

By Senator Hukill

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1                   A bill to be entitled  
2           An act relating to estates; amending s. 733.106, F.S.;  
3           authorizing the court, if costs and attorney fees are  
4           to be paid from the estate under specified sections of  
5           law, to direct payment from a certain part of the  
6           estate or, under specified circumstances, to direct  
7           payment from a trust; authorizing costs and fees to be  
8           assessed against one or more persons' part of the  
9           trust in such proportions as the court finds just and  
10          proper; specifying factors that the court may consider  
11          in directing the assessment of such costs and fees;  
12          authorizing a court to assess costs and fees without  
13          finding that the person engaged in specified wrongful  
14          acts; amending s. 733.212, F.S.; revising the required  
15          content for a notice of administration; revising  
16          provisions that require an interested person, who has  
17          been served a notice of administration, to file  
18          specified objections in an estate matter within 3  
19          months after service of such notice; providing that  
20          the 3-month period may only be extended for certain  
21          estoppel; providing that objections that are not  
22          barred by the 3-month period must be filed no later  
23          than a specified date; deleting references to  
24          objections based upon the qualifications of a personal  
25          representative; amending s. 733.2123, F.S.; conforming  
26          provisions to changes made by the act; amending s.  
27          733.3101, F.S.; requiring a personal representative to  
28          resign immediately if he or she knows that he or she  
29          was not qualified to act at the time of appointment;

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30 requiring a personal representative who was qualified  
31 to act at such appointment to file a notice if no  
32 longer qualified; authorizing an interested person  
33 within a specified period of time to request the  
34 removal of a personal representative who files such  
35 notice; providing that a personal representative is  
36 liable for costs and attorney fees incurred in a  
37 removal proceeding if he or she is removed and should  
38 have known of the facts supporting the removal;  
39 defining the term "qualified"; amending s. 733.504,  
40 F.S.; requiring a personal representative to be  
41 removed and the letters of administration revoked if  
42 he or she was not qualified to act at the time of  
43 appointment; amending s. 733.617, F.S.; prohibiting an  
44 attorney or person related to the attorney from  
45 receiving compensation for serving as a personal  
46 representative if the attorney prepared or supervised  
47 execution of the will unless the attorney or person is  
48 related to the testator or the testator acknowledges  
49 in writing the receipt of certain disclosures;  
50 specifying the disclosures that must be acknowledged;  
51 specifying when an attorney is deemed to have prepared  
52 or supervised the execution of a will; specifying when  
53 a person is "related" to another individual;  
54 specifying when an attorney or person related to the  
55 attorney is deemed to be nominated as personal  
56 representative; providing that the provisions do not  
57 limit an interested person's rights or remedies at law  
58 or equity except for compensation payable to a

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59 personal representative; providing that the failure to  
60 obtain a written acknowledgment of the disclosure does  
61 not disqualify a personal representative from serving  
62 or affect the validity of a will; providing a form for  
63 the written acknowledgment; providing applicability;  
64 amending s. 733.817, F.S.; defining and redefining  
65 terms; deleting a provision that exempts an interest  
66 in protected homestead from the apportionment of  
67 taxes; providing for the payment of taxes on protected  
68 homestead family allowance and exempt property by  
69 certain other property to the extent such other  
70 property is sufficient; revising the allocation of  
71 taxes; revising the apportionment of the net tax  
72 attributable to specified interests; authorizing a  
73 court to assess liability in an equitable manner under  
74 certain circumstances; providing that a governing  
75 instrument may not direct that taxes be paid from  
76 property other than property passing under the  
77 governing instrument, except under specified  
78 conditions; requiring that direction in a governing  
79 instrument be express to apportion taxes under certain  
80 circumstances; requiring that the right of recovery  
81 provided in the Internal Revenue Code for certain  
82 taxes be expressly waived in the decedent's will or  
83 revocable trust with certain specificity;  
84 specifying the property upon which certain tax is  
85 imposed for allocation and apportionment of certain  
86 tax; providing that a general statement in the  
87 decedent's will or revocable trust waiving all rights

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88 of reimbursement or recovery under the Internal  
89 Revenue Code is not an express waiver of certain  
90 rights of recovery; requiring direction to  
91 specifically reference the generation-skipping  
92 transfer tax imposed by the Internal Revenue Code to  
93 direct its apportionment; authorizing, under certain  
94 circumstances, the decedent to direct by will the  
95 amount of net tax attributable to property over which  
96 the decedent held a general power of appointment under  
97 certain circumstances; providing that an express  
98 direction in a revocable trust is deemed to be a  
99 direction contained in the decedent's will as well as  
100 the revocable trust under certain circumstances;  
101 providing that an express direction in the decedent's  
102 will to pay tax from the decedent's revocable trust by  
103 specific reference to the revocable trust is effective  
104 unless a contrary express direction is contained in  
105 the revocable trust; revising the resolution of  
106 conflicting directions in governing instruments with  
107 regard to payment of taxes; providing that the later  
108 express direction in the will or other governing  
109 instrument controls; providing that the date of an  
110 amendment to a will or other governing instrument is  
111 the date of the will or trust for conflict resolution  
112 only if the codicil or amendment contains an express  
113 tax apportionment provision or an express modification  
114 of the tax apportionment provision; providing that a  
115 will is deemed executed after another governing  
116 instrument if the decedent's will and another

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117 governing instrument were executed on the same date;  
118 providing that an earlier conflicting governing  
119 instrument controls as to any tax remaining unpaid  
120 after the application of the later conflicting  
121 governing instrument; providing that a grant of  
122 permission or authority in a governing instrument to  
123 request payment of tax from property passing under  
124 another governing instrument is not a direction  
125 apportioning the tax to the property passing under the  
126 other governing instrument; providing a grant of  
127 permission or authority in a governing instrument to  
128 pay tax attributable to property not passing under the  
129 governing instrument is not a direction apportioning  
130 the tax to property passing under the governing  
131 instrument; providing application; prohibiting the  
132 requiring of a personal representative or fiduciary to  
133 transfer to a recipient property that may be used for  
134 payment of taxes; amending s. 736.0708, F.S.;

135 prohibiting an attorney or person related to the  
136 attorney from receiving compensation for serving as a  
137 trustee if the attorney prepared or supervised  
138 execution of the trust instrument unless the attorney  
139 or person is related to the settlor or the settlor  
140 acknowledges in writing the receipt of certain  
141 disclosures; specifying the disclosures that must be  
142 acknowledged; specifying when an attorney is deemed to  
143 have prepared or supervised the execution of a trust  
144 instrument; specifying when a person is "related" to  
145 another individual; specifying when an attorney or

