

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1022

BY: HENDRICK of the SENATE

and

DAVIS of the HOUSE

COMMITTEE SUBSTITUTE AN ACT RELATING TO GUARDIAN AND WARD, PROBATE PROCEDURE AND WILLS AND SUCCESSION; AMENDING 30 O.S. 1991, SECTIONS 1-122, 3-220, 4-307 AND 4-803, WHICH RELATE TO THE OKLAHOMA GUARDIANSHIP AND CONSERVATORSHIP ACT, 58 O.S. 1991, SECTIONS 44, 211, 217, 234, 387, 423, 527, 596, 632.3 AND 912, WHICH RELATE TO PROBATE OF WILLS, EXECUTORS AND ADMINISTRATORS, CLAIMS AGAINST ESTATES, SALES AND CONVEYANCES, ACCOUNTS AND PAYMENTS, DISTRIBUTION AND SETTLEMENT OF ESTATES AND TERMINATION OF JOINT TENANCY, 58 O.S. 1991, SECTION 1071, WHICH RELATES TO THE UNIFORM DURABLE POWER OF ATTORNEY ACT, AND 84 O.S. 1991, SECTION 41, WHICH RELATES TO EXECUTION AND REVOCATION OF WILLS; PROVIDING THAT CERTAIN FACT NOT BE CONSIDERED CONFIDENTIAL INFORMATION; SPECIFYING CERTAIN REBUTTABLE PRESUMPTION; MODIFYING FILING PERIOD FOR OBJECTIONS TO ANNUAL REPORT; MODIFYING TERMINATION OF AUTHORITY AND RESPONSIBILITY TO INCLUDE CONSERVATOR; MODIFYING PROCEDURE FOR FILING FINAL ACCOUNT; PROVIDING FOR NOTICE AND HEARING; CLARIFYING JUDGE BEFORE WHOM CERTAIN SUBSCRIPTION MAY BE MADE; AUTHORIZING DISTRICT COURT TO APPOINT SPECIAL ADMINISTRATOR AND MODIFYING CIRCUMSTANCES UNDER WHICH SUCH APPOINTMENT MAY BE MADE; PROVIDING FOR FEE FOR SPECIAL ADMINISTRATOR; MODIFYING PROCEDURE AND CIRCUMSTANCES FOR SUSPENSION OF POWERS OF EXECUTOR OR ADMINISTRATOR; REQUIRING SUCH SUSPENSION IN

CERTAIN MATTERS UNDER CERTAIN CONDITIONS; MODIFYING PROCEDURE FOR SALE OF CERTAIN PROPERTY; REQUIRING REPORT OF SUCH SALE; PROVIDING THAT EXECUTOR, ADMINISTRATOR OR SPECIAL ADMINISTRATOR NOT BE SURCHARGED OR OTHERWISE LIABLE UNDER CERTAIN CIRCUMSTANCES; MODIFYING CERTAIN PROCEDURE FOR MAKING BIDS OR OFFERS ON SALE OF REAL PROPERTY AT PRIVATE SALE; MODIFYING COMPENSATION OF EXECUTORS OR ADMINISTRATORS UNDER CERTAIN CONDITIONS; MODIFYING PROCEDURE FOR PAYMENT OF CERTAIN CLAIMS; MODIFYING CIRCUMSTANCES UNDER WHICH CERTAIN FAILURE BY PERSONAL REPRESENTATIVE WILL NOT AFFECT TITLE TO CERTAIN PROPERTY; MODIFYING PROCEDURES FOR THE TERMINATION OF JOINT TENANCY OTHER THAN BY JUDICIAL DETERMINATION; PROVIDING PROCEDURES FOR THE TERMINATION OF LIFE TENANCY OTHER THAN BY JUDICIAL DETERMINATION; MODIFYING SHORT TITLE; PROVIDING FOR CONTENTS OF DURABLE POWER OF ATTORNEY; IDENTIFYING SCOPE OF THE POWER OF ATTORNEY; PROVIDING PROCEDURES FOR EXECUTION; PROVIDING THAT FAILURE TO EXECUTE POWER OF ATTORNEY PURSUANT TO SAID PROCEDURES DOES NOT DIMINISH EFFECT OR VALIDITY; PROVIDING FORM; ESTABLISHING PRESUMPTION UPON EXECUTION; AVOIDING THE NECESSITY OF MAKING CERTAIN INQUIRIES; VALIDATING CERTAIN POWERS OF ATTORNEY; REQUIRING CERTAIN JUDGE TO MAKE CERTAIN ATTESTATION; SPECIFYING DUTIES AND AUTHORITY OF SUCH JUDGE; PROVIDING THAT CERTAIN DOCUMENTS CONSTITUTE PRIMA FACIE EVIDENCE OF DEATH OF LIFE TENANT LEAVING ESTATE SUBJECT TO PROBATE; REPEALING 58 O.S. 1991, SECTIONS 1051, 1052, 1053, 1055, 1056, 1058, 1059, 1060, 1061 AND 1062, WHICH RELATE TO POWERS OF ATTORNEY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 30 O.S. 1991, Section 1-122, is amended to read as follows:

