

CHAPTER 2015-176

Committee Substitute for House Bill No. 961

An act relating to electronic noticing of trust accounts; amending s. 736.0109, F.S.; authorizing a sender to post a document to a secure electronic account or website upon the approval of a recipient; providing for effective authorization for such posting; requiring a sender to provide a separate notice once a document is electronically posted; specifying when a document sent electronically is deemed received by the recipient; requiring a sender to provide notice of the beginning of a limitations period and authority of a recipient to amend or revoke authorization for electronic posting; providing a form that may be used to effectuate such notice; requiring documents posted to an electronic website to remain accessible to the recipient for a specified period; establishing burdens of proof for purposes of determining whether proper notifications were provided; specifying that electronic messages are deemed received when sent; specifying situations under which electronic messages are not deemed received; specifying that service of documents in a judicial proceeding are governed by the Florida Rules of Civil Procedure; providing an effective date.

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

Section 1. Subsections (3) and (4) of section 736.0109, Florida Statutes, are renumbered as subsections (5) and (6), respectively, present subsection (4) is amended, and new subsections (3) and (4) are added to that section, to read:

736.0109 Methods and waiver of notice.—

(3) In addition to the methods listed in subsection (1) for sending a document, a sender may post a document to a secure electronic account or website where the document can be accessed.

(a) Before a document may be posted to an electronic account or website, the recipient must sign a separate written authorization solely for the purpose of authorizing the sender to post documents on an electronic account or website. The written authorization must:

1. Enumerate the documents that may be posted in this manner.
2. Contain specific instructions for accessing the electronic account or website, including the security procedures required to access the electronic account or website, such as a username and password.
3. Advise the recipient that a separate notice will be sent when a document is posted to the electronic account or website and the manner in which the separate notice will be sent.

4. Advise the recipient that the authorization to receive documents by electronic posting may be amended or revoked at any time and include specific instructions for revoking or amending the authorization, including the address designated for the purpose of receiving notice of the revocation or amendment.

5. Advise the recipient that posting a document on the electronic account or website may commence a limitations period as short as 6 months even if the recipient never actually accesses the electronic account, electronic website, or the document.

(b) Once the recipient signs the written authorization, the sender must provide a separate notice to the recipient when a document is posted to the electronic account or website. As used in this subsection, the term “separate notice” means a notice sent to the recipient by means other than electronic posting, which identifies each document posted to the electronic account or website and provides instructions for accessing the posted document. The separate notice requirement is satisfied if the recipient accesses the document on the electronic account or website.

(c) A document sent by electronic posting is deemed received by the recipient on the earlier of the date that the separate notice is received or the date that the recipient accesses the document on the electronic account or website.

(d) At least annually after a recipient signs a written authorization, a sender shall send a notice advising recipients who have authorized one or more documents to be posted to an electronic account or website that such posting may commence a limitations period as short as 6 months even if the recipient never accesses the electronic account or website or the document and that authority to receive documents by electronic posting may be amended or revoked at any time. This notice must be given by means other than electronic posting and may not be accompanied by any other written communication. Failure to provide such notice within 380 days after the last notice is deemed to automatically revoke the authorization to receive documents in the manner permitted under this subsection 380 days after the last notice is sent.

(e) The notice required in paragraph (d) may be in substantially the following form: “You have authorized the receipt of documents through posting to an electronic account or website where the documents can be accessed. This notice is being sent to advise you that a limitations period, which may be as short as 6 months, may be running as to matters disclosed in a trust accounting or other written report of a trustee posted to the electronic account or website even if you never actually access the electronic account or website or the documents. You may amend or revoke the authorization to receive documents by electronic posting at any time. If you have any questions, please consult your attorney.”

(f) A sender may rely on the recipient’s authorization until the recipient amends or revokes the authorization by sending a notice to the address designated for that purpose in the authorization. The recipient, at any time, may amend or revoke an authorization to have documents posted on the electronic account or website.

(g) A document provided to a recipient solely through electronic posting must remain accessible to the recipient on the electronic account or website for at least 4 years after the date that the document is deemed received by the recipient. The electronic account or website must allow the recipient to download or print the document. This subsection does not affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810 or affect or alter the time periods for which the trustee must maintain those records.

(h) To be effective, the posting of a document to an electronic account or website must be done in accordance with this subsection. The sender has the burden of establishing compliance with this subsection.

(i) This subsection does not preclude the sending of a document by other means.

(4) Notice to a person under this code, or the sending of a document to a person under this code by electronic message, is complete when the document is sent.

(a) An electronic message is presumed received on the date that the message is sent.

(b) If the sender has knowledge that an electronic message did not reach the recipient, the electronic message is deemed to have not been received. The sender has the burden to prove that another copy of the notice or document was sent by electronic message or by other means authorized by this section.

~~(6)(4) Notice and service of documents in of a judicial proceeding are governed by must be given as provided in the Florida Rules of Civil Procedure.~~

Section 2. This act shall take effect July 1, 2015.

Approved by the Governor June 16, 2015.

Filed in Office Secretary of State June 16, 2015.