

HOUSE RESEARCH

Bill Summary

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Authors: Wilkin

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Analyst: Thomas R. Pender, 651-296-1885

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Overview

This bill provides a procedure for transferring Minnesota real estate out of a custodianship, modeled after the existing procedure for transferring real estate out of a trust. This procedure will apply primarily to real estate held in self-directed Individual Retirement Accounts (IRAs), which sometimes use a custodianship instead of a trust to hold title to the real estate. This bill provides a means of assuring the buyer and the buyer's lender that the custodian has legal authority to transfer the property.

Section

1 Certificate of custodianship.

Subd. 1. Contents of certificate. Specifies the contents of a certificate of custodianship, which may be prepared to prove authority of a custodian to transfer an interest in real estate out of the custodianship. The certificate provides the terms of the custodianship that are relevant to a real estate transaction.

Subd. 2. Effect. Provides that a certificate of custodianship specified in subdivision 1 may be recorded with the county real estate records to document the existence and relevant terms of the custodianship. Provides that the recorded certificate is prima facie proof of the matters contained in it and may be relied upon until amended or revoked, or until the full custodianship instrument is recorded.

Section

Subd. 3. Amendment or revocation. Tells how to amend or revoke a certificate of custodianship. Provides that an amendment or revocation is not effective as to a person until that person has actual notice of it.

Subd. 4. Application. (a) Provides that this section is effective August 1, 2006 and applies to custodianships whenever they were created.

(b) Provides that this section applies only to custodianships established under authority of federal or state law. Provides that this section does not apply to custodianships created under the Uniform Transfers to Minors Act or the similar laws of another state, which have their own procedures for this situation.

2 **Affidavit of custodianship in real property transactions.**

Subd. 1. Form of affidavit for custodianship. Provides a form to be used for an affidavit to be signed by a custodian to establish that the custodian has authority to transfer real estate based upon the information provided about the custodianship in the certificate of custodianship provided under section 1.

Subd. 2. Effect. Provides that the affidavit is proof that the custodianship is valid and still exists and that the custodian has authority to transfer the real estate described in the affidavit. Provides that the affidavit is conclusive to anyone who relies on it, except for a person who deals directly with the custodian and has actual knowledge that the affidavit is untrue.

Subd. 3. Recording or filing. Provides that the affidavit may be recorded with the county real estate records. Permits it to be recorded separately or attached to the certificate of custodianship and recorded as one combined document. (Both documents would be recorded with the deed or other conveyance from the custodian.)

Subd. 4. Application. (a) Provides that this section is effective August 1, 2006, and applies to custodial instruments whenever created.

(b) Provides that this section applies only to custodianships created under a federal or state law and does not apply to custodianships created under the Uniform Transfers to Minors Act or the similar laws of another state, which have their own procedures for this situation.