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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. 733.817, F.S.; defining and redefining  
44 terms; deleting a provision that exempts an interest  
45 in protected homestead from the apportionment of  
46 taxes; providing for the payment of taxes on protected  
47 homestead family allowance and exempt property by  
48 certain other property to the extent such other  
49 property is sufficient; revising the allocation of  
50 taxes; revising the apportionment of the net tax  
51 attributable to specified interests; authorizing a  
52 court to assess liability in an equitable manner under  
53 certain circumstances; providing that a governing  
54 instrument may not direct that taxes be paid from  
55 property other than property passing under the  
56 governing instrument, except under specified  
57 conditions; requiring that direction in a governing  
58 instrument be express to apportion taxes under certain

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59 circumstances; requiring that the right of recovery  
60 provided in the Internal Revenue Code for certain  
61 taxes be expressly waived in the decedent's will or  
62 revocable trust with certain specificity; specifying  
63 the property upon which certain tax is imposed for  
64 allocation and apportionment of certain tax; providing  
65 that a general statement in the decedent's will or  
66 revocable trust waiving all rights of reimbursement or  
67 recovery under the Internal Revenue Code is not an  
68 express waiver of certain rights of recovery;  
69 requiring direction to specifically reference the  
70 generation-skipping transfer tax imposed by the  
71 Internal Revenue Code to direct its apportionment;  
72 authorizing, under certain circumstances, the decedent  
73 to direct by will the amount of net tax attributable  
74 to property over which the decedent held a general  
75 power of appointment under certain circumstances;  
76 providing that an express direction in a revocable  
77 trust is deemed to be a direction contained in the  
78 decedent's will as well as the revocable trust under  
79 certain circumstances; providing that an express  
80 direction in the decedent's will to pay tax from the  
81 decedent's revocable trust by specific reference to  
82 the revocable trust is effective unless a contrary  
83 express direction is contained in the revocable trust;  
84 revising the resolution of conflicting directions in  
85 governing instruments with regard to payment of taxes;  
86 providing that the later express direction in the will  
87 or other governing instrument controls; providing that

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88 the date of an amendment to a will or other governing  
89 instrument is the date of the will or trust for  
90 conflict resolution only if the codicil or amendment  
91 contains an express tax apportionment provision or an  
92 express modification of the tax apportionment  
93 provision; providing that a will is deemed executed  
94 after another governing instrument if the decedent's  
95 will and another governing instrument were executed on  
96 the same date; providing that an earlier conflicting  
97 governing instrument controls as to any tax remaining  
98 unpaid after the application of the later conflicting  
99 governing instrument; providing that a grant of  
100 permission or authority in a governing instrument to  
101 request payment of tax from property passing under  
102 another governing instrument is not a direction  
103 apportioning the tax to the property passing under the  
104 other governing instrument; providing a grant of  
105 permission or authority in a governing instrument to  
106 pay tax attributable to property not passing under the  
107 governing instrument is not a direction apportioning  
108 the tax to property passing under the governing  
109 instrument; providing application; prohibiting the  
110 requiring of a personal representative or fiduciary to  
111 transfer to a recipient property that may be used for  
112 payment of taxes; amending s. 736.1005, F.S.;

113 authorizing the court, if attorney fees are to be paid  
114 from the trust under specified sections of law, to  
115 direct payment from a certain part of the trust;  
116 providing that fees may be assessed against one or

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117 more persons' part of the trust in such proportions as  
118 the court finds just and proper; specifying factors  
119 that the court may consider in directing the  
120 assessment of such fees; providing that a court may  
121 assess fees without finding that a person engaged  
122 specified wrongful acts; amending s. 736.1006, F.S.;  
123 authorizing the court, if costs are to be paid from  
124 the trust under specified sections of law, to direct  
125 payment from a certain part of the trust; providing  
126 that costs may be assessed against one or more  
127 persons' part of the trust in such proportions as the  
128 court finds just and proper; specifying factors that  
129 the court may consider in directing the assessment of  
130 such costs; providing that specified provisions of the  
131 act are remedial and intended to clarify existing law;  
132 providing for retroactive and prospective application  
133 of specified portions of the act; providing an  
134 effective date.

135  
136 Be It Enacted by the Legislature of the State of Florida:

137  
138 Section 1. Section 733.106, Florida Statutes, is amended to  
139 read:

140 733.106 Costs and attorney ~~attorney's~~ fees.—

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

143 (2) A person nominated as personal representative, or any  
144 proponent of a will if the person so nominated does not act  
145 within a reasonable time, if in good faith justified in offering

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146 the will in due form for probate, shall receive costs and  
147 attorney ~~attorney's~~ fees from the estate even though probate is  
148 denied or revoked.

