

By the Committee on Banking and Insurance; and Senator Bradley

597-02739-15

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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 a secure electronic  
5           account or website upon the authorization of a  
6           recipient; providing for effective authorization for  
7           such 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 amend or 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 a secure  
35 electronic account or website where the document can be  
36 accessed.

37 (a) Before a document may be posted to an electronic  
38 account or website, the recipient must sign a separate written  
39 authorization solely for the purpose of authorizing the sender  
40 to post documents on the electronic account or website. The  
41 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 amended or revoked at any  
81 time. This notice must be given by means other than electronic  
82 posting and may not be accompanied by any other written  
83 communication. Failure to provide such notice within 380 days  
84 after the last notice is deemed to automatically revoke the  
85 authorization to receive documents in the manner permitted under  
86 this subsection 380 days after the last notice is sent.

87 (e) The notice required in paragraph (d) may be in

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

99 (f) A sender may rely on the recipient's authorization  
100 until the recipient amends or revokes the authorization by  
101 sending a notice to the address designated for that purpose in  
102 the authorization. The recipient, at any time, may amend or  
103 revoke an authorization to have documents posted on the  
104 electronic account or website.

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

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

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117 compliance with this subsection.

118 (i) This subsection does not preclude the sending of a  
119 document by other means.

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

123 (a) An electronic message is presumed received on the date  
124 that the message is sent.

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

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

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