

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Moraitis offered the following:

4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 733.106, Florida Statutes, is amended  
 7 to read:

8 733.106 Costs and attorney ~~attorney's~~ fees.—

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

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

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

19 (4) ~~If when~~ costs and ~~attorney attorney's~~ fees are to be  
20 paid from the estate under this section, s. 733.6171(4), s.  
21 736.1005, or s. 736.1006, the court, in its discretion, may  
22 direct from what part of the estate they shall be paid.

23 (a) If the court directs an assessment against a person's  
24 part of the estate and such part is insufficient to fully pay  
25 the assessment, the court may direct payment from the person's  
26 part of a trust, if any, if a pourover will is involved and the  
27 matter is interrelated with the trust.

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

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

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

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

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

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

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

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

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

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

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

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

59 733.212 Notice of administration; filing of objections.—

60 (2) The notice shall state:

61 (c) That any interested person on whom a copy of the  
62 notice of administration is served must file on or before the  
63 date that is 3 months after the date of service of a copy of the  
64 notice of administration on that person any objection that  
65 challenges the validity of the will, ~~the qualifications of the~~  
66 ~~personal representative,~~ the venue, or the jurisdiction of the  
67 court. The 3-month time period may only be extended for estoppel  
68 based upon a misstatement by the personal representative

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69 regarding the time period within which an objection must be  
70 filed. The time period may not be extended for any other reason,  
71 including affirmative representation, failure to disclose  
72 information, or misconduct by the personal representative or any  
73 other person. Unless sooner barred by subsection (3), all  
74 objections to the validity of a will, venue, or the jurisdiction  
75 of the court must be filed no later than the earlier of the  
76 entry of an order of final discharge of the personal  
77 representative or 1 year after service of the notice of  
78 administration.

79 (3) Any interested person on whom a copy of the notice of  
80 administration is served must object to the validity of the  
81 will, ~~the qualifications of the personal representative,~~ the  
82 venue, or the jurisdiction of the court by filing a petition or  
83 other pleading requesting relief in accordance with the Florida  
84 Probate Rules on or before the date that is 3 months after the  
85 date of service of a copy of the notice of administration on the  
86 objecting person, or those objections are forever barred. The 3-  
87 month time period may only be extended for estoppel based upon a  
88 misstatement by the personal representative regarding the time  
89 period within which an objection must be filed. The time period  
90 may not be extended for any other reason, including affirmative  
91 representation, failure to disclose information, or misconduct  
92 by the personal representative or any other person. Unless  
93 sooner barred by this subsection, all objections to the validity  
94 of a will, venue, or the jurisdiction of the court must be filed

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95 no later than the earlier of the entry of an order of final  
96 discharge of the personal representative or 1 year after service  
97 of the notice of administration.

98 Section 3. Section 733.2123, Florida Statutes, is amended  
99 to read:

100 733.2123 Adjudication before issuance of letters.—A  
101 petitioner may serve formal notice of the petition for  
102 administration on interested persons. A person who is served  
103 with such notice before the issuance of letters or who has  
104 waived notice may not challenge the validity of the will,  
105 testacy of the decedent, ~~qualifications of the personal~~  
106 ~~representative,~~ venue, or jurisdiction of the court, except in  
107 the proceedings before issuance of letters.

108 Section 4. Section 733.3101, Florida Statutes, is amended  
109 to read:

110 733.3101 Personal representative not qualified.—

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

114 (2) Any time a personal representative, who was qualified  
115 to act at the time of appointment, ~~knows or should have known~~  
116 that he or she would not be qualified for appointment if  
117 application for appointment were then made, the personal  
118 representative shall promptly file and serve a notice setting  
119 forth the reasons. The notice shall state that any interested  
120 person may petition to remove the personal representative. An

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121 interested person on whom a copy of the notice is served may  
122 file a petition requesting the personal representative's removal  
123 within 30 days after the date on which such notice is served.

124 (3) A personal representative who fails to comply with  
125 this section shall be personally liable for costs, including  
126 attorney attorney's fees, incurred in any removal proceeding, if  
127 the personal representative is removed. This liability extends  
128 to a personal representative who does not know, but should have  
129 known, of the facts that would have required him or her to  
130 resign under subsection (1) or to file and serve notice under  
131 subsection (2). This liability shall be cumulative to any other  
132 provided by law.

133 (4) As used in this section, the term "qualified" means  
134 that the personal representative is qualified under ss. 733.302  
135 -733.305.

136 Section 5. Section 733.504, Florida Statutes, is amended  
137 to read:

138 733.504 Removal of personal representative; causes for  
139 removal.-

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

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

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146        ~~(a)(1)~~ Adjudication that the personal representative is  
147 incapacitated.

148        ~~(b)(2)~~ Physical or mental incapacity rendering the  
149 personal representative incapable of the discharge of his or her  
150 duties.

