Tax" means any estate tax, inheritance tax,
249 generation-skipping ~~generation-skipping~~ transfer tax, or other
250 tax levied or assessed under the laws of this or any other
251 state, the United States, any other country, or any political
252 subdivision of the foregoing, as finally determined, which is
253 imposed as a result of the death of the decedent, ~~including,~~
254 ~~without limitation, the tax assessed pursuant to s. 4980A of the~~
255 ~~Internal Revenue Code.~~ The term also includes any interest and
256 penalties imposed in addition to the tax. Unless the context
257 indicates otherwise, the term "tax" means each separate tax.
258 However, the term "tax" does not include any additional estate
259 tax imposed by s. 2032A(c) or s. 2057(f) of the Internal Revenue
260 Code or any corresponding state estate, inheritance, or death

261 tax. The additional estate tax shall be apportioned as provided
 262 in s. 2032A or s. 2057 of the Internal Revenue Code.

263 (q)~~(o)~~ "Temporary interest" means an interest in income or
 264 an estate for a specific period of time or for life or for some
 265 other period controlled by reference to extrinsic events,
 266 whether or not in trust.

267 (r)~~(p)~~ "Tentative Florida tax" with respect to any
 268 property means the net Florida estate tax that would have been
 269 attributable to that property if no tax were payable to any
 270 other state in respect of that property.

271 (s)~~(q)~~ "Value" means the pecuniary worth of the interest
 272 involved as finally determined for purposes of the applicable
 273 tax after deducting any debt, expense, or other deduction
 274 chargeable to it for which a deduction was allowed in
 275 determining the amount of the applicable tax. A lien or other
 276 encumbrance is not regarded as chargeable to a particular
 277 interest to the extent that it will be paid from other
 278 interests. The value of an interest shall not be reduced by
 279 reason of the charge against it of any part of the tax, except
 280 as provided in paragraph (3) (a).

281 (2) ALLOCATION OF TAX.—Except as otherwise effectively
 282 directed by the governing instrument, An interest in protected
 283 homestead shall be exempt from the apportionment of taxes.

284 ~~(3)~~ the net tax attributable to the interests included in
 285 the measure of each tax shall be determined by the proportion
 286 that the value of each interest included in the measure of the

287 tax bears to the total value of all interests included in the
288 measure of the tax. Notwithstanding the foregoing:

289 (a) The net tax attributable to Section 2044 interests
290 ~~included in the measure of the tax by reason of s. 2044 of the~~
291 ~~Internal Revenue Code~~ shall be determined in the manner provided
292 for the federal estate tax in s. 2207A of the Internal Revenue
293 Code, and the amount so determined shall be deducted from the
294 tax to determine the net tax attributable to all other ~~remaining~~
295 interests included in the measure of the tax.

296 (b) The foreign tax credit allowed with respect to the
297 federal estate tax shall be allocated among the recipients of
298 interests finally charged with the payment of the foreign tax in
299 reduction of any federal estate tax chargeable to the recipients
300 of the foreign interests, whether or not any federal estate tax
301 is attributable to the foreign interests. Any excess of the
302 foreign tax credit shall be applied to reduce proportionately
303 the net amount of federal estate tax chargeable to the remaining
304 recipients of the interests included in the measure of the
305 federal estate tax.

306 (c) The reduction in the net tax attributable to the
307 deduction for state death taxes allowed by s. 2058 of the
308 Internal Revenue Code shall be allocated to the recipients of
309 the interests that produced the deduction. For purposes of this
310 paragraph, the reduction in the net tax shall be calculated in
311 the manner provided for interests other than those described in
312 paragraph (a).

313 (d)~~(e)~~ The reduction in the Florida tax, if one is
 314 imposed, on the estate of a Florida resident for tax paid to
 315 other states shall be allocated as follows:

316 1. If the net tax paid to another state is greater than or
 317 equal to the tentative Florida tax attributable to the property
 318 subject to tax in the other state, none of the Florida tax shall
 319 be attributable to that property.

320 2. If the net tax paid to another state is less than the
 321 tentative Florida tax attributable to the property subject to
 322 tax in the other state, the net Florida tax attributable to the
 323 property subject to tax in the other state shall be the excess
 324 of the amount of the tentative Florida tax attributable to the
 325 property over the net tax payable to the other state with
 326 respect to the property.

327 3. Any remaining net Florida tax shall be attributable to
 328 property included in the measure of the Florida tax exclusive of
 329 property subject to tax in other states.

