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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
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The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 733.106, Florida Statutes, is amended to
read:

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

(1) In all probate proceedings, costs may be awarded as in
chancery actions.

(2) A person nominated as personal representative, or any
proponent of a will if the person so nominated does not act



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12 within a reasonable time, if in good faith justified in offering
13 the will in due form for probate, shall receive costs and
14 attorney ~~attorney's~~ fees from the estate even though probate is
15 denied or revoked.

16 (3) Any attorney who has rendered services to an estate may
17 be awarded reasonable compensation from the estate.

18 (4) If ~~When~~ costs and attorney ~~attorney's~~ fees are to be
19 paid from the estate under this section, s. 733.6171(4), s.
20 736.1005, or s. 736.1006, the court, in its discretion, may
21 direct from what part of the estate they shall be paid.

22 (a) If the court directs an assessment against a person's
23 part of the estate and such part is insufficient to fully pay
24 the assessment, the court may direct payment from the person's
25 part of a trust, if any, if a pourover will is involved and the
26 matter is interrelated with the trust.

27 (b) All or any part of the costs and attorney fees to be
28 paid from the estate may be assessed against one or more
29 persons' part of the estate in such proportions as the court
30 finds to be just and proper.

31 (c) In the exercise of its discretion, the court may
32 consider the following factors:

33 1. The relative impact of an assessment on the estimated
34 value of each person's part of the estate.

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

37 3. The extent to which a person whose part of the estate is
38 to be assessed, individually or through counsel, actively
39 participated in the proceeding.

40 4. The potential benefit or detriment to a person's part of



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41 the estate expected from the outcome of the proceeding.

42 5. The relative strength or weakness of the merits of the
43 claims, defenses, or objections, if any, asserted by a person
44 whose part of the estate is to be assessed.

45 6. Whether a person whose part of the estate is to be
46 assessed was a prevailing party with respect to one or more
47 claims, defenses, or objections.

48 7. Whether a person whose part of the estate is to be
49 assessed unjustly caused an increase in the amount of costs and
50 attorney fees incurred by the personal representative or another
51 interested person in connection with the proceeding.

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

53 (d) The court may assess a person's part of the estate
54 without finding that the person engaged in bad faith,
55 wrongdoing, or frivolousness.

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

58 733.212 Notice of administration; filing of objections.—

59 (2) The notice shall state:

60 (c) That any interested person on whom a copy of the notice
61 of administration is served must file on or before the date that
62 is 3 months after the date of service of a copy of the notice of
63 administration on that person any objection that challenges the
64 validity of the will, ~~the qualifications of the personal~~
65 ~~representative,~~ the venue, or the jurisdiction of the court. The
66 3-month time period may only be extended for estoppel based upon
67 a misstatement by the personal representative regarding the time
68 period within which an objection must be filed. The time period
69 may not be extended for any other reason, including affirmative



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70 representation, failure to disclose information, or misconduct
71 by the personal representative or any other person. Unless
72 sooner barred by subsection (3), all objections to the validity
73 of a will, venue, or the jurisdiction of the court must be filed
74 no later than the earlier of the entry of an order of final
75 discharge of the personal representative or 1 year after service
76 of the notice of administration.

77 (3) Any interested person on whom a copy of the notice of
78 administration is served must object to the validity of the
79 will, ~~the qualifications of the personal representative,~~ the
80 venue, or the jurisdiction of the court by filing a petition or
81 other pleading requesting relief in accordance with the Florida
82 Probate Rules on or before the date that is 3 months after the
83 date of service of a copy of the notice of administration on the
84 objecting person, or those objections are forever barred. The 3-
85 month time period may only be extended for estoppel based upon a
86 misstatement by the personal representative regarding the time
87 period within which an objection must be filed. The time period
88 may not be extended for any other reason, including affirmative
89 representation, failure to disclose information, or misconduct
90 by the personal representative or any other person. Unless
91 sooner barred by this subsection, all objections to the validity
92 of a will, venue, or the jurisdiction of the court must be filed
93 no later than the earlier of the entry of an order of final
94 discharge of the personal representative or 1 year after service
95 of the notice of administration.

96 Section 3. Section 733.2123, Florida Statutes, is amended
97 to read:

98 733.2123 Adjudication before issuance of letters.-A



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99 petitioner may serve formal notice of the petition for
100 administration on interested persons. A person who is served
101 with such notice before the issuance of letters or who has
102 waived notice may not challenge the validity of the will,
103 testacy of the decedent, ~~qualifications of the personal~~
104 ~~representative~~, venue, or jurisdiction of the court, except in
105 the proceedings before issuance of letters.

106 Section 4. Section 733.3101, Florida Statutes, is amended
107 to read:

108 733.3101 Personal representative not qualified.-

109 (1) A personal representative shall resign immediately if
110 the personal representative knows that he or she was not
111 qualified to act at the time of appointment.

112 (2) Any time a personal representative, who was qualified
113 to act at the time of appointment, knows or should have known
114 that he or she would not be qualified for appointment if
115 application for appointment were then made, the personal
116 representative shall promptly file and serve a notice setting
117 forth the reasons. The personal representative's notice shall
118 state that any interested person may petition to remove the
119 personal representative. An interested person on whom a copy of
120 the personal representative's notice is served may file a
121 petition requesting the personal representative's removal within
122 30 days after the date on which such notice is served.

123 (3) A personal representative who fails to comply with this
124 section shall be personally liable for costs, including attorney
125 attorney's fees, incurred in any removal proceeding, if the
126 personal representative is removed. This liability extends to a
127 personal representative who does not know, but should have



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128 known, of the facts that would have required him or her to
129 resign under subsection (1) or to file and serve notice under
130 subsection (2). This liability shall be cumulative to any other
131 provided by law.

132 (4) As used in this section, the term "qualified" means
133 that the personal representative is qualified under ss. 733.302
134 -733.305.

135 Section 5. Section 733.504, Florida Statutes, is amended to
136 read:

137 733.504 Removal of personal representative; causes for
138 removal.-A personal representative shall be removed and the
139 letters revoked if he or she was not qualified to act at the
140 time of appointment. A personal representative may be removed
141 and the letters revoked for any of the following causes,~~and the~~
142 ~~removal shall be in addition to any penalties prescribed by law:~~

143 (1) Adjudication that the personal representative is
144 incapacitated.

145 (2) Physical or mental incapacity rendering the personal
146 representative incapable of the discharge of his or her duties.

147 (3) Failure to comply with any order of the court, unless
148 the order has been superseded on appeal.

149 (4) Failure to account for the sale of property or to
150 produce and exhibit the assets of the estate when so required.

151 (5) Wasting or maladministration of the estate.

152 (6) Failure to give bond or security for any purpose.

153 (7) Conviction of a felony.

154 (8) Insolvency of, or the appointment of a receiver or
155 liquidator for, any corporate personal representative.

156 (9) Holding or acquiring conflicting or adverse interests



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157 against the estate that will or may interfere with the
158 administration of the estate as a whole. This cause of removal
159 shall not apply to the surviving spouse because of the exercise
160 of the right to the elective share, family allowance, or
161 exemptions, as provided elsewhere in this code.