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

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

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

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

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

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

160        ~~(i)(9)~~ Holding or acquiring conflicting or adverse  
161 interests against the estate that will or may interfere with the  
162 administration of the estate as a whole. This cause of removal  
163 shall not apply to the surviving spouse because of the exercise  
164 of the right to the elective share, family allowance, or  
165 exemptions, as provided elsewhere in this code.

166        ~~(j)(10)~~ Revocation of the probate of the decedent's will  
167 that authorized or designated the appointment of the personal  
168 representative.

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

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171 (1) ~~(12)~~ The personal representative was qualified to act  
172 at the time of appointment, but is ~~would~~ not now ~~be~~ entitled to  
173 appointment.

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

176 Section 6. Section 733.817, Florida Statutes, is amended  
177 to read:

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

180 733.817 Apportionment of estate taxes.—

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

182 (a) "Fiduciary" means a person, other than the personal  
183 representative in possession of property included in the measure  
184 of the tax, who is liable to the applicable taxing authority for  
185 payment of the entire tax to the extent of the value of the  
186 property in possession.

187 (b) "Generation-skipping transfer tax" means the  
188 generation-skipping transfer tax imposed by chapter 13 of the  
189 Internal Revenue Code on direct skips of interests includible in  
190 the federal gross estate or a corresponding tax imposed by any  
191 state or country or political subdivision of the foregoing. The  
192 term does not include the generation-skipping transfer tax on  
193 taxable distributions, taxable terminations, or any other  
194 generation-skipping transfer. The terms "direct skip," "taxable  
195 distribution," and "taxable termination" have the same meanings  
196 as provided in s. 2612 of the Internal Revenue Code.

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

201 (d) "Gross estate" means the gross estate, as determined  
202 by the Internal Revenue Code with respect to the federal estate  
203 tax and the Florida estate tax, and as that concept is otherwise  
204 determined by the estate, inheritance, or death tax laws of the  
205 particular state, country, or political subdivision whose tax is  
206 being apportioned.

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

211 1. Any interest, whether passing under the will or not, to  
212 the extent the interest is initially deductible from the gross  
213 estate, without regard to any subsequent reduction of the  
214 deduction by reason of the charge of any part of the applicable  
215 tax to the interest. If an election is required for  
216 deductibility, an interest is not initially deductible unless  
217 the election for deductibility is allowed.

218 2. Interests or amounts that are not included in the gross  
219 estate but are included in the amount upon which the applicable  
220 tax is computed, such as adjusted taxable gifts pursuant to s.  
221 2001 of the Internal Revenue Code.

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222 3. Gift taxes included in the gross estate pursuant to s.  
223 2035 of the Internal Revenue Code and the portion of any inter  
224 vivos transfer included in the gross estate pursuant to s. 529  
225 of the Internal Revenue Code, notwithstanding inclusion in the  
226 gross estate.

227 (f) "Internal Revenue Code" means the Internal Revenue  
228 Code of 1986, as amended.

229 (g) "Net tax" means the net tax payable to the particular  
230 state, country, or political subdivision whose tax is being  
231 apportioned, after taking into account all credits against the  
232 applicable tax except as provided in this section. With respect  
233 to the federal estate tax, net tax is determined after taking  
234 into account all credits against the tax except for the credit  
235 for foreign death taxes and except for the credit or deduction  
236 for state taxes imposed by states other than this state.

237 (h) "Nonresiduary devise" means any devise that is not a  
238 residuary devise.

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

241 (j) "Recipient" means, with respect to property or an  
242 interest in property included in the gross estate, an heir at  
243 law in an intestate estate, devisee in a testate estate,  
244 beneficiary of a trust, beneficiary of a life insurance policy,  
245 annuity, or other contractual right, surviving tenant, taker as  
246 a result of the exercise or in default of the exercise of a  
247 general power of appointment, person who receives or is to

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

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

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

256 (m) "Revocable trust" means a trust as described in s.  
257 733.707(3).

258 (n) "Section 2044 interest" means an interest included in  
259 the measure of the tax by reason of s. 2044 of the Internal  
260 Revenue Code.

261 (o) "State" means any state, territory, or possession of  
262 the United States, the District of Columbia, or the Commonwealth  
263 of Puerto Rico.

264 (p) "Tax" means any estate tax, inheritance tax,  
265 generation-skipping transfer tax, or other tax levied or  
266 assessed under the laws of this or any other state, the United  
267 States, any other country, or any political subdivision of the  
268 foregoing, as finally determined, which is imposed as a result  
269 of the death of the decedent. The term also includes any  
270 interest or penalties imposed in addition to the tax. Unless the  
271 context indicates otherwise, the term means each separate tax.  
272 The term does not include any additional estate tax imposed by  
273 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a

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274 corresponding tax imposed by any state or country or political  
275 subdivision of the foregoing. The additional estate tax imposed  
276 shall be apportioned as provided in s. 2032A or s. 2057 of the  
277 Internal Revenue Code.

