

By the Committees on Banking and Insurance; and Judiciary; and
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 to request the removal of a
34 personal representative who files such notice;
35 providing that a personal representative is liable for
36 costs and attorney fees incurred in a removal
37 proceeding if he or she is removed and should have
38 known of the facts supporting the removal; defining
39 the term "qualified"; amending s. 733.504, F.S.;
40 requiring a personal representative to be removed and
41 the letters of administration revoked if he or she was
42 not qualified to act at the time of appointment;
43 amending s. 733.617, F.S.; prohibiting an attorney or
44 person related to the attorney from receiving
45 compensation for serving as a personal representative
46 if the attorney prepared or supervised execution of
47 the will unless the attorney or person is related to
48 the testator or the testator acknowledges in writing
49 the receipt of certain disclosures; specifying the
50 disclosures that must be acknowledged; specifying when
51 an attorney is deemed to have prepared or supervised
52 the execution of a will; specifying when a person is
53 "related" to another individual; specifying when an
54 attorney or person related to the attorney is deemed
55 to be nominated as personal representative; providing
56 that the provisions do not limit an interested
57 person's rights or remedies at law or equity except
58 for compensation payable to a personal representative;

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

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

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

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

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

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175 portions of the act; providing effective dates.

176
177 Be It Enacted by the Legislature of the State of Florida:

178
179 Section 1. Section 733.106, Florida Statutes, is amended to
180 read:

181 733.106 Costs and attorney ~~attorney's~~ fees.—

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

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

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

192 (4) ~~If~~ ~~When~~ costs and attorney ~~attorney's~~ fees are to be
193 paid from the estate under this section, s. 733.6171(4), s.
194 736.1005, or s. 736.1006, the court, in its discretion, may
195 direct from what part of the estate they shall be paid.

196 (a) If the court directs an assessment against a person's
197 part of the estate and such part is insufficient to fully pay
198 the assessment, the court may direct payment from the person's
199 part of a trust, if any, if a pourover will is involved and the
200 matter is interrelated with the trust.

201 (b) All or any part of the costs and attorney fees to be
202 paid from the estate may be assessed against one or more
203 persons' part of the estate in such proportions as the court

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204 finds to be just and proper.

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

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

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

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

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

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

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

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

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

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

230 Section 2. Paragraph (c) of subsection (2) and subsection
231 (3) of section 733.212, Florida Statutes, are amended to read:
232 733.212 Notice of administration; filing of objections.—

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233 (2) The notice shall state:

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

251 (3) Any interested person on whom a copy of the notice of
252 administration is served must object to the validity of the
253 will, ~~the qualifications of the personal representative,~~ the
254 venue, or the jurisdiction of the court by filing a petition or
255 other pleading requesting relief in accordance with the Florida
256 Probate Rules on or before the date that is 3 months after the
257 date of service of a copy of the notice of administration on the
258 objecting person, or those objections are forever barred. The 3-
259 month time period may only be extended for estoppel based upon a
260 misstatement by the personal representative regarding the time
261 period within which an objection must be filed. The time period

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262 may not be extended for any other reason, including affirmative
263 representation, failure to disclose information, or misconduct
264 by the personal representative or any other person. Unless
265 sooner barred by this subsection, all objections to the validity
266 of a will, venue, or the jurisdiction of the court must be filed
267 no later than the earlier of the entry of an order of final
268 discharge of the personal representative or 1 year after service
269 of the notice of administration.

270 Section 3. Section 733.2123, Florida Statutes, is amended
271 to read:

272 733.2123 Adjudication before issuance of letters.—A
273 petitioner may serve formal notice of the petition for
274 administration on interested persons. A person who is served
275 with such notice before the issuance of letters or who has
276 waived notice may not challenge the validity of the will,
277 testacy of the decedent, ~~qualifications of the personal~~
278 ~~representative,~~ venue, or jurisdiction of the court, except in
279 the proceedings before issuance of letters.

280 Section 4. Section 733.3101, Florida Statutes, is amended
281 to read:

282 733.3101 Personal representative not qualified.—

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

286 (2) Any time a personal representative, who was qualified
287 to act at the time of appointment, knows ~~or should have known~~
288 that he or she would not be qualified for appointment if
289 application for appointment were then made, the personal
290 representative shall promptly file and serve a notice setting

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291 forth the reasons. The personal representative's notice shall
292 state that any interested person may petition to remove the
293 personal representative. An interested person on whom a copy of
294 the personal representative's notice is served may file a
295 petition requesting the personal representative's removal within
296 30 days after the date on which such notice is served.

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

306 (4) As used in this section, the term "qualified" means
307 that the personal representative is qualified under ss. 733.302
308 -733.305.

