FINAL BILL ANALYSIS

BILL #: CS/HB 325

FINAL HOUSE FLOOR ACTION:
119 Y's 0 N's

SPONSOR: Rep. Wood

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 648

SUMMARY ANALYSIS

CS/HB 325 passed the House on April 14, 2011, and subsequently passed the Senate on April 29, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-183, Laws of Florida. Sections 1 and 6-13 of the bill are effective upon becoming law. Sections 3-5 of the bill are effective July 1, 2011. Section 2 of the bill is effective October 1, 2011.

Where a person dies without a will or some other means of devising his or her estate such as a trust, the person is considered intestate. Current law provides that, in an intestate estate where all of the surviving descendents are also descendents of the surviving spouse, the surviving spouse receives the first $60,000 plus one-half of the remaining estate. This bill provides that the surviving spouse in this situation receives the entire estate.

Current law provides that, if a will is unambiguous, a court may only look to the will itself to determine distribution of the estate, even if the actual terms of the will do not reflect the intent of the deceased. The bill allows a court to modify an unambiguous will to correct mistakes of law, to correct mistakes of fact, or to create a favorable tax result. The bill also provides for an award of attorneys fees and costs directly against an individual in certain proceedings involving certain will challenges. Current law allows a person to revoke a will. If the will was revoked through publication such revocation may be challenged on grounds of fraud, duress, mistake, or undue influence. If, however, the revocation was by action (such as physical destruction of the will), it may not be challenged. The bill provides that any will revocation may be challenged by an interested party, regardless of the method of revocation.

A revocable trust is a common substitute for a will that allows the individual who created the trust (known as the "settlor") the ability to reclaim the property from the trust at anytime by revoking the trust. Current law does not provide a means to challenge the revocation of a revocable trust where the revocation was procured under fraud, duress, mistake or undue influence. The bill provides that, after the death of the settlor, an interested party can challenge the past revocation of a revocable trust on the grounds that the revocation was procured by fraud, duress, mistake or undue influence.

Attorneys fees in trust proceedings are awarded in various circumstances and do not necessarily follow the same method of awarding fees in a typical civil action. There is confusion on whether certain civil procedures regarding awarding of attorneys fees pertain to proceedings involving trusts. The bill provides that the rules of civil procedure generally apply to judicial proceedings involving trusts, but that the time requirements for filing for attorneys fees apply with exceptions for two probate proceeding categories.

Communication between a lawyer and a client is privileged information and the client may refuse to disclose those communications or prevent a third party from disclosing the privileged information. The bill provides that the lawyer-client privilege applies to certain communications between a lawyer and his or her client trustee, guardian, or personal representative.

The bill does not appear to have a fiscal impact on the state or on local governments.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Florida Probate Law in General

Probate is the court supervised process for indentifying the assets of a deceased person's (decedent) estate, paying the decedent's debts and distributing the assets of the estate to the decedent's beneficiaries.[1] Probate is a necessary step under Florida law to pass the ownership of the estate's assets to the decedent's beneficiaries.[2]

Assets subject to probate are those owned by the decedent that did not pass automatically to another person upon the death of the decedent. For instance, a home owned jointly with a spouse or a checking account in both names would typically pass outside of probate. Assets held in a trust where the trust has testamentary provisions pass outside of probate. On the other hand, most assets titled solely in the name of the deceased would be part of the probate estate.

There are various legal instruments that direct a court in dividing the assets of a deceased person. If the decedent died leaving assets subject to probate and did not have a valid will at his or her death, the decedent is considered intestate.

