

Council Substitute for House Bill No. 29

An act relating to land trusts; amending s. 689.071, F.S.; prescribing additional entities that receive an ownership interest in trust property when named trustee; amending s. 475.01, F.S.; clarifying that chapter 475 is applicable to real estate brokers acting as trustees; providing exceptions; amending s. 689.21, F.S.; revising language with respect to the time in which a disclaimer of interest in certain property may be made; providing for the effect of disclaimer of tenancy by the entirety property; providing for the extent of disclaimed interest in tenancy by the entirety property; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) is added to section 475.01, Florida Statutes, to read:

475.01 Definitions.—

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(23).

Section 2. Subsection (1) of section 689.071, Florida Statutes, is amended to read:

689.071 Land trusts transferring interests in real estate; ownership vests in trustee.—

(1) Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as “the recorded instrument,” transferring any interest in real property in this state, including but not limited to a leasehold or mortgagee interest, to any person, corporation, bank, ~~or trust company,~~ or other entity qualified to act as a fiduciary in this state, in which recorded instrument the person, corporation, bank, ~~or trust company,~~ or other entity is designated “trustee,” or “as trustee,” without therein naming the beneficiaries of such trust, whether or not reference is made in the recorded instrument to any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee full rights of ownership over the real property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the property or interest therein or any part thereof; provided, the recorded instrument confers on the trustee the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.

Section 3. Subsection (5) of section 689.21, Florida Statutes, is amended, and subsections (10) and (11) are added to said section, to read:

689.21 Disclaimer of interests in property passing under certain non-testamentary instruments or under certain powers of appointment.—

(5) TIME IN WHICH DISCLAIMER SHALL BE MADE.—A disclaimer shall be filed for recording at any time after the creation of the interest but, in any event, within 12 months after the effective date of the nontestamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or her or his interest has not then become indefeasibly fixed both in quality and quantity, such disclaimer shall be filed not later than 12 months after the event which would cause her or him so to become finally ascertained and her or his interest to become indefeasibly fixed both in quality and quantity. Nevertheless, for purposes of this section, the survivorship interest in a joint tenancy with rights of survivorship or the deceased tenant's interest in tenancy by the entirety property to which the survivor succeeds by operation of law upon death of the cotenant must be disclaimed within 9 months after the date of death of the deceased cotenant.

(10) EFFECT OF DISCLAIMER OF TENANCY BY THE ENTIRETY PROPERTY.—A disclaimer of an interest in real property held as tenants by the entirety shall not cause the disclaimed interest to be homestead property for purposes of descent and distribution under ss. 732.401 and 732.4015.

(11) EXTENT OF DISCLAIMED INTEREST IN TENANCY BY THE ENTIRETY PROPERTY.—For the purposes of this section, the deceased tenant's interest in tenancy by the entirety property shall be deemed to be an undivided one-half interest.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor May 6, 2002.

Filed in Office Secretary of State May 6, 2002.