

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1299

By: Crain of the Senate

and

6 Sherrer of the House

7
8
9 COMMITTEE SUBSTITUTE

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

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

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

24 Section 1252. A. An interest in real estate may be titled in
transfer-on-death form by recording a deed, signed by the record
owner of the interest, designating a grantee beneficiary or
beneficiaries of the interest. The deed shall transfer ownership of

1 the interest upon the death of the owner. A transfer-on-death deed
2 need not be supported by consideration. For purposes of the
3 Nontestamentary Transfer of Property Act, an "interest in real
4 estate" means any estate or interest in, over or under land,
5 including surface, minerals, structures and fixtures. A transfer-
6 on-death deed, or an instrument revoking such deed, may, in addition
7 to the owner of record, be executed by an attorney-in-fact of the
8 owner of record, or by a guardian of a minor or legally incompetent
9 owner of record.

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

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

- 17 1. ~~Verification of the record owner's death;~~
- 18 2. ~~Whether the record owner and the designated beneficiary were~~
19 ~~married at the time of the record owner's death; and~~
- 20 3. ~~A legal description of the real estate.~~

21 D. ~~The grantee shall attach a copy of the record owner's death~~
22 ~~certificate to the beneficiary affidavit. The beneficiary shall~~
23 ~~record the affidavit and related documents with the office of the~~
24 ~~county clerk where the real estate is located within nine (9) months~~

1 ~~of the grantor's death, otherwise the interest in the property~~
2 ~~reverts to the deceased grantor's estate. Notwithstanding the~~
3 ~~provisions of Section 26 of Title 16 of the Oklahoma Statutes, an~~
4 ~~affidavit properly sworn to before a notary shall be received for~~
5 ~~record and recorded by the county clerk without having been~~
6 ~~acknowledged and, when recorded, shall be effective as if it had~~
7 ~~been acknowledged~~ The validity of a transfer-on-death deed, or an
8 affidavit evidencing the death of the grantor or accepting the
9 acceptance of such interest, or an instrument or deed revoking or
10 disclaiming an interest granted by a transfer on death deed, shall
11 be based upon the statutory provisions in effect upon the
12 recordation of such deed, affidavit, disclaimer or other such
13 instrument.

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

16 Section 1253. An interest in real estate is titled in transfer-
17 on-death form by executing, acknowledging and recording in the
18 office of the county clerk in the county where the real estate is
19 located, prior to the death of the owner, a deed in substantially
20 the following form:

21 _____ (name of owner) being of competent mind and
22 having the legal capacity to execute this document, as owner
23 transfers on death to _____ (name of beneficiary) as
24 grantee beneficiary, the following described interest in real

1 estate: (here insert description of the interest in real estate).
2 THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY
3 OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR
4 BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL
5 ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED
6 AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED
7 THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR
8 ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

9 THE STATE OF OKLAHOMA
10 COUNTY OF _____

11 Before me, on this day personally appeared _____,
12 _____, and _____, the owner of the land described in
13 this deed, and the witnesses, respectively, whose names are
14 subscribed below in their respective capacities, and the owner of
15 the land declared to me and to the witnesses in my presence that the
16 deed is a revocable transfer-on-death of the real estate described
17 therein, and the witnesses declared in the presence of the owner of
18 the real estate and in my presence that the owner of the land
19 declared to them that the deed is a revocable transfer-on-death of
20 the real estate described therein and that the owner of the land
21 wanted each of them to sign it as a witness, and that each witness
22 did sign the same as witness in the presence of the owner of the
23 land and in my presence.

24 _____

1 (name of owner)

2 _____

3 (witness)

4 _____

5 (witness)

6 Subscribed and acknowledged before me by _____, the owner
7 of the land, and _____ and _____, witnesses, this
8 ___ day of _____ (month), _____ (year).

9 _____

10 (signature of notary public)

11 (Seal)

12 My commission expires _____ (date).

13 Instead of the words "transfer-on-death" the abbreviation "TOD" may
14 be used.

15 In addition to meeting all other applicable provisions of the
16 Nontestamentary Transfer of Property Act, execution, acknowledgment
17 and recording are all required to have an effective transfer-on-
18 death deed.

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

21 Section 1254. A. A designation of the grantee beneficiary or
22 beneficiaries may be as to any or all of such grantee beneficiaries
23 revoked at any time prior to the death of the record owner, by
24 executing, acknowledging and recording in the office of the county

1 clerk in the county where the real estate is located an instrument
2 revoking the designation. The signature, consent or agreement of or
3 notice to the grantee beneficiary or beneficiaries to the revocation
4 is not required.

