

By Senator Joyner

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

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30 not taxation of attorney's fees and costs subject to a
31 specified Rule of Civil Procedure; providing effective
32 dates.

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34 Be It Enacted by the Legislature of the State of Florida:

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

39 732.102 Spouse's share of intestate estate.—The intestate
40 share of the surviving spouse is:

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

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

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

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

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

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

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

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

79 733.1061 Fees and costs; will reformation and
80 modification.—

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

84 (2) When awarding taxable costs, including attorney's fees
85 and guardian ad litem fees, under this section, the court in its
86 discretion may direct payment from a party's interest, if any,
87 in the estate or enter a judgment which may be satisfied from

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88 other property of the party, or both.

89 Section 5. Section 732.5165, Florida Statutes, is amended
90 to read:

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

99 Section 6. Section 732.518, Florida Statutes, is amended to
100 read:

101 732.518 Will contests.—An action to contest the validity of
102 all or part of a will or the revocation of all or part of a will
103 may not be commenced before the death of the testator.

104 Section 7. Section 736.0207, Florida Statutes, is amended
105 to read:

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

114 Section 8. Section 736.0406, Florida Statutes, is amended
115 to read:

116 736.0406 Effect of fraud, duress, mistake, or undue

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

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

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

134 (11) Prosecute or defend claims or proceedings in any
135 jurisdiction for the protection of the estate and of the
136 guardian in the performance of his or her duties. Before
137 authorizing a guardian to bring an action described in s.
138 736.0207, the court shall first find that the action appears to
139 be in the ward's best interests during the ward's probable
140 lifetime. There shall be a rebuttable presumption that an action
141 challenging the ward's revocation of all or part of a trust is
142 not in the ward's best interests if the revocation relates
143 solely to a devise. This subsection does not preclude a
144 challenge after the ward's death. If the court denies a request
145 that a guardian be authorized to bring an action described in s.

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146 736.0207, the court shall review the continued need for a
147 guardian and the extent of the need for delegation of the ward's
148 rights.

149 Section 10. Subsection (1) of section 736.0201, Florida
150 Statutes, is amended, and subsection (6) is added to that
151 section, to read:

152 736.0201 Role of court in trust proceedings.—

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

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

162 (a) A trustee's payment of compensation or reimbursement of
163 costs to persons employed by the trustee from assets of the
164 trust.

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

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