

1 A bill to be entitled
2 An act relating to estates; amending s. 733.106, F.S.;
3 authorizing the court to direct payment from a certain
4 part of the estate or from a trust under certain
5 circumstances; authorizing certain costs and fees to
6 be assessed against one or more persons' part of the
7 trust; specifying factors that the court may consider
8 in directing the assessment of such costs and fees;
9 authorizing a court to assess costs and fees without
10 finding that the person engaged in specified wrongful
11 acts; amending s. 733.212, F.S.; revising the required
12 content for a notice of administration; revising
13 provisions that require an interested person who has
14 been served a notice of administration to file certain
15 objections in an estate matter within a specified
16 period; providing that such period may only be
17 extended for certain estoppel; requiring objections
18 that are not barred to be filed by a specified date;
19 deleting references to objections based upon the
20 qualifications of a personal representative; amending
21 s. 733.2123, F.S.; conforming provisions to changes
22 made by the act; amending s. 733.3101, F.S.; requiring
23 a personal representative to resign immediately if he
24 or she knows that he or she was not qualified to act
25 at the time of appointment; requiring a personal
26 representative who was qualified to act at such

27 | appointment to file a notice if no longer qualified;
28 | authorizing an interested person within a specified
29 | period to request the removal of a personal
30 | representative who files such notice; providing that a
31 | personal representative is liable for costs and
32 | attorney fees incurred in a removal proceeding under
33 | certain circumstances; defining the term "qualified";
34 | amending s. 733.504, F.S.; requiring a personal
35 | representative to be removed and the letters of
36 | administration revoked if he or she was not qualified
37 | to act at the time of appointment; amending s.
38 | 733.817, F.S.; providing and revising definitions;
39 | deleting a provision that exempts an interest in
40 | protected homestead from the apportionment of taxes;
41 | providing for the payment of taxes on protected
42 | homestead family allowance and exempt property by
43 | certain other property to the extent such other
44 | property is sufficient; revising the allocation of
45 | taxes; revising the apportionment of the net tax
46 | attributable to specified interests; authorizing a
47 | court to assess liability in an equitable manner under
48 | certain circumstances; providing that a governing
49 | instrument may not direct that taxes be paid from
50 | property other than property passing under the
51 | governing instrument, except under specified
52 | conditions; requiring that direction in a governing

53 instrument be express to apportion taxes under certain
54 circumstances; requiring that the right of recovery
55 provided in the Internal Revenue Code for certain
56 taxes be expressly waived in the decedent's will or
57 revocable trust with certain specificity; specifying
58 the property upon which certain tax is imposed for
59 allocation and apportionment of certain tax; providing
60 that a general statement in the decedent's will or
61 revocable trust waiving all rights of reimbursement or
62 recovery under the Internal Revenue Code is not an
63 express waiver of certain rights of recovery;
64 requiring a governing instrument, for certain
65 purposes, to specifically reference the generation-
66 skipping transfer tax imposed by the Internal Revenue
67 Code to be effective; authorizing the decedent to
68 direct by will the amount of net tax attributable to
69 property over which the decedent held a general power
70 of appointment under certain circumstances; providing
71 that an express direction in a revocable trust is
72 deemed to be a direction contained in the decedent's
73 will as well as the revocable trust under certain
74 circumstances; providing that an express direction in
75 the decedent's will to pay tax from the decedent's
76 revocable trust by specific reference to the revocable
77 trust is effective unless a contrary express direction
78 is contained in the revocable trust; revising the

79 resolution of conflicting directions in governing
80 instruments with regard to payment of taxes; providing
81 that the later express direction in the will or other
82 governing instrument controls; providing that the date
83 of an amendment to a will or other governing
84 instrument is the date of the will or trust for
85 conflict resolution only if the codicil or amendment
86 contains an express tax apportionment provision or an
87 express modification of the tax apportionment
88 provision; providing that a will is deemed executed
89 after another governing instrument if the decedent's
90 will and another governing instrument were executed on
91 the same date; providing that an earlier conflicting
92 governing instrument controls as to any tax remaining
93 unpaid after the application of the later conflicting
94 governing instrument; providing that a grant of
95 permission or authority in a governing instrument to
96 request payment of tax from property passing under
97 another governing instrument is not a direction
98 apportioning the tax to the property passing under the
99 other governing instrument; providing a grant of
100 permission or authority in a governing instrument to
101 pay tax attributable to property not passing under the
102 governing instrument is not a direction apportioning
103 the tax to property passing under the governing
104 instrument; providing application; prohibiting the

