

**NEW LEGISLATION AFFECTING
ESTATES AND TRUSTS**

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CS/HB 325 was submitted to Governor Scott on the morning of June 13, but as of the preparation of this outline, the Governor had not signed the Bill.

The new legislation contained in the Bill will, except as noted below, take effect upon becoming law and apply to all proceedings pending before such date and all cases commenced on or after the effective date. Section 14, page 9 of 9 of the Bill.

- I. Intestate Succession. *Florida Statutes*, §732.102 was amended to change the share of an intestate estate that passes to the surviving spouse. Section 2, page 3 of 9 of the Bill.
 - A. Decedent Has No Descendants. If the decedent has no surviving descendants, then the entire intestate estate passes to the surviving spouse (the same as prior law).
 - B. All Decedent's Descendants Are Also Descendants of the Surviving Spouse. If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse and the surviving spouse has no other descendants, the entire intestate estate passes to the surviving spouse (under prior law the surviving spouse received the first \$60,000 of the intestate estate, plus one-half of the balance of the intestate estate, and the other one-half of the balance passed to the decedent's descendants). The reason for the change was the belief that in a homogeneous family, most decedents would desire to leave their entire estate to the surviving spouse.
 - C. Some of Decedent's Descendants Are Not Descendants of the Surviving Spouse. If there are one or more surviving descendants of the decedent who are not descendants of the surviving spouse, one-half of the intestate estate passes to the surviving spouse and the other one-half passes to the decedent's descendants (the same as prior law).
 - D. All Decedent's Descendants Are Also Descendants of the Surviving Spouse, Some of Surviving Spouse's Descendants Are Not Decedent's Descendants. If there are one or more descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants that are not descendants of the decedent, one-half of the intestate estate passes to the surviving spouse and the other one-half passes to the decedent's descendants (under prior law the surviving spouse received the first \$60,000 of the intestate estate, plus one-half of the balance of the intestate estate).

Comment. Thus, as a result of the changes described in C and D above, if either the decedent or the surviving spouse has any descendants who are not also descendants of the other, then one-half of the intestate estate passes to the surviving spouse and the other one-half passes to the decedent's descendants.

E. Effective Date. The changes in the share of an intestate estate that passes to the surviving spouse will be effective October 1, 2011.

II. Reformation and Modification of Wills; Attorneys Fees and Costs.

A. Reformation of Will to Conform to Testator's Intent. *Florida Statutes* §732.615 was added to allow the court to reform a Will, even if the terms of the Will are unambiguous, to conform the terms to the testator's intent. The proponent of the reformation must prove by clear and convincing evidence that both (i) the accomplishment of the testator's intent and (ii) the terms of the Will were affected by a mistake of fact or law, whether in expression or inducement. The court may consider evidence relevant to the testator's intent even though the evidence contradicts an apparent plain meaning of the Will. Section 3, page 3 of 9 of the Bill.

1. Effective Date. The ability to reform a Will to conform to the testator's intent will be effective July 1, 2011.

2. Reasons for the Change.

a. Reformation of Will To Correct an Error Not Allowed Under Florida Common Law. Current Florida case law and statutes permit the modification and reformation of trusts and other Will substitutes for many reasons, including the correction of an error. Florida case law, however, does not allow reformation of a Will to correct an error. *Owen v. Estate of Davis ex rel. Holzauser*, 930 So.2d 873 (Fla. 2d DCA 2000); *In re Estate of Guess*, 213 So.2d 638 (Fla. 3d DCA 1968); *In re Estate of Reese*, 622 So.2d 157 (Fla. 4th DCA 1993). Moreover, Florida common law follows the plain meaning rule, i.e., if a Will is clear and unambiguous on its face, extrinsic evidence may not be admitted and judicial construction is prohibited. *In re Rice's Estate*, 406 So.2d 469 (Fla. 3rd DCA 1981). Current Florida law effectively prevents any changes to an unambiguous Will, even in the face of a glaring error by a scrivener. This blocks the ability of the court to carry out the testator's true intent and could result in a benefit to an unintended beneficiary to the detriment of an intended beneficiary. *Restatement Third, Property (Wills and Other Donative Transfers)* (hereafter "*Restatement Third*") §12.1.