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

151 (4) ~~If~~ ~~When~~ costs and attorney ~~attorney's~~ fees are to be  
152 paid from the estate under this section, s. 733.6171(4), s.  
153 736.1005, or s. 736.1006, the court, in its discretion, may  
154 direct from what part of the estate they shall be paid.

155 (a) If the court directs an assessment against a person's  
156 part of the estate and such part is insufficient to fully pay  
157 the assessment, the court may direct payment from the person's  
158 part of a trust, if any, if a pourover will is involved and the  
159 matter is interrelated with the trust.

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

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

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

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

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

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

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

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

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

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

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

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

191 733.212 Notice of administration; filing of objections.—

192 (2) The notice shall state:

193 (c) That any interested person on whom a copy of the notice  
194 of administration is served must file on or before the date that  
195 is 3 months after the date of service of a copy of the notice of  
196 administration on that person any objection that challenges the  
197 validity of the will, ~~the qualifications of the personal~~  
198 ~~representative,~~ the venue, or the jurisdiction of the court. The  
199 3-month time period may only be extended for estoppel based upon  
200 a misstatement by the personal representative regarding the time  
201 period within which an objection must be filed. The time period  
202 may not be extended for any other reason, including affirmative  
203 representation, failure to disclose information, or misconduct

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204 by the personal representative or any other person. Unless  
205 sooner barred by subsection (3), all objections to the validity  
206 of a will, venue, or the jurisdiction of the court must be filed  
207 no later than the earlier of the entry of an order of final  
208 discharge of the personal representative or 1 year after service  
209 of the notice of administration.

210 (3) Any interested person on whom a copy of the notice of  
211 administration is served must object to the validity of the  
212 will, ~~the qualifications of the personal representative,~~ the  
213 venue, or the jurisdiction of the court by filing a petition or  
214 other pleading requesting relief in accordance with the Florida  
215 Probate Rules on or before the date that is 3 months after the  
216 date of service of a copy of the notice of administration on the  
217 objecting person, or those objections are forever barred. The 3-  
218 month time period may only be extended for estoppel based upon a  
219 misstatement by the personal representative regarding the time  
220 period within which an objection must be filed. The time period  
221 may not be extended for any other reason, including affirmative  
222 representation, failure to disclose information, or misconduct  
223 by the personal representative or any other person. Unless  
224 sooner barred by this subsection, all objections to the validity  
225 of a will, venue, or the jurisdiction of the court must be filed  
226 no later than the earlier of the entry of an order of final  
227 discharge of the personal representative or 1 year after service  
228 of the notice of administration.

229 Section 3. Section 733.2123, Florida Statutes, is amended  
230 to read:

231 733.2123 Adjudication before issuance of letters.—A  
232 petitioner may serve formal notice of the petition for



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233 administration on interested persons. A person who is served  
234 with such notice before the issuance of letters or who has  
235 waived notice may not challenge the validity of the will,  
236 testacy of the decedent, ~~qualifications of the personal~~  
237 ~~representative,~~ venue, or jurisdiction of the court, except in  
238 the proceedings before issuance of letters.

239 Section 4. Section 733.3101, Florida Statutes, is amended  
240 to read:

241 733.3101 Personal representative not qualified.—

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

245 (2) Any time a personal representative, who was qualified  
246 to act at the time of appointment, knows or should have known  
247 that he or she would not be qualified for appointment if  
248 application for appointment were then made, the personal  
249 representative shall promptly file and serve a notice setting  
250 forth the reasons. The personal representative's notice shall  
251 state that any interested person may petition to remove the  
252 personal representative. An interested person on whom a copy of  
253 the personal representative's notice is served may file a  
254 petition requesting the personal representative's removal within  
255 30 days after the date on which such notice is served.

256 (3) A personal representative who fails to comply with this  
257 section shall be personally liable for costs, including attorney  
258 attorney's fees, incurred in any removal proceeding, if the  
259 personal representative is removed. This liability extends to a  
260 personal representative who does not know, but should have  
261 known, of the facts that would have required him or her to

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262 resign under subsection (1) or to file and serve notice under  
263 subsection (2). This liability shall be cumulative to any other  
264 provided by law.

265 (4) As used in this section, the term "qualified" means  
266 that the personal representative is qualified under ss. 733.302  
267 -733.305.

268 Section 5. Section 733.504, Florida Statutes, is amended to  
269 read:

270 733.504 Removal of personal representative; causes for  
271 removal.-A personal representative shall be removed and the  
272 letters revoked if he or she was not qualified to act at the  
273 time of appointment. A personal representative may be removed  
274 and the letters revoked for any of the following causes,~~and the~~  
275 ~~removal shall be in addition to any penalties prescribed by law:~~

276 (1) Adjudication that the personal representative is  
277 incapacitated.

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

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

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

284 (5) Wasting or maladministration of the estate.

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

286 (7) Conviction of a felony.