162 (10) Revocation of the probate of the decedent's will that
163 authorized or designated the appointment of the personal
164 representative.

165 (11) Removal of domicile from Florida, if domicile was a
166 requirement of initial appointment.

167 (12) The personal representative was qualified to act at
168 the time of appointment, but is ~~would~~ not now ~~be~~ entitled to
169 appointment.

170
171 Removal under this section is in addition to any penalties
172 prescribed by law.

173 Section 6. Effective October 1, 2015, subsection (6) of
174 section 733.617, Florida Statutes, is amended, and subsection
175 (8) is added to that section, to read:

176 733.617 Compensation of personal representative.—

177 (6) Except as provided in subsection (8), a ~~If the~~ personal
178 representative ~~who~~ is a member of The Florida Bar and ~~who~~ has
179 rendered legal services in connection with the administration of
180 the estate, ~~then in addition to a fee as personal~~
181 ~~representative, there also~~ shall be allowed a fee for the legal
182 services rendered in addition to a fee as personal
183 representative.

184 (8) (a) An attorney, or a person related to the attorney, is
185 not entitled to compensation for serving as personal



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186 representative if the attorney prepared or supervised the
187 execution of the will that nominates the attorney or person
188 related to the attorney as personal representative, unless the
189 attorney or person nominated is related to the testator or the
190 attorney makes the following disclosures to the testator in
191 writing before the will is executed:

192 1. Subject to certain statutory limitations, most family
193 members regardless of their residence, other persons who are
194 residents of Florida, including friends, and corporate
195 fiduciaries are eligible to serve as a personal representative.

196 2. Any person, including an attorney, who serves as a
197 personal representative is entitled to receive reasonable
198 compensation for serving as personal representative.

199 3. Compensation payable to the personal representative is
200 in addition to any attorney fees payable to the attorney or the
201 attorney's firm for legal services rendered to the personal
202 representative.

203 (b) The testator must execute a written statement
204 acknowledging that the disclosures required by this subsection
205 were made prior to the execution of the will. The written
206 acknowledgment must be in a separate writing from the will, but
207 may be annexed to the will. The written acknowledgment may be
208 executed before or after the execution of the will in which the
209 attorney or related person is nominated as the personal
210 representative.

211 (c) For purposes of this subsection:

212 1. An attorney is deemed to have prepared or supervised the
213 execution of a will if the preparation or the supervision of the
214 execution of the will was performed by an employee or attorney



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215 employed by the same firm as the attorney at the time the will
216 was executed.

217 2.a. A person is "related" to an individual if, at the time
218 the attorney prepared or supervised the execution of the will,
219 the person is:

220 (I) A spouse of the individual;

221 (II) A lineal ascendant or descendant of the individual;

222 (III) A sibling of the individual;

223 (IV) A relative of the individual or of the individual's
224 spouse with whom the attorney maintains a close, familial
225 relationship;

226 (V) A spouse of a person described in sub-sub-subparagraphs
227 (I)-(IV); or

228 (VI) A person who cohabits with the individual.

229 b. An employee or attorney employed by the same firm as the
230 attorney at the time the will is executed is deemed to be
231 related to the attorney.

232 3. An attorney or person related to the attorney is deemed
233 to be nominated in the will if the will provided the attorney or
234 a person related to the attorney with the power to nominate the
235 personal representative and the attorney or person related to
236 the attorney was nominated using that power.

237 (d) This subsection applies to provisions nominating an
238 attorney or a person related to the attorney as personal
239 representative, copersonal representative, or successor or
240 alternate personal representative if the person nominated is
241 unable or unwilling to serve.

242 (e) Other than compensation payable to the personal
243 representative, this subsection does not limit any rights or



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244 remedies that an interested person may have at law or equity.

245 (f) The failure to obtain a written acknowledgment from the
246 testator under this subsection does not disqualify a personal
247 representative from serving and does not affect the validity of
248 a will.

249 (g) A written acknowledgment signed by the testator that is
250 in substantially the following form is deemed to comply with the
251 disclosure requirements of this subsection:

252
253 I, ... (Name)..., declare that:

254 I have designated ... (my attorney, an attorney employed in
255 the same law firm as my attorney, or a person related to my
256 attorney)... as a nominated personal representative in my will
257 (or codicil) dated ... (Date)... .

258 Before executing the will (or codicil), I was informed
259 that:

260 (1) Subject to certain statutory limitations, most family
261 members regardless of their residence, other persons who are
262 residents of Florida, including friends, and corporate
263 fiduciaries are eligible to serve as a personal representative.

264 (2) Any person, including an attorney, who serves as a
265 personal representative is entitled to receive reasonable
266 compensation for serving as personal representative.

267 (3) Compensation payable to the personal representative is
268 in addition to any attorney fees payable to the attorney or the
269 attorney's firm for legal services rendered to the personal
270 representative.

271
272 ... (Testator)...



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... (Dated) ...

(h) This subsection applies to each nomination made pursuant to a will that is:

1. Executed by a resident of this state on or after October 1, 2015.

2. Republished by a resident of this state on or after October 1, 2015, if the republished will nominates the attorney who prepared or supervised the execution of the instrument that republished the will, or a person related to such attorney, as personal representative.

Section 7. Section 733.817, Florida Statutes, is amended to read:

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

733.817 Apportionment of estate taxes.—

(1) DEFINITIONS.—As used in this section, the term:

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

(b) "Generation-skipping transfer tax" means the generation-skipping transfer tax imposed by chapter 13 of the Internal Revenue Code on direct skips of interests includible in the federal gross estate or a corresponding tax imposed by any state or country or political subdivision of the foregoing. The term does not include the generation-skipping transfer tax on



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302 taxable distributions, taxable terminations, or any other
303 generation-skipping transfer. The terms "direct skip," "taxable
304 distribution," and "taxable termination" have the same meanings
305 as provided in s. 2612 of the Internal Revenue Code.

306 (c) "Governing instrument" means a will, trust instrument,
307 or any other document that controls the transfer of property on
308 the occurrence of the event with respect to which the tax is
309 being levied.

310 (d) "Gross estate" means the gross estate, as determined by
311 the Internal Revenue Code with respect to the federal estate tax
312 and the Florida estate tax, and as that concept is otherwise
313 determined by the estate, inheritance, or death tax laws of the
314 particular state, country, or political subdivision whose tax is
315 being apportioned.

316 (e) "Included in the measure of the tax" means for each
317 separate tax that an interest may incur, only interests included
318 in the measure of that particular tax are considered. As used in
319 this section, the term does not include:

320 1. Any interest, whether passing under the will or not, to
321 the extent the interest is initially deductible from the gross
322 estate, without regard to any subsequent reduction of the
323 deduction by reason of the charge of any part of the applicable
324 tax to the interest. If an election is required for
325 deductibility, an interest is not initially deductible unless
326 the election for deductibility is allowed.

