
DIGEST

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HB 286 Engrossed

2016 Regular Session

Garofalo

Abstract: Revises the Louisiana Trust Code relative to the definition of "person", the ability to shift an interest in principal of the trust, the requirement to record certain trust instruments, and the content of an extract of trust.

Present law (R.S. 9:1725(3)) provides that the definition of a "person" includes 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.

Proposed law expands the definition of "person" in the Louisiana Trust Code to include a limited liability company.

Present law (R.S. 9:1972) 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 must also follow present law provisions of the Trust Code.

Proposed 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 present law Trust Code.

Present law (R.S. 9:1973) provides that a trust may provide that the interest of an original or substitute principal beneficiary who dies intestate and without descendants vests in some other person or persons, each of whom shall be a substitute beneficiary. Except for the legitime in trust, the trust may provide that the interests of either an original or substitute principal beneficiary who dies without descendants vests in some other person or persons, each of whom shall be a substitute beneficiary. The trust can provide that the interest of a designated principal beneficiary or a revocable trust shifts to another person or persons if the substitution occurs prior to the time the trust becomes irrevocable.

Proposed 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.

Present law (R.S. 9:2092) provides that any time the trust property of an inter vivos or testamentary trust includes immovables or other property that requires the title to the property be recorded in order to affect third persons, the trustee must 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 is located. Present law also lists the information that must be included in an extract of a trust instrument. It also provides that the provisions of present law are remedial and shall be applied retroactively and that if an extract of an inter vivos trust instrument or clerk-certified copy is recorded, the failure of form of the trust instrument shall not be effective against third persons.

Proposed law clarifies the language of present 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.

Present law (R.S. 9:2262.2) provides that any time the trust property of a foreign inter vivos or testamentary trust includes immovables or other property that requires that the title to the property be recorded in order to affect third persons, the trustee must 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 is located. It also lists the information that must be included in an extract of a trust instrument. It also provides that the provisions of present law are remedial and shall be applied retroactively and that if an extract of an inter vivos trust instrument or clerk-certified copy is recorded, the failure of form of the trust instrument shall not be effective against third persons.

Proposed law clarifies the language of present 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.

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

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Rephrase the provision relative to when a beneficiary dies without descendants without changing the meaning of the sentence.