

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 effective dates.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Paragraph (c) of subsection (2) and subsection
 41 (3) of section 733.212, Florida Statutes, are amended to read:

42 733.212 Notice of administration; filing of objections.—

43 (2) The notice shall state:

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

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

62 (3) Any interested person on whom a copy of the notice of
63 administration is served must object to the validity of the
64 will, ~~the qualifications of the personal representative,~~ the
65 venue, or the jurisdiction of the court by filing a petition or
66 other pleading requesting relief in accordance with the Florida
67 Probate Rules on or before the date that is 3 months after the
68 date of service of a copy of the notice of administration on the
69 objecting person, or those objections are forever barred. Except
70 for estoppel based solely on a misstatement by the personal
71 representative as to the period within which an objection must
72 be filed, the 3-month period may not be extended for any reason,
73 including affirmative representation, failure to disclose
74 information, or misconduct by the personal representative or any
75 other person. Unless sooner barred under this subsection, all
76 objections to the validity of a will, the venue, or the
77 jurisdiction of the court must be filed no later than the
78 earlier of 1 year after service of notice of administration or

79 entry of an order of final discharge of the personal
 80 representative.

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

83 733.2123 Adjudication before issuance of letters.—A
 84 petitioner may serve formal notice of the petition for
 85 administration on interested persons. A copy of the will offered
 86 for probate must be attached to the notice. A person who is
 87 served with such notice before the issuance of letters or who
 88 has waived notice may not challenge the validity of the will,
 89 testacy of the decedent, ~~qualifications of the personal~~
 90 ~~representative,~~ venue, or jurisdiction of the court, except in
 91 the proceedings before issuance of letters.

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

94 733.3101 Personal representative not qualified.—

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

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

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

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

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

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

121 733.504 Removal of personal representative; causes for
 122 removal.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

161 733.817 Apportionment of estate taxes.—

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

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

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

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

178 (d) ~~(c)~~ "Gross estate" means the gross estate, as
 179 determined by the Internal Revenue Code with respect to the
 180 federal estate tax and the Florida estate tax, and as that
 181 concept is otherwise determined by the estate, inheritance, or
 182 death tax laws of the particular state, country, or political

183 subdivision whose tax is being apportioned.

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

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

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

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

208 (f)~~(e)~~ "Internal Revenue Code" means the Internal Revenue

209 Code of 1986, as amended from time to time.

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

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

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

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

231 (k)~~(j)~~ "Residuary devise" has the meaning set forth in s.
 232 731.201.

233 (l)~~(k)~~ "Residuary interest," in connection with a trust,
 234 means an interest in the assets of a trust which remain after

235 provision for any distribution that is to be satisfied by
 236 reference to a specific property or type of property, fund, sum,
 237 or statutory amount.

238 (m)~~(l)~~ "Revocable trust" means a trust as described in s.
 239 733.707(3).

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

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

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

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

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

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

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

282 ~~(3)~~ the net tax attributable to the interests included in
 283 the measure of each tax shall be determined by the proportion
 284 that the value of each interest included in the measure of the
 285 tax bears to the total value of all interests included in the
 286 measure of the tax. Notwithstanding the foregoing provisions of

287 this subsection, except as effectively directed in the governing
 288 instrument:

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 paragraphs 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 which pass in the manner described in paragraph
356 (c) or paragraph (d) shall be apportioned only to the other
357 interests pursuant to those paragraphs 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 the preceding provisions of this paragraph shall be apportioned
 466 to the recipients of those interests included in the measure of
 467 the tax in the proportion that the value of each bears to the
 468 total value of those interests included in the measure of the

469 tax.

470 (f) Construction.—For purposes of this subsection:

471 1. If the decedent's estate is the beneficiary of a life
 472 insurance policy, annuity, or contractual right included in the
 473 decedent's gross estate or is the taker as a result of the
 474 exercise or default in exercise of a general power of
 475 appointment held by the decedent, that interest shall be
 476 regarded as passing under the terms of the decedent's will for
 477 the purposes of paragraph (c) or by intestacy if not disposed of
 478 by will. Additionally, any interest included in the measure of
 479 the tax by reason of s. 2041 of the Internal Revenue Code
 480 passing to the decedent's creditors or the creditors of the
 481 decedent's estate shall be regarded as passing to the decedent's
 482 estate for purposes of this subparagraph.

483 2. If a trust is the beneficiary of a life insurance
 484 policy, annuity, or contractual right included in the decedent's
 485 gross estate or is the taker as a result of the exercise or
 486 default in exercise of a general power of appointment held by
 487 the decedent, that interest shall be regarded as passing under
 488 the trust for purposes of paragraph (d).

