

## ENROLLED

HB 1141, Engrossed 1

2006 Legislature

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.

25  
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

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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;

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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

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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.