309 Section 5. Section 733.504, Florida Statutes, is amended to
310 read:

311 733.504 Removal of personal representative; causes for
312 removal.-A personal representative shall be removed and the
313 letters revoked if he or she was not qualified to act at the
314 time of appointment. A personal representative may be removed
315 and the letters revoked for any of the following causes, ~~and the~~
316 ~~removal shall be in addition to any penalties prescribed by law:~~

317 (1) Adjudication that the personal representative is
318 incapacitated.

319 (2) Physical or mental incapacity rendering the personal

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320 representative incapable of the discharge of his or her duties.

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

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

325 (5) Wasting or maladministration of the estate.

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

327 (7) Conviction of a felony.

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

330 (9) Holding or acquiring conflicting or adverse interests
331 against the estate that will or may interfere with the
332 administration of the estate as a whole. This cause of removal
333 shall not apply to the surviving spouse because of the exercise
334 of the right to the elective share, family allowance, or
335 exemptions, as provided elsewhere in this code.

336 (10) Revocation of the probate of the decedent's will that
337 authorized or designated the appointment of the personal
338 representative.

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

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

344

345 Removal under this section is in addition to any penalties
346 prescribed by law.

347 Section 6. Effective October 1, 2015, subsection (6) of
348 section 733.617, Florida Statutes, is amended, and subsection

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349 (8) is added to that section, to read:

350 733.617 Compensation of personal representative.-

351 (6) Except as provided in subsection (8), a ~~If the~~ personal
352 representative who is a member of The Florida Bar and who has
353 rendered legal services in connection with the administration of
354 the estate, ~~then in addition to a fee as personal~~
355 ~~representative, there also~~ shall be allowed a fee for the legal
356 services rendered in addition to a fee as personal
357 representative.

358 (8) (a) An attorney, or a person related to the attorney, is
359 not entitled to compensation for serving as personal
360 representative if the attorney prepared or supervised the
361 execution of the will that nominates the attorney or person
362 related to the attorney as personal representative, unless the
363 attorney or person nominated is related to the testator or the
364 attorney makes the following disclosures to the testator in
365 writing before the will is executed:

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

370 2. Any person, including an attorney, who serves as a
371 personal representative is entitled to receive reasonable
372 compensation for serving as personal representative.

373 3. Compensation payable to the personal representative is
374 in addition to any attorney fees payable to the attorney or the
375 attorney's firm for legal services rendered to the personal
376 representative.

377 (b) The testator must execute a written statement

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378 acknowledging that the disclosures required by this subsection
379 were made prior to the execution of the will. The written
380 acknowledgment must be in a separate writing from the will, but
381 may be annexed to the will. The written acknowledgment may be
382 executed before or after the execution of the will in which the
383 attorney or related person is nominated as the personal
384 representative.

385 (c) For purposes of this subsection:

386 1. An attorney is deemed to have prepared or supervised the
387 execution of a will if the preparation or the supervision of the
388 execution of the will was performed by an employee or attorney
389 employed by the same firm as the attorney at the time the will
390 was executed.

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

394 (I) A spouse of the individual;

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

396 (III) A sibling of the individual;

397 (IV) A relative of the individual or of the individual's
398 spouse with whom the attorney maintains a close, familial
399 relationship;

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

401 (I)-(IV); or

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

403 b. An employee or attorney employed by the same firm as the
404 attorney at the time the will is executed is deemed to be
405 related to the attorney.

406 3. An attorney or person related to the attorney is deemed

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407 to be nominated in the will if the will provided the attorney or
408 a person related to the attorney with the power to nominate the
409 personal representative and the attorney or person related to
410 the attorney was nominated using that power.

411 (d) This subsection applies to provisions nominating an
412 attorney or a person related to the attorney as personal
413 representative, copersonal representative, or successor or
414 alternate personal representative if the person nominated is
415 unable or unwilling to serve.

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

419 (f) The failure to obtain a written acknowledgment from the
420 testator under this subsection does not disqualify a personal
421 representative from serving and does not affect the validity of
422 a will.

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

426
427 I, ... (Name)..., declare that:

428 I have designated ... (my attorney, an attorney employed in
429 the same law firm as my attorney, or a person related to my
430 attorney)... as a nominated personal representative in my will
431 (or codicil) dated ... (Date)... .

432 Before executing the will (or codicil), I was informed
433 that:

434 (1) Subject to certain statutory limitations, most family
435 members regardless of their residence, other persons who are

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436 residents of Florida, including friends, and corporate
437 fiduciaries are eligible to serve as a personal representative.

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

441 (3) Compensation payable to the personal representative is
442 in addition to any attorney fees payable to the attorney or the
443 attorney's firm for legal services rendered to the personal
444 representative.

445

446 ...(Testator)...

447

448 ...(Dated)...

449

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

452 1. Executed by a resident of this state on or after October
453 1, 2015.

