

By the Committees on Banking and Insurance; and Judiciary; and  
Senator Passidomo

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1                                   A bill to be entitled  
2       An act relating to estates; amending s. 732.2025,  
3       F.S.; conforming cross-references; amending s.  
4       732.2035, F.S.; providing that a decedent's property  
5       interest in the protected homestead is included in the  
6       elective estate; amending s. 732.2045, F.S.; revising  
7       the circumstances under which the decedent's property  
8       interest in the protected homestead is excluded from  
9       the elective estate; amending s. 732.2055, F.S.;  
10      providing for the valuation of the decedent's  
11      protected homestead under certain circumstances;  
12      amending s. 732.2075, F.S.; conforming cross-  
13      references; amending s. 732.2085, F.S.; requiring the  
14      payment of interest on any unpaid portion of a  
15      person's required contribution toward the elective  
16      share with respect to certain property; amending s.  
17      732.2095, F.S.; revising provisions relating to the  
18      valuation of a surviving spouse's interest in property  
19      to include protected homestead; conforming cross-  
20      references; amending s. 732.2115, F.S.; conforming a  
21      cross-reference; amending s. 732.2135, F.S.; revising  
22      the period within which a specified person may  
23      petition the court for an extension of time for making  
24      an election; removing a provision authorizing  
25      assessment of attorney fees and costs if an election  
26      is made in bad faith; amending s. 732.2145, F.S.;  
27      requiring the payment of interest on any unpaid  
28      portion of a person's required contribution toward the  
29      elective share after a certain date; creating s.

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30 732.2151, F.S.; providing for the award of fees and  
31 costs in certain elective share proceedings; providing  
32 that a court may direct payment from certain sources;  
33 providing applicability; amending s. 738.606, F.S.;  
34 providing that a surviving spouse may require a  
35 trustee of a marital or elective share trust to make  
36 property productive of income; providing  
37 applicability; providing an effective date.  
38

39 Be It Enacted by the Legislature of the State of Florida:  
40

41 Section 1. Subsections (1) and (9) of section 732.2025,  
42 Florida Statutes, are amended to read:

43 732.2025 Definitions.—As used in ss. 732.2025-732.2155, the  
44 term:

45 (1) "Direct recipient" means the decedent's probate estate  
46 and any other person who receives property included in the  
47 elective estate by transfer from the decedent, including  
48 transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right  
49 of survivorship, or by beneficiary designation under a governing  
50 instrument. For this purpose, a beneficiary of an insurance  
51 policy on the decedent's life, the net cash surrender value of  
52 which is included in the elective estate, is treated as having  
53 received property included in the elective estate. In the case  
54 of property held in trust, "direct recipient" includes the  
55 trustee but excludes the beneficiaries of the trust.

56 (9) "Revocable trust" means a trust that is includable in  
57 the elective estate under s. 732.2035(5) ~~s. 732.2035(4)~~.

58 Section 2. Section 732.2035, Florida Statutes, is amended

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59 to read:

60 732.2035 Property entering into elective estate.—Except as  
61 provided in s. 732.2045, the elective estate consists of the sum  
62 of the values as determined under s. 732.2055 of the following  
63 property interests:

64 (1) The decedent's probate estate.

65 (2) The decedent's interest in property which constitutes  
66 the protected homestead of the decedent.

67 (3) The decedent's ownership interest in accounts or  
68 securities registered in "Pay On Death," "Transfer On Death,"  
69 "In Trust For," or coownership with right of survivorship form.  
70 For this purpose, "decedent's ownership interest" means, in the  
71 case of accounts or securities held in tenancy by the entirety,  
72 one-half of the value of the account or security, and in all  
73 other cases, that portion of the accounts or securities which  
74 the decedent had, immediately before death, the right to  
75 withdraw or use without the duty to account to any person.

