

# Shumaker, Loop & Kendrick, LLP

Tampa ♦ Toledo ♦ Charlotte ♦ Columbus ♦ Sarasota  
Attorneys at Law

The Economic Growth And Tax Relief Reconciliation Act Of 2001  
("EGTRRA")

## SUMMARY OF TRANSFER TAXES 2001-2011

Year	Estate Tax Exemption	Gift Tax Exemption (1)	GST Exemption	Top Tax Rate
2001	\$675,000	\$675,000	\$1,060,000 <sup>(2)</sup>	55%
2002	\$1,000,000	\$1,000,000	\$1,100,000 <sup>(2)</sup>	50% <sup>(3)</sup>
2003	\$1,000,000	\$1,000,000	\$1,120,000 <sup>(2)</sup>	49%
2004 <sup>(4)</sup>	\$1,500,000	\$1,000,000	\$1,500,000	48%
2005 <sup>(4)</sup>	\$1,500,000	\$1,000,000	\$1,500,000	47%
2006 <sup>(4)</sup>	\$2,000,000	\$1,000,000	\$2,000,000	46%
2007 <sup>(4)</sup>	\$2,000,000	\$1,000,000	\$2,000,000	45%
2008 <sup>(4)</sup>	\$2,000,000	\$1,000,000	\$2,000,000	45%
2009 <sup>(4)</sup>	\$3,500,000	\$1,000,000	\$3,500,000	45%
<b>2010</b>	<b>N/A – Repealed</b>	<b>\$1,000,000</b>	<b>N/A – Repealed</b>	<b>35% <sup>(5)</sup></b>
2011 <sup>(6)</sup>	\$1,000,000	\$1,000,000	\$1,120,000	55%

- (1) The annual gift tax exclusion is \$13,000 for 2010 (unchanged from 2009). The 5-year advance funding of annual exclusions to 529 plans and the unlimited exclusions for direct payment of tuition or medical expenses will continue to be very important.
- (2) The Generation Skipping Tax ("GST") exemption continues to be subject to the inflation adjustments until 2004 and then becomes equal to the estate tax exemption for all years through 2009.
- (3) For 2002, the 5% surtax (which phases out the benefit of the graduated rates for estates in excess of \$10,000,000) is repealed and all transfer tax rates are reduced to the top transfer tax rate.
- (4) The lifetime gift tax exemption of \$1.0 Million remains lower than the increasing estate tax exemption from 2004 to 2009. This will make gifting in excess of \$1.0 Million taxable.
- (5) No estate tax or GST tax, but lifetime taxable transfers are taxed at the highest income tax rate (currently 35%). Carryover basis takes effect with a limited basis step-up. The transfer tax on lifetime distributions from a pre-2010 QDOT is repealed in 2021. There are three alternatives for 2010: (a) Congress reinstates the estate tax and GST tax retroactively (constitutional issues?); (b) Congress reinstates the estate tax and GST prospectively; or (c) Congress does nothing and EGTRRA sunsets after December 31, 2010.
- (6) If EGTRRA "sunsets" after December 31, 2010, the prior tax law returns with exemptions and rates as if EGTRRA had never been enacted (whatever that means), but with any adjustments and increases for inflation allowed under prior law. Therefore, the GST Exemption for 2011 is estimated and shown at its last inflation adjusted amount.

**Selected 2010 Inflation-Adjusted Items:** Annual Exclusion for Gifts is \$13,000; Annual Gift Tax Exclusion for gifts to non-citizen spouses (other than gifts of future interests in property) is now \$134,000 (up from \$133,000); Special Use Valuation maximum decrease for qualified real property under IRC 2032A remains at \$1.0 Million; Dollar amount used for qualified installment estate tax payments under IRC 6166 at 2% rate is now \$1.34 Million, up from \$1.33 Million.

See Rev. Proc. 2009-50, I.R.B. 2009-93 (Oct. 15, 2009).

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1 A bill to be entitled

2 An act relating to probate procedures; amending s.  
3 655.934, F.S.; updating terminology relating to a durable  
4 power of attorney; amending s. 655.935, F.S.; imposing  
5 additional duties on the lessor of a safe-deposit box  
6 relating to the contents of the box when the lessee has  
7 died; authorizing the lessor to charge fees for performing  
8 such duties; amending s. 731.110, F.S.; revising  
9 requirements relating to filing a caveat; providing that a  
10 caveat may be filed before or after a person's death;  
11 providing for the expiration of the caveat; amending s.  
12 731.201, F.S.; revising the definitions of "formal notice"  
13 and "informal notice"; amending s. 731.301, F.S.; revising  
14 provisions relating to notice; amending s. 732.2125, F.S.;  
15 revising a provision relating to the right of election;  
16 amending s. 732.401, F.S.; providing that a decedent's  
17 spouse may elect to take an interest in a homestead as a  
18 tenant in common rather than a life estate; providing  
19 procedures and forms for filing notice of such election;  
20 providing that such election is irrevocable; providing for  
21 the allocation of expenses relating to the homestead;  
22 specifying that the interests of the decedent's  
23 descendants in the homestead may not be divested if the  
24 spouse's interest is disclaimed; amending s. 732.4015,  
25 F.S.; providing that if a spouse's interest in a homestead  
26 has been disclaimed, the disclaimed interest passes in  
27 accordance with ch. 739, F.S.; creating s. 732.4017, F.S.;  
28 providing for the inter vivos transfer of homestead

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 property; providing limitations; amending s. 732.608,  
 30 F.S.; revising provisions relating to which laws apply  
 31 when determining intestate succession in certain  
 32 circumstances; creating s. 732.805, F.S.; denying certain  
 33 rights or benefits to a surviving spouse who procured a  
 34 marriage by fraud, duress, or undue influence; providing  
 35 procedures for challenging a surviving spouse; providing  
 36 for the award of costs and fees; providing a limitation of  
 37 liability relating to distributions made without notice of  
 38 a pending claim; providing for means of notice; providing  
 39 a time limitation on bringing such actions; creating s.  
 40 733.1051, F.S.; authorizing a court to construe the terms  
 41 of certain wills for certain purposes under certain  
 42 circumstances; providing definitions; providing criteria  
 43 for court construction of a will; providing for  
 44 nonapplication to certain dispositions; authorizing a  
 45 personal representative to take certain actions without  
 46 court order pending a determination of estate  
 47 distribution; limiting personal representative liability;  
 48 preserving certain rights to construe a will; providing  
 49 for retroactive operation; amending s. 733.107, F.S.;  
 50 providing that, in a will contest, certain affidavits and  
 51 oaths are prima facie evidence relating to execution and  
 52 attestation of a will; amending s. 733.2123, F.S.;  
 53 deleting the requirement for attaching a copy of a will to  
 54 a notice of a petition for administration; amending s.  
 55 733.608, F.S.; specifying the manner for serving notice of  
 56 the personal representative's lien for expenditures and

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57 obligations incurred; amending s. 735.203, F.S.; revising  
58 provisions relating to providing notice for a petition for  
59 summary administration; amending s. 736.1102, F.S.;  
60 clarifying provisions relating to which laws apply when  
61 determining intestate succession in certain circumstances;  
62 amending s. 744.444, F.S.; conforming provisions to  
63 changes made by the act; providing effective dates.  
64

65 Be It Enacted by the Legislature of the State of Florida:  
66

67 Section 1. Section 655.934, Florida Statutes, is amended  
68 to read:

69 655.934 Effect of lessee's death or incapacity.—If a  
70 lessor without knowledge of the death or ~~of~~ an order determining  
71 the incapacity of the lessee deals with the lessee's agent in  
72 accordance with a written power of attorney or a durable ~~family~~  
73 power of attorney signed by such lessee, the transaction binds  
74 the lessee's estate and the lessee.