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146 person related to the attorney is deemed to be  
147 appointed as trustee; providing that the provisions do  
148 not limit an interested person's rights or remedies at  
149 law or equity except for compensation payable to a  
150 trustee; providing that the failure to obtain a  
151 written acknowledgment of the disclosure does not  
152 disqualify a trustee from serving or affect the  
153 validity of a trust instrument; providing a form for  
154 the written acknowledgment; providing applicability;  
155 amending s. 736.1005, F.S.; authorizing the court, if  
156 attorney fees are to be paid from the trust under  
157 specified sections of law, to direct payment from a  
158 certain part of the trust; providing that fees may be  
159 assessed against one or more persons' part of the  
160 trust in such proportions as the court finds just and  
161 proper; specifying factors that the court may consider  
162 in directing the assessment of such fees; providing  
163 that a court may assess fees without finding that a  
164 person engaged specified wrongful acts; amending s.  
165 736.1006, F.S.; authorizing the court, if costs are to  
166 be paid from the trust under specified sections of  
167 law, to direct payment from a certain part of the  
168 trust; providing that costs may be assessed against  
169 one or more persons' part of the trust in such  
170 proportions as the court finds just and proper;  
171 specifying factors that the court may consider in  
172 directing the assessment of such costs; reenacting s.  
173 738.302(4), F.S., relating to the apportionment of  
174 receipts and disbursements when the decedent dies or

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175 income interest begins, to incorporate the amendment  
176 made to s. 733.817, F.S., in a reference thereto;  
177 providing that specified sections of the act are  
178 remedial and intended to clarify existing law;  
179 providing for retroactive and prospective application  
180 of specified portions of the act; providing effective  
181 dates.

182

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

184

185 Section 1. Effective July 1, 2015, section 733.106, Florida  
186 Statutes, is amended to read:

187 733.106 Costs and attorney ~~attorney's~~ fees.—

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

190 (2) A person nominated as personal representative, or any  
191 proponent of a will if the person so nominated does not act  
192 within a reasonable time, if in good faith justified in offering  
193 the will in due form for probate, shall receive costs and  
194 attorney ~~attorney's~~ fees from the estate even though probate is  
195 denied or revoked.

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

198 (4) ~~If When~~ costs and attorney ~~attorney's~~ fees are to be  
199 paid from the estate under this section, s. 733.6171(4), s.  
200 736.1005, or s. 736.1006, the court, in its discretion, may  
201 direct from what part of the estate they shall be paid.

202 (a) If the court directs an assessment against a person's  
203 part of the estate and such part is insufficient to fully pay

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204 the assessment, the court may direct payment from the person's  
205 part of a trust, if any, if a pourover will is involved and the  
206 matter is interrelated with the trust.

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

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

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

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

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

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

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

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

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

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



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

236 Section 2. Paragraph (c) of subsection (2) and subsection  
237 (3) of section 733.212, Florida Statutes, are amended to read:  
238 733.212 Notice of administration; filing of objections.—

239 (2) The notice shall state:

240 (c) That any interested person on whom a copy of the notice  
241 of administration is served must file on or before the date that  
242 is 3 months after the date of service of a copy of the notice of  
243 administration on that person any objection that challenges the  
244 validity of the will, ~~the qualifications of the personal~~  
245 ~~representative,~~ the venue, or the jurisdiction of the court. The  
246 3-month time period may only be extended for estoppel based upon  
247 a misstatement by the personal representative regarding the time  
248 period within which an objection must be filed. The time period  
249 may not be extended for any other reason, including affirmative  
250 representation, failure to disclose information, or misconduct  
251 by the personal representative or any other person. Unless  
252 sooner barred by subsection (3), all objections to the validity  
253 of a will, venue, or the jurisdiction of the court must be filed  
254 no later than the earlier of the entry of an order of final  
255 discharge of the personal representative or 1 year after service  
256 of the notice of administration.

257 (3) Any interested person on whom a copy of the notice of  
258 administration is served must object to the validity of the  
259 will, ~~the qualifications of the personal representative,~~ the  
260 venue, or the jurisdiction of the court by filing a petition or  
261 other pleading requesting relief in accordance with the Florida

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262 Probate Rules on or before the date that is 3 months after the  
263 date of service of a copy of the notice of administration on the  
264 objecting person, or those objections are forever barred. The 3-  
265 month time period may only be extended for estoppel based upon a  
266 misstatement by the personal representative regarding the time  
267 period within which an objection must be filed. The time period  
268 may not be extended for any other reason, including affirmative  
269 representation, failure to disclose information, or misconduct  
270 by the personal representative or any other person. Unless  
271 sooner barred by this subsection, all objections to the validity  
272 of a will, venue, or the jurisdiction of the court must be filed  
273 no later than the earlier of the entry of an order of final  
274 discharge of the personal representative or 1 year after service  
275 of the notice of administration.

276 Section 3. Section 733.2123, Florida Statutes, is amended  
277 to read:

278 733.2123 Adjudication before issuance of letters.—A  
279 petitioner may serve formal notice of the petition for  
280 administration on interested persons. A person who is served  
281 with such notice before the issuance of letters or who has  
282 waived notice may not challenge the validity of the will,  
283 testacy of the decedent, ~~qualifications of the personal~~  
284 ~~representative,~~ venue, or jurisdiction of the court, except in  
285 the proceedings before issuance of letters.

286 Section 4. Section 733.3101, Florida Statutes, is amended  
287 to read:

288 733.3101 Personal representative not qualified.—

289 (1) A personal representative shall resign immediately if  
290 the personal representative knows that he or she was not

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291 qualified to act at the time of appointment.

292 (2) Any time a personal representative, who was qualified  
293 to act at the time of appointment, ~~knows or should have known~~  
294 that he or she would not be qualified for appointment if  
295 application for appointment were then made, the personal  
296 representative shall promptly file and serve a notice setting  
297 forth the reasons. The personal representative's notice shall  
298 state that any interested person may petition to remove the  
299 personal representative. An interested person on whom a copy of  
300 the personal representative's notice is served may file a  
301 petition requesting the personal representative's removal within  
302 30 days after the date on which such notice is served.

303 (3) A personal representative who fails to comply with this  
304 section shall be personally liable for costs, including attorney  
305 attorney's fees, incurred in any removal proceeding, if the  
306 personal representative is removed. This liability extends to a  
307 personal representative who does not know, but should have  
308 known, of the facts that would have required him or her to  
309 resign under subsection (1) or to file and serve notice under  
310 subsection (2). This liability shall be cumulative to any other  
311 provided by law.

312 (4) As used in this section, the term "qualified" means  
313 that the personal representative is qualified under ss. 733.302  
314 and 733.303.

315 Section 5. Section 733.504, Florida Statutes, is amended to  
316 read:

317 733.504 Removal of personal representative; causes for  
318 removal.-A personal representative shall be removed and the  
319 letters revoked if he or she was not qualified to act at the

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320 time of appointment. A personal representative may be removed  
321 and the letters revoked for any of the following causes, ~~and the~~  
322 ~~removal shall be in addition to any penalties prescribed by law:~~

323 (1) Adjudication that the personal representative is  
324 incapacitated.