76 (4)~~(3)~~ The decedent's fractional interest in property,  
77 other than property described in subsection (3)~~(2)~~ or subsection  
78 (8)~~(7)~~, held by the decedent in joint tenancy with right of  
79 survivorship or in tenancy by the entirety. For this purpose,  
80 "decedent's fractional interest in property" means the value of  
81 the property divided by the number of tenants.

82 (5)~~(4)~~ That portion of property, other than property  
83 described in subsection (2) and subsection (3), transferred by  
84 the decedent to the extent that at the time of the decedent's  
85 death the transfer was revocable by the decedent alone or in  
86 conjunction with any other person. This subsection does not  
87 apply to a transfer that is revocable by the decedent only with

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88 the consent of all persons having a beneficial interest in the  
89 property.

90 (6) (a) ~~(5) (a)~~ That portion of property, other than property  
91 described in subsection (2) ~~(3)~~, subsection (4), subsection (5),  
92 or subsection (8) ~~(7)~~, transferred by the decedent to the extent  
93 that at the time of the decedent's death:

94 1. The decedent possessed the right to, or in fact enjoyed  
95 the possession or use of, the income or principal of the  
96 property; or

97 2. The principal of the property could, in the discretion  
98 of any person other than the spouse of the decedent, be  
99 distributed or appointed to or for the benefit of the decedent.

100

101 In the application of this subsection, a right to payments under  
102 a commercial or private annuity, an annuity trust, a unitrust,  
103 or a similar arrangement shall be treated as a right to that  
104 portion of the income of the property necessary to equal the  
105 annuity, unitrust, or other payment.

106 (b) The amount included under this subsection is:

107 1. With respect to subparagraph (a)1., the value of the  
108 portion of the property to which the decedent's right or  
109 enjoyment related, to the extent the portion passed to or for  
110 the benefit of any person other than the decedent's probate  
111 estate; and

112 2. With respect to subparagraph (a)2., the value of the  
113 portion subject to the discretion, to the extent the portion  
114 passed to or for the benefit of any person other than the  
115 decedent's probate estate.

116 (c) This subsection does not apply to any property if the

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117 decedent's only interests in the property are that:

118 1. The property could be distributed to or for the benefit  
119 of the decedent only with the consent of all persons having a  
120 beneficial interest in the property; or

121 2. The income or principal of the property could be  
122 distributed to or for the benefit of the decedent only through  
123 the exercise or in default of an exercise of a general power of  
124 appointment held by any person other than the decedent; or

125 3. The income or principal of the property is or could be  
126 distributed in satisfaction of the decedent's obligation of  
127 support; or

128 4. The decedent had a contingent right to receive  
129 principal, other than at the discretion of any person, which  
130 contingency was beyond the control of the decedent and which had  
131 not in fact occurred at the decedent's death.

132 (7)~~(6)~~ The decedent's beneficial interest in the net cash  
133 surrender value immediately before death of any policy of  
134 insurance on the decedent's life.

135 (8)~~(7)~~ The value of amounts payable to or for the benefit  
136 of any person by reason of surviving the decedent under any  
137 public or private pension, retirement, or deferred compensation  
138 plan, or any similar arrangement, other than benefits payable  
139 under the federal Railroad Retirement Act or the federal Social  
140 Security System. In the case of a defined contribution plan as  
141 defined in s. 414(i) of the Internal Revenue Code of 1986, as  
142 amended, this subsection shall not apply to the excess of the  
143 proceeds of any insurance policy on the decedent's life over the  
144 net cash surrender value of the policy immediately before the  
145 decedent's death.

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146        (9)~~(8)~~ Property that was transferred during the 1-year  
147 period preceding the decedent's death as a result of a transfer  
148 by the decedent if the transfer was either of the following  
149 types:

150            (a) Any property transferred as a result of the termination  
151 of a right or interest in, or power over, property that would  
152 have been included in the elective estate under subsection  
153 (5)~~(4)~~ or subsection (6)~~(5)~~ if the right, interest, or power had  
154 not terminated until the decedent's death.