Example. A testator executed a new Will, revoking her prior Will and making minor changes to her prior Will. The new Will did not

contain a residuary clause. The drafting attorney executed an affidavit stating that the residuary clause was omitted by mistake. The court refused to consider extrinsic evidence because the Will was clear and unambiguous on its face. As a result, the bulk of the decedent's assets passed by intestate succession, rather than to her intended beneficiaries. In re Estate of Agnes Baker, 448 S. 2d 28 (Fla. 1st DCA 1984)

b. Federal Tax Issues. Even if an interested party were successful in convincing a court to reform a Will under the guise of a construction of the terms of the Will, the construction probably would not be binding on the IRS for tax purposes. The decision of a state court, other than the state's highest court, on an issue of state law that affects application of a federal tax is not binding on federal courts and the IRS if the federal government is not a party to the proceeding. *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967). Federal courts and the IRS may ignore the decisions of Florida Circuit (trial) Courts and District (intermediate) Courts that affect federal tax issues if the federal court or IRS believes Florida law was not properly applied. Reformation of a Will under the guise of construction would not necessarily be binding on the IRS under Florida common law. The enactment of *Florida Statutes* §732.615 provides lawyers and their clients with a strong argument that the reformation should be respected by the IRS, because the reformation relates back to, and operates to alter the terms of the Will as of, the date of execution of the Will. See *Restatement Third* §12.1, Comment f.

c. Modern Trend in Reformation of Testamentary Documents. Reformation has long been permitted for deeds, life-insurance contracts and other donative documents. Modern jurisprudence favors the ability to reform inter vivos trusts and Wills. This modern trend is reflected in the *Restatement Third* §12.1 and the *Uniform Trust Code* ("UTC") §415. The provisions of the *Restatement Third* and the *UTC* were incorporated into *Florida Statutes* §736.0415 when the Florida Trust Code was enacted effective July 1, 2007. In 2008, a new §2-805 was added to the *Uniform Probate Code* ("UPC"), based upon *UTC* §415 and *Restatement Third* §12.1. The operative language in *Florida Statutes* §732.615, which now allows the reformation of Wills, is identical to the language in *Florida Statutes* §736.0415. The effect of the modern trend is to assure the intent of the testator is carried out. Extrinsic evidence is allowed, but the standard of proof is the stricter clear and convincing evidence, rather than the preponderance of the evidence used in typical civil cases, to guard against giving effect to fraudulent or mistaken evidence and protect the testator's true intent.

B. Modification of Will to Achieve Testator's Tax Objectives. *Florida Statutes*, §732.616 was added to allow the court to modify the terms of a Will in a manner that is not contrary to the testator's probable intent to achieve the testator's tax

objectives. The court may give the modification retroactive effect. Section 4, page 4 of 9 of the Bill.

1. Effective Date. The ability to modify a Will to achieve the testator's tax objectives will be effective July 1, 2011.

2. Reasons for the Change. The modern trend is also to allow the modification of a Will to achieve the testator's tax objectives. The trend is evidenced by the inclusion of provisions allowing such modifications in *Restatement Third* §12.2 and *UTC* §416. The provisions in the *Restatement Third* and *UTC* were incorporated into *Florida Statutes* §736.0416 when the Florida Trust Code was enacted effective July 1, 2007. More recently, the concept was added to the *UPC* with the addition of §2-806. The operative language in *Florida Statutes* §732.616, which now allows the modification of Wills to achieve the testator's tax objectives, is identical to the language in *Florida Statutes* §736.0416. As with the ability to reform a Will to correct a mistake, extrinsic evidence is allowed to establish the testator's tax objectives. The standard of proof, however, is a preponderance of the evidence, not clear and convincing evidence. It is not clear whether a retroactive modification of a Will would be respected by the IRS under the principles of the *Bosch* case discussed in II, A, 2, b above.

C. Attorney's Fees in Will Reformation or Modification Proceeding. In a proceeding to either (1) reform a Will to correct a mistake under new *Florida Statutes* §732.615 or (2) modify a Will to achieve the testator's tax objective under new *Florida Statutes*, §732.616, new *Florida Statutes*, §733.1061 allows the court to award attorneys fees to the prevailing party and direct the part of the estate from which the attorney's fees will be paid or award a personal judgment against a party that may be satisfied from other property of the party. Section 5, page 4 of 9 of the Bill.

1. Reasons for the Change. *Florida Statutes*, §733.106 currently allows a court to award fees to an attorney who has rendered services that benefit an estate and determine from what part of an estate they should be paid. There was concern that courts might not consider the new causes of actions to reform or modify a Will as being beneficial to the estate under the existing statute. The operative language in *Florida Statutes* §733.1061 is identical to the language in *Florida Statutes* §736.1004, which allows the award of attorney's fees for the modification, reformation or termination of trusts. If not for the new law, the estate would bear the burden of defending an unsuccessful action to reform or modify a Will in instances in which a petitioner has no interest, or an immaterial interest, in the estate but for the reformation or modification. Moreover, the actual beneficiaries of the estate would have no recourse in dealing with spurious actions for reformation or modification.

III. Effect of Fraud, Duress, Mistake or Undue Influence on Revocation of Will or Trust; When Challenge Can be Commenced.

