

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1299

By: Crain of the Senate

3 and

4 Sherrer of the House

5
6
7
8 (transfer of property - Nontestamentary Transfer of
9 Property Act -

10 effective date)

11
12
13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
14 entire bill and insert

15 "An Act relating to transfer of property; amending 58
16 O.S. 2011, Sections 1252, 1253, 1254, 1255 and 1256,
17 which relate to the Nontestamentary Transfer of
18 Property Act; authorizing certain persons to execute
19 or revoke certain deed; clarifying validity of
20 certain deed, affidavit or disclaimer; requiring
21 certain documentation; defining term; establishing
22 procedures for disclaiming certain deed; stating
23 when certain title vests to certain beneficiary;
24 requiring certain affidavit; clarifying transfer of
property from joint owners; and providing an
effective date.

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

1 SECTION 1. AMENDATORY 58 O.S. 2011, Section 1252, is
2 amended to read as follows:

3 Section 1252. A. An interest in real estate may be titled in
4 transfer-on-death form by recording a deed, signed by the record
5 owner of the interest, designating a grantee beneficiary or
6 beneficiaries of the interest. The deed shall transfer ownership of
7 the interest upon the death of the owner. A transfer-on-death deed
8 need not be supported by consideration. For purposes of the
9 Nontestamentary Transfer of Property Act, an "interest in real
10 estate" means any estate or interest in, over or under land,
11 including surface, minerals, structures and fixtures. A transfer-
12 on-death deed, or an instrument revoking such deed, may, in addition
13 to the owner of record, be executed by an attorney-in-fact of the
14 owner of record, or by a guardian of a minor or legally incompetent
15 owner of record.

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

20 C. ~~To accept real estate pursuant to a transfer-on-death deed,~~
21 ~~a designated grantee beneficiary shall execute an affidavit~~
22 ~~affirming:~~

23 1. ~~Verification of the record owner's death;~~
24

1 ~~2. Whether the record owner and the designated beneficiary were~~
2 ~~married at the time of the record owner's death; and~~

3 ~~3. A legal description of the real estate.~~

4 ~~D. The grantee shall attach a copy of the record owner's death~~
5 ~~certificate to the beneficiary affidavit. The beneficiary shall~~
6 ~~record the affidavit and related documents with the office of the~~
7 ~~county clerk where the real estate is located within nine (9) months~~
8 ~~of the grantor's death, otherwise the interest in the property~~
9 ~~reverts to the deceased grantor's estate. Notwithstanding the~~
10 ~~provisions of Section 26 of Title 16 of the Oklahoma Statutes, an~~
11 ~~affidavit properly sworn to before a notary shall be received for~~
12 ~~record and recorded by the county clerk without having been~~
13 ~~acknowledged and, when recorded, shall be effective as if it had~~
14 ~~been acknowledged~~ The validity of a transfer-on-death deed, or an
15 affidavit evidencing the death of the grantor or accepting the
16 acceptance of such interest, or an instrument or deed revoking or
17 disclaiming an interest granted by a transfer-on-death deed, shall
18 be based upon the statutory provisions in effect upon the
19 recordation of such deed, affidavit, disclaimer or other such
20 instrument.

21 SECTION 2. AMENDATORY 58 O.S. 2011, Section 1253, is
22 amended to read as follows:

23 Section 1253. An interest in real estate is titled in transfer-
24 on-death form by executing, acknowledging and recording in the

1 office of the county clerk in the county where the real estate is
2 located, prior to the death of the owner, a deed in substantially
3 the following form:

4 _____ (name of owner) being of competent mind and
5 having the legal capacity to execute this document, as owner
6 transfers on death to _____ (name of beneficiary) as
7 grantee beneficiary, the following described interest in real
8 estate: (here insert description of the interest in real estate).

9 THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY
10 OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR
11 BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL
12 ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED
13 AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED
14 THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR
15 ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

16 THE STATE OF OKLAHOMA
17 COUNTY OF _____

18 Before me, on this day personally appeared _____,
19 _____, and _____, the owner of the land described in
20 this deed, and the witnesses, respectively, whose names are
21 subscribed below in their respective capacities, and the owner of
22 the land declared to me and to the witnesses in my presence that the
23 deed is a revocable transfer-on-death of the real estate described
24 therein, and the witnesses declared in the presence of the owner of

1 the real estate and in my presence that the owner of the land
2 declared to them that the deed is a revocable transfer-on-death of
3 the real estate described therein and that the owner of the land
4 wanted each of them to sign it as a witness, and that each witness
5 did sign the same as witness in the presence of the owner of the
6 land and in my presence.

7 _____

8 (name of owner)

9 _____

10 (witness)

11 _____

12 (witness)

13 Subscribed and acknowledged before me by _____, the owner
14 of the land, and _____ and _____, witnesses, this
15 ___ day of _____ (month), _____ (year).

16 _____

17 (signature of notary public)

18 (Seal)

19 My commission expires _____ (date).

20 Instead of the words "transfer-on-death" the abbreviation "TOD" may
21 be used.

22 In addition to meeting all other applicable provisions of the
23 Nontestamentary Transfer of Property Act, execution, acknowledgment

24

1 and recording are all required to have an effective transfer-on-
2 death deed.

3 SECTION 3. AMENDATORY 58 O.S. 2011, Section 1254, is
4 amended to read as follows:

5 Section 1254. A. A designation of the grantee beneficiary or
6 beneficiaries may be as to any or all of such grantee beneficiaries
7 revoked at any time prior to the death of the record owner, by
8 executing, acknowledging and recording in the office of the county
9 clerk in the county where the real estate is located an instrument
10 revoking the designation. The signature, consent or agreement of or
11 notice to the grantee beneficiary or beneficiaries to the revocation
12 is not required.