75 Section 2. Section 655.935, Florida Statutes, is amended  
76 to read:

77 655.935 Search procedure on death of lessee.—If  
78 satisfactory proof of the death of the lessee is presented, a  
79 lessor shall permit the person named in a court order for that  
80 ~~the~~ purpose, or if no order has been served upon the lessor, the  
81 spouse, a parent, an adult descendant, or a person named as a  
82 personal representative in a copy of a purported will produced  
83 by such person, to open and examine the contents of a safe-  
84 deposit box leased or coleased by a decedent, or any documents

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85 delivered by a decedent for safekeeping, in the presence of an  
86 officer of the lessor, ~~and the lessor,~~

87 (1) If ~~so~~ requested by such person, the lessor shall  
88 remove and deliver only ~~shall deliver:~~

89 (a) ~~(1)~~ Any writing purporting to be a will of the  
90 decedent, to the court having probate jurisdiction in the county  
91 in which the financial institution is located.

92 (b) ~~(2)~~ Any writing purporting to be a deed to a burial  
93 plot or to give burial instructions, to the person making the  
94 request for a search.

95 (c) ~~(3)~~ Any document purporting to be an insurance policy  
96 on the life of the decedent, to the beneficiary named therein.

97 (2) The officer of the lessor shall make a complete copy  
98 of any document removed and delivered pursuant to this section  
99 and place that copy, together with a memorandum of delivery  
100 identifying the name of the officer, the person to whom the  
101 document was delivered, the purported relationship of the person  
102 to whom the document was delivered, and the date of delivery, in  
103 the safe-deposit box leased or coleased by the decedent.

104 (3) The lessor may charge reasonable fees to cover costs  
105 incurred pursuant to this section.

106 (4) No other contents may be removed pursuant to this  
107 section. Access granted pursuant to this section is ~~shall~~ not be  
108 considered the initial opening of the safe-deposit box pursuant  
109 to s. 733.6065 ~~by a personal representative appointed by a court~~  
110 ~~in this state.~~

111 Section 3. Section 731.110, Florida Statutes, is amended  
112 to read:

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113 731.110 Caveat; proceedings.—

114 (1) Any interested person, ~~including a creditor~~, who is  
 115 apprehensive that an estate, either testate or intestate, will  
 116 be administered or that a will may be admitted to probate  
 117 without ~~that the~~ person's knowledge may file a caveat with the  
 118 court. The caveat of the interested person, other than a  
 119 creditor, may be filed before or after the death of the person  
 120 for whom the estate will be, or is being, administered. The  
 121 caveat of a creditor may be filed only after the person's death.

122 (2) ~~A caveat shall contain the decedent's social security~~  
 123 ~~number, last known residence address, and date of birth, if they~~  
 124 ~~are known, as identification, a statement of the interest of the~~  
 125 ~~caveator in the estate, the name and specific residence address~~  
 126 ~~of the caveator, and, If the caveator, other than a state~~  
 127 ~~agency, is a nonresident and is not represented by an attorney~~  
 128 ~~admitted to practice in this state who has signed the caveat~~  
 129 ~~nonresident of the county, the caveator must designate~~  
 130 ~~additional name and specific residence address of some person~~  
 131 ~~residing in the county in which the caveat is filed, or office~~  
 132 ~~address of a member of The Florida Bar residing in Florida,~~  
 133 ~~designated as the agent of the caveator, upon whom service may~~  
 134 ~~be made; however, if the caveator is represented by an attorney~~  
 135 ~~admitted to practice in this state who has signed the caveat, it~~  
 136 is not necessary to designate a resident agent.

137 (3) ~~If~~ When a caveat has been filed by an interested  
 138 person other than a creditor, the court may ~~shall~~ not admit a  
 139 will of the decedent to probate or appoint a personal  
 140 representative until formal notice of the petition for

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141 administration has been served on the caveator or the caveator's  
142 designated agent ~~by formal notice~~ and the caveator has had the  
143 opportunity to participate in proceedings on the petition, as  
144 provided by the Florida Probate Rules.

145 (4) A caveat filed before the death of the person for whom  
146 the estate will be administered expires 2 years after filing.

147 Section 4. Subsections (18) and (22) of section 731.201,  
148 Florida Statutes, are amended to read:

149 731.201 General definitions.—Subject to additional  
150 definitions in subsequent chapters that are applicable to  
151 specific chapters or parts, and unless the context otherwise  
152 requires, in this code, in s. 409.9101, and in chapters 736,  
153 738, 739, and 744, the term:

154 (18) "Formal notice" means a form of ~~formal~~ notice that is  
155 described in and served by a method of services provided under  
156 rule 5.040(a) of the Florida Probate Rules.

157 (22) "Informal notice" or "notice" means a method of  
158 service for pleadings or papers as provided ~~informal notice~~  
159 under rule 5.040(b) of the Florida Probate Rules.

160 Section 5. Section 731.301, Florida Statutes, is amended  
161 to read:

162 731.301 Notice.—

163 (1) If ~~When~~ notice to an interested person of a petition  
164 or other proceeding is required, the notice shall be given to  
165 the interested person or that person's attorney as provided in  
166 the code or the Florida Probate Rules.

167 (2) In a probate proceeding, formal notice is ~~shall be~~  
168 sufficient to acquire jurisdiction over the person receiving

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169 formal notice to the extent of the person's interest in the  
170 estate or in the decedent's protected homestead.

171 (3) Persons given proper notice of a ~~any~~ proceeding are  
172 ~~shall be~~ bound by all orders entered in that proceeding.

173 Section 6. Subsection (2) of section 732.2125, Florida  
174 Statutes, is amended to read:

175 732.2125 Right of election; by whom exercisable.—The right  
176 of election may be exercised:

177 (2) With approval of the court having jurisdiction of the  
178 probate proceeding by an attorney in fact or a guardian of the  
179 property of the surviving spouse. Before approving the election,  
180 the court shall determine that the election is in ~~as~~ the best  
181 interests of the surviving spouse, ~~during the spouse's probable~~  
182 ~~lifetime,~~ ~~require.~~

183 Section 7. Section 732.401, Florida Statutes, is amended  
184 to read:

185 732.401 Descent of homestead.—

186 (1) If not devised as authorized ~~permitted~~ by law and the  
187 ~~Florida~~ constitution, the homestead shall descend in the same  
188 manner as other intestate property; but if the decedent is  
189 survived by a spouse and one or more descendants, the surviving  
190 spouse shall take a life estate in the homestead, with a vested  
191 remainder to the descendants in being at the time of the  
192 decedent's death per stirpes.

193 (2) In lieu of a life estate under subsection (1), the  
194 surviving spouse may elect to take an undivided one-half  
195 interest in the homestead as a tenant in common, with the  
196 remaining undivided one-half interest vesting in the decedent's

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197 descendants in being at the time of the decedent's death, per  
198 stirpes.

