

SB 1895

1 THE STATE SENATE
2 Tuesday, February 16, 2010

3 Senate Bill No. 1895
4 As Amended

5 SENATE BILL NO. 1895 - By: Anderson of the Senate and Sherrer of the
6 House.

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

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

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

13 Section 282.1 If it appears there is no possibility that estate
14 tax is due under the provisions of Sections 801 et seq. of Title 68,
15 the executor or administrator of an estate or a surviving joint
16 tenant or remainderman may request the district court to enter an
17 order releasing estate tax liability. Such request may be included
18 in a petition for distribution, in a petition to judicially
19 determine the death of a joint tenant or life tenant or may be made
20 by separate petition. Such request shall be set for hearing and
21 notice thereof shall be given by certified mail to the Tax
22 Commission at least thirty (30) days before the hearing. The notice
23 shall have attached thereto a statement, verified by the requesting
24 party, containing the description of the property claimed not to be
25 subject to taxation, the recipient thereof, their relationship to

1 the deceased, and an estimate of the value of the property. The Tax
2 Commission may appear at such hearing to object to the issuance of
3 such order, or may file a written objection with the court. If the
4 court finds that no possibility of tax liability exists under the
5 provisions of Sections 801 et seq. of Title 68, it shall issue an
6 order releasing estate tax liability as to the property described in
7 the notice. Such order shall have the same legal effect as a release
8 or waiver from the Tax Commission, and shall be a final order on the
9 issue of estate tax liability of such estate as to the property
10 described in the notice and order. If the court finds there is a
11 possibility that tax liability exists, it shall refer such matter to
12 the Tax Commission and the determination of tax liability or absence
13 thereof shall proceed as in other cases. For deaths occurring on or
14 after January 1, 2010, no release of estate tax liability is
15 necessary pursuant to Section 5 of this act.

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

18 Section 635. Before any decree of distribution of an estate is
19 made, the district court must be satisfied, by the oath of the
20 executor or administrator, or otherwise, that all state, county,
21 school and municipal taxes, legally levied upon personal property of
22 the estate, and all income and estate taxes due the State of
23 Oklahoma have been fully paid or arrangements satisfactory to the

1 court have been made to secure the payment of same. For deaths
2 occurring on or after January 1, 2010, no release of estate tax
3 liability is necessary pursuant to Section 5 of this act.

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

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

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

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

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

1 D. The filing of the documents described in subsection C of
2 this section shall constitute conclusive evidence of the death of
3 such joint tenant or life tenant and of the termination of the
4 interest of such deceased joint tenant or life tenant in such real
5 property. The title of such real property shall be deemed
6 marketable unless otherwise defective.

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

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

21 B. After being appointed personal representative, the surviving
22 spouse shall:

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

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

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

20 4. Carry out all other duties of a personal representative as
21 in other estate proceedings.

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

4 For deaths occurring on or after January 1, 2010, no lien
5 related to estate tax shall attach to any property passing through
6 the estate of a decedent, by joint tenancy, or otherwise. No order
7 exempting estate tax liability shall be necessary to authorize the
8 release of such property or for the title of real property to be
9 marketable. This shall not be construed as relieving an estate
10 from lien obligations in effect for deaths occurring before January
11 1, 2010.

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

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

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-2-10 - DO PASS,
18 As Amended and Coauthored.