105 requiring of a personal representative or fiduciary to
106 transfer to a recipient property that may be used for
107 payment of taxes; amending s. 736.1005, F.S. ;
108 authorizing the court to direct payment from a certain
109 part of the trust under certain circumstances;
110 authorizing certain fees to be assessed against one or
111 more persons' part of the trust; specifying factors
112 that the court may consider in directing the
113 assessment of such fees; authorizing a court to assess
114 fees without finding that a person engaged in
115 specified wrongful acts; amending s. 736.1006, F.S. ;
116 authorizing the court to direct payment from a certain
117 part of the trust under certain circumstances;
118 authorizing certain costs to be assessed against one
119 or more persons' part of the trust; specifying factors
120 that the court may consider in directing the
121 assessment of such costs; providing that specified
122 provisions of the act are remedial and intended to
123 clarify existing law; providing for retroactive and
124 prospective application of specified portions of the
125 act; providing an effective date.

126

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

128

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

131 733.106 Costs and attorney ~~attorney's~~ fees.—

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

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

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

142 (4) ~~If when~~ costs and attorney ~~attorney's~~ fees are to be
143 paid from the estate under this section, s. 733.6171(4), s.
144 736.1005, or s. 736.1006, the court, in its discretion, may
145 direct from what part of the estate they shall be paid.

146 (a) If the court directs an assessment against a person's
147 part of the estate and such part is insufficient to fully pay
148 the assessment, the court may direct payment from the person's
149 part of a trust, if any, if a pourover will is involved and the
150 matter is interrelated with the trust.

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

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

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

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

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

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

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

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

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

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

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

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

182 733.212 Notice of administration; filing of objections.—

183 (2) The notice shall state:

184 (c) That any interested person on whom a copy of the
 185 notice of administration is served must file on or before the
 186 date that is 3 months after the date of service of a copy of the
 187 notice of administration on that person any objection that
 188 challenges the validity of the will, ~~the qualifications of the~~
 189 ~~personal representative,~~ the venue, or the jurisdiction of the
 190 court. The 3-month time period may only be extended for estoppel
 191 based upon a misstatement by the personal representative
 192 regarding the time period within which an objection must be
 193 filed. The time period may not be extended for any other reason,
 194 including affirmative representation, failure to disclose
 195 information, or misconduct by the personal representative or any
 196 other person. Unless sooner barred by subsection (3), all
 197 objections to the validity of a will, venue, or the jurisdiction
 198 of the court must be filed no later than the earlier of the
 199 entry of an order of final discharge of the personal
 200 representative or 1 year after service of the notice of
 201 administration.

202 (3) Any interested person on whom a copy of the notice of
 203 administration is served must object to the validity of the
 204 will, ~~the qualifications of the personal representative,~~ the
 205 venue, or the jurisdiction of the court by filing a petition or
 206 other pleading requesting relief in accordance with the Florida
 207 Probate Rules on or before the date that is 3 months after the
 208 date of service of a copy of the notice of administration on the

209 | objecting person, or those objections are forever barred. The 3-
 210 | month time period may only be extended for estoppel based upon a
 211 | misstatement by the personal representative regarding the time
 212 | period within which an objection must be filed. The time period
 213 | may not be extended for any other reason, including affirmative
 214 | representation, failure to disclose information, or misconduct
 215 | by the personal representative or any other person. Unless
 216 | sooner barred by this subsection, all objections to the validity
 217 | of a will, venue, or the jurisdiction of the court must be filed
 218 | no later than the earlier of the entry of an order of final
 219 | discharge of the personal representative or 1 year after service
 220 | of the notice of administration.

221 | Section 3. Section 733.2123, Florida Statutes, is amended
 222 | to read:

223 | 733.2123 Adjudication before issuance of letters.—A
 224 | petitioner may serve formal notice of the petition for
 225 | administration on interested persons. A person who is served
 226 | with such notice before the issuance of letters or who has
 227 | waived notice may not challenge the validity of the will,
 228 | testacy of the decedent, ~~qualifications of the personal~~
 229 | ~~representative,~~ venue, or jurisdiction of the court, except in
 230 | the proceedings before issuance of letters.

231 | Section 4. Section 733.3101, Florida Statutes, is amended
 232 | to read:

233 | 733.3101 Personal representative not qualified.—

234 | (1) A personal representative shall resign immediately if

235 the personal representative knows that he or she was not
236 qualified to act at the time of appointment.