199 (a) The right of election may be exercised:

200 1. By the surviving spouse; or

201 2. With the approval of a court having jurisdiction of the  
202 real property, by an attorney in fact or guardian of the  
203 property of the surviving spouse. Before approving the election,  
204 the court shall determine that the election is in the best  
205 interests of the surviving spouse during the spouse's probable  
206 lifetime.

207 (b) The election must be made within 6 months after the  
208 decedent's death and during the surviving spouse's lifetime. The  
209 time for making the election may not be extended except as  
210 provided in paragraph (c).

211 (c) A petition by an attorney in fact or guardian of the  
212 property for approval to make the election tolls the time for  
213 making the election until 6 months after the decedent's death or  
214 30 days after the rendition of an order authorizing the  
215 election, whichever occurs last.

216 (d) Once made, the election is irrevocable.

217 (e) The election shall be made by filing a notice of  
218 election containing the legal description of the homestead  
219 property for recording in the official record books of the  
220 county or counties where the homestead property is located. The  
221 notice must be in substantially the following form:

222  
223 ELECTION OF SURVIVING SPOUSE  
224 TO TAKE A ONE-HALF INTEREST OF

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DECEDENT'S INTEREST IN HOMESTEAD PROPERTY

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STATE OF.....

COUNTY OF.....

1. The decedent, \_\_\_\_\_, died on \_\_\_\_\_.

On the date of the decedent's death, The decedent was married to \_\_\_\_\_, who survived the decedent.

2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, that real property being in \_\_\_\_\_ County, Florida, and described as: ...(description of homestead property)....

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

.....  
...(Affiant)...

Sworn to (or affirmed) and subscribed before me this .... day of ... (month) ..., ... (year) ..., by ... (affiant)...

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253 ...(Signature of Notary Public-State of Florida)...

254

255 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

256

257 Personally Known OR Produced Identification

258 ...(Type of Identification Produced)...

259

260 (3) Unless and until an election is made under subsection  
 261 (2), expenses relating to the ownership of the homestead shall  
 262 be allocated between the surviving spouse, as life tenant, and  
 263 the decedent's descendants, as remaindermen, in accordance with  
 264 chapter 738. If an election is made, expenses relating to the  
 265 ownership of the homestead shall be allocated between the  
 266 surviving spouse and the descendants as tenants in common in  
 267 proportion to their respective shares, effective as of the date  
 268 the election is filed for recording.

269 (4) If the surviving spouse's life estate created in  
 270 subsection (1) is disclaimed pursuant to chapter 739, the  
 271 interests of the decedent's descendants may not be divested.

272 (5)-(2) This section does ~~Subsection (1) shall~~ not apply to  
 273 property that the decedent and the surviving spouse owned in  
 274 tenancy by the entirety or joint tenancy with rights of  
 275 survivorship ~~as tenants by the entirety.~~

276 Section 8. Subsection (3) is added to section 732.4015,  
 277 Florida Statutes, to read:

278 732.4015 Devise of homestead.-

279 (3) If an interest in homestead has been devised to the  
 280 surviving spouse as authorized by law and the constitution, and

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281 the surviving spouse's interest is disclaimed, the disclaimed  
282 interest shall pass in accordance with chapter 739.

283 Section 9. Section 732.4017, Florida Statutes, is created  
284 to read:

285 732.4017 Inter vivos transfer of homestead property.—

286 (1) If the owner of homestead property transfers an  
287 interest in that property, including a transfer in trust, with  
288 or without consideration, to one or more persons during the  
289 owner's lifetime, the transfer is not a devise for purposes of  
290 s. 731.201(10) or s. 732.4015, and the interest transferred does  
291 not descend as provided in s. 732.401 if the transferor fails to  
292 retain a power, held in any capacity, acting alone or in  
293 conjunction with any other person, to revoke or revest that  
294 interest in the transferor.

295 (2) As used in this section, the term "transfer in trust"  
296 refers to a trust under which the transferor of the homestead  
297 property, alone or in conjunction with another person, does not  
298 possess a right of revocation as that term is defined in s.  
299 733.707(3)(e). A power possessed by the transferor which is  
300 exercisable during the transferor's lifetime to alter the  
301 beneficial use and enjoyment of the interest within a class of  
302 beneficiaries identified only in the trust instrument is not a  
303 right of revocation if the power may not be exercised in favor  
304 of the transferor, the transferor's creditors, the transferor's  
305 estate, or the creditors of the transferor's estate or exercised  
306 to discharge the transferor's legal obligations. This subsection  
307 does not create an inference that a power not described in this  
308 subsection is a power to revoke or revest an interest in the

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309 transferor.

310 (3) The transfer of an interest in homestead property  
311 described in subsection (1) may not be treated as a devise of  
312 that interest even if:

313 (a) The transferor retains a separate legal or equitable  
314 interest in the homestead property, directly or indirectly  
315 through a trust or other arrangement such as a term of years,  
316 life estate, reversion, possibility of reverter, or fractional  
317 fee interest;

318 (b) The interest transferred does not become a possessory  
319 interest until a date certain or upon a specified event, the  
320 occurrence or nonoccurrence of which does not constitute a power  
321 held by the transferor to revoke or revest the interest in the  
322 transferor, including, without limitation, the death of the  
323 transferor; or

324 (c) The interest transferred is subject to divestment,  
325 expiration, or lapse upon a date certain or upon a specified  
326 event, the occurrence or nonoccurrence of which does not  
327 constitute a power held by the transferor to revoke or revest  
328 the interest in the transferor, including, without limitation,  
329 survival of the transferor.

330 (4) It is the intent of the Legislature that this section  
331 clarify existing law.

332 Section 10. Section 732.608, Florida Statutes, is amended  
333 to read:

334 732.608 Construction of ~~generic~~ generic terms.—The laws used to  
335 determine paternity and ~~Adopted persons and persons born out of~~  
336 wedlock are included in class gift terminology and terms of

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337 ~~relationship, in accordance with rules for determining~~  
 338 relationships for the purposes of intestate succession apply  
 339 when determining whether class gift terminology and terms of  
 340 relationship include adopted persons and persons born out-of-  
 341 wedlock.

342 Section 11. Section 732.805, Florida Statutes, is created  
 343 to read:

344 732.805 Spousal rights procured by fraud, duress, or undue  
 345 influence.-

346 (1) A surviving spouse who is found to have procured a  
 347 marriage to the decedent by fraud, duress, or undue influence is  
 348 not entitled to any of the following rights or benefits that  
 349 inure solely by virtue of the marriage or the person's status as  
 350 surviving spouse of the decedent unless the decedent and the  
 351 surviving spouse voluntarily cohabited as husband and wife with  
 352 full knowledge of the facts constituting the fraud, duress, or  
 353 undue influence or both spouses otherwise subsequently ratified  
 354 the marriage:

355 (a) Any rights or benefits under the Florida Probate Code,  
 356 including, but not limited to, entitlement to elective share or  
 357 family allowance; preference in appointment as personal  
 358 representative; inheritance by intestacy, homestead, or exempt  
 359 property; or inheritance as a pretermitted spouse.

360 (b) Any rights or benefits under a bond, life insurance  
 361 policy, or other contractual arrangement if the decedent is the  
 362 principal obligee or the person upon whose life the policy is  
 363 issued, unless the surviving spouse is provided for by name,  
 364 whether or not designated as the spouse, in the bond, life

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365 insurance policy, or other contractual arrangement.

