EHB 1493

THE STATE SENATE
Monday, April 11, 2005

ENGROSSED

House Bill No. 1493

As Amended

ENGROSSED HOUSE BILL NO. 1493 - By: MORGAN (Fred) of the House and COFFEE of the Senate.

[probate procedure - Family Home Transfer Act - transfer-on-death deed – codification - effective date]

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1250 of Title 58, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Family Home Transfer Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1251 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. When the appraised value of real property owned by a decedent is not greater than Fifteen Thousand Dollars ($15,000.00) according to the most recent tax appraisal and the estate of the decedent is not subject to the provisions of Section 311 of Title 58 of the Oklahoma Statutes or the right to possess and occupy the homestead is waived, any heir, devisee or legatee of the decedent may file a notification of interest in title in the office of the

county clerk in the county where such real property is located. The notification of interest in title shall include:

1. The decedent's name and the date of death;

2. The address and legal description of such real property owned by the decedent;

3. The name and current address of the heir, devisee or legatee filing the notification;

4. The relationship between the decedent and the heir, devisee or legatee filing the notification;

5. That the taxes on such real property are current and not delinquent;

6. That such real property is free of liens and encumbrances; and

7. That the heir, devisee or legatee filing the notification of interest in title is filing a claim to be the vested owner of such real property.

B. A certified copy of the decedent's death certificate shall be attached to such form.

C. If after three (3) years from the date of the filing of the notification of interest in title, no other heir, devisee or legatee has petitioned the court in a probate proceeding, the heir, devisee or legatee who filed the notification of interest in title shall be the legal owner of the real property.

D. If at any time during the three-year period, another heir, devisee or legatee petitions the court to establish a probate proceeding, and if during the probate proceeding the court establishes a determination of descent that allows another party to receive a share of the real property, the other party shall be liable to the heir, devisee or legatee filing the notification of interest in title for any taxes paid on the real property and reasonable maintenance and upkeep costs documented and paid by the heir, devisee or legatee.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1252 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. An interest in real estate may be titled in transfer-on-death form by recording a deed signed by the record owner of the interest, designating a grantee beneficiary or beneficiaries of the interest. The deed shall transfer ownership of the interest upon the death of the owner. A transfer-on-death deed need not be supported by consideration.

B. The signature, consent or agreement of or notice to a grantee beneficiary of a transfer-on-death deed shall not be required for any purpose during the lifetime of the record owner.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1253 of Title 58, unless there is created a duplication in numbering, reads as follows:

An interest in real estate is titled in transfer-on-death form by executing, acknowledging and recording in the office of the register of deeds in the county where the real estate is located, prior to the death of the owner, a deed in substantially the following form:

(name of owner) (name of beneficiary)

_____ as owner transfers on death to _____ as grantee beneficiary, the following described interest in real estate: (here insert description of the interest in real estate). THIS TRANSFER ON DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE.

Instead of the words "transfer-on-death" the abbreviation "TOD" may be used.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1254 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A designation of the grantee beneficiary may be revoked at any time prior to the death of the record owner, by executing,

acknowledging and recording in the office of the register of deeds in the county where the real estate is located an instrument describing the interest revoking the designation. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required.

B. A designation of the grantee beneficiary may be changed at any time prior to the death of the record owner, by executing, acknowledging and recording a subsequent transfer-on-death deed in accordance with the Family Home Transfer Act. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required. A subsequent transfer-on-death beneficiary designation revokes all prior designations of grantee beneficiary or beneficiaries by the record owner for the interest in real estate.

C. A transfer-on-death deed executed, acknowledged and recorded in accordance with the Family Home Transfer Act may not be revoked by the provisions of a will.

D. A transfer-on-death deed executed, acknowledged and recorded in accordance with the Family Home Transfer Act may be disclaimed by the grantee beneficiary or beneficiaries.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1255 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Title to the interest in real estate recorded in transfer-on-death form shall vest in the designated grantee beneficiary or beneficiaries on the death of the record owner.

B. Grantee beneficiaries of a transfer-on-death deed take the interest of the record owner in the real estate at death subject to all conveyances, assignments, contracts, mortgages, liens and security pledges made by the record owner or to which the record owner was subject during the lifetime of the record owner including, but not limited to, any executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust or lien, and to any interest conveyed by the record owner that is less than all of the record owner's interest in the property.

C. If a grantee beneficiary dies prior to the death of the record owner and an alternative grantee beneficiary has not been designated on the deed, the transfer shall lapse.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1256 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A record joint owner of an interest in real estate may use the procedures in the Family Home Transfer Act to title the interest in transfer-on-death form. However, title to the interest shall vest in the designated grantee beneficiary or beneficiaries only if the record joint owner is the last to die of all of the record joint

owners of the interest. A deed in transfer-on-death form shall not sever a joint tenancy.

B. As used in this section, "joint owner" means a person who owns an interest in real estate as a joint tenant with right of survivorship.

SECTION 8. This act shall become effective November 1, 2005.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS, As Amended.