

1                   A bill to be entitled  
2           An act relating to estates; amending s. 732.102, F.S.;  
3           revising provisions relating to the intestate share of a  
4           surviving spouse; creating s. 732.615, F.S.; providing a  
5           right to reform the terms of a will to correct mistakes;  
6           creating s. 732.616, F.S.; providing a right to modify the  
7           terms of a will to achieve tax objectives; creating s.  
8           733.1061, F.S.; providing for a court to award fees and  
9           costs in reformation and modification proceedings either  
10          against a party's share in the estate or in the form of a  
11          personal judgment against a party individually; amending  
12          s. 732.5165, F.S.; clarifying that a revocation of a will  
13          is subject to challenge on the grounds of fraud, duress,  
14          mistake, or undue influence; amending s. 732.518, F.S.;  
15          specifying that a challenge to the revocation of a will  
16          may not be commenced before the testator's death; amending  
17          s. 736.0207, F.S.; clarifying when a challenge to the  
18          revocation of a revocable trust may be brought; amending  
19          s. 736.0406, F.S.; providing that the creation of a trust  
20          amendment or trust restatement and the revocation of a  
21          trust are subject to challenge on the grounds of fraud,  
22          duress, mistake, or undue influence; amending s. 744.441,  
23          F.S.; limiting the circumstances under which a guardian of  
24          an incapacitated person may bring a challenge to a  
25          settlor's revocation of a revocable trust; amending s.  
26          736.0201, F.S.; clarifying that certain payments by a  
27          trustee from trust assets are not taxation of attorney's

28 fees and costs subject to a specified Rule of Civil  
 29 Procedure; providing effective dates.

30  
 31 Be It Enacted by the Legislature of the State of Florida:

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 33 Section 1. Effective October 1, 2011, subsections (2) and  
 34 (3) of section 732.102, Florida Statutes, are amended, and  
 35 subsection (4) is added to that section, to read:

36 732.102 Spouse's share of intestate estate.—The intestate  
 37 share of the surviving spouse is:

38 (2) If the decedent is survived by one or more descendants  
 39 ~~there are surviving descendants of the decedent,~~ all of whom are  
 40 also ~~lineal~~ descendants of the surviving spouse, and the  
 41 surviving spouse has no other descendant, the entire intestate  
 42 estate the first \$60,000 of the intestate estate, plus one-half  
 43 of the balance of the intestate estate. Property allocated to  
 44 the surviving spouse to satisfy the \$60,000 shall be valued at  
 45 the fair market value on the date of distribution.

46 (3) If there are one or more surviving descendants of the  
 47 decedent who, ~~one or more of whom~~ are not lineal descendants of  
 48 the surviving spouse, one-half of the intestate estate.

49 (4) If there are one or more surviving descendants of the  
 50 decedent, all of whom are also descendants of the surviving  
 51 spouse, and the surviving spouse has one or more descendants who  
 52 are not descendants of the decedent, one-half of the intestate  
 53 estate.

54 Section 2. Effective July 1, 2011, section 732.615,  
 55 Florida Statutes, is created to read:

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56        732.615 Reformation to correct mistakes.—Upon application  
57 of any interested person, the court may reform the terms of a  
58 will, even if unambiguous, to conform the terms to the  
59 testator's intent if it is proved by clear and convincing  
60 evidence that both the accomplishment of the testator's intent  
61 and the terms of the will were affected by a mistake of fact or  
62 law, whether in expression or inducement. In determining the  
63 testator's original intent, the court may consider evidence  
64 relevant to the testator's intent even though the evidence  
65 contradicts an apparent plain meaning of the will.

66        Section 3. Effective July 1, 2011, section 732.616,  
67 Florida Statutes, is created to read:

68        732.616 Modification to achieve testator's tax  
69 objectives.—Upon application of any interested person, to  
70 achieve the testator's tax objectives the court may modify the  
71 terms of a will in a manner that is not contrary to the  
72 testator's probable intent. The court may provide that the  
73 modification has retroactive effect.

74        Section 4. Effective July 1, 2011, section 733.1061,  
75 Florida Statutes, is created to read:

76        733.1061 Fees and costs; will reformation and  
77 modification.—

78        (1) In a proceeding arising under s. 732.615 or s.  
79 732.616, the court shall award taxable costs as in chancery  
80 actions, including attorney's fees and guardian ad litem fees.

81        (2) When awarding taxable costs, including attorney's fees  
82 and guardian ad litem fees, under this section, the court in its  
83 discretion may direct payment from a party's interest, if any,

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84 in the estate or enter a judgment which may be satisfied from  
85 other property of the party, or both.