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

282 (r) "Tentative Florida tax" with respect to any property  
283 means the net Florida estate tax that would have been  
284 attributable to that property if no tax were payable to any  
285 other state in respect of that property.

286 (s) "Value" means the pecuniary worth of the interest  
287 involved as finally determined for purposes of the applicable  
288 tax after deducting any debt, expense, or other deduction  
289 chargeable to it for which a deduction was allowed in  
290 determining the amount of the applicable tax. A lien or other  
291 encumbrance is not regarded as chargeable to a particular  
292 interest to the extent that it will be paid from other  
293 interests. The value of an interest is not reduced by reason of  
294 the charge against it of any part of the tax, except as provided  
295 in paragraph (3) (a).

296 (2) ALLOCATION OF TAX.—Except as effectively directed in  
297 the governing instrument pursuant to subsection (4), the net tax  
298 attributable to the interests included in the measure of each  
299 tax shall be determined by the proportion that the value of each

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300 interest included in the measure of the tax bears to the total  
301 value of all interests included in the measure of the tax.

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

304 (a) The net tax attributable to section 2044 interests  
305 shall be determined in the manner provided for the federal  
306 estate tax in s. 2207A of the Internal Revenue Code, and the  
307 amount so determined shall be deducted from the tax to determine  
308 the net tax attributable to all other interests included in the  
309 measure of the tax.

310 (b) The foreign tax credit allowed with respect to the  
311 federal estate tax shall be allocated among the recipients of  
312 interests finally charged with the payment of the foreign tax in  
313 reduction of any federal estate tax chargeable to the recipients  
314 of the foreign interests, whether or not any federal estate tax  
315 is attributable to the foreign interests. Any excess of the  
316 foreign tax credit shall be applied to reduce proportionately  
317 the net amount of federal estate tax chargeable to the remaining  
318 recipients of the interests included in the measure of the  
319 federal estate tax.

320 (c) The reduction in the net tax attributable to the  
321 deduction for state death taxes allowed by s. 2058 of the  
322 Internal Revenue Code shall be allocated to the recipients of  
323 the interests that produced the deduction. For this purpose, the  
324 reduction in the net tax shall be calculated in the manner

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325 provided for interests other than those described in paragraph  
326 (a).

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

330 1. If the net tax paid to another state is greater than or  
331 equal to the tentative Florida tax attributable to the property  
332 subject to tax in the other state, none of the Florida tax shall  
333 be attributable to that property.

334 2. If the net tax paid to another state is less than the  
335 tentative Florida tax attributable to the property subject to  
336 tax in the other state, the net Florida tax attributable to the  
337 property subject to tax in the other state shall be the excess  
338 of the amount of the tentative Florida tax attributable to the  
339 property over the net tax payable to the other state with  
340 respect to the property.

341 3. Any remaining net Florida tax shall be attributable to  
342 property included in the measure of the Florida tax exclusive of  
343 the property subject to tax in another state.

344 4. The net federal tax attributable to the property  
345 subject to tax in the other state shall be determined as if the  
346 property were located in that state.

347 (e) The net tax attributable to a temporary interest, if  
348 any, is regarded as attributable to the principal that supports  
349 the temporary interest.

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

354 (a) Generation-skipping transfer tax.—Any federal or state  
355 generation-skipping transfer tax shall be apportioned as  
356 provided in s. 2603 of the Internal Revenue Code after the  
357 application of the remaining provisions of this subsection to  
358 taxes other than the generation-skipping transfer tax.

359 (b) Section 2044 interests.—The net tax attributable to  
360 section 2044 interests shall be apportioned among the recipients  
361 of the section 2044 interests in the proportion that the value  
362 of each section 2044 interest bears to the total of all section  
363 2044 interests. The net tax apportioned by this paragraph to  
364 section 2044 interests that pass in the manner described in  
365 paragraph (c) or paragraph (d) shall be apportioned to the  
366 section 2044 interests in the manner described in those  
367 paragraphs before the apportionment of the net tax attributable  
368 to the other interests passing as provided in those paragraphs.  
369 The net tax attributable to the interests other than the section  
370 2044 interests which pass in the manner described in paragraph  
371 (c) or paragraph (d) shall be apportioned only to such other  
372 interests pursuant to those paragraphs.

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

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376 1. The net tax attributable to nonresiduary devises shall  
377 be charged to and paid from the residuary estate, whether or not  
378 all interests in the residuary estate are included in the  
379 measure of the tax. If the residuary estate is insufficient to  
380 pay the net tax attributable to all nonresiduary devises, the  
381 balance of the net tax attributable to nonresiduary devises  
382 shall be apportioned among the recipients of the nonresiduary  
383 devises in the proportion that the value of each nonresiduary  
384 devise included in the measure of the tax bears to the total of  
385 all nonresiduary devises included in the measure of the tax.

