

THE HOUSE OF REPRESENTATIVES
Thursday, March 6, 2008

Committee Substitute for
House Bill No. 2639

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2639 - By: PETERS AND ROAN of the House and CRAIN of the Senate.

An Act relating to probate procedure; creating the Nontestamentary Transfer of Property Act; providing short title; providing procedure for the transfer of certain real property; providing method for a record owner of real estate to transfer interest to certain persons; providing for certain information to be included on deed; providing statement to be signed by land owner and witness and notarized; providing method of revocation; prohibiting revocation by a will; authorizing grantee beneficiary to disclaim title to real estate recorded in a transfer-on-death deed within a certain time period; providing circumstances under which disclaimer is waived; providing for waiver on behalf of minors or legally incompetent beneficiaries; specifying when ownership interest will vest; providing recording requirements; 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.

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

- 1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
- 2 Statutes as Section 1251 of Title 58, unless there is created a duplication in numbering,
- 3 reads as follows:
- 4 Sections 1 through 8 of this act shall be known and may be cited as the
- 5 “Nontestamentary Transfer of Property Act”.

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

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

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

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

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

18 _____ (name of owner) being of competent mind and having the legal
19 capacity to execute this document, as owner transfers on death to _____
20 (name of beneficiary) as grantee beneficiary, the following described interest in real
21 estate: (here insert description of the interest in real estate). THIS TRANSFER-ON-
22 DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY
2 DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE. THE
3 GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED AT ANY
4 TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED THAT
5 THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY
6 OR ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

7 THE STATE OF OKLAHOMA

8 COUNTY OF _____

9 Before me, on this day personally appeared _____, _____, and
10 _____, the owner of the land described in this deed, and the witnesses,
11 respectively, whose names are subscribed below in their respective capacities, and the
12 owner of the land declared to me and to the witnesses in my presence that the deed is a
13 revocable transfer-on-death of the real estate described therein, and the witnesses
14 declared in the presence of the owner of the real estate and in my presence that the
15 owner of the land declared to them that the deed is a revocable transfer-on-death of the
16 real estate described therein and that the owner of the land wanted each of them to sign
17 it as a witness, and that each witness did sign the same as witness in the presence of the
18 owner of the land and in my presence.

19 _____

20 (name of owner)

21 _____

22 (witness)

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(witness)

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

(signature of notary public)

(Seal)

My commission expires _____ (date).

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

SECTION 4. 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 county clerk in the county where the real estate is located an instrument revoking the designation. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries to the revocation 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 Nontestamentary Transfer of Property Act. The signature, consent or agreement of or notice to the grantee beneficiary or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 beneficiaries is not required. A subsequent transfer-on-death beneficiary designation
2 revokes all prior designations of grantee beneficiary or beneficiaries by the record owner
3 for the interest in real estate.

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

7 D. A transfer-on-death deed executed, acknowledged and recorded in accordance
8 with the Nontestamentary Transfer of Property Act may be disclaimed in whole or in
9 part or with reference to specific parts by the grantee beneficiary or beneficiaries. The
10 disclaimer must occur within nine (9) months after the death of the landowner. The
11 disclaimer shall be filed with the office of the county clerk in which the transfer-on-death
12 deed was recorded. If a grantee beneficiary exerts dominion over the real estate within
13 the nine-month period, the disclaimer is waived. Dominion may be evidenced by acts
14 including, but not limited to, possession or the execution of any conveyance, assignment,
15 contract, mortgage, security pledge, executory contract for sale, option to purchase, lease,
16 license, easement or right-of-way. A guardian, executor, administrator or other personal
17 representative of a minor or legally incompetent beneficiary may execute and file a
18 disclaimer on behalf of the beneficiary within the time and in the manner in which the
19 beneficiary could disclaim, if the guardian, executor, administrator or other personal
20 representative deems it in the best interests of and not detrimental to the best interests
21 of the beneficiary.

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

4 A. Title to the interest in real estate recorded in transfer-on-death form shall vest
5 in the designated grantee beneficiary or beneficiaries on the death of the record owner.
6 The death of the record owner shall be evidenced by the recording of an affidavit in the
7 office of the county clerk of the county where the real estate is located. The affidavit
8 shall be executed by the grantee beneficiary or beneficiaries. The affidavit shall state the
9 fact of the death of the record owner, state whether or not the record owner and the
10 designated grantee were husband and wife, and provide the legal description of the real
11 estate. The affidavit shall be notarized. If the record owner and designated grantee were
12 not husband and wife, a copy of the death certificate of the record owner and an estate
13 tax release shall be attached to the affidavit.

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

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

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

7 A. A record joint owner of an interest in real estate may use the procedures in the
8 Nontestamentary Transfer of Property Act to title the interest in transfer-on-death form.
9 However, title to the interest shall vest in the designated grantee beneficiary or
10 beneficiaries only if the record joint owner is the last to die of all of the record joint
11 owners of the interest. A deed in transfer-on-death form shall not sever a joint tenancy.

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

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

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

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

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

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

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
7 dated 03-05-08 - DO PASS, As Amended and Coauthored.