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

247 (3) A personal representative who fails to comply with
248 this section shall be personally liable for costs, including
249 attorney ~~attorney's~~ fees, incurred in any removal proceeding, if
250 the personal representative is removed. This liability extends
251 to a personal representative who does not know, but should have
252 known, of the facts that would have required him or her to
253 resign under subsection (1) or to file and serve notice under
254 subsection (2). This liability shall be cumulative to any other
255 provided by law.

256 (4) As used in this section, the term "qualified" means
257 that the personal representative is qualified under ss. 733.302-
258 733.305.

259 Section 5. Section 733.504, Florida Statutes, is amended
260 to read:

261 733.504 Removal of personal representative; causes for
 262 removal.—

263 (1) A personal representative shall be removed and the
 264 letters revoked if he or she was not qualified to act at the
 265 time of appointment.

266 (2) A personal representative may be removed and the
 267 letters revoked for any of the following causes,~~and the removal~~
 268 ~~shall be in addition to any penalties prescribed by law:~~

269 (a)~~(1)~~ Adjudication that the personal representative is
 270 incapacitated.

271 (b)~~(2)~~ Physical or mental incapacity rendering the
 272 personal representative incapable of the discharge of his or her
 273 duties.

274 (c)~~(3)~~ Failure to comply with any order of the court,
 275 unless the order has been superseded on appeal.

276 (d)~~(4)~~ Failure to account for the sale of property or to
 277 produce and exhibit the assets of the estate when so required.

278 (e)~~(5)~~ Wasting or maladministration of the estate.

279 (f)~~(6)~~ Failure to give bond or security for any purpose.

280 (g)~~(7)~~ Conviction of a felony.

281 (h)~~(8)~~ Insolvency of, or the appointment of a receiver or
 282 liquidator for, any corporate personal representative.

283 (i)~~(9)~~ Holding or acquiring conflicting or adverse
 284 interests against the estate that will or may interfere with the
 285 administration of the estate as a whole. This cause of removal
 286 shall not apply to the surviving spouse because of the exercise

287 of the right to the elective share, family allowance, or
 288 exemptions, as provided elsewhere in this code.

289 (j)~~(10)~~ Revocation of the probate of the decedent's will
 290 that authorized or designated the appointment of the personal
 291 representative.

292 (k)~~(11)~~ Removal of domicile from Florida, if domicile was
 293 a requirement of initial appointment.

294 (l)~~(12)~~ The personal representative was qualified to act
 295 at the time of appointment but is ~~would~~ not now ~~be~~ entitled to
 296 appointment.

297 (3) Removal under this section is in addition to any
 298 penalties prescribed by law.

299 Section 6. Section 733.817, Florida Statutes, is amended
 300 to read:

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

303 733.817 Apportionment of estate taxes.-

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

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

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

313 the federal gross estate or a corresponding tax imposed by any
314 state or country or political subdivision of the foregoing. The
315 term does not include the generation-skipping transfer tax on
316 taxable distributions, taxable terminations, or any other
317 generation-skipping transfer. The terms "direct skip," "taxable
318 distribution," and "taxable termination" have the same meanings
319 as provided in s. 2612 of the Internal Revenue Code.

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

324 (d) "Gross estate" means the gross estate, as determined
325 by the Internal Revenue Code with respect to the federal estate
326 tax and the Florida estate tax, and as that concept is otherwise
327 determined by the estate, inheritance, or death tax laws of the
328 particular state, country, or political subdivision thereof
329 whose tax is being apportioned.

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

334 1. Any interest, whether passing under the will or not, to
335 the extent the interest is initially deductible from the gross
336 estate, without regard to any subsequent reduction of the
337 deduction by reason of the charge of any part of the applicable
338 tax to the interest. If an election is required for

339 deductibility, an interest is not initially deductible unless
340 the election for deductibility is allowed.

341 2. Interests or amounts that are not included in the gross
342 estate but are included in the amount upon which the applicable
343 tax is computed, such as adjusted taxable gifts pursuant to s.
344 2001 of the Internal Revenue Code.

345 3. Gift taxes included in the gross estate pursuant to s.
346 2035 of the Internal Revenue Code and the portion of any inter
347 vivos transfer included in the gross estate pursuant to s. 529
348 of the Internal Revenue Code, notwithstanding inclusion in the
349 gross estate.

350 (f) "Internal Revenue Code" means the Internal Revenue
351 Code of 1986, as amended.

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

361 (h) "Nonresiduary devise" means any devise that is not a
362 residuary devise.

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

365 (j) "Recipient" means, with respect to property or an
366 interest in property included in the gross estate, an heir at
367 law in an intestate estate, devisee in a testate estate,
368 beneficiary of a trust, beneficiary of a life insurance policy,
369 annuity, or other contractual right, surviving tenant, taker as
370 a result of the exercise or in default of the exercise of a
371 general power of appointment, person who receives or is to
372 receive the property or an interest in the property, or person
373 in possession of the property, other than a creditor.