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

289 (9) Holding or acquiring conflicting or adverse interests  
290 against the estate that will or may interfere with the

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291 administration of the estate as a whole. This cause of removal  
292 shall not apply to the surviving spouse because of the exercise  
293 of the right to the elective share, family allowance, or  
294 exemptions, as provided elsewhere in this code.

295 (10) Revocation of the probate of the decedent's will that  
296 authorized or designated the appointment of the personal  
297 representative.

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

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

303  
304 Removal under this section is in addition to any penalties  
305 prescribed by law.

306 Section 6. Section 733.817, Florida Statutes, is amended to  
307 read:

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

310 733.817 Apportionment of estate taxes.-

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

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

317 (b) "Generation-skipping transfer tax" means the  
318 generation-skipping transfer tax imposed by chapter 13 of the  
319 Internal Revenue Code on direct skips of interests includible in

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320 the federal gross estate or a corresponding tax imposed by any  
321 state or country or political subdivision of the foregoing. The  
322 term does not include the generation-skipping transfer tax on  
323 taxable distributions, taxable terminations, or any other  
324 generation-skipping transfer. The terms "direct skip," "taxable  
325 distribution," and "taxable termination" have the same meanings  
326 as provided in s. 2612 of the Internal Revenue Code.

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

331 (d) "Gross estate" means the gross estate, as determined by  
332 the Internal Revenue Code with respect to the federal estate tax  
333 and the Florida estate tax, and as that concept is otherwise  
334 determined by the estate, inheritance, or death tax laws of the  
335 particular state, country, or political subdivision whose tax is  
336 being apportioned.

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

341 1. Any interest, whether passing under the will or not, to  
342 the extent the interest is initially deductible from the gross  
343 estate, without regard to any subsequent reduction of the  
344 deduction by reason of the charge of any part of the applicable  
345 tax to the interest. If an election is required for  
346 deductibility, an interest is not initially deductible unless  
347 the election for deductibility is allowed.

348 2. Interests or amounts that are not included in the gross

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349 estate but are included in the amount upon which the applicable  
350 tax is computed, such as adjusted taxable gifts pursuant to s.  
351 2001 of the Internal Revenue Code.

352 3. Gift taxes included in the gross estate pursuant to s.  
353 2035 of the Internal Revenue Code and the portion of any inter  
354 vivos transfer included in the gross estate pursuant to s. 529  
355 of the Internal Revenue Code, notwithstanding inclusion in the  
356 gross estate.

357 (f) "Internal Revenue Code" means the Internal Revenue Code  
358 of 1986, as amended.

359 (g) "Net tax" means the net tax payable to the particular  
360 state, country, or political subdivision whose tax is being  
361 apportioned, after taking into account all credits against the  
362 applicable tax except as provided in this section. With respect  
363 to the federal estate tax, net tax is determined after taking  
364 into account all credits against the tax except for the credit  
365 for foreign death taxes and except for the credit or deduction  
366 for state taxes imposed by states other than this state.

367 (h) "Nonresiduary devise" means any devise that is not a  
368 residuary devise.

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

371 (j) "Recipient" means, with respect to property or an  
372 interest in property included in the gross estate, an heir at  
373 law in an intestate estate, devisee in a testate estate,  
374 beneficiary of a trust, beneficiary of a life insurance policy,  
375 annuity, or other contractual right, surviving tenant, taker as  
376 a result of the exercise or in default of the exercise of a  
377 general power of appointment, person who receives or is to

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378 receive the property or an interest in the property, or person  
379 in possession of the property, other than a creditor.

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

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

386 (m) "Revocable trust" means a trust as described in s.  
387 733.707(3).

388 (n) "Section 2044 interest" means an interest included in  
389 the measure of the tax by reason of s. 2044 of the Internal  
390 Revenue Code.

391 (o) "State" means any state, territory, or possession of  
392 the United States, the District of Columbia, or the Commonwealth  
393 of Puerto Rico.

394 (p) "Tax" means any estate tax, inheritance tax,  
395 generation-skipping transfer tax, or other tax levied or  
396 assessed under the laws of this or any other state, the United  
397 States, any other country, or any political subdivision of the  
398 foregoing, as finally determined, which is imposed as a result  
399 of the death of the decedent. The term also includes any  
400 interest or penalties imposed in addition to the tax. Unless the  
401 context indicates otherwise, the term means each separate tax.  
402 The term does not include any additional estate tax imposed by  
403 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a  
404 corresponding tax imposed by any state or country or political  
405 subdivision of the foregoing. The additional estate tax imposed  
406 shall be apportioned as provided in s. 2032A or s. 2057 of the

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407 Internal Revenue Code.

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

412 (r) "Tentative Florida tax" with respect to any property  
413 means the net Florida estate tax that would have been  
414 attributable to that property if no tax were payable to any  
415 other state in respect of that property.