327 2. Interests or amounts that are not included in the gross
328 estate but are included in the amount upon which the applicable
329 tax is computed, such as adjusted taxable gifts pursuant to s.
330 2001 of the Internal Revenue Code.



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331 3. Gift taxes included in the gross estate pursuant to s.
332 2035 of the Internal Revenue Code and the portion of any inter
333 vivos transfer included in the gross estate pursuant to s. 529
334 of the Internal Revenue Code, notwithstanding inclusion in the
335 gross estate.

336 (f) "Internal Revenue Code" means the Internal Revenue Code
337 of 1986, as amended.

338 (g) "Net tax" means the net tax payable to the particular
339 state, country, or political subdivision whose tax is being
340 apportioned, after taking into account all credits against the
341 applicable tax except as provided in this section. With respect
342 to the federal estate tax, net tax is determined after taking
343 into account all credits against the tax except for the credit
344 for foreign death taxes and except for the credit or deduction
345 for state taxes imposed by states other than this state.

346 (h) "Nonresiduary devise" means any devise that is not a
347 residuary devise.

348 (i) "Nonresiduary interest," in connection with a trust,
349 means any interest in a trust which is not a residuary interest.

350 (j) "Recipient" means, with respect to property or an
351 interest in property included in the gross estate, an heir at
352 law in an intestate estate, devisee in a testate estate,
353 beneficiary of a trust, beneficiary of a life insurance policy,
354 annuity, or other contractual right, surviving tenant, taker as
355 a result of the exercise or in default of the exercise of a
356 general power of appointment, person who receives or is to
357 receive the property or an interest in the property, or person
358 in possession of the property, other than a creditor.

359 (k) "Residuary devise" has the meaning in s. 731.201.



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360 (l) "Residuary interest," in connection with a trust, means
361 an interest in the assets of a trust which remain after
362 provision for any distribution that is to be satisfied by
363 reference to a specific property or type of property, fund, sum,
364 or statutory amount.

365 (m) "Revocable trust" means a trust as described in s.
366 733.707(3).

367 (n) "Section 2044 interest" means an interest included in
368 the measure of the tax by reason of s. 2044 of the Internal
369 Revenue Code.

370 (o) "State" means any state, territory, or possession of
371 the United States, the District of Columbia, or the Commonwealth
372 of Puerto Rico.

373 (p) "Tax" means any estate tax, inheritance tax,
374 generation-skipping transfer tax, or other tax levied or
375 assessed under the laws of this or any other state, the United
376 States, any other country, or any political subdivision of the
377 foregoing, as finally determined, which is imposed as a result
378 of the death of the decedent. The term also includes any
379 interest or penalties imposed in addition to the tax. Unless the
380 context indicates otherwise, the term means each separate tax.
381 The term does not include any additional estate tax imposed by
382 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a
383 corresponding tax imposed by any state or country or political
384 subdivision of the foregoing. The additional estate tax imposed
385 shall be apportioned as provided in s. 2032A or s. 2057 of the
386 Internal Revenue Code.

387 (q) "Temporary interest" means an interest in income or an
388 estate for a specific period of time, for life, or for some



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389 other period controlled by reference to extrinsic events,
390 whether or not in trust.

391 (r) "Tentative Florida tax" with respect to any property
392 means the net Florida estate tax that would have been
393 attributable to that property if no tax were payable to any
394 other state in respect of that property.

395 (s) "Value" means the pecuniary worth of the interest
396 involved as finally determined for purposes of the applicable
397 tax after deducting any debt, expense, or other deduction
398 chargeable to it for which a deduction was allowed in
399 determining the amount of the applicable tax. A lien or other
400 encumbrance is not regarded as chargeable to a particular
401 interest to the extent that it will be paid from other
402 interests. The value of an interest is not reduced by reason of
403 the charge against it of any part of the tax, except as provided
404 in paragraph (3) (a).

405 (2) ALLOCATION OF TAX.—Except as effectively directed in
406 the governing instrument pursuant to subsection (4), the net tax
407 attributable to the interests included in the measure of each
408 tax shall be determined by the proportion that the value of each
409 interest included in the measure of the tax bears to the total
410 value of all interests included in the measure of the tax.

411 Notwithstanding the foregoing provision of this subsection and
412 except as effectively directed in the governing instrument:

413 (a) The net tax attributable to section 2044 interests
414 shall be determined in the manner provided for the federal
415 estate tax in s. 2207A of the Internal Revenue Code, and the
416 amount so determined shall be deducted from the tax to determine
417 the net tax attributable to all other interests included in the



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418 measure of the tax.

419 (b) The foreign tax credit allowed with respect to the
420 federal estate tax shall be allocated among the recipients of
421 interests finally charged with the payment of the foreign tax in
422 reduction of any federal estate tax chargeable to the recipients
423 of the foreign interests, whether or not any federal estate tax
424 is attributable to the foreign interests. Any excess of the
425 foreign tax credit shall be applied to reduce proportionately
426 the net amount of federal estate tax chargeable to the remaining
427 recipients of the interests included in the measure of the
428 federal estate tax.

429 (c) The reduction in the net tax attributable to the
430 deduction for state death taxes allowed by s. 2058 of the
431 Internal Revenue Code shall be allocated to the recipients of
432 the interests that produced the deduction. For this purpose, the
433 reduction in the net tax shall be calculated in the manner
434 provided for interests other than those described in paragraph
435 (a).

436 (d) The reduction in the Florida tax, if one is imposed, on
437 the estate of a Florida resident for tax paid to another state
438 shall be allocated as follows:

439 1. If the net tax paid to another state is greater than or
440 equal to the tentative Florida tax attributable to the property
441 subject to tax in the other state, none of the Florida tax shall
442 be attributable to that property.

443 2. If the net tax paid to another state is less than the
444 tentative Florida tax attributable to the property subject to
445 tax in the other state, the net Florida tax attributable to the
446 property subject to tax in the other state shall be the excess



447 of the amount of the tentative Florida tax attributable to the
448 property over the net tax payable to the other state with
449 respect to the property.

450 3. Any remaining net Florida tax shall be attributable to
451 property included in the measure of the Florida tax exclusive of
452 the property subject to tax in another state.

453 4. The net federal tax attributable to the property subject
454 to tax in the other state shall be determined as if the property
455 were located in that state.

456 (e) The net tax attributable to a temporary interest, if
457 any, is regarded as attributable to the principal that supports
458 the temporary interest.

459 (3) APPORTIONMENT OF TAX.—Except as otherwise effectively
460 directed in the governing instrument pursuant to subsection (4),
461 the net tax attributable to each interest shall be apportioned
462 as follows:

463 (a) Generation-skipping transfer tax.—Any federal or state
464 generation-skipping transfer tax shall be apportioned as
465 provided in s. 2603 of the Internal Revenue Code after the
466 application of the remaining provisions of this subsection to
467 taxes other than the generation-skipping transfer tax.