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

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

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

331 (5) Wasting or maladministration of the estate.

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

333 (7) Conviction of a felony.

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

336 (9) Holding or acquiring conflicting or adverse interests  
337 against the estate that will or may interfere with the  
338 administration of the estate as a whole. This cause of removal  
339 shall not apply to the surviving spouse because of the exercise  
340 of the right to the elective share, family allowance, or  
341 exemptions, as provided elsewhere in this code.

342 (10) Revocation of the probate of the decedent's will that  
343 authorized or designated the appointment of the personal  
344 representative.

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

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

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349 appointment.

350

351 Removal under this section is in addition to any penalties  
352 prescribed by law.

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

356 733.617 Compensation of personal representative.-

357 (6) Except as provided in subsection (8), a ~~If the~~ personal  
358 representative who is a member of The Florida Bar and who has  
359 rendered legal services in connection with the administration of  
360 the estate, ~~then in addition to a fee as personal~~  
361 ~~representative, there also~~ shall be allowed a fee for the legal  
362 services rendered in addition to a fee as personal  
363 representative.

364 (8) (a) An attorney, or a person related to the attorney, is  
365 not entitled to compensation for serving as personal  
366 representative if the attorney prepared or supervised the  
367 execution of the will that nominates the attorney or person  
368 related to the attorney as personal representative, unless the  
369 attorney or person nominated is related to the testator or the  
370 attorney makes the following disclosures to the testator in  
371 writing before the will is executed:

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

376 2. Any person, including an attorney, who serves as a  
377 personal representative is entitled to receive reasonable

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378 compensation for serving as personal representative.

379 3. Compensation payable to the personal representative is  
380 in addition to any attorney fees payable to the attorney or the  
381 attorney's firm for legal services rendered to the personal  
382 representative.

383 (b) The testator must execute a written statement  
384 acknowledging that the disclosures required by this subsection  
385 were made prior to the execution of the will. The written  
386 acknowledgment must be in a separate writing from the will, but  
387 may be annexed to the will. The written acknowledgment may be  
388 executed before or after the execution of the will in which the  
389 attorney or related person is nominated as the personal  
390 representative.

391 (c) For purposes of this subsection:

392 1. An attorney is deemed to have prepared or supervised the  
393 execution of a will if the preparation or the supervision of the  
394 execution of the will was performed by an employee or attorney  
395 employed by the same firm as the attorney at the time the will  
396 was executed.

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

400 (I) A spouse of the individual;

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

402 (III) A sibling of the individual;

403 (IV) A relative of the individual or of the individual's  
404 spouse with whom the attorney maintains a close, familial  
405 relationship;

406 (V) A spouse of a person described in sub-sub-subparagraphs

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407 (I)-(IV); or

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

409 b. An employee or attorney employed by the same firm as the  
410 attorney at the time the will is executed is deemed to be  
411 related to the attorney.

412 3. An attorney or person related to the attorney is deemed  
413 to be nominated in the will if the will provided the attorney or  
414 a person related to the attorney with the power to nominate the  
415 personal representative and the attorney or person related to  
416 attorney was nominated using that power.

417 (d) This subsection applies to provisions nominating an  
418 attorney or a person related to the attorney as personal  
419 representative, copersonal representative, or successor or  
420 alternate personal representative if the person nominated is  
421 unable or unwilling to serve.

422 (e) Other than compensation payable to the personal  
423 representative, this subsection does not limit any rights or  
424 remedies that an interested person may have at law or equity.

425 (f) The failure to obtain a written acknowledgment from the  
426 testator under this subsection does not disqualify a personal  
427 representative from serving and does not affect the validity of  
428 a will.

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

432  
433 I, ...(Name)..., declare that:

434 I have designated ...(my attorney, an attorney employed in  
435 the same law firm as my attorney, or a person related to my

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436 attorney)... as a nominated personal representative in my will  
 437 (or codicil) dated ...(Date)... .

438 Before executing the will (or codicil), I was informed  
 439 that:

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

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

447 (3) Compensation payable to the personal representative is  
 448 in addition to any attorney fees payable to the attorney or the  
 449 attorney's firm for legal services rendered to the personal  
 450 representative.

451  
 452 ...(Testator)...

453  
 454 ...(Dated)...

455  
 456 (h) This subsection applies to each nomination made  
 457 pursuant to a will that is:

458 1. Executed by a resident of this state on or after October  
 459 1, 2015.

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



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465 Section 7. Effective July 1, 2015, section 733.817, Florida  
466 Statutes, is amended to read:

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

469 733.817 Apportionment of estate taxes.-

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

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

476 (b) "Generation-skipping transfer tax" means the  
477 generation-skipping transfer tax imposed by chapter 13 of the  
478 Internal Revenue Code on direct skips of interests includible in  
479 the federal gross estate or a corresponding tax imposed by any  
480 state or country or political subdivision of the foregoing. The  
481 term does not include the generation-skipping transfer tax on  
482 taxable distributions, taxable terminations, or any other  
483 generation-skipping transfer. The terms "direct skip," "taxable  
484 distribution," and "taxable termination" have the same meanings  
485 as provided in s. 2612 of the Internal Revenue Code.

486 (c) "Governing instrument" means a will, trust agreement,  
487 or any other document that controls the transfer of property on  
488 the occurrence of the event with respect to which the tax is  
489 being levied.

490 (d) "Gross estate" means the gross estate, as determined by  
491 the Internal Revenue Code with respect to the federal estate tax  
492 and the Florida estate tax, and as that concept is otherwise  
493 determined by the estate, inheritance, or death tax laws of the

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494 particular state, country, or political subdivision whose tax is  
495 being apportioned.

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

500 1. Any interest, whether passing under the will or not, to  
501 the extent the interest is initially deductible from the gross  
502 estate, without regard to any subsequent reduction of the  
503 deduction by reason of the charge of any part of the applicable  
504 tax to the interest. If an election is required for  
505 deductibility, an interest is not initially deductible unless  
506 the election for deductibility is allowed.

507 2. Interests or amounts that are not included in the gross  
508 estate but are included in the amount upon which the applicable  
509 tax is computed, such as adjusted taxable gifts pursuant to s.  
510 2001 of the Internal Revenue Code.

511 3. Gift taxes included in the gross estate pursuant to s.  
512 2035 of the Internal Revenue Code and the portion of any inter  
513 vivos transfer included in the gross estate pursuant to s. 529  
514 of the Internal Revenue Code, notwithstanding inclusion in the  
515 gross estate.

516 (f) "Internal Revenue Code" means the Internal Revenue Code  
517 of 1986, as amended.

518 (g) "Net tax" means the net tax payable to the particular  
519 state, country, or political subdivision whose tax is being  
520 apportioned, after taking into account all credits against the  
521 applicable tax except as provided in this section. With respect  
522 to the federal estate tax, net tax is determined after taking

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523 into account all credits against the tax except for the credit  
524 for foreign death taxes and except for the credit or deduction  
525 for state taxes imposed by states other than this state.