416 (s) "Value" means the pecuniary worth of the interest  
417 involved as finally determined for purposes of the applicable  
418 tax after deducting any debt, expense, or other deduction  
419 chargeable to it for which a deduction was allowed in  
420 determining the amount of the applicable tax. A lien or other  
421 encumbrance is not regarded as chargeable to a particular  
422 interest to the extent that it will be paid from other  
423 interests. The value of an interest is not reduced by reason of  
424 the charge against it of any part of the tax, except as provided  
425 in paragraph (3) (a).

426 (2) ALLOCATION OF TAX.—Except as effectively directed in  
427 the governing instrument pursuant to subsection (4), the net tax  
428 attributable to the interests included in the measure of each  
429 tax shall be determined by the proportion that the value of each  
430 interest included in the measure of the tax bears to the total  
431 value of all interests included in the measure of the tax.  
432 Notwithstanding the foregoing provision of this subsection and  
433 except as effectively directed in the governing instrument:

434 (a) The net tax attributable to section 2044 interests  
435 shall be determined in the manner provided for the federal

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436 estate tax in s. 2207A of the Internal Revenue Code, and the  
437 amount so determined shall be deducted from the tax to determine  
438 the net tax attributable to all other interests included in the  
439 measure of the tax.

440 (b) The foreign tax credit allowed with respect to the  
441 federal estate tax shall be allocated among the recipients of  
442 interests finally charged with the payment of the foreign tax in  
443 reduction of any federal estate tax chargeable to the recipients  
444 of the foreign interests, whether or not any federal estate tax  
445 is attributable to the foreign interests. Any excess of the  
446 foreign tax credit shall be applied to reduce proportionately  
447 the net amount of federal estate tax chargeable to the remaining  
448 recipients of the interests included in the measure of the  
449 federal estate tax.

450 (c) The reduction in the net tax attributable to the  
451 deduction for state death taxes allowed by s. 2058 of the  
452 Internal Revenue Code shall be allocated to the recipients of  
453 the interests that produced the deduction. For this purpose, the  
454 reduction in the net tax shall be calculated in the manner  
455 provided for interests other than those described in paragraph  
456 (a).

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

460 1. If the net tax paid to another state is greater than or  
461 equal to the tentative Florida tax attributable to the property  
462 subject to tax in the other state, none of the Florida tax shall  
463 be attributable to that property.

464 2. If the net tax paid to another state is less than the



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465 tentative Florida tax attributable to the property subject to  
466 tax in the other state, the net Florida tax attributable to the  
467 property subject to tax in the other state shall be the excess  
468 of the amount of the tentative Florida tax attributable to the  
469 property over the net tax payable to the other state with  
470 respect to the property.

471 3. Any remaining net Florida tax shall be attributable to  
472 property included in the measure of the Florida tax exclusive of  
473 the property subject to tax in another state.

474 4. The net federal tax attributable to the property subject  
475 to tax in the other state shall be determined as if the property  
476 were located in that state.

477 (e) The net tax attributable to a temporary interest, if  
478 any, is regarded as attributable to the principal that supports  
479 the temporary interest.

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

484 (a) Generation-skipping transfer tax.—Any federal or state  
485 generation-skipping transfer tax shall be apportioned as  
486 provided in s. 2603 of the Internal Revenue Code after the  
487 application of the remaining provisions of this subsection to  
488 taxes other than the generation-skipping transfer tax.

489 (b) Section 2044 interests.—The net tax attributable to  
490 section 2044 interests shall be apportioned among the recipients  
491 of the section 2044 interests in the proportion that the value  
492 of each section 2044 interest bears to the total of all section  
493 2044 interests. The net tax apportioned by this paragraph to

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494 section 2044 interests that pass in the manner described in  
495 paragraph (c) or paragraph (d) shall be apportioned to the  
496 section 2044 interests in the manner described in those  
497 paragraphs before the apportionment of the net tax attributable  
498 to the other interests passing as provided in those paragraphs.  
499 The net tax attributable to the interests other than the section  
500 2044 interests which pass in the manner described in paragraph  
501 (c) or paragraph (d) shall be apportioned only to such other  
502 interests pursuant to those paragraphs.

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

506 1. The net tax attributable to nonresiduary devises shall  
507 be charged to and paid from the residuary estate, whether or not  
508 all interests in the residuary estate are included in the  
509 measure of the tax. If the residuary estate is insufficient to  
510 pay the net tax attributable to all nonresiduary devises, the  
511 balance of the net tax attributable to nonresiduary devises  
512 shall be apportioned among the recipients of the nonresiduary  
513 devises in the proportion that the value of each nonresiduary  
514 devise included in the measure of the tax bears to the total of  
515 all nonresiduary devises included in the measure of the tax.

