

THE FLORIDA SENATE  
2011 SUMMARY OF LEGISLATION PASSED  
**Committee on Judiciary**

**CS/HB 325 — Estates**

by Judiciary Committee and Rep. Wood (CS/SB 648 by Banking and Insurance Committee and Senator Joyner)

The bill establishes standards for privilege of communications between a lawyer and a client acting as a fiduciary. The bill provides that a client acts as a fiduciary when serving as a personal representative, a trustee, an administrator ad litem, a conservator, or an attorney in fact. The bill provides that the notice of administration sent by the personal representative of the estate must include a statement that the fiduciary lawyer-client privilege applies with respect to the personal representative and the attorney employed by the personal representative. The bill provides that the notice a trustee provides to qualified beneficiaries must include a statement that the fiduciary lawyer-client privilege applies with respect to the trustee and the attorney employed by the trustee.

Effective October 1, 2011, the bill increases the share a decedent's surviving spouse will receive in an intestate estate to the entire intestate estate when all of the decedent's descendants are also descendants of the surviving spouse and the surviving spouse does not have any other descendants.

Effective July 1, 2011, the bill:

- Permits wills to be reformed for mistake, which would be comparable to an existing provision applicable to testamentary trusts, revocable trusts, and other trusts.
- Allows wills to be modified to achieve the testator's tax objectives where it is not contrary to the testator's probable intent.
- Authorizes a court to award taxable costs, including attorney's fees and guardian ad litem fees, in a proceeding arising to reform a will for mistake or a proceeding for modifications to achieve the testator's tax objectives.

The bill authorizes a challenge to the revocation of a will or trust on the grounds of fraud, duress, mistake, or undue influence after the death of the testator or settlor. The bill limits powers of a guardian to prosecute or defend certain proceedings, to provide that there is a rebuttable presumption that an action challenging the ward's revocation of all or part of a trust is not in the ward's best interest if the revocation relates solely to a devise. This limitation does not preclude a challenge after the ward's death.

The bill provides that Florida Rule of Civil Procedure 1.525 applies to clarify when and under what circumstances a trustee or beneficiary of a trust or attorney must file a motion for attorney's fees and costs incurred in a judicial proceeding concerning a trust, with exceptions. Florida Rule of Civil Procedure 1.525 requires a party seeking costs or attorney's fees to serve a motion within the 30 days that follow the filing of a judgment.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided in the bill. The bill applies to all proceedings pending before such date and all cases commenced on or after the effective date.

*Vote Senate 39-0; House 119-0*