

ENGROSSED HOUSE  
BILL NO. 2199

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An Act relating to probate procedure; amending 58  
O.S. 1991, Sections 911 and 912, as last amended by  
Section 11, Chapter 345, O.S.L. 1993 (58 O.S. Supp.  
1995, Section 912), which relate to termination of  
joint tenancies; modifying provisions related to  
joint tenancy; authorizing termination of joint  
tenancy in certain instruments; and providing an  
effective date.

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

SECTION 1. AMENDATORY 58 O.S. 1991, Section 911, is  
amended to read as follows:

Section 911. In all cases where any person being a life tenant  
or joint tenant in real property, including but not limited to joint  
tenant mortgages and mortgages with right of survivorship, shall die  
either testate or intestate, leaving no property or estate on which  
administration proceedings have been had or commenced, any of the  
remaindermen having an interest in the real estate subject to such  
life estate, or any survivor of such joint tenancy, or any person  
claiming any right, title or interest in said real estate by,  
through or under such remainderman or survivor may have the fact of  
the death of said life tenant or joint tenant judicially determined

by filing a petition in the district court of the county in which said real estate or some part thereof is situated, or of the county of the residence of said decedent, alleging the facts of such life estate or joint tenancy, describing such real estate, alleging the death of such life tenant or joint tenant as the case may be, and setting forth the names and addresses, if known, of all of the heirs of said decedent, if intestate, and of his heirs, devisees and legatees, if testate, and of all other persons by him known to claim any interest in said real estate, which petition shall be sworn to by petitioner, his agent or attorney.

Upon the filing of such petition the court shall enter an order fixing the date and hour for hearing same, which date shall be not less than ten (10) days from the date of entry of said order. The court clerk shall thereupon issue a notice under his hand and seal, which notice shall be directed to "the heirs, devisees, legatees and assigns" of said decedent, "and to all persons claiming any right, title or interest in or to the real estate hereinafter described", and shall recite the filing of said petition and the entry of the order setting same for hearing, and shall notify said persons of the date, hour and place of hearing said petition and contain a description of the real estate described therein.

Said notice shall be published in one (1) issue of a newspaper of general circulation in said county, the date of such publication to be at least ten (10) days prior to the date set for said hearing, and at least ten (10) days prior to the date set for said hearing a copy thereof shall be mailed to each of the heirs, devisees, legatees and other persons interested in said real estate as named in said petition, at their respective addresses shown thereon, unless there be filed an affidavit of the petitioner, or his attorney, showing that the post office addresses of any of such persons are unknown to the petitioner or his attorney. Proofs of

such publication and of mailing shall be filed in the district court prior to the entry of any order or decree upon said petition.

Upon hearing of such petition being had, the court shall hear the evidence and proof of death, and shall make and enter an order and decree determining the fact of the death of such life tenant or joint tenant, as the case may be, and the termination of the life estate or joint tenancy in said real property, as the case may be, a certified copy of which decree shall be filed in the office of the county clerk of the county in which said real property or any part thereof is situated.

Such order or decree shall, upon entry, be conclusive of the facts therein found as to all purchasers, encumbrancers or lienors of said real estate acquiring their titles, encumbrances or liens in good faith, relying upon said decree.

SECTION 2. AMENDATORY 58 O.S. 1991, Section 912, as last amended by Section 11, Chapter 345, O.S.L. 1993 (58 O.S. Supp. 1995, Section 912), is amended to read as follows:

Section 912. A. If title to any real property is held by two or more persons in joint tenancy with right of survivorship, including but not limited to joint tenant mortgages and mortgages with right of survivorship, any surviving joint tenant or the personal representative or duly appointed attorney in fact of any surviving joint tenant, may evidence the termination of the interest of a deceased joint tenant in such real property by filing the documents described in subsection C of this section.

B. If title to any real property is held by two or more persons where at least one of them holds a life tenancy interest in such property and at least one of them holds a remainder interest in such property, any surviving life tenant or remainderman, or the personal representative or duly appointed attorney of any survivor of them may evidence the termination of the interest of any deceased life

tenant in such real property by filing the documents described in subsection C of this section.

C. A person entitled, by subsection A or B of this section, to evidence the termination of the interest of a decedent in real property pursuant to this section may do so by filing 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 Article 3 of the Public Health Code, Section 1-301 et seq. of Title 63 of the Oklahoma Statutes, or by the State Department of Health or comparable agency of the place of the death of the joint tenant or life tenant; ~~and~~

2. An affidavit by the surviving joint tenant, life tenant or remainderman or the personal representative or duly appointed attorney in fact of the surviving joint tenant, life tenant or remainderman describing the real property, stating that the decedent named in such certificate of death is one and the same person as the deceased joint tenant or life tenant named in a previously recorded document which created or purported to create such joint tenancy or life tenancy in such real property and identifying such recorded document by book and page where recorded, that the survivor making or on whose behalf the affidavit is made and the decedent were husband and wife, if such is the case, and the date of death of the deceased joint tenant or life tenant. 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 the power of attorney shall accompany the affidavit and be filed with the county clerk. An affidavit properly sworn before a notarial officer shall, notwithstanding the provisions of Section 26 of Title 16 of the Oklahoma Statutes, be received for record and recorded by the county clerk without having been

acknowledged and, when recorded, it shall be effective as if it had been acknowledged. An affidavit filed either before or after the effective date of this act which was either acknowledged or sworn or both acknowledged and sworn before a notarial officer is hereby validated and the title to such real property shall be deemed marketable unless otherwise defective-; and

3. If such real property is held in joint tenancy other than by two persons only who were husband and wife or other than by two persons only who were husband and wife with one as the life tenant and the other as the remainderman, a waiver or release issued by the Oklahoma Tax Commission of the estate tax lien as to the deceased joint tenant or life tenant must be filed with the affidavit required by paragraph 2 of this subsection, unless the estate tax lien has otherwise been released by operation of law.

D. The filing of the documents described in subsection C of this section shall constitute conclusive evidence of the death of such joint tenant or life tenant and of the termination of the interest of such deceased joint tenant or life tenant in such real property. The title of such real property shall be deemed marketable unless otherwise defective.

SECTION 3. This act shall become effective November 1, 1996.

Passed the House of Representatives the 26th day of February, 1996.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1996.

President of the Senate