516 2. The net tax attributable to residuary devises shall be  
517 apportioned among the recipients of the residuary devises  
518 included in the measure of the tax in the proportion that the  
519 value of each residuary devise included in the measure of the  
520 tax bears to the total of all residuary devises included in the  
521 measure of the tax. If the residuary estate is insufficient to  
522 pay the net tax attributable to all residuary devises, the

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523 balance of the net tax attributable to residuary devises shall  
524 be apportioned among the recipients of the nonresiduary devises  
525 in the proportion that the value of each nonresiduary devise  
526 included in the measure of the tax bears to the total of all  
527 nonresiduary devises included in the measure of the tax.

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

532 1. The net tax attributable to nonresiduary interests of  
533 the trust shall be charged to and paid from the residuary  
534 portion of the trust, whether or not all interests in the  
535 residuary portion are included in the measure of the tax. If the  
536 residuary portion is insufficient to pay the net tax  
537 attributable to all nonresiduary interests, the balance of the  
538 net tax attributable to nonresiduary interests shall be  
539 apportioned among the recipients of the nonresiduary interests  
540 in the proportion that the value of each nonresiduary interest  
541 included in the measure of the tax bears to the total of all  
542 nonresiduary interests included in the measure of the tax.

543 2. The net tax attributable to residuary interests of the  
544 trust shall be apportioned among the recipients of the residuary  
545 interests of the trust included in the measure of the tax in the  
546 proportion that the value of each residuary interest included in  
547 the measure of the tax bears to the total of all residuary  
548 interests of the trust included in the measure of the tax. If  
549 the residuary portion is insufficient to pay the net tax  
550 attributable to all residuary interests, the balance of the net  
551 tax attributable to residuary interests shall be apportioned

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552 among the recipients of the nonresiduary interests in the  
553 proportion that the value of each nonresiduary interest included  
554 in the measure of the tax bears to the total of all nonresiduary  
555 interests included in the measure of the tax.

556  
557 Except as provided in paragraph (g), this paragraph applies  
558 separately for each trust.

559 (e) Protected homestead, exempt property, and family  
560 allowance.—

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

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

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

571 c. Class III.—Recipients of nonresiduary devises and  
572 nonresiduary interests that are included in the measure of the  
573 federal estate tax.

574 2. Any net tax apportioned to a class pursuant to this  
575 paragraph shall be apportioned among each recipient in the class  
576 in the proportion that the value of the interest of each bears  
577 to the total value of all interests included in that class. A  
578 tax may not be apportioned under this paragraph to the portion  
579 of any interest applied in satisfaction of the elective share  
580 whether or not included in the measure of the tax. For purposes

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581 of this paragraph, if the value of the interests described in s.  
582 732.2075(1) exceeds the amount of the elective share, the  
583 elective share shall be treated as satisfied first from  
584 interests other than those described in classes I, II, and III,  
585 and to the extent that those interests are insufficient to  
586 satisfy the elective share, from the interests passing to or for  
587 the benefit of the surviving spouse described in classes I, II,  
588 and III, beginning with those described in class I, until the  
589 elective share is satisfied. This paragraph has priority over  
590 paragraphs (a) and (h).

591 3. The balance of the net tax attributable to any interest  
592 in protected homestead, exempt property, and the family  
593 allowance determined under s. 732.403 which is not apportioned  
594 under the preceding provisions of this paragraph shall be  
595 apportioned to the recipients of those interests included in the  
596 measure of the tax in the proportion that the value of each  
597 bears to the total value of those interests included in the  
598 measure of the tax.

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

600 1. If the decedent's estate is the beneficiary of a life  
601 insurance policy, annuity, or contractual right included in the  
602 decedent's gross estate, or is the taker as a result of the  
603 exercise or default in exercise of a general power of  
604 appointment held by the decedent, that interest shall be  
605 regarded as passing under the terms of the decedent's will for  
606 the purposes of paragraph (c) or by intestacy if not disposed of  
607 by will. Additionally, any interest included in the measure of  
608 the tax by reason of s. 2041 of the Internal Revenue Code  
609 passing to the decedent's creditors or the creditors of the

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610 decedent's estate shall be regarded as passing to the decedent's  
611 estate for the purpose of this subparagraph.

612 2. If a trust is the beneficiary of a life insurance  
613 policy, annuity, or contractual right included in the decedent's  
614 gross estate, or is the taker as a result of the exercise or  
615 default in exercise of a general power of appointment held by  
616 the decedent, that interest shall be regarded as passing under  
617 the trust for purposes of paragraph (d).

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

624 1. The decedent's will and revocable trust if the estate is  
625 a beneficiary of the revocable trust or if the revocable trust  
626 is a beneficiary of the estate.