468 (b) Section 2044 interests.—The net tax attributable to
469 section 2044 interests shall be apportioned among the recipients
470 of the section 2044 interests in the proportion that the value
471 of each section 2044 interest bears to the total of all section
472 2044 interests. The net tax apportioned by this paragraph to
473 section 2044 interests that pass in the manner described in
474 paragraph (c) or paragraph (d) shall be apportioned to the
475 section 2044 interests in the manner described in those



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476 paragraphs before the apportionment of the net tax attributable
477 to the other interests passing as provided in those paragraphs.
478 The net tax attributable to the interests other than the section
479 2044 interests which pass in the manner described in paragraph
480 (c) or paragraph (d) shall be apportioned only to such other
481 interests pursuant to those paragraphs.

482 (c) *Wills*.—The net tax attributable to property passing
483 under the decedent's will shall be apportioned in the following
484 order of priority:

485 1. The net tax attributable to nonresiduary devises shall
486 be charged to and paid from the residuary estate, whether or not
487 all interests in the residuary estate are included in the
488 measure of the tax. If the residuary estate is insufficient to
489 pay the net tax attributable to all nonresiduary devises, the
490 balance of the net tax attributable to nonresiduary devises
491 shall be apportioned among the recipients of the nonresiduary
492 devises in the proportion that the value of each nonresiduary
493 devise included in the measure of the tax bears to the total of
494 all nonresiduary devises included in the measure of the tax.

495 2. The net tax attributable to residuary devises shall be
496 apportioned among the recipients of the residuary devises
497 included in the measure of the tax in the proportion that the
498 value of each residuary devise included in the measure of the
499 tax bears to the total of all residuary devises included in the
500 measure of the tax. If the residuary estate is insufficient to
501 pay the net tax attributable to all residuary devises, the
502 balance of the net tax attributable to residuary devises shall
503 be apportioned among the recipients of the nonresiduary devises
504 in the proportion that the value of each nonresiduary devise



505 included in the measure of the tax bears to the total of all
506 nonresiduary devises included in the measure of the tax.

507 (d) Trusts.—The net tax attributable to property passing
508 under the terms of any trust other than a trust created in the
509 decedent's will shall be apportioned in the following order of
510 priority:

511 1. The net tax attributable to nonresiduary interests of
512 the trust shall be charged to and paid from the residuary
513 portion of the trust, whether or not all interests in the
514 residuary portion are included in the measure of the tax. If the
515 residuary portion is insufficient to pay the net tax
516 attributable to all nonresiduary interests, the balance of the
517 net tax attributable to nonresiduary interests shall be
518 apportioned among the recipients of the nonresiduary interests
519 in the proportion that the value of each nonresiduary interest
520 included in the measure of the tax bears to the total of all
521 nonresiduary interests included in the measure of the tax.

522 2. The net tax attributable to residuary interests of the
523 trust shall be apportioned among the recipients of the residuary
524 interests of the trust included in the measure of the tax in the
525 proportion that the value of each residuary interest included in
526 the measure of the tax bears to the total of all residuary
527 interests of the trust included in the measure of the tax. If
528 the residuary portion is insufficient to pay the net tax
529 attributable to all residuary interests, the balance of the net
530 tax attributable to residuary interests shall be apportioned
531 among the recipients of the nonresiduary interests in the
532 proportion that the value of each nonresiduary interest included
533 in the measure of the tax bears to the total of all nonresiduary



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534 interests included in the measure of the tax.

535

536 Except as provided in paragraph (g), this paragraph applies
537 separately for each trust.

538 (e) Protected homestead, exempt property, and family
539 allowance.—

540 1. The net tax attributable to an interest in protected
541 homestead, exempt property, and the family allowance determined
542 under s. 732.403 shall be apportioned against the recipients of
543 other interests in the estate or passing under any revocable
544 trust in the following order of priority:

545 a. Class I.—Recipients of interests passing by intestacy
546 that are included in the measure of the federal estate tax.

547 b. Class II.—Recipients of residuary devises, residuary
548 interests, and pretermitted shares under ss. 732.301 and 732.302
549 that are included in the measure of the federal estate tax.

550 c. Class III.—Recipients of nonresiduary devises and
551 nonresiduary interests that are included in the measure of the
552 federal estate tax.

553 2. Any net tax apportioned to a class pursuant to this
554 paragraph shall be apportioned among each recipient in the class
555 in the proportion that the value of the interest of each bears
556 to the total value of all interests included in that class. A
557 tax may not be apportioned under this paragraph to the portion
558 of any interest applied in satisfaction of the elective share
559 whether or not included in the measure of the tax. For purposes
560 of this paragraph, if the value of the interests described in s.
561 732.2075(1) exceeds the amount of the elective share, the
562 elective share shall be treated as satisfied first from



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563 interests other than those described in classes I, II, and III,
564 and to the extent that those interests are insufficient to
565 satisfy the elective share, from the interests passing to or for
566 the benefit of the surviving spouse described in classes I, II,
567 and III, beginning with those described in class I, until the
568 elective share is satisfied. This paragraph has priority over
569 paragraphs (a) and (h).

570 3. The balance of the net tax attributable to any interest
571 in protected homestead, exempt property, and the family
572 allowance determined under s. 732.403 which is not apportioned
573 under the preceding provisions of this paragraph shall be
574 apportioned to the recipients of those interests included in the
575 measure of the tax in the proportion that the value of each
576 bears to the total value of those interests included in the
577 measure of the tax.

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

579 1. If the decedent's estate is the beneficiary of a life
580 insurance policy, annuity, or contractual right included in the
581 decedent's gross estate, or is the taker as a result of the
582 exercise or default in exercise of a general power of
583 appointment held by the decedent, that interest shall be
584 regarded as passing under the terms of the decedent's will for
585 the purposes of paragraph (c) or by intestacy if not disposed of
586 by will. Additionally, any interest included in the measure of
587 the tax by reason of s. 2041 of the Internal Revenue Code
588 passing to the decedent's creditors or the creditors of the
589 decedent's estate shall be regarded as passing to the decedent's
590 estate for the purpose of this subparagraph.

591 2. If a trust is the beneficiary of a life insurance



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592 policy, annuity, or contractual right included in the decedent's
593 gross estate, or is the taker as a result of the exercise or
594 default in exercise of a general power of appointment held by
595 the decedent, that interest shall be regarded as passing under
596 the trust for purposes of paragraph (d).

597 (g) Common instrument construction.—In the application of
598 this subsection, paragraphs (b)-(f) shall be applied to
599 apportion the net tax to the recipients under certain governing
600 instruments as if all recipients under those instruments, other
601 than the estate or revocable trust itself, were taking under a
602 common instrument. This construction applies to the following:

603 1. The decedent's will and revocable trust if the estate is
604 a beneficiary of the revocable trust or if the revocable trust
605 is a beneficiary of the estate.

606 2. A revocable trust of the decedent and another revocable
607 trust of the decedent if either trust is the beneficiary of the
608 other trust.

