

By the Committee on Banking and Insurance; and Senator Joyner

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

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30 be brought; amending s. 736.0406, F.S.; providing that  
31 the creation of a trust amendment or trust restatement  
32 and the revocation of a trust are subject to challenge  
33 on the grounds of fraud, duress, mistake, or undue  
34 influence; amending s. 736.0813, F.S.; providing that  
35 the fiduciary lawyer-client privilege applies to  
36 communications between a trustee and an attorney  
37 employed by the trustee; amending s. 744.441, F.S.;

38 limiting the circumstances under which a guardian of  
39 an incapacitated person may bring a challenge to a  
40 settlor's revocation of a revocable trust; amending s.  
41 736.0201, F.S.; clarifying that certain payments by a  
42 trustee from trust assets are not taxation of  
43 attorney's fees and costs subject to a specified Rule  
44 of Civil Procedure; providing for application of the  
45 act; providing effective dates.

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. Section 90.5021, Florida Statutes, is created to  
50 read:

51 90.5021 Fiduciary lawyer-client privilege.-

52 (1) For the purpose of this section, a client acts as a  
53 fiduciary when serving as a personal representative or a trustee  
54 as defined in ss. 731.201 and 736.0103, an administrator ad  
55 litem as defined in s. 733.308, a curator as described in s.  
56 733.501, a guardian or guardian ad litem as defined in s.  
57 744.102, a conservator as defined in s. 710.102, or an attorney  
58 in fact as described in chapter 709.

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59       (2) A communication between a lawyer and a client acting as  
60 a fiduciary is privileged and protected from disclosure under s.  
61 90.502 to the same extent as if the client were not acting as a  
62 fiduciary. In applying s. 90.502 to a communication under this  
63 section, only the person or entity acting as a fiduciary is  
64 considered a client of the lawyer.

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

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

71       732.102 Spouse's share of intestate estate.—The intestate  
72 share of the surviving spouse is:

73       (2) If the decedent is survived by one or more descendants  
74 ~~there are surviving descendants of the decedent~~, all of whom are  
75 also ~~lineal~~ descendants of the surviving spouse, and the  
76 surviving spouse has no other descendant, the entire intestate  
77 estate ~~the first \$60,000 of the intestate estate, plus one-half~~  
78 ~~of the balance of the intestate estate. Property allocated to~~  
79 ~~the surviving spouse to satisfy the \$60,000 shall be valued at~~  
80 ~~the fair market value on the date of distribution.~~

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

84       (4) If there are one or more surviving descendants of the  
85 decedent, all of whom are also descendants of the surviving  
86 spouse, and the surviving spouse has one or more descendants who  
87 are not descendants of the decedent, one-half of the intestate

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88 estate.

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

91 732.615 Reformation to correct mistakes.—Upon application  
92 of any interested person, the court may reform the terms of a  
93 will, even if unambiguous, to conform the terms to the  
94 testator's intent if it is proved by clear and convincing  
95 evidence that both the accomplishment of the testator's intent  
96 and the terms of the will were affected by a mistake of fact or  
97 law, whether in expression or inducement. In determining the  
98 testator's original intent, the court may consider evidence  
99 relevant to the testator's intent even though the evidence  
100 contradicts an apparent plain meaning of the will.

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

103 732.616 Modification to achieve testator's tax objectives.—  
104 Upon application of any interested person, to achieve the  
105 testator's tax objectives the court may modify the terms of a  
106 will in a manner that is not contrary to the testator's probable  
107 intent. The court may provide that the modification has  
108 retroactive effect.

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

111 733.1061 Fees and costs; will reformation and  
112 modification.—

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

116 (2) When awarding taxable costs, including attorney's fees

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117 and guardian ad litem fees, under this section, the court in its  
118 discretion may direct payment from a party's interest, if any,  
119 in the estate or enter a judgment which may be satisfied from  
120 other property of the party, or both.

121 Section 6. Section 732.5165, Florida Statutes, is amended  
122 to read:

123 732.5165 Effect of fraud, duress, mistake, and undue  
124 influence.—A will is void if the execution is procured by fraud,  
125 duress, mistake, or undue influence. Any part of the will is  
126 void if so procured, but the remainder of the will not so  
127 procured shall be valid if it is not invalid for other reasons.  
128 If the revocation of a will, or any part thereof, is procured by  
129 fraud, duress, mistake, or undue influence, such revocation is  
130 void.

131 Section 7. Section 732.518, Florida Statutes, is amended to  
132 read:

133 732.518 Will contests.—An action to contest the validity of  
134 all or part of a will or the revocation of all or part of a will  
135 may not be commenced before the death of the testator.