155            (b) Any transfer of property to the extent not otherwise  
156 included in the elective estate, made to or for the benefit of  
157 any person, except:

158            1. Any transfer of property for medical or educational  
159 expenses to the extent it qualifies for exclusion from the  
160 United States gift tax under s. 2503(e) of the Internal Revenue  
161 Code, as amended; and

162            2. After the application of subparagraph 1., the first  
163 annual exclusion amount of property transferred to or for the  
164 benefit of each donee during the 1-year period, but only to the  
165 extent the transfer qualifies for exclusion from the United  
166 States gift tax under s. 2503(b) or (c) of the Internal Revenue  
167 Code, as amended. For purposes of this subparagraph, the term  
168 "annual exclusion amount" means the amount of one annual  
169 exclusion under s. 2503(b) or (c) of the Internal Revenue Code,  
170 as amended.

171            (c) Except as provided in paragraph (d), for purposes of  
172 this subsection:

173            1. A "termination" with respect to a right or interest in  
174 property occurs when the decedent transfers or relinquishes the

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175 right or interest, and, with respect to a power over property, a  
176 termination occurs when the power terminates by exercise,  
177 release, lapse, default, or otherwise.

178 2. A distribution from a trust the income or principal of  
179 which is subject to subsection (5)~~(4)~~, subsection (6)~~(5)~~, or  
180 subsection (10)~~(9)~~ shall be treated as a transfer of property by  
181 the decedent and not as a termination of a right or interest in,  
182 or a power over, property.

183 (d) Notwithstanding anything in paragraph (c) to the  
184 contrary:

185 1. A "termination" with respect to a right or interest in  
186 property does not occur when the right or interest terminates by  
187 the terms of the governing instrument unless the termination is  
188 determined by reference to the death of the decedent and the  
189 court finds that a principal purpose for the terms of the  
190 instrument relating to the termination was avoidance of the  
191 elective share.

192 2. A distribution from a trust is not subject to this  
193 subsection if the distribution is required by the terms of the  
194 governing instrument unless the event triggering the  
195 distribution is determined by reference to the death of the  
196 decedent and the court finds that a principal purpose of the  
197 terms of the governing instrument relating to the distribution  
198 is avoidance of the elective share.

199 (10)~~(9)~~ Property transferred in satisfaction of the  
200 elective share.

201 Section 3. Paragraph (i) of subsection (1) of section  
202 732.2045, Florida Statutes, is amended to read:

203 732.2045 Exclusions and overlapping application.—

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204 (1) EXCLUSIONS.—Section 732.2035 does not apply to:

205 (i) Property which constitutes the protected homestead of  
206 the decedent if the surviving spouse validly waived his or her  
207 homestead rights as provided under s. 732.702, or otherwise  
208 under applicable law, and such spouse did not receive any  
209 interest in the protected homestead upon the decedent's death  
210 ~~whether held by the decedent or by a trust at the decedent's~~  
211 ~~death.~~

212 Section 4. Section 732.2055, Florida Statutes, is amended  
213 to read:

214 732.2055 Valuation of the elective estate.—For purposes of  
215 s. 732.2035, "value" means:

216 (1) (a) In the case of protected homestead:

217 1. If the surviving spouse receives a fee simple interest,  
218 the fair market value of the protected homestead on the date of  
219 the decedent's death.

220 2. If the spouse takes a life estate as provided in s.  
221 732.401(1), or validly elects to take an undivided one-half  
222 interest as a tenant in common as provided in s. 732.401(2),  
223 one-half of the fair market value of the protected homestead on  
224 the date of the decedent's death.

225 3. If the surviving spouse validly waived his or her  
226 homestead rights as provided under s. 732.702 or otherwise under  
227 applicable law, but nevertheless receives an interest in the  
228 protected homestead, other than an interest described in s.  
229 732.401, including an interest in trust, the value of the  
230 spouse's interest is determined as property interests that are  
231 not protected homestead.

