

2016 Regular Session

HOUSE BILL NO. 253

BY REPRESENTATIVE GAROFALO

TRUSTS: Provides with respect to recordation of instruments of foreign trusts

1 AN ACT

2 To amend and reenact R.S. 9:2262.2, relative to the recordation of instruments; to provide
3 for certain information required to be included in an extract of trust; to provide for
4 the parish in which to file the trust instrument; to provide for the failure to include
5 certain required information; to provide for an immunity from liability under certain
6 circumstances; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:2262.2 is hereby amended and reenacted to read as follows:

9 §2262.2. Recordation of instruments

10 A. If at any time the trust property of a foreign trust includes an immovable
11 or other property in Louisiana the title to which must be recorded in order to affect
12 third parties, a trustee shall file the trust instrument, an extract of trust, or a copy of
13 the trust instrument or extract of trust certified by the clerk of court for the parish in
14 which the original trust instrument or extract of trust was filed, for record in each
15 parish in which the property is located. If the instrument contains a transfer of
16 immovable property or other property the title to which must be recorded in order
17 to affect third parties, a trustee shall file the trust instrument for record in the parish
18 in which the property is located.

19 B.(1) For purposes of recording an extract of a trust instrument, such an
20 extract of a trust instrument either shall be in such form and contain such information

1 as may be lawful under the law of the jurisdiction which the parties have expressly
2 chosen to govern the trust, or shall be executed by either the settlor or the trustee and
3 shall include all of the following:

- 4 (a) The name of the trust, if any.
- 5 (b) A statement as to whether the trust is revocable or irrevocable.
- 6 ~~(b)~~ (c) The name of each settlor.
- 7 ~~(c)~~ (d) The name of ~~the trustee~~ each trustee and the name or other description
8 of the beneficiary or beneficiaries.
- 9 ~~(d)~~ The name or other description of the beneficiary or beneficiaries.
- 10 (e) The date of execution of the trust instrument.
- 11 (f) ~~A statement whether the trust is revocable or irrevocable.~~ Any limitation
12 or restriction on the power of the trustee to alienate, lease, or encumber immovable
13 property contained in the trust instrument.
- 14 (g) ~~If the trust instrument also contains a transfer of immovable property or~~
15 ~~other property to the trust, the title to which must be recorded in order to affect third~~
16 ~~persons, then the extract shall contain a brief legal description of the property.~~
- 17 ~~(h)~~ Any other provisions of the trust instrument as the party executing the
18 extract deems useful.

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

26 (3) The provisions of this Section authorizing the filing of an extract of the
27 trust instrument or a clerk-certified copy of the trust instrument or extract of trust
28 without a description of the property are remedial and shall be applied retroactively
29 to any trust extract or clerk-certified copy of either the trust instrument or extract of

1 trust theretofore filed for record which is in substantial compliance with the
 2 provisions of this ~~Section~~ Subsection, and such extract or clerk-certified copy shall
 3 affect third persons as of the date of recordation. If the extract of an inter vivos trust
 4 instrument or clerk-certified copy of the inter vivos trust instrument is recorded, the
 5 failure of the trust instrument to be in the form required by R.S. 9:1752 shall not be
 6 effective against third parties, who shall be immune from claims based on the failure
 7 of the trust instrument to be in the form required by R.S. 9:1752.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 253 Original

2016 Regular Session

Garofalo

Abstract: Provides for certain information required to be contained in a trust instrument and an extract of trust, and provides for the parish in which to file such instruments.

Present law requires that if a foreign trust includes an immovable or other property in Louisiana the title to which must be recorded in order to affect third parties, 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, in each parish in which the property is located.

Present law requires certain information to be included in an extract of trust, including all of the following: (1) the name of the trust, if any; (2) the name of each settlor; (3) the name of the trustee; (4) the name or other description of the beneficiary or beneficiaries; (5) the date of the trust instrument; (6) a statement as to whether the trust is revocable or irrevocable; (7) if the trust instrument also contains a transfer of immovable property or other property to the trust, the title to which must be recorded in order to affect third persons, then the extract shall contain a brief legal description of the property; and (8) any other provisions of the trust instrument as the party executing the extract deems useful.

Proposed law deletes present law with respect to the extract of trust containing a legal description of the property and requires the trustee to file the trust instrument for record in the parish in which the property is located if the instrument contains a transfer of immovable property or other property the title to which must be recorded in order to affect third parties.

Proposed law specifies that the date of execution of the trust and each trustee shall be listed.

Present law provides that the trustee shall have all of the powers and duties granted to trustees under the Louisiana Trust Code unless the trust and abstract of trust recite or otherwise note any modification or restriction of the trustee's power or duties.

Proposed law deletes present law and provides that any limitation or restriction in the trust instrument on the power of the trustee to alienate, lease, or encumber immovable property shall not be effective against third persons unless it is noted or recited in the extract of trust.

Present law (R.S. 9:1752) provides that an inter vivos trust may be created only by authentic act or by act under private signature executed in the presence of two witnesses and duly acknowledged by the settlor or by the affidavit of one of the attesting witnesses.

Proposed law provides that if the extract of an inter vivos trust instrument or clerk-certified copy of the inter vivos trust instrument is recorded, the failure of the trust instrument to be in the form required by present law shall not be effective against third parties, who shall be immune from claims based on the failure of the trust instrument to be in the required form.

(Amends R.S. 9:2262.2)