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2 An act relating to the administration of trusts  
3 and estates; amending s. 689.225, F.S.;  
4 providing a statement of the rule against  
5 perpetuities; amending s. 709.08, F.S.;  
6 authorizing certain corporations to serve as an  
7 attorney in fact; amending s. 733.707, F.S.;  
8 increasing the ceiling on funeral expenses;  
9 defining the term "right of revocation" with  
10 respect to the order of payment of expenses and  
11 obligations of an estate; amending s. 737.111,  
12 F.S.; revising provisions with respect to  
13 execution requirements for express trusts;  
14 providing for the application of the section;  
15 amending s. 737.2041, F.S., relating to  
16 trustee's attorney's fee; revising procedures  
17 for determining attorney's fees; providing for  
18 determining fees for an attorney who is  
19 retained for limited services; revising the  
20 list of services that constitute ordinary  
21 services in an initial trust administration;  
22 deleting an exception from the applicability of  
23 presumptive fees for a corporate fiduciary that  
24 serves as a trustee or cotrustee; amending s.  
25 737.303, F.S.; revising provisions with respect  
26 to the duty of the trustee to inform and  
27 account to beneficiaries to require information  
28 to the grantor with respect to certain trusts;  
29 amending s. 737.308, F.S.; providing for  
30 specified notice to the trustee and caveator;  
31 amending s. 518.112, F.S.; providing for

1 delegation of investment functions; amending s.  
2 733.817, F.S.; revising provisions of law with  
3 respect to the apportionment of estate taxes;  
4 amending s. 738.12, F.S.; providing conditions  
5 under which a trust beneficiary is considered  
6 an income beneficiary; amending s. 744.441,  
7 F.S.; increasing the ceiling on funeral  
8 expenses; amending ss. 655.936 and 733.604,  
9 F.S.; providing requirements on opening certain  
10 safe-deposit boxes; requiring an inventory;  
11 requiring filing of inventories with the court;  
12 providing an effective date.

13

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

15

16 Section 1. Paragraph (e) is added to subsection (2) of  
17 section 689.225, Florida Statutes, to read:

18 689.225 Statutory rule against perpetuities.--

19 (2) STATEMENT OF THE RULE.--

20 (e) If, in measuring a period from the creation of a  
21 trust or other property arrangement, language in a governing  
22 instrument (i) seeks to disallow the vesting or termination of  
23 any interest or trust beyond, (ii) seeks to postpone the  
24 vesting or termination of any interest or trust until, or  
25 (iii) seeks to operate in effect in any similar fashion upon,  
26 the later of

27 1. the expiration of a period of time not exceeding 21  
28 years after the death of a specified life or the survivor of  
29 specified lives, or upon the death of a specified life or the  
30 death of the survivor of specified lives in being at the  
31 creation of the trust or other property arrangement, or

1           2. the expiration of a period of time that exceeds or  
2 might exceed 21 years after the death of the survivor of lives  
3 in being at the creation of the trust or other property  
4 arrangement,  
5 that language is inoperative to the extent it produces a  
6 period of time that exceeds 21 years after the death of the  
7 survivor of the specified lives.

8           Section 2. Subsection (2) of section 709.08, Florida  
9 Statutes, is amended to read:

10           709.08 Durable power of attorney.--

11           (2) WHO MAY SERVE AS ATTORNEY IN FACT.--The attorney  
12 in fact must be a natural person who is 18 years of age or  
13 older and is of sound mind, or a financial institution, as  
14 defined in chapter 655, with trust powers, having a place of  
15 business in this state and authorized to conduct trust  
16 business in this state. A not-for-profit corporation,  
17 organized for charitable or religious purposes in this state,  
18 which has qualified as a court-appointed guardian prior to  
19 January 1, 1996, and which is a tax-exempt organization under  
20 26 U.S.C. s. 501(c)(3), may also act as an attorney in fact.  
21 Notwithstanding any contrary clause in the written power of  
22 attorney, no assets of the principal may be used for the  
23 benefit of the corporate attorney in fact, or its officers or  
24 directors.

25           Section 3. Subsections (1) and (3) of section 733.707,  
26 Florida Statutes, are amended to read:

27           733.707 Order of payment of expenses and  
28 obligations.--

29           (1) The personal representative shall pay the expenses  
30 of the administration and obligations of the estate in the  
31 following order:

- 1 (a) Class 1.--Costs, expenses of administration, and  
2 compensation of personal representatives and their attorneys'  
3 fees.
- 4 (b) Class 2.--Reasonable funeral, interment, and grave  
5 marker expenses, whether paid by a guardian under s.  
6 744.441(16), the personal representative, or any other person,  
7 not to exceed the aggregate of \$6,000~~\$3,000~~.
- 8 (c) Class 3.--Debts and taxes with preference under  
9 federal law.
- 10 (d) Class 4.--Reasonable and necessary medical and  
11 hospital expenses of the last 60 days of the last illness of  
12 the decedent, including compensation of persons attending him.
- 13 (e) Class 5.--Family allowance.
- 14 (f) Class 6.--Arrearage from court-ordered child  
15 support.
- 16 (g) Class 7.--Debts acquired after death by the  
17 continuation of the decedent's business, in accordance with s.  
18 733.612(22), but only to the extent of the assets of that  
19 business.
- 20 (h) Class 8.--All other claims, including those  
21 founded on judgments or decrees rendered against the decedent  
22 during his lifetime, and any excess over the sums allowed in  
23 paragraphs (b) and (d).
- 24 (3) Any portion of a trust with respect to which a  
25 decedent who is the grantor has at the decedent's death a  
26 right of revocation, as defined in paragraph (e)~~(c)~~, either  
27 alone or in conjunction with any other person, is liable for  
28 the expenses of the administration of the decedent's estate  
29 and enforceable claims of the decedent's creditors to the  
30 extent the decedent's estate is insufficient to pay them as  
31 provided in s. 733.607(2).

1           (a) For purposes of this subsection, any trusts  
2 established as part of, and all payments from, either an  
3 employee annuity described in s. 403 of the Internal Revenue  
4 Code of 1986, as amended, an Individual Retirement Account, as  
5 described in s. 408 of the Internal Revenue Code of 1986, as  
6 amended, a Keogh (HR-10) Plan, or a retirement or other plan  
7 established by a corporation which is qualified under s. 401  
8 of the Internal Revenue Code of 1986, as amended, shall not be  
9 considered a trust over which the decedent has a right of  
10 revocation.

11           (b) For purposes of this subsection, any trust  
12 described in s. 664 of the Internal Revenue Code of 1986, as  
13 amended, shall not be considered a trust over which the  
14 decedent has a right of revocation.

