

By Senator Bradley

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1 A bill to be entitled
2 An act relating to electronic noticing of trust
3 accounts; amending s. 736.0109, F.S.; authorizing a
4 sender to post a document to an electronic account or
5 website upon the authorization of a recipient;
6 providing for effective authorization for such
7 posting; requiring a sender to provide a separate
8 notice once a document is electronically posted;
9 specifying when a document sent electronically is
10 deemed received by the recipient; requiring a sender
11 to provide notice of the beginning of a limitations
12 period and authority of a recipient to revoke
13 authorization for electronic posting; providing a form
14 that may be used to effectuate such notice; requiring
15 documents posted to an electronic website to remain
16 accessible to the recipient for a specified period;
17 establishing burdens of proof for purposes of
18 determining whether proper notifications were
19 provided; specifying that electronic messages are
20 deemed received when sent; specifying situations under
21 which electronic messages are not deemed received;
22 specifying that service of documents in a judicial
23 proceeding are governed by the Florida Rules of Civil
24 Procedure; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
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28 Section 1. Present subsections (3) and (4) of section
29 736.0109, Florida Statutes, are redesignated as subsections (5)

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30 and (6), respectively, present subsection (4) is amended, and
31 new subsections (3) and (4) are added to that section, to read:

32 736.0109 Methods and waiver of notice.—

33 (3) In addition to the methods listed in subsection (1) for
34 sending a document, a sender may post a document to an
35 electronic account or website where the document can be
36 accessed.

37 (a) Posting a document to an electronic account or website
38 must be authorized by the recipient in a separate written
39 authorization that must be signed by the recipient solely for
40 the purpose of authorizing a sender to post documents on an
41 electronic account or website. The written authorization must:

42 1. Enumerate the documents that may be posted in this
43 manner.

44 2. Contain specific instructions for accessing the
45 electronic account or website, including the security procedures
46 required to access the electronic account or website, such as a
47 username and password.

48 3. Advise the recipient that a separate notice will be sent
49 when a document is posted to the electronic account or website
50 and the manner in which the separate notice will be sent.

51 4. Advise the recipient that the authorization to receive
52 documents by electronic posting may be amended or revoked at any
53 time and include specific instructions for revoking or amending
54 the authorization, including the address designated for the
55 purpose of receiving notice of the revocation or amendment.

56 5. Advise the recipient that posting a document on the
57 electronic account or website may commence a limitations period
58 as short as 6 months even if the recipient never actually

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59 accesses the electronic account or website or the document.

60 (b) Once the recipient signs the written authorization, the
61 sender must provide a separate notice to the recipient when a
62 document is posted to the electronic account or website. As used
63 in this subsection, the term "separate notice" means a notice
64 sent to the recipient by means other than electronic posting
65 which identifies each document posted to the electronic account
66 or website and provides instructions for accessing the posted
67 document. The separate notice requirement is satisfied if the
68 recipient accesses the document on the electronic account or
69 website.

70 (c) A document sent by electronic posting is deemed
71 received by the recipient on the earlier of the date that the
72 separate notice is received or the date that the recipient
73 accesses the document on the electronic account or website.

74 (d) At least annually after a recipient signs a written
75 authorization, a sender shall send a notice advising the
76 recipient that posting a document on the electronic account or
77 website may commence a limitations period as short as 6 months
78 even if the recipient never accesses the electronic account or
79 website or the document and that the authorization to receive
80 documents by electronic posting may be revoked at any time. This
81 notice must be given by means other than electronic posting.
82 Failure to provide such notice within 1 year after the last
83 notice is deemed to automatically revoke the authorization to
84 receive documents in the manner permitted under this subsection
85 1 year after the last notice is sent.

86 (e) The notice required in paragraph (d) may be in
87 substantially the following form: "You have authorized receipt

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88 of documents through posting to an electronic account or website
89 where the documents can be accessed. This notice is being sent
90 to advise you that a limitations period, which may be as short
91 as 6 months, may be running as to matters disclosed in a trust
92 accounting or other written report of a trustee posted to the
93 electronic account or website even if you never actually access
94 the electronic account or website or the documents. You may
95 revoke the authorization to receive documents by electronic
96 posting at any time. If you have any questions, please consult
97 your attorney."

98 (f) A sender may rely on the recipient's authorization
99 until the recipient revokes the authorization by sending a
100 notice to the address designated for that purpose in the
101 authorization. An authorization to have documents posted on the
102 electronic account or website may be revoked at any time.

103 (g) A document provided to a recipient solely through
104 electronic posting must remain accessible to the recipient on
105 the electronic account or website for at least 4 years after the
106 date that the document is deemed received by the recipient. The
107 electronic account or website must allow the recipient to
108 download or print the document. This subsection does not affect
109 or alter the duties of a trustee to keep clear, distinct, and
110 accurate records pursuant to s. 736.0810 or affect or alter the
111 time periods for which the trustee must maintain those records.

112 (h) To be effective, the posting of a document to an
113 electronic account or website must be done in accordance with
114 the provisions of this subsection. The sender has the burden of
115 establishing compliance with this subsection.

116 (i) This subsection does not preclude the sending of a

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117 document by other means.

118 (4) Notice to a person under this code, or the sending of a
119 document to a person under this code by electronic message, is
120 complete when the document is sent.

121 (a) An electronic message is presumed received on the date
122 that the message is sent.

123 (b) If the sender has knowledge that an electronic message
124 did not reach the recipient, the electronic message is deemed to
125 have not been received. The sender has the burden to prove that
126 another copy of the notice or document was sent by electronic
127 message or by other means authorized under this section.

128 (6)~~(4)~~ Notice and service of documents in ~~of~~ a judicial
129 proceeding are governed by ~~must be given as provided in the~~
130 Florida Rules of Civil Procedure.

131 Section 2. This act shall take effect July 1, 2015.