609 (h) Other interests.—The net tax that is not apportioned to
610 interests under paragraphs (b)-(g), including, but not limited
611 to, the net tax attributable to interests passing by intestacy,
612 interests applied in satisfaction of the elective share pursuant
613 to s. 732.2075(2), interests passing by reason of the exercise
614 or nonexercise of a general power of appointment, jointly held
615 interests passing by survivorship, life insurance, properties in
616 which the decedent held a reversionary or revocable interest,
617 annuities, and contractual rights, shall be apportioned among
618 the recipients of the remaining interests included in the
619 measure of the tax in the proportion that the value of each such
620 interest bears to the total value of all remaining interests



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621 included in the measure of the tax.

622 (i) Assessment of liability by court.—If the court finds
623 that:

624 1. It is inequitable to apportion interest or penalties, or
625 both, in the manner provided in paragraphs (a)-(h), the court
626 may assess liability for the payment thereof in the manner that
627 the court finds equitable.

628 2. The payment of any tax was not effectively directed in
629 the governing instrument pursuant to subsection (4) and that
630 such tax is not apportioned by this subsection, the court may
631 assess liability for the payment of such tax in the manner that
632 the court finds equitable.

633 (4) DIRECTION AGAINST APPORTIONMENT.—

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

637 (b) For a direction in a governing instrument to be
638 effective to direct payment of taxes attributable to property
639 passing under the governing instrument in a manner different
640 from that provided in this section, the direction must be
641 express.

642 (c) For a direction in a governing instrument to be
643 effective to direct payment of taxes attributable to property
644 not passing under the governing instrument from property passing
645 under the governing instrument, the governing instrument must
646 expressly direct that the property passing under the governing
647 instrument bear the burden of taxation for property not passing
648 under the governing instrument. Except as provided in paragraph
649 (d), a direction in the governing instrument to the effect that



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650 all taxes are to be paid from property passing under the
651 governing instrument whether attributable to property passing
652 under the governing instrument or otherwise shall be effective
653 to direct payment from property passing under the governing
654 instrument of taxes attributable to property not passing under
655 the governing instrument.

656 (d) In addition to satisfying the other provisions of this
657 subsection:

658 1.a. For a direction in the decedent's will or revocable
659 trust to be effective in waiving the right of recovery provided
660 in s. 2207A of the Internal Revenue Code for the tax
661 attributable to section 2044 interests, and for any tax imposed
662 by Florida based upon such section 2044 interests, the direction
663 must expressly waive that right of recovery. An express
664 direction that property passing under the will or revocable
665 trust bear the tax imposed by s. 2044 of the Internal Revenue
666 Code is deemed an express waiver of the right of recovery
667 provided in s. 2207A of the Internal Revenue Code. A reference
668 to "qualified terminable interest property," "QTIP," or property
669 in which the decedent had a "qualifying income interest for
670 life" is deemed to be a reference to property upon which tax is
671 imposed by s. 2044 of the Internal Revenue Code which is subject
672 to the right of recovery provided in s. 2207A of the Internal
673 Revenue Code.

674 b. If property is included in the gross estate pursuant to
675 ss. 2041 and 2044 of the Internal Revenue Code, the property is
676 deemed included under s. 2044, and not s. 2041, for purposes of
677 allocation and apportionment of the tax.

678 2. For a direction in the decedent's will or revocable



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679 trust to be effective in waiving the right of recovery provided
680 in s. 2207B of the Internal Revenue Code for tax imposed by
681 reason of s. 2036 of the Internal Revenue Code, and any tax
682 imposed by Florida based upon s. 2036 of the Internal Revenue
683 Code, the direction must expressly waive that right of recovery.
684 An express direction that property passing under the will or
685 revocable trust bear the tax imposed by s. 2036 of the Internal
686 Revenue Code is deemed an express waiver of the right of
687 recovery provided in s. 2207B of the Internal Revenue Code. If
688 property is included in the gross estate pursuant to ss. 2036
689 and 2038 of the Internal Revenue Code, the property is deemed
690 included under s. 2038, not s. 2036, for purposes of allocation
691 and apportionment of the tax, and there is no right of recovery
692 under s. 2207B of the Internal Revenue Code.

693 3. A general statement in the decedent's will or revocable
694 trust waiving all rights of reimbursement or recovery under the
695 Internal Revenue Code is not an express waiver of the rights of
696 recovery provided in s. 2207A or s. 2207B of the Internal
697 Revenue Code.

698 4. For a direction in a governing instrument to be
699 effective to direct payment of generation-skipping transfer tax
700 in a manner other than as provided in s. 2603 of the Internal
701 Revenue Code, and any tax imposed by Florida based on s. 2601 of
702 the Internal Revenue Code, the direction must specifically
703 reference the tax imposed by s. 2601 of the Internal Revenue
704 Code. A reference to the generation-skipping transfer tax or s.
705 2603 of the Internal Revenue Code is deemed to be a reference to
706 property upon which tax is imposed by reason of s. 2601 of the
707 Internal Revenue Code.



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708 (e) If the decedent expressly directs by will, the net tax
709 attributable to property over which the decedent held a general
710 power of appointment may be determined in a manner other than as
711 provided in subsection (2) if the net tax attributable to that
712 property does not exceed the difference between the total net
713 tax determined pursuant to subsection (2), determined without
714 regard to this paragraph, and the total net tax that would have
715 been payable if the value of the property subject to such power
716 of appointment had not been included in the decedent's gross
717 estate. If tax is attributable to one or more section 2044
718 interests pursuant to subsection (2), the net tax attributable
719 to the section 2044 interests shall be calculated before the
720 application of this paragraph unless the decedent expressly
721 directs otherwise by will.

722 (f) If the decedent's will expressly provides that the tax
723 is to be apportioned as provided in the decedent's revocable
724 trust by specific reference to the revocable trust, an express
725 direction in the revocable trust is deemed to be a direction
726 contained in the will as well as the revocable trust.

727 (g) An express direction in the decedent's will to pay tax
728 from the decedent's revocable trust by specific reference to the
729 revocable trust is effective unless a contrary express direction
730 is contained in the revocable trust.

731 (h) If governing instruments contain effective directions
732 that conflict as to payment of taxes, the most recently executed
733 tax apportionment provision controls to the extent of the
734 conflict. For the purpose of this subsection, if a will or other
735 governing instrument is amended, the date of the codicil to the
736 will or amendment to the governing instrument is regarded as the



737 date of the will or other governing instrument only if the
738 codicil or amendment contains an express tax apportionment
739 provision or an express modification of the tax apportionment
740 provision. A general statement ratifying or republishing all
741 provisions not otherwise amended does not meet this condition.
742 If the decedent's will and another governing instrument were
743 executed on the same date, the will is deemed executed after the
744 other governing instrument. The earlier conflicting governing
745 instrument controls as to any tax remaining unpaid after the
746 application of the later conflicting governing instrument.

747 (i) A grant of permission or authority in a governing
748 instrument to request payment of tax from property passing under
749 another governing instrument is not a direction apportioning the
750 tax to the property passing under the other governing
751 instrument. A grant of permission or authority in a governing
752 instrument to pay tax attributable to property not passing under
753 the governing instrument is not a direction apportioning the tax
754 to property passing under the governing instrument.