526 (h) "Nonresiduary devise" means any devise that is not a  
527 residuary devise.

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

530 (j) "Recipient" means, with respect to property or an  
531 interest in property included in the gross estate, an heir at  
532 law in an intestate estate, devisee in a testate estate,  
533 beneficiary of a trust, beneficiary of a life insurance policy,  
534 annuity, or other contractual right, surviving tenant, taker as  
535 a result of the exercise or in default of the exercise of a  
536 general power of appointment, person who receives or is to  
537 receive the property or an interest in the property, or person  
538 in possession of the property, other than a creditor.

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

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

545 (m) "Revocable trust" means a trust as described in s.  
546 733.707(3).

547 (n) "Section 2044 interest" means an interest included in  
548 the measure of the tax by reason of s. 2044 of the Internal  
549 Revenue Code.

550 (o) "State" means any state, territory, or possession of  
551 the United States, the District of Columbia, or the Commonwealth

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552 of Puerto Rico.

553 (p) "Tax" means any estate tax, inheritance tax,  
554 generation-skipping transfer tax, or other tax levied or  
555 assessed under the laws of this or any other state, the United  
556 States, any other country, or any political subdivision of the  
557 foregoing, as finally determined, which is imposed as a result  
558 of the death of the decedent. The term also includes any  
559 interest or penalties imposed in addition to the tax. Unless the  
560 context indicates otherwise, the term means each separate tax.  
561 The term does not include any additional estate tax imposed by  
562 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a  
563 corresponding tax imposed by any state or country or political  
564 subdivision of the foregoing. The additional estate tax imposed  
565 shall be apportioned as provided in s. 2032A or s. 2057 of the  
566 Internal Revenue Code.

567 (q) "Temporary interest" means an interest in income or an  
568 estate for a specific period of time, for life, or for some  
569 other period controlled by reference to extrinsic events,  
570 whether or not in trust.

571 (r) "Tentative Florida tax" with respect to any property  
572 means the net Florida estate tax that would have been  
573 attributable to that property if no tax were payable to any  
574 other state in respect of that property.

575 (s) "Value" means the pecuniary worth of the interest  
576 involved as finally determined for purposes of the applicable  
577 tax after deducting any debt, expense, or other deduction  
578 chargeable to it for which a deduction was allowed in  
579 determining the amount of the applicable tax. A lien or other  
580 encumbrance is not regarded as chargeable to a particular

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581 interest to the extent that it will be paid from other  
582 interests. The value of an interest is not reduced by reason of  
583 the charge against it of any part of the tax, except as provided  
584 in paragraph (3) (a).

585 (2) ALLOCATION OF TAX.—Except as effectively directed in  
586 the governing instrument pursuant to subsection (4), the net tax  
587 attributable to the interests included in the measure of each  
588 tax shall be determined by the proportion that the value of each  
589 interest included in the measure of the tax bears to the total  
590 value of all interests included in the measure of the tax.

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

593 (a) The net tax attributable to section 2044 interests  
594 shall be determined in the manner provided for the federal  
595 estate tax in s. 2207A of the Internal Revenue Code, and the  
596 amount so determined shall be deducted from the tax to determine  
597 the net tax attributable to all other interests included in the  
598 measure of the tax.

599 (b) The foreign tax credit allowed with respect to the  
600 federal estate tax shall be allocated among the recipients of  
601 interests finally charged with the payment of the foreign tax in  
602 reduction of any federal estate tax chargeable to the recipients  
603 of the foreign interests, whether or not any federal estate tax  
604 is attributable to the foreign interests. Any excess of the  
605 foreign tax credit shall be applied to reduce proportionately  
606 the net amount of federal estate tax chargeable to the remaining  
607 recipients of the interests included in the measure of the  
608 federal estate tax.

609 (c) The reduction in the net tax attributable to the

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610 deduction for state death taxes allowed by s. 2058 of the  
611 Internal Revenue Code shall be allocated to the recipients of  
612 the interests that produced the deduction. For this purpose, the  
613 reduction in the net tax shall be calculated in the manner  
614 provided for interests other than those described in paragraph  
615 (a).

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

619 1. If the net tax paid to another state is greater than or  
620 equal to the tentative Florida tax attributable to the property  
621 subject to tax in the other state, none of the Florida tax shall  
622 be attributable to that property.

623 2. If the net tax paid to another state is less than the  
624 tentative Florida tax attributable to the property subject to  
625 tax in the other state, the net Florida tax attributable to the  
626 property subject to tax in the other state shall be the excess  
627 of the amount of the tentative Florida tax attributable to the  
628 property over the net tax payable to the other state with  
629 respect to the property.

630 3. Any remaining net Florida tax shall be attributable to  
631 property included in the measure of the Florida tax exclusive of  
632 the property subject to tax in another state.

633 4. The net federal tax attributable to the property subject  
634 to tax in the other state shall be determined as if the property  
635 were located in that state.

636 (e) The net tax attributable to a temporary interest, if  
637 any, is regarded as attributable to the principal that supports  
638 the temporary interest.

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

643 (a) Generation-skipping transfer tax.—Any federal or state  
644 generation-skipping transfer tax shall be apportioned as  
645 provided in s. 2603 of the Internal Revenue Code after the  
646 application of the remaining provisions of this subsection to  
647 taxes other than the generation-skipping transfer tax.

648 (b) Section 2044 interests.—The net tax attributable to  
649 section 2044 interests shall be apportioned among the recipients  
650 of the section 2044 interests in the proportion that the value  
651 of each section 2044 interest bears to the total of all section  
652 2044 interests. The net tax apportioned by this paragraph to  
653 section 2044 interests that pass in the manner described in  
654 paragraph (c) or paragraph (d) shall be apportioned to the  
655 section 2044 interests in the manner described in those  
656 paragraphs before the apportionment of the net tax attributable  
657 to the other interests passing as provided in those paragraphs.  
658 The net tax attributable to the interests other than the section  
659 2044 interests which pass in the manner described in paragraph  
660 (c) or paragraph (d) shall be apportioned only to such other  
661 interests pursuant to those paragraphs.

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

665 1. The net tax attributable to nonresiduary devises shall  
666 be charged to and paid from the residuary estate, whether or not  
667 all interests in the residuary estate are included in the

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668 measure of the tax. If the residuary estate is insufficient to  
669 pay the net tax attributable to all nonresiduary devises, the  
670 balance of the net tax attributable to nonresiduary devises  
671 shall be apportioned among the recipients of the nonresiduary  
672 devises in the proportion that the value of each nonresiduary  
673 devise included in the measure of the tax bears to the total of  
674 all nonresiduary devises included in the measure of the tax.