Section 1-122. A. Confidential information filed with or submitted to the court in conjunction with any proceeding pursuant to the Oklahoma Guardianship and Conservatorship Act, Section 1-101 et seq. of this title, shall not constitute a public record and shall be sealed by the court. Access to confidential information shall be strictly controlled. Except upon court order, no confidential information shall be disclosed to persons other than:

1. ~~the~~ The subject of the proceeding and his attorney;
2. ~~the~~ The guardian ad litem;
3. ~~if~~ If the subject of the confidential information is a ward, the guardian or conservator of such ward;
4. ~~if~~ If the subject of the confidential information is the guardian or conservator, the ward and his attorney, and the attorney of such guardian or conservator;

5. ~~abstractors~~ Abstractors licensed pursuant to the Oklahoma Abstractors Law, Section 227.10 et seq. of Title 74 of the Oklahoma Statutes, for the purpose of having access to records regarding minors and determinations of persons as incapacitated or partially incapacitated persons pursuant to the Oklahoma Guardianship Act. ~~Said abstractor~~ Abstractor shall maintain the confidentiality of this data, except for such parts as are relevant to the land title being researched; and

6. ~~an~~ An authorized representative of the United States Department of Veterans Affairs upon proper identification.

B. The fact of the existence of a guardianship or conservatorship of a person or that person's estate shall not be considered confidential information.

SECTION 2. AMENDATORY 30 O.S. 1991, Section 3-220, is amended to read as follows:

Section 3-220. All conservatorships created prior to the effective date of the Oklahoma Guardianship and Conservatorship Act, Section 1-101 et seq. of this title, with the consent of the person

for whose property a conservator was appointed, are hereby validated. Each such conservatorship shall be presumed to have been created by consent unless otherwise established by documents filed in the conservatorship action or by other evidence.

SECTION 3. AMENDATORY 30 O.S. 1991, Section 4-307, is amended to read as follows:

Section 4-307. A. 1. Upon the filing of an annual report the court shall immediately cause a copy of the report to be mailed by first-class mail to:

- a. the persons entitled to notice pursuant to Section 2-101 of this title for minors, or
- b. those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 3-110 of this title for adults, and
- c. the attorney of the ward, if any.

2. Attached to the copy of the report shall be a statement notifying the person receiving copies of said reports that any objection to the report must be filed within ~~thirty (30)~~ fifteen (15) days after the date of the filing of the annual report with the court.

3. Any person entitled to receive a copy of the annual report may file an objection to said report within ~~thirty (30)~~ fifteen (15) days after the filing of the annual report with the court.