330 4. The net federal tax attributable to the property
 331 subject to tax in the other state shall be determined as if it
 332 were located in that ~~the~~ state.

333 (e)~~(d)~~ The net tax attributable to a temporary interest,
 334 if any, shall be regarded as attributable to the principal that
 335 supports the temporary interest.

336 (3)~~(4)~~(a) APPORTIONMENT OF TAX.—Except as otherwise
 337 effectively directed by the governing instrument, the net tax
 338 attributable to each interest shall be apportioned as follows:

339 (a) Generation-skipping transfer tax.—Any federal or state
340 generation-skipping transfer tax shall be apportioned in the
341 manner provided in s. 2603 of the Internal Revenue Code after
342 application of the remaining provisions of this subsection to
343 taxes other than the generation-skipping transfer tax.

344 (b) Section 2044 interests.—The net tax attributable to
345 Section 2044 interests shall be apportioned among the recipients
346 of the Section 2044 interests in the proportion that the value
347 of each Section 2044 interest bears to the total of all Section
348 2044 interests. The net tax apportioned by this paragraph to
349 Section 2044 interests that pass in the manner described in
350 paragraph (c) or paragraph (d) shall be apportioned to the
351 Section 2044 interests in the manner described in those
352 subsections before the apportionment of the net tax attributable
353 to the other interests passing as provided in those paragraphs.
354 The net tax attributable to the interests other than the Section
355 2044 interests that pass in the manner described in paragraph
356 (c) or paragraph (d) shall be apportioned only to the other
357 interests pursuant to those subsections if the Internal Revenue
358 Code, including, but not limited to, ss. 2032A(c)(5), 2206,
359 2207, 2207A, 2207B, and 2603, applies to apportion federal tax
360 against recipients of certain interests, all net taxes,
361 including taxes levied by the state attributable to each type of
362 interest, shall be apportioned against the recipients of all
363 interests of that type in the proportion that the value of each
364 interest of that type included in the measure of the tax bears

365 ~~to the total of all interests of that type included in the~~
366 ~~measure of the tax.~~

367 ~~(b) The provisions of this subsection do not affect~~
368 ~~allocation of the reduction in the Florida tax as provided in~~
369 ~~this section with respect to estates of Florida residents which~~
370 ~~are also subject to tax in other states.~~

371 ~~(5) Except as provided above or as otherwise directed by~~
372 ~~the governing instrument, the net tax attributable to each~~
373 ~~interest shall be apportioned as follows:~~

374 ~~(c)(a)~~ Wills.—For property passing under the decedent's
375 will, in the following order of priority:

376 1. The net tax attributable to nonresiduary devises shall
377 be charged to and paid from the residuary estate whether or not
378 all interests in the residuary estate are included in the
379 measure of the tax. If the residuary estate is insufficient to
380 pay the net tax attributable to all nonresiduary devises, the
381 balance of the net tax attributable to nonresiduary devises
382 shall be apportioned among the recipients of the nonresiduary
383 devises in the proportion that the value of each nonresiduary
384 devise included in the measure of the tax bears to the total of
385 all nonresiduary devises included in the measure of the tax.

386 2. The net tax attributable to residuary devises shall be
387 apportioned among the recipients of the residuary devises
388 included in the measure of tax in the proportion that the value
389 of each residuary devise included in the measure of the tax
390 bears to the total of all residuary devises included in the

391 measure of the tax. If the residuary estate is insufficient to
 392 pay the net tax attributable to all residuary devisees, the
 393 balance of the net tax attributable to residuary devisees shall
 394 be apportioned among the recipients of the nonresiduary devisees
 395 in the proportion that the value of each nonresiduary devise
 396 included in the measure of the tax bears to the total of all
 397 nonresiduary devisees included in the measure of the tax.

398 (d) ~~(b)~~ Trusts.—For property passing under the terms of any
 399 trust other than a trust created in the decedent's will, in the
 400 following order of priority:

401 1. The net tax attributable to nonresiduary interests of
 402 the trust shall be charged to and paid from the residuary
 403 portion of the trust, whether or not all interests in the
 404 residuary portion are included in the measure of the tax. If the
 405 residuary portion ~~of the trust~~ is insufficient to pay the net
 406 tax attributable to all nonresiduary interests, the balance of
 407 the net tax attributable to nonresiduary interests shall be
 408 apportioned among the recipients of the nonresiduary interests
 409 in the proportion that the value of each nonresiduary interest
 410 included in the measure of the tax bears to the total of all
 411 nonresiduary interests included in the measure of the tax.