13 B. A designation of the grantee beneficiary or beneficiaries
14 may be changed as to any or all of such grantee beneficiaries at any
15 time prior to the death of the record owner, by executing,
16 acknowledging and recording a subsequent transfer-on-death deed in
17 accordance with the Nontestamentary Transfer of Property Act.

18 "Subsequent transfer-on-death deed" means a deed which is executed,
19 acknowledged and recorded subsequent to the earlier execution,
20 acknowledgment and recording of a transfer-on-death deed. The
21 signature, consent or agreement of or notice to the grantee
22 beneficiary or beneficiaries is not required. A subsequent
23 transfer-on-death beneficiary designation revokes all prior
24

1 designations of grantee beneficiary or beneficiaries by the record
2 owner for the interest in real estate.

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

6 D. A transfer-on-death deed executed, acknowledged and recorded
7 in accordance with the Nontestamentary Transfer of Property Act may
8 be disclaimed in writing in whole or in part or with reference to
9 specific parts by the grantee beneficiary or beneficiaries. To be
10 effective, the disclaimer shall be executed, acknowledged and
11 recorded in the office of the county clerk in which the transfer-on-
12 death deed was recorded, within two hundred seventy (270) days after
13 the death of the landowner, and if so timely executed, acknowledged
14 and recorded, the interest in the property shall revert to the
15 grantor's estate. A guardian of a minor or legally incompetent
16 beneficiary or beneficiaries, or an executor, administrator or other
17 personal representative of a deceased grantee beneficiary or
18 beneficiaries, where such beneficiary or beneficiaries survive the
19 grantor, or an attorney-in-fact for a beneficiary or beneficiaries,
20 may execute, acknowledge and record a disclaimer on behalf of the
21 beneficiary or beneficiaries within the time and in the manner in
22 which the beneficiary or beneficiaries could disclaim, if the
23 guardian, executor, administrator or other personal representative
24 or attorney-in-fact deems it in the best interests of and not

1 detrimental to the best interests of the beneficiary or
2 beneficiaries.

3 SECTION 4. AMENDATORY 58 O.S. 2011, Section 1255, is
4 amended to read as follows:

5 Section 1255. A. Title to the interest in real estate recorded
6 in transfer-on-death form shall vest in the designated grantee
7 beneficiary or beneficiaries on the death of the record owner. The
8 death of the record owner shall be evidenced by the recording of an
9 affidavit in the office of the county clerk of the county where the
10 real estate is located. The affidavit shall be executed by one or
11 more of the grantee beneficiary or beneficiaries. The affidavit
12 shall state the fact of the death of the record owner, shall state
13 whether or not the record owner and the designated grantee were
14 husband and wife, and shall provide the legal description of the
15 real estate. Notwithstanding the provisions of Section 26 of Title
16 16 of the Oklahoma Statutes, an affidavit properly sworn to before a
17 notary shall be received for record and recorded by the county clerk
18 without having been acknowledged and, when recorded, shall be
19 effective as if it had been acknowledged. A copy of the death
20 certificate of the record owner and, if applicable, an estate tax
21 release shall be attached to the affidavit.

22 B. Grantee beneficiaries of a transfer-on-death deed take the
23 interest of the record owner in the real estate at the death of the
24 grantor owner, free and clear of any claims or interest under

1 Section 44 of Title 84 of the Oklahoma Statutes as to a person who
2 became the spouse of the grantor subsequent to the execution of the
3 transfer-on-death deed, subject to all recorded conveyances,
4 assignments, contracts, mortgages, liens and security pledges made
5 by the record owner or to which the record owner was subject during
6 the lifetime of the record owner including, but not limited to, any
7 recorded executory contract of sale, option to purchase, lease,
8 license, easement, mortgage, deed of trust or lien, and to any
9 interest conveyed by the record owner that is less than all of the
10 record owner's interest in the property⁷; provided however, ~~a non-~~
11 ~~consensual lien~~ nonconsensual liens against the grantee beneficiary
12 shall not attach to the property ~~until the recording of the~~
13 ~~affidavit described in Section 1252 of this title~~ if a disclaimer is
14 timely executed, acknowledged and recorded, as provided in the
15 Nontestamentary Transfer of Property Act.

16 ~~B.~~ C. If one or more of the grantee beneficiaries dies prior to
17 the death of the grantor owner, the transfer to those beneficiaries
18 who predecease the grantor owner shall lapse. In the event the
19 grantee beneficiaries are designated in the deed to be joint tenants
20 with right of survivorship, the death of one or more of the grantee
21 beneficiaries prior to the death of the grantor owner shall not
22 invalidate an otherwise validly created joint tenancy estate as to
23 those grantee beneficiaries who are living at the time of the death
24 of the grantor owner.

1 SECTION 5. AMENDATORY 58 O.S. 2011, Section 1256, is
2 amended to read as follows:

3 Section 1256. A. A record joint owner or owners of an interest
4 in real estate may use the procedures in the Nontestamentary
5 Transfer of Property Act to title the interest in transfer-on-death
6 form. However, title to the interest shall vest in the designated
7 grantee beneficiary or beneficiaries only ~~if the record joint owner~~
8 ~~is~~ upon the death of the last to die of all of the record joint
9 owners of the interest. A deed in transfer-on-death form shall not
10 sever a joint tenancy.

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

14 SECTION 6. This act shall become effective November 1, 2012."

15 Passed the House of Representatives the 3rd day of April, 2012.

16

17

18 _____
19 Presiding Officer of the House of
Representatives

20 Passed the Senate the ____ day of _____, 2012.

21

22

23 _____
24 Presiding Officer of the Senate