366 (c) Any rights or benefits under a will, trust, or power  
367 of appointment, unless the surviving spouse is provided for by  
368 name, whether or not designated as the spouse, in the will,  
369 trust, or power of appointment.

370 (d) Any immunity from the presumption of undue influence  
371 that a surviving spouse may have under state law.

372 (2) Any of the rights or benefits listed in paragraphs  
373 (1)(a)-(c) which would have passed solely by virtue of the  
374 marriage to a surviving spouse who is found to have procured the  
375 marriage by fraud, duress, or undue influence shall pass as if  
376 the spouse had predeceased the decedent.

377 (3) A challenge to a surviving spouse's rights under this  
378 section may be maintained as a defense, objection, or cause of  
379 action by any interested person after the death of the decedent  
380 in any proceeding in which the fact of marriage may be directly  
381 or indirectly material.

382 (4) The contestant has the burden of establishing, by a  
383 preponderance of the evidence, that the marriage was procured by  
384 fraud, duress, or undue influence. If ratification of the  
385 marriage is raised as a defense, the surviving spouse has the  
386 burden of establishing, by a preponderance of the evidence, the  
387 subsequent ratification by both spouses.

388 (5) In all actions brought under this section, the court  
389 shall award taxable costs as in chancery actions, including  
390 attorney's fees. When awarding taxable costs and attorney's  
391 fees, the court may direct payment from a party's interest, if  
392 any, in the estate, or enter a judgment that may be satisfied

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393 from other property of the party, or both.

394 (6) An insurance company, financial institution, or other  
395 obligor making payment according to the terms of its policy or  
396 obligation is not liable by reason of this section unless,  
397 before payment, it received written notice of a claim pursuant  
398 to this section.

399 (a) The notice required by this subsection must be in  
400 writing and must be accomplished in a manner reasonably suitable  
401 under the circumstances and likely to result in receipt of the  
402 notice. Permissible methods of notice include first-class mail,  
403 personal delivery, delivery to the person's last known place of  
404 residence or place of business, or a properly directed facsimile  
405 or other electronic message.

406 (b) To be effective, notice to a financial institution or  
407 insurance company must contain the name, address, and the  
408 taxpayer identification number, or the account or policy number,  
409 of the principal obligee or person whose life is insured and  
410 shall be directed to an officer or a manager of the financial  
411 institution or insurance company in this state. If the financial  
412 institution or insurance company has no offices in this state,  
413 the notice shall be directed to the principal office of the  
414 financial institution or insurance company.

415 (c) Notice shall be effective when given, except that  
416 notice to a financial institution or insurance company is not  
417 effective until 5 business days after being given.

418 (7) The rights and remedies granted in this section are in  
419 addition to any other rights or remedies a person may have at  
420 law or equity.

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421 (8) Unless sooner barred by adjudication, estoppel, or a  
 422 provision of the Florida Probate Code or Florida Probate Rules,  
 423 an interested person is barred from bringing an action under  
 424 this section unless the action is commenced within 4 years after  
 425 the decedent's date of death. A cause of action under this  
 426 section accrues on the decedent's date of death.

427 Section 12. Effective upon this act becoming a law,  
 428 section 733.1051, Florida Statutes, is created to read:

429 733.1051 Limited judicial construction of will with  
 430 federal tax provisions.-

431 (1) Upon the application of a personal representative or a  
 432 person who is or may be a beneficiary who is affected by the  
 433 outcome of the construction, a court at any time may construe  
 434 the terms of a will to define the respective shares or determine  
 435 beneficiaries, in accordance with the intention of a testator,  
 436 if a disposition occurs during the applicable period and the  
 437 will contains a provision that:

438 (a) Includes a disposition formula referring to the terms  
 439 "unified credit," "estate tax exemption," "applicable exemption  
 440 amount," "applicable credit amount," "applicable exclusion  
 441 amount," "generation-skipping transfer tax exemption," "GST  
 442 exemption," "marital deduction," "maximum marital deduction,"  
 443 "unlimited marital deduction," or "maximum charitable  
 444 deduction";

445 (b) Measures a share of an estate based on the amount that  
 446 may pass free of federal estate tax or the amount that may pass  
 447 free of federal generation-skipping transfer tax;

448 (c) Otherwise makes a disposition referring to a

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449 charitable deduction, marital deduction, or another provision of  
450 federal estate tax or generation-skipping transfer tax law; or

451 (d) Appears to be intended to reduce or minimize the  
452 federal estate tax or generation-skipping transfer tax.

453 (2) For purposes of this section:

454 (a) The term "applicable period" means a period beginning  
455 January 1, 2010, and ending on the end of the day on the earlier  
456 of December 31, 2010, or the day before the date that an act  
457 becomes law that repeals or otherwise modifies or has the effect  
458 of repealing or modifying s. 901 of The Economic Growth and Tax  
459 Relief Reconciliation Act of 2001.

460 (b) A "disposition occurs" when the testator dies.

461 (3) In construing the will, the court shall consider the  
462 terms and purposes of the will, the facts and circumstances  
463 surrounding the creation of the will, and the testator's  
464 probable intent. In determining the testator's probable intent,  
465 the court may consider evidence relevant to the testator's  
466 intent even though the evidence contradicts an apparent plain  
467 meaning of the will.

468 (4) This section does not apply to a disposition that is  
469 specifically conditioned upon no federal estate or generation-  
470 skipping transfer tax being imposed.

471 (5) (a) Unless otherwise ordered by the court, during the  
472 applicable period and without court order, the personal  
473 representative administering a will containing one or more  
474 provisions described in subsection (1) may:

475 1. Delay or refrain from making any distribution.

476 2. Incur and pay fees and costs reasonably necessary to

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477 determine its duties and obligations, including compliance with  
478 provisions of existing and reasonably anticipated future federal  
479 tax laws.

480 3. Establish and maintain reserves for the payment of  
481 these fees and costs and federal taxes.

482 (b) The personal representative shall not be liable for  
483 its actions as provided in this subsection made or taken in good  
484 faith.

485 (6) The provisions of this section are in addition to, and  
486 not in derogation of, rights under the common law to construe a  
487 will.

488 (7) This section is remedial in nature and intended to  
489 provide a new or modified legal remedy. This section shall  
490 operate retroactively to January 1, 2010.

491 Section 13. Subsection (1) of section 733.107, Florida  
492 Statutes, is amended to read:

493 733.107 Burden of proof in contests; presumption of undue  
494 influence.—

495 (1) In all proceedings contesting the validity of a will,  
496 the burden shall be upon the proponent of the will to establish  
497 prima facie its formal execution and attestation. A self-proving  
498 affidavit executed in accordance with s. 732.503 or an oath of  
499 an attesting witness executed as required in s. 733.201(2) is  
500 admissible and establishes prima facie the formal execution and  
501 attestation of the will. Thereafter, the contestant shall have  
502 the burden of establishing the grounds on which the probate of  
503 the will is opposed or revocation is sought.

504 Section 14. Section 733.2123, Florida Statutes, is amended

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505 to read:

506 733.2123 Adjudication before issuance of letters.—A  
507 petitioner may serve formal notice of the petition for  
508 administration on interested persons. ~~A copy of the will offered~~  
509 ~~for probate shall be attached to the notice. A~~ No person who is  
510 served with such formal notice before ~~of the petition for~~  
511 ~~administration prior to~~ the issuance of letters or who has  
512 waived notice may not challenge the validity of the will,  
513 testacy of the decedent, qualifications of the personal  
514 representative, venue, or jurisdiction of the court, except in  
515 the proceedings before issuance of letters.