412 2. The net tax attributable to residuary interests of the
 413 trust shall be apportioned among the recipients of the residuary
 414 interests of the trust included in the measure of the tax in the
 415 proportion that the value of each residuary interest included in
 416 the measure of the tax bears to the total of all residuary

417 interests of the trust included in the measure of the tax. If
 418 the residuary portion is insufficient to pay the net tax
 419 attributable to all residuary interests, the balance of the net
 420 tax attributable to residuary interests shall be apportioned
 421 among the recipients of the nonresiduary interests in the
 422 proportion that the value of each nonresiduary interest included
 423 in the measure of the tax bears to the total of all nonresiduary
 424 interests included in the measure of the tax.

425
 426 Except as provided in paragraph (g), this paragraph applies
 427 separately for each trust.

428 (e)-(e) Protected homestead, exempt property, and family
 429 allowance.-

430 1. The net tax attributable to an interest in protected
 431 homestead, exempt property, and the family allowance as
 432 determined under s. 732.403 shall be apportioned against the
 433 recipients of other interests in the estate or passing under any
 434 revocable trust in the following order of priority:

435 a.1. Class I: Recipients of interests passing by intestacy
 436 ~~not disposed of by the decedent's will or revocable trust~~ that
 437 are included in the measure of the federal estate tax.

438 b.2. Class II: Recipients of residuary devises, and
 439 residuary interests, and pretermitted shares pursuant to ss.
 440 732.301 and 732.302 that are included in the measure of the
 441 federal estate tax.

442 c.3. Class III: Recipients of nonresiduary devises and

443 nonresiduary interests that are included in the measure of the
444 federal estate tax.

445 2. Any ~~The~~ net tax apportioned to a class, ~~if any,~~
446 pursuant to this paragraph shall be apportioned among each
447 recipient ~~the recipients~~ in the class in the proportion that the
448 value of the interest of each bears to the total value of all
449 interests included in that class. Tax may not be apportioned
450 under this paragraph to the portion of any interest applied in
451 satisfaction of the elective share whether or not included in
452 the measure of the tax. For purposes of this paragraph, if the
453 interests described in s. 732.2075(1) exceed the amount of the
454 elective share, the elective share shall be treated as satisfied
455 first from interests other than those described in classes I,
456 II, and III and, to the extent those interests are insufficient
457 to satisfy the elective share, from the interests passing to or
458 for the benefit of the surviving spouse described in classes I,
459 II, and III, beginning with those described in class I, until
460 the elective share is satisfied. This paragraph has priority
461 over paragraphs (a) and (h).

462 3. The balance of the net tax attributable to any interest
463 in protected homestead, exempt property, and the family
464 allowance as determined under s. 732.403 not apportioned under
465 this paragraph shall be apportioned to the recipients of those
466 interests included in the measure of the tax in the proportion
467 that the value of each bears to the total value of those
468 interests included in the measure of the tax.

469 (f) Construction.—For purposes of this subsection:
470 1. If the decedent's estate is the beneficiary of a life
471 insurance policy, annuity, or contractual right included in the
472 decedent's gross estate or is the taker as a result of the
473 exercise or default in exercise of a general power of
474 appointment held by the decedent, that interest shall be
475 regarded as passing under the terms of the decedent's will for
476 the purposes of paragraph (c) or by intestacy if not disposed of
477 by will. Additionally, any interest included in the measure of
478 the tax by reason of s. 2041 of the Internal Revenue Code
479 passing to the decedent's creditors or the creditors of the
480 decedent's estate shall be regarded as passing to the decedent's
481 estate for purposes of this subparagraph.
482 2. If a trust is the beneficiary of a life insurance
483 policy, annuity, or contractual right included in the decedent's
484 gross estate or is the taker as a result of the exercise or
485 default in exercise of a general power of appointment held by
486 the decedent, that interest shall be regarded as passing under
487 the trust for purposes of paragraph (d).
488 (g)-(d) Common instrument construction.—In the application
489 of this subsection, paragraphs (b)-(f) (a), (b), and (c) shall
490 be applied to apportion the net tax to the recipients under
491 certain governing instruments of the estate and the recipients
492 of the decedent's revocable trust as if all recipients under
493 those instruments, other than the estate or revocable trust
494 trusts themselves, were taking under a common instrument. This

495 construction applies to:

496 1. The decedent's will and revocable trust if either the
497 estate or the revocable trust is a beneficiary of the other.