A. Amendment, Restatement or Revocation of Revocable Trust. *Florida Statutes* §736.0406 is amended to provide that not only the creation of a trust is void if procured by fraud, duress, mistake or undue influence, but any amendment, restatement or revocation of a trust, or any part thereof, procured by fraud, duress, mistake or undue influence is void. A conforming amendment was made to Florida Statutes §736.0207, to provide that an action to contest not only the validity of a revocable trust, or a part thereof, but the revocation of part of a revocable trust, may not be commenced until the trust becomes irrevocable by its terms or by the settlor's death (subject to the power of a guardian of the property to contest a revocable trust under *Florida Statutes* §736.0207; see III, C below); and that an action to contest the revocation of all of a revocable trust may not be commenced until after the settlor's death. Section 10, page 6 of 9 of the Bill.

1. Reasons for the Change. The Florida Trust Code permits the creation of a trust to be challenged on the grounds of fraud, duress, mistake or undue influence. The Florida Trust Code, however, did not address whether, and when, an amendment, restatement or revocation of a revocable trust could be challenged on the grounds of fraud, duress, mistake or undue influence. Courts generally have allowed challenges to amendments and restatements on the grounds of fraud, duress, mistake or undue influence, but the power of the courts to do so is not explicitly set forth in the Florida Trust Code. A recent case held that an interested person could not contest the revocation of a revocable trust by a settlor who is not incapacitated on the grounds of undue influence. *MacIntyre v. Wedell*, 12 So.3d 273 (Fla. 4th DCA 2009). The holding in *MacIntyre* could be interpreted to mean that lack of capacity is the sole grounds for challenging the revocation of a revocable trust.

B. Revocation of Will. *Florida Statutes* §732.5165 is amended to provide that not only is a Will, or part of a Will, void if the execution is procured by fraud, duress, mistake or undue influence, but any revocation of a Will, or any part thereof, procured by fraud, duress, mistake or undue influence is void. A conforming amendment was made to Florida Statutes §732.518, to provide that an action to contest not only the validity of a Will, or a part thereof, but the revocation of all or part of a Will, may not be commenced until after the death of the testator. Sections 6 and 7, page 5 of 9 of the Bill.

1. Reason for the Change. The Florida Probate Code permits the execution of a Will to be challenged on the grounds of fraud, duress, mistake or undue influence, but is silent as to the ability to challenge the revocation of a Will on these grounds. Under a prior version of the Florida Probate Code, *Florida Statutes* §731.09 (1974) provided that if the revocation of a Will, or part thereof, is procured by fraud, duress, menace or undue influence, such revocable is void. There are no reported Florida cases on point, but it appears that under current law the revocation of a Will may be challenged on the grounds of fraud, duress or undue influence. *Restatement Third* §4.1. In order to codify this concept, and to

be consistent with the enactment of *Florida Statutes* §736.0406 relating to the revocation of revocable trusts, a similar provision was added relating to the revocation of Wills.

C. Presumption Regarding Guardian's Challenge of Ward's Revocation of Trust. *Florida Statutes* §736.0207 of the Florida Trust Code generally prohibits an action to contest the validity of a trust until the trust becomes irrevocable, except an action by the guardian of the property of an incapacitated person. Florida Statutes §744.441(11) of the Florida Guardianship Law provides that a guardian may bring an action to contest the validity of a revocable trust if the court finds that the action appears to be in the best interests of the ward during the ward's probable lifetime. Florida Statutes §744.441(11) is amended to create a rebuttable presumption that an action challenging the ward's revocation of all or part of a trust is not in the best interest of the ward if the revocation relates solely to a devise (i.e., a testamentary disposition). The amendment would also clarify that the subsection does not preclude a challenge after the death of the ward. Section 12, page 7 of 9 of the Bill.

IV. Lawyer-Client Privilege When Client is a Fiduciary; Notice. Section 1, page 2 of 9 of the Bill.

A. Lawyer-Client Privilege. *Florida Statutes* §90.502 of the Florida Evidence Code contains the lawyer-client privilege, which provides that a client can refuse to disclose, and prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in rendering legal services to the client.

B. Reason for the Change. Several Florida cases called into question whether a fiduciary could claim the lawyer-client privilege. *Jacob v. Barton*, 877 So.2d 935 (Fla. 2d DCA 2004) (holding that if the ultimate benefit of legal services for a trustee was the beneficiary of a trust, then the beneficiary was the real client, and the trustee could not invoke the privilege); *Tripp v. Salkovitz*, 919 So.2d 716 (Fla. 2d DCA 2004) (holding that a guardian of an incapacitated person can invoke the privilege only if the attorney was representing the interests of the guardian and not the ward).

