

2016 Regular Session

HOUSE BILL NO. 286

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

TRUSTS: Provides for revisions to the Trust Code

1 AN ACT

2 To amend and reenact R.S. 9:1725(3), 1972, 1973, 2092, and 2262.2, relative to the
3 Louisiana Trust Code; to provide for a definition of a "person"; to provide for the
4 treatment of interest upon death of the principal beneficiary; to provide for shifting
5 interest in principal; to provide for recordation of instruments; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:1725(3), 1972, 1973, 2092, and 2262.2 are hereby amended and
9 reenacted to read as follows:

10 §1725. Definitions

11 Except when the context clearly indicates otherwise, as used in this Code:

12 * * *

13 (3) "Person" means an individual, a corporation, a partnership, a limited
14 liability company, an association, a joint stock company, a business trust, or two or
15 more persons having a joint or common interest.

16 * * *

17 Comment - 2016

18 (f) This revision augments the definition of person to include limited liability
19 companies.

20 * * *

1 §1972. Treatment of interest upon death of principal beneficiary

2 Upon a principal beneficiary's death, his interest vests in his heirs or legatees,
3 subject to the trust, ~~provided, however, that the~~ Nevertheless, the trust instrument
4 may ~~stipulate~~ provide otherwise by designating substitute principal beneficiaries to
5 the extent permitted by the following Sections of this Subpart and R.S. 9:1895.

6 Comment - 2016

7 This revision does not change the law. It encompasses minor semantic
8 clarifications.

9 §1973. Shifting interest in principal

10 A. ~~The trust instrument may provide that the interest of either an original or~~
11 ~~a substitute principal beneficiary who dies intestate and without descendants during~~
12 ~~the term of the trust or at its termination vests in some other person or persons, each~~
13 ~~of whom shall be a substitute beneficiary.~~

14 ~~B.~~(1) Except as to the legitime in trust, the trust instrument may provide that
15 the interest of ~~either an original or a substitute principal beneficiary who dies without~~
16 ~~descendants during the term of the trust or at its termination vests in some other~~
17 ~~person or persons, each of whom shall be a substitute beneficiary~~ of an irrevocable
18 trust vests in one or more of his descendants upon the death of the beneficiary either
19 during the term of the trust or at its termination. If the beneficiary has no
20 descendants, the trust instrument may provide that the interest vests in another
21 person.

22 (2) With respect to the legitime in trust, the trust instrument may provide that
23 the interest of an original or a substitute principal beneficiary vests in another person
24 upon the death of the beneficiary either during the term of the trust or at its
25 termination, only if a beneficiary dies intestate and without descendants.

26 ~~C.~~B. The trust instrument may provide that the interest of a designated
27 principal beneficiary of a revocable trust shifts to another ~~person or persons~~, if the
28 substitution occurs no later than the date when the trust becomes irrevocable.

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Comment - 2016

(a) This revision reorganizes, modifies, and clarifies prior law. It expands prior law by enlarging the category of allowable parties to whom a principal interest can be shifted at the death of an original or substitute principal beneficiary. It allows for a settlor to provide that if a principal beneficiary dies with descendants his interest passes to one or more of the beneficiary's descendants. As under prior law, a settlor can shift to any other person the principal interest of a beneficiary who dies without descendants. If the legitime is affected, however, the shifting of principal is allowed only if the beneficiary dies intestate and without descendants.

(b) Subsections (A)(1) and (A)(2) apply both to irrevocable trusts and to revocable ones once the latter has ceased to be revocable. Subsection C applies to revocable trusts prior to the trust becoming irrevocable.

* * *

§2092. Recordation of instruments

A. If at any time the trust property of either an inter vivos trust or a testamentary trust includes immovables or other property the title to which must be recorded in order to affect third ~~parties~~ persons, a trustee shall file the trust instrument, an extract of trust, or a copy of the trust instrument or extract of trust certified by the clerk of court for the parish in which the original trust instrument or extract of trust was filed, for record in each parish in which the property is located. Nevertheless, if the trust instrument contains a transfer of immovable property or other property the title to which must be recorded in order to affect third persons, a trustee shall file the trust instrument for record in the parish in which the property is located.

B.(1) For purposes of recording an extract of a trust instrument, such an extract shall be executed by either the settlor or the trustee and shall include all of the following:

- (a) The name of the trust, if any.
- (b) A statement as to whether the trust is revocable or irrevocable.
- (c) The name of each settlor.
- (d) The name of each trustee and name or other description of the beneficiary or beneficiaries.
- (e) The date of execution of the trust.