498 2. The decedent's revocable trust and any other revocable
499 trust of the decedent if the revocable trust is a beneficiary of
500 the other trust.

501 ~~(e) The net tax imposed under s. 4980A of the Internal~~
502 ~~Revenue Code shall be apportioned among the recipients of the~~
503 ~~interests included in the measure of that tax in the proportion~~
504 ~~that the value of the interest of each bears to the total value~~
505 ~~of all interests included in the measure of that tax.~~

506 (h)-(f) Other interests.—The net tax that is not
507 apportioned to interests under paragraphs (b)-(g) ~~(a), (b), and~~
508 ~~(e)~~, including, ~~but not limited to,~~ the net tax attributable to
509 interests passing by intestacy, interests applied in
510 satisfaction of the elective share pursuant to s. 732.2075(2),
511 interests passing by reason of the exercise or nonexercise of a
512 general power of appointment, jointly held interests passing by
513 survivorship, life insurance, properties in which the decedent
514 held a reversionary or revocable interest, and annuities and
515 contractual rights, shall be apportioned among the recipients of
516 the remaining interests that are included in the measure of the
517 tax in the proportion that the value of each such interest bears
518 to the total value of all the remaining interests included in
519 the measure of the tax.

520 (i)-(g) Liability for payment of interest or penalties.—If

521 the court finds that it is inequitable to apportion interest,
 522 penalties, or both, ~~7~~ in the manner provided in paragraphs (a)-(h)
 523 ~~(a)-(f)~~, the court may assess liability for the payment thereof
 524 in the manner it finds equitable.

525 (j) Liability for payment of tax.—If the court finds that
 526 this section does not apportion any tax that was not effectively
 527 directed by the governing instrument, the court may assess
 528 liability for the payment of the tax in the manner it finds
 529 equitable.

530 (4) DIRECTION AGAINST APPORTIONMENT.—

531 (a) Except as provided in this subsection, a governing
 532 instrument may not direct that taxes be paid from property other
 533 than that passing under the governing instrument.

534 (b)(h)1. For To be effective as a direction in a governing
 535 instrument to be effective to direct payment of taxes
 536 attributable to property passing under the governing instrument
 537 ~~for payment of tax~~ in a manner different from that provided in
 538 this section, the direction must be express governing instrument
 539 ~~must direct that the tax be paid from assets that pass pursuant~~
 540 ~~to that governing instrument, except as provided in this~~
 541 ~~section.~~

542 ~~2. If the decedent's will provides that the tax shall be~~
 543 ~~apportioned as provided in the decedent's revocable trust by~~
 544 ~~specific reference to the trust, the direction in the revocable~~
 545 ~~trust shall be deemed to be a direction contained in the will~~
 546 ~~and shall control with respect to payment of taxes from assets~~

547 ~~passing under both the will and the revocable trust.~~

548 ~~3. A direction in the decedent's will to pay tax from the~~
549 ~~decedent's revocable trust is effective if a contrary direction~~
550 ~~is not contained in the trust agreement.~~

551 (c)4. For a direction in a governing instrument to be
552 effective to direct payment of taxes attributable to property
553 not passing under the governing instrument from property passing
554 under the governing instrument, the governing instrument must
555 expressly direct ~~refer to this section, or expressly indicate~~
556 that the property passing under the governing instrument is to
557 bear the burden of taxation for property not passing under the
558 governing instrument. Except as provided in paragraph (d), a
559 direction in the governing instrument to the effect that all
560 taxes are to be paid from property passing under the governing
561 instrument whether attributable to property passing under the
562 governing instrument or otherwise shall be effective to direct
563 the payment from property passing under the governing instrument
564 of taxes attributable to property not passing under the
565 governing instrument.