232 (b) For purposes of this subsection, fair market value



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233 shall be calculated by deducting from the total value of the  
234 property all mortgages, liens, and security interests to which  
235 the protected homestead is subject and for which the decedent is  
236 liable, but only to the extent that such amount is not otherwise  
237 deducted as a claim paid or payable from the elective estate.

238 (2) In the case of any policy of insurance on the  
239 decedent's life includable under s. 732.2035(5), (6), or (7) ~~s.~~  
240 ~~732.2035(4), (5), or (6)~~, the net cash surrender value of the  
241 policy immediately before the decedent's death.

242 (3)~~(2)~~ In the case of any policy of insurance on the  
243 decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8)~~,  
244 the net cash surrender value of the policy on the date of the  
245 termination or transfer.

246 (4)~~(3)~~ In the case of amounts includable under s.  
247 732.2035(8) ~~s. 732.2035(7)~~, the transfer tax value of the  
248 amounts on the date of the decedent's death.

249 (5)~~(4)~~ In the case of other property included under s.  
250 732.2035(9) ~~s. 732.2035(8)~~, the fair market value of the  
251 property on the date of the termination or transfer, computed  
252 after deducting any mortgages, liens, or security interests on  
253 the property as of that date.

254 (6)~~(5)~~ In the case of all other property, the fair market  
255 value of the property on the date of the decedent's death,  
256 computed after deducting from the total value of the property:

257 (a) All claims paid or payable from the elective estate;  
258 and

259 (b) To the extent they are not deducted under paragraph  
260 (a), all mortgages, liens, or security interests on the  
261 property.

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262 Section 5. Paragraph (b) of subsection (1), paragraph (b)  
263 of subsection (2), and paragraph (c) of subsection (3) of  
264 section 732.2075, Florida Statutes, are amended to read:

265 732.2075 Sources from which elective share payable;  
266 abatement.—

267 (1) Unless otherwise provided in the decedent's will or, in  
268 the absence of a provision in the decedent's will, in a trust  
269 referred to in the decedent's will, the following are applied  
270 first to satisfy the elective share:

271 (b) To the extent paid to or for the benefit of the  
272 surviving spouse, amounts payable under any plan or arrangement  
273 described in s. 732.2035(8) ~~s. 732.2035(7)~~.

274 (2) If, after the application of subsection (1), the  
275 elective share is not fully satisfied, the unsatisfied balance  
276 shall be allocated entirely to one class of direct recipients of  
277 the remaining elective estate and apportioned among those  
278 recipients, and if the elective share amount is not fully  
279 satisfied, to the next class of direct recipients, in the  
280 following order of priority, until the elective share amount is  
281 satisfied:

282 (b) *Class 2.*—Recipients of property interests, other than  
283 protected charitable interests, included in the elective estate  
284 under s. 732.2035(3), (4), or (7) ~~s. 732.2035(2), (3), or (6)~~  
285 and, to the extent the decedent had at the time of death the  
286 power to designate the recipient of the property, property  
287 interests, other than protected charitable interests, included  
288 under s. 732.2035(6) and (8) ~~s. 732.2035(5) and (7)~~.

289  
290 For purposes of this subsection, a protected charitable interest

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291 is any interest for which a charitable deduction with respect to  
292 the transfer of the property was allowed or allowable to the  
293 decedent or the decedent's spouse under the United States gift  
294 or income tax laws.

295 (3) If, after the application of subsections (1) and (2),  
296 the elective share amount is not fully satisfied, the additional  
297 amount due to the surviving spouse shall be determined and  
298 satisfied as follows:

299 (c) If there is more than one trust to which this  
300 subsection could apply, unless otherwise provided in the  
301 decedent's will or, in the absence of a provision in the  
302 decedent's will, in a trust referred to in the decedent's will,  
303 the unsatisfied balance shall be apportioned pro rata to all  
304 such trusts in proportion to the value, as determined under s.  
305 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's  
306 beneficial interests in the trusts.

