

2016 Regular Session

HOUSE BILL NO. 286

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact R.S. 9:1725(3), 1972, 1973, 2092, and 2262.2, relative to the Louisiana Trust Code; to provide for a definition of a "person"; to provide for the treatment of interest upon death of the principal beneficiary; to provide for shifting interest in principal; to provide for recordation of instruments; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:1725(3), 1972, 1973, 2092, and 2262.2 are hereby amended and reenacted to read as follows:

§1725. Definitions

Except when the context clearly indicates otherwise, as used in this Code:

* * *

(3) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a business trust, or two or more persons having a joint or common interest.

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Comment - 2016

(f) This revision augments the definition of person to include limited liability companies.

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§1972. Treatment of interest upon death of principal beneficiary

Upon a principal beneficiary's death, his interest vests in his heirs or legatees, subject to the trust, ~~provided, however, that the~~ Nevertheless, the trust instrument

1 (b) Subsections (A)(1) and (A)(2) apply both to irrevocable trusts and to
2 revocable ones once the latter has ceased to be revocable. Subsection C applies to
3 revocable trusts prior to the trust becoming irrevocable.

4 * * *

5 §2092. Recordation of instruments

6 A. If at any time the trust property of either an inter vivos trust or a
7 testamentary trust includes immovables or other property the title to which must be
8 recorded in order to affect third ~~parties~~ persons, a trustee shall file the trust
9 instrument, an extract of trust, or a copy of the trust instrument or extract of trust
10 certified by the clerk of court for the parish in which the original trust instrument or
11 extract of trust was filed, for record in each parish in which the property is located.
12 Nevertheless, if the trust instrument contains a transfer of immovable property or
13 other property the title to which must be recorded in order to affect third persons, a
14 trustee shall file the trust instrument for record in the parish in which the property is
15 located.

16 B.(1) For purposes of recording an extract of a trust instrument, such an
17 extract shall be executed by either the settlor or the trustee and shall include all of
18 the following:

- 19 (a) The name of the trust, if any.
- 20 (b) A statement as to whether the trust is revocable or irrevocable.
- 21 (c) The name of each settlor.
- 22 (d) The name of each trustee and name or other description of the beneficiary
23 or beneficiaries.
- 24 (e) The date of execution of the trust.
- 25 (f) ~~If the trust instrument also contains a transfer of immovable property or~~
26 ~~other property to the trust, the title to which must be recorded in order to affect third~~
27 ~~persons, then the extract shall contain a brief legal description of the property. Any~~
28 ~~limitation or restriction on the power of the trustee to alienate, lease, or encumber~~
29 ~~immovable property contained in the trust instrument.~~
- 30 (g) ~~Any limitation or restriction on the power of the trustee to sell, lease, or~~
31 ~~mortgage immovable property contained in the trust instrument.~~

1 (2) When an extract of trust is recorded pursuant to Subsection A of this
 2 Section, any limitation or restriction in the trust instrument on the power of the
 3 trustee to ~~sell, lease, or mortgage~~ alienate, lease, or encumber immovable property
 4 shall not be effective against third persons unless it is ~~noted~~ or recited in the extract
 5 of trust.

6 (3) The provisions of this Section authorizing the filing of an extract of the
 7 trust instrument or a clerk-certified copy of the trust instrument or extract of trust
 8 without a description of the property are remedial and shall be applied retroactively
 9 to any trust extract or clerk-certified copy of either the trust instrument or extract of
 10 trust theretofore filed for record which is in substantial compliance with the
 11 provisions of this Subsection, and such extract or clerk-certified copy shall affect
 12 third persons as of the date of recordation. If the extract of an inter vivos trust
 13 instrument or clerk-certified copy thereof is recorded, the failure of the trust
 14 instrument to be in the form required by R.S. 9:1752 shall not be effective against
 15 third ~~parties~~ persons, who shall be immune from claims based on the failure of the
 16 trust instrument to be in the form required by R.S. 9:1752.