755 (j) This section applies to any tax remaining to be paid
756 after the application of any effective express directions. An
757 effective express direction for payment of tax on specific
758 property or a type of property in a manner different from that
759 provided in this section is not effective as an express
760 direction for payment of tax on other property or other types of
761 property included in the measure of the tax.

762 (5) TRANSFER OF PROPERTY.—A personal representative or
763 fiduciary shall not be required to transfer to a recipient any
764 property reasonably anticipated to be necessary for the payment
765 of taxes. Further, the personal representative or fiduciary is



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766 not required to transfer any property to the recipient until the
767 amount of the tax due from the recipient is paid by the
768 recipient. If property is transferred before final apportionment
769 of the tax, the recipient shall provide a bond or other security
770 for his or her apportioned liability in the amount and form
771 prescribed by the personal representative or fiduciary.

772 (6) ORDER OF APPORTIONMENT.—

773 (a) The personal representative may petition at any time
774 for an order of apportionment. If administration of the
775 decedent's estate has not commenced at any time after 90 days
776 from the decedent's death, any fiduciary may petition for an
777 order of apportionment in the court in which venue would be
778 proper for administration of the decedent's estate. Notice of
779 the petition for order of apportionment must be served on all
780 interested persons in the manner provided for service of formal
781 notice. At any time after 6 months from the decedent's death,
782 any recipient may petition the court for an order of
783 apportionment.

784 (b) The court shall determine all issues concerning
785 apportionment. If the tax to be apportioned has not been finally
786 determined, the court shall determine the probable tax due or to
787 become due from all interested persons, apportion the probable
788 tax, and retain jurisdiction over the parties and issues to
789 modify the order of apportionment as appropriate until after the
790 tax is finally determined.

791 (7) DEFICIENCY.—

792 (a) If the personal representative or fiduciary does not
793 have possession of sufficient property otherwise distributable
794 to the recipient to pay the tax apportioned to the recipient,



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795 whether under this section, the Internal Revenue Code, or the
796 governing instrument, if applicable, the personal representative
797 or fiduciary shall recover the deficiency in tax so apportioned
798 to the recipient:

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

801 2. To the extent of any deficiency in collection from the
802 fiduciary, or to the extent collection from the fiduciary is
803 excused pursuant to subsection (8) and in all other cases, from
804 the recipient of the property to which the tax is apportioned,
805 unless relieved of this duty as provided in subsection (8).

806 (b) In any action to recover the tax apportioned, the order
807 of apportionment is prima facie correct.

808 (c) In any action for the enforcement of an order of
809 apportionment, the court shall award taxable costs as in
810 chancery actions, including reasonable attorney fees, and may
811 award penalties and interest on the unpaid tax in accordance
812 with equitable principles.

813 (d) This subsection does not authorize the recovery of any
814 tax from a company issuing life insurance included in the gross
815 estate, or from a bank, trust company, savings and loan
816 association, or similar institution with respect to any account
817 in the name of the decedent and any other person which passed by
818 operation of law at the decedent's death.

819 (8) RELIEF FROM DUTY.—

820 (a) A personal representative or fiduciary who has the duty
821 under this section of collecting the apportioned tax from
822 recipients may be relieved of the duty to collect the tax by an
823 order of the court finding that:



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824 1. The estimated court costs and attorney fees in
825 collecting the apportioned tax from a person against whom the
826 tax has been apportioned will approximate or exceed the amount
827 of the recovery;

828 2. The person against whom the tax has been apportioned is
829 a resident of a foreign country other than Canada and refuses to
830 pay the apportioned tax on demand; or

831 3. It is impracticable to enforce contribution of the
832 apportioned tax against a person against whom the tax has been
833 apportioned in view of the improbability of obtaining a judgment
834 or the improbability of collection under any judgment that might
835 be obtained, or otherwise.

836 (b) A personal representative or fiduciary is not liable
837 for failure to attempt to enforce collection if the personal
838 representative or fiduciary reasonably believes that collection
839 would have been economically impracticable.

840 (9) UNCOLLECTED TAX.—Any apportioned tax that is not
841 collected shall be reapportioned in accordance with this section
842 as if the portion of the property to which the uncollected tax
843 had been apportioned had been exempt.

844 (10) CONTRIBUTION.—This section does not limit the right of
845 any person who has paid more than the amount of the tax
846 apportionable to that person, calculated as if all apportioned
847 amounts would be collected, to obtain contribution from those
848 who have not paid the full amount of the tax apportionable to
849 them, calculated as if all apportioned amounts would be
850 collected, and that right is hereby conferred. In any action to
851 enforce contribution, the court shall award taxable costs as in
852 chancery actions, including reasonable attorney fees.



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853 (11) FOREIGN TAX.—This section does not require the
854 personal representative or fiduciary to pay any tax levied or
855 assessed by a foreign country unless specific directions to that
856 effect are contained in the will or other instrument under which
857 the personal representative or fiduciary is acting.

858 Section 8. Effective October 1, 2015, subsection (4) is
859 added to section 736.0708, Florida Statutes, to read:

860 736.0708 Compensation of trustee.—

861 (4) (a) An attorney, or a person related to the attorney, is
862 not entitled to compensation for serving as trustee if the
863 attorney prepared or supervised the execution of the trust
864 instrument that appoints the attorney or person related to the
865 attorney as trustee, unless the attorney or person appointed is
866 related to the settlor or the attorney makes the following
867 disclosures to the settlor in writing before the trust
868 instrument is executed:

869 1. Unless specifically disqualified by the terms of the
870 trust instrument, any person, regardless of his or her
871 residence, including a family member, friend, or corporate
872 fiduciary is eligible to serve as a trustee.

873 2. Any person, including an attorney, who serves as a
874 trustee is entitled to receive reasonable compensation for
875 servicing as trustee.

876 3. Compensation payable to the trustee is in addition to
877 any attorney fees payable to the attorney or the attorney's firm
878 for legal services rendered to the trustee.

879 (b) The settlor must execute a written statement
880 acknowledging that the disclosures required by this subsection
881 were made before the execution of the trust instrument. The



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882 written acknowledgment must be in a separate writing from the
883 trust instrument, but may be annexed to the trust instrument.
884 The written acknowledgment may be executed before or after the
885 execution of the trust instrument in which the attorney or
886 related person is appointed as the trustee.

887 (c) For purposes of this subsection:

888 1. An attorney is deemed to have prepared or supervised the
889 execution of a trust instrument if the preparation or the
890 supervision of the execution of the trust instrument was
891 performed by an employee or attorney employed by the same firm
892 as the attorney at the time the trust instrument was executed.

893 2.a. A person is "related" to an individual if, at the time
894 the attorney prepared or supervised the execution of the trust
895 instrument, the person is:

896 (I) A spouse of the individual;

897 (II) A lineal ascendant or descendant of the individual;

898 (III) A sibling of the individual;

899 (IV) A relative of the individual or of the individual's
900 spouse with whom the lawyer maintains a close, familial
901 relationship;

902 (V) A spouse of a person described in sub-sub-subparagraphs
903 (I)-(IV); or

904 (VI) A person who cohabitates with the individual.