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

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

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

463 733.817 Apportionment of estate taxes.-

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

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

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

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

484 (d) "Gross estate" means the gross estate, as determined by
485 the Internal Revenue Code with respect to the federal estate tax
486 and the Florida estate tax, and as that concept is otherwise
487 determined by the estate, inheritance, or death tax laws of the
488 particular state, country, or political subdivision whose tax is
489 being apportioned.

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

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494 1. Any interest, whether passing under the will or not, to
495 the extent the interest is initially deductible from the gross
496 estate, without regard to any subsequent reduction of the
497 deduction by reason of the charge of any part of the applicable
498 tax to the interest. If an election is required for
499 deductibility, an interest is not initially deductible unless
500 the election for deductibility is allowed.

501 2. Interests or amounts that are not included in the gross
502 estate but are included in the amount upon which the applicable
503 tax is computed, such as adjusted taxable gifts pursuant to s.
504 2001 of the Internal Revenue Code.

505 3. Gift taxes included in the gross estate pursuant to s.
506 2035 of the Internal Revenue Code and the portion of any inter
507 vivos transfer included in the gross estate pursuant to s. 529
508 of the Internal Revenue Code, notwithstanding inclusion in the
509 gross estate.

510 (f) "Internal Revenue Code" means the Internal Revenue Code
511 of 1986, as amended.

512 (g) "Net tax" means the net tax payable to the particular
513 state, country, or political subdivision whose tax is being
514 apportioned, after taking into account all credits against the
515 applicable tax except as provided in this section. With respect
516 to the federal estate tax, net tax is determined after taking
517 into account all credits against the tax except for the credit
518 for foreign death taxes and except for the credit or deduction
519 for state taxes imposed by states other than this state.

520 (h) "Nonresiduary devise" means any devise that is not a
521 residuary devise.

522 (i) "Nonresiduary interest," in connection with a trust,

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523 means any interest in a trust which is not a residuary interest.

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

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

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

539 (m) "Revocable trust" means a trust as described in s.
540 733.707(3).

541 (n) "Section 2044 interest" means an interest included in
542 the measure of the tax by reason of s. 2044 of the Internal
543 Revenue Code.

544 (o) "State" means any state, territory, or possession of
545 the United States, the District of Columbia, or the Commonwealth
546 of Puerto Rico.

547 (p) "Tax" means any estate tax, inheritance tax,
548 generation-skipping transfer tax, or other tax levied or
549 assessed under the laws of this or any other state, the United
550 States, any other country, or any political subdivision of the
551 foregoing, as finally determined, which is imposed as a result

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552 of the death of the decedent. The term also includes any
553 interest or penalties imposed in addition to the tax. Unless the
554 context indicates otherwise, the term means each separate tax.
555 The term does not include any additional estate tax imposed by
556 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a
557 corresponding tax imposed by any state or country or political
558 subdivision of the foregoing. The additional estate tax imposed
559 shall be apportioned as provided in s. 2032A or s. 2057 of the
560 Internal Revenue Code.

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

565 (r) "Tentative Florida tax" with respect to any property
566 means the net Florida estate tax that would have been
567 attributable to that property if no tax were payable to any
568 other state in respect of that property.

569 (s) "Value" means the pecuniary worth of the interest
570 involved as finally determined for purposes of the applicable
571 tax after deducting any debt, expense, or other deduction
572 chargeable to it for which a deduction was allowed in
573 determining the amount of the applicable tax. A lien or other
574 encumbrance is not regarded as chargeable to a particular
575 interest to the extent that it will be paid from other
576 interests. The value of an interest is not reduced by reason of
577 the charge against it of any part of the tax, except as provided
578 in paragraph (3) (a).

579 (2) ALLOCATION OF TAX.—Except as effectively directed in
580 the governing instrument pursuant to subsection (4), the net tax

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581 attributable to the interests included in the measure of each
582 tax shall be determined by the proportion that the value of each
583 interest included in the measure of the tax bears to the total
584 value of all interests included in the measure of the tax.

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

587 (a) The net tax attributable to section 2044 interests
588 shall be determined in the manner provided for the federal
589 estate tax in s. 2207A of the Internal Revenue Code, and the
590 amount so determined shall be deducted from the tax to determine
591 the net tax attributable to all other interests included in the
592 measure of the tax.

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

603 (c) The reduction in the net tax attributable to the
604 deduction for state death taxes allowed by s. 2058 of the
605 Internal Revenue Code shall be allocated to the recipients of
606 the interests that produced the deduction. For this purpose, the
607 reduction in the net tax shall be calculated in the manner
608 provided for interests other than those described in paragraph

609 (a).

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

613 1. If the net tax paid to another state is greater than or
614 equal to the tentative Florida tax attributable to the property
615 subject to tax in the other state, none of the Florida tax shall
616 be attributable to that property.