15           (c) This subsection shall not impair any rights an  
16 individual has under a qualified domestic relations order as  
17 that term is defined in s. 414(p) of the Internal Revenue Code  
18 of 1986, as amended.

19           (d) For purposes of this subsection, property held or  
20 received by a trust to the extent that the property would not  
21 have been subject to claims against the decedent's estate if  
22 it had been paid directly to a trust created under the  
23 decedent's will or other than to the decedent's estate, or  
24 assets received from any trust other than a trust described in  
25 this subsection, shall not be deemed assets of the trust  
26 available for the payment of the expenses of administration of  
27 and enforceable claims against the decedent's estate.

28           (e) For purposes of this subsection, a "right of  
29 revocation" is a power retained by the decedent, held in any  
30 capacity, to:

31

1           1. Amend or revoke the trust and revest the principal  
2 of the trust in the decedent; or

3           2. Withdraw or appoint the principal of the trust to  
4 or for the decedent's benefit.

5           Section 4. Section 737.111, Florida Statutes, is  
6 amended to read:

7           737.111 Execution requirements for express trusts.--

8           (1) The testamentary aspects of a trust defined in s.  
9 731.201(33), are invalid unless the trust instrument is  
10 executed by the settlor with the formalities required for the  
11 execution of a will.

12           (2) The testamentary aspects of a trust created by a  
13 nonresident of Florida, either before or after this law takes  
14 effect, are not invalid because the trust does not meet the  
15 requirements of this section, if the trust is valid under the  
16 laws of the state or country where the settlor was at the time  
17 of execution.

18           (3) The testamentary aspects of an amendment to a  
19 trust are invalid unless the amendment is executed by the  
20 settlor with the same formalities as a will.

21           (4) For the purposes of this section, the term  
22 "testamentary aspects" means those provisions of the trust  
23 that dispose of the trust property on or after the death of  
24 the settlor other than to the settlor's estate.

25           (5) This section shall not apply to trusts established  
26 as part of an employee annuity described in s. 403 of the  
27 Internal Revenue Code of 1986, as amended, an Individual  
28 Retirement Account as described in s. 408 of the Internal  
29 Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a  
30 retirement or other plan that is qualified under s. 401 of the  
31 Internal Revenue Code of 1986, as amended.

1           (6) This section shall not apply to trust instruments  
2 executed prior to October 1, 1995.

3           Section 5. Section 737.2041, Florida Statutes, is  
4 amended to read:

5           737.2041 Trustee's attorney's fees.--

6           (1) If ~~The attorney retained by~~ the trustee of a trust  
7 described in s. 733.707(3) retains an attorney to render legal  
8 services in connection with the initial administration of the  
9 trust, the attorney is ~~shall be~~ entitled to reasonable  
10 compensation for those legal services, rendered in the initial  
11 administration of the trust payable from the assets of the  
12 trust without court order. If the trustee of a trust described  
13 in s. 733.707(3) retains an attorney to render legal services  
14 in connection with the initial administration of a trust, the  
15 trustee and the attorney may agree to compensation that is  
16 determined in a manner or amount other than the manner or  
17 amount provided in this section. The agreement is not binding  
18 upon a person who bears the impact of the compensation unless  
19 that person is a party to or otherwise consents to be bound by  
20 the agreement. The agreement may provide that the trustee is  
21 not individually liable for the attorney's fees and costs.

22           ~~(2) The attorney, the trustee, and persons bearing the~~  
23 ~~impact of the compensation may agree to compensation~~  
24 ~~determined in a different manner than provided in this~~  
25 ~~section.~~

26           (2)(3) Unless otherwise agreed, compensation for  
27 ordinary services based upon the value of the trust assets  
28 immediately following the settlor's death and the income  
29 earned by the trust during initial administration at the rate  
30 of 75 percent of the schedule provided in s.  
31 733.6171(3)(a)-(h) is presumed to be reasonable total

1 compensation for ordinary services of all attorneys employed  
2 generally to advise trustees concerning their duties in  
3 initial trust administration.

4 (3) An attorney who is retained to render only limited  
5 and specifically defined legal services shall be compensated  
6 as provided in the retaining agreement. If the amount or  
7 method of determining compensation is not provided in the  
8 agreement, the attorney is entitled to a reasonable fee,  
9 taking into account the factors set forth in subsection (6).

10 (4) Ordinary services of the attorney in an initial  
11 trust administration ~~for a trustee~~ include legal advice and  
12 representation concerning the trustee's duties ~~where~~  
13 ~~applicable~~, relating to:

14 (a) Review of the trust instrument and each amendment  
15 for legal sufficiency and interpretation.

16 (b) Implementation of substitution of the successor  
17 trustee.

18 (c) Persons who must or should be served with required  
19 notices and the method and timing of such service.

20 (d) The obligation of a successor to require a former  
21 trustee to account.

22 (e) The trustee's duty to protect, insure, and manage  
23 trust assets and the trustee's liability relating to these  
24 duties.

25 (f) The trustee's duty regarding investments imposed  
26 by the prudent investor rule.

27 (g) Contributions due to the personal representative  
28 of settlor's estate for payment of administrative expenses or  
29 creditor claims and estate taxes.

30 (h) The trustee's obligation to inform and account to  
31 beneficiaries and the method of satisfaction of these



1 obligations; the liability of the trust and trustee to the  
2 settlor's creditors; the advisability or necessity for probate  
3 proceedings to bar creditors; and the contribution  
4 requirements to the settlor's probate estate.

5 ~~(i) Creditor procedures and direct payment or~~  
6 ~~compromise and satisfaction of claims against the trust~~  
7 ~~assets.~~

8 (i)(j) Identifying tax returns required to be filed by  
9 the trustee, the trustee's liability for payment of taxes, and  
10 the due date of returns.

11 (j)(k) Obtaining nontaxable certificate and receipt,  
12 if not done by a personal representative.

13 (k)(l) Order of payment of expenses of administration  
14 of the trust, ~~contribution to the settlor's estate or claims~~  
15 ~~filed against trust assets,~~ and order and priority of  
16 abatement of bequests and legacies in the trust.

17 (l)(m) Distribution of income or principal to  
18 beneficiaries or funding of further trusts provided in the  
19 governing instrument.

20 (m)(n) Preparation of any legal documents required to  
21 effect distribution.

22 (n)(o) Fiduciary duties, avoidance of self-dealing,  
23 conflicts of interest, duty of impartiality, and obligations  
24 to beneficiaries.