386 2. The net tax attributable to residuary devises shall be  
387 apportioned among the recipients of the residuary devises  
388 included in the measure of the tax in the proportion that the  
389 value of each residuary devise included in the measure of the  
390 tax bears to the total of all residuary devises included in the  
391 measure of the tax. If the residuary estate is insufficient to  
392 pay the net tax attributable to all residuary devises, the  
393 balance of the net tax attributable to residuary devises shall  
394 be apportioned among the recipients of the nonresiduary devises  
395 in the proportion that the value of each nonresiduary devise  
396 included in the measure of the tax bears to the total of all  
397 nonresiduary devises included in the measure of the tax.

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

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402       1. The net tax attributable to nonresiduary interests of  
403 the trust shall be charged to and paid from the residuary  
404 portion of the trust, whether or not all interests in the  
405 residuary portion are included in the measure of the tax. If the  
406 residuary portion is insufficient to pay the net tax  
407 attributable to all nonresiduary interests, the balance of the  
408 net tax attributable to nonresiduary interests shall be  
409 apportioned among the recipients of the nonresiduary interests  
410 in the proportion that the value of each nonresiduary interest  
411 included in the measure of the tax bears to the total of all  
412 nonresiduary interests included in the measure of the tax.

413       2. The net tax attributable to residuary interests of the  
414 trust shall be apportioned among the recipients of the residuary  
415 interests of the trust included in the measure of the tax in the  
416 proportion that the value of each residuary interest included in  
417 the measure of the tax bears to the total of all residuary  
418 interests of the trust included in the measure of the tax. If  
419 the residuary portion is insufficient to pay the net tax  
420 attributable to all residuary interests, the balance of the net  
421 tax attributable to residuary interests shall be apportioned  
422 among the recipients of the nonresiduary interests in the  
423 proportion that the value of each nonresiduary interest included  
424 in the measure of the tax bears to the total of all nonresiduary  
425 interests included in the measure of the tax.

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

429 (e) Protected homestead, exempt property, and family  
430 allowance.—

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

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

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

441 c. Class III.—Recipients of nonresiduary devises and  
442 nonresiduary interests that are included in the measure of the  
443 federal estate tax.

444 2. Any net tax apportioned to a class pursuant to this  
445 paragraph shall be apportioned among each recipient in the class  
446 in the proportion that the value of the interest of each bears  
447 to the total value of all interests included in that class. A  
448 tax may not be apportioned under this paragraph to the portion  
449 of any interest applied in satisfaction of the elective share  
450 whether or not included in the measure of the tax. For purposes  
451 of this paragraph, if the value of the interests described in s.  
452 732.2075(1) exceeds the amount of the elective share, the

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453 elective share shall be treated as satisfied first from  
454 interests other than those described in classes I, II, and III,  
455 and to the extent that those interests are insufficient to  
456 satisfy the elective share, from the interests passing to or for  
457 the benefit of the surviving spouse described in classes I, II,  
458 and III, beginning with those described in class I, until the  
459 elective share is satisfied. This paragraph has priority over  
460 paragraphs (a) and (h).

461 3. The balance of the net tax attributable to any interest  
462 in protected homestead, exempt property, and the family  
463 allowance determined under s. 732.403 which is not apportioned  
464 under the preceding provisions of this paragraph shall be  
465 apportioned to the recipients of those interests included in the  
466 measure of the tax in the proportion that the value of each  
467 bears to the total value of those interests included in the  
468 measure of the tax.

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

470 1. If the decedent's estate is the beneficiary of a life  
471 insurance policy, annuity, or contractual right included in the  
472 decedent's gross estate, or is the taker as a result of the  
473 exercise or default in exercise of a general power of  
474 appointment held by the decedent, that interest shall be  
475 regarded as passing under the terms of the decedent's will for  
476 the purposes of paragraph (c) or by intestacy if not disposed of  
477 by will. Additionally, any interest included in the measure of  
478 the tax by reason of s. 2041 of the Internal Revenue Code

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479 passing to the decedent's creditors or the creditors of the  
480 decedent's estate shall be regarded as passing to the decedent's  
481 estate for the purpose of this subparagraph.

482 2. If a trust is the beneficiary of a life insurance  
483 policy, annuity, or contractual right included in the decedent's  
484 gross estate, or is the taker as a result of the exercise or  
485 default in exercise of a general power of appointment held by  
486 the decedent, that interest shall be regarded as passing under  
487 the trust for purposes of paragraph (d).

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

494 1. The decedent's will and revocable trust if the estate  
495 is a beneficiary of the revocable trust or if the revocable  
496 trust is a beneficiary of the estate.

497 2. A revocable trust of the decedent and another revocable  
498 trust of the decedent if either trust is the beneficiary of the  
499 other trust.

