MISSISSIPPI LEGISLATURE REGULAR SESSION 2001

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1227

AN ACT TO AMEND SECTION 91-9-7, MISSISSIPPI CODE OF 1972, TO REVISE THE FILING OF A CERTIFICATE OF TRUST AGREEMENT IN LIEU OF THE ENTIRE TRUST AGREEMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 91-9-7, Mississippi Code of 1972, is amended as follows:

91-9-7. (1) A certificate of a trust agreement which conveys or entrusts an interest in real property may be lodged for record with the clerk of the appropriate chancery court, in lieu of the entire trust agreement, in accordance with the provisions of this section. The certificate must be executed by the trustee * * * and it must contain the following: (a) the name of the trust; (b) the street and mailing address of the office, and the name and street and mailing address of the trustee; (c) the name and street and mailing address of the grantor; (d) a legally sufficient description of all interests in real property owned by or conveyed to the trust; (e) the anticipated date of termination of the trust; and (f) the general powers granted to the trustee.

(2) The trust shall be formed and take full effect as of the filing of the certificate of trust in the office of the chancery clerk. For all purposes, a copy of the certificate of trust, duly recorded, is conclusive evidence of the formation of a trust and prima facie evidence of its existence. Any person, who in good faith deems it necessary to review the terms and conditions of the trust, shall be entitled to inspect the trust agreement in the office of the trustee upon reasonable notification.

(3) If the trustee does not allow a person to inspect the trust agreement as provided in subsection (2) of this section within thirty (30) days after reasonable notification, such person may petition a court of competent jurisdiction to compel the trustee to produce the trust agreement for inspection by the petitioner. In the event such court grants the petition all necessary costs incurred by the petitioner, including reasonable attorney's fees, shall be taxed against the trustee.

(4) The certificate of trust may be amended by filing a certificate of amendment thereto with the chancery clerk. The certificate of amendment shall set forth the amendment to the original certificate with particularity and the future effective date of the amendment, which must be a date certain. Each certificate of amendment filed under this subsection must be executed in the following manner: (a) the original certificate of trust must be signed and acknowledged by * * * the trustee; (b) the certificate of amendment must be acknowledged in a manner that is suitable for recordation; and (c) * * * the certificate of amendment must be filed in the office of the chancery clerk where the original trust or certificate of trust is recorded.

SECTION 2. This act shall take effect and be in force from and after July 1, 2001.