Intestate Estate

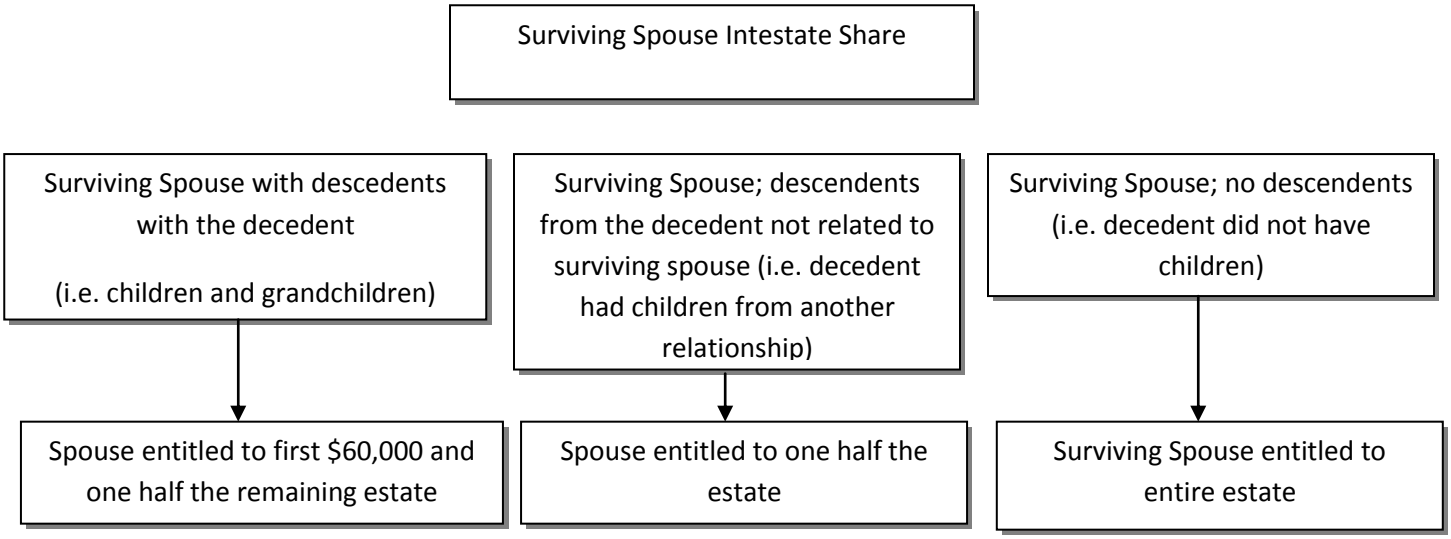
When an individual dies (the decedent) without a will, a person's will is declared invalid, or assets are not distributed by a valid will, then the individual is considered "intestate." Since there is no will to direct the distribution of assets, Florida law provides the distribution of assets that remain after paying debts and the expense of conducting the probate proceedings.[3]

Florida law on intestate succession provides that various family members receive a share of the decedent's estate:

- If there are no surviving descendents[4] of the decedent, then the spouse receives the entire intestate estate.[5]
- If there are surviving descendents of the decedent, who are all also lineal descendents of the surviving spouse, then the surviving spouse receives the first $60,000 in property of the estate, plus one-half of the remaining balance of the estate subject to distribution.[6]
- If there are surviving descendents of the decedent, one or more of whom are not lineal descendents of the surviving spouse, then the surviving spouse receives one half of the estate and the lineal descendents receive the other half.[7]

[1] See chs. 731-735, F.S., for Florida Probate Code.
[2] There are alternatives to probate, including trust arrangements. Trusts arrangements transfer ownership of the assets to the trust prior to the death of the owner.
[3] Section 732.101, F.S.
[4] Descendants are children, grandchildren, great-grandchildren, etc.
[5] Section 732.102(1), F.S.
[6] Section 732.102(2), F.S.

- There are additional provisions for distribution in situations beyond these, which distribute assets to other family members, but those are not relevant to the changes made in this bill. See ss. 732.103 and 732.104, F.S.