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

10 "Subsequent transfer-on-death deed" means a deed which is executed,
11 acknowledged and recorded subsequent to the earlier execution,
12 acknowledgment and recording of a transfer-on-death deed. The
13 signature, consent or agreement of or notice to the grantee
14 beneficiary or beneficiaries is not required. A subsequent
15 transfer-on-death beneficiary designation revokes all prior
16 designations of grantee beneficiary or beneficiaries by the record
17 owner for the interest in real estate.

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

21 D. A transfer-on-death deed executed, acknowledged and recorded
22 in accordance with the Nontestamentary Transfer of Property Act may
23 be disclaimed in writing in whole or in part or with reference to
24 specific parts by the grantee beneficiary or beneficiaries. To be

1 effective, the disclaimer shall be executed, acknowledged and
2 recorded in the office of the county clerk in which the transfer-on-
3 death deed was recorded, within two hundred seventy (270) days after
4 the death of the landowner, and if so timely executed, acknowledged
5 and recorded, the interest in the property shall revert to the
6 grantor's estate. A guardian of a minor or legally incompetent
7 beneficiary or beneficiaries, or an executor, administrator or other
8 personal representative of a deceased grantee beneficiary or
9 beneficiaries, where such beneficiary or beneficiaries survive the
10 grantor, or an attorney-in-fact for a beneficiary or beneficiaries,
11 may execute, acknowledge and record a disclaimer on behalf of the
12 beneficiary or beneficiaries within the time and in the manner in
13 which the beneficiary or beneficiaries could disclaim, if the
14 guardian, executor, administrator or other personal representative
15 or attorney-in-fact deems it in the best interests of and not
16 detrimental to the best interests of the beneficiary or
17 beneficiaries.

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

20 Section 1255. A. Title to the interest in real estate recorded
21 in transfer-on-death form shall vest in the designated grantee
22 beneficiary or beneficiaries on the death of the record owner. The
23 death of the record owner shall be evidenced by the recording of an
24 affidavit in the office of the county clerk of the county where the

1 real estate is located. The affidavit shall be executed by one or
2 more of the grantee beneficiary or beneficiaries. The affidavit
3 shall state the fact of the death of the record owner, shall state
4 whether or not the record owner and the designated grantee were
5 husband and wife, and shall provide the legal description of the
6 real estate. Notwithstanding the provisions of Section 26 of Title
7 16 of the Oklahoma Statutes, an affidavit properly sworn to before a
8 notary shall be received for record and recorded by the county clerk
9 without having been acknowledged and, when recorded, shall be
10 effective as if it had been acknowledged. A copy of the death
11 certificate of the record owner and, if applicable, an estate tax
12 release shall be attached to the affidavit.

13 B. Grantee beneficiaries of a transfer-on-death deed take the
14 interest of the record owner in the real estate at the death of the
15 grantor owner, free and clear of any claims or interest under
16 Section 44 of Title 84 of the Oklahoma Statutes as to a person who
17 became the spouse of the grantor subsequent to the execution of the
18 transfer-on-death deed, subject to all recorded conveyances,
19 assignments, contracts, mortgages, liens and security pledges made
20 by the record owner or to which the record owner was subject during
21 the lifetime of the record owner including, but not limited to, any
22 recorded executory contract of sale, option to purchase, lease,
23 license, easement, mortgage, deed of trust or lien, and to any
24 interest conveyed by the record owner that is less than all of the

1 record owner's interest in the property⁷ⁱ; provided however, ~~a non-~~
2 ~~consensual lien~~ nonconsensual liens against the grantee beneficiary
3 shall not attach to the property ~~until the recording of the~~
4 ~~affidavit described in Section 1252 of this title~~ if a disclaimer is
5 timely executed, acknowledged and recorded, as provided in the
6 Nontestamentary Transfer of Property Act.

7 B. C. If one or more of the grantee beneficiaries dies prior to
8 the death of the grantor owner, the transfer to those beneficiaries
9 who predecease the grantor owner shall lapse. In the event the
10 grantee beneficiaries are designated in the deed to be joint tenants
11 with right of survivorship, the death of one or more of the grantee
12 beneficiaries prior to the death of the grantor owner shall not
13 invalidate an otherwise validly created joint tenancy estate as to
14 those grantee beneficiaries who are living at the time of the death
15 of the grantor owner.

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

18 Section 1256. A. A record joint owner or owners of an interest
19 in real estate may use the procedures in the Nontestamentary
20 Transfer of Property Act to title the interest in transfer-on-death
21 form. However, title to the interest shall vest in the designated
22 grantee beneficiary or beneficiaries only ~~if the record joint owner~~
23 is upon the death of the last to die of all of the record joint
24

1 owners of the interest. A deed in transfer-on-death form shall not
2 sever a joint tenancy.

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

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

7

8 53-2-10104 EK 03/27/12

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24