25 (o)(p) If there is a conflict of interest between a  
26 trustee who is a beneficiary and other beneficiaries of the  
27 trust, advice to the trustee on limitations of certain  
28 authority of the trustee regarding discretionary distributions  
29 or exercise of certain powers and alternatives for appointment  
30 of an independent trustee and appropriate procedures.

31

1           (p)~~(q)~~ Procedures for trustee's discharge from  
2 liability for administration of trust upon termination or  
3 resignation.

4           ~~(5) When a corporate fiduciary is serving as trustee~~  
5 ~~or cotrustee of a trust described in s. 733.707(3), the~~  
6 ~~presumptive fee for ordinary services and the list of what~~  
7 ~~constitutes ordinary services in subsections (3) and (4) shall~~  
8 ~~not apply, and what constitutes ordinary services and~~  
9 ~~reasonable compensation for those services shall instead be~~  
10 ~~determined under the particular facts and circumstances~~  
11 ~~applicable to that trust.~~In addition to the attorney's fees  
12 for ordinary services, the attorney for the trustee shall be  
13 allowed further reasonable compensation for any extraordinary  
14 service. What is an extraordinary service may vary depending  
15 on many factors, including the size of the trust.

16 Extraordinary services may include, but are not limited to:

17           (a) Involvement in a trust contest, trust  
18 construction, a proceeding for determination of beneficiaries,  
19 a contested claim, elective share proceedings, apportionment  
20 of estate taxes, or other adversary proceedings or litigation  
21 by or against the trust.

22           (b) Representation of the trustee in audit or any  
23 proceeding for adjustment, determination, or collection of any  
24 taxes.

25           (c) Tax advice on postmortem tax planning, including,  
26 but not limited to, disclaimer, renunciation of fiduciary  
27 commission, alternate valuation date, allocation of  
28 administrative expenses between tax returns, the QTIP or  
29 reverse QTIP election, allocation of GST exemption,  
30 qualification for Internal Revenue Code ss. 303 and 6166  
31 privileges, deduction of last illness expenses, distribution

1 planning, asset basis considerations, throwback rules,  
2 handling income or deductions in respect of a decedent,  
3 valuation discounts, special use and other valuation, handling  
4 employee benefit or retirement proceeds, prompt assessment  
5 request, or request for release of personal liability for  
6 payment of tax.

7 (d) Review of estate tax return and preparation or  
8 review of other tax returns required to be filed by the  
9 trustee.

10 (e) Preparation of decedent's federal estate tax  
11 return. If this return is prepared by the attorney, a fee of  
12 one-half of 1 percent up to a value of \$10 million and  
13 one-fourth of 1 percent on the value in excess of \$10 million,  
14 of the gross estate as finally determined for federal estate  
15 tax purposes, is presumed to be reasonable compensation for  
16 the attorney for this service. These fees shall include  
17 services for routine audit of the return, not beyond the  
18 examining agent level, if required.

19 (f) Purchase, sale, lease, or encumbrance of real  
20 property by the trustee or involvement in zoning, land use,  
21 environmental, or other similar matters.

22 (g) Legal advice regarding carrying on of decedent's  
23 business or conducting other commercial activity by the  
24 trustee.

25 (h) Legal advice regarding claims for damage to the  
26 environment or related procedures.

27 (i) Legal advice regarding homestead status of trust  
28 real property or proceedings involving the status.

29 (j) Involvement in fiduciary, employee, or attorney  
30 compensation disputes.

31

1 (k) Considerations of special valuation of trust  
2 assets, including discounts for blockage, minority interests,  
3 lack of marketability, and environmental liability.

4 (6) Upon petition of any interested person in a  
5 proceeding to review the compensation paid or to be paid to  
6 the attorney for the trustee, the court may increase or  
7 decrease the compensation for ordinary services of the  
8 attorney for the trustee or award compensation for  
9 extraordinary services if the facts and circumstances of the  
10 particular administration warrant. In determining reasonable  
11 compensation, the court shall consider all of the following  
12 factors giving such weight to each as it may determine to be  
13 appropriate:

14 (a) The promptness, efficiency, and skill with which  
15 the initial administration was handled by the attorney.

16 (b) The responsibilities assumed by, and potential  
17 liabilities of, the attorney.

18 (c) The nature and value of the assets that are  
19 affected by the decedent's death.

20 (d) The benefits or detriments resulting to the trust  
21 or its beneficiaries from the attorney's services.

22 (e) The complexity or simplicity of the administration  
23 and the novelty of issues presented.

24 (f) The attorney's participation in tax planning for  
25 the estate, the trust, and the trust's beneficiaries and tax  
26 return preparation or review and approval.

27 (g) The nature of the trust assets, the expenses of  
28 administration, and the claims payable by the trust and the  
29 compensation paid to other professionals and fiduciaries.

30 (h) Any delay in payment of the compensation after the  
31 services were furnished.

1 (i) Any other relevant factors.

2 (7) The court may determine reasonable attorney's  
3 compensation without receiving expert testimony. Any party  
4 may offer expert testimony after notice to interested persons.  
5 If expert testimony is offered, an expert witness fee may be  
6 awarded by the court and paid from the assets of the trust.  
7 The court may, in its discretion, direct from what part of the  
8 trust it shall be paid.

9 (8) If a separate written agreement regarding  
10 compensation exists between the attorney and the settlor, the  
11 attorney shall furnish a copy to the trustee prior to  
12 commencement of employment and, if employed, shall promptly  
13 file and serve a copy on all interested persons. Neither a  
14 separate agreement nor a provision in the trust suggesting or  
15 directing the trustee to retain a specific attorney will  
16 obligate the trustee to employ the attorney or obligate the  
17 attorney to accept the representation, but if the attorney who  
18 is a party to the agreement or who drafted the trust is  
19 employed, the compensation paid shall not exceed the  
20 compensation provided in the agreement.

21 (9) Court proceedings to determine compensation, if  
22 required, are a part of the trust administration process, and  
23 the costs, including fees for the trustee's attorney, shall be  
24 determined by the court and paid from the assets of the trust  
25 unless the court finds the attorney's fees request to be  
26 substantially unreasonable. The court shall direct from which  
27 part of the trust they shall be paid.

28 (10) "Initial trust administration" as used in this  
29 section means administration of a trust described in s.  
30 733.707(3) during the period which begins with the death of  
31 the settlor and ends upon the final distribution of trust

1 assets outright or to continuing trusts created under the  
2 trust agreement, but if an estate tax return is required, not  
3 until after issuance of an estate tax closing letter or other  
4 evidence of termination of the estate tax proceeding. This  
5 initial period is not intended to include continued regular  
6 administration of the trust.

