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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2011	.	
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The Committee on Banking and Insurance (Bennett) recommended the following:

**Senate Amendment (with title amendment)**

Before line 36  
insert:

Section 1. Section 90.5021, Florida Statutes, is created to read:

90.5021 Fiduciary lawyer-client privilege.-

(1) For the purpose of this section, a client acts as a fiduciary when serving as a personal representative or a trustee as defined in ss. 731.201 and 736.0103, an administrator ad litem as defined in s. 733.308, a curator as described in s. 733.501, a guardian or guardian ad litem as defined in s.



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13 744.102, a conservator as defined in s. 710.102, or an attorney  
14 in fact as described in chapter 709.

15 (2) A communication between a lawyer and a client acting as  
16 a fiduciary is privileged and protected from disclosure under s.  
17 90.502 to the same extent as if the client were not acting as a  
18 fiduciary. In applying s. 90.502 to a communication under this  
19 section, only the person or entity acting as a fiduciary is  
20 considered a client of the lawyer.

21 (3) This section does not affect the exception to the  
22 lawyer-client privilege which is provided for crime or fraud as  
23 set forth in s. 90.502(4)(a).

24  
25 Between lines 103 and 104  
26 insert:

27 Section 7. Paragraph (b) of subsection (2) of section  
28 733.212, Florida Statutes, is amended to read:

29 733.212 Notice of administration; filing of objections.—

30 (2) The notice shall state:

31 (b) The name and address of the personal representative and  
32 the name and address of the personal representative's attorney,  
33 and that the fiduciary lawyer-client privilege in s. 90.5021  
34 applies with respect to the personal representative and any  
35 attorney employed by the personal representative.

36  
37 Between lines 125 and 126  
38 insert:

39 Section 9. Paragraphs (a) and (b) of subsection (1) of  
40 section 736.0813, Florida Statutes, are amended to read:

41 736.0813 Duty to inform and account.—The trustee shall keep



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42 the qualified beneficiaries of the trust reasonably informed of  
43 the trust and its administration.

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

46 (a) Within 60 days after acceptance of the trust, the  
47 trustee shall give notice to the qualified beneficiaries of the  
48 acceptance of the trust, ~~and~~ the full name and address of the  
49 trustee, and that the fiduciary lawyer-client privilege in s.  
50 90.5021 applies with respect to the trustee and any attorney  
51 employed by the trustee.

52 (b) Within 60 days after the date the trustee acquires  
53 knowledge of the creation of an irrevocable trust, or the date  
54 the trustee acquires knowledge that a formerly revocable trust  
55 has become irrevocable, whether by the death of the settlor or  
56 otherwise, the trustee shall give notice to the qualified  
57 beneficiaries of the trust's existence, the identity of the  
58 settlor or settlors, the right to request a copy of the trust  
59 instrument, ~~and~~ the right to accountings under this section, and  
60 that the fiduciary lawyer-client privilege in s. 90.5021 applies  
61 with respect to the trustee and any attorney employed by the  
62 trustee.

63  
64 Paragraphs (a) and (b) do not apply to an irrevocable trust  
65 created before the effective date of this code, or to a  
66 revocable trust that becomes irrevocable before the effective  
67 date of this code. Paragraph (a) does not apply to a trustee who  
68 accepts a trusteeship before the effective date of this code.

69  
70 ===== T I T L E A M E N D M E N T =====



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71 And the title is amended as follows:

72 Delete lines 2 - 24

73 and insert:

74 An act relating to estates; creating s. 90.5021, F.S.;

75 creating a fiduciary lawyer-client privilege;

76 providing that the lawyer-client privilege applies to

77 the communications between a lawyer and a client that

78 is a fiduciary; providing that the act does not affect

79 the crime or fraud exception to the lawyer-client

80 privilege; amending s. 732.102, F.S.; revising

81 provisions relating to the intestate share of a

82 surviving spouse; creating s. 732.615, F.S.; providing

83 a right to reform the terms of a will to correct

84 mistakes; creating s. 732.616, F.S.; providing a right

85 to modify the terms of a will to achieve tax

86 objectives; creating s. 733.1061, F.S.; providing for

87 a court to award fees and costs in reformation and

88 modification proceedings either against a party's

89 share in the estate or in the form of a personal

90 judgment against a party individually; amending s.

91 732.5165, F.S.; clarifying that a revocation of a will

92 is subject to challenge on the grounds of fraud,

93 duress, mistake, or undue influence; amending s.

94 732.518, F.S.; specifying that a challenge to the

95 revocation of a will may not be commenced before the

96 testator's death; amending s. 733.212, F.S.; requiring

97 a notice of administration to state that the fiduciary

98 lawyer-client privilege applies with respect to the

99 personal representative and his or her attorney;



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100 amending s. 736.0207, F.S.; clarifying when a  
101 challenge to the revocation of a revocable trust may  
102 be brought; amending s. 736.0406, F.S.; providing that  
103 the creation of a trust amendment or trust restatement  
104 and the revocation of a trust are subject to challenge  
105 on the grounds of fraud, duress, mistake, or undue  
106 influence; amending s. 736.0813, F.S.; providing that  
107 the fiduciary lawyer-client privilege applies to  
108 communications between a trustee and an attorney  
109 employed by the trustee; amending s. 744.441,