516 Section 15. Subsection (4) of section 733.608, Florida  
517 Statutes, is amended to read:

518 733.608 General power of the personal representative.—

519 (4) The personal representative's lien shall attach to the  
520 property and take priority as of the date and time a notice of  
521 that lien is recorded in the official records of the county  
522 where that property is located, and the lien may secure  
523 expenditures and obligations incurred, including, but not  
524 limited to, fees and costs made before or after recording the  
525 notice. The notice of lien may be recorded before adjudicating  
526 ~~prior to the adjudication of~~ the amount of the debt. The notice  
527 of lien ~~also~~ shall also be filed in the probate proceeding, but  
528 failure to do so does ~~shall~~ not affect the validity of the lien.  
529 A copy of the notice of lien shall be served in the manner  
530 provided for service of ~~by~~ formal notice upon each person  
531 appearing to have an interest in the property. The notice of  
532 lien must ~~shall~~ state:

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533 (a) The name and address of the personal representative  
534 and the personal representative's attorney;

535 (b) The legal description of the property;

536 (c) The name of the decedent and also, to the extent known  
537 to the personal representative, the name and address of each  
538 person appearing to have an interest in the property; and

539 (d) That the personal representative has expended or is  
540 obligated to expend funds to preserve, maintain, insure, and  
541 protect the property and that the lien stands as security for  
542 recovery of those expenditures and obligations incurred,  
543 including, but not limited to, fees and costs.

544  
545 Substantial compliance with the foregoing provisions renders  
546 ~~shall render~~ the notice in comportment with this section.

547 Section 16. Subsections (1) and (3) of section 735.203,  
548 Florida Statutes, are amended to read:

549 735.203 Petition for summary administration.—

550 (1) A petition for summary administration may be filed by  
551 any beneficiary or person nominated as personal representative  
552 in the decedent's will offered for probate. The petition must be  
553 signed and verified by the surviving spouse, if any, and any  
554 beneficiaries except that the joinder in a petition for summary  
555 administration is not required of a beneficiary who will receive  
556 a full distributive share under the proposed distribution.

557 However, formal notice of the petition must be served on a Any  
558 beneficiary not joining in shall be served by formal notice with  
559 the petition.

560 (3) If each trustee of a trust that is a beneficiary of

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561 the estate of the deceased person is also a petitioner, formal  
 562 notice of the petition for summary administration shall be  
 563 served on each qualified beneficiary of the trust as defined in  
 564 ~~s. 736.0103 shall be served by formal notice with the petition~~  
 565 ~~for summary administration unless joinder in, or consent to, the~~  
 566 petition is obtained from each qualified beneficiary of the  
 567 trust.

568 Section 17. Section 736.1102, Florida Statutes, is amended  
 569 to read:

570 736.1102 Construction of ~~generic terms.~~ The laws used to  
 571 determine paternity and Adopted persons and persons born out of  
 572 ~~wedlock are included in class gift terminology and terms of~~  
 573 ~~relationship, in accordance with rules for determining~~  
 574 relationships for the purposes of intestate succession apply  
 575 when determining whether class gift terminology and terms of  
 576 relationship include adopted persons and persons born out of  
 577 wedlock.

578 Section 18. Subsection (9) of section 744.444, Florida  
 579 Statutes, is amended to read:

580 744.444 Power of guardian without court approval.—Without  
 581 obtaining court approval, a plenary guardian of the property, or  
 582 a limited guardian of the property within the powers granted by  
 583 the order appointing the guardian or an approved annual or  
 584 amended guardianship report, may:

585 (9) Elect ~~whether~~ to dissent from a will under ~~the~~  
 586 ~~provisions of~~ s. 732.2125(2), seek approval to make an election  
 587 in accordance with s. 732.401, or assert any other right or  
 588 choice available to a surviving spouse in the administration of

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589 | a decedent's estate.

590 |       Section 19. Except as otherwise expressly provided in this  
591 | act, this act shall take effect October 1, 2010.

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1  
2 An act relating to trust administration; amending s.  
3 733.607, F.S.; limiting a personal representative's  
4 entitlement to payment from a trust of certain estate  
5 expenses and obligations; specifying application of  
6 certain criteria in making certain payments from a  
7 trust; amending s. 733.707, F.S.; specifying  
8 application of additional provisions to liability for  
9 certain estate expense and obligation payments from a  
10 trust; amending s. 736.0206, F.S.; deleting certain  
11 notice requirements relating to court review of a  
12 trustee's employment of certain persons; authorizing  
13 the award of expert witness fees from trust assets  
14 rather than requiring the award of such fees;  
15 providing a limitation; creating s. 736.04114, F.S.;

16 providing for interpretation of trusts not subject to  
17 the federal estate tax; providing conditions;  
18 providing definitions; providing criteria for a court  
19 interpreting a trust; providing an exception; allowing  
20 a trustee to take certain actions pending a  
21 determination of trust distribution; limiting trustee  
22 liability; providing for interpretation; providing for  
23 retroactive effect; amending s. 736.0505, F.S.;

24 revising a value criterion for determining the extent  
25 of treating the holder of a power of withdrawal as the  
26 settlor of a trust; providing criteria for determining  
27 who contributed certain trust assets under certain  
28 circumstances; amending s. 736.05053, F.S.; requiring  
29 application of priorities for pro rata abatement of

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30 nonresiduary trust dispositions together with  
31 nonresiduary devises; amending s. 736.1007, F.S.;  
32 deleting authority for a court to determine an  
33 attorney's compensation; deleting certain expert  
34 testimony and fee payment provisions; deleting  
35 requirements for certain court compensation  
36 determination proceedings to be part of a trust  
37 administration process and for court determination and  
38 payment of certain estate costs and fees from trust  
39 assets; creating s. 736.1211, F.S.; prohibiting state  
40 agencies and local governments from requiring the  
41 disclosure of certain characteristics of persons  
42 associated with certain charitable organizations,  
43 trusts, and foundations; prohibiting state agencies  
44 and local governments from requiring certain private  
45 foundations or trusts to disclose certain  
46 characteristics of persons associated with an entity  
47 receiving monetary or in-kind contributions from the  
48 foundation or trust; prohibiting state agencies and  
49 local governments from requiring that individuals  
50 having certain characteristics be included on the  
51 governing board or as officers of certain charitable  
52 organizations, trusts, or foundations; prohibiting  
53 state agencies and local governments from prohibiting  
54 a person from serving on the board or as an officer  
55 based on the person's familial relationship to other  
56 board members, officers, or a donor; prohibiting state  
57 agencies and local governments from requiring that  
58 certain charitable organizations, trusts, or

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59 foundations distribute funds to or contract with  
60 persons or entities having certain characteristics;  
61 specifying the effect of the act on contracts in  
62 existence before the effective date of the act;  
63 providing effective dates.  
64

65 Be It Enacted by the Legislature of the State of Florida:  
66

67 Section 1. Subsection (2) of section 733.607, Florida  
68 Statutes, is amended to read:

69 733.607 Possession of estate.—

70 (2) If, after providing for statutory entitlements and all  
71 devises other than residuary devises, the assets of the  
72 decedent's estate are insufficient to pay the expenses of the  
73 administration and obligations of the decedent's estate, the  
74 personal representative is entitled to payment from the trustee  
75 of a trust described in s. 733.707(3), in the amount the  
76 personal representative certifies in writing to be required to  
77 satisfy the insufficiency, subject to the exclusions and  
78 preferences under s. 736.05053. The provisions of s. 733.805  
79 shall apply in determining the amount of any payment required by  
80 this section.