905 b. An employee or attorney employed by the same firm as the
906 attorney at the time the trust instrument is executed is deemed
907 to be related to the attorney.

908 3. An attorney or person related to the attorney is deemed
909 to be appointed in the trust instrument if the trust instrument
910 provided the attorney or a person related to the attorney with



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911 the power to appoint the trustee and the attorney or person
912 related to the attorney was appointed using that power.

913 (d) This subsection applies to provisions appointing an
914 attorney or a person related to the attorney as trustee,
915 cotrustee, or as successor or alternate trustee if the person
916 appointed is unable or unwilling to serve.

917 (e) Other than compensation payable to the trustee, this
918 subsection does not limit any rights or remedies that an
919 interested person may have at law or equity.

920 (f) The failure to obtain a written acknowledgment from the
921 settlor under this subsection does not disqualify a trustee from
922 serving and does not affect the validity of a trust instrument.

923 (g) A written acknowledgment signed by the settlor that is
924 in substantially the following form is deemed to comply with the
925 disclosure requirements of this subsection:

926
927 I, ...(Name)... declare that:

928 I have designated ...(my attorney, an attorney employed in
929 the same law firm as my attorney, or a person related to my
930 attorney)... as a trustee in my trust instrument dated
931 ...(Date)....

932 Before executing the trust, I was informed that:

933 1. Unless specifically disqualified by the terms of the
934 trust instrument, any person, regardless of his or her
935 residence, including a family member, friend, or corporate
936 fiduciary is eligible to serve as a trustee.

937 2. Any person, including an attorney, who serves as a
938 trustee is entitled to receive reasonable compensation for
939 serving as trustee.



969 from what part of the trust the fees shall be paid.

970 (a) All or any part of the attorney fees to be paid from
971 the trust may be assessed against one or more persons' part of
972 the trust in such proportions as the court finds to be just and
973 proper.

974 (b) In the exercise of its discretion, the court may
975 consider the following factors:

976 1. The relative impact of an assessment on the estimated
977 value of each person's part of the trust.

978 2. The amount of attorney fees to be assessed against a
979 person's part of the trust.

980 3. The extent to which a person whose part of the trust is
981 to be assessed, individually or through counsel, actively
982 participated in the proceeding.

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

985 5. The relative strength or weakness of the merits of the
986 claims, defenses, or objections, if any, asserted by a person
987 whose part of the trust is to be assessed.

988 6. Whether a person whose part of the trust is to be
989 assessed was a prevailing party with respect to one or more
990 claims, defenses, or objections.

991 7. Whether a person whose part of the trust is to be
992 assessed unjustly caused an increase in the amount of attorney
993 fees incurred by the trustee or another person in connection
994 with the proceeding.

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

996 (c) The court may assess a person's part of the trust
997 without finding that the person engaged in bad faith,



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998 wrongdoing, or frivolousness.

999 (3) Except when a trustee's interest may be adverse in a
1000 particular matter, the attorney shall give reasonable notice in
1001 writing to the trustee of the attorney's retention by an
1002 interested person and the attorney's entitlement to fees
1003 pursuant to this section. A court may reduce any fee award for
1004 services rendered by the attorney prior to the date of actual
1005 notice to the trustee, if the actual notice date is later than a
1006 date of reasonable notice. In exercising this discretion, the
1007 court may exclude compensation for services rendered after the
1008 reasonable notice date but before ~~prior to~~ the date of actual
1009 notice.

1010 Section 10. Section 736.1006, Florida Statutes, is amended
1011 to read:

1012 736.1006 Costs in trust proceedings.—

1013 (1) In all trust proceedings, costs may be awarded as in
1014 chancery actions.

1015 (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust
1016 under subsection (1) or s. 733.106(4) (a), the court, in its
1017 discretion, may direct from what part of the trust the costs
1018 shall be paid. All or any part of the costs to be paid from the
1019 trust may be assessed against one or more persons' part of the
1020 trust in such proportions as the court finds to be just and
1021 proper. In the exercise of its discretion, the court may
1022 consider the factors set forth in s. 736.1005(2).

1023 Section 11. The amendments made by this act to ss. 733.212,
1024 733.2123, 733.3101, and 733.504, Florida Statutes, are remedial
1025 in nature, are intended to clarify existing law, and apply
1026 retroactively to all proceedings pending or commenced on or



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1027 after July 1, 2015.

1028 Section 12. (1) The amendment made by this act to s.
1029 733.817(1)(g) and (2)(c), Florida Statutes, is remedial in
1030 nature, is intended to clarify existing law, and applies
1031 retroactively to all proceedings pending or commenced on or
1032 after July 1, 2015, in which the apportionment of taxes has not
1033 been finally determined or agreed for the estates of decedents
1034 who die after December 31, 2004.

1035 (2) The amendment made by this act to s. 733.817(1)(e)3.,
1036 (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and
1037 (6), Florida Statutes, applies to the estates of decedents who
1038 die on or after July 1, 2015.

1039 (3) Except as provided in subsections (1) and (2), the
1040 amendment made by this act to s. 733.817, Florida Statutes, is
1041 remedial in nature, is intended to clarify existing law, and
1042 applies retroactively to all proceedings pending or commenced on
1043 or after July 1, 2015, in which the apportionment of taxes has
1044 not been finally determined or agreed and without regard to the
1045 date of the decedent's death.

1046 Section 13. The amendments made by this act to ss. 733.106,
1047 736.1005, and 736.1006, Florida Statutes, apply to proceedings
1048 commenced on or after July 1, 2015. The law in effect before
1049 July 1, 2015, applies to proceedings commenced before that date.

1050 Section 14. Except as otherwise expressly provided in this
1051 act, this act shall take effect July 1, 2015.

1052
1053 ===== T I T L E A M E N D M E N T =====

1054 And the title is amended as follows:

1055 Delete everything before the enacting clause



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1056 and insert:

1057 A bill to be entitled
1058 An act relating to estates; amending s. 733.106, F.S.;
1059 authorizing the court, if costs and attorney fees are
1060 to be paid from the estate under specified sections of
1061 law, to direct payment from a certain part of the
1062 estate or, under specified circumstances, to direct
1063 payment from a trust; authorizing costs and fees to be
1064 assessed against one or more persons' part of the
1065 trust in such proportions as the court finds just and
1066 proper; specifying factors that the court may consider
1067 in directing the assessment of such costs and fees;
1068 authorizing a court to assess costs and fees without
1069 finding that the person engaged in specified wrongful
1070 acts; amending s. 733.212, F.S.; revising the required
1071 content for a notice of administration; revising
1072 provisions that require an interested person, who has
1073 been served a notice of administration, to file
1074 specified objections in an estate matter within 3
1075 months after service of such notice; providing that
1076 the 3-month period may only be extended for certain
1077 estoppel; providing that objections that are not
1078 barred by the 3-month period must be filed no later
1079 than a specified date; deleting references to
1080 objections based upon the qualifications of a personal
1081 representative; amending s. 733.2123, F.S.; conforming
1082 provisions to changes made by the act; amending s.
1083 733.3101, F.S.; requiring a personal representative to
1084 resign immediately if he or she knows that he or she