Comment - 2016

This revision includes minor semantic changes and makes clear that if the trust instrument contains a conveyance of immovable property, then the trust instrument, rather than an extract of trust, must be filed.

* * *

§2262.2. Recordation of instruments

A. If at any time the trust property of a foreign trust includes ~~an immovable~~
immovables or other property in Louisiana the title to which must be recorded in
 order to affect third ~~parties~~ persons, a trustee shall file the trust instrument, an extract
 of trust, or a copy of the trust instrument or extract of trust certified by the clerk of
 court for the parish in which the original trust instrument or extract of trust was filed,
 for record in each parish in which the property is located. Nevertheless, if the trust
instrument contains a transfer of immovable property or other property the title to
which must be recorded in order to affect third persons, a trustee shall file the trust
instrument for record in the parish in which the property is located.

1 B.(1) For purposes of recording an extract of a trust instrument, such an
 2 extract of a trust instrument either shall be in such form and contain such information
 3 as may be lawful under the law of the jurisdiction which the parties have expressly
 4 chosen to govern the trust, or shall be executed by either the settlor or the trustee and
 5 shall include all of the following:

6 (a) The name of the trust, if any.

7 (b) ~~The name of each settlor.~~ A statement as to whether the trust is
 8 revocable or irrevocable.

9 (c) The name of ~~the trustee~~ each settlor.

10 (d) ~~The name or other description of the beneficiary or beneficiaries.~~ The
 11 name of each trustee and name or other description of the beneficiary or
 12 beneficiaries.

13 (e) The date of execution of the trust instrument.

14 (f) ~~A statement whether the trust is revocable or irrevocable.~~ Any limitation
 15 or restriction on the power of the trustee to alienate, lease, or encumber immovable
 16 property contained in the trust instrument.

17 (g) ~~If the trust instrument also contains a transfer of immovable property or~~
 18 ~~other property to the trust, the title to which must be recorded in order to affect third~~
 19 ~~persons, then the extract shall contain a brief legal description of the property.~~ Any
 20 other provisions of the trust instrument as the party executing the extract deems
 21 useful.

22 (h) ~~Any other provisions of the trust instrument as the party executing the~~
 23 ~~extract deems useful.~~

24 (2) ~~Unless the trust and abstract of trust recite or otherwise note any~~
 25 ~~modification or restriction of the trustee's power or duties, the trustee shall have all~~
 26 ~~of the powers and duties granted to trustees under the Louisiana Trust Code.~~ When
 27 an extract of trust is recorded pursuant to Subsection A of this Section, any limitation
 28 or restriction in the trust instrument on the power of the trustee to alienate, lease or
 29 encumber immovable property shall not be effective against third persons unless it
 30 is recited in the extract of trust.

1 (3) The provisions of this Section authorizing the filing of an extract of the
2 trust instrument or a clerk-certified copy of the trust instrument or extract of trust
3 without a description of the property are remedial and shall be applied retroactively
4 to any trust extract or clerk-certified copy of either the trust instrument or extract of
5 trust theretofore filed for record which is in substantial compliance with the
6 provisions of this ~~Section~~ Subsection, and such extract or clerk-certified copy shall
7 affect third persons as of the date of recordation. If the extract of an inter vivos trust
8 instrument or clerk-certified copy thereof is recorded, the failure of the trust
9 instrument to be in the form required by R.S. 9:1752 shall not be effective against
10 third persons, who shall be immune from claims based on the failure of the trust
11 instrument to be in the form required by R.S. 9:1752.

Comment - 2016

13 This revision makes clear that if the trust instrument contains a conveyance
14 of immovable property, then the trust instrument, rather than an extract of trust, must
15 be filed. It also includes a number of semantic changes and reorders of provisions
16 of prior law to make them consistent with R.S. 9:2092.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____