C. Fiduciary Lawyer-Client Privilege Confirmed. New *Florida Statutes* §90.5021 was added, confirming that a communication between a client who is a fiduciary and the client's attorney is privileged and protected by the lawyer-client privilege. For purposes of the new statute, a fiduciary includes a client acting as personal representative, trustee, administrator-ad-litem, curator, guardian, guardian-ad-litem, conservator or attorney-in-fact.

D. Additional Notice Required in Estate Administration. *Florida Statutes*, §733.212(2)(b) was amended to require that the Notice of Administration served by the personal representative on interested persons must contain a statement that "the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the personal representative

and any attorney employed by the personal representative.” Section 8, page 5 of 9 of the Bill.

E. Additional Notice Required in Trust Administration. Two new additional notice requirements were added to the Florida Trust Code.

1. *Florida Statutes*, §736.0813(1)(a) was amended to require that the notice a trustee must give to the qualified beneficiaries within 60 days after acceptance of the trust must include a statement that “the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.” Section 11, page 6 of 9 of the Bill.

2. *Florida Statutes*, §736.0813(1)(b) was amended to require that the notice a trustee must give to the qualified beneficiaries within 60 days after either (i) acquiring knowledge of the creation of a irrevocable trust or (ii) the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable must include a statement that “the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.” Section 11, page 7 of 9 of the Bill.

3. Effective Date. The additional notice requirements in (1)(a) and (1)(b) do not apply to an irrevocable trust created before the effective date of the law or a revocable trust that becomes irrevocable before the effective date of the law. The additional notice requirement in (1)(a) does not apply to a trustee who accepts a trusteeship before the effective date of the law.

V. Application of Rule 1.525, Florida Rules of Civil Procedure to Certain Trust Proceedings. Florida Statutes §736.0201 is amended to confirm that Rule 1.525¹ of the Florida Rules of Civil Procedure generally applies to judicial proceedings concerning trusts, but creates certain exceptions. Payment of the following services and costs do not constitute the taxation of costs or attorney’s fees: (a) compensation or reimbursement of costs to persons employed by the trustee from assets of the trust and (b) a determination by the court directing from what part of the trust fees and costs shall be paid, unless the determination is made under Florida Statutes §736.1004 in an action for breach of fiduciary duty or challenging the exercise of, or failure to exercise, a trustee’s powers. Section 13, page 8 of 9 of the Bill. Accordingly, a motion does not need to be filed within 30 days after the filing of a judgment pursuant to Rule 1.525 with respect to those

¹ Rule 1.525 provides as follows:

Rule 1.525. Motions for Costs and Attorneys Fees. Any party seeking a judgment taxing costs, attorneys’ fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.

services and costs that do not constitute taxation of costs or attorney's fees under Section 736.0201.

A. Reason for the Change. The Florida Trust Code provides for persons who have rendered services to a trust to have their attorney's fees and costs paid from trust assets under various circumstances. *Florida Statutes* §§736.1004, 736.1005 and 736.0802. In those instances, the court has the discretion to direct from what part of the trust fees and costs are to be paid. *Florida Statutes* §§736.1004(2), 736.1005(2) and 736.1006. None of the statutes addresses the procedure for applying for fees and costs or the timing of the request.

Florida Statutes §736.0201 provides that the Florida Rules of Civil Procedure govern most trust proceedings, which implies that Rule 1.525 applies.

The purpose of Rule 1.525 is to avoid uncertainty and prejudice to opposing parties and the court caused by tardy motions regarding attorney's fees and costs. The Rule, however, is not well suited for application to unique circumstances in trust proceedings. Generally, a trustee is entitled to pay attorney's fees and costs from trust assets without court approval, unless there has been a claim of breach of trust. *Florida Statutes* §736.0802(10). The civil litigation method of taxing attorney's fees and costs based on which party prevails is not always applicable in trust proceedings. It has been reported that the uncertainty concerning the application of the rule to trust attorney fee proceedings created considerable confusion and unnecessary litigation. Scuderi and Zung-Clough, *Does Florida Rule of Civil Procedure 1.525 Apply to Probate the Trust Proceedings?*, ActionLine (Fla. Bar RPPTL Section, Winter 2008).

The amendment confirms that Rule 1.525 is applicable to judicial proceedings concerning trusts, but excludes two categories from taxation or attorney's fees and costs that would require a motion within 30 days after the entry of a judgment of dismissal. The first is a trustee's payment of compensation or reimbursement of costs to persons employed by the trustee from assets of the trust. The second is a determination by the court directing from what part of the trust fees or costs shall be paid, unless the determination is made under *Florida Statutes* §736.1004 in an action for breach of fiduciary duty or challenging the exercise of, or failure to exercise, a trustee's powers.

MISCELLANEOUS LEGISLATION AFFECTING ESTATES AND TRUSTS

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CS/HB 325

2011 Legislature

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

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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.

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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.

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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

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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:

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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.