

1 ENGROSSED SENATE  
2 BILL NO. 1895

By: Anderson of the Senate  
and  
Sherrer of the House

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7 [ probate procedure - probate of estates -  
8 codification - effective date -  
9 emergency ]

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

13 SECTION 1. AMENDATORY 58 O.S. 2001, Section 282.1, is  
14 amended to read as follows:

15 Section 282.1 If it appears there is no possibility that estate  
16 tax is due under the provisions of Sections 801 et seq. of Title 68,  
17 the executor or administrator of an estate or a surviving joint  
18 tenant or remainderman may request the district court to enter an  
19 order releasing estate tax liability. Such request may be included  
20 in a petition for distribution, in a petition to judicially  
21 determine the death of a joint tenant or life tenant or may be made  
22 by separate petition. Such request shall be set for hearing and  
23 notice thereof shall be given by certified mail to the Tax  
24 Commission at least thirty (30) days before the hearing. The notice

1 shall have attached thereto a statement, verified by the requesting  
2 party, containing the description of the property claimed not to be  
3 subject to taxation, the recipient thereof, their relationship to  
4 the deceased, and an estimate of the value of the property. The Tax  
5 Commission may appear at such hearing to object to the issuance of  
6 such order, or may file a written objection with the court. If the  
7 court finds that no possibility of tax liability exists under the  
8 provisions of Sections 801 et seq. of Title 68, it shall issue an  
9 order releasing estate tax liability as to the property described in  
10 the notice. Such order shall have the same legal effect as a release  
11 or waiver from the Tax Commission, and shall be a final order on the  
12 issue of estate tax liability of such estate as to the property  
13 described in the notice and order. If the court finds there is a  
14 possibility that tax liability exists, it shall refer such matter to  
15 the Tax Commission and the determination of tax liability or absence  
16 thereof shall proceed as in other cases. For deaths occurring on or  
17 after January 1, 2010, no release of estate tax liability is  
18 necessary pursuant to Section 5 of this act.

19 SECTION 2. AMENDATORY 58 O.S. 2001, Section 635, is  
20 amended to read as follows:

21 Section 635. Before any decree of distribution of an estate is  
22 made, the district court must be satisfied, by the oath of the  
23 executor or administrator, or otherwise, that all state, county,  
24 school and municipal taxes, legally levied upon personal property of

1 the estate, and all income and estate taxes due the State of  
2 Oklahoma have been fully paid or arrangements satisfactory to the  
3 court have been made to secure the payment of same. For deaths  
4 occurring on or after January 1, 2010, no release of estate tax  
5 liability is necessary pursuant to Section 5 of this act.

6 SECTION 3. AMENDATORY 58 O.S. 2001, Section 912, is  
7 amended to read as follows:

8 Section 912. A. If title to any interest in real property is  
9 held by two or more persons in joint tenancy with right of  
10 survivorship, including but not limited to mortgages owned by two or  
11 more persons in joint tenancy with right of survivorship, any  
12 surviving joint tenant or the personal representative or duly  
13 appointed attorney in fact of any surviving joint tenant, may  
14 evidence the termination of the interest of a deceased joint tenant  
15 in such real property by filing the documents described in  
16 subsection C of this section.

17 B. If title to any real property is held by two or more persons  
18 where at least one of them holds a life tenancy interest in such  
19 property and at least one of them holds a remainder interest in such  
20 property, any surviving life tenant or remainderman, or the personal  
21 representative or duly appointed attorney of any survivor of them  
22 may evidence the termination of the interest of any deceased life  
23 tenant in such real property by filing the documents described in  
24 subsection C of this section.

1 C. A person entitled, by subsection A or B of this section, to  
2 evidence the termination of the interest of a decedent in real  
3 property pursuant to this section may do so by filing in the office  
4 of the county clerk of the county in which said real property is  
5 located, the following:

6 1. A certified copy of the certificate of death of the joint  
7 tenant or life tenant issued by the court clerk as prescribed in  
8 Article 3 of the Public Health Code, Section 1-301 et seq. of Title  
9 63 of the Oklahoma Statutes, or by the State Department of Health or  
10 comparable agency of the place of the death of the joint tenant or  
11 life tenant;

12 2. An affidavit by the surviving joint tenant, life tenant or  
13 remainderman or the personal representative or duly appointed  
14 attorney in fact of the surviving joint tenant, life tenant or  
15 remainderman describing the real property, stating that the decedent  
16 named in such certificate of death is one and the same person as the  
17 deceased joint tenant or life tenant named in a previously recorded  
18 document which created or purported to create such joint tenancy or  
19 life tenancy in such real property and identifying such recorded  
20 document by book and page where recorded, that the survivor making  
21 or on whose behalf the affidavit is made and the decedent were  
22 husband and wife, if such is the case, and the date of death of the  
23 deceased joint tenant or life tenant. If the affidavit is filed by  
24 a personal representative or duly appointed attorney in fact, the

