

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2639

6 By: Peters

7 COMMITTEE SUBSTITUTE

8 An Act relating to probate procedure; creating the
9 Nontestamentary Transfer of Property Act; providing
10 short title; providing procedure for the transfer of
11 certain real property; providing method for a record
12 owner of real estate to transfer interest to certain
13 persons; providing for certain information to be
14 included on deed; providing statement to be signed by
15 land owner and witness and notarized; providing
16 method of revocation; prohibiting revocation by a
17 will; authorizing grantee beneficiary to disclaim
18 title to real estate recorded in a transfer-on-death
19 deed within a certain time period; providing
20 circumstances under which disclaimer is waived;
21 providing for waiver on behalf of minors or legally
22 incompetent beneficiaries; specifying when ownership
23 interest will vest; providing recording requirements;
24 providing that interest is subject to encumbrances;
providing procedure and required documentation for
proof of death of the record owner; providing when a
transfer will lapse; providing certain limitation of
transfer vesting; providing that record owner remains
absolute owner for certain purposes; providing that
transfer-on-death deed is not a testamentary
disposition; providing for codification; and
providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1251 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 Sections 1 through 8 of this act shall be known and may be cited
5 as the "Nontestamentary Transfer of Property Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1252 of Title 58, unless there
8 is created a duplication in numbering, reads as follows:

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

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

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1253 of Title 58, unless there
21 is created a duplication in numbering, reads as follows:

22 An interest in real estate is titled in transfer-on-death form
23 by executing, acknowledging and recording in the office of the
24 county clerk in the county where the real estate is located, prior

1 to the death of the owner, a deed in substantially the following
2 form:

3 _____ (name of owner) being of competent mind and
4 having the legal capacity to execute this document, as owner
5 transfers on death to _____ (name of beneficiary) as
6 grantee beneficiary, the following described interest in real
7 estate: (here insert description of the interest in real estate).

8 THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY
9 OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR
10 BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL
11 ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED
12 AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED
13 THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR
14 ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

15 THE STATE OF OKLAHOMA
16 COUNTY OF _____

17 Before me, on this day personally appeared _____,
18 _____, and _____, the owner of the land described in
19 this deed, and the witnesses, respectively, whose names are
20 subscribed below in their respective capacities, and the owner of
21 the land declared to me and to the witnesses in my presence that the
22 deed is a revocable transfer-on-death of the real estate described
23 therein, and the witnesses declared in the presence of the owner of
24 the real estate and in my presence that the owner of the land

1 declared to them that the deed is a revocable transfer-on-death of
2 the real estate described therein and that the owner of the land
3 wanted each of them to sign it as a witness, and that each witness
4 did sign the same as witness in the presence of the owner of the
5 land and in my presence.

6 _____

7 (name of owner)

8 _____

9 (witness)

10 _____

11 (witness)

12 Subscribed and acknowledged before me by _____, the owner
13 of the land, and _____ and _____, witnesses, this
14 ____ day of _____ (month), ____ (year).

15 _____

16 (signature of notary public)

17 (Seal)

My commission expires _____ (date).

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

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1254 of Title 58, unless there
22 is created a duplication in numbering, reads as follows:
23
24

1 A. A designation of the grantee beneficiary may be revoked at
2 any time prior to the death of the record owner, by executing,
3 acknowledging and recording in the office of the county clerk in the
4 county where the real estate is located an instrument revoking the
5 designation. The signature, consent or agreement of or notice to
6 the grantee beneficiary or beneficiaries to the revocation is not
7 required.

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

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

20 D. A transfer-on-death deed executed, acknowledged and recorded
21 in accordance with the Nontestamentary Transfer of Property Act may
22 be disclaimed in whole or in part or with reference to specific
23 parts by the grantee beneficiary or beneficiaries. The disclaimer
24 must occur within nine (9) months after the death of the landowner.

1 The disclaimer shall be filed with the office of the county clerk in
2 which the transfer-on-death deed was recorded. If a grantee
3 beneficiary exerts dominion over the real estate within the nine-
4 month period, the disclaimer is waived. Dominion may be evidenced
5 by acts including, but not limited to, possession or the execution
6 of any conveyance, assignment, contract, mortgage, security pledge,
7 executory contract for sale, option to purchase, lease, license,
8 easement or right-of-way. A guardian, executor, administrator or
9 other personal representative of a minor or legally incompetent
10 beneficiary may execute and file a disclaimer on behalf of the
11 beneficiary within the time and in the manner in which the
12 beneficiary could disclaim, if the guardian, executor, administrator
13 or other personal representative deems it in the best interests of
14 and not detrimental to the best interests of the beneficiary.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1255 of Title 58, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Title to the interest in real estate recorded in transfer-
19 on-death form shall vest in the designated grantee beneficiary or
20 beneficiaries on the death of the record owner. The death of the
21 record owner shall be evidenced by the recording of an affidavit in
22 the office of the county clerk of the county where the real estate
23 is located. The affidavit shall be executed by the grantee
24 beneficiary or beneficiaries. The affidavit shall state the fact of

1 the death of the record owner, state whether or not the record owner
2 and the designated grantee were husband and wife, and provide the
3 legal description of the real estate. The affidavit shall be
4 notarized. If the record owner and designated grantee were not
5 husband and wife, a copy of the death certificate of the record
6 owner and an estate tax release shall be attached to the affidavit.

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

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

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1256 of Title 58, unless there
21 is created a duplication in numbering, reads as follows:

22 A. A record joint owner of an interest in real estate may use
23 the procedures in the Nontestamentary Transfer of Property Act to
24 title the interest in transfer-on-death form. However, title to the

1 interest shall vest in the designated grantee beneficiary or
2 beneficiaries only if the record joint owner is the last to die of
3 all of the record joint owners of the interest. A deed in transfer-
4 on-death form shall not sever a joint tenancy.

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

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1257 of Title 58, unless there
10 is created a duplication in numbering, reads as follows:

11 A record owner who executes a transfer-on-death deed remains the
12 legal and equitable owner until the death of the owner and during
13 the lifetime of the owner is considered an absolute owner as regards
14 creditors and purchasers.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1258 of Title 58, unless there
17 is created a duplication in numbering, reads as follows:

18 A deed in transfer-on-death form, executed in conformity with
19 the Nontestamentary Transfer of Property Act, shall not be
20 considered a testamentary disposition and shall not be invalidated
21 due to nonconformity with other provisions in Title 58 or Title 84
22 of the Oklahoma Statutes.

23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SECTION 9. This act shall become effective November 1, 2008.

51-2-10529 SD 03/04/08