81 Section 2. Subsection (3) of section 733.707, Florida  
82 Statutes, is amended to read:

83 733.707 Order of payment of expenses and obligations.—

84 (3) Any portion of a trust with respect to which a decedent  
85 who is the grantor has at the decedent's death a right of  
86 revocation, as defined in paragraph (e), either alone or in  
87 conjunction with any other person, is liable for the expenses of

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88 the administration and obligations of the decedent's estate to  
89 the extent the decedent's estate is insufficient to pay them as  
90 provided in ss. s- 733.607(2) and 736.05053.

91 (a) For purposes of this subsection, any trusts established  
92 as part of, and all payments from, either an employee annuity  
93 described in s. 403 of the Internal Revenue Code of 1986, as  
94 amended, an Individual Retirement Account, as described in s.  
95 408 of the Internal Revenue Code of 1986, as amended, a Keogh  
96 (HR-10) Plan, or a retirement or other plan established by a  
97 corporation which is qualified under s. 401 of the Internal  
98 Revenue Code of 1986, as amended, shall not be considered a  
99 trust over which the decedent has a right of revocation.

100 (b) For purposes of this subsection, any trust described in  
101 s. 664 of the Internal Revenue Code of 1986, as amended, shall  
102 not be considered a trust over which the decedent has a right of  
103 revocation.

104 (c) This subsection shall not impair any rights an  
105 individual has under a qualified domestic relations order as  
106 that term is defined in s. 414(p) of the Internal Revenue Code  
107 of 1986, as amended.

108 (d) For purposes of this subsection, property held or  
109 received by a trust to the extent that the property would not  
110 have been subject to claims against the decedent's estate if it  
111 had been paid directly to a trust created under the decedent's  
112 will or other than to the decedent's estate, or assets received  
113 from any trust other than a trust described in this subsection,  
114 shall not be deemed assets of the trust available to the  
115 decedent's estate.

116 (e) For purposes of this subsection, a "right of

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117 revocation" is a power retained by the decedent, held in any  
118 capacity, to:

119 1. Amend or revoke the trust and revest the principal of  
120 the trust in the decedent; or

121 2. Withdraw or appoint the principal of the trust to or for  
122 the decedent's benefit.

123 Section 3. Subsections (1), (5), (6), and (7) of section  
124 736.0206, Florida Statutes, are amended to read:

125 736.0206 Proceedings for review of employment of agents and  
126 review of compensation of trustee and employees of trust.-

127 (1) ~~After notice to all interested persons,~~ The court may  
128 review the propriety of the employment by a trustee of any  
129 person, including any attorney, auditor, investment adviser, or  
130 other specialized agent or assistant, and the reasonableness of  
131 any compensation paid to that person or to the trustee.

132 (5) The court may determine reasonable compensation for a  
133 trustee or any person employed by a trustee without receiving  
134 expert testimony. Any party may offer expert testimony after  
135 notice to interested persons. If expert testimony is offered, a  
136 reasonable expert witness fee may ~~shall~~ be awarded by the court  
137 and paid from the assets of the trust unless the court finds  
138 that the expert testimony did not assist the court. The court  
139 shall direct from which part of the trust assets the fee shall  
140 be paid.

141 ~~(6) Persons given notice as provided in this section shall~~  
142 ~~be bound by all orders entered on the complaint.~~

143 (6) ~~(7)~~ In a proceeding pursuant to subsection (2), the  
144 petitioner may serve formal notice as provided in the Florida  
145 Probate Rules, and such notice shall be sufficient for the court

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146 to acquire jurisdiction over the person receiving the notice to  
147 the extent of the person's interest in the trust.

148 Section 4. Effective upon this act becoming a law, section  
149 736.04114, Florida Statutes, is created to read:

150 736.04114 Limited judicial construction of irrevocable  
151 trust with federal tax provisions.—

152 (1) Upon the application of a trustee or any qualified  
153 beneficiary of a trust, a court at any time may construe the  
154 terms of a trust that is not then revocable to define the  
155 respective shares or determine beneficiaries, in accordance with  
156 the intention of the settlor, if a disposition occurs during the  
157 applicable period and the trust contains a provision that:

158 (a) Includes a formula disposition referring to the  
159 "unified credit," "estate tax exemption," "applicable exemption  
160 amount," "applicable credit amount," "applicable exclusion  
161 amount," "generation-skipping transfer tax exemption," "GST  
162 exemption," "marital deduction," "maximum marital deduction,"  
163 "unlimited marital deduction," or "maximum charitable  
164 deduction";

165 (b) Measures a share of a trust based on the amount that  
166 can pass free of federal estate tax or the amount that can pass  
167 free of federal generation-skipping transfer tax;

168 (c) Otherwise makes a disposition referring to a charitable  
169 deduction, marital deduction, or another provision of federal  
170 estate tax or generation-skipping transfer tax law; or

171 (d) Appears to be intended to reduce or minimize federal  
172 estate tax or generation-skipping transfer tax.

173 (2) For the purpose of this section:

174 (a) "Applicable period" means a period beginning January 1,

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175 2010, and ending on the end of the day on the earlier of:

176 1. December 31, 2010; or

177 2. The day before the date that an act becomes law which  
178 repeals or otherwise modifies or has the effect of repealing or  
179 modifying s. 901 of The Economic Growth and Tax Relief  
180 Reconciliation Act of 2001.

181 (b) A "disposition occurs" when an interest takes effect in  
182 possession or enjoyment.

183 (3) In construing the trust, the court shall consider the  
184 terms and purposes of the trust, the facts and circumstances  
185 surrounding the creation of the trust, and the settlor's  
186 probable intent. In determining the settlor's probable intent,  
187 the court may consider evidence relevant to the settlor's intent  
188 even though the evidence contradicts an apparent plain meaning  
189 of the trust instrument.

190 (4) This section does not apply to a disposition that is  
191 specifically conditioned upon no federal estate or generation-  
192 skipping transfer tax being imposed.

193 (5) Unless otherwise ordered by the court, during the  
194 applicable period and without court order, the trustee  
195 administering a trust containing one or more provisions  
196 described in subsection (1) may:

197 (a) Delay or refrain from making any distribution;

198 (b) Incur and pay fees and costs reasonably necessary to  
199 determine its duties and obligations, including compliance with  
200 provisions of existing and reasonably anticipated future federal  
201 tax laws; and

202 (c) Establish and maintain reserves for the payment of  
203 these fees and costs and federal taxes.

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The trustee is not liable for its actions as provided in this subsection which are made or taken in good faith.

(6) The provisions of this section are in addition to, and not in derogation of, rights under this code or the common law to construe a trust.

(7) This section is remedial in order to provide a new or modified legal remedy. This section applies retroactively and is effective as of January 1, 2010.

Section 5. Paragraph (b) of subsection (2) of section 736.0505, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

736.0505 Creditors' claims against settlor.—

(2) For purposes of this section:

(b) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in:

1. Section 2041(b)(2) or s. 2514(e); or
2. Section 2503(b) and, if the donor was married at the time of the transfer to which the power of withdrawal applies, twice the amount specified in s. 2503(b),

of the Internal Revenue Code of 1986, as amended.