1085 was not qualified to act at the time of appointment;
1086 requiring a personal representative who was qualified
1087 to act at such appointment to file a notice if no
1088 longer qualified; authorizing an interested person
1089 within a specified period to request the removal of a
1090 personal representative who files such notice;
1091 providing that a personal representative is liable for
1092 costs and attorney fees incurred in a removal
1093 proceeding if he or she is removed and should have
1094 known of the facts supporting the removal; defining
1095 the term "qualified"; amending s. 733.504, F.S.;
1096 requiring a personal representative to be removed and
1097 the letters of administration revoked if he or she was
1098 not qualified to act at the time of appointment;
1099 amending s. 733.617, F.S.; prohibiting an attorney or
1100 person related to the attorney from receiving
1101 compensation for serving as a personal representative
1102 if the attorney prepared or supervised execution of
1103 the will unless the attorney or person is related to
1104 the testator or the testator acknowledges in writing
1105 the receipt of certain disclosures; specifying the
1106 disclosures that must be acknowledged; specifying when
1107 an attorney is deemed to have prepared or supervised
1108 the execution of a will; specifying when a person is
1109 "related" to another individual; specifying when an
1110 attorney or person related to the attorney is deemed
1111 to be nominated as personal representative; providing
1112 that the provisions do not limit an interested
1113 person's rights or remedies at law or equity except



1114 for compensation payable to a personal representative;
1115 providing that the failure to obtain a written
1116 acknowledgment of the disclosure does not disqualify a
1117 personal representative from serving or affect the
1118 validity of a will; providing a form for the written
1119 acknowledgment; providing applicability; amending s.
1120 733.817, F.S.; defining and redefining terms; deleting
1121 a provision that exempts an interest in protected
1122 homestead from the apportionment of taxes; providing
1123 for the payment of taxes on protected homestead family
1124 allowance and exempt property by certain other
1125 property to the extent such other property is
1126 sufficient; revising the allocation of taxes; revising
1127 the apportionment of the net tax attributable to
1128 specified interests; authorizing a court to assess
1129 liability in an equitable manner under certain
1130 circumstances; providing that a governing instrument
1131 may not direct that taxes be paid from property other
1132 than property passing under the governing instrument,
1133 except under specified conditions; requiring that
1134 direction in a governing instrument be express to
1135 apportion taxes under certain circumstances; requiring
1136 that the right of recovery provided in the Internal
1137 Revenue Code for certain taxes be expressly waived in
1138 the decedent's will or revocable trust with certain
1139 specificity; specifying the property upon which
1140 certain tax is imposed for allocation and
1141 apportionment of certain tax; providing that a general
1142 statement in the decedent's will or revocable trust



1143 waiving all rights of reimbursement or recovery under
1144 the Internal Revenue Code is not an express waiver of
1145 certain rights of recovery; requiring direction to
1146 specifically reference the generation-skipping
1147 transfer tax imposed by the Internal Revenue Code to
1148 direct its apportionment; authorizing, under certain
1149 circumstances, the decedent to direct by will the
1150 amount of net tax attributable to property over which
1151 the decedent held a general power of appointment under
1152 certain circumstances; providing that an express
1153 direction in a revocable trust is deemed to be a
1154 direction contained in the decedent's will as well as
1155 the revocable trust under certain circumstances;
1156 providing that an express direction in the decedent's
1157 will to pay tax from the decedent's revocable trust by
1158 specific reference to the revocable trust is effective
1159 unless a contrary express direction is contained in
1160 the revocable trust; revising the resolution of
1161 conflicting directions in governing instruments with
1162 regard to payment of taxes; providing that the later
1163 express direction in the will or other governing
1164 instrument controls; providing that the date of an
1165 amendment to a will or other governing instrument is
1166 the date of the will or trust for conflict resolution
1167 only if the codicil or amendment contains an express
1168 tax apportionment provision or an express modification
1169 of the tax apportionment provision; providing that a
1170 will is deemed executed after another governing
1171 instrument if the decedent's will and another



1172 governing instrument were executed on the same date;
1173 providing that an earlier conflicting governing
1174 instrument controls as to any tax remaining unpaid
1175 after the application of the later conflicting
1176 governing instrument; providing that a grant of
1177 permission or authority in a governing instrument to
1178 request payment of tax from property passing under
1179 another governing instrument is not a direction
1180 apportioning the tax to the property passing under the
1181 other governing instrument; providing a grant of
1182 permission or authority in a governing instrument to
1183 pay tax attributable to property not passing under the
1184 governing instrument is not a direction apportioning
1185 the tax to property passing under the governing
1186 instrument; providing application; prohibiting the
1187 requiring of a personal representative or fiduciary to
1188 transfer to a recipient property that may be used for
1189 payment of taxes; amending s. 736.0708, F.S.;

1190 prohibiting an attorney or person related to the
1191 attorney from receiving compensation for serving as a
1192 trustee if the attorney prepared or supervised
1193 execution of the trust instrument unless the attorney
1194 or person is related to the settlor or the settlor
1195 acknowledges in writing the receipt of certain
1196 disclosures; specifying the disclosures that must be
1197 acknowledged; specifying when an attorney is deemed to
1198 have prepared or supervised the execution of a trust
1199 instrument; specifying when a person is "related" to
1200 another individual; specifying when an attorney or



1201 person related to the attorney is deemed to be
1202 appointed as trustee; providing that the provisions do
1203 not limit an interested person's rights or remedies at
1204 law or equity except for compensation payable to a
1205 trustee; providing that the failure to obtain a
1206 written acknowledgment of the disclosure does not
1207 disqualify a trustee from serving or affect the
1208 validity of a trust instrument; providing a form for
1209 the written acknowledgment; providing applicability;
1210 amending s. 736.1005, F.S.; authorizing the court, if
1211 attorney fees are to be paid from the trust under
1212 specified sections of law, to direct payment from a
1213 certain part of the trust; providing that fees may be
1214 assessed against one or more persons' part of the
1215 trust in such proportions as the court finds just and
1216 proper; specifying factors that the court may consider
1217 in directing the assessment of such fees; providing
1218 that a court may assess fees without finding that a
1219 person engaged specified wrongful acts; amending s.
1220 736.1006, F.S.; authorizing the court, if costs are to
1221 be paid from the trust under specified sections of
1222 law, to direct payment from a certain part of the
1223 trust; providing that costs may be assessed against
1224 one or more persons' part of the trust in such
1225 proportions as the court finds just and proper;
1226 specifying factors that the court may consider in
1227 directing the assessment of such costs; providing that
1228 specified sections of the act are remedial and
1229 intended to clarify existing law; providing for



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retroactive and prospective application of specified
portions of the act; providing effective dates.