566 (d) In addition to satisfying the other provisions of this
567 subsection:

568 1.a. For a direction in the decedent's will or revocable
569 trust to be effective to waive the right of recovery provided in
570 s. 2207A of the Internal Revenue Code for tax imposed by reason
571 of s. 2044 of the Internal Revenue Code and any other tax
572 imposed by Florida based on that provision of the Internal

573 Revenue Code, the direction must expressly waive the right of
574 recovery. An express direction that property passing under the
575 will or revocable trust bear the tax imposed by s. 2044 of the
576 Internal Revenue Code is an express waiver of the right of
577 recovery provided in s. 2207A of the Internal Revenue Code. A
578 reference to "qualified terminable interest property" or "QTIP"
579 or property in which the decedent had a "qualifying income
580 interest for life" is deemed to be a reference to property upon
581 which tax is imposed by s. 2044 of the Internal Revenue Code and
582 which is subject to the right of recovery provided in s. 2207A
583 of the Internal Revenue Code.

584 b. If property is included in the gross estate pursuant to
585 both ss. 2044 and 2041 of the Internal Revenue Code, the
586 property is deemed to be included under s. 2044 but not s. 2041
587 for purposes of allocation and apportionment of the tax.

588 2. For a direction in the decedent's will or revocable
589 trust to be effective to waive the right of recovery provided in
590 s. 2207B of the Internal Revenue Code for tax imposed by reason
591 of s. 2036 of the Internal Revenue Code and any other tax
592 imposed by Florida based on that provision of the Internal
593 Revenue Code, the direction must expressly waive the right of
594 recovery. An express direction that property passing under the
595 will or revocable trust bear the tax imposed by s. 2036 of the
596 Internal Revenue Code is deemed to be an express waiver of the
597 right of recovery provided in s. 2207B. If property is included
598 in the gross estate pursuant to both ss. 2038 and 2036 of the

599 Internal Revenue Code, the property is deemed to be included
600 under s. 2038 but not s. 2036 for purposes of allocation and
601 apportionment of the tax, and there is no right of recovery
602 under s. 2207B of the Internal Revenue Code.

603 3. A general statement in the decedent's will or revocable
604 trust waiving all rights of reimbursement or recovery under the
605 Internal Revenue Code is not an express waiver of the rights of
606 recovery provided in s. 2207A or s. 2207B of the Internal
607 Revenue Code.

608 4. For a direction in a governing instrument to be
609 effective to direct the payment of the generation-skipping
610 transfer tax in a manner other than as provided in s. 2603 of
611 the Internal Revenue Code and any other tax imposed by Florida
612 based on that provision of the Internal Revenue Code, the
613 direction must specifically reference the tax imposed by s. 2601
614 of the Internal Revenue Code. A reference to the "generation-
615 skipping transfer tax" or s. 2603 of the Internal Revenue Code
616 is deemed to be a reference to property upon which tax is
617 imposed by reason of s. 2601 of the Internal Revenue Code.

618 (e) If the decedent expressly directs by will, the net tax
619 attributable to property over which the decedent held a general
620 power of appointment may be determined in a manner different
621 from that provided in subsection (2); however, the net tax
622 attributable to that property may not exceed the difference
623 between the total net tax determined pursuant to subsection (2)
624 without regard to this paragraph and the total net tax that

625 would have been payable if the value of the property subject to
626 such power of appointment had not been included in the
627 decedent's gross estate. If tax is attributable to one or more
628 Section 2044 interests pursuant to subsection (2), the net tax
629 attributable to the Section 2044 interests shall be calculated
630 before the application of this paragraph unless the decedent
631 expressly directs otherwise by will.

632 (f) If the decedent's will expressly provides that the tax
633 is to be apportioned as provided in the decedent's revocable
634 trust by specific reference to the revocable trust, an express
635 direction in the revocable trust is deemed to be a direction
636 contained in the will as well as the revocable trust.

637 (g) An express direction in the decedent's will to pay tax
638 from the decedent's revocable trust by specific reference to the
639 revocable trust is effective unless a contrary express direction
640 is contained in the revocable trust.

641 (h) If governing instruments contain effective directions
642 that conflict as to payment of taxes, the most recently executed
643 tax apportionment provision controls to the extent of the
644 conflict. For the purpose of this subsection, if a will or other
645 governing instrument is amended, the date of the codicil to the
646 will or amendment to the governing instrument is regarded as the
647 date of the will or other governing instrument only if the
648 codicil or amendment contains an express tax apportionment
649 provision or an express modification of the tax apportionment
650 provision. A general statement ratifying or republishing all

651 provisions not otherwise amended does not meet this condition.
652 If the decedent's will and another governing instrument were
653 executed on the same date, the will is deemed to be executed
654 after the other governing instrument. The earlier conflicting
655 governing instrument shall control as to any tax remaining
656 unpaid after the application of the later conflicting governing
657 instrument.