136 Section 8. Paragraph (b) of subsection (2) of section  
137 733.212, Florida Statutes, is amended to read:

138 733.212 Notice of administration; filing of objections.—

139 (2) The notice shall state:

140 (b) The name and address of the personal representative and  
141 the name and address of the personal representative's attorney,  
142 and that the fiduciary lawyer-client privilege in s. 90.5021  
143 applies with respect to the personal representative and any  
144 attorney employed by the personal representative.

145 Section 9. Section 736.0207, Florida Statutes, is amended

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146 to read:

147       736.0207 Trust contests.—An action to contest the validity  
148 of all or part of a revocable trust, or the revocation of part  
149 of a revocable trust, may not be commenced until the trust  
150 becomes irrevocable by its terms or by the settlor's death. If  
151 all of a revocable trust has been revoked, an action to contest  
152 the revocation may not be commenced until after the settlor's  
153 death.~~—except~~ This section does not prohibit such action by the  
154 guardian of the property of an incapacitated settlor.

155       Section 10. Section 736.0406, Florida Statutes, is amended  
156 to read:

157       736.0406 Effect of fraud, duress, mistake, or undue  
158 influence.~~A trust is void~~ If the creation, amendment, or  
159 restatement of a the trust is procured by fraud, duress,  
160 mistake, or undue influence, the trust or any part so procured  
161 ~~of the trust~~ is void. ~~if procured by such means, but~~ The  
162 remainder of the trust not procured by such means is valid if  
163 the remainder is not invalid for other reasons. If the  
164 revocation of a trust, or any part thereof, is procured by  
165 fraud, duress, mistake, or undue influence, such revocation is  
166 void.

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

169       736.0813 Duty to inform and account.—The trustee shall keep  
170 the qualified beneficiaries of the trust reasonably informed of  
171 the trust and its administration.

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

174       (a) Within 60 days after acceptance of the trust, the

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175 trustee shall give notice to the qualified beneficiaries of the  
176 acceptance of the trust, ~~and~~ the full name and address of the  
177 trustee, and that the fiduciary lawyer-client privilege in s.  
178 90.5021 applies with respect to the trustee and any attorney  
179 employed by the trustee.

180 (b) Within 60 days after the date the trustee acquires  
181 knowledge of the creation of an irrevocable trust, or the date  
182 the trustee acquires knowledge that a formerly revocable trust  
183 has become irrevocable, whether by the death of the settlor or  
184 otherwise, the trustee shall give notice to the qualified  
185 beneficiaries of the trust's existence, the identity of the  
186 settlor or settlors, the right to request a copy of the trust  
187 instrument, ~~and~~ the right to accountings under this section, and  
188 that the fiduciary lawyer-client privilege in s. 90.5021 applies  
189 with respect to the trustee and any attorney employed by the  
190 trustee.

191  
192 Paragraphs (a) and (b) do not apply to an irrevocable trust  
193 created before the effective date of this code, or to a  
194 revocable trust that becomes irrevocable before the effective  
195 date of this code. Paragraph (a) does not apply to a trustee who  
196 accepts a trusteeship before the effective date of this code.

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

199 744.441 Powers of guardian upon court approval.—After  
200 obtaining approval of the court pursuant to a petition for  
201 authorization to act, a plenary guardian of the property, or a  
202 limited guardian of the property within the powers granted by  
203 the order appointing the guardian or an approved annual or

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204 amended guardianship report, may:

205 (11) Prosecute or defend claims or proceedings in any  
206 jurisdiction for the protection of the estate and of the  
207 guardian in the performance of his or her duties. Before  
208 authorizing a guardian to bring an action described in s.  
209 736.0207, the court shall first find that the action appears to  
210 be in the ward's best interests during the ward's probable  
211 lifetime. There shall be a rebuttable presumption that an action  
212 challenging the ward's revocation of all or part of a trust is  
213 not in the ward's best interests if the revocation relates  
214 solely to a devise. This subsection does not preclude a  
215 challenge after the ward's death. If the court denies a request  
216 that a guardian be authorized to bring an action described in s.  
217 736.0207, the court shall review the continued need for a  
218 guardian and the extent of the need for delegation of the ward's  
219 rights.

220 Section 13. Subsection (1) of section 736.0201, Florida  
221 Statutes, is amended, and subsection (6) is added to that  
222 section, to read:

223 736.0201 Role of court in trust proceedings.—

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

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

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233       (a) A trustee's payment of compensation or reimbursement of  
234 costs to persons employed by the trustee from assets of the  
235 trust.

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

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