

A bill to be entitled

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; 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

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29 property in this state, including a leasehold or mortgagee  
30 interest, to a person who is qualified to act as a custodian or  
31 trustee for an individual retirement account under 26 U.S.C. s.  
32 408(a)(2), as amended, in which instrument the transferee is  
33 designated "custodian," "as custodian," "trustee," or "as  
34 trustee" and the account owner or beneficiary of the  
35 custodianship in the individual retirement account is named,  
36 creates custodial property and transfers title to the custodian  
37 or trustee when an interest in real property is recorded in the  
38 name of the custodian or trustee, followed by the words "as  
39 custodian or trustee for the benefit of (name of individual  
40 retirement account owner or beneficiary) individual retirement  
41 account."

42 (b) This section also applies to a qualified stock bonus,  
43 pension, or profit-sharing plan created under 26 U.S.C. s.  
44 401(a), as amended, in which instrument a person is designated  
45 "custodian," "as custodian," "trustee," or "as trustee" and the  
46 plan, plan participant, or plan beneficiary of the custodianship  
47 in the plan also creates custodial property and transfers title  
48 to the custodian or trustee when an interest in real property is  
49 recorded in the name of the custodian or trustee, followed by  
50 the words "as custodian, or trustee of the (name of plan) for  
51 the benefit of (name of plan participant or beneficiary)."

52 (2) A transfer to a custodian or trustee of an individual  
53 retirement account or qualified plan pursuant to this section  
54 the incorporates the provisions of this section into the  
55 disposition and grants to the custodian or trustee the power to  
56 protect, conserve, sell, lease, encumber, or otherwise manage

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57 and dispose of the real property described in the recorded  
58 instrument without joinder of the named individual retirement  
59 account owner, plan participant, or beneficiary, except as  
60 provided in subsection (5).

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

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

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

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

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

84 (4) A person dealing with the custodian or trustee under

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85 the recorded instrument takes any interest transferred by such  
86 custodian or trustee, within the authority provided under this  
87 section, free of claims of the named owner, plan participant, or  
88 beneficiary of the individual retirement account or qualified  
89 plan or of anyone claiming by, through, or under such owner,  
90 plan participant, or beneficiary.

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

99 (6) In dealing with custodial property created under this  
100 section, a custodian or trustee shall observe the standard of  
101 care of a prudent person dealing with property of another  
102 person. This section does not relieve the custodian or trustee  
103 from liability for breach of the individual retirement account  
104 agreement, custodial agreement, or qualified plan document.

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

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

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

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

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

119        Section 2. This act shall take effect July 1, 2006.