7 (11) This section shall apply to trusts of settlors  
8 who die on or after July 1, 1995.

9 Section 6. Paragraphs (c) and (e) of subsection (4) of  
10 section 737.303, Florida Statutes, are amended to read:

11 737.303 Duty to inform and account to  
12 beneficiaries.--The trustee shall keep the beneficiaries of  
13 the trust reasonably informed of the trust and its  
14 administration. The trustee's duty to inform and account  
15 includes, but is not limited to, the following:

16 (4)

17 (c) In the case of a trust described in s. 733.707(3),  
18 the trustee's duties under paragraph (a) extend only to the  
19 grantor ~~or beneficiary~~ or the legal representative of the  
20 grantor ~~or beneficiary~~ during the grantor's lifetime.

21 (e) All rights provided a beneficiary under this  
22 section may be asserted by a legal representative or natural  
23 guardian of the beneficiary. Notice under subsection (1) and a  
24 statement of accounts under paragraph (a) provided to a  
25 representative of the beneficiary as defined in s. 731.303  
26 shall bind the beneficiary and the trustee shall not be  
27 required to provide such notice or statement of accounts to  
28 any beneficiary who would be bound by an order binding on a  
29 representative of the beneficiary under s. 731.303, if such  
30 notice or statement of accounts, respectively, is provided to  
31 that representative.

1           Section 7. Section 737.308, Florida Statutes, is  
2 amended to read:

3           737.308 Notice of trust.--

4           (1) Upon the death of a settlor of a trust described  
5 in s. 733.707(3), the trustee must file a notice of trust with  
6 the court of the county of the settlor's domicile and the  
7 court having jurisdiction of the settlor's estate.

8           (2) The notice of trust must contain the name of the  
9 settlor, the settlor's date of death, the title of the trust,  
10 if any, the date of the trust, and the name and address of the  
11 trustee.

12           (3) If the settlor's probate proceeding has been  
13 commenced, the clerk must notify the trustee in writing of the  
14 date of the commencement of the probate proceeding and the  
15 file number.

16           (4) The clerk shall file and index the notice of trust  
17 in the same manner as a caveat, unless there exists a probate  
18 proceeding for the settlor's estate in which case the notice  
19 of trust must be filed in the probate proceeding and the clerk  
20 shall send a copy to the personal representative.

21           (5) The clerk shall send a copy of any caveat filed  
22 regarding the settlor to the trustee, and the Notice of Trust  
23 to any caveator, unless there is a probate proceeding pending  
24 and the personal representative and the trustee are the same.

25           ~~(6)~~~~(5)~~ In any proceeding affecting the expenses of the  
26 administration of the estate, or any claims described in s.  
27 733.702(1), the trustee of a trust described in s. 733.707(3)  
28 is an interested person in the administration of the grantor's  
29 estate.

30           ~~(7)~~~~(6)~~ Any proceeding affecting the expenses of the  
31 administration of the estate or any claims described in s.

1 733.702(1) prior to the trustee filing a notice of trust are  
2 binding upon the trustee.

3 (8)~~(7)~~ The trustee's failure to file the notice of  
4 trust does not affect the trustee's obligation to pay expenses  
5 of administration and enforceable claims as provided in s.  
6 733.607(2).

7 Section 8. Section 518.112, Florida Statutes, is  
8 amended to read:

9 518.112 Delegation of investment functions.--

10 (1) A fiduciary may delegate any part or all of the  
11 investment functions, with regard to acts constituting  
12 investment functions that a prudent investor of comparable  
13 skills might delegate under the circumstances, ~~and with regard~~  
14 to all or part of those investment functions, to an investment  
15 agent as provided in subsection (3)~~(2)~~, if the fiduciary  
16 exercises reasonable care, judgment, and caution in selecting  
17 the investment agent, in establishing the scope and specific  
18 terms of any delegation, and in reviewing periodically the  
19 agent's actions in order to monitor overall performance and  
20 compliance with the scope and specific terms of the  
21 delegation.

22 (2)(a) The requirements of subsection (1)  
23 notwithstanding, a fiduciary that administers an insurance  
24 contract on the life or lives of one or more persons may  
25 delegate without any continuing obligation to review the  
26 agent's actions, certain investment functions with respect to  
27 any such contract as provided in subsection (3), to any one or  
28 more of the following persons as investment agents:

29 1. The trust's settlor if the trust is one described  
30 in s. 733.707(3);

31



1           2. Beneficiaries of the trust or estate, regardless of  
2 the beneficiary's interest therein, whether vested or  
3 contingent;

4           3. The spouse, ancestor, or descendant of any person  
5 described in subparagraphs 1. or 2.;

6           4. Any person or entity nominated by a majority of the  
7 beneficiaries entitled to receive notice under subsection  
8 (3)(b); or

9           5. An investment agent if the fiduciary exercises  
10 reasonable care, judgment, and caution in selecting the  
11 investment agent and in establishing the scope and specific  
12 terms of any delegation.

13           (b) The delegable investment functions under this  
14 subsection include:

15           1. A determination of whether any insurance contract  
16 is or remains a proper investment;

17           2. A determination of whether or not to exercise any  
18 policy option available under such contracts;

19           3. A determination of whether or not to diversify such  
20 contracts relative to one another or to other assets, if any,  
21 administered by the fiduciary; or

22           4. An inquiry about changes in the health or financial  
23 condition of the insured or insureds relative to any such  
24 contract.

25           (c) Until the contract matures and the policy proceeds  
26 are received, a fiduciary that administers insurance contracts  
27 under this subsection is not obligated to diversify nor  
28 allocate other assets, if any, relative to such insurance  
29 contracts.

30  
31

1           ~~(3)(2)~~ A fiduciary may delegate investment functions  
2 to an investment agent under subsections (1) or (2) pursuant  
3 ~~to subsection (1)~~, if:

4           ~~(a) The fiduciary exercises reasonable care, judgment,~~  
5 ~~and caution in selecting the investment agent, in establishing~~  
6 ~~the scope and specific terms of any delegation, and in~~  
7 ~~reviewing periodically the agent's actions in order to monitor~~  
8 ~~overall performance and compliance with the scope and specific~~  
9 ~~terms of the delegation.~~

10           ~~(a)(b)~~ In the case of a guardianship, the fiduciary  
11 has obtained court approval.