500 (h) Other interests.—The net tax that is not apportioned  
501 to interests under paragraphs (b)-(g), including, but not  
502 limited to, the net tax attributable to interests passing by  
503 intestacy, interests applied in satisfaction of the elective  
504 share pursuant to s. 732.2075(2), interests passing by reason of

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505 the exercise or nonexercise of a general power of appointment,  
506 jointly held interests passing by survivorship, life insurance,  
507 properties in which the decedent held a reversionary or  
508 revocable interest, annuities, and contractual rights, shall be  
509 apportioned among the recipients of the remaining interests  
510 included in the measure of the tax in the proportion that the  
511 value of each such interest bears to the total value of all  
512 remaining interests included in the measure of the tax.

513 (i) Assessment of liability by court.—If the court finds  
514 that:

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

519 2. The payment of any tax was not effectively directed in  
520 the governing instrument pursuant to subsection (4) and that  
521 such tax is not apportioned by this subsection, the court may  
522 assess liability for the payment of such tax in the manner that  
523 the court finds equitable.

524 (4) DIRECTION AGAINST APPORTIONMENT.—

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

528 (b) For a direction in a governing instrument to be  
529 effective to direct payment of taxes attributable to property  
530 passing under the governing instrument in a manner different

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531 from that provided in this section, the direction must be  
532 express.

533 (c) For a direction in a governing instrument to be  
534 effective to direct payment of taxes attributable to property  
535 not passing under the governing instrument from property passing  
536 under the governing instrument, the governing instrument must  
537 expressly direct that the property passing under the governing  
538 instrument bear the burden of taxation for property not passing  
539 under the governing instrument. Except as provided in paragraph  
540 (d), a direction in the governing instrument to the effect that  
541 all taxes are to be paid from property passing under the  
542 governing instrument whether attributable to property passing  
543 under the governing instrument or otherwise shall be effective  
544 to direct payment from property passing under the governing  
545 instrument of taxes attributable to property not passing under  
546 the governing instrument.

547 (d) In addition to satisfying the other provisions of this  
548 subsection:

549 1.a. For a direction in the decedent's will or revocable  
550 trust to be effective in waiving the right of recovery provided  
551 in s. 2207A of the Internal Revenue Code for the tax  
552 attributable to section 2044 interests, and for any tax imposed  
553 by Florida based upon such section 2044 interests, the direction  
554 must expressly waive that right of recovery. An express  
555 direction that property passing under the will or revocable  
556 trust bear the tax imposed by s. 2044 of the Internal Revenue

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557 Code is deemed an express waiver of the right of recovery  
558 provided in s. 2207A of the Internal Revenue Code. A reference  
559 to "qualified terminable interest property," "QTIP," or property  
560 in which the decedent had a "qualifying income interest for  
561 life" is deemed to be a reference to property upon which tax is  
562 imposed by s. 2044 of the Internal Revenue Code which is subject  
563 to the right of recovery provided in s. 2207A of the Internal  
564 Revenue Code.

565 b. If property is included in the gross estate pursuant to  
566 ss. 2041 and 2044 of the Internal Revenue Code, the property is  
567 deemed included under s. 2044, and not s. 2041, for purposes of  
568 allocation and apportionment of the tax.

569 2. For a direction in the decedent's will or revocable  
570 trust to be effective in waiving the right of recovery provided  
571 in s. 2207B of the Internal Revenue Code for tax imposed by  
572 reason of s. 2036 of the Internal Revenue Code, and any tax  
573 imposed by Florida based upon s. 2036 of the Internal Revenue  
574 Code, the direction must expressly waive that right of recovery.  
575 An express direction that property passing under the will or  
576 revocable trust bear the tax imposed by s. 2036 of the Internal  
577 Revenue Code is deemed an express waiver of the right of  
578 recovery provided in s. 2207B of the Internal Revenue Code. If  
579 property is included in the gross estate pursuant to ss. 2036  
580 and 2038 of the Internal Revenue Code, the property is deemed  
581 included under s. 2038, not s. 2036, for purposes of allocation

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

584 3. A general statement in the decedent's will or revocable  
585 trust waiving all rights of reimbursement or recovery under the  
586 Internal Revenue Code is not an express waiver of the rights of  
587 recovery provided in s. 2207A or s. 2207B of the Internal  
588 Revenue Code.

589 4. For a direction in a governing instrument to be  
590 effective to direct payment of generation-skipping transfer tax  
591 in a manner other than as provided in s. 2603 of the Internal  
592 Revenue Code, and any tax imposed by Florida based on s. 2601 of  
593 the Internal Revenue Code, the direction must specifically  
594 reference the tax imposed by s. 2601 of the Internal Revenue  
595 Code. A reference to the generation-skipping transfer tax or s.  
596 2603 of the Internal Revenue Code is deemed to be a reference to  
597 property upon which tax is imposed by reason of s. 2601 of the  
598 Internal Revenue Code.

