

1 A bill to be entitled

2 An act relating to conveyances of land; creating s.
3 689.072, F.S.; providing for the transfer and creation of
4 custodial property in an individual retirement account or
5 certain qualified plans; incorporating statutory
6 provisions into such transfer; providing powers to the
7 custodian or trustee of such custodial property; providing
8 protections for persons dealing with the custodian or
9 trustee; exempting certain transfers from specific claims;
10 providing for the disposition of custodial property held
11 in an account, plan or custodianship that is terminated;
12 providing a standard of care for the custodian or trustee;
13 providing for certain declarations to control in specific
14 legal proceedings; providing that provisions relating to
15 deeds under statute of uses are not applicable to a
16 transfer by a custodian or trustee under the act;
17 providing for liberal construction; creating s. 694.17,
18 F.S.; providing that certain recorded instruments
19 transferring certain interests in real property to a
20 custodian or trustee are ratified, confirmed, and
21 validated; specifying vesting of such interests in the
22 custodian or trustee; specifying nonapplication of
23 provisions relating to deeds under statute of uses;
24 providing an 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. Section 689.072, Florida Statutes, is created
29 to read:

30 689.072 Real estate interests transferred to or by a
31 custodian or trustee of an individual retirement account or
32 qualified plan.--

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

48 (b) This section also applies to a qualified stock bonus,
49 pension, or profit-sharing plan created under 26 U.S.C. s.
50 401(a), as amended, in which instrument a person is designated
51 "custodian," "as custodian," "trustee," or "as trustee" and the
52 plan, plan participant, or plan beneficiary of the custodianship
53 in the plan also creates custodial property and transfers title
54 to the custodian or trustee when an interest in real property is

55 recorded in the name of the custodian or trustee, followed by
56 the words "as custodian, or trustee of the (name of plan) for
57 the benefit of (name of plan participant or beneficiary)."

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

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

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

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

85 (c) The adequacy or disposition or any consideration
86 provided to the custodian or trustee in connection with any
87 interest acquired from such custodian or trustee; or

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

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

97 (5) If notice of the revocation or termination of the
98 individual retirement account agreement, qualified plan, or
99 custodianship established under such individual retirement
100 account agreement or qualified plan is recorded, any disposition
101 or encumbrance of the custodial property must be by an
102 instrument executed by the custodian or trustee or the successor
103 and the respective owner, plan participant, or beneficiary of
104 the individual retirement account or qualified plan.

105 (6) In dealing with custodial property created under this
106 section, a custodian or trustee shall observe the standard of
107 care of a prudent person dealing with property of another
108 person. This section does not relieve the custodian or trustee

109 from liability for breach of the individual retirement account
110 agreement, custodial agreement, or qualified plan document.

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

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

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

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

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

125 Section 2. Section 694.17, Florida Statutes, is created to
126 read:

127 694.17 Validation of conveyances to custodian or trustee
128 of an individual retirement account or qualified plan.--All
129 conveyances, deeds, mortgages, lease assignments, or other
130 recorded instruments transferring an interest in real property
131 in this state to a custodian or trustee, which were recorded
132 before July 1, 2006, but would be within the scope of s. 689.072
133 if recorded after July 1, 2006, are ratified, confirmed, and
134 validated in all respects and shall be deemed to have vested
135 such interest in the custodian or trustee without reversion or

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136 | impairment, as if such instruments had been recorded after July
137 | 1, 2006, and s. 689.09 shall not apply to any such instruments
138 | regardless of when recorded.

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