

Florida Legislative Updates 2015 (wills, trusts & estates area)

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SB 872

Chapter No. 2015-27

Enhances statutory provisions on court discretionary allocation of costs and attorney fees against a beneficiary's share of an estate (or trust receiving assets from a pourover will).

Fla.Stats. Section 733.106 Amendments

Statute provides a list of factors a court may consider.

Allocation against a beneficiary can occur even in the absence of bad faith, wrongdoing, or frivolousness.

Fla.Stats. Section 733.212 Amendments

Strictly limits the 3 month time period for objecting to the validity of a will, or the venue or jurisdiction of the court.

Fla.Stats. Section 733.3101 Amendments

Requires a personal representative to resign if he/she learns he was never qualified to serve.

Revisions of required notice when a personal representative ceases to be qualified to serve.

Attorneys fee provision for failure of personal representative to meet these requirements extends to failures where the personal representative should have known of his/her failure.

Fla.Stats. Section 733.504 Amendments

Clarifies that a personal representative shall be removed if he/she was not eligible to serve at time of appointment, or ceases to continue to be qualified.

Substantial rewrite of Florida's estate tax apportionment statute.

Gift taxes for gifts made within 3 years of death and gifts to a 529 plan are not "included in the measure of the tax" even though they may be included in the gross estate.

Statute now includes what happens if residuary estate insufficient to pay the tax.

Tax on exempt property and family allowance apportioned similarly to protected homestead.	And the elective share is not charged with such taxes
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Clarifies what enhanced level of specificity is required to overcome Internal Revenue Code Section apportionment under Sections 2207A, 2207B, and 2603.

Requires express provisions to coordinate special tax allocation provisions in a revocable trust via a provision in a will.

Where there are conflicts in instruments as to custom apportionment, the last executed document controls.

Other misc. statutory clean-up to coordinate with changes in federal taxes.

Fla.Stats. Section 733.817 Amendments

Provides for apportionment of trust costs and attorney fees against shares of beneficiaries, similar to revisions made to Fla.Stats. Section 733.106.

Fla.Stats. Section 736.1005 Amendments

General effective date: July 1, 2015

HB 889

Revisions to health care surrogate laws, including:

Adding a definition of "health care."

Allows persons to name a surrogate to serve currently, even if they are not incapacitated.

Provides a revised suggested form.

Allows guardians of minors to designate a surrogate, and provides a suggested form.

HB 961

Allows a trustee to transmit trust documents to beneficiaries via a secure website or email if the beneficiary opts in.

HB 283

Allows Uniform Transfers to Minors Acts to remain in existence until the minor is 25 years old.