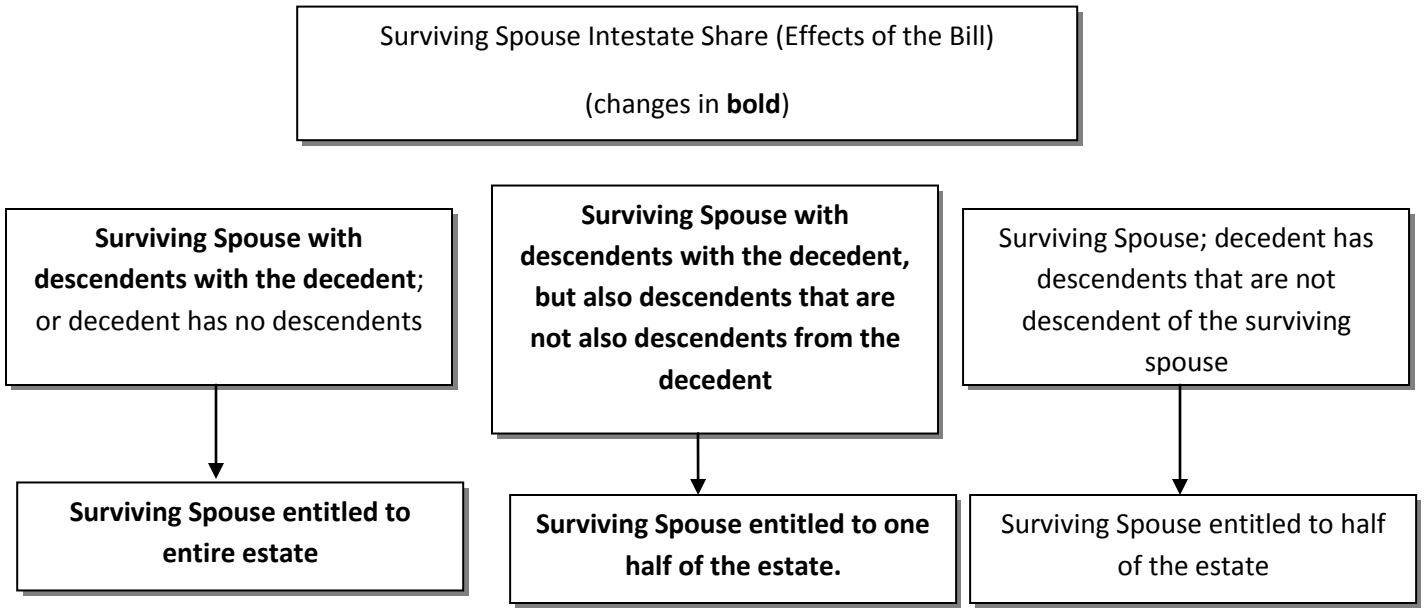


Effect of the Bill- Intestate Share of Spouse (Section 2)

The bill amends s. 732.102(2), F.S., to provide that the intestate share of a surviving spouse, where all of the decedent's descendents are also descendents of the surviving spouse, is the entire estate. For example, if a husband passes away and was survived by his wife and two children and the wife was the mother of both children and neither had any other children, the wife would now inherit the entire estate rather than the first $60,000 and half of the remaining estate.

The bill also creates s. 732.102(4), F.S., to provide that if the surviving spouse has descendents that are also descendents of the decedent, but the surviving spouse also has a descendent not related to the decedent, then the surviving spouse's intestate share is half of the estate. The lineal descendents of the decedent would inherit the remaining half of the estate under s. 732.103, F.S.

[7] Section 732.102(3), F.S.



Wills

A will is a written instrument that names the beneficiaries whom the decedent wants to receive his or her probate assets after his or her death.[8] The decedent also designates a personal representative to administer the estate. There are several requirements for a valid will in the state of Florida including:

- The person (testator) be 18 years of age or older (or an emancipated minor) and be of sound mind.[9]
- The testator or someone at the direction of the testator in the testator's presence must sign the will at the end.[10]
- The signing of the will must be in the presence of two witnesses.[11]
- The two witnesses must sign the will in the presence of the testator and each other.[12]

A will may also devise assets of the estate into a trust or may create a trust, which is considered a testamentary trust.

Reformation of a Will

Florida law allows the reformation of a will in the case of an ambiguity.[13] One court has described the legal standards of reformation:

> The paramount objective in constructing a will is to ascertain the intent of the testator. The will as a whole should be considered in order to ascertain the testamentary scheme.