12           ~~(b)(c)~~ In the case of a trust or estate, the fiduciary  
13 has given written notice, of its intention to begin delegating  
14 investment functions under this section, to all the  
15 beneficiaries, or their legal representative, eligible to  
16 ~~receive income from the trust or distributions from the trust~~  
17 or estate within 30 days of the delegation unless such notice  
18 is waived by the eligible beneficiaries entitled to receive  
19 such notice. This notice shall thereafter, until or unless  
20 the beneficiaries eligible to receive income from the trust or  
21 distributions from the estate at the time are notified to the  
22 contrary, authorize the trustee or legal representative to  
23 delegate investment functions pursuant to this subsection.  
24 This discretion to revoke the delegation does not imply under  
25 subsection (2) any continuing obligation to review the agent's  
26 actions.

27           1. Notice to beneficiaries eligible to receive  
28 distributions ~~income~~ from the trust ~~or distributions~~ from the  
29 estate, or their legal representatives ~~at the time of~~  
30 ~~delegation,~~ shall be sufficient notice to all persons who may  
31 join the eligible class of beneficiaries in the future.

1           2. Additionally, as used herein, legal representative  
2 includes one described in s. 731.303, without any requirement  
3 of a court order, an attorney-in-fact under a durable power of  
4 attorney sufficient to grant such authority, a legally  
5 appointed guardian, or equivalent under applicable law, any  
6 living, natural guardian of a minor child, or a guardian ad  
7 litem.~~In the case of a minor, notice may be sent to a parent~~  
8 ~~or legal guardian of the minor.~~

9           3. Written notice shall be:

10           (a) By any form of mail or by any commercial delivery  
11 service, approved for service of process by the chief judge of  
12 the judicial circuit in which the trust has its principal  
13 place of business at the date of notice, requiring a signed  
14 receipt;

15           (b) As provided by law for service of process; or

16           (c) By an elisor as may be provided in the Florida  
17 Rules of Civil Procedure.

18  
19 Notice by mail or by approved commercial delivery service is  
20 complete on receipt of notice. Proof of notice must be by  
21 verified statement of the person mailing or sending notice,  
22 and there must be attached thereto the signed receipt or other  
23 satisfactory evidence that delivery was effected on the  
24 addressee or on the addressee's agent. Proof of notice must be  
25 maintained among the trustee's permanent records.~~In the case~~  
26 ~~of an otherwise incapacitated person, notice may be given to~~  
27 ~~the guardian of such person or to such person's donee under a~~  
28 ~~durable power of attorney that is sufficient to grant such~~  
29 ~~authority.~~

30           (4)~~(3)~~ If all requirements of subsection (3)~~(2)~~are  
31 satisfied, the fiduciary shall not be responsible otherwise

1 for the investment decisions nor ~~or~~ actions or omissions of  
2 the investment agent to which the investment functions are  
3 delegated.

4 ~~(5)(4)~~ The investment agent shall, by virtue of  
5 acceptance of its appointment, be subject to the jurisdiction  
6 of the courts of this state.

7 ~~(6)(5)~~ In performing a delegated function, the  
8 investment agent shall be subject to the same standards as the  
9 fiduciary.

10 ~~(6) This section applies to all existing and future~~  
11 ~~fiduciary relationships subject to this section, but only as~~  
12 ~~to acts or omissions occurring after October 1, 1993.~~

13 Section 9. Section 733.817, Florida Statutes, is  
14 amended to read:

15 (Substantial rewording of section. See  
16 s. 733.817, F.S., for present text.)

17 733.817 Apportionment of estate taxes.--

18 (1) For purposes of this section:

19 (a) "Fiduciary" means a person other than the personal  
20 representative in possession of property included in the  
21 measure of the tax who is liable to the applicable taxing  
22 authority for payment of the entire tax to the extent of the  
23 value of the property in his possession.

24 (b) "Governing instrument" means a will, trust  
25 agreement, or any other document that controls the transfer of  
26 an asset on the occurrence of the event with respect to which  
27 the tax is being levied.

28 (c) "Gross estate" means the gross estate, as  
29 determined by the Internal Revenue Code with respect to the  
30 federal estate tax and the Florida estate tax, and as such  
31 concept is otherwise determined by the estate, inheritance, or

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

3 (d) "Included in the measure of the tax" means that  
4 for each separate tax that an interest may incur, only  
5 interests included in the measure of that particular tax are  
6 considered. The term "included in the measure of the tax" does  
7 not include any interest, whether passing under the will or  
8 not, to the extent the interest is initially deductible from  
9 the gross estate, without regard to any subsequent diminution  
10 of the deduction by reason of the charge of any part of the  
11 applicable tax to the interest. The term "included in the  
12 measure of the tax" does not include interests or amounts that  
13 are not included in the gross estate but are included in the  
14 amount upon which the applicable tax is computed, such as  
15 adjusted taxable gifts with respect to the federal estate tax.  
16 If an election is required for deductibility, an interest is  
17 not "initially deductible" unless the election for  
18 deductibility is allowed.

19 (e) "Internal Revenue Code" means the Internal Revenue  
20 Code of 1986, as amended from time to time.

21 (f) "Net tax" means the net tax payable to the  
22 particular state, country, or political subdivision whose tax  
23 is being apportioned, after taking into account all credits  
24 against the applicable tax except as provided in this section.  
25 With respect to the federal estate tax, "net tax" is  
26 determined after taking into account all credits against the  
27 tax except for the credit for foreign death taxes.

28 (g) "Nonresiduary devise" means any devise that is not  
29 a residuary devise.

30  
31

1           (h) "Nonresiduary interest" in connection with a trust  
2 means any interest in a trust which is not a residuary  
3 interest.

4           (i) "Recipient" means, with respect to property or an  
5 interest in property included in the gross estate, an heir at  
6 law in an intestate estate, devisee in a testate estate,  
7 beneficiary of a trust, beneficiary of an insurance policy,  
8 annuity, or other contractual right, surviving tenant, taker  
9 as a result of the exercise or in default of the exercise of a  
10 general power of appointment, person who receives or is to  
11 receive the property or an interest in the property, or person  
12 in possession of the property.

13           (j) "Residuary devise" has the meaning set forth in s.  
14 731.201(30).

15           (k) "Residuary interest," in connection with a trust,  
16 means an interest in the assets of a trust which remain after  
17 provision for any distribution that is to be satisfied by  
18 reference to a specific property or type of property, fund,  
19 sum, or statutory amount.

20           (l) "Revocable trust" means a trust as defined in s.  
21 731.201(33) created by the decedent to the extent that the  
22 decedent had at his or her death the power to alter, amend, or  
23 revoke the trust either alone or in conjunction with any other  
24 person.

25           (m) "State" means any state, territory, or possession  
26 of the United States, the District of Columbia, and the  
27 Commonwealth of Puerto Rico.

