

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.

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Comment - 2016

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

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§1972. Treatment of interest upon death of principal beneficiary

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

Comment - 2016

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

§1973. Shifting interest in principal

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

~~B.(1) Except as to the legitime in trust, the trust instrument may provide that the interest of either an original or a substitute principal beneficiary who dies without descendants during the term of the trust or at its termination vests in some other person or persons, each of whom shall be a substitute beneficiary of an irrevocable trust vests in one or more of his descendants upon the death of the beneficiary either during the term of the trust or at its termination. The trust instrument may provide that the interest vests in another person if the beneficiary dies without descendants.~~

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



1 (d) The name of each trustee and name or other description of the beneficiary  
2 or beneficiaries.

3 (e) The date of execution of the trust.

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

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

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

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

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Comment - 2016

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

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§2262.2. Recordation of instruments

A. If at any time the trust property of a foreign trust includes ~~an immovable~~ immovables or other property in Louisiana 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 of a trust instrument either shall be in such form and contain such information as may be lawful under the law of the jurisdiction which the parties have expressly chosen to govern the trust, or 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) ~~The name of each settlor.~~ A statement as to whether the trust is revocable or irrevocable.
- (c) The name of ~~the trustee~~ each settlor.
- (d) ~~The name or other description of the beneficiary or beneficiaries.~~ The name of each trustee and name or other description of the beneficiary or beneficiaries.
- (e) The date of execution of the trust ~~instrument.~~

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

4           (g) ~~If the trust instrument also contains a transfer of immovable property or~~  
5           ~~other property to the trust, the title to which must be recorded in order to affect third~~  
6           ~~persons, then the extract shall contain a brief legal description of the property.~~ Any  
7           other provisions of the trust instrument as the party executing the extract deems  
8           useful.

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

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

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

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

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### 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)]

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HB 286 Engrossed

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)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Rephrase the provision relative to when a beneficiary dies without descendants without changing the meaning of the sentence.