[8] Section 731.201(40), F.S.
[9] Section 732.501, F.S.
[10] Section 732.502(1)(a), F.S.
[11] Section 732.502(1)(b), F.S.
[12] Section 732.502(1)(c), F.S.
[13] A will may be void if it is found to be procured by fraud, duress, mistake or undue influence under s. 732.5165, F.S.

> The construction of the will which leads to a valid testamentary disposition is favored over one which results in intestacy. If possible, the intent should be determined from the will itself. However, in case of ambiguity, extrinsic evidence is admissible to explain the intent of the testator.[14]

In some circumstances a mistake does not always involve an ambiguity but instead involves a mistake of fact or law. An example of an unambiguous mistake is *Azcunce v. Estate of Azcunce*.[15] In *Azcunce*, a father drafted a codicil[16] to his will prior to the birth of his fourth child.[17] The will allowed for the creation of a trust for his wife and three children when he died. His fourth child was born shortly after the publication of the codicil. Under current law, the fourth child would be considered a pretermitted child and would be entitled to a share of the estate.[18] The issue in the case was that the father then drafted and published another codicil after the birth of child which did not mention the child. The publication of the second codicil, which republished the previous will with the amendments, also terminated the child's pretermitted status. Shortly after the publication of the codicil, the father died of a sudden heart attack.[19]

The mother, on behalf of the minor child, filed suit challenging the will and requesting the child's pretermitted share of the estate under s. 732.302, F.S.[20] The court ruled that the republication of the will when the father published the second codicil terminated the child's pretermitted status and therefore the father had effectively disinherited his daughter.[21] The court noted that,

> ...there is utterly no ambiguity in the subject will and codicils which would authorize the taking of parol evidence herein...the mistake of which Patricia claims amounts, at best, to the draftsman's alleged professional negligence in failing to apprise the [father] of the need to expressly provide for Patricia in the second codicil; this is not the type of mistake which voids a will under Section 732.5165, Florida Statutes.[22]

There was evidence that the father did not want to disinherit his daughter, but the court could not look at such evidence because there was no ambiguity to the will. The court ruled that the daughter was not entitled to any share of the deceased estate.

<u>Attorneys Fees and Costs in Probate Proceedings</u>

In probate proceedings, the party challenging the will or offering an alternative will may seek attorneys fees and costs from the estate provided that:

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[14] *Wilson v. First Florida Bank*, 498 So.2d 1289, 1291 (Fla. 2d DCA 1986)(Internal citations omitted).
[15] *Azcunce v. Estate of Azcunce*, 586 So.2d 1216 (Fla. 3d DCA 1991).
[16] A codicil is an amendment to a will that in this case amended the will and republished the previous will with the amendment.
[17] *Azcunce* at 1218.
[18] *See* s. 732.302, F.S.
[19] *Azcunce* at 1218-19.
[20] *Id*. at 1219.
[21] *Id*.
[22] *Id*.

- The will is due form;
- There is not a contingency arrangement between the proponent and the attorney; and
- The action was brought in good faith.[23]

Probate proceedings are one of the few legal proceedings in which the losing party may still collect attorneys fees.[24] When awarding attorneys fees and costs, a probate court has the discretion to direct from which part of the estate the attorneys fees and costs are to be paid.[25] The court does not have the ability to tax attorneys fees of the opposing party against the will proponent directly, instead the court may direct the fees against the person's share of the estate, if any.

An attorney may also request attorneys fees from the estate directly if the attorney provided valuable services which benefitted the estate.[26] In a proceeding against the personal representative of an estate for improper exercise of power or breach of fiduciary duty, the court may award costs and attorneys fees directly against either party.[27] A proceeding against the personal representative differs from other probate proceedings in awarding attorneys fees because the attorneys fees and costs may be awarded directly against any party in the form of a judgment.[28] The court awards the costs and attorneys fees as in chancery actions.[29]

Effect of the Bill (Sections 3, 4, and 5)

The bill creates s. 732.615, F.S., to provide that a court may reform a will even if it is unambiguous. A person challenging the will would have to prove by clear and convincing evidence[30] that both the testator's intent and the terms of the will were affected by a mistake of fact or law.[31] A court may look to extrinsic evidence in these circumstances even if the evidence contradicts the plain meaning of the will.