627 2. A revocable trust of the decedent and another revocable  
628 trust of the decedent if either trust is the beneficiary of the  
629 other trust.

630 (h) Other interests.—The net tax that is not apportioned to  
631 interests under paragraphs (b)-(g), including, but not limited  
632 to, the net tax attributable to interests passing by intestacy,  
633 interests applied in satisfaction of the elective share pursuant  
634 to s. 732.2075(2), interests passing by reason of the exercise  
635 or nonexercise of a general power of appointment, jointly held  
636 interests passing by survivorship, life insurance, properties in  
637 which the decedent held a reversionary or revocable interest,  
638 annuities, and contractual rights, shall be apportioned among

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639 the recipients of the remaining interests included in the  
640 measure of the tax in the proportion that the value of each such  
641 interest bears to the total value of all remaining interests  
642 included in the measure of the tax.

643 (i) Assessment of liability by court.—If the court finds  
644 that:

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

649 2. The payment of any tax was not effectively directed in  
650 the governing instrument pursuant to subsection (4) and that  
651 such tax is not apportioned by this subsection, the court may  
652 assess liability for the payment of such tax in the manner that  
653 the court finds equitable.

654 (4) DIRECTION AGAINST APPORTIONMENT.—

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

658 (b) For a direction in a governing instrument to be  
659 effective to direct payment of taxes attributable to property  
660 passing under the governing instrument in a manner different  
661 from that provided in this section, the direction must be  
662 express.

663 (c) For a direction in a governing instrument to be  
664 effective to direct payment of taxes attributable to property  
665 not passing under the governing instrument from property passing  
666 under the governing instrument, the governing instrument must  
667 expressly direct that the property passing under the governing

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668 instrument bear the burden of taxation for property not passing  
669 under the governing instrument. Except as provided in paragraph  
670 (d), a direction in the governing instrument to the effect that  
671 all taxes are to be paid from property passing under the  
672 governing instrument whether attributable to property passing  
673 under the governing instrument or otherwise shall be effective  
674 to direct payment from property passing under the governing  
675 instrument of taxes attributable to property not passing under  
676 the governing instrument.

677 (d) In addition to satisfying the other provisions of this  
678 subsection:

679 1.a. For a direction in the decedent's will or revocable  
680 trust to be effective in waiving the right of recovery provided  
681 in s. 2207A of the Internal Revenue Code for the tax  
682 attributable to section 2044 interests, and for any tax imposed  
683 by Florida based upon such section 2044 interests, the direction  
684 must expressly waive that right of recovery. An express  
685 direction that property passing under the will or revocable  
686 trust bear the tax imposed by s. 2044 of the Internal Revenue  
687 Code is deemed an express waiver of the right of recovery  
688 provided in s. 2207A of the Internal Revenue Code. A reference  
689 to "qualified terminable interest property," "QTIP," or property  
690 in which the decedent had a "qualifying income interest for  
691 life" is deemed to be a reference to property upon which tax is  
692 imposed by s. 2044 of the Internal Revenue Code which is subject  
693 to the right of recovery provided in s. 2207A of the Internal  
694 Revenue Code.

695 b. If property is included in the gross estate pursuant to  
696 ss. 2041 and 2044 of the Internal Revenue Code, the property is



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697 deemed included under s. 2044, and not s. 2041, for purposes of  
698 allocation and apportionment of the tax.

699 2. For a direction in the decedent's will or revocable  
700 trust to be effective in waiving the right of recovery provided  
701 in s. 2207B of the Internal Revenue Code for tax imposed by  
702 reason of s. 2036 of the Internal Revenue Code, and any tax  
703 imposed by Florida based upon s. 2036 of the Internal Revenue  
704 Code, the direction must expressly waive that right of recovery.  
705 An express direction that property passing under the will or  
706 revocable trust bear the tax imposed by s. 2036 of the Internal  
707 Revenue Code is deemed an express waiver of the right of  
708 recovery provided in s. 2207B of the Internal Revenue Code. If  
709 property is included in the gross estate pursuant to ss. 2036  
710 and 2038 of the Internal Revenue Code, the property is deemed  
711 included under s. 2038, not s. 2036, for purposes of allocation  
712 and apportionment of the tax, and there is no right of recovery  
713 under s. 2207B of the Internal Revenue Code.

714 3. A general statement in the decedent's will or revocable  
715 trust waiving all rights of reimbursement or recovery under the  
716 Internal Revenue Code is not an express waiver of the rights of  
717 recovery provided in s. 2207A or s. 2207B of the Internal  
718 Revenue Code.

719 4. For a direction in a governing instrument to be  
720 effective to direct payment of generation-skipping transfer tax  
721 in a manner other than as provided in s. 2603 of the Internal  
722 Revenue Code, and any tax imposed by Florida based on s. 2601 of  
723 the Internal Revenue Code, the direction must specifically  
724 reference the tax imposed by s. 2601 of the Internal Revenue  
725 Code. A reference to the generation-skipping transfer tax or s.

