

By Senator Atwater

25-820A-06

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

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

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26 Section 1. Section 689.072, Florida Statutes, is
27 created to read:

28 689.072 Real estate interests transferred to or by a
29 custodian or trustee of an individual retirement account or
30 qualified plan.--
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1 (1)(a) A conveyance, deed, mortgage, lease assignment,
2 or other recorded instrument that transfers an interest in
3 real property in this state, including a leasehold or
4 mortgagee interest, to a person who is qualified to act as a
5 custodian or trustee for an individual retirement account
6 under 26 U.S.C. s. 408(a)(2), as amended, in which instrument
7 the transferee is designated "custodian," "as custodian,"
8 "trustee," or "as trustee" and the account owner or
9 beneficiary of the custodianship in the individual retirement
10 account is named, creates custodial property and transfers
11 title to the custodian or trustee when an interest in real
12 property is recorded in the name of the custodian or trustee,
13 followed by the words "as custodian, or trustee, for the
14 benefit of (name of individual retirement account owner or
15 beneficiary) IRA."

16 (b) This section also applies to a qualified stock
17 bonus, pension, or profit-sharing plan created under 26 U.S.C.
18 s. 401(a), as amended, in which instrument a person is
19 designated "custodian," "as custodian," "trustee," or "as
20 trustee" and the plan, plan participant, or plan beneficiary
21 of the custodianship in the plan also creates custodial
22 property and transfers title to the custodian or trustee when
23 an interest in real property is recorded in the name of the
24 custodian or trustee, followed by the words "as custodian, or
25 trustee, of the (name of plan) for the benefit of (name of
26 plan participant or beneficiary)."

27 (2) A transfer to a custodian or trustee of an
28 individual retirement account or qualified plan pursuant to
29 this section incorporates the provisions of this section into
30 the disposition and grants to the custodian or trustee the
31 power to protect, conserve, sell, lease, encumber, or

1 otherwise manage and dispose of the real property described in
2 the recorded instrument without the joinder of the named
3 individual retirement account owner, plan participant, or
4 beneficiary, except as provided in subsection (5).

5 (3) A person dealing with the custodian or trustee
6 does not have a duty to inquire into the qualifications of the
7 custodian or trustee and may rely on the powers of the
8 custodian or trustee for the custodial property created under
9 this section regardless of whether such powers are specified
10 in the recorded instrument. A grantee, mortgagee, lessee,
11 transferee, assignee, or person obtaining a satisfaction or
12 release or otherwise dealing with the custodian or trustee
13 regarding such custodial property is not required to:

14 (a) Inquire into the identification or status of any
15 named individual retirement account owner, plan participant,
16 or beneficiary of the individual retirement account or
17 qualified plan or his or her heirs or assigns to whom the
18 custodian or trustee may be accountable under the provisions
19 of the individual retirement account agreement or qualified
20 plan document;

21 (b) Inquire into the authority of the custodian or
22 trustee to act within and exercise the powers granted under
23 the individual retirement account agreement or qualified plan
24 document;

25 (c) Inquire into the adequacy or disposition or any
26 consideration provided to the custodian or trustee in
27 connection with any interest acquired from such custodian or
28 trustee; or

29 (d) Inquire into any provision of an individual
30 retirement account agreement or qualified plan document.

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1 (4) A person dealing with the custodian or trustee
2 under the recorded instrument takes any interest transferred
3 by such custodian or trustee, within the authority provided
4 under this section, free of claims of the named owner, plan
5 participant, or beneficiary of the individual retirement
6 account or qualified plan or of anyone claiming by, through,
7 or under such owner, plan participant, or beneficiary.

8 (5) If notice of the revocation or termination of an
9 individual retirement account agreement, qualified plan, or
10 custodianship established under such individual retirement
11 account or qualified plan is recorded, any disposition or
12 encumbrance of the custodian property must be by an instrument
13 executed by the custodian or trustee or the successor and the
14 respective owner, plan participant, or beneficiary of the
15 individual retirement account or qualified plan.

16 (6) In dealing with custodial property created under
17 this section, a custodian or trustee must observe the standard
18 of care of a prudent person dealing with the property of
19 another person. This section does not relieve the custodian or
20 trustee from liability for breach of the individual retirement
21 account agreement, custodial agreement, or qualified plan
22 document.

23 (7) A provision of the recorded instrument which
24 defines and declares the interest of the owner, plan
25 participant, or beneficiary of the individual retirement
26 account or qualified plan to be personal property controls
27 only if a determination becomes an issue in any legal
28 proceeding.

29 (8) As used in this section, the term "beneficiary"
30 applies only when the individual account owner or qualified
31 plan participant is deceased.

1 (9) Section 689.09 does not apply to transfers of real
2 property interests to a custodian or trustee under this
3 section.

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

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

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9 SENATE SUMMARY

10 Provides for the creation of custodian property in an
11 individual retirement account or qualified plan.
12 Incorporates certain statutory provisions into such
13 transfers and grants powers to custodians or trustees of
14 such property. Provides that certain transfers are free
15 of claims. Provides for the transfer of certain custodial
16 property that is in a terminated account, plan, or
17 custodianship. Provides a standard of care for a
18 custodian or trustee. Requires certain declarations to
19 control in a legal proceeding. Exempts transfers made
20 under the act from provisions relating to deeds under the
21 statute of uses. Provides for liberal construction of the
22 act.
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