658 (i) A grant of permission or authority in a governing
659 instrument to request payment of tax from property passing under
660 another governing instrument is not a direction apportioning the
661 tax to the property passing under the other governing
662 instrument. A grant of permission or authority in a governing
663 instrument to pay tax attributable to property not passing under
664 the governing instrument is not a direction apportioning the tax
665 to property passing under the governing instrument.

666 (j) This section applies to any tax remaining to be paid
667 after the application of any effective express directions. An
668 effective express direction for the payment of tax on certain
669 interests in a manner different from that provided in this
670 section is not effective as an express direction for payment of
671 tax on other interests included in the measure of the tax.

672 ~~5. If there is a conflict as to payment of taxes between~~
673 ~~the decedent's will and the governing instrument, the decedent's~~
674 ~~will controls, except as follows:~~

675 ~~a. The governing instrument shall be given effect with~~
676 ~~respect to any tax remaining unpaid after the application of the~~

677 ~~decedent's will.~~

678 ~~b. A direction in a governing instrument to pay the tax~~
679 ~~attributable to assets that pass pursuant to the governing~~
680 ~~instrument from assets that pass pursuant to that governing~~
681 ~~instrument shall be effective notwithstanding any conflict with~~
682 ~~the decedent's will, unless the tax provision in the decedent's~~
683 ~~will expressly overrides the conflicting provision in the~~
684 ~~governing instrument.~~

685 (5)~~(6)~~ TRANSFER OF PROPERTY.—The personal representative
686 or fiduciary shall not be required to transfer to a recipient
687 any property reasonably anticipated to be necessary for the
688 payment of taxes. Further, the personal representative or
689 fiduciary shall not be required to transfer any property to the
690 recipient until the amount of the tax due from the recipient is
691 paid by the recipient. If property is transferred before final
692 apportionment of the tax, the recipient shall provide a bond or
693 other security for his or her apportioned liability in the
694 amount and form prescribed by the personal representative or
695 fiduciary.

696 (6)~~(7)~~ ORDER OF APPORTIONMENT.—

697 (a) The personal representative may petition at any time
698 for an order of apportionment. If no administration has been
699 commenced at any time after 90 days from the decedent's death,
700 any fiduciary may petition for an order of apportionment in the
701 court in which venue would be proper for administration of the
702 decedent's estate. ~~Formal~~ Notice of the petition for an order of

703 appportionment must be served on ~~shall be given to~~ all interested
 704 persons in the same manner as required for service of formal
 705 notice. At any time after 6 months from the decedent's death,
 706 any recipient may petition the court for an order of
 707 appportionment.

708 (b) The court shall determine all issues concerning
 709 appportionment. If the tax to be appportioned has not been finally
 710 determined, the court shall determine the probable tax due or to
 711 become due from all interested persons, appportion the probable
 712 tax, and retain jurisdiction over the parties and issues to
 713 modify the order of appportionment as appropriate until after the
 714 tax is finally determined.

715 ~~(7)-(8)~~ DEFICIENCY.-

716 (a) If the personal representative or fiduciary does not
 717 have possession of sufficient property otherwise distributable
 718 to the recipient to pay the tax appportioned to the recipient,
 719 whether under this section, the Internal Revenue Code, or the
 720 governing instrument, if applicable, the personal representative
 721 or fiduciary shall recover the deficiency in tax so appportioned
 722 to the recipient:

723 1. From the fiduciary in possession of the property to
 724 which the tax is appportioned, if any; and

725 2. To the extent of any deficiency in collection from the
 726 fiduciary, or to the extent collection from the fiduciary is
 727 excused pursuant to subsection (8) ~~(9)~~ and in all other cases,
 728 from the recipient of the property to which the tax is

729 apporportioned, unless relieved of this duty as provided in
 730 subsection (8) ~~(9)~~.

731 (b) In any action to recover the tax apporportioned, the
 732 order of apporportionment shall be prima facie correct.

733 (c) In any action for the enforcement of an order of
 734 apporportionment, the court shall award taxable costs as in
 735 chancery actions, including reasonable attorney ~~attorney's~~ fees,
 736 and may award penalties and interest on the unpaid tax in
 737 accordance with equitable principles.

738 (d) This subsection does ~~shall~~ not authorize the recovery
 739 of any tax from any company issuing life insurance included in
 740 the gross estate, or from any bank, trust company, savings and
 741 loan association, or similar institution with respect to any
 742 account in the name of the decedent and any other person which
 743 passed by operation of law on the decedent's death.

