

By the Committee on Banking and Insurance; and Senator Joyner

597-02875-11

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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

597-02875-11

2011648c1

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.

597-02875-11

2011648c1

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

597-02875-11

2011648c1

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

597-02875-11

2011648c1

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

597-02875-11

2011648c1

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

597-02875-11

2011648c1

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

597-02875-11

2011648c1

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:

597-02875-11

2011648c1

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.