In the example of the *Azcunce* case, the changes provided in the bill may have allowed the court to look at the extrinsic evidence regarding the deceased's intent to not disinherit his daughter even though the will was unambiguous and the extrinsic evidence contradicted the plain meaning of the will.

The bill creates s. 732.616, F.S., to provide that any interested person may petition to modify a testator's will in order to achieve the testator's tax objectives, provided such modification is not contrary

[23] Section 733.106(2), F.S.
[24] Wallace, Douglas A, "The Recovery of Attorney's Fees and Costs for the Unsuccessful Offer of a Will for Probate," Fla. B.J. pg.1 (Jan. 2002).
[25] Section 733.106(4), F.S.
[26] Section 733.106(3), F.S. See *In Re Gleason's Estate*, 74 So.2d 360, 362 (Fla. 1954)(Attorney may be awarded attorneys fees directly from the estate if he or she rendered a valuable service and the service benefitted the estate).
[27] Section 733.609, F.S.
[28] Section 733.609(1) & (2), F.S.
[29] Chancery action is an action in equity. "The general rule is that costs follow the results of the litigation but in equity this rule may be departed from according to the circumstances." *Schwartz v. Zaconick*, 74 So.2d 108, 110 (Fla. 1954).
[30] "[A] workable definition of clear and convincing evidence must contain both qualitative and quantitative standards...clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." *Slomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th DCA 1983).
[31] The bill language mirrors the language that applies to trusts in s. 736.0415, F.S.

to the testator's probable intent. This change would allow a party to seek modification of the will in order to achieve a tax advantage intended by the testator so long as the modification is not contrary to the testator's probable intent.

The bill creates s. 733.1061, F.S., to provide that in the newly created actions under s. 732.615 and s. 732.616, F.S., "the court shall award taxable costs as in chancery actions, including attorneys fees and guardian ad litem fees."[32] A chancery action for attorneys fees and costs is an action in equity that is similar to a prevailing party provision for attorneys fees and costs, but equity does give the court discretion if the circumstances demand.[33] The new section would give the court the ability to charge attorneys fees and costs directly to a party. The bill also gives the court the discretion to tax the fees and costs against a party's interest in the estate or other property of the party that is not part of the estate.

Voided Will - Fraud, Duress, Mistake and Undue Influence

Section 732.5165, F.S., provides that a will is void if the execution is procured by fraud, duress, mistake or undue influence. "Undue influence comprehends over persuasion, coercion, or force that destroys or hampers the free agency and will power of the testator."[34] "If a substantial beneficiary under a will occupies a confidential relationship with the testator and is active in procuring the contested will, the presumption of undue influence arises."[35] The Florida Supreme Court has found that the following criteria are relevant to determining whether a beneficiary has been improperly active in procuring a will:

- Presence of the beneficiary at the execution of the will;
- Presence of the beneficiary on those occasions when the testator expressed a desire to make a will;
- Recommendation by the beneficiary of an attorney to draw the will;
- Knowledge of the contents of the will by the beneficiary prior to execution;
- Giving of instructions on preparation of the will by the beneficiary to the attorney drawing the will;
- Securing of witnesses to the will by the beneficiary; and
- Safekeeping of the will by the beneficiary subsequent to execution.[36]

Will contestants are not required to prove all the criteria, but a showing of a significant number will create a rebuttable presumption of undue influence under s. 733.107(2), F.S. If the presumption of undue influence is created, it shifts the burden of proof from the party challenging the will to the proponent of the will.[37]

[32] The language mirrors part of s. 733.609, F.S.
[33] "In chancery or equity actions, the well settled rule is that 'costs follow the judgment unless there are circumstances that render application of this rule unjust.'" *In Re Estate of Simon*, 549 So.2d 210, 212 (Fla. 3d DCA 1989).
[34] *RBC Ministries v. Tompkins*, 974 So.2d 569, 571 (Fla. 2d DCA 2008)(quoting *Newman v. Smith*, 82 So. 236, 246 (Fla. 1918)).
[35] *Carpenter v. Carpenter*, 253 So.2d 697, 701 (Fla. 1971).
[36] *Carpenter* at 702.
[37] *RBC Ministries* at 571-72.

