

By the Committee on Regulated Industries; and Senator Garcia

315-1952-02

1 A bill to be entitled
2 An act relating to land trusts; amending s.
3 689.071, F.S.; prescribing additional entities
4 that receive an ownership interest in trust
5 property when named trustee; amending s.
6 475.01, F.S.; clarifying that ch. 475, F.S.,
7 applies to real estate brokers acting as
8 trustees; providing exceptions; amending s.
9 689.21, F.S.; revising provisions governing the
10 time within which a disclaimer of interest in
11 certain property may be made; providing for the
12 effect of disclaimer of tenancy-by-the-entirety
13 property; providing for the extent of
14 disclaimed interest in tenancy-by-the-entirety
15 property; providing an effective date.

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

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

21 475.01 Definitions.--

22 (4) A broker acting as a trustee of a trust created
23 under chapter 689 is subject to the provisions of this chapter
24 unless the trustee is a nonprofit organization as defined in
25 s. 259.041(7) or the trustee is a bank, state or federal
26 association, or trust company possessing trust powers as
27 defined in s. 658.12(23).

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

30 689.071 Land trusts transferring interests in real
31 estate; ownership vests in trustee.--

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

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

26 689.21 Disclaimer of interests in property passing
27 under certain nontestamentary instruments or under certain
28 powers of appointment.--

29 (5) TIME IN WHICH DISCLAIMER SHALL BE MADE.--A
30 disclaimer shall be filed for recording at any time after the
31 creation of the interest but, in any event, within 12 months

1 after the effective date of the nontestamentary instrument
2 creating the interest, or, if the disclaimant is not then
3 finally ascertained as a beneficiary or her or his interest
4 has not then become indefeasibly fixed both in quality and
5 quantity, such disclaimer shall be filed not later than 12
6 months after the event which would cause her or him so to
7 become finally ascertained and her or his interest to become
8 indefeasibly fixed both in quality and quantity. Nevertheless,
9 for purposes of this section, the survivorship interest in a
10 joint tenancy with rights of survivorship or the deceased
11 tenant's interest in tenancy-by-the-entirety property to which
12 the survivor succeeds by operation of law upon death of the
13 cotenant must be disclaimed within 9 months after the date of
14 death of the deceased cotenant.

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

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1428

Clarifies that the provisions of ch. 475, F.S., apply to brokers acting as trustees of a trust created under ch. 689, F.S., unless the trustee is a non-profit organization as defined in s. 259.041(7), F.S., or the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(23), F.S.

Adds the term "other entity" to s. 689.071, to recognize the ability of limited partnerships and limited liabilities companies to act as trustees of land trusts. The change clarifies the existing law and conforms the statute to current practice.

Modifies s. 689.21, F.S., to allow a surviving co-owner of a joint tenancy with rights of survivorship or tenancy by the entirety to make a tax-qualified disclaimer under section 2518 of the IRS Code within nine months of the cotenant's death; clarifies that the disclaimed interest does not become homestead property for the purposes of ss. 732.401 and 732.4015, F.S.; and clarifies that the disclaimed interest is equal to one-half of the property interest.