

1                   A bill to be entitled  
2           An act relating to estates; creating s. 90.5021, F.S.;  
3           providing a fiduciary lawyer-client privilege; providing  
4           that the section is inapplicable to a specified crime or  
5           fraud exception to lawyer-client privilege; amending s.  
6           732.102, F.S.; revising provisions relating to the  
7           intestate share of a surviving spouse; creating s.  
8           732.615, F.S.; providing a right to reform the terms of a  
9           will to correct mistakes; creating s. 732.616, F.S.;  
10          providing a right to modify the terms of a will to achieve  
11          tax objectives; creating s. 733.1061, F.S.; providing for  
12          a court to award fees and costs in reformation and  
13          modification proceedings either against a party's share in  
14          the estate or in the form of a personal judgment against a  
15          party individually; amending s. 732.5165, F.S.; clarifying  
16          that a revocation of a will is subject to challenge on the  
17          grounds of fraud, duress, mistake, or undue influence;  
18          amending s. 732.518, F.S.; specifying that a challenge to  
19          the revocation of a will may not be commenced before the  
20          testator's death; amending s. 733.212, F.S.; providing for  
21          notice of fiduciary lawyer-client privilege in a notice of  
22          administration; amending s. 736.0207, F.S.; clarifying  
23          when a challenge to the revocation of a revocable trust  
24          may be brought; amending s. 736.0406, F.S.; providing that  
25          the creation of a trust amendment or trust restatement and  
26          the revocation of a trust are subject to challenge on the  
27          grounds of fraud, duress, mistake, or undue influence;  
28          amending s. 736.0813, F.S.; providing for notice of

29 | fiduciary lawyer-client privilege by a trustee; amending  
 30 | s. 744.441, F.S.; limiting the circumstances under which a  
 31 | guardian of an incapacitated person may bring a challenge  
 32 | to a settlor's revocation of a revocable trust; amending  
 33 | s. 736.0201, F.S.; clarifying that certain payments by a  
 34 | trustee from trust assets are not taxation of attorney's  
 35 | fees and costs subject to a specified Rule of Civil  
 36 | Procedure; providing effective dates.

37 |  
 38 | Be It Enacted by the Legislature of the State of Florida:

39 |  
 40 | Section 1. Section 90.5021, Florida Statutes, is created  
 41 | to read:

42 | 90.5021 Fiduciary lawyer-client privilege.—

43 | (1) For the purpose of this section, a client acts as a  
 44 | fiduciary when serving as a personal representative or a trustee  
 45 | as defined in ss. 731.201 and 736.0103, an administrator ad  
 46 | litem as described in s. 733.308, a curator as described in s.  
 47 | 733.501, a guardian or guardian ad litem as defined in s.  
 48 | 744.102, a conservator as defined in s. 710.102, or an attorney  
 49 | in fact as described in chapter 709.

50 | (2) A communication between a lawyer and a client acting  
 51 | as a fiduciary is privileged and protected from disclosure under  
 52 | s. 90.502 to the same extent as if the client were not acting as  
 53 | a fiduciary. In applying s. 90.502 to a communication under this  
 54 | section, only the person or entity acting as a fiduciary is  
 55 | considered a client of the lawyer.

56           (3) This section does not affect the crime or fraud  
 57 exception to the lawyer-client privilege provided in s.  
 58 90.502(4) (a).

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

62           732.102 Spouse's share of intestate estate.—The intestate  
 63 share of the surviving spouse is:

64           (2) If the decedent is survived by one or more descendants  
 65 ~~there are surviving descendants of the decedent, all of whom are~~  
 66 ~~also lineal descendants of the surviving spouse, and the~~  
 67 surviving spouse has no other descendant, the entire intestate  
 68 estate the first \$60,000 of the intestate estate, plus one-half  
 69 ~~of the balance of the intestate estate. Property allocated to~~  
 70 ~~the surviving spouse to satisfy the \$60,000 shall be valued at~~  
 71 ~~the fair market value on the date of distribution.~~

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

75           (4) If there are one or more surviving descendants of the  
 76 decedent, all of whom are also descendants of the surviving  
 77 spouse, and the surviving spouse has one or more descendants who  
 78 are not descendants of the decedent, one-half of the intestate  
 79 estate.

