
DIGEST

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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)