307 Section 6. Paragraph (a) of subsection (3) of section  
308 732.2085, Florida Statutes, is amended to read:

309 732.2085 Liability of direct recipients and beneficiaries.—

310 (3) If a person pays the value of the property on the date  
311 of a sale or exchange or contributes all of the property  
312 received, as provided in paragraph (2)(b):

313 (a) No further contribution toward satisfaction of the  
314 elective share shall be required with respect to that property.  
315 However, if a person's required contribution is not fully paid  
316 by 2 years after the date of the death of the decedent, such  
317 person must also pay interest at the statutory rate on any  
318 portion of the required contribution that remains unpaid.

319 Section 7. Section 732.2095, Florida Statutes, is amended

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320 to read:

321 732.2095 Valuation of property used to satisfy elective  
322 share.—

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

324 (a) "Applicable valuation date" means:

325 1. In the case of transfers in satisfaction of the elective  
326 share, the date of the decedent's death.

327 2. In the case of property held in a qualifying special  
328 needs trust on the date of the decedent's death, the date of the  
329 decedent's death.

330 3. In the case of other property irrevocably transferred to  
331 or for the benefit of the surviving spouse during the decedent's  
332 life, the date of the transfer.

333 4. In the case of property distributed to the surviving  
334 spouse by the personal representative, the date of distribution.

335 5. Except as provided in subparagraphs 1., 2., and 3., in  
336 the case of property passing in trust for the surviving spouse,  
337 the date or dates the trust is funded in satisfaction of the  
338 elective share.

339 6. In the case of property described in s. 732.2035(2),  
340 (3), or (4) ~~s. 732.2035(2) or (3)~~, the date of the decedent's  
341 death.

342 7. In the case of proceeds of any policy of insurance  
343 payable to the surviving spouse, the date of the decedent's  
344 death.

345 8. In the case of amounts payable to the surviving spouse  
346 under any plan or arrangement described in s. 732.2035(8) ~~s.~~  
347 ~~732.2035(7)~~, the date of the decedent's death.

348 9. In all other cases, the date of the decedent's death or

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349 the date the surviving spouse first comes into possession of the  
350 property, whichever occurs later.

351 (b) "Qualifying power of appointment" means a general power  
352 of appointment that is exercisable alone and in all events by  
353 the decedent's spouse in favor of the spouse or the spouse's  
354 estate. For this purpose, a general power to appoint by will is  
355 a qualifying power of appointment if the power may be exercised  
356 by the spouse in favor of the spouse's estate without the  
357 consent of any other person.

358 (c) "Qualifying invasion power" means a power held by the  
359 surviving spouse or the trustee of an elective share trust to  
360 invade trust principal for the health, support, and maintenance  
361 of the spouse. The power may, but need not, provide that the  
362 other resources of the spouse are to be taken into account in  
363 any exercise of the power.

364 (2) Except as provided in this subsection, the value of  
365 property for purposes of s. 732.2075 is the fair market value of  
366 the property on the applicable valuation date.

367 (a) If the surviving spouse has a life interest in property  
368 not in trust that entitles the spouse to the use of the property  
369 for life, including, without limitation, a life estate in  
370 protected homestead as provided in s. 732.401(1), the value of  
371 the spouse's interest is one-half of the value of the property  
372 on the applicable valuation date.

373 (b) If the surviving spouse elects to take an undivided  
374 one-half interest in protected homestead as a tenant in common  
375 as provided in s. 732.401(2), the value of the spouse's interest  
376 is one-half of the value of the property on the applicable  
377 valuation date.

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378       (c) If the surviving spouse validly waived his or her  
379 homestead rights as provided in s. 732.702 or otherwise under  
380 applicable law but nevertheless receives an interest in  
381 protected homestead, other than an interest described in s.  
382 732.401, including, without limitation, an interest in trust,  
383 the value of the spouse's interest is determined as property  
384 interests that are not protected homestead.