80           Section 3. Effective July 1, 2011, section 732.615,  
 81 Florida Statutes, is created to read:

82           732.615 Reformation to correct mistakes.—Upon application  
 83 of any interested person, the court may reform the terms of a

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84 will, even if unambiguous, to conform the terms to the  
85 testator's intent if it is proved by clear and convincing  
86 evidence that both the accomplishment of the testator's intent  
87 and the terms of the will were affected by a mistake of fact or  
88 law, whether in expression or inducement. In determining the  
89 testator's original intent, the court may consider evidence  
90 relevant to the testator's intent even though the evidence  
91 contradicts an apparent plain meaning of the will.

92 Section 4. Effective July 1, 2011, section 732.616,  
93 Florida Statutes, is created to read:

94 732.616 Modification to achieve testator's tax  
95 objectives.—Upon application of any interested person, to  
96 achieve the testator's tax objectives the court may modify the  
97 terms of a will in a manner that is not contrary to the  
98 testator's probable intent. The court may provide that the  
99 modification has retroactive effect.

100 Section 5. Effective July 1, 2011, section 733.1061,  
101 Florida Statutes, is created to read:

102 733.1061 Fees and costs; will reformation and  
103 modification.—

104 (1) In a proceeding arising under s. 732.615 or s.  
105 732.616, the court shall award taxable costs as in chancery  
106 actions, including attorney's fees and guardian ad litem fees.

107 (2) When awarding taxable costs, including attorney's fees  
108 and guardian ad litem fees, under this section, the court in its  
109 discretion may direct payment from a party's interest, if any,  
110 in the estate or enter a judgment which may be satisfied from  
111 other property of the party, or both.

112 Section 6. Section 732.5165, Florida Statutes, is amended  
 113 to read:

114 732.5165 Effect of fraud, duress, mistake, and undue  
 115 influence.—A will is void if the execution is procured by fraud,  
 116 duress, mistake, or undue influence. Any part of the will is  
 117 void if so procured, but the remainder of the will not so  
 118 procured shall be valid if it is not invalid for other reasons.  
 119 If the revocation of a will, or any part thereof, is procured by  
 120 fraud, duress, mistake, or undue influence, such revocation is  
 121 void.

122 Section 7. Section 732.518, Florida Statutes, is amended  
 123 to read:

124 732.518 Will contests.—An action to contest the validity  
 125 of all or part of a will or the revocation of all or part of a  
 126 will may not be commenced before the death of the testator.

127 Section 8. Paragraph (b) of subsection (2) of section  
 128 733.212, Florida Statutes, is amended to read:

129 733.212 Notice of administration; filing of objections.—

130 (2) The notice shall state:

131 (b) The name and address of the personal representative  
 132 and the name and address of the personal representative's  
 133 attorney, and that the fiduciary lawyer-client privilege in s.  
 134 90.5021 applies with respect to the personal representative and  
 135 any attorney employed by the personal representative.

136 Section 9. Section 736.0207, Florida Statutes, is amended  
 137 to read:

138 736.0207 Trust contests.—An action to contest the validity  
 139 of all or part of a revocable trust, or the revocation of part

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140 of a revocable trust, may not be commenced until the trust  
 141 becomes irrevocable by its terms or by the settlor's death. If  
 142 all of a revocable trust has been revoked, an action to contest  
 143 the revocation may not be commenced until after the settlor's  
 144 death., ~~except~~ This section does not prohibit such action by the  
 145 guardian of the property of an incapacitated settlor.