28           (n) "Tax" means any estate tax, inheritance tax,  
29 generation skipping transfer tax, or other tax levied or  
30 assessed under the laws of this or any other state, the United  
31 States, any other country, or any political subdivision of the

1 foregoing, as finally determined, which is imposed as a result  
2 of the death of the decedent, including, without limitation,  
3 the tax assessed pursuant to s. 4980A of the Internal Revenue  
4 Code. The term also includes any interest and penalties  
5 imposed in addition to the tax. Unless the context indicates  
6 otherwise, the term "tax" means each separate tax.

7 (o) "Temporary interest" means an interest in income  
8 or an estate for a specific period of time or for life or for  
9 some other period controlled by reference to extrinsic events,  
10 whether or not in trust.

11 (p) "Tentative Florida tax" with respect to any  
12 property means the net Florida estate tax that would have been  
13 attributable to that property if no tax were payable to any  
14 other state in respect of that property.

15 (q) "Value" means the pecuniary worth of the interest  
16 involved as finally determined for purposes of the applicable  
17 tax after deducting any debt, expense, or other deduction  
18 chargeable to it for which a deduction was allowed in  
19 determining the amount of the applicable tax. A lien or other  
20 encumbrance is not regarded as chargeable to a particular  
21 interest to the extent that it will be paid from other  
22 interests. The value of an interest shall not be reduced by  
23 reason of the charge against it of any part of the tax.

24 (2) An interest in homestead property shall be exempt  
25 from the apportionment of taxes if such interest passes to a  
26 person to whom inures the decedent's exemption from forced  
27 sale under the State Constitution.

28 (3) The net tax attributable to the interests included  
29 in the measure of each tax shall be determined by the  
30 proportion that the value of each interest included in the  
31 measure of the tax bears to the total value of all interests

1 included in the measure of the tax. Notwithstanding the  
2 foregoing:

3 (a) The net tax attributable to interests included in  
4 the measure of the tax by reason of s. 2044 of the Internal  
5 Revenue Code shall be determined in the manner provided for  
6 the federal estate tax in s. 2207A of the Internal Revenue  
7 Code, and the amount so determined shall be deducted from the  
8 tax to determine the net tax attributable to all remaining  
9 interests included in the measure of the tax.

10 (b) The foreign tax credit allowed with respect to the  
11 federal estate tax shall be allocated among the recipients of  
12 interests finally charged with the payment of the foreign tax  
13 in reduction of any federal estate tax chargeable to the  
14 recipients of the foreign interests, whether or not any  
15 federal estate tax is attributable to the foreign interests.  
16 Any excess of the foreign tax credit shall be applied to  
17 reduce proportionately the net amount of federal estate tax  
18 chargeable to the remaining recipients of the interests  
19 included in the measure of the federal estate tax.

20 (c) The reduction in the Florida tax on the estate of  
21 a Florida resident for tax paid to other states shall be  
22 allocated as follows:

23 1. If the net tax paid to another state is greater  
24 than or equal to the tentative Florida tax attributable to the  
25 property subject to tax in the other state, none of the  
26 Florida tax shall be attributable to that property.

27 2. If the net tax paid to another state is less than  
28 the tentative Florida tax attributable to the property subject  
29 to tax in the other state, the net Florida tax attributable to  
30 the property subject to tax in the other state shall be the  
31 excess of the amount of the tentative Florida tax attributable



1 to the property over the net tax payable to the other state  
2 with respect to the property.

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

6 4. The net federal tax attributable to the property  
7 subject to tax in the other state shall be determined as if it  
8 were located in the state.

9 (d) The net tax attributable to a temporary interest,  
10 if any, shall be regarded as attributable to the principal  
11 that supports the temporary interest.

12 (4)(a) Except as otherwise effectively directed by the  
13 governing instrument, if the Internal Revenue Code including,  
14 but not limited to, ss. 2032A(c)(5), 2206, 2207, 2207A, 2207B,  
15 and 2603 of the Internal Revenue Code applies to apportion  
16 federal tax against recipients of certain interests, all net  
17 taxes, including taxes levied by the state attributable to  
18 each type of interest, shall be apportioned against the  
19 recipients of all interests of that type in the proportion  
20 that the value of each interest of that type included in the  
21 measure of the tax bears to the total of all interests of that  
22 type included in the measure of the tax.

23 (b) The provisions of this subsection do not affect  
24 allocation of the reduction in the Florida tax as provided in  
25 this section with respect to estates of Florida residents  
26 which are also subject to tax in other states.

27 (5) Except as provided above or as otherwise directed  
28 by the governing instrument, the net tax attributable to each  
29 interest shall be apportioned as follows:

30 (a) For property passing under the decedent's will:

31

1           1. The net tax attributable to nonresiduary devises  
2 shall be charged to and paid from the residuary estate whether  
3 or not all interests in the residuary estate are included in  
4 the measure of the tax. If the residuary estate is  
5 insufficient to pay the net tax attributable to all  
6 nonresiduary devises, the balance of the net tax attributable  
7 to nonresiduary devises shall be apportioned among the  
8 recipients of the nonresiduary devises in the proportion that  
9 the value of each nonresiduary devise included in the measure  
10 of the tax bears to the total of all nonresiduary devises  
11 included in the measure of the tax.

12           2. The net tax attributable to residuary devises shall  
13 be apportioned among the recipients of the residuary devises  
14 included in the measure of tax in the proportion that the  
15 value of each residuary devise included in the measure of the  
16 tax bears to the total of all residuary devises included in  
17 the measure of the tax.

18           (b) For property passing under the terms of any trust  
19 other than a trust created in the decedent's will:

20           1. The net tax attributable to nonresiduary interests  
21 shall be charged to and paid from the residuary portion of the  
22 trust, whether or not all interests in the residuary portion  
23 are included in the measure of the tax. If the residuary  
24 portion of the trust is insufficient to pay the net tax  
25 attributable to all nonresiduary interests, the balance of the  
26 net tax attributable to nonresiduary interests shall be  
27 apportioned among the recipients of the nonresiduary interests  
28 in the proportion that the value of each nonresiduary interest  
29 included in the measure of the tax bears to the total of all  
30 nonresiduary interests included in the measure of the tax.

31

1           2. The net tax attributable to residuary interests  
2 shall be apportioned among the recipients of the residuary  
3 interests included in the measure of the tax in the proportion  
4 that the value of each residuary interest included in the  
5 measure of the tax bears to the total of all residuary  
6 interests included in the measure of the tax.

