

**ACT No. 544**

2016 Regular Session

HOUSE BILL NO. 286

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§1725. Definitions

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

\* \* \*

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

\* \* \*

Comment - 2016

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

\* \* \*

§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

1 may ~~stipulate~~ provide otherwise by designating substitute principal beneficiaries to  
 2 the extent permitted by the following Sections of this Subpart and R.S. 9:1895.

3 Comment - 2016

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

6 §1973. Shifting interest in principal

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

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

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

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

25 Comment - 2016

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

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

4 \* \* \*

5 §2092. Recordation of instruments

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

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

- 19 (a) The name of the trust, if any.
- 20 (b) A statement as to whether the trust is revocable or irrevocable.
- 21 (c) The name of each settlor.
- 22 (d) The name of each trustee and name or other description of the beneficiary  
23 or beneficiaries.
- 24 (e) The date of execution of the trust.
- 25 (f) ~~If the trust instrument also contains a transfer of immovable property or~~  
26 ~~other property to the trust, the title to which must be recorded in order to affect third~~  
27 ~~persons, then the extract shall contain a brief legal description of the property. Any~~  
28 ~~limitation or restriction on the power of the trustee to alienate, lease, or encumber~~  
29 ~~immovable property contained in the trust instrument.~~
- 30 (g) ~~Any limitation or restriction on the power of the trustee to sell, lease, or~~  
31 ~~mortgage immovable property contained in the trust instrument.~~

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

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

Comment - 2016

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

\* \* \*

§2262.2. Recordation of instruments

23           A. If at any time the trust property of a foreign trust includes ~~an immovable~~  
 24 immovables or other property in Louisiana the title to which must be recorded in  
 25 order to affect third ~~parties~~ persons, a trustee shall file the trust instrument, an extract  
 26 of trust, or a copy of the trust instrument or extract of trust certified by the clerk of  
 27 court for the parish in which the original trust instrument or extract of trust was filed,  
 28 for record in each parish in which the property is located. Nevertheless, if the trust  
 29 instrument contains a transfer of immovable property or other property the title to  
 30 which must be recorded in order to affect third persons, a trustee shall file the trust  
 31 instrument for record in the parish in which the property is located.

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

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

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

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

10                    (d) ~~The name or other description of the beneficiary or beneficiaries.~~ The  
 11                    name of each trustee and name or other description of the beneficiary or  
 12                    beneficiaries.

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

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

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

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

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

1                   (3) The provisions of this Section authorizing the filing of an extract of the  
2                   trust instrument or a clerk-certified copy of the trust instrument or extract of trust  
3                   without a description of the property are remedial and shall be applied retroactively  
4                   to any trust extract or clerk-certified copy of either the trust instrument or extract of  
5                   trust theretofore filed for record which is in substantial compliance with the  
6                   provisions of this ~~Section~~ Subsection, and such extract or clerk-certified copy shall  
7                   affect third persons as of the date of recordation. If the extract of an inter vivos trust  
8                   instrument or clerk-certified copy thereof is recorded, the failure of the trust  
9                   instrument to be in the form required by R.S. 9:1752 shall not be effective against  
10                   third persons, who shall be immune from claims based on the failure of the trust  
11                   instrument to be in the form required by R.S. 9:1752.

Comment - 2016

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_