

1 A bill to be entitled

2 An act relating to electronic noticing of trust
3 accounts; amending s. 736.0109, F.S.; authorizing a
4 sender to post a document to an electronic account or
5 website upon the approval of a recipient; providing
6 for effective authorization for such posting;
7 requiring a sender to provide a separate notice once a
8 document is electronically posted; specifying when a
9 document sent electronically is deemed received by the
10 recipient; requiring a sender to provide notice of the
11 beginning of a limitations period and authority of a
12 recipient to revoke authorization for electronic
13 posting; providing a form that may be used to
14 effectuate such notice; requiring documents posted to
15 an electronic website to remain accessible to the
16 recipient for a specified period; establishing burdens
17 of proof for purposes of determining whether proper
18 notifications were provided; specifying that
19 electronic messages are deemed received when sent;
20 specifying situations under which electronic messages
21 are not deemed received; specifying that service of
22 documents in a judicial proceeding are governed by the
23 Florida Rules of Civil Procedure; providing an
24 effective date.

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

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

32 736.0109 Methods and waiver of notice.—

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

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

42 1. Enumerate the documents that may be posted in this
43 manner.

44 2. Contain specific instructions for accessing the
45 electronic account or website, including the security procedures
46 required to access the electronic account or website, such as a
47 username and password.

48 3. Advise the recipient that a separate notice will be
49 sent when a document is posted to the electronic account or
50 website and the manner in which the separate notice will be
51 sent.

52 4. Advise the recipient that the authorization to receive

53 documents by electronic posting may be amended or revoked at any
54 time and include specific instructions for revoking or amending
55 the authorization, including the address designated for the
56 purpose of receiving notice of the revocation or amendment.

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

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

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

76 (d) At least annually after a recipient signs a written
77 authorization, a sender shall send a notice advising recipients
78 who have authorized one or more documents to be posted to an

79 electronic account or website that such posting may commence a
80 limitations period as short as 6 months even if the recipient
81 never accesses the electronic account or website or the document
82 and that authority to receive documents by electronic posting
83 may be revoked at any time. This notice must be given by means
84 other than electronic posting. Failure to provide such notice
85 within 1 year after the last notice is deemed to automatically
86 revoke the authorization to receive documents in the manner
87 permitted under this subsection 1 year after the last notice is
88 sent.

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

101 (f) A sender may rely on the recipient's authorization
102 until the recipient revokes the authorization by sending a
103 notice to the address designated for that purpose in the
104 authorization. An authorization to have documents posted on the

105 electronic account or website may be revoked at any time.

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

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

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

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

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

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

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131 (6)(4) Notice and service of documents in ~~of~~ a judicial
132 proceeding are governed by ~~must be given as provided in~~ the
133 Florida Rules of Civil Procedure.

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