599 (e) If the decedent expressly directs by will, the net tax  
600 attributable to property over which the decedent held a general  
601 power of appointment may be determined in a manner other than as  
602 provided in subsection (2) if the net tax attributable to that  
603 property does not exceed the difference between the total net  
604 tax determined pursuant to subsection (2), determined without  
605 regard to this paragraph, and the total net tax that would have  
606 been payable if the value of the property subject to such power  
607 of appointment had not been included in the decedent's gross

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608 estate. If tax is attributable to one or more section 2044  
609 interests pursuant to subsection (2), the net tax attributable  
610 to the section 2044 interests shall be calculated before the  
611 application of this paragraph unless the decedent expressly  
612 directs otherwise by will.

613 (f) If the decedent's will expressly provides that the tax  
614 is to be apportioned as provided in the decedent's revocable  
615 trust by specific reference to the revocable trust, an express  
616 direction in the revocable trust is deemed to be a direction  
617 contained in the will as well as the revocable trust.

618 (g) An express direction in the decedent's will to pay tax  
619 from the decedent's revocable trust by specific reference to the  
620 revocable trust is effective unless a contrary express direction  
621 is contained in the revocable trust.

622 (h) If governing instruments contain effective directions  
623 that conflict as to payment of taxes, the most recently executed  
624 tax apportionment provision controls to the extent of the  
625 conflict. For the purpose of this subsection, if a will or other  
626 governing instrument is amended, the date of the codicil to the  
627 will or amendment to the governing instrument is regarded as the  
628 date of the will or other governing instrument only if the  
629 codicil or amendment contains an express tax apportionment  
630 provision or an express modification of the tax apportionment  
631 provision. A general statement ratifying or republishing all  
632 provisions not otherwise amended does not meet this condition.  
633 If the decedent's will and another governing instrument were

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634 executed on the same date, the will is deemed executed after the  
635 other governing instrument. The earlier conflicting governing  
636 instrument controls as to any tax remaining unpaid after the  
637 application of the later conflicting governing instrument.

638 (i) A grant of permission or authority in a governing  
639 instrument to request payment of tax from property passing under  
640 another governing instrument is not a direction apportioning the  
641 tax to the property passing under the other governing  
642 instrument. A grant of permission or authority in a governing  
643 instrument to pay tax attributable to property not passing under  
644 the governing instrument is not a direction apportioning the tax  
645 to property passing under the governing instrument.

646 (j) This section applies to any tax remaining to be paid  
647 after the application of any effective express directions. An  
648 effective express direction for payment of tax on specific  
649 property or a type of property in a manner different from that  
650 provided in this section is not effective as an express  
651 direction for payment of tax on other property or other types of  
652 property included in the measure of the tax.

653 (5) TRANSFER OF PROPERTY.—A personal representative or  
654 fiduciary shall not be required to transfer to a recipient any  
655 property reasonably anticipated to be necessary for the payment  
656 of taxes. Further, the personal representative or fiduciary is  
657 not required to transfer any property to the recipient until the  
658 amount of the tax due from the recipient is paid by the  
659 recipient. If property is transferred before final apportionment

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660 of the tax, the recipient shall provide a bond or other security  
661 for his or her apportioned liability in the amount and form  
662 prescribed by the personal representative or fiduciary.

663 (6) ORDER OF APPORTIONMENT.—

664 (a) The personal representative may petition at any time  
665 for an order of apportionment. If administration of the  
666 decedent's estate has not commenced at any time after 90 days  
667 from the decedent's death, any fiduciary may petition for an  
668 order of apportionment in the court in which venue would be  
669 proper for administration of the decedent's estate. Notice of  
670 the petition for order of apportionment must be served on all  
671 interested persons in the manner provided for service of formal  
672 notice. At any time after 6 months from the decedent's death,  
673 any recipient may petition the court for an order of  
674 apportionment.

675 (b) The court shall determine all issues concerning  
676 apportionment. If the tax to be apportioned has not been finally  
677 determined, the court shall determine the probable tax due or to  
678 become due from all interested persons, apportion the probable  
679 tax, and retain jurisdiction over the parties and issues to  
680 modify the order of apportionment as appropriate until after the  
681 tax is finally determined.

682 (7) DEFICIENCY.—

683 (a) If the personal representative or fiduciary does not  
684 have possession of sufficient property otherwise distributable  
685 to the recipient to pay the tax apportioned to the recipient,

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686 whether under this section, the Internal Revenue Code, or the  
687 governing instrument, if applicable, the personal representative  
688 or fiduciary shall recover the deficiency in tax so apportioned  
689 to the recipient:

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

692 2. To the extent of any deficiency in collection from the  
693 fiduciary, or to the extent collection from the fiduciary is  
694 excused pursuant to subsection (8) and in all other cases, from  
695 the recipient of the property to which the tax is apportioned,  
696 unless relieved of this duty as provided in subsection (8).

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

699 (c) In any action for the enforcement of an order of  
700 apportionment, the court shall award taxable costs as in  
701 chancery actions, including reasonable attorney fees, and may  
702 award penalties and interest on the unpaid tax in accordance  
703 with equitable principles.