B. 1. After notice, the court may on its own motion hold a hearing on an annual report and shall hold a hearing:

- a. upon the filing of an objection to the annual report;
or
- b. when the court is considering issuing an order other than an order accepting the report and granting the relief requested.

2. Notice for a hearing on an annual report shall be given, by mail, to the persons entitled to notice pursuant to Section 2-101 of

this title for minors or Section 3-110 of this title for adults at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the court may direct and shall be sent by regular first-class mail.

C. The court may enter an order granting the relief requested in the report without notice if the court determines that such relief should be granted immediately. In that event, the court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the ~~thirty (30)~~ fifteen (15) days within which an objection to the report may be filed.

D. When no objection to an annual report is filed and no hearing on the annual report is held as otherwise provided by this section, the court shall issue an order accepting the annual report and granting the relief requested.

E. The compensation for the guardian, the guardian's attorney, and any other person entitled to compensation from the property of the ward shall be determined by the court in the manner required by the provisions of the Oklahoma Guardianship and Conservatorship Act. Such order, whether issued at the expiration of the ~~thirty (30)~~ fifteen (15) days within which an objection to the annual report may be filed or after a hearing on the report, shall be final with respect to all persons given copies of the annual report or notice of such hearing, except with regard to any such person who may be determined to have been subject to a legal disability at the time such notice was given. Such order also shall be final with respect to the guardian except with respect to challenge by the ward upon the removal of the ward's legal disability.

F. With regard to an annual report of a guardian of the property of a ward, the court shall examine the changes, if any, to the property of the ward as set forth in the report. If the guardian was required to submit a bond, and if the total value of the ward's property which is subject to the proceeding differs

significantly from the total value of the ward's property as last disclosed to the court:

1. The court shall direct such guardian to obtain a new bond of a lesser or greater penal amount as will adequately protect the ward's property which is subject to the proceeding;

2. Such new bond shall be filed with the district court clerk within thirty (30) days following the date of the order; and

3. If the court requires a new bond of a greater penal amount than the bond previously submitted, failure of the guardian to submit such new bond within the thirty-day period set forth in this subsection shall constitute grounds for removal of such guardian or limited guardian.

G. At any hearing held upon an annual report:

1. If required by the court, the guardian or limited guardian shall be present;

2. The court shall review the annual report and consider any objection made thereto, and thereupon enter such order as the court deems appropriate; and

3. The court may make any order which the court deems to be in the best interest of the ward or the estate of the ward. The court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the court deems should be considered in the best interest of the ward or the estate of the ward.

H. At a hearing upon an annual report the court may appoint an attorney to represent the ward who is an incapacitated or partially incapacitated person, in the same manner and with the same compensation as provided in this act for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:

1. Upon the entry by the court of an order pertaining to the matters considered at such hearing, unless the court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;

2. Unless an appeal is taken from the order of the court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition of the appeal or as otherwise ordered by the court; or

3. Upon application of said attorney, the court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

SECTION 4. AMENDATORY 30 O.S. 1991, Section 4-803, is amended to read as follows:

Section 4-803. A. The authority and responsibility of a guardian terminates upon the death of the guardian, conservator, or the ward, the determination of incapacity of the guardian or conservator, or upon removal or resignation of the guardian or conservator. Termination does not affect the liability of a guardian or conservator for prior acts or the obligation to account for any funds and assets of the ward under the control of the guardian or conservator. The authority and responsibility of a guardian of a minor also terminates upon the marriage or majority of the ward.

B. The court, after notice and hearing, may remove a guardian or conservator for cause if the guardian or conservator has failed for thirty (30) days, after he is required to do so, to render an account or make a report, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto.

C. Every guardian or conservator may resign when it appears proper to allow the same and upon the resignation or removal of a guardian or conservator the court may appoint a successor guardian

or conservator in the place of the guardian or conservator who has resigned or has been removed or make other appropriate orders pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act.

