

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2639

By: Peters

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5
6 AS INTRODUCED

7 An Act relating to probate procedure; creating the
8 Non-Testamentary Transfer of Property Act; providing
9 short title; providing procedure for the transfer of
10 certain real property; providing method for a record
11 owner of real estate to transfer interest to certain
12 persons; providing for certain information to be
13 included on deed; providing method of revocation;
14 prohibiting revocation by a will; authorizing grantee
15 beneficiary to disclaim title to real estate recorded
16 in a transfer-on-death deed within a certain time
17 period; providing circumstances under which
18 disclaimer is waived; providing for waiver on behalf
19 of minors or legally incompetent beneficiaries;
20 specifying when ownership interest will vest;
21 providing recording requirements; providing that
22 interest is subject to encumbrances; providing
23 procedure and required documentation for proof of
24 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.

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

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

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

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

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

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

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

19 An interest in real estate is titled in transfer-on-death form
20 by executing, acknowledging and recording in the office of the
21 county clerk in the county where the real estate is located, prior
22 to the death of the owner, a deed in substantially the following
23 form:
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1 _____ (name of owner) being of competent mind and
2 having the legal capacity to execute this document, as owner
3 transfers on death to _____ (name of beneficiary) as
4 grantee beneficiary, the following described interest in real
5 estate: (here insert description of the interest in real estate).

6 THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY
7 OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR
8 BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL
9 ESTATE.

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

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

15 A. A designation of the grantee beneficiary may be revoked at
16 any time prior to the death of the record owner, by executing,
17 acknowledging and recording in the office of the county clerk in the
18 county where the real estate is located an instrument revoking the
19 designation. The signature, consent or agreement of or notice to
20 the grantee beneficiary or beneficiaries to the revocation is not
21 required.

22 B. A designation of the grantee beneficiary may be changed at
23 any time prior to the death of the record owner, by executing,
24 acknowledging and recording a subsequent transfer-on-death deed in

1 accordance with the Non-Testamentary Transfer of Property Act. The
2 signature, consent or agreement of or notice to the grantee
3 beneficiary or beneficiaries is not required. A subsequent
4 transfer-on-death beneficiary designation revokes all prior
5 designations of grantee beneficiary or beneficiaries by the record
6 owner for the interest in real estate.

7 C. A transfer-on-death deed executed, acknowledged and recorded
8 in accordance with the Non-Testamentary Transfer of Property Act may
9 not be revoked by the provisions of a will.

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

1 beneficiary within the time and in the manner in which the
2 beneficiary could disclaim, if the guardian, executor, administrator
3 or other personal representative deems it in the best interests of
4 and not detrimental to the best interests of the beneficiary.

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

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

21 B. Grantee beneficiaries of a transfer-on-death deed take the
22 interest of the record owner in the real estate at death subject to
23 all conveyances, assignments, contracts, mortgages, liens and
24 security pledges made by the record owner or to which the record

1 owner was subject during the lifetime of the record owner including,
2 but not limited to, any executory contract of sale, option to
3 purchase, lease, license, easement, mortgage, deed of trust or lien,
4 and to any interest conveyed by the record owner that is less than
5 all of the record owner's interest in the property.

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

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

12 A. A record joint owner of an interest in real estate may use
13 the procedures in the Non-Testamentary Transfer of Property Act to
14 title the interest in transfer-on-death form. However, title to the
15 interest shall vest in the designated grantee beneficiary or
16 beneficiaries only if the record joint owner is the last to die of
17 all of the record joint owners of the interest. A deed in transfer-
18 on-death form shall not sever a joint tenancy.

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

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

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

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

8 A deed in transfer-on-death form, executed in conformity with
9 the Non-Testamentary Transfer of Property Act, shall not be
10 considered a testamentary disposition and shall not be invalidated
11 due to nonconformity with other provisions in Title 58 or Title 84
12 of the Oklahoma Statutes.

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

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