Revoking a Will by Publication or Act

Section 732.505, F.S., provides that a will may be revoked by writing. A will or codicil, or any part of either, is revoked:

- By a subsequent inconsistent will or codicil, even though the subsequent inconsistent will or codicil does not expressly revoke all previous will or codicils, but the revocation extends only so far as the inconsistency; or
- By a subsequent will, codicil, or other writing executed with the same formalities required for the execution of wills declaring the revocation.

A will may also be revoked by act. Section 732.506, F.S., provides that:

> A will or codicil is revoked by the testator, or some other person in the testator's presence and at the testator's direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation.

A revocation by subsequent writing can be challenged as having been influenced by fraud, duress, mistake or undue influence. However, there is no apparent means to challenge revocation by act.

Effect of the Bill (Section 6 and Section 7)

The bill amends s. 732.5165, F.S., to allow an interested person to challenge the revocation of a will on the grounds of fraud, duress, mistake, or undue influence. This change will apply to revocation through a written instrument or through an act (i.e. destroying the will).

The bill amends s. 732.518, F.S., to provide that a challenge to a revocation of a will may not be commenced before the death of the testator. The bill would provide the same limitations that currently apply to challenging wills to challenging will revocations.

Trusts and Revocable Trusts

A trust is a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (beneficiary).[38] A trust must include specific property, reflect the settlor's intent, and be created for a lawful purpose.[39]

There are many different types of trusts, including a revocable trust. A revocable trust is a trust in which the settlor may, without the consent of the trustee, revoke the trust.[40] Unless the terms of a trust expressly provide that the trust is irrevocable, then the settlor may revoke or amend the trust at any time.[41] The capacity requirement is the same for a revocable trust as it is for a will.[42] The Florida Supreme Court has ruled that:

[38] Black's Law Dictionary (9th ed. 2009), trust.
[39] *Id.*
[40] Section 736.0103(15), F.S.
[41] Section 736.0602(1), F.S.
[42] Section 736.0601, F.S.

> a revocable trust is a 'a unique type of transfer' and 'by definition..., when a settlor sets up a revocable trust, he or she has the right to recall or end the trust at any time, and thereby regain absolute ownership of the trust property.' The settlor's retention of control 'distinguishes a revocable trust from other types of conveyances...' [43]

Revocable trusts are commonly used as will substitutes and as an alternative to probate.

Challenging the Revocation of a Revocable Trust

A court may void a trust if the creation of the trust is procured by fraud, duress, mistake, or undue influence.[44] However, revocation of a trust cannot be challenged under these grounds. For instance, in *Florida National Bank of Palm Beach County v. Genova*, the Florida Supreme Court ruled that the principle of undue influence is not applicable when revoking a revocable trust.[45] In the facts of the case, Mrs. Genova, who was 76, had married Mr. Genova, who was 32.[46] The couple was divorced a year later but then remarried a year after the divorce. Mrs. Genova had established a revocable trust with Florida National Bank of Palm Beach County as the trustee.[47] Mrs. Genova attempted to revoke her trust, but the trust officer refused to do so suspecting undue influence on the part of Mrs. Genova's husband.[48] Mrs. Genova filed an action to force the bank to revoke the trust shortly after. The Supreme Court ruled that, "Mrs. Genova has the power to revoke this trust at any time she wishes to do so."[49] The Court further noted that:

> The courts have no place in trying to save person such as Mrs. Genova, the otherwise competent settlor of a revocable trust, from what may or may not be her own imprudence with her own assets. When she created this trust, she provided a means to save herself from her own incompetence, and the courts can and should zealously protect her from her own mental capacity. However, when she created this trust, she also reserved the absolute right to revoke it if she were not incompetent. In order for this to remain a desirable feature of a trust instrument, the right to revoke should also be absolute.[50]

The Florida Fourth District Court of Appeal furthered the opinion in *Genova* to include barring challenges to the revocation of a revocable trust under undue influence after the death of the settlor.[51]

Effect of the Bill (Sections 9, 10 and 12)

The bill amends s. 736.0207, F.S., to provide that the validity of a revocable trust or the revocation of part of a revocable trust cannot be challenged until the trust becomes irrevocable by its terms, or until after the settlor's death.