D. Upon termination of the disability of the ward or upon his death, ~~a guardian shall account to the court or to the former ward or the successors of the ward. Subject to appeal or vacation within the time permitted, an order after notice and hearing allowing an intermediate report of a guardian adjudicates as to liabilities concerning the matters considered in connection with said hearing. An order, following notice and hearing, allowing a final report adjudicates as to all previously unsettled liabilities of the guardian to the ward's successors relating to the guardianship. In connection with any report, the court may require a guardian to submit to an actual review of the estate of the ward, to be made in any manner the court specifies~~ or upon the resignation or removal of the guardian or conservator, a guardian or conservator shall file his final account and request for final compensation with the court within thirty (30) days after such event.

1. The court shall set a date for hearing on the final account at a date not less than fifteen (15) days after the filing thereof. Notice of such hearing shall be given at least ten (10) days prior to the date set for hearing, by mailing a copy of the notice of hearing by first-class mail, to the persons entitled to notice pursuant to Section 2-101 of this title if the ward is still a minor, or to the ward only if the ward has attained majority or has married, or to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 3-110 of this title for incapacitated or partially incapacitated persons and the attorney of the ward, if any, or, in the case of a conservatorship, to the ward or the next of kin of the ward as the court may determine.

2. Any person to whom notice is given in accordance with this subsection may appear at the hearing on final account and file his exceptions in writing to the final account and contest same.

3. The settlement of the account and the allowance thereof by the court shall be conclusive against all persons interested in the estate of the ward, except as to persons subject to a legal disability at the time the notice of hearing is given.

4. Upon approval of the final account, the guardian or conservator shall be discharged and the bond of the guardian or conservator released and terminated.

SECTION 5. AMENDATORY 58 O.S. 1991, Section 44, is amended to read as follows:

Section 44. The testimony of any witness or witnesses admitted at a hearing on a petition to probate a will shall be recorded in one of the following methods:

(a) filing with the court clerk a written summary of the testimony, subscribed and sworn to by each witness in the presence of the ~~district or associate district~~ judge having jurisdiction of probate matters; or

(b) having the testimony taken down verbatim in shorthand, stenotype, or any other method approved by the court; or

(c) having the testimony recorded verbatim by a sound recorder approved by the court; or

(d) having the testimony recorded verbatim by an official court reporter.

If the testimony is recorded by one of the methods described in subdivisions (b) or (c), the same shall be transcribed, subscribed and sworn to by each witness, and filed with the court clerk. If the testimony is recorded by the method described in subdivision (d), the same shall be transcribed and certified by the official court reporter who took the testimony, and filed with the clerk of the court. Such evidence shall be admissible in any subsequent

proceedings concerning the validity of the will, or the sufficiency of the proof if the subscribing witness is dead, or has permanently left this state.

SECTION 6. AMENDATORY 58 O.S. 1991, Section 211, is amended to read as follows:

Section 211. When there is delay in granting letters testamentary, or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies, or is suspended, suspended partially, or removed, the judge of the district court ~~must~~ may appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

SECTION 7. AMENDATORY 58 O.S. 1991, Section 217, is amended to read as follows:

Section 217. The special administrator must render an account, on oath of his proceedings, in like manner as other administrators are required to do. The special administrator shall be entitled to a fee to be determined by the court in its discretion, which fee shall in no event exceed the fee allowed to an executor or administrator pursuant to Section 527 of this title.

SECTION 8. AMENDATORY 58 O.S. 1991, Section 234, is amended to read as follows:

Section 234. A. Whenever the judge ~~of the district court~~ has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act ~~or has permanently removed from the state~~ or has wrongfully

neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated.

B. If the judge determines on his own motion, or upon application by an interested party and upon proper showing, that an executor or administrator is subject to a conflict of interest which substantially impairs the executor's or administrator's ability to perform his duties as required by law, the judge shall suspend the powers of the executor or administrator with respect to the subject matter of the conflict of interest and appoint a special administrator to act with respect to such subject matter. The executor or administrator shall remain empowered to act with respect to all other matters.