374 (k) "Residuary devise" has the same meaning as provided in
375 s. 731.201.

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

381 (m) "Revocable trust" means a trust as described in s.
382 733.707(3).

383 (n) "Section 2044 interest" means an interest included in
384 the measure of the tax by reason of s. 2044 of the Internal
385 Revenue Code.

386 (o) "State" means any state, territory, or possession of
387 the United States, the District of Columbia, or the Commonwealth
388 of Puerto Rico.

389 (p) "Tax" means any estate tax, inheritance tax,
390 generation-skipping transfer tax, or other tax levied or

391 assessed under the laws of this or any other state, the United
392 States, any other country, or any political subdivision thereof,
393 as finally determined, which is imposed as a result of the death
394 of the decedent. The term includes any interest or penalties
395 imposed in addition to the tax. Unless the context indicates
396 otherwise, the term means each separate tax. The term does not
397 include any additional estate tax imposed by s. 2032A(c) or s.
398 2057(f) of the Internal Revenue Code or a corresponding tax
399 imposed by any state or country or political subdivision
400 thereof. The additional estate tax imposed shall be apportioned
401 as provided in s. 2032A or s. 2057 of the Internal Revenue Code.

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

406 (r) "Tentative Florida tax," with respect to any property,
407 means the net Florida estate tax that would have been
408 attributable to that property if no tax were payable to any
409 other state in respect of that property.

410 (s) "Value" means the pecuniary worth of the interest
411 involved as finally determined for purposes of the applicable
412 tax after deducting any debt, expense, or other deduction
413 chargeable to it for which a deduction was allowed in
414 determining the amount of the applicable tax. A lien or other
415 encumbrance is not regarded as chargeable to a particular
416 interest to the extent that it will be paid from other

417 interests. The value of an interest is not reduced by reason of
418 the charge against it of any part of the tax, except as provided
419 in paragraph (3) (a).

420 (2) ALLOCATION OF TAX.—Except as effectively directed in
421 the governing instrument pursuant to subsection (4), the net tax
422 attributable to the interests included in the measure of each
423 tax shall be determined by the proportion that the value of each
424 interest included in the measure of the tax bears to the total
425 value of all interests included in the measure of the tax.

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

428 (a) The net tax attributable to section 2044 interests
429 shall be determined in the manner provided for the federal
430 estate tax in s. 2207A of the Internal Revenue Code, and the
431 amount so determined shall be deducted from the tax to determine
432 the net tax attributable to all other interests included in the
433 measure of the tax.

434 (b) The foreign tax credit allowed with respect to the
435 federal estate tax shall be allocated among the recipients of
436 interests finally charged with the payment of the foreign tax in
437 reduction of any federal estate tax chargeable to the recipients
438 of the foreign interests, regardless of whether any federal
439 estate tax is attributable to the foreign interests. Any excess
440 of the foreign tax credit shall be applied to reduce
441 proportionately the net amount of federal estate tax chargeable
442 to the remaining recipients of the interests included in the

443 measure of the federal estate tax.

444 (c) The reduction in the net tax attributable to the
445 deduction for state death taxes allowed by s. 2058 of the
446 Internal Revenue Code shall be allocated to the recipients of
447 the interests that produced the deduction. For this purpose, the
448 reduction in the net tax shall be calculated in the manner
449 provided for interests other than those described in paragraph
450 (a).

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

454 1. If the net tax paid to another state is greater than or
455 equal to the tentative Florida tax attributable to the property
456 subject to tax in the other state, none of the Florida tax shall
457 be attributable to that property.

458 2. If the net tax paid to another state is less than the
459 tentative Florida tax attributable to the property subject to
460 tax in the other state, the net Florida tax attributable to the
461 property subject to tax in the other state shall be the excess
462 of the amount of the tentative Florida tax attributable to the
463 property over the net tax payable to the other state with
464 respect to the property.

465 3. Any remaining net Florida tax shall be attributable to
466 property included in the measure of the Florida tax exclusive of
467 the property subject to tax in another state.

468 4. The net federal tax attributable to the property

469 subject to tax in the other state shall be determined as if the
470 property were located in that state.

471 (e) The net tax attributable to a temporary interest, if
472 any, is regarded as attributable to the principal that supports
473 the temporary interest.