617 2. If the net tax paid to another state is less than the
618 tentative Florida tax attributable to the property subject to
619 tax in the other state, the net Florida tax attributable to the
620 property subject to tax in the other state shall be the excess
621 of the amount of the tentative Florida tax attributable to the
622 property over the net tax payable to the other state with
623 respect to the property.

624 3. Any remaining net Florida tax shall be attributable to
625 property included in the measure of the Florida tax exclusive of
626 the property subject to tax in another state.

627 4. The net federal tax attributable to the property subject
628 to tax in the other state shall be determined as if the property
629 were located in that state.

630 (e) The net tax attributable to a temporary interest, if
631 any, is regarded as attributable to the principal that supports
632 the temporary interest.

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

637 (a) Generation-skipping transfer tax.—Any federal or state
638 generation-skipping transfer tax shall be apportioned as

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639 provided in s. 2603 of the Internal Revenue Code after the
640 application of the remaining provisions of this subsection to
641 taxes other than the generation-skipping transfer tax.

642 (b) Section 2044 interests.—The net tax attributable to
643 section 2044 interests shall be apportioned among the recipients
644 of the section 2044 interests in the proportion that the value
645 of each section 2044 interest bears to the total of all section
646 2044 interests. The net tax apportioned by this paragraph to
647 section 2044 interests that pass in the manner described in
648 paragraph (c) or paragraph (d) shall be apportioned to the
649 section 2044 interests in the manner described in those
650 paragraphs before the apportionment of the net tax attributable
651 to the other interests passing as provided in those paragraphs.
652 The net tax attributable to the interests other than the section
653 2044 interests which pass in the manner described in paragraph
654 (c) or paragraph (d) shall be apportioned only to such other
655 interests pursuant to those paragraphs.

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

659 1. The net tax attributable to nonresiduary devisees shall
660 be charged to and paid from the residuary estate, whether or not
661 all interests in the residuary estate are included in the
662 measure of the tax. If the residuary estate is insufficient to
663 pay the net tax attributable to all nonresiduary devisees, the
664 balance of the net tax attributable to nonresiduary devisees
665 shall be apportioned among the recipients of the nonresiduary
666 devisees in the proportion that the value of each nonresiduary
667 devise included in the measure of the tax bears to the total of

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668 all nonresiduary devises included in the measure of the tax.

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

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

685 1. The net tax attributable to nonresiduary interests of
686 the trust shall be charged to and paid from the residuary
687 portion of the trust, whether or not all interests in the
688 residuary portion are included in the measure of the tax. If the
689 residuary portion is insufficient to pay the net tax
690 attributable to all nonresiduary interests, the balance of the
691 net tax attributable to nonresiduary interests shall be
692 apportioned among the recipients of the nonresiduary interests
693 in the proportion that the value of each nonresiduary interest
694 included in the measure of the tax bears to the total of all
695 nonresiduary interests included in the measure of the tax.

696 2. The net tax attributable to residuary interests of the

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697 trust shall be apportioned among the recipients of the residuary
698 interests of the trust included in the measure of the tax in the
699 proportion that the value of each residuary interest included in
700 the measure of the tax bears to the total of all residuary
701 interests of the trust included in the measure of the tax. If
702 the residuary portion is insufficient to pay the net tax
703 attributable to all residuary interests, the balance of the net
704 tax attributable to residuary interests shall be apportioned
705 among the recipients of the nonresiduary interests in the
706 proportion that the value of each nonresiduary interest included
707 in the measure of the tax bears to the total of all nonresiduary
708 interests included in the measure of the tax.

709
710 Except as provided in paragraph (g), this paragraph applies
711 separately for each trust.

712 (e) Protected homestead, exempt property, and family
713 allowance.—

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

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

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

724 c. Class III.—Recipients of nonresiduary devises and
725 nonresiduary interests that are included in the measure of the

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726 federal estate tax.

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

744 3. The balance of the net tax attributable to any interest
745 in protected homestead, exempt property, and the family
746 allowance determined under s. 732.403 which is not apportioned
747 under the preceding provisions of this paragraph shall be
748 apportioned to the recipients of those interests included in the
749 measure of the tax in the proportion that the value of each
750 bears to the total value of those interests included in the
751 measure of the tax.

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

753 1. If the decedent's estate is the beneficiary of a life
754 insurance policy, annuity, or contractual right included in the

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755 decedent's gross estate, or is the taker as a result of the
756 exercise or default in exercise of a general power of
757 appointment held by the decedent, that interest shall be
758 regarded as passing under the terms of the decedent's will for
759 the purposes of paragraph (c) or by intestacy if not disposed of
760 by will. Additionally, any interest included in the measure of
761 the tax by reason of s. 2041 of the Internal Revenue Code
762 passing to the decedent's creditors or the creditors of the
763 decedent's estate shall be regarded as passing to the decedent's
764 estate for the purpose of this subparagraph.