C. The judge of the district court shall require each and every administrator, executor or guardian to make a report at least once in each year, showing the condition of the estate, and of all property, notes, monies, and other assets in his hands and the use that has been made thereof during the past year.

SECTION 9. AMENDATORY 58 O.S. 1991, Section 387, is amended to read as follows:

Section 387. A. At any time after receiving letters, the executor, administrator, or special administrator may ~~make application to the court for an order to sell at public auction or private sale,~~ perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent without obtaining prior court authorization for sale, without filing a return of sale, and without obtaining court confirmation of sale. ~~The order and the sale may be made without notice; but the executor, administrator or special administrator must file a sworn return of said sale, and on~~

~~proper showing, the court shall approve the sale. Title to such property shall pass to the purchaser thereof without approval or confirmation by the court of such sale.~~

B. Any sale of property made by an executor, administrator or special administrator of the property of a decedent pursuant to this section shall be reported in the accounting next filed by such executor, administrator or special administrator after the making of the sale. If the court determines the property sold was not perishable or was not otherwise likely to depreciate in value or would not have caused the estate of the decedent loss or expense if kept, or was not necessary to pay the allowance made to the family of the decedent, the executor, administrator or special administrator who made such sale shall not be surcharged or otherwise held liable with respect to such sale if he made a reasonable determination in good faith that the property sold was perishable, was otherwise likely to depreciate in value, would have caused the estate of the decedent to incur loss or expense if kept or the sale was necessary to pay the allowance made to the family of the decedent.

SECTION 10. AMENDATORY 58 O.S. 1991, Section 423, is amended to read as follows:

Section 423. When a sale of real property is ordered to be made at private sale, notice of such sale must be published once each week for two (2) consecutive weeks in a newspaper in each county in which any part of the land to be sold is situated, and in the county where the order is made and by mailing a copy of ~~said~~ the notice to all heirs, legatees and devisees of the decedent whose addresses are known. The notice of sale shall describe the real property to be sold with common certainty, and must set a day on or after which the sale will be made, and the place where offers or bids will be received. The date last referred to must be at least ten (10) days from the first publication of notice, and the sale must not be made

before that day, but must be made within one (1) year thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, ~~or may be filed in the court to which the return of the sale must be made,~~ at any time after the first publication of notice, and before the making of the sale.

SECTION 11. AMENDATORY 58 O.S. 1991, Section 527, is amended to read as follows:

Section 527. A. When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him, excluding all property not ranked as assets, as follows:

1. For the first thousand dollars, at the rate of five percent (5%); ~~for all above that sum, and not exceeding~~

2. For the next Five Thousand Dollars (\$5,000.00), at the rate of four percent (4%); ~~for and~~

3. For all amounts above ~~that sum~~ Six Thousand Dollars (\$6,000.00), at the rate of two and one-half percent (2 1/2%); and the same commission must be allowed administrators.

In all cases such further allowance may be made, as the judge of the district court may deem just and reasonable, for any extraordinary service. The total amount of such allowance must not exceed the amount of commissions allowed by this section.

B. Co-executors and co-administrators shall be entitled, as a unit, to the same fee allowable to a single executor or administrator, and shall divide such fee among themselves equally unless they agree to a different division and the division is approved by the court.

C. An executor or administrator who does not serve during the entire administration of an estate shall be entitled to only a portion of the fee provided in subsection A of this section, and such portion shall be determined by the court in its discretion.

SECTION 12. AMENDATORY 58 O.S. 1991, Section 596, is amended to read as follows:

Section 596. ~~If~~ Subject to the provisions of Section 5 of Title 46 of the Oklahoma Statutes, if there is any claim not due, or any contingent or disputed claim against the estate, the court may direct that the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established or absolute, ~~must~~ be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto, or the court may direct that such claim be satisfied in some other manner as determined by the court in its discretion; or, if ~~he~~ the party fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a pro rata distribution is ordered.

