STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

SENATE BILL 1299 By: Crain

AS INTRODUCED

An Act relating to transfer of property; amending 58 O.S. 2011, Sections 1252, 1253, 1254, 1255 and 1256, which relate to the Nontestamentary Transfer of Property Act; authorizing certain persons to execute or revoke certain deed; clarifying validity of certain deed, affidavit or disclaimer; requiring certain documentation; defining term; establishing procedures for disclaiming certain deed; stating when certain title vests to certain beneficiary; 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:

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

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 the interest upon the death of the owner. A transfer-on-death deed need not be supported by consideration. For purposes of the Nontestamentary Transfer of Property Act, an "interest in real

estate" means any estate or interest in, over or under land, including surface, minerals, structures and fixtures. A transfer-on-death deed, or an instrument revoking such deed, may, in addition to the owner of record, be executed by an attorney-in-fact of the owner of record, or by a guardian of a minor or legally incompetent owner of record.

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

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

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

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

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

~~D. The grantee shall attach a copy of the record owner's death certificate to the beneficiary affidavit. The beneficiary shall record the affidavit and related documents with the office of the county clerk where the real estate is located within nine (9) months of the grantor's death, otherwise the interest in the property reverts to the deceased grantor's estate. Notwithstanding the provisions of Section 26 of Title 16 of the Oklahoma Statutes, an~~

~~affidavit properly sworn to before a notary shall be received for record and recorded by the county clerk without having been acknowledged and, when recorded, shall be effective as if it had been acknowledged~~ The validity of a transfer-on-death deed, or an affidavit evidencing the death of the grantor or accepting the acceptance of such interest, or an instrument or deed revoking or disclaiming an interest granted by a transfer on death deed, shall be based upon the statutory provisions in effect upon the recordation of such deed, affidavit, disclaimer or other such instrument.

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

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

_____ (name of owner) being of competent mind and having the legal capacity to execute this document, as owner transfers on death to _____ (name of beneficiary) as grantee beneficiary, the following described interest in real estate: (here insert description of the interest in real estate). THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR

BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

THE STATE OF OKLAHOMA

COUNTY OF _____

Before me, on this day personally appeared _____, _____, and _____, the owner of the land described in this deed, and the witnesses, respectively, whose names are subscribed below in their respective capacities, and the owner of the land declared to me and to the witnesses in my presence that the deed is a revocable transfer-on-death of the real estate described therein, and the witnesses declared in the presence of the owner of the real estate and in my presence that the owner of the land declared to them that the deed is a revocable transfer-on-death of the real estate described therein and that the owner of the land wanted each of them to sign it as a witness, and that each witness did sign the same as witness in the presence of the owner of the land and in my presence.

_____

(name of owner)

_____

(witness)

_____

(witness)

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

_____

(signature of notary public)

(Seal)

My commission expires _____ (date).

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

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

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

Section 1254. A. A designation of the grantee beneficiary or beneficiaries may be as to any or all of such grantee beneficiaries revoked at any time prior to the death of the record owner, by executing, acknowledging and recording in the office of the county clerk in the county where the real estate is located an instrument revoking the designation. The signature, consent or agreement of or

notice to the grantee beneficiary or beneficiaries to the revocation is not required.

B. A designation of the grantee beneficiary or beneficiaries may be changed as to any or all of such grantee beneficiaries at any time prior to the death of the record owner, by executing, acknowledging and recording a subsequent transfer-on-death deed in accordance with the Nontestamentary Transfer of Property Act. "Subsequent transfer-on-death deed" means a deed which is executed, acknowledged and recorded subsequent to the earlier execution, acknowledgment and recording of a transfer-on-death deed. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required. A subsequent transfer-on-death beneficiary designation revokes all prior designations of grantee beneficiary or beneficiaries by the record owner for the interest in real estate.

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

D. A transfer-on-death deed executed, acknowledged and recorded in accordance with the Nontestamentary Transfer of Property Act may be disclaimed in writing in whole or in part or with reference to specific parts by the grantee beneficiary or beneficiaries. To be effective, the disclaimer shall be executed, acknowledged and recorded in the office of the county clerk in which the transfer-on-

death deed was recorded, within two hundred seventy (270) days after the death of the landowner, and if so timely executed, acknowledged and recorded, the interest in the property shall revert to the grantor's estate. A guardian of a minor or legally incompetent beneficiary or beneficiaries, or an executor, administrator or other personal representative of a deceased grantee beneficiary or beneficiaries, where such beneficiary or beneficiaries survives the grantor, or an attorney-in-fact for a beneficiary or beneficiaries, may execute, acknowledge and record a disclaimer on behalf of the beneficiary or beneficiaries within the time and in the manner in which the beneficiary or beneficiaries could disclaim, if the guardian, executor, administrator or other personal representative or attorney-in-fact deems it in the best interests of and not detrimental to the best interests of the beneficiary or beneficiaries.

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

Section 1255. A. Title to the interest in real estate recorded in transfer-on-death form shall vest in the designated grantee beneficiary or beneficiaries on the death of the record owner. The death of the record owner shall be evidenced by the recording of an affidavit in the office of the county clerk of the county where the real estate is located. The affidavit shall be executed by one or more of the grantee beneficiary or beneficiaries. The affidavit

shall state the fact of the death of the record owner, shall state whether or not the record owner and the designated grantee were husband and wife, and shall provide the legal description of the real estate. Notwithstanding the provisions of Section 26 of Title 16 of the Oklahoma Statutes, an affidavit properly sworn to before a notary shall be received for record and recorded by the county clerk without having been acknowledged and, when recorded, shall be effective as if it had been acknowledged. A copy of the death certificate of the record owner and, if applicable, an estate tax release shall be attached to the affidavit.

B. Grantee beneficiaries of a transfer-on-death deed take the interest of the record owner in the real estate at the death of the grantor owner, free and clear of any claims or interest under Section 44 of Title 84 of the Oklahoma Statutes as to a person who became the spouse of the grantor subsequent to the execution of the transfer-on-death deed, subject to all recorded conveyances, assignments, contracts, mortgages, liens and security pledges made by the record owner or to which the record owner was subject during the lifetime of the record owner including, but not limited to, any recorded executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust or lien, and to any interest conveyed by the record owner that is less than all of the record owner's interest in the property, provided however, ~~a~~ non-consensual ~~lien~~ liens against the grantee beneficiary shall not

attach to the property ~~until the recording of the affidavit described in Section 1252 of this title~~ if a disclaimer is timely executed, acknowledged and recorded, as provided in the Nontestamentary Transfer of Property Act.

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

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

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

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

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

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