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

710 (8) RELIEF FROM DUTY.—

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

715 1. The estimated court costs and attorney fees in  
716 collecting the apportioned tax from a person against whom the  
717 tax has been apportioned will approximate or exceed the amount  
718 of the recovery;

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

722 3. It is impracticable to enforce contribution of the  
723 apportioned tax against a person against whom the tax has been  
724 apportioned in view of the improbability of obtaining a judgment  
725 or the improbability of collection under any judgment that might  
726 be obtained, or otherwise.

727 (b) A personal representative or fiduciary is not liable  
728 for failure to attempt to enforce collection if the personal  
729 representative or fiduciary reasonably believes that collection  
730 would have been economically impracticable.

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

735 (10) CONTRIBUTION.—This section does not limit the right  
736 of any person who has paid more than the amount of the tax

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737 apportionable to that person, calculated as if all apportioned  
738 amounts would be collected, to obtain contribution from those  
739 who have not paid the full amount of the tax apportionable to  
740 them, calculated as if all apportioned amounts would be  
741 collected, and that right is hereby conferred. In any action to  
742 enforce contribution, the court shall award taxable costs as in  
743 chancery actions, including reasonable attorney fees.

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

749 Section 7. Section 736.1005, Florida Statutes, is amended  
750 to read:

751 736.1005 Attorney ~~attorney's~~ fees for services to the  
752 trust.—

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

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

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

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

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

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

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

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

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

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

784 7. Whether a person whose part of the trust is to be  
785 assessed unjustly caused an increase in the amount of attorney  
786 fees incurred by the trustee or another person in connection  
787 with the proceeding.

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

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

792        (3) Except when a trustee's interest may be adverse in a  
793 particular matter, the attorney shall give reasonable notice in  
794 writing to the trustee of the attorney's retention by an  
795 interested person and the attorney's entitlement to fees  
796 pursuant to this section. A court may reduce any fee award for  
797 services rendered by the attorney prior to the date of actual  
798 notice to the trustee, if the actual notice date is later than a  
799 date of reasonable notice. In exercising this discretion, the  
800 court may exclude compensation for services rendered after the  
801 reasonable notice date but before ~~prior to~~ the date of actual  
802 notice.

803        Section 8. Section 736.1006, Florida Statutes, is amended  
804 to read:

805        736.1006 Costs in trust proceedings.-

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

808        (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust  
809 under subsection (1) or s. 733.106(4)(a), the court, in its  
810 discretion, may direct from what part of the trust the costs  
811 shall be paid. All or any part of the costs to be paid from the  
812 trust may be assessed against one or more persons' part of the  
813 trust in such proportions as the court finds to be just and

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814 proper. In the exercise of its discretion, the court may  
815 consider the factors set forth in s. 736.1005(2).

816 Section 9. The amendments made by this act to ss. 733.212,  
817 733.2123, 733.3101, and 733.504, Florida Statutes, apply to  
818 proceedings commenced on or after July 1, 2015. The law in  
819 effect before July 1, 2015, applies to proceedings commenced  
820 before that date.

821 Section 10. (1) The amendment made by this act to s.  
822 733.817(1)(g) and (2)(c), Florida Statutes, is remedial in  
823 nature, is intended to clarify existing law, and applies  
824 retroactively to all proceedings pending or commenced on or  
825 after July 1, 2015, in which the apportionment of taxes has not  
826 been finally determined or agreed for the estates of decedents  
827 who die after December 31, 2004.

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

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

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839 Section 11. The amendments made by this act to ss.  
840 733.106, 736.1005, and 736.1006, Florida Statutes, apply to  
841 proceedings commenced on or after July 1, 2015. The law in  
842 effect before July 1, 2015, applies to proceedings commenced  
843 before that date.

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

845

846

847 **T I T L E A M E N D M E N T**

848 Remove everything before the enacting clause and insert:  
849 An act relating to estates; amending s. 733.106, F.S.;  
850 authorizing the court, if costs and attorney fees are to be paid  
851 from the estate under specified sections of law, to direct  
852 payment from a certain part of the estate or, under specified  
853 circumstances, to direct payment from a trust; authorizing costs  
854 and fees to be assessed against one or more persons' part of the  
855 trust in such proportions as the court finds just and proper;  
856 specifying factors that the court may consider in directing the  
857 assessment of such costs and fees; authorizing a court to assess  
858 costs and fees without finding that the person engaged in  
859 specified wrongful acts; amending s. 733.212, F.S.; revising the  
860 required content for a notice of administration; revising  
861 provisions that require an interested person, who has been  
862 served a notice of administration, to file specified objections  
863 in an estate matter within 3 months after service of such  
864 notice; providing that the 3-month period may only be extended