SECTION 13. AMENDATORY 58 O.S. 1991, Section 632.3, is amended to read as follows:

Section 632.3 1. At the hearing on the final account of any personal representative who has given notice to creditors as provided in this title, the judge shall conduct an inquiry to judicially determine whether the personal representative has complied with the provisions of Sections ~~3~~ 243 and ~~4~~ 331 of this ~~act~~ title.

2. The final decree shall contain a finding in substantially the following form:

~~that~~ a. That notice to creditors as required by Sections ~~3~~ 243 and ~~4~~ 331 of this ~~act~~ title was given by the personal representative, including notice by mail to all creditors, if any, known to the personal representative as of the date said notice was

filed with the district court clerk for the county in which the probate is pending, at their respective last-known addresses; and

~~that~~ b. That all claims not filed within the time permitted for the presentation of claims are nonsuited, void and forever barred, except as otherwise provided in this title or any claim for which payment is approved in this decree pursuant to Section 335 of ~~Title 58 of the Oklahoma Statutes~~ this title.

3. A final decree which fails to contain the finding required by this section shall be voidable.

4. If the affidavits required by Section 332 of ~~Title 58 of the Oklahoma Statutes~~ this title are filed in the probate proceeding for the decedent's estate prior to the entry of the final decree ~~or prior to the entry of the order confirming a sale of any property, real or personal, sold during the administration of such estate and the final decree or such order confirming such sale~~ contains the findings required by this section, the failure of a personal representative to give actual notice to a creditor shall not impair the marketability of the title to any property, real or personal, distributed from the estate ~~or sold during the administration of such estate~~.

5. Marketability of the title to any property, real or personal, sold during the administration of an estate shall not be impaired or affected by the requirements of this title for giving notice to creditors of a decedent.

SECTION 14. AMENDATORY 58 O.S. 1991, Section 912, is amended to read as follows:

Section 912. A. If any real property is held by ~~husband and wife~~ two or more persons in joint tenancy with right of survivorship, or as a life tenant with the other person holding the remainder interest, the surviving joint tenant, remainderman, or the personal representative or duly appointed attorney in fact or guardian of the surviving joint tenant or remainderman, may file in

the office of the county clerk of the county in which said real property is located, the following:

1. A certified copy of the certificate of death of the joint tenant or life tenant issued by the court clerk as prescribed in Section 1-307 of Title 63 of the Oklahoma Statutes, or by the State Department of Health or comparable agency of the place of the death of said joint tenant or life tenant; ~~and~~

2. An affidavit by the surviving joint tenant, remainderman or the personal representative or duly appointed attorney in fact of the surviving joint tenant or remainderman, acknowledged before a notary public describing the real property, stating that the decedent named in such certificate is one and the same person as the joint tenant or life tenant named in a previously recorded document, that the parties were in fact husband and wife, if such is the case, identifying such recorded document by book and page where recorded, and the date of death of the deceased joint tenant or holder of the life estate. If the affidavit is filed by a personal representative or duly appointed attorney in fact, the letters of administration, letters testamentary, letters of guardianship or power of attorney shall accompany the affidavit and be filed with the county clerks; and

3. If any real property is held by persons other than spouses in joint tenancy with the right of survivorship or as a life tenant and remainderman, the surviving joint tenant(s), remainderman(men), or the personal representative(s) or duly appointed attorney(s) in fact or guardian(s) of the surviving joint tenant(s) or remainderman(men), in addition to the death certificate and affidavit required above, a waiver or release by the Oklahoma Tax Commission of the estate tax lien must be filed.

B. The filing of such documents shall constitute conclusive evidence of the death of such joint tenant or life tenant and the termination of said joint tenancy or said life tenancy. The title

of such real estate shall be deemed merchantable unless otherwise defective.

