

Regular Session, 2012

HOUSE BILL NO. 469

BY REPRESENTATIVE ABRAMSON

RECORDS/RECORDATION: Provides with respect to property held in a trust

1 AN ACT

2 To amend and reenact R.S. 9:2092(A) and (B)(2) and 2262.2(A) and (B)(2), to enact R.S.  
3 9:2092(B)(3) and 2262.2(B)(3), and to repeal R.S. 9:2092(B)(1)(f) and  
4 2262.2(B)(1)(g), relative to property held in a trust; to provide for recordation of  
5 certain documents; to provide for the contents of an extract of trust relative to the  
6 authority of a trustee; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:2092(A) and (B)(2) and 2262.2(A) and (B)(2) are hereby amended  
9 and reenacted and R.S. 9:2092(B)(3) and 2262.2(B)(3) are hereby enacted to read as follows:

10 §2092. Recordation of instruments

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

17 B.

18 \* \* \*

19 (2) Unless the extract of trust recites or otherwise notes any restrictions or  
20 limitations on the trustee's authority, no alienation or encumbrance of trust property  
21 shall be set aside on the ground that the trustee did not have all of the powers granted

1 to trustees under the Louisiana Trust Code, except if the transferee or purchaser of  
2 the trust property participated with the intent to defraud or committed fraud in the  
3 transaction.

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

15 \* \* \*

16 §2262.2. Recordation of instruments

17 A. If at any time the trust property of a foreign trust includes an immovable  
18 or other property in Louisiana the title to which must be recorded in order to affect  
19 third parties, a trustee shall file the trust instrument, ~~or an extract thereof, of trust, or~~  
20 a copy of the trust instrument or extract of trust certified by the clerk of court for the  
21 parish in which the original trust instrument or extract of trust was filed, for record  
22 in each parish in which the property is located.

23 B.

24 \* \* \*

25 (2) Unless the extract of trust recites or otherwise notes any restrictions or  
26 limitations on the trustee's authority, no alienation or encumbrance of trust property  
27 shall be set aside on the ground that the trustee did not have all of the powers granted  
28 to trustees under the Louisiana Trust Code, except if the transferee or purchaser of

1        the trust property participated with the intent to defraud or committed fraud in the  
2        transaction.

3            (3) The provisions of this Section authorizing the filing of an extract of the  
4        trust instrument or a clerk-certified copy of the trust instrument or extract of trust  
5        without a description of the property are remedial and shall be applied retroactively  
6        to any trust extract or clerk-certified copy of either the trust instrument or extract of  
7        trust theretofore filed for record which is in substantial compliance with the  
8        provisions of this Section, and such extract shall affect third persons as of the date  
9        of recordation.

10       Section 2. R.S. 9:2092(B)(1)(f) and 2262.2(B)(1)(g) are hereby repealed in their  
11       entirety.

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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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Abramson

HB No. 469

**Abstract:** Authorizes a trustee of an inter vivos trust, a testamentary trust, or a foreign trust that includes immovable property to file a recorded copy of either the trust document or extract which is certified by the clerk of court.

Present law provides that if the trust property of either an inter vivos trust, a testamentary trust, or a foreign trust includes immovables or other property the title to which must be recorded, a trustee shall file the trust instrument or an extract thereof in each parish in which the property is located.

Proposed law retains present law and authorizes recording a copy of either the trust instrument or extract which is certified by the clerk of court.

Present law provides that an extract of the trust shall include the name of the trust, a statement as to whether the trust is revocable or irrevocable, the name of each settlor, the name of each trustee and name or other description of the beneficiary or beneficiaries, the date of execution of the trust, and a brief description of the immovable property or other property subject to the trust, the title to which must be recorded in order to affect third persons.

Proposed law deletes the requirement to include a brief description of the immovable property or other property subject to the trust.

Proposed law provides that unless the extract of trust recites any restrictions on the trustee's authority, no alienation or encumbrance of trust property shall be set aside on the ground that the trustee did not have all of the powers granted to trustees under the La. Trust Code, except in cases of fraud by the purchaser.

Proposed law provides that the authorization to file an extract of the trust instrument or a clerk-certified copy of the trust instrument or extract of trust without a description of the property shall be applied retroactively to any trust extract or clerk-certified copy of either the trust instrument or extract of trust filed for record.

(Amends R.S. 9:2092(A) and (B)(2) and 2262.2(A) and (B)(2); Adds R.S. 9:2092(B)(3) and 2262.2(B)(3); Repeals R.S. 9:2092(B)(1)(f) and 2262.2(B)(1)(g))

Summary of Amendments Adopted by House

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

1. Added provisions clarifying that the trustee shall file the trust instrument or extract of trust in each parish in which the trust property is located.

House Floor Amendments to the engrossed bill.

1. Changed references from the "recorder of mortgages" to "clerk of court".
2. Added an exception for cases of fraud by the purchaser.