765 2. If a trust is the beneficiary of a life insurance
766 policy, annuity, or contractual right included in the decedent's
767 gross estate, or is the taker as a result of the exercise or
768 default in exercise of a general power of appointment held by
769 the decedent, that interest shall be regarded as passing under
770 the trust for purposes of paragraph (d).

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

777 1. The decedent's will and revocable trust if the estate is
778 a beneficiary of the revocable trust or if the revocable trust
779 is a beneficiary of the estate.

780 2. A revocable trust of the decedent and another revocable
781 trust of the decedent if either trust is the beneficiary of the
782 other trust.

783 (h) Other interests.—The net tax that is not apportioned to

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

796 (i) Assessment of liability by court.—If the court finds
797 that:

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

802 2. The payment of any tax was not effectively directed in
803 the governing instrument pursuant to subsection (4) and that
804 such tax is not apportioned by this subsection, the court may
805 assess liability for the payment of such tax in the manner that
806 the court finds equitable.

807 (4) DIRECTION AGAINST APPORTIONMENT.—

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

811 (b) For a direction in a governing instrument to be
812 effective to direct payment of taxes attributable to property

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813 passing under the governing instrument in a manner different
814 from that provided in this section, the direction must be
815 express.

816 (c) For a direction in a governing instrument to be
817 effective to direct payment of taxes attributable to property
818 not passing under the governing instrument from property passing
819 under the governing instrument, the governing instrument must
820 expressly direct that the property passing under the governing
821 instrument bear the burden of taxation for property not passing
822 under the governing instrument. Except as provided in paragraph
823 (d), a direction in the governing instrument to the effect that
824 all taxes are to be paid from property passing under the
825 governing instrument whether attributable to property passing
826 under the governing instrument or otherwise shall be effective
827 to direct payment from property passing under the governing
828 instrument of taxes attributable to property not passing under
829 the governing instrument.

830 (d) In addition to satisfying the other provisions of this
831 subsection:

832 1.a. For a direction in the decedent's will or revocable
833 trust to be effective in waiving the right of recovery provided
834 in s. 2207A of the Internal Revenue Code for the tax
835 attributable to section 2044 interests, and for any tax imposed
836 by Florida based upon such section 2044 interests, the direction
837 must expressly waive that right of recovery. An express
838 direction that property passing under the will or revocable
839 trust bear the tax imposed by s. 2044 of the Internal Revenue
840 Code is deemed an express waiver of the right of recovery
841 provided in s. 2207A of the Internal Revenue Code. A reference

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842 to "qualified terminable interest property," "QTIP," or property
843 in which the decedent had a "qualifying income interest for
844 life" is deemed to be a reference to property upon which tax is
845 imposed by s. 2044 of the Internal Revenue Code which is subject
846 to the right of recovery provided in s. 2207A of the Internal
847 Revenue Code.

848 b. If property is included in the gross estate pursuant to
849 ss. 2041 and 2044 of the Internal Revenue Code, the property is
850 deemed included under s. 2044, and not s. 2041, for purposes of
851 allocation and apportionment of the tax.

852 2. For a direction in the decedent's will or revocable
853 trust to be effective in waiving the right of recovery provided
854 in s. 2207B of the Internal Revenue Code for tax imposed by
855 reason of s. 2036 of the Internal Revenue Code, and any tax
856 imposed by Florida based upon s. 2036 of the Internal Revenue
857 Code, the direction must expressly waive that right of recovery.
858 An express direction that property passing under the will or
859 revocable trust bear the tax imposed by s. 2036 of the Internal
860 Revenue Code is deemed an express waiver of the right of
861 recovery provided in s. 2207B of the Internal Revenue Code. If
862 property is included in the gross estate pursuant to ss. 2036
863 and 2038 of the Internal Revenue Code, the property is deemed
864 included under s. 2038, not s. 2036, for purposes of allocation
865 and apportionment of the tax, and there is no right of recovery
866 under s. 2207B of the Internal Revenue Code.

867 3. A general statement in the decedent's will or revocable
868 trust waiving all rights of reimbursement or recovery under the
869 Internal Revenue Code is not an express waiver of the rights of
870 recovery provided in s. 2207A or s. 2207B of the Internal

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871 Revenue Code.

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

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

896 (f) If the decedent's will expressly provides that the tax
897 is to be apportioned as provided in the decedent's revocable
898 trust by specific reference to the revocable trust, an express
899 direction in the revocable trust is deemed to be a direction

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900 contained in the will as well as the revocable trust.

901 (g) An express direction in the decedent's will to pay tax
902 from the decedent's revocable trust by specific reference to the
903 revocable trust is effective unless a contrary express direction
904 is contained in the revocable trust.

