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CS/HB 961

2015 Legislature

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

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

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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

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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

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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 amended or revoked at any time. This notice must be given  
84 by means other than electronic posting and may not be  
85 accompanied by any other written communication. Failure to  
86 provide such notice within 380 days after the last notice is  
87 deemed to automatically revoke the authorization to receive  
88 documents in the manner permitted under this subsection 380 days  
89 after the last notice is sent.

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

102 (f) A sender may rely on the recipient's authorization  
103 until the recipient amends or revokes the authorization by  
104 sending a notice to the address designated for that purpose in

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105 the authorization. The recipient, at any time, may amend or  
 106 revoke an authorization to have documents posted on the  
 107 electronic account or website.

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

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

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

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

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

128 (b) If the sender has knowledge that an electronic message  
 129 did not reach the recipient, the electronic message is deemed to  
 130 have not been received. The sender has the burden to prove that

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131 another copy of the notice or document was sent by electronic  
 132 message or by other means authorized by this section.

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

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