675 2. The net tax attributable to residuary devises shall be  
676 apportioned among the recipients of the residuary devises  
677 included in the measure of the tax in the proportion that the  
678 value of each residuary devise included in the measure of the  
679 tax bears to the total of all residuary devises included in the  
680 measure of the tax. If the residuary estate is insufficient to  
681 pay the net tax attributable to all residuary devises, the  
682 balance of the net tax attributable to residuary devises shall  
683 be apportioned among the recipients of the nonresiduary devises  
684 in the proportion that the value of each nonresiduary devise  
685 included in the measure of the tax bears to the total of all  
686 nonresiduary devises included in the measure of the tax.

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

691 1. The net tax attributable to nonresiduary interests of  
692 the trust shall be charged to and paid from the residuary  
693 portion of the trust, whether or not all interests in the  
694 residuary portion are included in the measure of the tax. If the  
695 residuary portion is insufficient to pay the net tax  
696 attributable to all nonresiduary interests, the balance of the



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697 net tax attributable to nonresiduary interests shall be  
698 apportioned among the recipients of the nonresiduary interests  
699 in the proportion that the value of each nonresiduary interest  
700 included in the measure of the tax bears to the total of all  
701 nonresiduary interests included in the measure of the tax.

702 2. The net tax attributable to residuary interests of the  
703 trust shall be apportioned among the recipients of the residuary  
704 interests of the trust included in the measure of the tax in the  
705 proportion that the value of each residuary interest included in  
706 the measure of the tax bears to the total of all residuary  
707 interests of the trust included in the measure of the tax. If  
708 the residuary portion is insufficient to pay the net tax  
709 attributable to all residuary interests, the balance of the net  
710 tax attributable to residuary interests shall be apportioned  
711 among the recipients of the nonresiduary interests in the  
712 proportion that the value of each nonresiduary interest included  
713 in the measure of the tax bears to the total of all nonresiduary  
714 interests included in the measure of the tax.

715  
716 Except as provided in paragraph (g), this paragraph applies  
717 separately for each trust.

718 (e) Protected homestead, exempt property, and family  
719 allowance.—

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

725 a. Class I.—Recipients of interests passing by intestacy

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726 that are included in the measure of the federal estate tax.

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

730 c. Class III.—Recipients of nonresiduary devises and  
731 nonresiduary interests that are included in the measure of the  
732 federal estate tax.

733 2. Any net tax apportioned to a class pursuant to this  
734 paragraph shall be apportioned among each recipient in the class  
735 in the proportion that the value of the interest of each bears  
736 to the total value of all interests included in that class. A  
737 tax may not be apportioned under this paragraph to the portion  
738 of any interest applied in satisfaction of the elective share  
739 whether or not included in the measure of the tax. For purposes  
740 of this paragraph, if the value of the interests described in s.  
741 732.2075(1) exceeds the amount of the elective share, the  
742 elective share shall be treated as satisfied first from  
743 interests other than those described in classes I, II, and III,  
744 and to the extent that those interests are insufficient to  
745 satisfy the elective share, from the interests passing to or for  
746 the benefit of the surviving spouse described in classes I, II,  
747 and III, beginning with those described in class I, until the  
748 elective share is satisfied. This paragraph has priority over  
749 paragraphs (a) and (h).

750 3. The balance of the net tax attributable to any interest  
751 in protected homestead, exempt property, and the family  
752 allowance determined under s. 732.403 which is not apportioned  
753 under the preceding provisions of this paragraph shall be  
754 apportioned to the recipients of those interests included in the

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755 measure of the tax in the proportion that the value of each  
756 bears to the total value of those interests included in the  
757 measure of the tax.

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

759 1. If the decedent's estate is the beneficiary of a life  
760 insurance policy, annuity, or contractual right included in the  
761 decedent's gross estate, or is the taker as a result of the  
762 exercise or default in exercise of a general power of  
763 appointment held by the decedent, that interest shall be  
764 regarded as passing under the terms of the decedent's will for  
765 the purposes of paragraph (c) or by intestacy if not disposed of  
766 by will. Additionally, any interest included in the measure of  
767 the tax by reason of s. 2041 of the Internal Revenue Code  
768 passing to the decedent's creditors or the creditors of the  
769 decedent's estate shall be regarded as passing to the decedent's  
770 estate for the purpose of this subparagraph.

771 2. If a trust is the beneficiary of a life insurance  
772 policy, annuity, or contractual right included in the decedent's  
773 gross estate, or is the taker as a result of the exercise or  
774 default in exercise of a general power of appointment held by  
775 the decedent, that interest shall be regarded as passing under  
776 the trust for purposes of paragraph (d).

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

783 1. The decedent's will and revocable trust if the estate is

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784 a beneficiary of the revocable trust or if the revocable trust  
785 is a beneficiary of the estate.

786 2. A revocable trust of the decedent and another revocable  
787 trust of the decedent if either trust is the beneficiary of the  
788 other trust.

789 (h) Other interests.—The net tax that is not apportioned to  
790 interests under paragraphs (b)-(g), including, but not limited  
791 to, the net tax attributable to interests passing by intestacy,  
792 interests applied in satisfaction of the elective share pursuant  
793 to s. 732.2075(2), interests passing by reason of the exercise  
794 or nonexercise of a general power of appointment, jointly held  
795 interests passing by survivorship, life insurance, properties in  
796 which the decedent held a reversionary or revocable interest,  
797 annuities, and contractual rights, shall be apportioned among  
798 the recipients of the remaining interests included in the  
799 measure of the tax in the proportion that the value of each such  
800 interest bears to the total value of all remaining interests  
801 included in the measure of the tax.

802 (i) Assessment of liability by court.—If the court finds  
803 that:

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

808 2. The payment of any tax was not effectively directed in  
809 the governing instrument pursuant to subsection (4) and that  
810 such tax is not apportioned by this subsection, the court may  
811 assess liability for the payment of such tax in the manner that  
812 the court finds equitable.

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813 (4) DIRECTION AGAINST APPORTIONMENT.-

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

817 (b) For a direction in a governing instrument to be  
818 effective to direct payment of taxes attributable to property  
819 passing under the governing instrument in a manner different  
820 from that provided in this section, the direction must be  
821 express.

822 (c) For a direction in a governing instrument to be  
823 effective to direct payment of taxes attributable to property  
824 not passing under the governing instrument from property passing  
825 under the governing instrument, the governing instrument must  
826 expressly direct that the property passing under the governing  
827 instrument bear the burden of taxation for property not passing  
828 under the governing instrument. Except as provided in paragraph

829 (d), a direction in the governing instrument to the effect that  
830 all taxes are to be paid from property passing under the  
831 governing instrument, whether attributable to property passing  
832 under the governing instrument or otherwise, shall be effective  
833 to direct payment from property passing under the governing  
834 instrument of taxes attributable to property not passing under  
835 the governing instrument.