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

921 (i) A grant of permission or authority in a governing
922 instrument to request payment of tax from property passing under
923 another governing instrument is not a direction apportioning the
924 tax to the property passing under the other governing
925 instrument. A grant of permission or authority in a governing
926 instrument to pay tax attributable to property not passing under
927 the governing instrument is not a direction apportioning the tax
928 to property passing under the governing instrument.

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929 (j) This section applies to any tax remaining to be paid
930 after the application of any effective express directions. An
931 effective express direction for payment of tax on specific
932 property or a type of property in a manner different from that
933 provided in this section is not effective as an express
934 direction for payment of tax on other property or other types of
935 property included in the measure of the tax.

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

946 (6) ORDER OF APPORTIONMENT.—

947 (a) The personal representative may petition at any time
948 for an order of apportionment. If administration of the
949 decedent's estate has not commenced at any time after 90 days
950 from the decedent's death, any fiduciary may petition for an
951 order of apportionment in the court in which venue would be
952 proper for administration of the decedent's estate. Notice of
953 the petition for order of apportionment must be served on all
954 interested persons in the manner provided for service of formal
955 notice. At any time after 6 months from the decedent's death,
956 any recipient may petition the court for an order of
957 apportionment.

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958 (b) The court shall determine all issues concerning
959 apportionment. If the tax to be apportioned has not been finally
960 determined, the court shall determine the probable tax due or to
961 become due from all interested persons, apportion the probable
962 tax, and retain jurisdiction over the parties and issues to
963 modify the order of apportionment as appropriate until after the
964 tax is finally determined.

965 (7) DEFICIENCY.—

966 (a) If the personal representative or fiduciary does not
967 have possession of sufficient property otherwise distributable
968 to the recipient to pay the tax apportioned to the recipient,
969 whether under this section, the Internal Revenue Code, or the
970 governing instrument, if applicable, the personal representative
971 or fiduciary shall recover the deficiency in tax so apportioned
972 to the recipient:

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

975 2. To the extent of any deficiency in collection from the
976 fiduciary, or to the extent collection from the fiduciary is
977 excused pursuant to subsection (8) and in all other cases, from
978 the recipient of the property to which the tax is apportioned,
979 unless relieved of this duty as provided in subsection (8).

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

982 (c) In any action for the enforcement of an order of
983 apportionment, the court shall award taxable costs as in
984 chancery actions, including reasonable attorney fees, and may
985 award penalties and interest on the unpaid tax in accordance
986 with equitable principles.

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

993 (8) RELIEF FROM DUTY.-

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

998 1. The estimated court costs and attorney fees in
999 collecting the apportioned tax from a person against whom the
1000 tax has been apportioned will approximate or exceed the amount
1001 of the recovery;

1002 2. The person against whom the tax has been apportioned is
1003 a resident of a foreign country other than Canada and refuses to
1004 pay the apportioned tax on demand; or

1005 3. It is impracticable to enforce contribution of the
1006 apportioned tax against a person against whom the tax has been
1007 apportioned in view of the improbability of obtaining a judgment
1008 or the improbability of collection under any judgment that might
1009 be obtained, or otherwise.

1010 (b) A personal representative or fiduciary is not liable
1011 for failure to attempt to enforce collection if the personal
1012 representative or fiduciary reasonably believes that collection
1013 would have been economically impracticable.

1014 (9) UNCOLLECTED TAX.-Any apportioned tax that is not
1015 collected shall be reapportioned in accordance with this section

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1016 as if the portion of the property to which the uncollected tax
1017 had been apportioned had been exempt.

1018 (10) CONTRIBUTION.—This section does not limit the right of
1019 any person who has paid more than the amount of the tax
1020 apportionable to that person, calculated as if all apportioned
1021 amounts would be collected, to obtain contribution from those
1022 who have not paid the full amount of the tax apportionable to
1023 them, calculated as if all apportioned amounts would be
1024 collected, and that right is hereby conferred. In any action to
1025 enforce contribution, the court shall award taxable costs as in
1026 chancery actions, including reasonable attorney fees.

1027 (11) FOREIGN TAX.—This section does not require the
1028 personal representative or fiduciary to pay any tax levied or
1029 assessed by a foreign country unless specific directions to that
1030 effect are contained in the will or other instrument under which
1031 the personal representative or fiduciary is acting.

