

By the Committee on Judiciary; and Senator Passidomo

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

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

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

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

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

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

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

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

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59 to read:

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

64 (1) The decedent's probate estate.

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

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

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

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

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

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

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

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

100

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

203 732.2045 Exclusions and overlapping application.—

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

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

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

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

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

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

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

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

232 (b) For purposes of this subsection, the term "fair market

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233 value" means the net of the aggregate amount, as of the date of
 234 the decedent's death, of all mortgages, liens, and security
 235 interests to which the protected homestead is subject and for
 236 which the decedent is liable, but only to the extent that such
 237 amount is not otherwise deducted as a claim paid or payable from
 238 the elective estate.

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

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

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

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

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

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

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

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262 property.

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

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

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

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

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

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

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

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

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

308 Section 6. Paragraph (a) of subsection (3) of section
309 732.2085, Florida Statutes, is amended to read:

310 732.2085 Liability of direct recipients and beneficiaries.—

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

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

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

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

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

325 (a) "Applicable valuation date" means:

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

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

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

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

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

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

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

346 8. In the case of amounts payable to the surviving spouse
347 under any plan or arrangement described in s. 732.2035(8) ~~s.~~
348 ~~732.2035(7)~~, the date of the decedent's death.

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

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

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

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

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

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

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378 valuation date.

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

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

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

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

397 3. Fifty percent in all other cases.

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

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

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407 all of the spouse's interests in the trust shall not exceed one-
408 half of the value of the trust principal on the applicable
409 valuation date.

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

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

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

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

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

435 732.2135 Time of election; extensions; withdrawal.—

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

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

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

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

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

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

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

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

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

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

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

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

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

487 (c) The satisfaction of the elective share.

488 (2) When awarding taxable costs or attorney fees, the court
489 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

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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 or
505 after July 1, 2017, without regard to the date of the decedent's
506 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

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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.