

EHB 2639

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THE STATE SENATE
Thursday, April 3, 2008

ENGROSSED

House Bill No. 2639

ENGROSSED HOUSE BILL NO. 2639 - By: Peters, Roan, McMullen and
Winchester of the House and Crain and Sykes 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:

SECTION 1. 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:

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

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

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

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

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

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

22 _____ (name of owner) being of competent mind and
23 having the legal capacity to execute this document, as owner

1 transfers on death to _____ (name of beneficiary) as
2 grantee beneficiary, the following described interest in real
3 estate: (here insert description of the interest in real estate).
4 THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY
5 OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR
6 BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL
7 ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED
8 AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED
9 THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR
10 ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

11 THE STATE OF OKLAHOMA
12 COUNTY OF _____

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

1 did sign the same as witness in the presence of the owner of the
2 land and in my presence.

3 _____
4 (name of owner)

5 _____
6 (witness)

7 _____
8 (witness)

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

12 _____
13 (signature of notary public)

14 (Seal)

15 My commission expires _____ (date).

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

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

21 A. A designation of the grantee beneficiary may be revoked at
22 any time prior to the death of the record owner, by executing,
23 acknowledging and recording in the office of the county clerk in the
24 county where the real estate is located an instrument revoking the

1 designation. The signature, consent or agreement of or notice to
2 the grantee beneficiary or beneficiaries to the revocation is not
3 required.

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

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

16 D. A transfer-on-death deed executed, acknowledged and recorded
17 in accordance with the Nontestamentary Transfer of Property Act may
18 be disclaimed in whole or in part or with reference to specific
19 parts by the grantee beneficiary or beneficiaries. The disclaimer
20 must occur within nine (9) months after the death of the landowner.
21 The disclaimer shall be filed with the office of the county clerk in
22 which the transfer-on-death deed was recorded. If a grantee
23 beneficiary exerts dominion over the real estate within the nine-

1 month period, the disclaimer is waived. Dominion may be evidenced
2 by acts including, but not limited to, possession or the execution
3 of any conveyance, assignment, contract, mortgage, security pledge,
4 executory contract for sale, option to purchase, lease, license,
5 easement or right-of-way. A guardian, executor, administrator or
6 other personal representative of a minor or legally incompetent
7 beneficiary may execute and file a disclaimer on behalf of the
8 beneficiary within the time and in the manner in which the
9 beneficiary could disclaim, if the guardian, executor, administrator
10 or other personal representative deems it in the best interests of
11 and not detrimental to the best interests of the beneficiary.

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

15 A. Title to the interest in real estate recorded in transfer-
16 on-death form shall vest in the designated grantee beneficiary or
17 beneficiaries on the death of the record owner. The death of the
18 record owner shall be evidenced by the recording of an affidavit in
19 the office of the county clerk of the county where the real estate
20 is located. The affidavit shall be executed by the grantee
21 beneficiary or beneficiaries. The affidavit shall state the fact of
22 the death of the record owner, state whether or not the record owner
23 and the designated grantee were husband and wife, and provide the

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

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

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

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

20 A. A record joint owner of an interest in real estate may use
21 the procedures in the Nontestamentary Transfer of Property Act to
22 title the interest in transfer-on-death form. However, title to the
23 interest shall vest in the designated grantee beneficiary or

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

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

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

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

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

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

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

2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-1-08 - DO PASS.