1 letters of administration, letters testamentary, letters of  
2 guardianship or the power of attorney shall accompany the affidavit  
3 and be filed with the county clerk. An affidavit properly sworn  
4 before a notarial officer shall, notwithstanding the provisions of  
5 Section 26 of Title 16 of the Oklahoma Statutes, be received for  
6 record and recorded by the county clerk without having been  
7 acknowledged and, when recorded, it shall be effective as if it had  
8 been acknowledged. An affidavit filed either before or after the  
9 effective date of this act which was either acknowledged or sworn or  
10 both acknowledged and sworn before a notarial officer is hereby  
11 validated and the title to such real property shall be deemed  
12 marketable unless otherwise defective; and

13 3. If such real property is held in joint tenancy other than by  
14 two persons only who were husband and wife or other than by two  
15 persons only who were husband and wife with one as the life tenant  
16 and the other as the remainderman, a waiver or release issued by the  
17 Oklahoma Tax Commission of the estate tax lien as to the deceased  
18 joint tenant or life tenant must be filed with the affidavit  
19 required by paragraph 2 of this subsection, unless the estate tax  
20 lien has otherwise been released by operation of law. For deaths  
21 occurring on or after January 1, 2010, no release of estate tax  
22 liability is necessary pursuant to Section 5 of this act.

23 D. The filing of the documents described in subsection C of  
24 this section shall constitute conclusive evidence of the death of

1 such joint tenant or life tenant and of the termination of the  
2 interest of such deceased joint tenant or life tenant in such real  
3 property. The title of such real property shall be deemed  
4 marketable unless otherwise defective.

5 SECTION 4. AMENDATORY 58 O.S. 2001, Section 1104, is  
6 amended to read as follows:

7 Section 1104. A. At the time and place of such hearing or at  
8 the postponement thereof, after first receiving satisfactory proof  
9 of the giving of the notice of the hearing, and if there is no  
10 contest to the probate of the will or the appointment of the  
11 personal representative, the court shall receive proof of the will  
12 and, if satisfied thereby, may admit the will to probate and order  
13 the appointment and qualification of the surviving spouse as  
14 personal representative. Unless the will provides otherwise, the  
15 court, in its discretion, may waive or require the giving of bond by  
16 the spouse regardless of the known or estimated value of the estate.  
17 The court, at a later time, for good cause shown, may waive or  
18 require a bond of the personal representative.

19 B. After being appointed personal representative, the surviving  
20 spouse shall:

21 1. Give notice to creditors in the manner provided in Section  
22 331 of this title with respect to a decedent who has been dead for a  
23 period of more than five (5) years prior to the commencement of a  
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1 probate proceeding for such decedent's estate, and file the  
2 appropriate affidavits as provided in Section 332 of this title;

3 2. Make and return to the court, as in other estate  
4 proceedings, a true inventory and appraisal of all the estate of  
5 the decedent, except that the surviving spouse alone may appraise  
6 the values thereof and shall appraise the items set out in the  
7 estate inventory at their fair market values and no appraisers need  
8 be appointed by the court. Both the estate inventory and the  
9 appraisal thereof shall be verified by the surviving spouse;

10 3. Prepare all returns and reports required by law with regard  
11 to estate, income and other taxes owed by the decedent or the estate  
12 and obtain receipts, releases and waivers as are required in regard  
13 thereto, or in regard to estate taxes, obtain an order releasing  
14 estate tax liability from the district court. For deaths occurring  
15 on or after January 1, 2010, no release of estate tax liability is  
16 necessary pursuant to Section 5 of this act; and

17 4. Carry out all other duties of a personal representative as  
18 in other estate proceedings.

19 SECTION 5. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 804.1 of Title 68, unless there  
21 is created a duplication in numbering, reads as follows:

22 For deaths occurring on or after January 1, 2010, no lien  
23 related to estate tax shall attach to any property passing through  
24 the estate of a decedent, by joint tenancy, or otherwise. No order

1 exempting estate tax liability shall be necessary to authorize the  
2 release of such property or for the title of real property to be  
3 marketable. This shall not be construed as relieving an estate  
4 from lien obligations in effect for deaths occurring before January  
5 1, 2010.

6 SECTION 6. This act shall become effective July 1, 2010.

7 SECTION 7. It being immediately necessary for the preservation  
8 of the public peace, health and safety, an emergency is hereby  
9 declared to exist, by reason whereof this act shall take effect and  
10 be in full force from and after its passage and approval.

11 Passed the Senate the 22nd day of February, 2010.

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13 \_\_\_\_\_  
14 Presiding Officer of the Senate

15 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
16 2010.

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19 Presiding Officer of the House  
20 of Representatives  
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