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[43] *MacIntyre v. Wedell*, 12 So.3d 273, 274 (Fla. 4th DCA 2009)(quoting *Florida National Bank of Palm Beach County v. Genova*, 460 So.2d 895 (Fla. 1985)).
[44] *See* s. 736.0406, F.S.
[45] *Florida National Bank of Palm Beach County v. Genova*, 460 So.2d 895, 895 (Fla. 1985).
[46] *Id*.
[47] *Id*.
[48] *Id*. at 896.
[49] *Id*.
[50] *Id*. at 898
[51] *MacIntyre v. Wedell*, 12 So.3d 272 (Fla. 4th DCA 2009).

The bill amends s. 736.0406, F.S., to provide that the amendment and restatement of a trust procured by fraud, duress, mistake or undue influence is void. The bill also provides that the revocation of a revocable trust procured by fraud, duress, mistake or undue influence is void.

The bill amends s. 744.441(11), F.S., to provide that "there shall be a rebuttable presumption that an action challenging the ward's revocation of all or part of a trust is not in the ward's best interests if the revocation relates solely to a devise." This would limit the ability of a guardian to contest the revocation of trust for only testamentary dispositions by creating a rebuttable presumption that the guardian would have to overcome. The bill also adds that the subsection does not preclude a challenge after the ward's death.

Attorneys Fees and Costs in Trust Proceedings

Section 736.0201, F.S., provides that, with the exception of a proceeding for the construction of a testamentary trust, trust proceedings are governed by the Florida Rules of Civil Procedure. There are many instances where attorneys fees and costs are awarded in trust proceedings and these awards tend to be unique to trust proceedings.

Rule 1.525 of the Florida Rules of Civil Procedure provides that:

> 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.

The rule was created in the civil litigation context "to cure the evil" of uncertainty created by tardy motions for fees and costs, and to eliminate the prejudice that tardy motions cause to both the opposing party and the trial court.[52] Application of the rule can be confusing in trust proceedings. In many trust proceedings the trustee is entitled to pay its attorneys fees and costs from trust assets. While in civil litigation taxation of attorneys fees is usually based on prevailing party considerations, trust actions do not necessarily follow the same considerations. Also, attorneys who have provided a benefit to the trust may apply directly for attorneys fees and costs.[53] Applying Rule 1.525 to lawsuits regarding trusts has created confusion for attorneys and the courts.[54]

Effect of the Bill (Section 13)

The bill amends s. 736.0201, F.S., by adding the term "judicial" in order to provide that the Florida Rules of Civil Procedure (specifically at issue is Rule 1.525) apply to judicial proceedings concerning trusts. The bill creates s. 736.0201(6), F.S., to provide that Rule 1.525 applies to judicial proceedings concerning trusts but also provides two exceptions that would not qualify as taxation of costs or attorneys fees: (1) a trustee's payment of compensation or reimbursement of costs to persons employed by the trustee from assets of the trust or (2) a determination by the court directing from what

[52] *Barco v. School Board of Pinellas County*, 975 So.2d 1116, 1123 (Fla. 2008).
[53] Florida Statutes awarding attorneys fees in trust proceedings include ss. 736.1004; 736.1005; 736.1006; 736.1007; 736.0201; 736.0206; 736.0410; 736.04113; 736.04113; 736.04115; 736.04117; 736.0412; 736.0413; 736.0414; 736.0415; 736.0416; and 736.0417, F.S.
[54] Scuderi and Zung-Clough, "Does Florida Rule of Civil Procedure 1.525 Apply to Probate and Trust Proceedings?" ActionLine (Fla. Bar RPPTL Section Winter 2009).

part of the trust or fees shall be paid. A determination under s. 736.1004, F.S., in an action for breach of fiduciary duty or challenging the exercise of, or failure to exercise, a trustee's powers would not apply to the either exception.