1 (f) ~~If the trust instrument also contains a transfer of immovable property or~~
2 ~~other property to the trust, the title to which must be recorded in order to affect third~~
3 ~~persons, then the extract shall contain a brief legal description of the property. Any~~
4 ~~limitation or restriction on the power of the trustee to alienate, lease, or encumber~~
5 ~~immovable property contained in the trust instrument.~~

6 (g) ~~Any limitation or restriction on the power of the trustee to sell, lease, or~~
7 ~~mortgage immovable property contained in the trust instrument.~~

8 (2) When an extract of trust is recorded pursuant to Subsection A of this
9 Section, any limitation or restriction in the trust instrument on the power of the
10 trustee to ~~sell, lease, or mortgage~~ alienate, lease, or encumber immovable property
11 shall not be effective against third persons unless it is ~~noted or~~ recited in the extract
12 of trust.

13 (3) The provisions of this Section authorizing the filing of an extract of the
14 trust instrument or a clerk-certified copy of the trust instrument or extract of trust
15 without a description of the property are remedial and shall be applied retroactively
16 to any trust extract or clerk-certified copy of either the trust instrument or extract of
17 trust theretofore filed for record which is in substantial compliance with the
18 provisions of this Subsection, and such extract or clerk-certified copy shall affect
19 third persons as of the date of recordation. If the extract of an inter vivos trust
20 instrument or clerk-certified copy thereof is recorded, the failure of the trust
21 instrument to be in the form required by R.S. 9:1752 shall not be effective against
22 third ~~parties~~ persons, who shall be immune from claims based on the failure of the
23 trust instrument to be in the form required by R.S. 9:1752.

24 Comment - 2016

25 This revision includes minor semantic changes and makes clear that if the
26 trust instrument contains a conveyance of immovable property, then the trust
27 instrument, rather than an extract of trust, must be filed.

28 * * *

1 §2262.2. Recordation of instruments

2 A. If at any time the trust property of a foreign trust includes ~~an immovable~~
3 immovables or other property in Louisiana the title to which must be recorded in
4 order to affect third ~~parties~~ persons, a trustee shall file the trust instrument, an extract
5 of trust, or a copy of the trust instrument or extract of trust certified by the clerk of
6 court for the parish in which the original trust instrument or extract of trust was filed,
7 for record in each parish in which the property is located. Nevertheless, if the trust
8 instrument contains a transfer of immovable property or other property the title to
9 which must be recorded in order to affect third persons, a trustee shall file the trust
10 instrument for record in the parish in which the property is located.

11 B.(1) For purposes of recording an extract of a trust instrument, such an
12 extract of a trust instrument either shall be in such form and contain such information
13 as may be lawful under the law of the jurisdiction which the parties have expressly
14 chosen to govern the trust, or shall be executed by either the settlor or the trustee and
15 shall include all of the following:

16 (a) The name of the trust, if any.

17 (b) ~~The name of each settlor.~~ A statement as to whether the trust is
18 revocable or irrevocable.

19 (c) The name of the ~~trustee~~ each settlor.

20 (d) ~~The name or other description of the beneficiary or beneficiaries.~~ The
21 name of each trustee and name or other description of the beneficiary or
22 beneficiaries.

23 (e) The date of execution of the trust instrument.

24 (f) ~~A statement whether the trust is revocable or irrevocable.~~ Any limitation
25 or restriction on the power of the trustee to alienate, lease, or encumber immovable
26 property contained in the trust instrument.

27 (g) ~~If the trust instrument also contains a transfer of immovable property or~~
28 ~~other property to the trust, the title to which must be recorded in order to affect third~~
29 ~~persons, then the extract shall contain a brief legal description of the property.~~ Any

1 other provisions of the trust instrument as the party executing the extract deems
2 useful.

3 ~~(h) Any other provisions of the trust instrument as the party executing the~~
4 ~~extract deems useful.~~

5 (2) ~~Unless the trust and abstract of trust recite or otherwise note any~~
6 ~~modification or restriction of the trustee's power or duties, the trustee shall have all~~
7 ~~of the powers and duties granted to trustees under the Louisiana Trust Code. When~~
8 ~~an extract of trust is recorded pursuant to Subsection A of this Section, any limitation~~
9 ~~or restriction in the trust instrument on the power of the trustee to alienate, lease or~~
10 ~~encumber immovable property shall not be effective against third persons unless it~~
11 ~~is recited in the extract of trust.~~

12 (3) The provisions of this Section authorizing the filing of an extract of the
13 trust instrument or a clerk-certified copy of the trust instrument or extract of trust
14 without a description of the property are remedial and shall be applied retroactively
15 to any trust extract or clerk-certified copy of either the trust instrument or extract of
16 trust theretofore filed for record which is in substantial compliance with the
17 provisions of this ~~Section~~ Subsection, and such extract or clerk-certified copy shall
18 affect third persons as of the date of recordation. If the extract of an inter vivos trust
19 instrument or clerk-certified copy thereof is recorded, the failure of the trust
20 instrument to be in the form required by R.S. 9:1752 shall not be effective against
21 third persons, who shall be immune from claims based on the failure of the trust
22 instrument to be in the form required by R.S. 9:1752.

