

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

203 732.2045 Exclusions and overlapping application.—

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

205 (i) Property which constitutes the protected homestead of
 206 the decedent if the surviving spouse validly waived his or her
 207 homestead rights as provided under s. 732.702, or otherwise
 208 under applicable law, and such spouse did not receive any
 209 interest in the protected homestead upon 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, fair market value is
 233 net of the aggregate amount, as of the date of the decedent's
 234 death, of all mortgages, liens, and security interests to which
 235 the protected homestead is subject and for which the decedent is
 236 liable, but only to the extent that such amount is not otherwise
 237 deducted as a claim paid or payable from the elective estate.

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

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

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

249 (5)~~(4)~~ In the case of other property included under s.
 250 732.2035(9) ~~s. 732.2035(8),~~ the fair market value of the

251 | property on the date of the termination or transfer, computed
 252 | after deducting any mortgages, liens, or security interests on
 253 | the property as of that date.

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

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

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

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

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

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

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

274 | (2) If, after the application of subsection (1), the
 275 | elective share is not fully satisfied, the unsatisfied balance

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

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

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

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

299 (c) If there is more than one trust to which this
300 subsection could apply, unless otherwise provided in the

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

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

309 732.2085 Liability of direct recipients and
 310 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.

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
 327 elective 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
 332 to or for the benefit of the surviving spouse during the
 333 decedent's 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.
- 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
 353 power of appointment that is exercisable alone and in all events
 354 by 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
 369 property not in trust that entitles the spouse to the use of the
 370 property for life, including, without limitation, a life estate
 371 in protected homestead as provided in s. 732.401(1), the value
 372 of the spouse's interest is one-half of the value of the
 373 property 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
 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
 399 trust, 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
 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), (c), 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), (c), 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.—

436 (1) Except as provided in subsection (2), the election
 437 must be filed on or before the earlier of the date that is 6
 438 months 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.~~

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
485 share;

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

488 (c) The satisfaction of the elective share.

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

491 (a) Direct payment from the estate.

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

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

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

501 personal representative of the electing spouse may be awarded
 502 from the estate reasonable costs, including attorney fees,
 503 incurred in connection with the preparation and filing of the
 504 petition.

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

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

510 738.606 Property not productive of income.—

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

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

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

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