836 (d) In addition to satisfying the other provisions of this  
837 subsection:

838 1.a. For a direction in the decedent's will or revocable  
839 trust to be effective in waiving the right of recovery provided  
840 in s. 2207A of the Internal Revenue Code for the tax  
841 attributable to section 2044 interests, and for any tax imposed

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842 by Florida based upon such section 2044 interests, the direction  
843 must expressly waive that right of recovery. An express  
844 direction that property passing under the will or revocable  
845 trust bear the tax imposed by s. 2044 of the Internal Revenue  
846 Code is deemed an express waiver of the right of recovery  
847 provided in s. 2207A of the Internal Revenue Code. A reference  
848 to "qualified terminable interest property," "QTIP," or property  
849 in which the decedent had a "qualifying income interest for  
850 life" is deemed to be a reference to property upon which tax is  
851 imposed by s. 2044 of the Internal Revenue Code which is subject  
852 to the right of recovery provided in s. 2207A of the Internal  
853 Revenue Code.

854 b. If property is included in the gross estate pursuant to  
855 ss. 2041 and 2044 of the Internal Revenue Code, the property is  
856 deemed included under s. 2044, and not s. 2041, for purposes of  
857 allocation and apportionment of the tax.

858 2. For a direction in the decedent's will or revocable  
859 trust to be effective in waiving the right of recovery provided  
860 in s. 2207B of the Internal Revenue Code for tax imposed by  
861 reason of s. 2036 of the Internal Revenue Code, and any tax  
862 imposed by Florida based upon s. 2036 of the Internal Revenue  
863 Code, the direction must expressly waive that right of recovery.  
864 An express direction that property passing under the will or  
865 revocable trust bear the tax imposed by s. 2036 of the Internal  
866 Revenue Code is deemed an express waiver of the right of  
867 recovery provided in s. 2207B of the Internal Revenue Code. If  
868 property is included in the gross estate pursuant to ss. 2036  
869 and 2038 of the Internal Revenue Code, the property is deemed  
870 included under s. 2038, not s. 2036, for purposes of allocation

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871 and apportionment of the tax, and there is no right of recovery  
872 under s. 2207B of the Internal Revenue Code.

873 3. A general statement in the decedent's will or revocable  
874 trust waiving all rights of reimbursement or recovery under the  
875 Internal Revenue Code is not an express waiver of the rights of  
876 recovery provided in s. 2207A or s. 2207B of the Internal  
877 Revenue Code.

878 4. For a direction in a governing instrument to be  
879 effective to direct payment of generation-skipping transfer tax  
880 in a manner other than as provided in s. 2603 of the Internal  
881 Revenue Code, and any tax imposed by Florida based on s. 2601 of  
882 the Internal Revenue Code, the direction must specifically  
883 reference the tax imposed by s. 2601 of the Internal Revenue  
884 Code. A reference to the generation-skipping transfer tax or s.  
885 2603 of the Internal Revenue Code is deemed to be a reference to  
886 property upon which tax is imposed by reason of s. 2601 of the  
887 Internal Revenue Code.

888 (e) If the decedent expressly directs by will the net tax  
889 attributable to property over which the decedent held, a general  
890 power of appointment may be determined in a manner other than as  
891 provided in subsection (2) if the net tax attributable to that  
892 property does not exceed the difference between the total net  
893 tax determined pursuant to subsection (2), determined without  
894 regard to this paragraph, and the total net tax that would have  
895 been payable if the value of the property subject to such power  
896 of appointment had not been included in the decedent's gross  
897 estate. If tax is attributable to one or more section 2044  
898 interests pursuant to subsection (2), the net tax attributable  
899 to the section 2044 interests shall be calculated before the

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900 application of this paragraph unless the decedent expressly  
901 directs otherwise by will.

902 (f) If the decedent's will expressly provides that the tax  
903 is to be apportioned as provided in the decedent's revocable  
904 trust by specific reference to the revocable trust, an express  
905 direction in the revocable trust is deemed to be a direction  
906 contained in the will as well as the revocable trust.

907 (g) An express direction in the decedent's will to pay tax  
908 from the decedent's revocable trust by specific reference to the  
909 revocable trust is effective unless a contrary express direction  
910 is contained in the revocable trust.

911 (h) If governing instruments contain effective directions  
912 that conflict as to payment of taxes, the most recently executed  
913 tax apportionment provision controls to the extent of the  
914 conflict. For the purpose of this subsection, if a will or other  
915 governing instrument is amended, the date of the codicil to the  
916 will or amendment to the governing instrument is regarded as the  
917 date of the will or other governing instrument only if the  
918 codicil or amendment contains an express tax apportionment  
919 provision or an express modification of the tax apportionment  
920 provision. A general statement ratifying or republishing all  
921 provisions not otherwise amended does not meet this condition.  
922 If the decedent's will and another governing instrument were  
923 executed on the same date, the will is deemed executed after the  
924 other governing instrument. The earlier conflicting governing  
925 instrument controls as to any tax remaining unpaid after the  
926 application of the later conflicting governing instrument.

927 (i) A grant of permission or authority in a governing  
928 instrument to request payment of tax from property passing under



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929 another governing instrument is not a direction apportioning the  
930 tax to the property passing under the other governing  
931 instrument. A grant of permission or authority in a governing  
932 instrument to pay tax attributable to property not passing under  
933 the governing instrument is not a direction apportioning the tax  
934 to property passing under the governing instrument.

935 (j) This section applies to any tax remaining to be paid  
936 after the application of any effective express directions. An  
937 effective express direction for payment of tax on specific  
938 property or a type of property in a manner different from that  
939 provided in this section is not effective as an express  
940 direction for payment of tax on other property or other types of  
941 property included in the measure of the tax.

942 (5) TRANSFER OF PROPERTY.—A personal representative or  
943 fiduciary shall not be required to transfer to a recipient any  
944 property reasonably anticipated to be necessary for the payment  
945 of taxes. Further, the personal representative or fiduciary is  
946 not required to transfer any property to the recipient until the  
947 amount of the tax due from the recipient is paid by the  
948 recipient. If property is transferred before final apportionment  
949 of the tax, the recipient shall provide a bond or other security  
950 for his or her apportioned liability in the amount and form  
951 prescribed by the personal representative or fiduciary.

952 (6) ORDER OF APPORTIONMENT.—

953 (a) The personal representative may petition at any time  
954 for an order of apportionment. If administration of the  
955 decedent's estate has not commenced at any time after 90 days  
956 from the decedent's death, any fiduciary may petition for an  
957 order of apportionment in the court in which venue would be

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958 proper for administration of the decedent's estate. Notice of  
959 the petition for order of apportionment must be served on all  
960 interested persons in the manner provided for service of formal  
961 notice. At any time after 6 months from the decedent's death,  
962 any recipient may petition the court for an order of  
963 apportionment.

964 (b) The court shall determine all issues concerning  
965 apportionment. If the tax to be apportioned has not been finally  
966 determined, the court shall determine the probable tax due or to  
967 become due from all interested persons, apportion the probable  
968 tax, and retain jurisdiction over the parties and issues to  
969 modify the order of apportionment as appropriate until after the  
970 tax is finally determined.