86 Section 5. Section 732.5165, Florida Statutes, is amended  
87 to read:

88 732.5165 Effect of fraud, duress, mistake, and undue  
89 influence.—A will is void if the execution is procured by fraud,  
90 duress, mistake, or undue influence. Any part of the will is  
91 void if so procured, but the remainder of the will not so  
92 procured shall be valid if it is not invalid for other reasons.  
93 If the revocation of a will, or any part thereof, is procured by  
94 fraud, duress, mistake, or undue influence, such revocation is  
95 void.

96 Section 6. Section 732.518, Florida Statutes, is amended  
97 to read:

98 732.518 Will contests.—An action to contest the validity  
99 of all or part of a will or the revocation of all or part of a  
100 will may not be commenced before the death of the testator.

101 Section 7. Section 736.0207, Florida Statutes, is amended  
102 to read:

103 736.0207 Trust contests.—An action to contest the validity  
104 of all or part of a revocable trust, or the revocation of part  
105 of a revocable trust, may not be commenced until the trust  
106 becomes irrevocable by its terms or by the settlor's death. If  
107 all of a revocable trust has been revoked, an action to contest  
108 the revocation may not be commenced until after the settlor's  
109 death. ~~—except~~ This section does not prohibit such action by the  
110 guardian of the property of an incapacitated settlor.

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111 Section 8. Section 736.0406, Florida Statutes, is amended  
 112 to read:

113 736.0406 Effect of fraud, duress, mistake, or undue  
 114 influence. ~~A trust is void~~ If the creation, amendment, or  
 115 restatement of a ~~the~~ trust is procured by fraud, duress,  
 116 mistake, or undue influence, the trust or any part so procured  
 117 of the trust is void. ~~if procured by such means, but~~ The  
 118 remainder of the trust not procured by such means is valid if  
 119 the remainder is not invalid for other reasons. If the  
 120 revocation of a trust, or any part thereof, is procured by  
 121 fraud, duress, mistake, or undue influence, such revocation is  
 122 void.

123 Section 9. Subsection (11) of section 744.441, Florida  
 124 Statutes, is amended to read:

125 744.441 Powers of guardian upon court approval.—After  
 126 obtaining approval of the court pursuant to a petition for  
 127 authorization to act, a plenary guardian of the property, or a  
 128 limited guardian of the property within the powers granted by  
 129 the order appointing the guardian or an approved annual or  
 130 amended guardianship report, may:

131 (11) Prosecute or defend claims or proceedings in any  
 132 jurisdiction for the protection of the estate and of the  
 133 guardian in the performance of his or her duties. Before  
 134 authorizing a guardian to bring an action described in s.  
 135 736.0207, the court shall first find that the action appears to  
 136 be in the ward's best interests during the ward's probable  
 137 lifetime. There shall be a rebuttable presumption that an action  
 138 challenging the ward's revocation of all or part of a trust is

139 not in the ward's best interests if the revocation relates  
 140 solely to a devise. This subsection does not preclude a  
 141 challenge after the ward's death. If the court denies a request  
 142 that a guardian be authorized to bring an action described in s.  
 143 736.0207, the court shall review the continued need for a  
 144 guardian and the extent of the need for delegation of the ward's  
 145 rights.

146 Section 10. Subsection (1) of section 736.0201, Florida  
 147 Statutes, is amended, and subsection (6) is added to that  
 148 section, to read:

149 736.0201 Role of court in trust proceedings.—

150 (1) Except as provided in subsections ~~subsection~~ (5) and  
 151 (6) and s. 736.0206, judicial proceedings concerning trusts  
 152 shall be commenced by filing a complaint and shall be governed  
 153 by the Florida Rules of Civil Procedure.

154 (6) Rule 1.525, Florida Rules of Civil Procedure, shall  
 155 apply to judicial proceedings concerning trusts, except that the  
 156 following do not constitute taxation of costs or attorney's fees  
 157 even if the payment is for services rendered or costs incurred  
 158 in a judicial proceeding:

159 (a) A trustee's payment of compensation or reimbursement  
 160 of costs to persons employed by the trustee from assets of the  
 161 trust.

162 (b) A determination by the court directing from what part  
 163 of the trust fees or costs shall be paid, unless the  
 164 determination is made under s. 736.1004 in an action for breach  
 165 of fiduciary duty or challenging the exercise of, or failure to  
 166 exercise, a trustee's powers.

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167           Section 11. Except as otherwise expressly provided in this  
168 act, this act shall take effect upon becoming a law and shall  
169 apply to all proceedings pending before such date and all cases  
170 commenced on or after the effective date.