385       ~~(d)~~ ~~(b)~~ If the surviving spouse has an interest in a trust,  
386 or portion of a trust, which meets the requirements of an  
387 elective share trust, the value of the spouse's interest is a  
388 percentage of the value of the principal of the trust, or trust  
389 portion, on the applicable valuation date as follows:

390           1. One hundred percent if the trust instrument includes  
391 both a qualifying invasion power and a qualifying power of  
392 appointment.

393           2. Eighty percent if the trust instrument includes a  
394 qualifying invasion power but no qualifying power of  
395 appointment.

396           3. Fifty percent in all other cases.

397       ~~(e)~~ ~~(e)~~ If the surviving spouse is a beneficiary of a trust,  
398 or portion of a trust, which meets the requirements of a  
399 qualifying special needs trust, the value of the principal of  
400 the trust, or trust portion, on the applicable valuation date.

401       ~~(f)~~ ~~(d)~~ If the surviving spouse has an interest in a trust  
402 that does not meet the requirements of either an elective share  
403 trust or a qualifying special needs trust, the value of the  
404 spouse's interest is the transfer tax value of the interest on  
405 the applicable valuation date; however, the aggregate value of  
406 all of the spouse's interests in the trust shall not exceed one-

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407 half of the value of the trust principal on the applicable  
408 valuation date.

409 (g)~~(e)~~ In the case of any policy of insurance on the  
410 decedent's life the proceeds of which are payable outright or to  
411 a trust described in paragraph (d)~~(b)~~, paragraph (e)~~(e)~~, or  
412 paragraph (f)~~(d)~~, the value of the policy for purposes of s.  
413 732.2075 and paragraphs (d), (e), and (f) ~~(b), (c), and (d)~~ is  
414 the net proceeds.

415 (h)~~(f)~~ In the case of a right to one or more payments from  
416 an annuity or under a similar contractual arrangement or under  
417 any plan or arrangement described in s. 732.2035(8) ~~s.~~  
418 ~~732.2035(7)~~, the value of the right to payments for purposes of  
419 s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (c), and (d)~~  
420 is the transfer tax value of the right on the applicable  
421 valuation date.

422 Section 8. Section 732.2115, Florida Statutes, is amended  
423 to read:

424 732.2115 Protection of payors and other third parties.—  
425 Although a property interest is included in the decedent's  
426 elective estate under s. 732.2035(3)-(9) ~~s. 732.2035(2)-(8)~~, a  
427 payor or other third party is not liable for paying,  
428 distributing, or transferring the property to a beneficiary  
429 designated in a governing instrument, or for taking any other  
430 action in good faith reliance on the validity of a governing  
431 instrument.

432 Section 9. Section 732.2135, Florida Statutes, is amended  
433 to read:

434 732.2135 Time of election; extensions; withdrawal.—

435 (1) Except as provided in subsection (2), the election must

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436 be filed on or before the earlier of the date that is 6 months  
437 after the date of service of a copy of the notice of  
438 administration on the surviving spouse, or an attorney in fact  
439 or guardian of the property of the surviving spouse, or the date  
440 that is 2 years after the date of the decedent's death.

441 (2) Within the period provided in subsection (1), or 40  
442 days after the date of termination of any proceeding which  
443 affects the amount the spouse is entitled to receive under s.  
444 732.2075(1), whichever is later, but no more than 2 years after  
445 the decedent's death, the surviving spouse or an attorney in  
446 fact or guardian of the property of the surviving spouse may  
447 petition the court for an extension of time for making an  
448 election. For good cause shown, the court may extend the time  
449 for election. If the court grants the petition for an extension,  
450 the election must be filed within the time allowed by the  
451 extension.

452 (3) The surviving spouse or an attorney in fact, guardian  
453 of the property, or personal representative of the surviving  
454 spouse may withdraw an election at any time within 8 months  
455 after the decedent's death and before the court's order of  
456 contribution.