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:

(a) A trust described in s. 2523(e) of the Internal Revenue Code of 1986, as amended, or a trust for which the election described in s. 2523(f) of the Internal Revenue Code of 1986, as

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233 amended, has been made; and

234 (b) Another trust, to the extent that the assets in the  
235 other trust are attributable to a trust described in paragraph  
236 (a),

237  
238 shall, after the death of the settlor's spouse, be deemed to  
239 have been contributed by the settlor's spouse and not by the  
240 settlor.

241 Section 6. Subsection (5) is added to section 736.05053,  
242 Florida Statutes, to read:

243 736.05053 Trustee's duty to pay expenses and obligations of  
244 settlor's estate.—

245 (5) Nonresiduary trust dispositions shall abate pro rata  
246 with nonresiduary devisees pursuant to the priorities specified  
247 in this section and s. 733.805, determined as if the  
248 beneficiaries of the will and trust, other than the estate or  
249 trust itself, were taking under a common instrument.

250 Section 7. Subsections (7) through (10) of section  
251 736.1007, Florida Statutes, are amended to read:

252 736.1007 Trustee's attorney's fees.—

253 ~~(7) The court may determine reasonable attorney's~~  
254 ~~compensation without receiving expert testimony. Any party may~~  
255 ~~offer expert testimony after notice to interested persons. If~~  
256 ~~expert testimony is offered, an expert witness fee may be~~  
257 ~~awarded by the court and paid from the assets of the trust. The~~  
258 ~~court shall direct from what part of the trust the fee is to be~~  
259 ~~paid.~~

260 (7) ~~(8)~~ If a separate written agreement regarding  
261 compensation exists between the attorney and the settlor, the

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262 attorney shall furnish a copy to the trustee prior to  
263 commencement of employment and, if employed, shall promptly file  
264 and serve a copy on all interested persons. A separate agreement  
265 or a provision in the trust suggesting or directing the trustee  
266 to retain a specific attorney does not obligate the trustee to  
267 employ the attorney or obligate the attorney to accept the  
268 representation but, if the attorney who is a party to the  
269 agreement or who drafted the trust is employed, the compensation  
270 paid shall not exceed the compensation provided in the  
271 agreement.

272 ~~(9) Court proceedings to determine compensation, if~~  
273 ~~required, are a part of the trust administration process, and~~  
274 ~~the costs, including fees for the trustee's attorney, shall be~~  
275 ~~determined by the court and paid from the assets of the trust~~  
276 ~~unless the court finds the attorney's fees request to be~~  
277 ~~substantially unreasonable. The court shall direct from what~~  
278 ~~part of the trust the fees are to be paid.~~

279 (8)~~(10)~~ As used in this section, the term "initial trust  
280 administration" means administration of a revocable trust during  
281 the period that begins with the death of the settlor and ends on  
282 the final distribution of trust assets outright or to continuing  
283 trusts created under the trust agreement but, if an estate tax  
284 return is required, not until after issuance of an estate tax  
285 closing letter or other evidence of termination of the estate  
286 tax proceeding. This initial period is not intended to include  
287 continued regular administration of the trust.

288 Section 8. Section 736.1211, Florida Statutes, is created  
289 to read:

290 736.1211 Protections afforded to certain charitable trusts

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291 and organizations.-

292 (1) A charitable organization, private foundation trust,  
293 split interest trust, or a private foundation as defined in s.  
294 509(a) of the Internal Revenue Code may not be required by a  
295 state agency or a local government to disclose the race,  
296 religion, gender, national origin, socioeconomic status, age,  
297 ethnicity, disability, marital status, sexual orientation, or  
298 political party registration of its employees, officers,  
299 directors, trustees, members, or owners, without the prior  
300 written consent of the individual or individuals in question.

301 (2) A private foundation as defined in s. 509(a) of the  
302 Internal Revenue Code, a private foundation trust, a split  
303 interest trust, or a grant-making organization may not be  
304 required by the state or any local government to disclose the  
305 race, religion, gender, national origin, socioeconomic status,  
306 age, ethnicity, disability, marital status, sexual orientation,  
307 or political party registration of any person, or of the  
308 employees, officers, directors, trustees, members, or owners of  
309 any entity that has received monetary or in-kind contributions  
310 from or contracted with the organization, trust, or foundation,  
311 without the prior written consent of the individual or  
312 individuals in question. For purposes of this subsection, a  
313 "grant-making organization" is an organization that makes grants  
314 to charitable organizations but is not a private foundation,  
315 private foundation trust, or split interest trust.

316 (3) A state agency or a local government may not require  
317 that the governing board or officers of a charitable  
318 organization, private foundation trust, split interest trust, or  
319 a private foundation as defined in s. 509(a) of the Internal

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320 Revenue Code include an individual or individuals of any  
321 particular race, religion, gender, national origin,  
322 socioeconomic status, age, ethnicity, disability, marital  
323 status, sexual orientation, or political party registration.  
324 Further, a state agency or a local government may not prohibit  
325 service as a board member or officer by an individual or  
326 individuals based upon their familial relationship to each other  
327 or to a donor or require that the governing board or officers  
328 include one or more individuals who do not share a familial  
329 relationship with each other or with a donor.

330 (4) A charitable organization, private foundation trust,  
331 split interest trust, or any private foundation as defined in s.  
332 509(a) of the Internal Revenue Code may not be required by a  
333 state agency or a local government to distribute its funds to or  
334 contract with any person or entity based upon the race,  
335 religion, gender, national origin, socioeconomic status, age,  
336 ethnicity, disability, marital status, sexual orientation, or  
337 political party registration of the person or of the employees,  
338 officers, directors, trustees, members, or owners of the entity,  
339 or based upon the populations, locales, or communities served by  
340 the person or entity, except as a lawful condition on the  
341 expenditure of particular funds imposed by the donor of such  
342 funds.

343 Section 9. Section 8 of this act does not invalidate  
344 contracts in effect before the effective date of this act.

345 Section 10. Except as otherwise expressly provided in this  
346 act and except for this section, which shall take effect upon  
347 this act becoming a law, this act shall take effect July 1,  
348 2010.

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1  
2 An act relating to trusts; creating s. 736.0902, F.S.;  
3 limiting the duties and liability of certain trustees  
4 with respect to contracts for life insurance; defining  
5 the term "qualified person"; providing for the  
6 application and nonapplication of certain provisions  
7 of state law; requiring that notice of such provisions  
8 be given under certain circumstances; providing  
9 requirements for such notice; providing that such  
10 provisions do not apply if a party notified of the  
11 application of certain provisions of state law objects  
12 in writing; creating a rebuttable presumption of  
13 delivery of notice; defining the term "affiliate" for  
14 specified purposes; providing that certain provisions  
15 of state law do not apply under specified  
16 circumstances; prohibiting the compensation of a  
17 trustee for the performance of certain activities;  
18 amending s. 518.112, F.S.; expanding the list of  
19 delegable investment functions for certain  
20 fiduciaries; revising requirements for the provision  
21 of written notice by a trustee of an intent to begin  
22 delegating investment functions; providing an  
23 effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Section 736.0902, Florida Statutes, is created  
28 to read:

29 736.0902 Nonapplication of prudent investor rule.-

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30       (1) Notwithstanding the provisions of s. 518.11 or s.  
31 736.0804, with respect to any contract for life insurance  
32 acquired or retained on the life of a qualified person, a  
33 trustee has no duty to:

34       (a) Determine whether the contract of life insurance is or  
35 was procured or effected in compliance with s. 627.404;

36       (b) Determine whether any contract of life insurance is, or  
37 remains, a proper investment;

38       (c) Investigate the financial strength of the life  
39 insurance company;

40       (d) Determine whether to exercise any policy option  
41 available under the contract for life insurance;

42       (e) Diversify any such contract for life insurance or the  
43 assets of the trust with respect to the contract for life  
44 insurance; or

45       (f) Inquire about or investigate the health or financial  
46 condition of any insureds.