1032 Section 8. Effective October 1, 2015, subsection (4) is
1033 added to section 736.0708, Florida Statutes, to read:

1034 736.0708 Compensation of trustee.—

1035 (4) (a) An attorney, or a person related to the attorney, is
1036 not entitled to compensation for serving as trustee if the
1037 attorney prepared or supervised the execution of the trust
1038 instrument that appoints the attorney or person related to the
1039 attorney as trustee, unless the attorney or person appointed is
1040 related to the settlor or the attorney makes the following
1041 disclosures to the settlor in writing before the trust
1042 instrument is executed:

1043 1. Unless specifically disqualified by the terms of the
1044 trust instrument, any person, regardless of his or her

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1045 residence, including a family member, friend, or corporate
1046 fiduciary is eligible to serve as a trustee.

1047 2. Any person, including an attorney, who serves as a
1048 trustee is entitled to receive reasonable compensation for
1049 serving as trustee.

1050 3. Compensation payable to the trustee is in addition to
1051 any attorney fees payable to the attorney or the attorney's firm
1052 for legal services rendered to the trustee.

1053 (b) The settlor must execute a written statement
1054 acknowledging that the disclosures required by this subsection
1055 were made before the execution of the trust instrument. The
1056 written acknowledgment must be in a separate writing from the
1057 trust instrument, but may be annexed to the trust instrument.
1058 The written acknowledgment may be executed before or after the
1059 execution of the trust instrument in which the attorney or
1060 related person is appointed as the trustee.

1061 (c) For purposes of this subsection:

1062 1. An attorney is deemed to have prepared or supervised the
1063 execution of a trust instrument if the preparation or the
1064 supervision of the execution of the trust instrument was
1065 performed by an employee or attorney employed by the same firm
1066 as the attorney at the time the trust instrument was executed.

1067 2.a. A person is "related" to an individual if, at the time
1068 the attorney prepared or supervised the execution of the trust
1069 instrument, the person is:

1070 (I) A spouse of the individual;

1071 (II) A lineal ascendant or descendant of the individual;

1072 (III) A sibling of the individual;

1073 (IV) A relative of the individual or of the individual's

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1074 spouse with whom the lawyer maintains a close, familial
1075 relationship;

1076 (V) A spouse of a person described in sub-sub-subparagraphs
1077 (I)-(IV); or

1078 (VI) A person who cohabitates with the individual.

1079 b. An employee or attorney employed by the same firm as the
1080 attorney at the time the trust instrument is executed is deemed
1081 to be related to the attorney.

1082 3. An attorney or person related to the attorney is deemed
1083 to be appointed in the trust instrument if the trust instrument
1084 provided the attorney or a person related to the attorney with
1085 the power to appoint the trustee and the attorney or person
1086 related to the attorney was appointed using that power.

1087 (d) This subsection applies to provisions appointing an
1088 attorney or a person related to the attorney as trustee,
1089 cotrustee, or as successor or alternate trustee if the person
1090 appointed is unable or unwilling to serve.

1091 (e) Other than compensation payable to the trustee, this
1092 subsection does not limit any rights or remedies that an
1093 interested person may have at law or equity.

1094 (f) The failure to obtain a written acknowledgment from the
1095 settlor under this subsection does not disqualify a trustee from
1096 serving and does not affect the validity of a trust instrument.

1097 (g) A written acknowledgment signed by the settlor that is
1098 in substantially the following form is deemed to comply with the
1099 disclosure requirements of this subsection:

1100

1101 I, ... (Name) ... declare that:

1102 I have designated ... (my attorney, an attorney employed in

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1103 the same law firm as my attorney, or a person related to my
 1104 attorney)... as a trustee in my trust instrument dated
 1105 ...(Date)....

1106 Before executing the trust, I was informed that:

1107 1. Unless specifically disqualified by the terms of the
 1108 trust instrument, any person, regardless of his or her
 1109 residence, including a family member, friend, or corporate
 1110 fiduciary is eligible to serve as a trustee.

1111 2. Any person, including an attorney, who serves as a
 1112 trustee is entitled to receive reasonable compensation for
 1113 servng as trustee.

1114 3. Compensation payable to the trustee is in addition to
 1115 any attorney fees payable to the attorney or the attorney's firm
 1116 for legal services rendered to the trustee.

1118 ...(Settlor)...

1120 ...(Dated)...

1122 (h) This subsection applies to each appointment made
 1123 pursuant to a trust instrument that is:

1124 1. Executed by a resident of this state on or after October
 1125 1, 2015.

1126 2. Amended by a resident of this state on or after October
 1127 1, 2015, if the trust instrument appoints the attorney who
 1128 prepared or supervised the execution of the amendment, or a
 1129 person related to such attorney, as trustee.

1130 Section 9. Section 736.1005, Florida Statutes, is amended
 1131 to read:

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1132 736.1005 Attorney ~~attorney's~~ fees for services to the
1133 trust.—

1134 (1) Any attorney who has rendered services to a trust may
1135 be awarded reasonable compensation from the trust. The attorney
1136 may apply to the court for an order awarding attorney ~~attorney's~~
1137 fees and, after notice and service on the trustee and all
1138 beneficiaries entitled to an accounting under s. 736.0813, the
1139 court shall enter an order on the fee application.

