

HB 1141

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## CHAMBER ACTION

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1 The Justice Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to conveyances of land; creating s.  
7 689.072, F.S.; providing for the transfer and creation of  
8 custodial property in an individual retirement account or  
9 certain qualified plans; incorporating statutory  
10 provisions into such transfer; providing powers to the  
11 custodian or trustee of such custodial property; providing  
12 protections for persons dealing with the custodian or  
13 trustee; exempting certain transfers from specific claims;  
14 providing for the disposition of custodial property held  
15 in an account, plan or custodianship that is terminated;  
16 providing a standard of care for the custodian or trustee;  
17 providing for certain declarations to control in specific  
18 legal proceedings; providing that provisions relating to  
19 deeds under statute of uses are not applicable to a  
20 transfer by a custodian or trustee under the act;  
21 providing for liberal construction; creating s. 694.17,  
22 F.S.; providing that certain recorded instruments  
23 transferring certain interests in real property to a

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 |       custodian or trustee are ratified, confirmed, and  
25 |       validated; specifying vesting of such interests in the  
26 |       custodian or trustee; specifying nonapplication of  
27 |       provisions relating to deeds under statute of uses;  
28 |       providing an effective date.

29 |

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

31 |

32 |       Section 1. Section 689.072, Florida Statutes, is created  
33 | to read:

34 |       689.072 Real estate interests transferred to or by a  
35 | custodian or trustee of an individual retirement account or  
36 | qualified plan.--

37 |       (1) (a) A conveyance, deed, mortgage, lease assignment, or  
38 | other recorded instrument that transfers an interest in real  
39 | property in this state, including a leasehold or mortgagee  
40 | interest, to a person who is qualified to act as a custodian or  
41 | trustee for an individual retirement account under 26 U.S.C. s.  
42 | 408(a) (2), as amended, in which instrument the transferee is  
43 | designated "custodian," "as custodian," "trustee," or "as  
44 | trustee" and the account owner or beneficiary of the  
45 | custodianship in the individual retirement account is named,  
46 | creates custodial property and transfers title to the custodian  
47 | or trustee when an interest in real property is recorded in the  
48 | name of the custodian or trustee, followed by the words "as  
49 | custodian or trustee for the benefit of (name of individual  
50 | retirement account owner or beneficiary) individual retirement  
51 | account."

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52        (b) This section also applies to a qualified stock bonus,  
53 pension, or profit-sharing plan created under 26 U.S.C. s.  
54 401(a), as amended, in which instrument a person is designated  
55 "custodian," "as custodian," "trustee," or "as trustee" and the  
56 plan, plan participant, or plan beneficiary of the custodianship  
57 in the plan also creates custodial property and transfers title  
58 to the custodian or trustee when an interest in real property is  
59 recorded in the name of the custodian or trustee, followed by  
60 the words "as custodian, or trustee of the (name of plan) for  
61 the benefit of (name of plan participant or beneficiary)."

62        (2) A transfer to a custodian or trustee of an individual  
63 retirement account or qualified plan pursuant to this section  
64 incorporates the provisions of this section into the disposition  
65 and grants to the custodian or trustee the power to protect,  
66 conserve, sell, lease, encumber, or otherwise manage and dispose  
67 of the real property described in the recorded instrument  
68 without joinder of the named individual retirement account  
69 owner, plan participant, or beneficiary, except as provided in  
70 subsection (5).

71        (3) A person dealing with the custodian or trustee does  
72 not have a duty to inquire as to the qualifications of the  
73 custodian or trustee and may rely on the powers of the custodian  
74 or trustee for the custodial property created under this section  
75 regardless of whether such powers are specified in the recorded  
76 instrument. A grantee, mortgagee, lessee, transferee, assignee,  
77 or person obtaining a satisfaction or release or otherwise  
78 dealing with the custodian or trustee regarding such custodial  
79 property is not required to inquire into:

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80        (a) The identification or status of any named individual  
81 retirement account owner, plan participant, or beneficiary of  
82 the individual retirement account or qualified plan or his or  
83 her heirs or assigns to whom a custodian or trustee may be  
84 accountable under the terms of the individual retirement account  
85 agreement or qualified plan document;

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

89        (c) The adequacy or disposition or any consideration  
90 provided to the custodian or trustee in connection with any  
91 interest acquired from such custodian or trustee; or

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

94        (4) A person dealing with the custodian or trustee under  
95 the recorded instrument takes any interest transferred by such  
96 custodian or trustee, within the authority provided under this  
97 section, free of claims of the named owner, plan participant, or  
98 beneficiary of the individual retirement account or qualified  
99 plan or of anyone claiming by, through, or under such owner,  
100 plan participant, or beneficiary.

101        (5) If notice of the revocation or termination of the  
102 individual retirement account agreement, qualified plan, or  
103 custodianship established under such individual retirement  
104 account agreement or qualified plan is recorded, any disposition  
105 or encumbrance of the custodial property must be by an  
106 instrument executed by the custodian or trustee or the successor

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107 and the respective owner, plan participant, or beneficiary of  
108 the individual retirement account or qualified plan.

109 (6) In dealing with custodial property created under this  
110 section, a custodian or trustee shall observe the standard of  
111 care of a prudent person dealing with property of another  
112 person. This section does not relieve the custodian or trustee  
113 from liability for breach of the individual retirement account  
114 agreement, custodial agreement, or qualified plan document.

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

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

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

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

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

129 Section 2. Section 694.17, Florida Statutes, is created to  
130 read:

131 694.17 Validation of conveyances to custodian or trustee  
132 of an individual retirement account or qualified plan.--All  
133 conveyances, deeds, mortgages, lease assignments, or other  
134 recorded instruments transferring an interest in real property

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135 | in this state to a custodian or trustee, which were recorded  
136 | before July 1, 2006, but would be within the scope of s. 689.072  
137 | if recorded after July 1, 2006, are ratified, confirmed, and  
138 | validated in all respects and shall be deemed to have vested  
139 | such interest in the custodian or trustee without reversion or  
140 | impairment, as if such instruments had been recorded after July  
141 | 1, 2006, and s. 689.09 shall not apply to any such instruments  
142 | regardless of when recorded.

143 | Section 3. This act shall take effect July 1, 2006.