47       (2) For purposes of this section, a "qualified person" is a  
48 person who is insured or a proposed insured, or the spouse of  
49 that person, who has provided the trustee with the funds used to  
50 acquire or pay premiums with respect to a policy of insurance on  
51 the life of that person or the spouse of that person, or on the  
52 lives of that person and the spouse of that person.

53       (3) The trustee is not liable to the beneficiaries of the  
54 trust or any other person for any loss sustained with respect to  
55 a contract for life insurance to which this section applies.

56       (4) Unless otherwise provided in the trust instrument,  
57 paragraph (1)(a) applies to any contract for life insurance on  
58 the life of a qualified person.

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59 (5) Unless otherwise provided in the trust instrument,  
60 paragraphs (1)(b)-(f) apply if:

61 (a) The trust instrument, by reference to this section,  
62 makes this section applicable to contracts for life insurance  
63 held by the trust; or

64 (b) The trustee gives notice that this section applies to a  
65 contract for life insurance held by the trust.

66 1. The notice of the application of this section shall be  
67 given to the qualified beneficiaries and shall contain a copy or  
68 restatement of this section.

69 2. Notice given pursuant to any of the provisions of part  
70 III of this chapter to a person who represents the interests of  
71 any of the persons set forth in subparagraph 1. shall be treated  
72 as notice to the person so represented.

73 3. Notice shall be given in the manner provided in s.  
74 736.0109.

75 4. If any person notified pursuant to this paragraph  
76 delivers a written objection to the application of this section  
77 to the trustee within 30 days after the date on which the  
78 objector received such notice, paragraphs (1)(b)-(f) shall not  
79 apply until the objection is withdrawn.

80 5. There shall exist a rebuttable presumption that any  
81 notice sent by United States mail is received 3 days after  
82 depositing the notice in the United States mail system with  
83 proper postage prepaid.

84 (6) This section does not apply to any contract for life  
85 insurance purchased from any affiliate of the trustee, or with  
86 respect to which the trustee or any affiliate of the trustee  
87 receives any commission unless the duties have been delegated to

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88 another person in accordance with s. 518.112. For purposes of  
89 this subsection, an "affiliate" is any person who controls, is  
90 controlled by, or is under common control with the trustee.

91 (7) Paragraph (1)(a) does not apply if the trustee applied  
92 for or accepted ownership of a contract of life insurance and  
93 the trustee had knowledge that:

94 (a) The benefits were not payable to a person specified in  
95 s. 627.404 when the contract of life insurance was issued; or

96 (b) The contract of life insurance is or was purchased with  
97 resources or guarantees directly or indirectly provided by a  
98 person who, at the time of the inception of such contract, did  
99 not have an insurable interest in the insured as defined by s.  
100 627.404, and, at the time of the inception of such contract,  
101 there is a verbal or written arrangement, agreement, or plan  
102 with a third party to transfer ownership of the policy or policy  
103 benefits in a manner that would be in violation of state law.

104 (8) A trustee who performs fiduciary or advisory services  
105 related to a policy of life insurance to which subsection (1)  
106 applies shall not be compensated for performing the applicable  
107 service to which subsection (1) applies.

108 Section 2. Paragraph (b) of subsection (2) and paragraph  
109 (b) of subsection (3) of section 518.112, Florida Statutes, are  
110 amended to read:

111 518.112 Delegation of investment functions.—

112 (2)

113 (b) The delegable investment functions under this  
114 subsection include:

115 1. A determination of whether the insurance contract was  
116 procured or effected in compliance with s. 627.404;

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117       ~~2.1.~~ A determination of whether any insurance contract is  
118 or remains a proper investment;

119       3. The investigation of the financial strength of the life  
120 insurance company;

121       ~~4.2.~~ A determination of whether or not to exercise any  
122 policy option available under any insurance ~~such~~ contracts;

123       ~~5.3.~~ A determination of whether or not to diversify such  
124 contracts relative to one another or to other assets, if any,  
125 administered by the fiduciary; or

126       ~~6.4.~~ An inquiry about changes in the health or financial  
127 condition of the insured or insureds relative to any such  
128 contract.

129       (3) A fiduciary may delegate investment functions to an  
130 investment agent under subsection (1) or subsection (2), if:

131       (b) In the case of a trust or estate, the fiduciary has  
132 given written notice, of its intention to begin delegating  
133 investment functions under this section, to all beneficiaries,  
134 or their legal representative, eligible to receive distributions  
135 from the trust or estate within 30 days of the delegation unless  
136 such notice is waived by the eligible beneficiaries entitled to  
137 receive such notice. This notice shall thereafter, until or  
138 unless the beneficiaries eligible to receive income from the  
139 trust or distributions from the estate at the time are notified  
140 to the contrary, authorize the trustee or legal representative  
141 to delegate investment functions pursuant to this subsection.  
142 This discretion to revoke the delegation does not imply under  
143 subsection (2) any continuing obligation to review the agent's  
144 actions.

145       1. Notice to beneficiaries eligible to receive

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146 distributions from the trust from the estate, or their legal  
147 representatives shall be sufficient notice to all persons who  
148 may join the eligible class of beneficiaries in the future.

149 2. Additionally, as used herein, legal representative  
150 includes one described in s. 731.303, without any requirement of  
151 a court order, an attorney-in-fact under a durable power of  
152 attorney sufficient to grant such authority, a legally appointed  
153 guardian, or equivalent under applicable law, any living,  
154 natural guardian of a minor child, or a guardian ad litem.

155 3. Written notice shall be given as provided in part III of  
156 chapter 731 as to an estate, and as provided in s. 736.0109 and  
157 part III of chapter 736 as to a trust.+

158 ~~a. By any form of mail or by any commercial delivery~~  
159 ~~service, approved for service of process by the chief judge of~~  
160 ~~the judicial circuit in which the trust has its principal place~~  
161 ~~of business at the date of notice, requiring a signed receipt;~~

162 ~~b. As provided by law for service of process; or~~

163 ~~c. By an elisor as may be provided in the Florida Rules of~~  
164 ~~Civil Procedure.~~

165  
166 ~~Notice by mail or by approved commercial delivery service is~~  
167 ~~complete on receipt of notice. Proof of notice must be by~~  
168 ~~verified statement of the person mailing or sending notice, and~~  
169 ~~there must be attached thereto the signed receipt or other~~  
170 ~~satisfactory evidence that delivery was effected on the~~  
171 ~~addressee or on the addressee's agent. Proof of notice must be~~  
172 ~~maintained among the trustee's permanent records.~~

173 Section 3. This act shall take effect July 1, 2010.