489 (g) ~~(d)~~ Common instrument construction.—In the application
 490 of this subsection, paragraphs ~~(b)-(f)~~ ~~(a)~~, ~~(b)~~, and ~~(c)~~ shall
 491 be applied to apportion the net tax to the recipients under
 492 ~~certain governing instruments of the estate and the recipients~~
 493 ~~of the decedent's revocable trust~~ as if all recipients under
 494 ~~those instruments~~, other than the estate or revocable trust

495 itself trusts themselves, were taking under a common instrument.

496 This construction applies to:

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

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

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

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

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

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

531 (4) DIRECTION AGAINST APPORTIONMENT.—

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

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

543 ~~2. If the decedent's will provides that the tax shall be~~
 544 ~~apportioned as provided in the decedent's revocable trust by~~
 545 ~~specific reference to the trust, the direction in the revocable~~
 546 ~~trust shall be deemed to be a direction contained in the will~~

547 ~~and shall control with respect to payment of taxes from assets~~
548 ~~passing under both the will and the revocable trust.~~

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

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

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

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

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

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

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

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

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

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

619 (e) If the decedent expressly directs by will, the net tax
620 attributable to property over which the decedent held a general
621 power of appointment may be determined in a manner different
622 from that provided in subsection (2); however, the net tax
623 attributable to that property may not exceed the difference
624 between the total net tax determined pursuant to subsection (2)

625 without regard to this paragraph and the total net tax that
626 would have been payable if the value of the property subject to
627 such power of appointment had not been included in the
628 decedent's gross estate. If tax is attributable to one or more
629 Section 2044 interests pursuant to subsection (2), the net tax
630 attributable to the Section 2044 interests shall be calculated
631 before the application of this paragraph unless the decedent
632 expressly directs otherwise by will.

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

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

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

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

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

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

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

676 ~~a. The governing instrument shall be given effect with~~

677 ~~respect to any tax remaining unpaid after the application of the~~
678 ~~decedent's will.~~

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

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

697 (6) ~~(7)~~ ORDER OF APPORTIONMENT.—

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

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

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

716 (7)-(8) DEFICIENCY.-

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

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

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

729 from the recipient of the property to which the tax is
730 apportioned, unless relieved of this duty as provided in
731 subsection (8) ~~(9)~~.

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

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

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

745 ~~(8)(9)~~ RELIEF FROM DUTY.—

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

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

754 2. That the person against whom the tax has been

755 | apportioned is a resident of a foreign country other than Canada
756 | and refuses to pay the apportioned tax on demand; or

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

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

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

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

780 | (11)-(12) FOREIGN TAX.—Nothing herein contained shall be

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

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

788 733.106 Costs and attorney ~~attorney's~~ fees.—

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

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

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

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

807 3. The extent to which a person whose part of the estate
 808 is to be assessed, individually or through counsel, actively
 809 participated in the proceeding;

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

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

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

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

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

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

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

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

830 (2)(a) When attorney ~~Whenever attorney's~~ fees are to be
 831 paid from out of the trust pursuant to subsection (1) or s.
 832 736.1007(5)(a), or when the court assesses attorney fees against

833 a person's part of an estate under s. 733.106(4) involving a
834 pourover will and the matter is interrelated with the trust but
835 the person's part of the estate is insufficient to fully pay the
836 assessment, the court, in its discretion, may direct from what
837 part of the trust the fees shall be paid. All or any part of
838 attorney fees to be paid from the trust may be assessed against
839 one or more persons' part of the trust in such proportions as
840 the court finds to be just and proper.

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

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

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

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

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

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

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

858 7. Whether a person whose part of the trust is to be

859 assessed unjustly caused an increase in the amount of attorney
860 fees incurred by the trustee or other persons in connection with
861 the proceeding; and

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

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

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

868 736.1006 Costs in trust proceedings.—

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

882 Section 9. The amendments made by this act to ss. 733.212,
883 733.2123, 733.3101, and 733.504, Florida Statutes, are remedial
884 in nature, are intended to clarify existing law, and apply

885 retroactively to all proceedings filed or commenced on or after
886 July 1, 2015.

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 on or 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 or commenced on or after July 1, 2015, in
901 which the apportionment of taxes has not been finally determined
902 or agreed and without regard to the decedent's death.

903 Section 11. The amendments made by this act to ss.
904 733.106, 736.1005, and 736.1006, Florida Statutes, apply to
905 proceedings commenced on or after July 1, 2015. The law in
906 effect before July 1, 2015, applies to proceedings commenced
907 before that date.

908 Section 12. Except as otherwise expressly provided in this
909 act and except for this section, which shall take effect upon
910 this act becoming a law, this act shall take effect July 1,

CS/CS/HB 343

2015

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