971 (7) DEFICIENCY.—

972 (a) If the personal representative or fiduciary does not  
973 have possession of sufficient property otherwise distributable  
974 to the recipient to pay the tax apportioned to the recipient,  
975 whether under this section, the Internal Revenue Code, or the  
976 governing instrument, if applicable, the personal representative  
977 or fiduciary shall recover the deficiency in tax so apportioned  
978 to the recipient:

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

981 2. To the extent of any deficiency in collection from the  
982 fiduciary, or to the extent collection from the fiduciary is  
983 excused pursuant to subsection (8) and in all other cases, from  
984 the recipient of the property to which the tax is apportioned,  
985 unless relieved of this duty as provided in subsection (8).

986 (b) In any action to recover the tax apportioned, the order

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987 of apportionment is prima facie correct.

988 (c) In any action for the enforcement of an order of  
989 apportionment, the court shall award taxable costs as in  
990 chancery actions, including reasonable attorney fees, and may  
991 award penalties and interest on the unpaid tax in accordance  
992 with equitable principles.

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

999 (8) RELIEF FROM DUTY.—

1000 (a) A personal representative or fiduciary who has the duty  
1001 under this section of collecting the apportioned tax from  
1002 recipients may be relieved of the duty to collect the tax by an  
1003 order of the court finding that:

1004 1. The estimated court costs and attorney fees in  
1005 collecting the apportioned tax from a person against whom the  
1006 tax has been apportioned will approximate or exceed the amount  
1007 of the recovery;

1008 2. The person against whom the tax has been apportioned is  
1009 a resident of a foreign country other than Canada and refuses to  
1010 pay the apportioned tax on demand; or

1011 3. It is impracticable to enforce contribution of the  
1012 apportioned tax against a person against whom the tax has been  
1013 apportioned in view of the improbability of obtaining a judgment  
1014 or the improbability of collection under any judgment that might  
1015 be obtained, or otherwise.

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1016 (b) A personal representative or fiduciary is not liable  
1017 for failure to attempt to enforce collection if the personal  
1018 representative or fiduciary reasonably believes that collection  
1019 would have been economically impracticable.

1020 (9) UNCOLLECTED TAX.—Any apportioned tax that is not  
1021 collected shall be reapportioned in accordance with this section  
1022 as if the portion of the property to which the uncollected tax  
1023 had been apportioned had been exempt.

1024 (10) CONTRIBUTION.—This section does not limit the right of  
1025 any person who has paid more than the amount of the tax  
1026 apportionable to that person, calculated as if all apportioned  
1027 amounts would be collected, to obtain contribution from those  
1028 who have not paid the full amount of the tax apportionable to  
1029 them, calculated as if all apportioned amounts would be  
1030 collected, and that right is hereby conferred. In any action to  
1031 enforce contribution, the court shall award taxable costs as in  
1032 chancery actions, including reasonable attorney fees.

1033 (11) FOREIGN TAX.—This section does not require the  
1034 personal representative or fiduciary to pay any tax levied or  
1035 assessed by a foreign country unless specific directions to that  
1036 effect are contained in the will or other instrument under which  
1037 the personal representative or fiduciary is acting.

1038 Section 8. Effective October 1, 2015, subsection (4) is  
1039 added to section 736.0708, Florida Statutes, to read:

1040 736.0708 Compensation of trustee.—

1041 (4) (a) An attorney, or a person related to the attorney, is  
1042 not entitled to compensation for serving as trustee if the  
1043 attorney prepared or supervised the execution of the trust  
1044 instrument that appoints the attorney or person related to the

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1045 attorney as trustee, unless the attorney or person appointed is  
1046 related to the settlor or the attorney makes the following  
1047 disclosures to the settlor in writing before the trust  
1048 instrument is executed:

1049 1. Unless specifically disqualified by the terms of the  
1050 trust instrument, any person, regardless of his or her  
1051 residence, including a family member, friend, or corporate  
1052 fiduciary is eligible to serve as a trustee.

1053 2. Any person, including an attorney, who serves as a  
1054 trustee is entitled to receive reasonable compensation for  
1055 servicing as trustee.

1056 3. Compensation payable to the trustee is in addition to  
1057 any attorney fees payable to the attorney or the attorney's firm  
1058 for legal services rendered to the trustee.

1059 (b) The settlor must execute a written statement  
1060 acknowledging that the disclosures required by this subsection  
1061 were made before the execution of the trust instrument. The  
1062 written acknowledgment must be in a separate writing from the  
1063 trust instrument, but may be annexed to the trust instrument.  
1064 The written acknowledgment may be executed before or after the  
1065 execution of the trust instrument in which the attorney or  
1066 related person is appointed as the trustee.

1067 (c) For purposes of this subsection:

1068 1. An attorney is deemed to have prepared or supervised the  
1069 execution of a trust instrument if the preparation or the  
1070 supervision of the execution of the trust instrument was  
1071 performed by an employee or attorney employed by the same firm  
1072 as the attorney at the time the trust instrument was executed.

1073 2.a. A person is "related" to an individual if, at the time

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1074 the attorney prepared or supervised the execution of the trust  
1075 instrument, the person is:

1076 (I) A spouse of the individual;

1077 (II) A lineal ascendant or descendant of the individual;

1078 (III) A sibling of the individual;

1079 (IV) A relative of the individual or of the individual's  
1080 spouse with whom the lawyer maintains a close, familial  
1081 relationship;

1082 (V) A spouse of a person described in sub-sub-subparagraphs  
1083 (I)-(IV); or

1084 (VI) A person who cohabitates with the individual.

1085 b. An employee or attorney employed by the same firm as the  
1086 attorney at the time the trust instrument is executed is deemed  
1087 to be related to the attorney.

1088 3. An attorney or person related to the attorney is deemed  
1089 to be appointed in the trust instrument if the trust instrument  
1090 provided the attorney or a person related to the attorney with  
1091 the power to appoint the trustee and the attorney or person  
1092 related to the attorney was appointed using that power.

1093 (d) This subsection applies to provisions appointing an  
1094 attorney or a person related to the attorney as trustee,  
1095 cotrustee, or as successor or alternate trustee if the person  
1096 appointed is unable or unwilling to serve.

1097 (e) Other than compensation payable to the trustee, this  
1098 subsection does not limit any rights or remedies that an  
1099 interested person may have at law or equity.

1100 (f) The failure to obtain a written acknowledgment from the  
1101 settlor under this subsection does not disqualify a trustee from  
1102 serving and does not affect the validity of a trust instrument.

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1103 (g) A written acknowledgment signed by the settlor that is  
 1104 in substantially the following form is deemed to comply with the  
 1105 disclosure requirements of this subsection:

1106  
 1107 I, ...(Name)... declare that:

1108 I have designated ...(my attorney, an attorney employed in  
 1109 the same law firm as my attorney, or a person related to my  
 1110 attorney)... as a trustee in my trust instrument dated  
 1111 ...(Date)....