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

478 (a) Generation-skipping transfer tax.—Any federal or state
479 generation-skipping transfer tax shall be apportioned as
480 provided in s. 2603 of the Internal Revenue Code after the
481 application of the remaining provisions of this subsection to
482 taxes other than the generation-skipping transfer tax.

483 (b) Section 2044 interests.—The net tax attributable to
484 section 2044 interests shall be apportioned among the recipients
485 of the section 2044 interests in the proportion that the value
486 of each section 2044 interest bears to the total of all section
487 2044 interests. The net tax apportioned by this paragraph to
488 section 2044 interests that pass in the manner described in
489 paragraph (c) or paragraph (d) shall be apportioned to the
490 section 2044 interests in the manner described in those
491 paragraphs before the apportionment of the net tax attributable
492 to the other interests passing as provided in those paragraphs.
493 The net tax attributable to the interests other than the section
494 2044 interests which pass in the manner described in paragraph

495 (c) or paragraph (d) shall be apportioned only to such other
496 interests pursuant to those paragraphs.

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

500 1. The net tax attributable to nonresiduary devises shall
501 be charged to and paid from the residuary estate, regardless of
502 whether all interests in the residuary estate are included in
503 the measure of the tax. If the residuary estate is insufficient
504 to pay the net tax attributable to all nonresiduary devises, the
505 balance of the net tax attributable to nonresiduary devises
506 shall be apportioned among the recipients of the nonresiduary
507 devises in the proportion that the value of each nonresiduary
508 devise included in the measure of the tax bears to the total of
509 all nonresiduary devises included in the measure of the tax.

510 2. The net tax attributable to residuary devises shall be
511 apportioned among the recipients of the residuary devises
512 included in the measure of the tax in the proportion that the
513 value of each residuary devise included in the measure of the
514 tax bears to the total of all residuary devises included in the
515 measure of the tax. If the residuary estate is insufficient to
516 pay the net tax attributable to all residuary devises, the
517 balance of the net tax attributable to residuary devises shall
518 be apportioned among the recipients of the nonresiduary devises
519 in the proportion that the value of each nonresiduary devise
520 included in the measure of the tax bears to the total of all

521 nonresiduary devises included in the measure of the tax.

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

526 1. The net tax attributable to nonresiduary interests of
527 the trust shall be charged to and paid from the residuary
528 portion of the trust, regardless of whether all interests in the
529 residuary portion are included in the measure of the tax. If the
530 residuary portion is insufficient to pay the net tax
531 attributable to all nonresiduary interests, the balance of the
532 net tax attributable to nonresiduary interests shall be
533 apportioned among the recipients of the nonresiduary interests
534 in the proportion that the value of each nonresiduary interest
535 included in the measure of the tax bears to the total of all
536 nonresiduary interests included in the measure of the tax.

537 2. The net tax attributable to residuary interests of the
538 trust shall be apportioned among the recipients of the residuary
539 interests of the trust included in the measure of the tax in the
540 proportion that the value of each residuary interest included in
541 the measure of the tax bears to the total of all residuary
542 interests of the trust included in the measure of the tax. If
543 the residuary portion is insufficient to pay the net tax
544 attributable to all residuary interests, the balance of the net
545 tax attributable to residuary interests shall be apportioned
546 among the recipients of the nonresiduary interests in the

547 proportion that the value of each nonresiduary interest included
548 in the measure of the tax bears to the total of all nonresiduary
549 interests included in the measure of the tax.

550

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

553 (e) Protected homestead, exempt property, and family
554 allowance.—

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

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

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

565 c. Class III.—Recipients of nonresiduary devises and
566 nonresiduary interests that are included in the measure of the
567 federal estate tax.

568 2. Any net tax apportioned to a class pursuant to this
569 paragraph shall be apportioned among each recipient in the class
570 in the proportion that the value of the interest of each bears
571 to the total value of all interests included in that class. A
572 tax may not be apportioned under this paragraph to the portion

573 of any interest applied in satisfaction of the elective share
574 whether or not included in the measure of the tax. For purposes
575 of this paragraph, if the value of the interests described in s.
576 732.2075(1) exceeds the amount of the elective share, the
577 elective share shall be treated as satisfied first from
578 interests other than those described in classes I, II, and III,
579 and to the extent that those interests are insufficient to
580 satisfy the elective share, from the interests passing to or for
581 the benefit of the surviving spouse described in classes I, II,
582 and III, beginning with those described in class I, until the
583 elective share is satisfied. This paragraph has priority over
584 paragraphs (a) and (h).

