

RÉSUMÉ DIGEST**ACT 544 (HB 286)****2016 Regular Session****Garofalo**

Prior law (R.S. 9:1725(3)) defined a "person" in the Louisiana Trust Code to include an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or two or more persons having a joint or common interest.

New law expands the definition of "person" to include a limited liability company.

Prior law (R.S. 9:1972) provided that upon a principal beneficiary's death, his interest vested in his heirs or legatees, subject to the trust. However, the stipulations of the trust instrument were required to also follow existing law provisions of the Trust Code.

New law provides that upon a principal beneficiary's death, this interest vests in his heirs or legatees, subject to the trust. However, the stipulations of the trust instrument may create substitute principal beneficiaries so long as any such provisions also follow the existing law Trust Code.

Prior law (R.S. 9:1973) provided that, except for the legitime in trust, the trust could provide that the interests of either an original or substitute principal beneficiary who died without descendants vested in some other person or persons, each of whom was required to be a substitute beneficiary. The trust could provide that the interest of a designated principal beneficiary or a revocable trust shifted to another person or persons if the substitution occurred prior to the time the trust became irrevocable.

New law provides that except for the legitime in trust, the trust may provide that the interest of either an original or substitute principal beneficiary vests in one or more of his descendants upon the death of the beneficiary. If the beneficiary has no descendants, the trust may provide that the interest vests in some other person. For the legitime in trust, the trust may provide that the interest of either an original or a substitute principal beneficiary vests in some other person upon the death of the beneficiary, only if a beneficiary dies intestate and without descendants. Again, the trust can provide that the interest of a designated principal beneficiary or a revocable trust shifts to another person if the substitution occurs prior to the time the trust becomes irrevocable.

Prior law (R.S. 9:2092) provided that any time the trust property of an inter vivos or testamentary trust included immovables or other property that required the title to the property to be recorded in order to affect third persons, the trustee was required to file the trust instrument, an extract of the trust, or a copy of the trust instrument or extract of trust certified by the clerk of court in each parish where the property was located. Prior law also listed the information that was required to be included in an extract of a trust instrument. It also provided that the provisions of prior law were remedial and were required to be applied retroactively, and that if an extract of an inter vivos trust instrument or clerk-certified copy was recorded, the failure of form of the trust instrument was prohibited from being effective against third persons.

New law clarifies the language of prior law and provides that if the trust instrument contains a transfer of immovable property or other property that has a title that must be recorded in order to affect third persons, a trustee shall file the trust instrument in the parish where each property is located.

Prior law (R.S. 9:2262.2) provided that any time the trust property of a foreign inter vivos or testamentary trust included immovables or other property that required that the title to the property be recorded in order to affect third persons, the trustee was required to file the trust instrument, an extract of the trust, or a copy of the trust instrument or extract of trust certified by the clerk of court in each parish where the property was located. It also listed the information that was required to be included in an extract of a trust instrument. It also provided that the provisions of prior law were remedial and were required to be applied retroactively and that if an extract of an inter vivos trust instrument or clerk-certified copy was recorded, the failure of form of the trust instrument was prohibited from being effective against third persons.

New law clarifies the language of prior law and reforms it to make it better conform with R.S. 9:2092. It also adds that if the trust instrument contains a transfer of immovable property or other property that has a title that must be recorded to affect third persons, a trustee shall file the trust instrument in the parish where each property is located.

Effective August 1, 2016.

(Amends R.S. 9:1725(3), 1972, 1973, 2092, and 2262.2)