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726 2603 of the Internal Revenue Code is deemed to be a reference to  
727 property upon which tax is imposed by reason of s. 2601 of the  
728 Internal Revenue Code.

729 (e) If the decedent expressly directs by will, the net tax  
730 attributable to property over which the decedent held a general  
731 power of appointment may be determined in a manner other than as  
732 provided in subsection (2) if the net tax attributable to that  
733 property does not exceed the difference between the total net  
734 tax determined pursuant to subsection (2), determined without  
735 regard to this paragraph, and the total net tax that would have  
736 been payable if the value of the property subject to such power  
737 of appointment had not been included in the decedent's gross  
738 estate. If tax is attributable to one or more section 2044  
739 interests pursuant to subsection (2), the net tax attributable  
740 to the section 2044 interests shall be calculated before the  
741 application of this paragraph unless the decedent expressly  
742 directs otherwise by will.

743 (f) If the decedent's will expressly provides that the tax  
744 is to be apportioned as provided in the decedent's revocable  
745 trust by specific reference to the revocable trust, an express  
746 direction in the revocable trust is deemed to be a direction  
747 contained in the will as well as the revocable trust.

748 (g) An express direction in the decedent's will to pay tax  
749 from the decedent's revocable trust by specific reference to the  
750 revocable trust is effective unless a contrary express direction  
751 is contained in the revocable trust.

752 (h) If governing instruments contain effective directions  
753 that conflict as to payment of taxes, the most recently executed  
754 tax apportionment provision controls to the extent of the

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755 conflict. For the purpose of this subsection, if a will or other  
756 governing instrument is amended, the date of the codicil to the  
757 will or amendment to the governing instrument is regarded as the  
758 date of the will or other governing instrument only if the  
759 codicil or amendment contains an express tax apportionment  
760 provision or an express modification of the tax apportionment  
761 provision. A general statement ratifying or republishing all  
762 provisions not otherwise amended does not meet this condition.  
763 If the decedent's will and another governing instrument were  
764 executed on the same date, the will is deemed executed after the  
765 other governing instrument. The earlier conflicting governing  
766 instrument controls as to any tax remaining unpaid after the  
767 application of the later conflicting governing instrument.

768 (i) A grant of permission or authority in a governing  
769 instrument to request payment of tax from property passing under  
770 another governing instrument is not a direction apportioning the  
771 tax to the property passing under the other governing  
772 instrument. A grant of permission or authority in a governing  
773 instrument to pay tax attributable to property not passing under  
774 the governing instrument is not a direction apportioning the tax  
775 to property passing under the governing instrument.

776 (j) This section applies to any tax remaining to be paid  
777 after the application of any effective express directions. An  
778 effective express direction for payment of tax on specific  
779 property or a type of property in a manner different from that  
780 provided in this section is not effective as an express  
781 direction for payment of tax on other property or other types of  
782 property included in the measure of the tax.

783 (5) TRANSFER OF PROPERTY.—A personal representative or

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784 fiduciary shall not be required to transfer to a recipient any  
785 property reasonably anticipated to be necessary for the payment  
786 of taxes. Further, the personal representative or fiduciary is  
787 not required to transfer any property to the recipient until the  
788 amount of the tax due from the recipient is paid by the  
789 recipient. If property is transferred before final apportionment  
790 of the tax, the recipient shall provide a bond or other security  
791 for his or her apportioned liability in the amount and form  
792 prescribed by the personal representative or fiduciary.

793 (6) ORDER OF APPORTIONMENT.—

794 (a) The personal representative may petition at any time  
795 for an order of apportionment. If administration of the  
796 decedent's estate has not commenced at any time after 90 days  
797 from the decedent's death, any fiduciary may petition for an  
798 order of apportionment in the court in which venue would be  
799 proper for administration of the decedent's estate. Notice of  
800 the petition for order of apportionment must be served on all  
801 interested persons in the manner provided for service of formal  
802 notice. At any time after 6 months from the decedent's death,  
803 any recipient may petition the court for an order of  
804 apportionment.

805 (b) The court shall determine all issues concerning  
806 apportionment. If the tax to be apportioned has not been finally  
807 determined, the court shall determine the probable tax due or to  
808 become due from all interested persons, apportion the probable  
809 tax, and retain jurisdiction over the parties and issues to  
810 modify the order of apportionment as appropriate until after the  
811 tax is finally determined.