1112 Before executing the trust, I was informed that:

1113 1. Unless specifically disqualified by the terms of the  
 1114 trust instrument, any person, regardless of his or her  
 1115 residence, including a family member, friend, or corporate  
 1116 fiduciary is eligible to serve as a trustee.

1117 2. Any person, including an attorney, who serves as a  
 1118 trustee is entitled to receive reasonable compensation for  
 1119 servicing as trustee.

1120 3. Compensation payable to the trustee is in addition to  
 1121 any attorney fees payable to the attorney or the attorney's firm  
 1122 for legal services rendered to the trustee.

1123  
 1124 ...(Settlor)...

1125  
 1126 ...(Dated)...

1127  
 1128 (h) This subsection applies to each appointment made  
 1129 pursuant to a trust agreement that is:

1130 1. Executed by a resident of this state on or after October  
 1131 1, 2015.

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1132 2. Amended by a resident of this state on or after October  
1133 1, 2015, if the trust agreement appoints the attorney who  
1134 prepared or supervised the execution of the amendment, or a  
1135 person related to such attorney, as trustee.

1136 Section 9. Effective July 1, 2015, section 736.1005,  
1137 Florida Statutes, is amended to read:

1138 736.1005 Attorney ~~attorney's~~ fees for services to the  
1139 trust.—

1140 (1) Any attorney who has rendered services to a trust may  
1141 be awarded reasonable compensation from the trust. The attorney  
1142 may apply to the court for an order awarding attorney ~~attorney's~~  
1143 fees and, after notice and service on the trustee and all  
1144 beneficiaries entitled to an accounting under s. 736.0813, the  
1145 court shall enter an order on the fee application.

1146 (2) If attorney ~~Whenever attorney's~~ fees are to be paid  
1147 from out of the trust under subsection (1), s. 736.1007(5)(a),  
1148 or s. 733.106(4)(a), the court, in its discretion, may direct  
1149 from what part of the trust the fees shall be paid.

1150 (a) All or any part of the attorney fees to be paid from  
1151 the trust may be assessed against one or more persons' part of  
1152 the trust in such proportions as the court finds to be just and  
1153 proper.

1154 (b) In the exercise of its discretion, the court may  
1155 consider the following factors:

1156 1. The relative impact of an assessment on the estimated  
1157 value of each person's part of the trust.

1158 2. The amount of attorney fees to be assessed against a  
1159 person's part of the trust.

1160 3. The extent to which a person whose part of the trust is



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1161 to be assessed, individually or through counsel, actively  
1162 participated in the proceeding.

1163 4. The potential benefit or detriment to a person's part of  
1164 the trust expected from the outcome of the proceeding.

1165 5. The relative strength or weakness of the merits of the  
1166 claims, defenses, or objections, if any, asserted by a person  
1167 whose part of the trust is to be assessed.

1168 6. Whether a person whose part of the trust is to be  
1169 assessed was a prevailing party with respect to one or more  
1170 claims, defenses, or objections.

1171 7. Whether a person whose part of the trust is to be  
1172 assessed unjustly caused an increase in the amount of attorney  
1173 fees incurred by the trustee or another person in connection  
1174 with the proceeding.

1175 8. Any other relevant fact, circumstance, or equity.

1176 (c) The court may assess a person's part of the trust  
1177 without finding that the person engaged in bad faith,  
1178 wrongdoing, or frivolousness.

1179 (3) Except when a trustee's interest may be adverse in a  
1180 particular matter, the attorney shall give reasonable notice in  
1181 writing to the trustee of the attorney's retention by an  
1182 interested person and the attorney's entitlement to fees  
1183 pursuant to this section. A court may reduce any fee award for  
1184 services rendered by the attorney prior to the date of actual  
1185 notice to the trustee, if the actual notice date is later than a  
1186 date of reasonable notice. In exercising this discretion, the  
1187 court may exclude compensation for services rendered after the  
1188 reasonable notice date but before ~~prior to~~ the date of actual  
1189 notice.

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1190 Section 10. Effective July 1, 2015, section 736.1006,  
1191 Florida Statutes, is amended to read:

1192 736.1006 Costs in trust proceedings.—

1193 (1) In all trust proceedings, costs may be awarded as in  
1194 chancery actions.

1195 (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust  
1196 under subsection (1) or s. 736.106(4) (a), the court, in its  
1197 discretion, may direct from what part of the trust the costs  
1198 shall be paid. All or any part of the costs to be paid from the  
1199 trust may be assessed against one or more persons' part of the  
1200 trust in such proportions as the court finds to be just and  
1201 proper. In the exercise of its discretion, the court may  
1202 consider the factors set forth in s. 736.1005(2).

1203 Section 11. For the purpose of incorporating the amendment  
1204 made by this act to section 733.817, Florida Statutes, in a  
1205 reference thereto, subsection (4) of section 738.302, Florida  
1206 Statutes, is reenacted to read:

1207 738.302 Apportionment of receipts and disbursements when  
1208 decedent dies or income interest begins.—

1209 (4) Nothing in this section shall prevent the application  
1210 of s. 733.817 to apportion tax to the income recipient under  
1211 this section.

1212 Section 12. The amendments made by this act to ss. 733.212,  
1213 733.2123, 733.3101, and 733.504, Florida Statutes, are remedial  
1214 in nature, are intended to clarify existing law, and apply  
1215 retroactively to all proceedings pending or commenced on or  
1216 after the date upon which this act becomes a law.

1217 Section 13. (1) The amendment made by this act to s.  
1218 733.817(1) (g) and (2) (c), Florida Statutes, is remedial in

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1219 nature, is intended to clarify existing law, and applies  
1220 retroactively to all proceedings pending or commenced on or  
1221 after July 1, 2015, in which the apportionment of taxes has not  
1222 been finally determined or agreed for the estates of decedents  
1223 who die after December 31, 2004.

1224 (2) The amendment made by this act to s. 733.817(1)(e)3.,  
1225 (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and  
1226 (6), Florida Statutes, applies to the estates of decedents who  
1227 die on or after July 1, 2015.

1228 (3) Except as provided in subsections (1) and (2), the  
1229 amendment made by this act to s. 733.817, Florida Statutes, is  
1230 remedial in nature, is intended to clarify existing law, and  
1231 applies retroactively to all proceedings pending or commenced on  
1232 or after July 1, 2015, in which the apportionment of taxes has  
1233 not been finally determined or agreed and without regard to the  
1234 date of the decedent's death.

1235 Section 14. The amendments made by this act to ss. 733.106,  
1236 736.1005, and 736.1006, Florida Statutes, apply to proceedings  
1237 commenced on or after July 1, 2015. The law in effect on June  
1238 30, 2015, applies to proceedings commenced on or before that  
1239 date.

1240 Section 15. Except as otherwise expressly provided in this  
1241 act, this act shall take effect upon becoming a law.