

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2009

By: Crain

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6 AS INTRODUCED

7 An Act relating to probate procedure; creating the  
8 Family Home Transfer Act; providing short title;  
9 establishing procedure for the transfer of certain  
10 real property; providing method for a record owner of  
11 real estate to transfer interest to certain persons;  
12 providing for certain information to be included on  
13 deed; providing method of revocation; prohibiting  
14 revocation by a will; authorizing grantee beneficiary  
15 to disclaim title to real estate recorded in a  
16 transfer-on-death deed within a certain time period;  
17 providing circumstances under which disclaimer is  
18 waived; providing for waiver on behalf of minors or  
19 legally incompetent beneficiaries; specifying when  
20 ownership interest will vest; providing recording  
21 requirements; providing that interest is subject to  
22 encumbrances; providing procedure and required  
23 documentation for proof of death of the record owner;  
24 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 This act shall be known and may be cited as the "Family Home  
2 Transfer 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 be  
11 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 Family Home Transfer Act. The signature,  
2 consent or agreement of or notice to the grantee beneficiary or  
3 beneficiaries is not required. A subsequent transfer-on-death  
4 beneficiary designation revokes all prior designations of grantee  
5 beneficiary or beneficiaries by the record owner for the interest in  
6 real estate.

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

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

1 the time and in the manner in which the beneficiary could disclaim,  
2 if the guardian, executor, administrator or other personal  
3 representative deems it in the best interests of and not detrimental  
4 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 Family Home Transfer Act to title the interest  
14 in transfer-on-death form. However, title to the interest shall  
15 vest in the designated grantee beneficiary or beneficiaries only if  
16 the record joint owner is the last to die of all of the record joint  
17 owners of the interest. A deed in transfer-on-death form shall not  
18 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 Family Home Transfer Act, shall not be considered a testamentary  
10 disposition and shall not be invalidated due to nonconformity with  
11 other provisions in Title 58 or Title 84 of the Oklahoma Statutes.

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

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