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

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

594 1. If the decedent's estate is the beneficiary of a life
595 insurance policy, annuity, or contractual right included in the
596 decedent's gross estate, or is the taker as a result of the
597 exercise or default in exercise of a general power of
598 appointment held by the decedent, that interest shall be

599 regarded as passing under the terms of the decedent's will for
600 the purposes of paragraph (c) or by intestacy if not disposed of
601 by will. Additionally, any interest included in the measure of
602 the tax by reason of s. 2041 of the Internal Revenue Code
603 passing to the decedent's creditors or the creditors of the
604 decedent's estate shall be regarded as passing to the decedent's
605 estate for the purpose of this subparagraph.

606 2. If a trust is the beneficiary of a life insurance
607 policy, annuity, or contractual right included in the decedent's
608 gross estate, or is the taker as a result of the exercise or
609 default in exercise of a general power of appointment held by
610 the decedent, that interest shall be regarded as passing under
611 the trust for purposes of paragraph (d).

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

618 1. The decedent's will and revocable trust if the estate
619 is a beneficiary of the revocable trust or if the revocable
620 trust is a beneficiary of the estate.

621 2. A revocable trust of the decedent and another revocable
622 trust of the decedent if either trust is the beneficiary of the
623 other trust.

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

625 to interests under paragraphs (b)-(g), including, but not
626 limited to, the net tax attributable to interests passing by
627 intestacy, interests applied in satisfaction of the elective
628 share pursuant to s. 732.2075(2), interests passing by reason of
629 the exercise or nonexercise of a general power of appointment,
630 jointly held interests passing by survivorship, life insurance,
631 properties in which the decedent held a reversionary or
632 revocable interest, annuities, and contractual rights, shall be
633 apportioned among the recipients of the remaining interests
634 included in the measure of the tax in the proportion that the
635 value of each such interest bears to the total value of all
636 remaining interests included in the measure of the tax.

637 (i) Assessment of liability by court.—If the court finds
638 that:

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

643 2. The payment of any tax was not effectively directed in
644 the governing instrument pursuant to subsection (4) and that
645 such tax is not apportioned by this subsection, the court may
646 assess liability for the payment of such tax in the manner that
647 the court finds equitable.

648 (4) DIRECTION AGAINST APPORTIONMENT.—

649 (a) Except as provided in this subsection, a governing
650 instrument may not direct that taxes be paid from property other

651 than that passing under the governing instrument.

652 (b) For a direction in a governing instrument to be
653 effective to direct payment of taxes attributable to property
654 passing under the governing instrument in a manner different
655 from that provided in this section, the direction must be
656 express.

657 (c) For a direction in a governing instrument to be
658 effective to direct payment of taxes attributable to property
659 not passing under the governing instrument from property passing
660 under the governing instrument, the governing instrument must
661 expressly direct that the property passing under the governing
662 instrument bear the burden of taxation for property not passing
663 under the governing instrument. Except as provided in paragraph
664 (d), a direction in the governing instrument to the effect that
665 all taxes are to be paid from property passing under the
666 governing instrument whether attributable to property passing
667 under the governing instrument or otherwise shall be effective
668 to direct payment from property passing under the governing
669 instrument of taxes attributable to property not passing under
670 the governing instrument.

671 (d) In addition to satisfying the other provisions of this
672 subsection:

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

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

689 b. If property is included in the gross estate pursuant to
690 ss. 2041 and 2044 of the Internal Revenue Code, the property is
691 deemed included under s. 2044, and not s. 2041, for purposes of
692 allocation and apportionment of the tax.

693 2. For a direction in the decedent's will or revocable
694 trust to be effective in waiving the right of recovery provided
695 in s. 2207B of the Internal Revenue Code for tax imposed by
696 reason of s. 2036 of the Internal Revenue Code, and any tax
697 imposed by Florida based upon s. 2036 of the Internal Revenue
698 Code, the direction must expressly waive that right of recovery.
699 An express direction that property passing under the will or
700 revocable trust bear the tax imposed by s. 2036 of the Internal
701 Revenue Code is deemed an express waiver of the right of
702 recovery provided in s. 2207B of the Internal Revenue Code. If

703 property is included in the gross estate pursuant to ss. 2036
704 and 2038 of the Internal Revenue Code, the property is deemed
705 included under s. 2038, not s. 2036, for purposes of allocation
706 and apportionment of the tax, and there is no right of recovery
707 under s. 2207B of the Internal Revenue Code.

708 3. A general statement in the decedent's will or revocable
709 trust waiving all rights of reimbursement or recovery under the
710 Internal Revenue Code is not an express waiver of the rights of
711 recovery provided in s. 2207A or s. 2207B of the Internal
712 Revenue Code.

