

Legislative Update from 2021 Florida Session

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There were 3096 Bills introduced in the Florida House and Senate this session. About 275 passed. Many have not yet been signed by the governor.

The Academy of Florida Elder Law Attorneys and the Elder Law Section were closely tracking 29 bills, most with companion bills, so over 55 bills. 15 of these bills passed.

There were many bills that could impact the lives of most of us but 4 were passed that impact our field of law.

First would be a bill partly proposed by our groups and lead by Attorney General Ashley Moody dealing with strengthening protections for Florida's elderly and disabled.

Another bill was proposed by the Real Property, Probate and Trust Law Section that dealt with a potpourri of subjects in our practice areas.

The third bill was proposed by outside groups that would change how attorney fees are referenced in the Florida Probate Code.

Finally a bill proposed by the Supreme Court's Alternative Dispute Resolution Committee brings us Elder Caring and Coordination predominantly through mediation.

CS/HB 1041 – Protection of Elderly Persons and Disabled Adults –

- Prohibits a person who commits the following offenses on an elderly person or disabled adult from inheriting from the victim's estate, trust, or other beneficiary assets:
 - Abuse;
 - Neglect;
 - Exploitation; or
 - Aggravated manslaughter.
- Authorizes the Office of Statewide Prosecution to investigate and prosecute crimes under chapter 825, F.S.
- Prohibits unreasonable isolation of an elderly person or disabled adult from his or her family members.
- Prohibits seeking out appointment as a guardian, trustee, or agent under power of attorney with the intent to obtain control over the victim or his or her assets for the perpetrator or some third party's benefit.

- Disqualifies a person convicted of abuse, neglect or exploitation from serving as a Personal Representative in an estate.
- Prohibits intentional conduct by a perpetrator to modify an elderly or disabled victim's estate plan to financially benefit either the perpetrator or third party in a manner that is inconsistent with the intent of the elderly person or disabled adult.
- Authorizes agents under a durable power of attorney to petition for an injunction for protection against exploitation of a vulnerable adult.

Link: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=72126&SessionId=90>

CS/CS/SB 1070 - Estates and Trusts – a 44 page bill

- Creates Directed Trust guidance - In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust's administration.
- Creates ability to form a Community Property Trust in Florida – even though Florida is not a community property state a trust with many of the characteristics of community property can be established.
- Clarifies the law that for a divorce to sever the right of the ex-spouse to inherit under a will of a decedent the will is not required to be signed during the marriage but could be signed before the marriage.
- Allows in estate proceedings that the personal representative can post a surety bond and not require the funds to be held in a restricted account.
- Provides liability protections for Directors, Officers and Employees of the Trustee (generally a bank or trust company) or trust director the same that a trustee would enjoy for statutes of limitations.
- Provides that Homestead constitutional protections, including exemptions, apply also to homesteads held in a revocable trust.

Link: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=71414&SessionId=90>

CS/HB 625 – Attorney Compensation

- Requires that certain disclosures be made by an attorney to the personal representative or trustee in an estate or initial trust administration.
- Clarifies that if an attorney intends to use the statutory schedule for the determination of fees in an estate or initial trust administration, he or she must make specified disclosures to the personal representative or trustee and must obtain his or her signature acknowledging receipt of such disclosures.
- An attorney who fails to provide the required disclosures may not be paid for legal services without prior court approval of the fees or the written consent of all interested parties or qualified beneficiaries.

Link: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=70937&SessionId=90>

CS/CS/HB 441 – Elder Focused Dispute Resolution

- Creates an alternative dispute resolution option in which court-appointed eldercaring coordinators assist elders, their legally authorized decision makers, and their family members in resolving high-conflict disputes that can impact an elder’s safety and autonomy. The bill authorizes the court to refer certain cases to eldercaring coordination and establishes a specified framework for the referral process. The bill prohibits the referral of certain cases where a party has a history of domestic violence or exploitation of an elderly person, unless the parties consent to the referral and the court considers certain factors.
- Requires an eldercaring coordinator to satisfy specified qualifications, including, in part:
 - Professional requirements, including good standing status with the applicable professional licensing or certification board;
 - Minimum requirements related to the number of years of post-licensure or post-certification practice; and
 - Training in certain topics.
- Provides specified procedures for an eldercaring coordinator’s disqualification, suspension, or removal.
- Requires fees to be paid in equal portion by each party referred, subject to an exception.
- Requires all communications made during eldercaring coordination to be kept confidential, subject to enumerated exceptions.

Link: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=70632&SessionId=90>