

Bulletin

FLORIDA BULLETIN 06-04

TO: ALL AGENTS AND TITLE PLANT OPERATIONS
FROM: UNDERWRITING DEPARTMENT
DATE: July 12, 2006
RE: New Florida Statute Sections 689.072 and 694.17 Relating to Transfers of Property to Custodians or Trustees of IRA's or Qualified Plans

On June 9, 2006, the Governor signed House Bill 1141 into law. This act relates to conveyances of real property into custodians or trustees of individual retirement accounts or certain qualified plans. The act creates Section 689.072 which provides that the transfer of real property to the custodian or trustee, followed by the words "as custodian or trustee for the benefit of (name of individual retirement account owner or beneficiary) individual retirement account," creates custodial property in the individual retirement account named.

The act further provides that such a transfer grants to the custodian or trustee the power to "protect, conserve, sell, lease, encumber, or otherwise manage and dispose of the real property" without joinder of the named individual retirement account owner, plan participant, or beneficiary, unless notice of revocation of the plan is of record. The act goes on to state that a person dealing with the custodian or trustee does not have to inquire as to the qualifications of the custodian or trustee and may rely on the powers of the custodian or trustee set forth in the act, regardless of whether such powers are specified in the recorded instrument (i.e. deed).

The act specifically exempts transfers of real property interests to a custodian or trustee under this Section from the statute of uses contained in Section 689.09. This clears up the previous confusion caused by these conveyances, wherein due to the statute of uses as well as the fact that most of the trusts and custodial agreements were passive, title insurance underwriters routinely required the signature of the named beneficiary of the individual retirement account along with the custodian or trustee. Please note, however, that the act specifically states that it does not apply to any deed, mortgage, or other instrument to which Section 689.071 (land trusts) applies. The act also created Section 694.17 which ratifies, confirms and validates transfers to custodians or trustees of individual retirement accounts or qualified plans which were recorded before the effective date of the act, but which would be within the scope of Section 689.072 if recorded after the effective date of the act. That section also provides that Section 689.09 will not apply to such instruments regardless of when they were recorded.

THE EFFECTIVE DATE OF THE ACT IS JULY 1, 2006.

Should you have any questions, please contact your Old Republic Underwriting Department.

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and you are to comply with the requirements contained herein.**