457 (4) A petition for an extension of the time for making the  
458 election or for approval to make the election shall toll the  
459 time for making the election.

460 ~~(5) If the court determines that an election is made or~~  
461 ~~pursued in bad faith, the court may assess attorney's fees and~~  
462 ~~costs against the surviving spouse or the surviving spouse's~~  
463 ~~estate.~~

464 Section 10. Subsection (1) of section 732.2145, Florida



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465 Statutes, is amended to read:

466       732.2145 Order of contribution; personal representative's  
467 duty to collect contribution.—

468       (1) The court shall determine the elective share and  
469 contribution. Any amount of the elective share not satisfied  
470 within 2 years of the date of death of the decedent shall bear  
471 interest at the statutory rate until fully satisfied, even if an  
472 order of contribution has not yet been entered. Contributions  
473 shall bear interest at the statutory rate beginning 90 days  
474 after the order of contribution. The order is prima facie  
475 correct in proceedings in any court or jurisdiction.

476       Section 11. Section 732.2151, Florida Statutes, is created  
477 to read:

478       732.2151 Award of fees and costs in elective share  
479 proceedings.—

480       (1) The court may award taxable costs as in chancery  
481 actions, including attorney fees, in any proceeding under this  
482 part in which there is an objection to or dispute over:

483       (a) The entitlement to or the amount of the elective share;

484       (b) The property interests included in the elective estate,  
485 or its value; or

486       (c) The satisfaction of the elective share.

487       (2) When awarding taxable costs or attorney fees, the court  
488 may do one or more of the following:

489       (a) Direct payment from the estate.

490       (b) Direct payment from a party's interest in the elective  
491 share or the elective estate.

492       (c) Enter a judgement that can be satisfied from other  
493 property of the party.

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494 (3) In addition to any of the fees that may be awarded  
495 under subsections (1) and (2), if the personal representative  
496 does not file a petition to determine the amount of the elective  
497 share as required by the Florida Probate Rules, the electing  
498 spouse or the attorney in fact, guardian of the property, or  
499 personal representative of the electing spouse may be awarded  
500 from the estate reasonable costs, including attorney fees,  
501 incurred in connection with the preparation and filing of the  
502 petition.

503 (4) This section applies to all proceedings commenced on or  
504 after July 1, 2017, without regard to the date of the decedent's  
505 death.

506 Section 12. Subsection (1) of section 738.606, Florida  
507 Statutes, is amended to read:

508 738.606 Property not productive of income.—

509 (1) If a marital deduction under the Internal Revenue Code  
510 or comparable law of any state is allowed for all or part of a  
511 trust, or if assets are transferred to a trust that satisfies  
512 the requirements of s. 732.2025(2)(a) and (c), and such assets  
513 have been used in whole or in part to satisfy an election by a  
514 surviving spouse under s. 732.2125 and ~~the income of which must~~  
515 ~~be distributed to the grantor's spouse and the assets of which~~  
516 consist ~~substantially~~ of property that, in the aggregate, does  
517 not provide the spouse with sufficient income from or use of the  
518 trust assets, and if ~~the~~ amounts the trustee transfers from  
519 principal to income under s. 738.104 and distributes to the  
520 spouse from principal pursuant to the terms of the trust are  
521 insufficient to provide the spouse with the beneficial enjoyment  
522 required to obtain the marital deduction, even though, in the

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523 case of an elective share trust, a marital deduction is not made  
524 or is only partially made, the spouse may require the trustee of  
525 such marital trust or elective share trust to make property  
526 productive of income, convert property within a reasonable time,  
527 or exercise the power conferred by ss. 738.104 and 738.1041. The  
528 trustee may decide which action or combination of actions to  
529 take.

530 Section 13. Applicability.—Except as otherwise provided in  
531 this act, the amendments made by this act apply to decedents  
532 whose death occurred on or after July 1, 2017.

533 Section 14. This act shall take effect July 1, 2017.