23 Comment - 2016

24 This revision makes clear that if the trust instrument contains a conveyance
25 of immovable property, then the trust instrument, rather than an extract of trust, must
26 be filed. It also includes a number of semantic changes and reorders of provisions
27 of prior law to make them consistent with R.S. 9:2092.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 286 Original

2016 Regular Session

Garofalo

Abstract: Revises the Louisiana Trust Code relative to the definition of "person", the ability to shift an interest in principal of the trust, the requirement to record certain trust instruments, and the content of an extract of trust.

Present law (R.S. 9:1725(3)) provides that the definition of a "person" includes an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or two or more persons having a joint or common interest.

Proposed law expands the definition of "person" in the Louisiana Trust Code to include a limited liability company.

Present law (R.S. 9:1972) provides that upon a principal beneficiary's death, this interest vests in his heirs or legatees, subject to the trust. However, the stipulations of the trust instrument must also follow present law provisions of the Trust Code.

Proposed law provides that upon a principal beneficiary's death, this interest vests in his heirs or legatees, subject to the trust. However, the stipulations of the trust instrument may create substitute principal beneficiaries so long as any such provisions also follow the present law Trust Code.

Present law (R.S. 9:1973) provides that a trust may provide that the interest of an original or substitute principal beneficiary who dies intestate and without descendants vests in some other person or persons, each of whom shall be a substitute beneficiary. Except for the legitime in trust, the trust may provide that the interests of either an original or substitute principal beneficiary who dies without descendants vests in some other person or persons, each of whom shall be a substitute beneficiary. The trust can provide that the interest of a designated principal beneficiary or a revocable trust shifts to another person or persons if the substitution occurs prior to the time the trust becomes irrevocable.

Proposed law provides that except for the legitime in trust, the trust may provide that the interest of either an original or substitute principal beneficiary vests in one or more of his descendants upon the death of the beneficiary. If the beneficiary has no descendants, the trust may provide that the interest vests in some other person. For the legitime in trust, the trust may provide that the interest of either an original or a substitute principal beneficiary vests in some other person upon the death of the beneficiary, only if a beneficiary dies intestate and without descendants. Again, the trust can provide that the interest of a designated principal beneficiary or a revocable trust shifts to another person if the substitution occurs prior to the time the trust becomes irrevocable.

Present law (R.S. 9:2092) provides that any time the trust property of an inter vivos or testamentary trust includes immovables or other property that requires the title to the property be recorded in order to affect third persons, the trustee must file the trust instrument, an extract of the trust, or a copy of the trust instrument or extract of trust certified by the clerk of court in each parish where the property is located. Present law also lists the information that must be included in an extract of a trust instrument. It also provides that the provisions of present law are remedial and shall be applied retroactively and that if an extract of an inter vivos trust instrument or clerk-certified copy is recorded, the failure of form of the trust instrument shall not be effective against third persons.

Proposed law clarifies the language of present law and provides that if the trust instrument contains a transfer of immovable property or other property that has a title that must be recorded in order to affect third persons, a trustee shall file the trust instrument in the parish where each property is located.

Present law (R.S. 9:2262.2) provides that any time the trust property of a foreign inter vivos or testamentary trust includes immovables or other property that requires that the title to the property be recorded in order to affect third persons, the trustee must file the trust instrument, an extract of the trust, or a copy of the trust instrument or extract of trust certified by the clerk of court in each parish where the property is located. It also lists the information that must be included in an extract of a trust instrument. It also provides that the provisions of present law are remedial and shall be applied retroactively and that if an extract of an inter vivos trust instrument or clerk-certified copy is recorded, the failure of form of the trust instrument shall not be effective against third persons.

Proposed law clarifies the language of present law and reforms it to make it better conform with R.S. 9:2092. It also adds that if the trust instrument contains a transfer of immovable property or other property that has a title that must be recorded to affect third persons, a trustee shall file the trust instrument in the parish where each property is located.

(Amends R.S. 9:1725(3), 1972, 1973, 2092, and 2262.2)