146 Section 10. Section 736.0406, Florida Statutes, is amended  
 147 to read:

148 736.0406 Effect of fraud, duress, mistake, or undue  
 149 influence. ~~A trust is void~~ If the creation, amendment, or  
 150 restatement of a the trust is procured by fraud, duress,  
 151 mistake, or undue influence, the trust or any part so procured  
 152 ~~of the trust is void. if procured by such means, but~~ The  
 153 remainder of the trust not procured by such means is valid if  
 154 the remainder is not invalid for other reasons. If the  
 155 revocation of a trust, or any part thereof, is procured by  
 156 fraud, duress, mistake, or undue influence, such revocation is  
 157 void.

158 Section 11. Paragraphs (a) and (b) of subsection (1) of  
 159 section 736.0813, Florida Statutes, are amended to read:

160 736.0813 Duty to inform and account.—The trustee shall  
 161 keep the qualified beneficiaries of the trust reasonably  
 162 informed of the trust and its administration.

163 (1) The trustee's duty to inform and account includes, but  
 164 is not limited to, the following:

165 (a) Within 60 days after acceptance of the trust, the  
 166 trustee shall give notice to the qualified beneficiaries of the  
 167 acceptance of the trust, ~~and~~ and the full name and address of the

168 trustee, and that the fiduciary lawyer-client privilege in s.  
 169 90.5021 applies with respect to the trustee and any attorney  
 170 employed by the trustee.

171 (b) Within 60 days after the date the trustee acquires  
 172 knowledge of the creation of an irrevocable trust, or the date  
 173 the trustee acquires knowledge that a formerly revocable trust  
 174 has become irrevocable, whether by the death of the settlor or  
 175 otherwise, the trustee shall give notice to the qualified  
 176 beneficiaries of the trust's existence, the identity of the  
 177 settlor or settlors, the right to request a copy of the trust  
 178 instrument, ~~and~~ the right to accountings under this section, and  
 179 that the fiduciary lawyer-client privilege in s. 90.5021 applies  
 180 with respect to the trustee and any attorney employed by the  
 181 trustee.

182  
 183 Paragraphs (a) and (b) do not apply to an irrevocable trust  
 184 created before the effective date of this code, or to a  
 185 revocable trust that becomes irrevocable before the effective  
 186 date of this code. Paragraph (a) does not apply to a trustee who  
 187 accepts a trusteeship before the effective date of this code.

188 Section 12. Subsection (11) of section 744.441, Florida  
 189 Statutes, is amended to read:

190 744.441 Powers of guardian upon court approval.—After  
 191 obtaining approval of the court pursuant to a petition for  
 192 authorization to act, a plenary guardian of the property, or a  
 193 limited guardian of the property within the powers granted by  
 194 the order appointing the guardian or an approved annual or  
 195 amended guardianship report, may:

196           (11) Prosecute or defend claims or proceedings in any  
 197 jurisdiction for the protection of the estate and of the  
 198 guardian in the performance of his or her duties. Before  
 199 authorizing a guardian to bring an action described in s.  
 200 736.0207, the court shall first find that the action appears to  
 201 be in the ward's best interests during the ward's probable  
 202 lifetime. There shall be a rebuttable presumption that an action  
 203 challenging the ward's revocation of all or part of a trust is  
 204 not in the ward's best interests if the revocation relates  
 205 solely to a devise. This subsection does not preclude a  
 206 challenge after the ward's death. If the court denies a request  
 207 that a guardian be authorized to bring an action described in s.  
 208 736.0207, the court shall review the continued need for a  
 209 guardian and the extent of the need for delegation of the ward's  
 210 rights.

211           Section 13. Subsection (1) of section 736.0201, Florida  
 212 Statutes, is amended, and subsection (6) is added to that  
 213 section, to read:

214           736.0201 Role of court in trust proceedings.—

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

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



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224        (a) A trustee's payment of compensation or reimbursement  
225 of costs to persons employed by the trustee from assets of the  
226 trust.

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

232        Section 14. Except as otherwise expressly provided in this  
233 act, this act shall take effect upon becoming a law and shall  
234 apply to all proceedings pending before such date and all cases  
235 commenced on or after the effective date.