7           (c) The net tax attributable to an interest in  
8 homestead property which is exempt from apportionment pursuant  
9 to subsection (2) shall be apportioned against the recipients  
10 of other interests in the estate or passing under any  
11 revocable trust in the following order:

12           1. Class I: Recipients of interests not disposed of  
13 by the decedent's will or revocable trust which are included  
14 in the measure of the federal estate tax.

15           2. Class II: Recipients of residuary devises and  
16 residuary interests that are included in the measure of the  
17 federal estate tax.

18           3. Class III: Recipients of nonresiduary devises and  
19 nonresiduary interests that are included in the measure of the  
20 federal estate tax. The net tax apportioned to a class, if  
21 any, pursuant to this paragraph shall be apportioned among the  
22 recipients in the class in the proportion that the value of  
23 the interest of each bears to the total value of all interests  
24 included in that class.

25           (d) In the application of this subsection, paragraphs  
26 (a), (b), and (c) shall be applied to apportion the net tax to  
27 the recipients of the estate and the recipients of the  
28 decedent's revocable trust as if all recipients, other than  
29 the estate or trusts themselves, were taking under a common  
30 instrument.

31

1           (e) The net tax imposed under s. 4980A of the Internal  
2 Revenue Code shall be apportioned among the recipients of the  
3 interests included in the measure of that tax in the  
4 proportion that the value of the interest of each bears to the  
5 total value of all interests included in the measure of that  
6 tax.

7           (f) The net tax that is not apportioned under  
8 paragraphs (a), (b), and (c), including, but not limited to,  
9 the net tax attributable to interests passing by intestacy,  
10 jointly held interests passing by survivorship, insurance,  
11 properties in which the decedent held a reversionary or  
12 revocable interest, and annuities, shall be apportioned among  
13 the recipients of the remaining interests that are included in  
14 the measure of the tax in the proportion that the value of  
15 each such interest bears to the total value of all the  
16 remaining interests included in the measure of the tax.

17           (g) If the court finds that it is inequitable to  
18 apportion interest, penalties, or both, in the manner provided  
19 in paragraphs (a)-(f), the court may assess liability for the  
20 payment thereof in the manner it finds equitable.

21           (h)1. To be effective as a direction for payment of  
22 tax in a manner different from that provided in this section,  
23 the governing instrument must direct that the tax be paid from  
24 assets that pass pursuant to that governing instrument, except  
25 as provided in this section.

26           2. If the decedent's will provides that the tax shall  
27 be apportioned as provided in the decedent's revocable trust  
28 by specific reference to the trust, the direction in the  
29 revocable trust shall be deemed to be a direction contained in  
30 the will and shall control with respect to payment of taxes  
31

1 from assets passing under both the will and the revocable  
2 trust.

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

6 4. For a direction in a governing instrument to be  
7 effective to direct payment of taxes attributable to property  
8 not passing under the governing instrument from property  
9 passing under the governing instrument, the governing  
10 instrument must expressly refer to this section, or expressly  
11 indicate that the property passing under the governing  
12 instrument is to bear the burden of taxation for property not  
13 passing under the governing instrument. A direction in the  
14 governing instrument to the effect that all taxes are to be  
15 paid from property passing under the governing instrument  
16 whether attributable to property passing under the governing  
17 instrument or otherwise shall be effective to direct the  
18 payment from property passing under the governing instrument  
19 of taxes attributable to property not passing under the  
20 governing instrument.

21 5. If there is a conflict as to payment of taxes  
22 between the decedent's will and the governing instrument, the  
23 decedent's will controls, except as follows:

24 a. The governing instrument shall be given effect with  
25 respect to any tax remaining unpaid after the application of  
26 the decedent's will.

27 b. A direction in a governing instrument to pay the  
28 tax attributable to assets that pass pursuant to the governing  
29 instrument from assets that pass pursuant to that governing  
30 instrument shall be effective notwithstanding any conflict  
31 with the decedent's will, unless the tax provision in the

1 decedent's will expressly overrides the conflicting provision  
2 in the governing instrument.

3 (6) The personal representative or fiduciary shall not  
4 be required to transfer to a recipient any property in  
5 possession of the personal representative or fiduciary which  
6 he or she reasonably anticipates may be necessary for the  
7 payment of taxes. Further, the personal representative or  
8 fiduciary shall not be required to transfer any property in  
9 possession of the personal representative or fiduciary to the  
10 recipient until the amount of the tax due from the recipient  
11 is paid by the recipient. If property is transferred before  
12 final apportionment of the tax, the recipient shall provide a  
13 bond or other security for his apportioned liability in the  
14 amount and form prescribed by the personal representative or  
15 fiduciary.

16 (7)(a) The personal representative may petition at any  
17 time for an order of apportionment. If no administration has  
18 been commenced at any time after 90 days from the decedent's  
19 death any fiduciary may petition for an order of apportionment  
20 in the court in which venue would be proper for administration  
21 of the decedent's estate. Formal notice of the petition for  
22 order of apportionment shall be given to all interested  
23 persons. At any time after 6 months from the decedent's death,  
24 any recipient may petition such court for an order of  
25 apportionment.

26 (b) The court shall determine all issues concerning  
27 apportionment. If the tax to be apportioned has not been  
28 finally determined, the court shall determine the probable tax  
29 due or to become due from all interested persons, apportion  
30 the probable tax, and retain jurisdiction over the parties and  
31

1 issues to modify the order of apportionment as appropriate  
2 until after the tax is finally determined.

3 (8)(a) If the personal representative or fiduciary  
4 does not have possession of sufficient property otherwise  
5 distributable to the recipient to pay the tax apportioned to  
6 the recipient, whether under this section, the Internal  
7 Revenue Code, or the governing instrument, if applicable, the  
8 personal representative or fiduciary shall recover the  
9 deficiency in tax so apportioned to the recipient:

10 1. From the fiduciary in possession of the property to  
11 which the tax is apportioned, if any; and

12 2. To the extent of any deficiency in collection from  
13 the fiduciary, or to the extent collection from the fiduciary  
14 is excused pursuant to subsection (9) and in all other cases,  
15 from the recipient of the property to which the tax is  
16 apportioned, unless relieved of this duty as provided in  
17 subsection (9).

18 (b) In any action to recover the tax apportioned, the  
19 order of apportionment shall be prima facie correct.

20 (c) In any action for the enforcement of an order of  
21 apportionment, the court shall award taxable costs as in  
22 chancery actions, including reasonable attorney's fees, and  
23 may award penalties and interest on the unpaid tax in  
24 accordance with equitable principles.