1140 (2) If attorney ~~Whenever attorney's~~ fees are to be paid
1141 from out of the trust under subsection (1), s. 736.1007(5) (a),
1142 or s. 733.106(4) (a), the court, in its discretion, may direct
1143 from what part of the trust the fees shall be paid.

1144 (a) All or any part of the attorney fees to be paid from
1145 the trust may be assessed against one or more persons' part of
1146 the trust in such proportions as the court finds to be just and
1147 proper.

1148 (b) In the exercise of its discretion, the court may
1149 consider the following factors:

1150 1. The relative impact of an assessment on the estimated
1151 value of each person's part of the trust.

1152 2. The amount of attorney fees to be assessed against a
1153 person's part of the trust.

1154 3. The extent to which a person whose part of the trust is
1155 to be assessed, individually or through counsel, actively
1156 participated in the proceeding.

1157 4. The potential benefit or detriment to a person's part of
1158 the trust expected from the outcome of the proceeding.

1159 5. The relative strength or weakness of the merits of the
1160 claims, defenses, or objections, if any, asserted by a person

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1161 whose part of the trust is to be assessed.

1162 6. Whether a person whose part of the trust is to be
1163 assessed was a prevailing party with respect to one or more
1164 claims, defenses, or objections.

1165 7. Whether a person whose part of the trust is to be
1166 assessed unjustly caused an increase in the amount of attorney
1167 fees incurred by the trustee or another person in connection
1168 with the proceeding.

1169 8. Any other relevant fact, circumstance, or equity.

1170 (c) The court may assess a person's part of the trust
1171 without finding that the person engaged in bad faith,
1172 wrongdoing, or frivolousness.

1173 (3) Except when a trustee's interest may be adverse in a
1174 particular matter, the attorney shall give reasonable notice in
1175 writing to the trustee of the attorney's retention by an
1176 interested person and the attorney's entitlement to fees
1177 pursuant to this section. A court may reduce any fee award for
1178 services rendered by the attorney prior to the date of actual
1179 notice to the trustee, if the actual notice date is later than a
1180 date of reasonable notice. In exercising this discretion, the
1181 court may exclude compensation for services rendered after the
1182 reasonable notice date but before ~~prior to~~ the date of actual
1183 notice.

1184 Section 10. Section 736.1006, Florida Statutes, is amended
1185 to read:

1186 736.1006 Costs in trust proceedings.—

1187 (1) In all trust proceedings, costs may be awarded as in
1188 chancery actions.

1189 (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust

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1190 under subsection (1) or s. 733.106(4) (a), the court, in its
1191 discretion, may direct from what part of the trust the costs
1192 shall be paid. All or any part of the costs to be paid from the
1193 trust may be assessed against one or more persons' part of the
1194 trust in such proportions as the court finds to be just and
1195 proper. In the exercise of its discretion, the court may
1196 consider the factors set forth in s. 736.1005(2).

1197 Section 11. The amendments made by this act to ss. 733.212,
1198 733.2123, 733.3101, and 733.504, Florida Statutes, apply to
1199 proceedings commenced on or after July 1, 2015. The law in
1200 effect before July 1, 2015, applies to proceedings commenced
1201 before that date.

1202 Section 12. (1) The amendment made by this act to s.
1203 733.817(1) (g) and (2) (c), Florida Statutes, is remedial in
1204 nature, is intended to clarify existing law, and applies
1205 retroactively to all proceedings pending or commenced on or
1206 after July 1, 2015, in which the apportionment of taxes has not
1207 been finally determined or agreed for the estates of decedents
1208 who die after December 31, 2004.

1209 (2) The amendment made by this act to s. 733.817(1) (e) 3.,
1210 (3) (e), (3) (g), (4) (b), (4) (c), (4) (d) 1.b., (4) (e), (4) (h), and
1211 (6), Florida Statutes, applies to the estates of decedents who
1212 die on or after July 1, 2015.

1213 (3) Except as provided in subsections (1) and (2), the
1214 amendment made by this act to s. 733.817, Florida Statutes, is
1215 remedial in nature, is intended to clarify existing law, and
1216 applies retroactively to all proceedings pending or commenced on
1217 or after July 1, 2015, in which the apportionment of taxes has
1218 not been finally determined or agreed and without regard to the

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1219 date of the decedent's death.

1220 Section 13. The amendments made by this act to ss. 733.106,
1221 736.1005, and 736.1006, Florida Statutes, apply to proceedings
1222 commenced on or after July 1, 2015. The law in effect before
1223 July 1, 2015, applies to proceedings commenced before that date.

1224 Section 14. Except as otherwise expressly provided in this
1225 act, this act shall take effect July 1, 2015.