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865 for certain estoppel; providing that objections that are not  
866 barred by the 3-month period must be filed no later than a  
867 specified date; deleting references to objections based upon the  
868 qualifications of a personal representative; amending s.  
869 733.2123, F.S.; conforming provisions to changes made by the  
870 act; amending s. 733.3101, F.S.; requiring a personal  
871 representative to resign immediately if he or she knows that he  
872 or she was not qualified to act at the time of appointment;  
873 requiring a personal representative who was qualified to act at  
874 such appointment to file a notice if no longer qualified;  
875 authorizing an interested person within a specified period to  
876 request the removal of a personal representative who files such  
877 notice; providing that a personal representative is liable for  
878 costs and attorney fees incurred in a removal proceeding if he  
879 or she is removed and should have known of the facts supporting  
880 the removal; defining the term "qualified"; amending s. 733.504,  
881 F.S.; requiring a personal representative to be removed and the  
882 letters of administration revoked if he or she was not qualified  
883 to act at the time of appointment; amending s. 733.817, F.S.;  
884 defining and redefining terms; deleting a provision that exempts  
885 an interest in protected homestead from the apportionment of  
886 taxes; providing for the payment of taxes on protected homestead  
887 family allowance and exempt property by certain other property  
888 to the extent such other property is sufficient; revising the  
889 allocation of taxes; revising the apportionment of the net tax  
890 attributable to specified interests; authorizing a court to

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891 assess liability in an equitable manner under certain  
892 circumstances; providing that a governing instrument may not  
893 direct that taxes be paid from property other than property  
894 passing under the governing instrument, except under specified  
895 conditions; requiring that direction in a governing instrument  
896 be express to apportion taxes under certain circumstances;  
897 requiring that the right of recovery provided in the Internal  
898 Revenue Code for certain taxes be expressly waived in the  
899 decedent's will or revocable trust with certain specificity;  
900 specifying the property upon which certain tax is imposed for  
901 allocation and apportionment of certain tax; providing that a  
902 general statement in the decedent's will or revocable trust  
903 waiving all rights of reimbursement or recovery under the  
904 Internal Revenue Code is not an express waiver of certain rights  
905 of recovery; requiring direction to specifically reference the  
906 generation-skipping transfer tax imposed by the Internal Revenue  
907 Code to direct its apportionment; authorizing, under certain  
908 circumstances, the decedent to direct by will the amount of net  
909 tax attributable to property over which the decedent held a  
910 general power of appointment under certain circumstances;  
911 providing that an express direction in a revocable trust is  
912 deemed to be a direction contained in the decedent's will as  
913 well as the revocable trust under certain circumstances;  
914 providing that an express direction in the decedent's will to  
915 pay tax from the decedent's revocable trust by specific  
916 reference to the revocable trust is effective unless a contrary

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917 | express direction is contained in the revocable trust; revising  
918 | the resolution of conflicting directions in governing  
919 | instruments with regard to payment of taxes; providing that the  
920 | later express direction in the will or other governing  
921 | instrument controls; providing that the date of an amendment to  
922 | a will or other governing instrument is the date of the will or  
923 | trust for conflict resolution only if the codicil or amendment  
924 | contains an express tax apportionment provision or an express  
925 | modification of the tax apportionment provision; providing that  
926 | a will is deemed executed after another governing instrument if  
927 | the decedent's will and another governing instrument were  
928 | executed on the same date; providing that an earlier conflicting  
929 | governing instrument controls as to any tax remaining unpaid  
930 | after the application of the later conflicting governing  
931 | instrument; providing that a grant of permission or authority in  
932 | a governing instrument to request payment of tax from property  
933 | passing under another governing instrument is not a direction  
934 | apportioning the tax to the property passing under the other  
935 | governing instrument; providing a grant of permission or  
936 | authority in a governing instrument to pay tax attributable to  
937 | property not passing under the governing instrument is not a  
938 | direction apportioning the tax to property passing under the  
939 | governing instrument; providing application; prohibiting the  
940 | requiring of a personal representative or fiduciary to transfer  
941 | to a recipient property that may be used for payment of taxes;  
942 | amending s. 736.1005, F.S.; authorizing the court, if attorney

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943 fees are to be paid from the trust under specified sections of  
944 law, to direct payment from a certain part of the trust;  
945 providing that fees may be assessed against one or more persons'  
946 part of the trust in such proportions as the court finds just  
947 and proper; specifying factors that the court may consider in  
948 directing the assessment of such fees; providing that a court  
949 may assess fees without finding that a person engaged specified  
950 wrongful acts; amending s. 736.1006, F.S.; authorizing the  
951 court, if costs are to be paid from the trust under specified  
952 sections of law, to direct payment from a certain part of the  
953 trust; providing that costs may be assessed against one or more  
954 persons' part of the trust in such proportions as the court  
955 finds just and proper; specifying factors that the court may  
956 consider in directing the assessment of such costs; providing  
957 that specified provisions of the act are remedial and intended  
958 to clarify existing law; providing for retroactive and  
959 prospective application of specified portions of the act;  
960 providing an effective date.