25 (d) This subsection shall not authorize the recovery  
26 of any tax from any company issuing insurance included in the  
27 gross estate, or from any bank, trust company, savings and  
28 loan association, or similar institution with respect to any  
29 account in the name of the decedent and any other person which  
30 passed by operation of law on the decedent's death.

31

1           (9)(a) A personal representative or fiduciary who has  
2 the duty under this section of collecting the apportioned tax  
3 from recipients may be relieved of the duty to collect the tax  
4 by an order of the court finding:

5           1. That the estimated court costs and attorney's fees  
6 in collecting the apportioned tax from a person against whom  
7 the tax has been apportioned will approximate or exceed the  
8 amount of the recovery;

9           2. That the person against whom the tax has been  
10 apportioned is a resident of a foreign country other than  
11 Canada and refuses to pay the apportioned tax on demand; or

12           3. That it is impracticable to enforce contribution of  
13 the apportioned tax against a person against whom the tax has  
14 been apportioned in view of the improbability of obtaining a  
15 judgment or the improbability of collection under any judgment  
16 that might be obtained, or otherwise.

17           (b) A personal representative or fiduciary shall not  
18 be liable for failure to attempt to enforce collection if the  
19 personal representative or fiduciary reasonably believes it  
20 would have been economically impracticable.

21           (10) Any apportioned tax that is not collected shall  
22 be reapportioned in accordance with this section as if the  
23 portion of the property to which the uncollected tax had been  
24 apportioned had been exempt.

25           (11) Nothing in this section shall limit the right of  
26 any person who has paid more than the amount of the tax  
27 apportionable to such person, calculated as if all apportioned  
28 amounts would be collected, to obtain contribution from those  
29 who have not paid the full amount of the tax apportionable to  
30 them, calculated as if all apportioned amounts would be  
31 collected, and that right is hereby conferred. In any action



1 to enforce contribution, the court shall award taxable costs  
2 as in chancery actions, including reasonable attorney's fees.

3 (12) Nothing herein contained shall be construed to  
4 require the personal representative or fiduciary to pay any  
5 tax levied or assessed by any foreign country, unless specific  
6 directions to that effect are contained in the will or other  
7 instrument under which the personal representative or  
8 fiduciary is acting.

9 Section 10. Section 738.12, Florida Statutes, is  
10 amended to read:

11 738.12 Underproductive property.--

12 (1)(a) If the total principal of a trust does not in  
13 any year yield a net income of at least 3 percent of its  
14 market value (including as income the value of any beneficial  
15 use of the property by the income beneficiary), the trustee  
16 shall pay to the income beneficiary an amount equal to the  
17 excess of 3 percent of the value of the principal, based upon  
18 the market value at the beginning of the calendar year, over  
19 the trust income paid to the income beneficiary in that year.  
20 This amount shall be paid to the income beneficiary using the  
21 first principal cash available.

22 (b) In the event of a termination or initiation of a  
23 trust, or the termination of a beneficial income interest of a  
24 trust, for a period of less than 12 months, the amount to be  
25 paid to the income beneficiary shall be prorated  
26 proportionately with the length of the time of his interest in  
27 the trust and in accordance with s. 738.03.

28 (c) For purposes of this subsection, a beneficiary is  
29 considered to be an income beneficiary only if the trust  
30 instrument is irrevocable and requires that the net income  
31 from the trust be paid to the beneficiary. Payment under this

1 subsection may not be made to a beneficiary who may receive  
2 trust income only in the discretion of the trustee.

3 (2) Upon the sale of the property the income  
4 beneficiary shall not be entitled to any portion of the  
5 proceeds of sale, except that any amount determined in  
6 subsection (1) that remains unpaid at the time of sale shall  
7 be paid therefrom.

8 ~~(3) If by the terms of the trust any portion of the~~  
9 ~~income is to be retained by the trustee or disposed of other~~  
10 ~~than by payment to an income beneficiary, such portion of the~~  
11 ~~amount determined in subsection (1) shall be retained or~~  
12 ~~disposed of as provided by the terms of the trust.~~

13 Section 11. Subsection (16) of section 744.441,  
14 Florida Statutes, is amended to read:

15 744.441 Powers of guardian upon court approval.--After  
16 obtaining approval of the court pursuant to a petition for  
17 authorization to act, a plenary guardian of the property, or a  
18 limited guardian of the property within the powers granted by  
19 the order appointing the guardian or an approved annual or  
20 amended guardianship report, may:

21 (16) Pay reasonable funeral, interment, and grave  
22 marker expenses for the ward from the ward's estate, up to a  
23 maximum of ~~\$6,000~~\$3,000.

24 Section 12. Subsection (4) is added to section  
25 655.936, Florida Statutes, to read:

26 655.936 Delivery of safe-deposit box contents or  
27 property held in safekeeping to personal representative.--

28 (4) Notwithstanding other provisions of this section,  
29 the initial opening of any safe-deposit box of the decedent  
30 must be conducted in the presence of an employee of the  
31 institution where the box is located and the personal

1 representative. The inventory of the contents of the box also  
2 must be conducted in the presence of the employee and the  
3 personal representative, each of whom must verify the contents  
4 of the box by signing a copy of the inventory. The personal  
5 representative shall file the safe-deposit box inventory with  
6 the court within 10 days after the box is opened.

7 Section 13. Subsection (1) of section 733.604,  
8 Florida Statutes, is amended to read:

9 733.604 Inventory.--

10 (1)(a) Within 60 days after issuance of letters, a  
11 personal representative who is not a curator or a successor to  
12 another personal representative who has previously discharged  
13 the duty shall file an inventory of property of the estate,  
14 listing it with reasonable detail and including for each  
15 listed item its estimated fair market value at the date of the  
16 decedent's death. Unless otherwise ordered by the court for  
17 good cause shown, any such inventory or amended or  
18 supplementary inventory is subject to inspection only by the  
19 clerk of the court or his representative, the personal  
20 representative and his attorney, and other interested persons.

21 (b) The initial opening of any safe-deposit box of the  
22 decedent must be conducted in the presence of an employee of  
23 the institution where the box is located and the personal  
24 representative. The inventory of the contents of the box also  
25 must be conducted in the presence of the employee and the  
26 personal representative, each of whom must verify the contents  
27 of the box by signing a copy of the inventory. The personal  
28 representative shall file the safe-deposit box inventory with  
29 the court within 10 days after the box is opened.

30 Section 14. This act shall take effect upon becoming a  
31 law, except that section 9 of this act shall take effect

1 October 1, 1998, and shall apply to the estates of decedents  
2 dying on or after October 1, 1998, and section 10 of this act  
3 shall take effect upon becoming law and shall be applicable to  
4 all trusts, whenever executed.

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