812 (7) DEFICIENCY.—

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813 (a) If the personal representative or fiduciary does not  
814 have possession of sufficient property otherwise distributable  
815 to the recipient to pay the tax apportioned to the recipient,  
816 whether under this section, the Internal Revenue Code, or the  
817 governing instrument, if applicable, the personal representative  
818 or fiduciary shall recover the deficiency in tax so apportioned  
819 to the recipient:

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

822 2. To the extent of any deficiency in collection from the  
823 fiduciary, or to the extent collection from the fiduciary is  
824 excused pursuant to subsection (8) and in all other cases, from  
825 the recipient of the property to which the tax is apportioned,  
826 unless relieved of this duty as provided in subsection (8).

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

829 (c) In any action for the enforcement of an order of  
830 apportionment, the court shall award taxable costs as in  
831 chancery actions, including reasonable attorney fees, and may  
832 award penalties and interest on the unpaid tax in accordance  
833 with equitable principles.

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

840 (8) RELIEF FROM DUTY.—

841 (a) A personal representative or fiduciary who has the duty

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842 under this section of collecting the apportioned tax from  
843 recipients may be relieved of the duty to collect the tax by an  
844 order of the court finding that:

845 1. The estimated court costs and attorney fees in  
846 collecting the apportioned tax from a person against whom the  
847 tax has been apportioned will approximate or exceed the amount  
848 of the recovery;

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

852 3. It is impracticable to enforce contribution of the  
853 apportioned tax against a person against whom the tax has been  
854 apportioned in view of the improbability of obtaining a judgment  
855 or the improbability of collection under any judgment that might  
856 be obtained, or otherwise.

857 (b) A personal representative or fiduciary is not liable  
858 for failure to attempt to enforce collection if the personal  
859 representative or fiduciary reasonably believes that collection  
860 would have been economically impracticable.

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

865 (10) CONTRIBUTION.—This section does not limit the right of  
866 any person who has paid more than the amount of the tax  
867 apportionable to that person, calculated as if all apportioned  
868 amounts would be collected, to obtain contribution from those  
869 who have not paid the full amount of the tax apportionable to  
870 them, calculated as if all apportioned amounts would be

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871 collected, and that right is hereby conferred. In any action to  
872 enforce contribution, the court shall award taxable costs as in  
873 chancery actions, including reasonable attorney fees.

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

879 Section 7. Section 736.1005, Florida Statutes, is amended  
880 to read:

881 736.1005 Attorney ~~attorney's~~ fees for services to the  
882 trust.—

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

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

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

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

899 1. The relative impact of an assessment on the estimated

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900 value of each person's part of the trust.

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

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

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

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

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

914 7. Whether a person whose part of the trust is to be  
915 assessed unjustly caused an increase in the amount of attorney  
916 fees incurred by the trustee or another person in connection  
917 with the proceeding.

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

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

922 (3) Except when a trustee's interest may be adverse in a  
923 particular matter, the attorney shall give reasonable notice in  
924 writing to the trustee of the attorney's retention by an  
925 interested person and the attorney's entitlement to fees  
926 pursuant to this section. A court may reduce any fee award for  
927 services rendered by the attorney prior to the date of actual  
928 notice to the trustee, if the actual notice date is later than a



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929 date of reasonable notice. In exercising this discretion, the  
930 court may exclude compensation for services rendered after the  
931 reasonable notice date but before ~~prior to~~ the date of actual  
932 notice.

933 Section 8. Section 736.1006, Florida Statutes, is amended  
934 to read:

935 736.1006 Costs in trust proceedings.-

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

938 (2) If Whenever costs are to be paid from out of the trust  
939 under subsection (1) or s. 733.106(4) (a), the court, in its  
940 discretion, may direct from what part of the trust the costs  
941 shall be paid. All or any part of the costs to be paid from the  
942 trust may be assessed against one or more persons' part of the  
943 trust in such proportions as the court finds to be just and  
944 proper. In the exercise of its discretion, the court may  
945 consider the factors set forth in s. 736.1005(2).

946 Section 9. The amendments made by this act to ss. 733.212,  
947 733.2123, 733.3101, and 733.504, Florida Statutes, apply to  
948 proceedings commenced on or after July 1, 2015. The law in  
949 effect before July 1, 2015, applies to proceedings commenced  
950 before that date.

951 Section 10. (1) The amendment made by this act to s.  
952 733.817(1) (g) and (2) (c), Florida Statutes, is remedial in  
953 nature, is intended to clarify existing law, and applies  
954 retroactively to all proceedings pending or commenced on or  
955 after July 1, 2015, in which the apportionment of taxes has not  
956 been finally determined or agreed for the estates of decedents  
957 who die after December 31, 2004.

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

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

969 Section 11. The amendments made by this act to ss. 733.106,  
970 736.1005, and 736.1006, Florida Statutes, apply to proceedings  
971 commenced on or after July 1, 2015. The law in effect before  
972 July 1, 2015, applies to proceedings commenced before that date.

973 Section 12. This act shall take effect July 1, 2015.