

1 A bill to be entitled

2 An act relating to trust and probate proceedings; amending s. 732.5165, F.S.; to clarify  
3 that a revocation of a will is subject to challenge on the grounds of fraud, duress,  
4 mistake or undue influence; amending s. 732.518, F.S.; to specify that a challenge to the  
5 revocation of a will may not be commenced before the testator's death; amending s.  
6 736.0207, F.S.; to specify when a challenge to the revocation of a revocable trust may be  
7 brought; amending s. 736.0406, F.S.; to clarify that the creation of a trust amendment or  
8 trust restatement is subject to challenge and to clarify that the revocation of a trust is  
9 subject to challenge on the grounds of fraud, duress, mistake or undue influence;  
10 amending s. 744.441, F.S.; to limit the circumstances under which a guardian of an  
11 incapacitated person may bring a challenge to a settlor's revocation of a revocable trust;  
12 and providing for an effective date.

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

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16 Section 1. Section 732.5165, Florida Statutes, is amended to read:

17 732.5165 Effect of fraud, duress, mistake, and undue influence.—

18 A will is void if the execution is procured by fraud, duress, mistake, or undue  
19 influence. Any part of the will is void if so procured, but the remainder of the will not so  
20 procured shall be valid if it is not invalid for other reasons. If the revocation of a will, or  
21 any part thereof, is procured by fraud, duress, mistake, or undue influence, such  
22 revocation is void.

23 Section 2. Section 732.518, Florida Statutes, is amended to read:

24 732.518 Will contests.—

25 An action to contest the validity of all or part of a will or the revocation of all or  
26 part of a will may not be commenced before the death of the testator.

27 Section 3. Section 736.0207, Florida Statutes, is amended to read:

28 736.0207 Trust contests.—

29 An action to contest the validity of all or part of a revocable trust, or the  
30 revocation of part of a revocable trust, may not be commenced until the trust becomes  
31 irrevocable by its terms or by the settlor's death. If all of a revocable trust has been  
32 revoked, an action to contest the revocation may not be commenced until after the  
33 settlor's death. ~~—except this~~ This section does not prohibit such actions by the guardian  
34 of the property of an incapacitated settlor.

35 Section 4. Section 736.0406, Florida Statutes, is amended to read:

36 736.0406 Effect of fraud, duress, mistake, or undue influence.—

37 If A trust is void the creation, amendment, or restatement of a the trust, or any  
38 part thereof, is procured by fraud, duress, mistake, or undue influence the trust, or any -  
39 Any part so procured of the trust is void . The if procured by such means, but the  
40 remainder of the trust not procured by such means is valid if the remainder is not invalid  
41 for other reasons. If the revocation of a trust, or any part thereof, is procured by fraud,  
42 duress, mistake, or undue influence, such revocation is void.

43           Section 5. Subsection (11) of Section 744.441, Florida Statutes, is amended to  
44 read:

45           744.441 Powers of guardian upon court approval.—

46           After obtaining approval of the court pursuant to a petition for authorization to  
47 act, a plenary guardian of the property, or a limited guardian of the property within the  
48 powers granted by the order appointing the guardian or an approved annual or  
49 amended guardianship report, may:

50           (11) Prosecute or defend claims or proceedings in any jurisdiction for the  
51 protection of the estate and of the guardian in the performance of his or her duties.  
52 Before authorizing a guardian to bring an action described in s. 736.0207, the court shall  
53 first find that the action appears to be in the ward's best interests during the ward's  
54 probable lifetime. There shall be a rebuttable presumption that an action challenging  
55 the ward's revocation of all or part of a trust is not in the ward's best interests if the  
56 revocation relates solely to a devise. Nothing in this subsection shall preclude a  
57 challenge after the ward's death. If the court denies a request that a guardian be  
58 authorized to bring an action described in s. 736.0207, the court shall review the  
59 continued need for a guardian and the extent of the need for delegation of the ward's  
60 rights.

61           Section 6. This act shall take effect upon becoming law and shall apply to all  
62 proceedings pending before such date and all cases commenced on or after the  
63 effective date.