744 (8) ~~(9)~~ RELIEF FROM DUTY.—

745 (a) A personal representative or fiduciary who has the
 746 duty under this section of collecting the apporportioned tax from
 747 recipients may be relieved of the duty to collect the tax by an
 748 order of the court finding:

749 1. That the estimated court costs and attorney ~~attorney's~~
 750 fees in collecting the apporportioned tax from a person against
 751 whom the tax has been apporportioned will approximate or exceed the
 752 amount of the recovery;

753 2. That the person against whom the tax has been
 754 apporportioned is a resident of a foreign country other than Canada

755 and refuses to pay the apportioned tax on demand; or

756 3. That it is impracticable to enforce contribution of the
 757 apportioned tax against a person against whom the tax has been
 758 apportioned in view of the improbability of obtaining a judgment
 759 or the improbability of collection under any judgment that might
 760 be obtained, or otherwise.

761 (b) A personal representative or fiduciary shall not be
 762 liable for failure to attempt to enforce collection if the
 763 personal representative or fiduciary reasonably believes it
 764 would have been economically impracticable.

765 (9) ~~(10)~~ UNCOLLECTED TAX.—Any apportioned tax that is not
 766 collected shall be reapportioned in accordance with this section
 767 as if the portion of the property to which the uncollected tax
 768 had been apportioned had been exempt.

769 (10) ~~(11)~~ CONTRIBUTION.—~~Nothing in~~ This section does not
 770 ~~shall~~ limit the right of any person who has paid more than the
 771 amount of the tax apportionable to that person, calculated as if
 772 all apportioned amounts would be collected, to obtain
 773 contribution from those who have not paid the full amount of the
 774 tax apportionable to them, calculated as if all apportioned
 775 amounts would be collected, and that right is hereby conferred.
 776 In any action to enforce contribution, the court shall award
 777 taxable costs as in chancery actions, including reasonable
 778 attorney ~~attorney's~~ fees.

779 (11) ~~(12)~~ FOREIGN TAX.—Nothing herein contained shall be
 780 construed to require the personal representative or fiduciary to

781 pay any tax levied or assessed by any foreign country, unless
 782 specific directions to that effect are contained in the will or
 783 other instrument under which the personal representative or
 784 fiduciary is acting.

785 Section 6. Subsection (4) of section 733.106, Florida
 786 Statutes, is amended to read:

787 733.106 Costs and attorney ~~attorney's~~ fees.—

788 (4) (a) When costs and attorney ~~attorney's~~ fees are to be
 789 paid from the estate pursuant to subsections (1)-(3), s.
 790 733.6171(4), s. 736.1005, or s. 736.1006, the court, in its
 791 discretion, may direct from what part of the estate they shall
 792 be paid. If the court directs an assessment against a person's
 793 part of the estate and that part is insufficient to fully pay
 794 the assessment, the court may direct payment from the person's
 795 part of a trust, if any, if a pourover will is involved and the
 796 matter is interrelated with the trust. All or any part of costs
 797 and attorney fees to be paid from the estate may be assessed
 798 against one or more persons' part of the estate in such
 799 proportions as the court finds to be just and proper.

800 (b) The court, in the exercise of its discretion, may
 801 consider the following factors:

802 1. The relative impact of an assessment on the estimated
 803 value of each person's part of the estate;

804 2. The amount of costs and attorney fees to be assessed
 805 against a person's part of the estate;

806 3. The extent to which a person whose part of the estate

807 is to be assessed, individually or through counsel, actively
 808 participated in the proceeding;

809 4. The potential benefit or detriment to a person's part
 810 of the estate expected from the outcome of the proceeding;

811 5. The relative strength or weakness of the merits of the
 812 claims, defenses, or objections, if any, asserted by a person
 813 whose part of the estate is to be assessed;

814 6. Whether a person whose part of the estate is to be
 815 assessed was a prevailing party with respect to one or more
 816 claims, defenses, or objections;

817 7. Whether a person whose part of the estate is to be
 818 assessed unjustly caused an increase in the amount of attorney
 819 fees and costs incurred by the personal representative or other
 820 interested persons in connection with the proceeding; and

821 8. Any other relevant fact, circumstance, or equity.

822 (c) The court may assess attorney fees and costs against a
 823 person's part of the estate without finding that the person
 824 engaged in bad faith, wrongdoing, or frivolousness.