Lawyer-Client Privilege

Section 90.502(1)(c), F.S., provides that a communication between lawyer and client is confidential if it is not intended to be disclosed to a third person. Section 90.502(2), F.S., provides that a client has a privilege to refuse or prevent another party from disclosing those communications.

There has been some issue as to whether the attorney-client privilege applies to a trustee or guardian who employs an attorney in connection with his or her duties as trustee or guardian. The Florida Second District Court of Appeal has addressed both situations.

In *Jacob v. Barton*, the trustee was being sued by the beneficiary. The issue before the court was whether the attorney client privilege applied to the trustee or the beneficiary. The court ruled that the privilege applied if the work being done was on behalf and for the benefit of the trustee, but if the ultimate benefit was for the beneficiary, the privilege would not apply since the beneficiary was the "real client."[55] The court in *Tripp v. Salkovitz*, furthered this reasoning to a guardian. The guardian employed an attorney to assist in the duties of administrating the guardianship. The guardian was later sued for mismanagement by a beneficiary after the ward's death.[56] The court ruled that the privilege applies only if the attorney was representing the interests of the guardian and not the ward. In both cases, the court mandated that the lower court conduct an in camera review of the records in question and determine which, if any, fell under the attorney-client privilege.

Effect of the Bill (Section 1, Section 8, Section 11)

The bill creates s. 90.5021, F.S., which provides that, for purposes of this section, a client acts a fiduciary when serving as a personal representative,[57] a trustee,[58] an administrator ad litem,[59] a curator,[60] a guardian[61] or guardian ad litem,[62] a conservator,[63] or an attorney-in-fact.[64] The bill also

[55] *Jacob v. Barton*, 877 So.2d 935 (Fla. 2d DCA 2004).
[56] Tripp v. Salkovitz, 919 So.2d 716 (Fla. 2d DCA 2004).
[57] As defined in s. 731.201(28), F.S., "'Personal representative' means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor."
[58] As defined in s. 731.201(39), F.S., "'Trustee' includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court." As defined in s. 736.103(21), F.S., "'Trustee' means the original trustee and includes any additional trustee, any successor trustee, and any cotrustee."
[59] As defined in s. 733.308, F.S., "Administrator ad litem.—When an estate must be represented and the personal representative is unable to do so, the court shall appoint an administrator ad litem without bond to represent the estate in that proceeding."
[60] As described in s. 733.501, F.S., "Curators.-- When it is necessary, the court may appoint a curator after formal notice to the person apparently entitled to letters of administration. The curator may be authorized to perform any duty or function of a personal representative. If there is great danger that any of the decedent's property is likely to be wasted, destroyed, or removed beyond the jurisdiction of the court and if the appointment of a curator would be delayed by giving notice, the court may appoint a curator without giving notice."
[61] As defined in s. 744.102(9), F.S., "'Guardian' means a person who has been appointed by the court to act on behalf of a ward's person or property, or both."

provides that a communication between a client, acting as a fiduciary, and the client's lawyer is privileged and protected pursuant to s. 90.502, F.S., and that nothing in this section affects the crime-fraud exception to the lawyer-client privilege set forth in s. 90.502(4)(a), F.S.[65]

The bill also amends s. 733.212(2)(b), F.S., to provide that a notice be included on the notice of administration regarding the fiduciary lawyer-client relationship.[66]

The bill amends s. 736.0813, F.S., to require the trustee of a trust to include a notice regarding the fiduciary lawyer-client relationship in various statutory mandated notices to the beneficiaries of the trust.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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[62] As defined in s. 744.102(10), F.S., "'Guardian ad litem' means a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding."
[63] As defined in s. 710.102(4), F.S, "'Conservator' means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions."
[64] Attorney-in-fact is a term used to describe a person who has been given power of attorney pursuant to ch. 709, F.S.
[65] Section 90.502(4)(a), F.S., provides that there is no lawyer-client privilege when the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud.
[66] Pursuant to s. 733.212, F.S., the personal representative is required to give a notice of administration to the decedent's surviving spouse, beneficiaries, trustee of certain trusts, and people who may be entitled to exempt property.