713 4. For a direction in a governing instrument to be
714 effective to direct payment of generation-skipping transfer tax
715 in a manner other than as provided in s. 2603 of the Internal
716 Revenue Code, and any tax imposed by Florida based on s. 2601 of
717 the Internal Revenue Code, the direction must specifically
718 reference the tax imposed by s. 2601 of the Internal Revenue
719 Code. A reference to the generation-skipping transfer tax or s.
720 2603 of the Internal Revenue Code is deemed to be a reference to
721 property upon which tax is imposed by reason of s. 2601 of the
722 Internal Revenue Code.

723 (e) If the decedent expressly directs by will, the net tax
724 attributable to property over which the decedent held a general
725 power of appointment may be determined in a manner other than as
726 provided in subsection (2) if the net tax attributable to that
727 property does not exceed the difference between the total net
728 tax determined pursuant to subsection (2), determined without

729 regard to this paragraph, and the total net tax that would have
730 been payable if the value of the property subject to such power
731 of appointment had not been included in the decedent's gross
732 estate. If tax is attributable to one or more section 2044
733 interests pursuant to subsection (2), the net tax attributable
734 to the section 2044 interests shall be calculated before the
735 application of this paragraph unless the decedent expressly
736 directs otherwise by will.

737 (f) If the decedent's will expressly provides that the tax
738 is to be apportioned as provided in the decedent's revocable
739 trust by specific reference to the revocable trust, an express
740 direction in the revocable trust is deemed to be a direction
741 contained in the will as well as the revocable trust.

742 (g) An express direction in the decedent's will to pay tax
743 from the decedent's revocable trust by specific reference to the
744 revocable trust is effective unless a contrary express direction
745 is contained in the revocable trust.

746 (h) If governing instruments contain effective directions
747 that conflict as to payment of taxes, the most recently executed
748 tax apportionment provision controls to the extent of the
749 conflict. For the purpose of this subsection, if a will or other
750 governing instrument is amended, the date of the codicil to the
751 will or amendment to the governing instrument is regarded as the
752 date of the will or other governing instrument only if the
753 codicil or amendment contains an express tax apportionment
754 provision or an express modification of the tax apportionment

755 provision. A general statement ratifying or republishing all
756 provisions not otherwise amended does not meet this condition.
757 If the decedent's will and another governing instrument were
758 executed on the same date, the will is deemed executed after the
759 other governing instrument. The earlier conflicting governing
760 instrument controls as to any tax remaining unpaid after the
761 application of the later conflicting governing instrument.

762 (i) A grant of permission or authority in a governing
763 instrument to request payment of tax from property passing under
764 another governing instrument is not a direction apportioning the
765 tax to the property passing under the other governing
766 instrument. A grant of permission or authority in a governing
767 instrument to pay tax attributable to property not passing under
768 the governing instrument is not a direction apportioning the tax
769 to property passing under the governing instrument.

770 (j) This section applies to any tax remaining to be paid
771 after the application of any effective express directions. An
772 effective express direction for payment of tax on specific
773 property or a type of property in a manner different from that
774 provided in this section is not effective as an express
775 direction for payment of tax on other property or other types of
776 property included in the measure of the tax.

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

781 not required to transfer any property to the recipient until the
782 amount of the tax due from the recipient is paid by the
783 recipient. If property is transferred before final apportionment
784 of the tax, the recipient shall provide a bond or other security
785 for his or her apportioned liability in the amount and form
786 prescribed by the personal representative or fiduciary.

787 (6) ORDER OF APPORTIONMENT.—

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

799 (b) The court shall determine all issues concerning
800 apportionment. If the tax to be apportioned has not been finally
801 determined, the court shall determine the probable tax due or to
802 become due from all interested persons, apportion the probable
803 tax, and retain jurisdiction over the parties and issues to
804 modify the order of apportionment as appropriate until after the
805 tax is finally determined.

806 (7) DEFICIENCY.—

807 (a) If the personal representative or fiduciary does not
808 have possession of sufficient property otherwise distributable
809 to the recipient to pay the tax apportioned to the recipient,
810 whether under this section, the Internal Revenue Code, or the
811 governing instrument, if applicable, the personal representative
812 or fiduciary shall recover the deficiency in tax so apportioned
813 to the recipient:

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

816 2. To the extent of any deficiency in collection from the
817 fiduciary, or to the extent collection from the fiduciary is
818 excused pursuant to subsection (8) and in all other cases, from
819 the recipient of the property to which the tax is apportioned,
820 unless relieved of this duty as provided in subsection (8).

