

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

26 | bad faith; amending s. 732.2145, F.S.; requiring the
 27 | payment of interest on any unpaid portion of a
 28 | person's required contribution toward the elective
 29 | share after a certain date; creating s. 732.2151,
 30 | F.S.; providing for the award of fees and costs in
 31 | certain elective share proceedings; providing that a
 32 | court may direct payment from certain sources;
 33 | providing applicability; amending s. 738.606, F.S.;
 34 | providing that a surviving spouse may require a
 35 | trustee of a marital or elective share trust to make
 36 | property productive of income; providing
 37 | applicability; providing an effective date.

38 |
 39 | Be It Enacted by the Legislature of the State of Florida:

40 |
 41 | Section 1. Subsections (1) and (9) of section 732.2025,
 42 | Florida Statutes, are amended to read:

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

45 | (1) "Direct recipient" means the decedent's probate estate
 46 | and any other person who receives property included in the
 47 | elective estate by transfer from the decedent, including
 48 | transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right
 49 | of survivorship, or by beneficiary designation under a governing
 50 | instrument. For this purpose, a beneficiary of an insurance

51 | policy on the decedent's life, the net cash surrender value of
52 | which is included in the elective estate, is treated as having
53 | received property included in the elective estate. In the case
54 | of property held in trust, "direct recipient" includes the
55 | trustee but excludes the beneficiaries of the trust.

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

58 | Section 2. Section 732.2035, Florida Statutes, is amended
59 | to read:

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

64 | (1) The decedent's probate estate.

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

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

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

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

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

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

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

100

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

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

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

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

116 (c) This subsection does not apply to any property if the
 117 decedent's only interests in the property are that:

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

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

125 3. The income or principal of the property is or could be

126 distributed in satisfaction of the decedent's obligation of
127 support; or

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

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

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

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

150 (a) Any property transferred as a result of the

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

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

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

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

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

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

176 termination occurs when the power terminates by exercise,
177 release, lapse, default, or otherwise.

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

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

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

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

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

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

203 732.2045 Exclusions and overlapping application.—

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

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

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

213 732.2055 Valuation of the elective estate.—For purposes of
 214 s. 732.2035, "value" means:

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

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

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

224 3. If the surviving spouse validly waived his or her
 225 homestead rights as provided under s. 732.702 or otherwise under

226 applicable law, but nevertheless receives an interest in the
227 protected homestead, other than an interest described in s.
228 732.401, including an interest in trust, the value of the
229 spouse's interest is determined as property interests that are
230 not protected homestead.

231 (b) For purposes of this subsection, fair market value is
232 net of the aggregate amount, as of the date of the decedent's
233 death, of all mortgages, liens, and security interests to which
234 the protected homestead is subject and for which the decedent is
235 liable, but only to the extent that such amount is not otherwise
236 deducted as a claim paid or payable from the elective estate.

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

241 (3)~~(2)~~ In the case of any policy of insurance on the
242 decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8),~~
243 the net cash surrender value of the policy on the date of the
244 termination or transfer.

245 (4)~~(3)~~ In the case of amounts includable under s.
246 732.2035(8) ~~s. 732.2035(7),~~ the transfer tax value of the
247 amounts on the date of the decedent's death.

248 (5)~~(4)~~ In the case of other property included under s.
249 732.2035(9) ~~s. 732.2035(8),~~ the fair market value of the
250 property on the date of the termination or transfer, computed

251 after deducting any mortgages, liens, or security interests on
252 the property as of that date.

253 (6)~~(5)~~ In the case of all other property, the fair market
254 value of the property on the date of the decedent's death,
255 computed after deducting from the total value of the property:

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

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

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

264 732.2075 Sources from which elective share payable;
265 abatement.—

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

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

273 (2) If, after the application of subsection (1), the
274 elective share is not fully satisfied, the unsatisfied balance
275 shall be allocated entirely to one class of direct recipients of

276 the remaining elective estate and apportioned among those
277 recipients, and if the elective share amount is not fully
278 satisfied, to the next class of direct recipients, in the
279 following order of priority, until the elective share amount is
280 satisfied:

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

288
289 For purposes of this subsection, a protected charitable interest
290 is any interest for which a charitable deduction with respect to
291 the transfer of the property was allowed or allowable to the
292 decedent or the decedent's spouse under the United States gift
293 or income tax laws.

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

298 (c) If there is more than one trust to which this
299 subsection could apply, unless otherwise provided in the
300 decedent's will or, in the absence of a provision in the

301 decedent's will, in a trust referred to in the decedent's will,
 302 the unsatisfied balance shall be apportioned pro rata to all
 303 such trusts in proportion to the value, as determined under s.
 304 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's
 305 beneficial interests in the trusts.

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

308 732.2085 Liability of direct recipients and
 309 beneficiaries.—

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

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

319 Section 7. Section 732.2095, Florida Statutes, is amended
 320 to read:

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

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

324 (a) "Applicable valuation date" means:

325 1. In the case of transfers in satisfaction of the

326 elective share, the date of the decedent's death.

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

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

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

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

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

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

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

348 9. In all other cases, the date of the decedent's death or
 349 the date the surviving spouse first comes into possession of the
 350 property, whichever occurs later.

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

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

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

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

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

376 is one-half of the value of the property on the applicable
377 valuation date.

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

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

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

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

396 3. Fifty percent in all other cases.

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

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

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

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

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

424 732.2115 Protection of payors and other third parties.—
425 Although a property interest is included in the decedent's

426 elective estate under s. 732.2035(3)-(9) ~~s. 732.2035(2)-(8)~~, a
427 payor or other third party is not liable for paying,
428 distributing, or transferring the property to a beneficiary
429 designated in a governing instrument, or for taking any other
430 action in good faith reliance on the validity of a governing
431 instrument.

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

434 732.2135 Time of election; extensions; withdrawal.—

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

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

451 extension.

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

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

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

464 Section 10. Subsection (1) of section 732.2145, Florida
465 Statutes, is amended to read:

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

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

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

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

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

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

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

487 (c) The satisfaction of the elective share.

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

490 (a) Direct payment from the estate.

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

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

495 (3) In addition to any of the fees that may be awarded
496 under subsections (1) and (2), if the personal representative
497 does not file a petition to determine the amount of the elective
498 share as required by the Florida Probate Rules, the electing
499 spouse or the attorney-in-fact, guardian of the property, or
500 personal representative of the electing spouse may be awarded

501 from the estate reasonable costs, including attorney fees,
502 incurred in connection with the preparation and filing of the
503 petition.

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

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

509 738.606 Property not productive of income.—

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

526 | such marital trust or elective share trust to make property
527 | productive of income, convert property within a reasonable time,
528 | or exercise the power conferred by ss. 738.104 and 738.1041. The
529 | trustee may decide which action or combination of actions to
530 | take.

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

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