825 Section 7. Subsection (2) of section 736.1005, Florida
 826 Statutes, is amended to read:

827 736.1005 Attorney ~~Attorney's~~ fees for services to the
 828 trust.—

829 (2) (a) When attorney ~~Whenever attorney's~~ fees are to be
 830 paid from out of the trust pursuant to subsection (1) or s.
 831 736.1007(5) (a), or when the court assesses attorney fees against
 832 a person's part of an estate under s. 733.106(4) involving a

833 pourover will and the matter is interrelated with the trust but
834 the person's part of the estate is insufficient to fully pay the
835 assessment, the court, in its discretion, may direct from what
836 part of the trust the fees shall be paid. All or any part of
837 attorney fees to be paid from the trust may be assessed against
838 one or more persons' part of the trust in such proportions as
839 the court finds to be just and proper.

840 (b) The court, in the exercise of its discretion, may
841 consider the following factors:

842 1. The relative impact of an assessment on the estimated
843 value of each person's part of the trust;

844 2. The amount of attorney fees to be assessed against a
845 person's part of the trust;

846 3. The extent to which a person whose part of the trust is
847 to be assessed, individually or through counsel, actively
848 participated in the proceeding;

849 4. The potential benefit or detriment to a person's part
850 of the trust expected from the outcome of the proceeding;

851 5. The relative strength or weakness of the merits of the
852 claims, defenses, or objections, if any, asserted by a person
853 whose part of the trust is to be assessed;

854 6. Whether a person whose part of the trust is to be
855 assessed was a prevailing party with respect to one or more
856 claims, defenses, or objections;

857 7. Whether a person whose part of the trust is to be
858 assessed unjustly caused an increase in the amount of attorney

859 fees incurred by the trustee or other persons in connection with
 860 the proceeding; and

861 8. Any other relevant fact, circumstance, or equity.

862 (c) The court may assess attorney fees and costs against a
 863 person's part of the trust without finding that the person
 864 engaged in bad faith, wrongdoing, or frivolousness.

865 Section 8. Subsection (2) of section 736.1006, Florida
 866 Statutes, is amended to read:

867 736.1006 Costs in trust proceedings.-

868 (2) When ~~Whenever~~ costs are to be paid from ~~out of~~ the
 869 trust pursuant to subsection (1) or when the court assesses
 870 costs against a person's part of an estate under s. 733.106(4)
 871 involving a pourover will and the matter is interrelated with
 872 the trust but that person's part of the estate is insufficient
 873 to fully pay the assessment, the court, in its discretion, may
 874 direct from what part of the trust the costs shall be paid. All
 875 or any part of the costs to be paid from the trust may be
 876 assessed against one or more persons' part of the trust in such
 877 proportions as the court finds to be just and proper. The court,
 878 in the exercise of its discretion, may consider the factors set
 879 forth in s. 736.1005(2) as they relate to costs to be paid from
 880 the trust.

881 Section 9. (1) The amendments made by this act to s.
 882 733.212, Florida Statutes, apply to proceedings filed on or
 883 after July 1, 2015.

884 (2) The amendments made by this act to ss. 733.3101 and

885 733.504, Florida Statutes, apply to proceedings pending upon
886 this act becoming a law.

887 Section 10. (1) Section 733.817(1)(g) and (2)(c), Florida
888 Statutes, as amended by this act, is intended to clarify
889 existing law and applies retroactively to all proceedings
890 pending or commenced after July 1, 2015, in which the
891 apportionment of taxes has not been finally determined or agreed
892 for estates of decedents dying on or after January 1, 2005.

893 (2) Section 733.817(1)(e)3., (3)(e), (3)(g), (4)(b),
894 (4)(c), (4)(d)1.b., (4)(e), (4)(h), and (6), Florida Statutes,
895 as amended by this act, applies to the estates of decedents
896 dying on or after July 1, 2015.

897 (3) Except as otherwise provided in this section, the
898 amendments made by this act to s. 733.817, Florida Statutes, are
899 intended to clarify existing law and apply retroactively to all
900 proceedings pending on or after July 1, 2015, in which the
901 apportionment of taxes has not been finally determined or
902 agreed.

903 Section 11. Except as otherwise expressly provided in this
904 act and except for this section, which shall take effect upon
905 this act becoming a law, this act shall take effect July 1,
906 2015.