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

823 (c) In any action for the enforcement of an order of
824 apportionment, the court shall award taxable costs as in
825 chancery actions, including reasonable attorney fees, and may
826 award penalties and interest on the unpaid tax in accordance
827 with equitable principles.

828 (d) This subsection does not authorize the recovery of any
829 tax from a company issuing life insurance included in the gross
830 estate, or from a bank, trust company, savings and loan
831 association, or similar institution with respect to any account
832 in the name of the decedent and any other person which passed by

833 operation of law at the decedent's death.

834 (8) RELIEF FROM DUTY.—

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

839 1. The estimated court costs and attorney fees in
840 collecting the apportioned tax from a person against whom the
841 tax has been apportioned will approximate or exceed the amount
842 of the recovery;

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

846 3. It is impracticable to enforce contribution of the
847 apportioned tax against a person against whom the tax has been
848 apportioned in view of the improbability of obtaining a judgment
849 or the improbability of collection under any judgment that might
850 be obtained, or otherwise.

851 (b) A personal representative or fiduciary is not liable
852 for failure to attempt to enforce collection if the personal
853 representative or fiduciary reasonably believes that collection
854 would have been economically impracticable.

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

859 (10) CONTRIBUTION.—This section does not limit the right
 860 of any person who has paid more than the amount of the tax
 861 apportionable to that person, calculated as if all apportioned
 862 amounts would be collected, to obtain contribution from those
 863 who have not paid the full amount of the tax apportionable to
 864 them, calculated as if all apportioned amounts would be
 865 collected, and that right is hereby conferred. In any action to
 866 enforce contribution, the court shall award taxable costs as in
 867 chancery actions, including reasonable attorney fees.

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

873 Section 7. Section 736.1005, Florida Statutes, is amended
 874 to read:

875 736.1005 Attorney ~~attorney's~~ fees for services to the
 876 trust.—

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

883 (2) If attorney ~~Whenever attorney's~~ fees are to be paid
 884 from ~~out of~~ the trust under subsection (1), s. 736.1007(5)(a),

885 or s. 733.106(4)(a), the court, in its discretion, may direct
886 from what part of the trust the fees shall be paid.

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

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

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

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

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

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

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

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

908 7. Whether a person whose part of the trust is to be
909 assessed unjustly caused an increase in the amount of attorney
910 fees incurred by the trustee or another person in connection

911 with the proceeding.

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

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

916 (3) Except when a trustee's interest may be adverse in a
917 particular matter, the attorney shall give reasonable notice in
918 writing to the trustee of the attorney's retention by an
919 interested person and the attorney's entitlement to fees
920 pursuant to this section. A court may reduce any fee award for
921 services rendered by the attorney prior to the date of actual
922 notice to the trustee, if the actual notice date is later than a
923 date of reasonable notice. In exercising this discretion, the
924 court may exclude compensation for services rendered after the
925 reasonable notice date but before ~~prior to~~ the date of actual
926 notice.

927 Section 8. Section 736.1006, Florida Statutes, is amended
928 to read:

929 736.1006 Costs in trust proceedings.—

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

932 (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust
933 under subsection (1) or s. 733.106(4)(a), the court, in its
934 discretion, may direct from what part of the trust the costs
935 shall be paid. All or any part of the costs to be paid from the
936 trust may be assessed against one or more persons' part of the

937 trust in such proportions as the court finds to be just and
938 proper. In the exercise of its discretion, the court may
939 consider the factors set forth in s. 736.1005(2).

940 Section 9. The amendments made by this act to ss. 733.212,
941 733.2123, 733.3101, and 733.504, Florida Statutes, apply to
942 proceedings commenced on or after July 1, 2015. The law in
943 effect before July 1, 2015, applies to proceedings commenced
944 before that date.

945 Section 10. (1) The amendments made by this act to s.
946 733.817(1)(g) and (2)(c), Florida Statutes, are remedial in
947 nature, are intended to clarify existing law, and apply
948 retroactively to all proceedings pending or commenced on or
949 after July 1, 2015, in which the apportionment of taxes has not
950 been finally determined or agreed for the estates of decedents
951 who die after December 31, 2004.

952 (2) The amendments made by this act to s. 733.817(1)(e)3.,
953 (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and
954 (6), Florida Statutes, apply to the estates of decedents who die
955 on or after July 1, 2015.

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

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963 Section 11. The amendments made by this act to ss.
964 733.106, 736.1005, and 736.1006, Florida Statutes, apply to
965 proceedings commenced on or after July 1, 2015. The law in
966 effect before July 1, 2015, applies to proceedings commenced
967 before that date.

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