SECTION 15. AMENDATORY 58 O.S. 1991, Section 1071, is amended to read as follows:

Section 1071. Sections ~~1 through 7~~ 1071 through 1077 of this title, and Sections 16 and 17 of this act shall be known and may be cited as the "Uniform Durable Power of Attorney Act".

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1072.1 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. The durable power of attorney may show or state:

1. The fact of execution under the provisions of the Uniform Durable Power of Attorney Act;

2. The time and conditions under which the power is to become effective;

3. The extent and scope of the powers conferred; and

4. Who is to exercise the power, including any successor attorney-in-fact if the prior appointed attorney-in-fact dies, ceases to act, refuses or is unable to serve, or resigns.

B. The power may be restricted, or it may grant complete authority with respect to the principal's:

1. Person, including, without limitation, health and medical care decisions on the principal's behalf, but excluding the execution of Directives to Physicians on behalf of the principal; and

2. Property, whether real, personal, intangible or mixed.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1072.2 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A durable power of attorney may be executed in accordance with the following provisions; provided, however, failure to execute a power of attorney as prescribed in this section shall not be

construed to diminish the effect or validity of an otherwise properly executed durable power of attorney:

1. The principal shall sign the power of attorney at its end, or, if the principal is unable, some other person shall subscribe his name thereto in his presence and by his direction. The principal, or such other person, shall sign in the presence of two witnesses, each of whom shall sign his name in the presence of the principal and each other;

2. The witnesses shall not be:

- a. under eighteen (18) years of age,
- b. related to the principal by blood or marriage, or
- c. the attorney-in-fact or anyone related to the attorney-in-fact by blood or marriage; and

3. The execution of the power of attorney shall be in substantially the following form:

Signed: _____

(Principal's signature)

City, County, and State of Residence

The principal is personally known to me and I believe the principal to be of sound mind. I am eighteen (18) years of age or older. I am not related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage. The principal has declared to me that this instrument is his power of attorney granting to the named attorney-in-fact the power and authority specified herein, and that he has willingly made and executed it as his free and voluntary act for the purposes herein expressed.

Witness: _____

Witness: _____

C. County clerks shall record any durable power of attorney executed in substantially the form prescribed in subsection A of this section.

D. The Uniform Durable Power of Attorney Act governs only powers of attorney executed under said act and does not affect powers of attorney executed under other statutes or the common law of this state.

E. A power of attorney executed in another state shall be considered valid for purposes of the Uniform Durable Power of Attorney Act if the power of attorney and the execution of the power of attorney substantially comply with the requirements of the Uniform Durable Power of Attorney Act.

SECTION 18. AMENDATORY 84 O.S. 1991, Section 41, is amended to read as follows:

Section 41. A. Every person over the age of eighteen (18) years of sound mind may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in this title, being chargeable in both cases with the payment of all the decedent's debts, as provided in Title 12 of the Oklahoma Statutes.

B. The appointment of a guardian or a conservator does not prohibit a person from disposing of his estate, real and personal, by will; provided, that when any person subject to a guardianship or conservatorship shall dispose of such estate by will, such will must be subscribed and acknowledged in the presence of a judge of the district court. The judge before whom the will is subscribed and acknowledged shall attest to the execution of the will but shall have neither the duty nor the authority to approve or disapprove the contents of the will. Subscribing and acknowledging such will before a judge shall not render such will valid if it would otherwise be invalid.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

In the event of the death of a life tenant leaving an estate subject to probate, a certified copy of Letters Testamentary or of Administration shall constitute prima facie evidence of the life tenant's death.

SECTION 20. REPEALER 58 O.S. 1991, Sections 1051, 1052, 1053, 1055, 1056, 1058, 1059, 1060, 1061 and 1062, are hereby repealed.

SECTION 21. This act shall become effective September 1, 1992.

43-2-8731 SD