

House Bill No. 1141

An act relating to conveyances of land; creating s. 689.072, F.S.; providing for the transfer and creation of custodial property in an individual retirement account or certain qualified plans; incorporating statutory provisions into such transfer; providing powers to the custodian or trustee of such custodial property; providing protections for persons dealing with the custodian or trustee; exempting certain transfers from specific claims; providing for the disposition of custodial property held in an account, plan or custodianship that is terminated; providing a standard of care for the custodian or trustee; providing for certain declarations to control in specific legal proceedings; providing that provisions relating to deeds under statute of uses are not applicable to a transfer by a custodian or trustee under the act; providing for liberal construction; creating s. 694.17, F.S.; providing that certain recorded instruments transferring certain interests in real property to a custodian or trustee are ratified, confirmed, and validated; specifying vesting of such interests in the custodian or trustee; specifying nonapplication of provisions relating to deeds under statute of uses; providing an effective date.

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

Section 1. Section 689.072, Florida Statutes, is created to read:

689.072 Real estate interests transferred to or by a custodian or trustee of an individual retirement account or qualified plan.—

(1)(a) A conveyance, deed, mortgage, lease assignment, or other recorded instrument that transfers an interest in real property in this state, including a leasehold or mortgagee interest, to a person who is qualified to act as a custodian or trustee for an individual retirement account under 26 U.S.C. s. 408(a)(2), as amended, in which instrument the transferee is designated “custodian,” “as custodian,” “trustee,” or “as trustee” and the account owner or beneficiary of the custodianship in the individual retirement account is named, creates custodial property and transfers title to the custodian or trustee when an interest in real property is recorded in the name of the custodian or trustee, followed by the words “as custodian or trustee for the benefit of ...(name of individual retirement account owner or beneficiary)... individual retirement account.”

(b) This section also applies to a qualified stock bonus, pension, or profit-sharing plan created under 26 U.S.C. s. 401(a), as amended, in which instrument a person is designated “custodian,” “as custodian,” “trustee,” or “as trustee” and the plan, plan participant, or plan beneficiary of the custodianship in the plan also creates custodial property and transfers title to the custodian or trustee when an interest in real property is recorded in the name of the custodian or trustee, followed by the words “as custodian, or trustee of the ...(name of plan)... for the benefit of ...(name of plan participant or beneficiary)...”

(2) A transfer to a custodian or trustee of an individual retirement account or qualified plan pursuant to this section incorporates the provisions of this section into the disposition and grants to the custodian or trustee the power to protect, conserve, sell, lease, encumber, or otherwise manage and dispose of the real property described in the recorded instrument without joinder of the named individual retirement account owner, plan participant, or beneficiary, except as provided in subsection (5).

(3) A person dealing with the custodian or trustee does not have a duty to inquire as to the qualifications of the custodian or trustee and may rely on the powers of the custodian or trustee for the custodial property created under this section regardless of whether such powers are specified in the recorded instrument. A grantee, mortgagee, lessee, transferee, assignee, or person obtaining a satisfaction or release or otherwise dealing with the custodian or trustee regarding such custodial property is not required to inquire into:

(a) The identification or status of any named individual retirement account owner, plan participant, or beneficiary of the individual retirement account or qualified plan or his or her heirs or assigns to whom a custodian or trustee may be accountable under the terms of the individual retirement account agreement or qualified plan document;

(b) The authority of the custodian or trustee to act within and exercise the powers granted under the individual retirement account agreement or qualified plan document;

(c) The adequacy or disposition or any consideration provided to the custodian or trustee in connection with any interest acquired from such custodian or trustee; or

(d) Any provision of an individual retirement account agreement or qualified plan document.

(4) A person dealing with the custodian or trustee under the recorded instrument takes any interest transferred by such custodian or trustee, within the authority provided under this section, free of claims of the named owner, plan participant, or beneficiary of the individual retirement account or qualified plan or of anyone claiming by, through, or under such owner, plan participant, or beneficiary.

(5) If notice of the revocation or termination of the individual retirement account agreement, qualified plan, or custodianship established under such individual retirement account agreement or qualified plan is recorded, any disposition or encumbrance of the custodial property must be by an instrument executed by the custodian or trustee or the successor and the respective owner, plan participant, or beneficiary of the individual retirement account or qualified plan.

(6) In dealing with custodial property created under this section, a custodian or trustee shall observe the standard of care of a prudent person dealing with property of another person. This section does not relieve the custodian

or trustee from liability for breach of the individual retirement account agreement, custodial agreement, or qualified plan document.

(7) A provision of the recorded instrument that defines and declares the interest of the owner, plan participant, or beneficiary of the individual retirement account or qualified plan to be personal property controls only if a determination becomes an issue in any legal proceeding.

(8) As used in this section, the term “beneficiary” applies only when the individual retirement account owner or qualified plan participant is deceased.

(9)(a) This section does not apply to any deed, mortgage, or instrument to which s. 689.071 applies.

(b) Section 689.09 does not apply to transfers of real property interests to a custodian or trustee under this section.

(10) This section is remedial and shall be liberally construed to effectively carry out its purposes.

Section 2. Section 694.17, Florida Statutes, is created to read:

694.17 Validation of conveyances to custodian or trustee of an individual retirement account or qualified plan.—All conveyances, deeds, mortgages, lease assignments, or other recorded instruments transferring an interest in real property in this state to a custodian or trustee, which were recorded before July 1, 2006, but would be within the scope of s. 689.072 if recorded after July 1, 2006, are ratified, confirmed, and validated in all respects and shall be deemed to have vested such interest in the custodian or trustee without reversion or impairment, as if such instruments had been recorded after July 1, 2006, and s. 689.09 shall not apply to any such instruments regardless of when recorded.

Section 3. This act shall take effect July 1, 2006.

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.