

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 521

By: Crain

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5  
6 AS INTRODUCED

7 An Act relating to nontestamentary transfer of  
8 property; amending Sections 2, as amended by Section  
9 1, Chapter 205, O.S.L. 2010, 4 and 5, Section 78,  
10 O.S.L. 2008 (58 O.S. Supp. 2010, Sections 1252, 1254  
11 and 1255), which relate to notice, revocation and  
12 vesting of interest; defining term; requiring certain  
13 documents to be recorded within specified time  
14 period; establishing requirements for recording of  
15 certain affidavit; modifying procedures for  
16 revocation of certain transfer on death deeds;  
17 modifying requirements for vesting of interest in  
18 certain property to grantee beneficiaries; and  
19 providing an effective date.

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

21 SECTION 1. AMENDATORY Section 2, Chapter 78, O.S.L.  
22 2008, as amended by Section 1, Chapter 205, O.S.L. 2010 (58 O.S.  
23 Supp. 2010, Section 1252), is 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  
the interest upon the death of the owner. A transfer-on-death deed

1 need not be supported by consideration. For purposes of the  
2 Nontestamentary Transfer of Property Act, an "interest in real  
3 estate" means any estate or interest in, over or under land,  
4 including surface, minerals, structures and fixtures.

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

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

- 12 1. Verification of the record owner's death;
- 13 2. Whether the record owner and the designated beneficiary were  
14 married at the time of the record owner's death; and
- 15 3. A legal description of the real estate.

16 ~~D. If the grantee beneficiary was not the record owner's~~  
17 ~~spouse, he or she~~ The grantee shall attach a copy of the record  
18 owner's death certificate and, unless the grantee beneficiary was  
19 the record owner's spouse, an estate tax release to the beneficiary  
20 affidavit. The beneficiary shall record the affidavit and related  
21 documents with the office of the county clerk where the real estate  
22 is located within nine (9) months of the grantor's death, otherwise  
23 the interest in the property reverts to the deceased grantor's  
24 estate. Notwithstanding the provisions of Section 26 of Title 16 of

1 the Oklahoma Statutes, an affidavit properly sworn to before a  
2 notary shall be received for record and recorded by the county clerk  
3 without having been acknowledged and, when recorded, shall be  
4 effective as if it had been acknowledged.

5 SECTION 2. AMENDATORY Section 4, Chapter 78, O.S.L. 2008  
6 (58 O.S. Supp. 2010, Section 1254), is amended to read as follows:

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

14 B. A designation of the grantee beneficiary may be changed at  
15 any 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. The  
18 signature, consent or agreement of or notice to the grantee  
19 beneficiary or beneficiaries is not required. A subsequent  
20 transfer-on-death beneficiary designation revokes all prior  
21 designations of grantee beneficiary or beneficiaries by the record  
22 owner for the interest in real estate.

23 C. A transfer-on-death deed executed, ~~acknowledged~~ sworn to and  
24 notarized, and recorded in accordance with the Nontestamentary

1 Transfer of Property Act may not be revoked by the provisions of a  
2 will.

3 ~~D. A transfer on death deed executed, acknowledged and recorded~~  
4 ~~in accordance with the Nontestamentary Transfer of Property Act may~~  
5 ~~be disclaimed in whole or in part or with reference to specific~~  
6 ~~parts by the grantee beneficiary or beneficiaries. The disclaimer~~  
7 ~~must occur within nine (9) months after the death of the landowner.~~  
8 ~~The disclaimer shall be filed with the office of the county clerk in~~  
9 ~~which the transfer on death deed was recorded. If a grantee~~  
10 ~~beneficiary exerts dominion over the real estate within the nine-~~  
11 ~~month period, the disclaimer is waived. Dominion may be evidenced~~  
12 ~~by acts including, but not limited to, possession or the execution~~  
13 ~~of any conveyance, assignment, contract, mortgage, security pledge,~~  
14 ~~executory contract for sale, option to purchase, lease, license,~~  
15 ~~easement or right of way. A guardian, executor, administrator or~~  
16 ~~other personal representative of a minor or legally incompetent~~  
17 ~~beneficiary may execute and file a disclaimer on behalf of the~~  
18 ~~beneficiary within the time and in the manner in which the~~  
19 ~~beneficiary could disclaim, if the guardian, executor, administrator~~  
20 ~~or other personal representative deems it in the best interests of~~  
21 ~~and not detrimental to the best interests of the beneficiary.~~

22 SECTION 3. AMENDATORY Section 5, Chapter 78, O.S.L. 2008  
23 (58 O.S. Supp. 2010, Section 1255), is amended to read as follows:

24

1 Section 1255. A. ~~Title to the interest in real estate recorded~~  
2 ~~in transfer on death form shall vest in the designated grantee~~  
3 ~~beneficiary or beneficiaries on the death of the record owner. The~~  
4 ~~death of the record owner shall be evidenced by the recording of an~~  
5 ~~affidavit in the office of the county clerk of the county where the~~  
6 ~~real estate is located. The affidavit shall be executed by the~~  
7 ~~grantee beneficiary or beneficiaries. The affidavit shall state the~~  
8 ~~fact of the death of the record owner, state whether or not the~~  
9 ~~record owner and the designated grantee were husband and wife, and~~  
10 ~~provide the legal description of the real estate. The affidavit~~  
11 ~~shall be notarized. If the record owner and designated grantee were~~  
12 ~~not husband and wife, a copy of the death certificate of the record~~  
13 ~~owner and an estate tax release shall be attached to the affidavit.~~

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

1 interest conveyed by the record owner that is less than all of the  
2 record owner's interest in the property, provided however, a non-  
3 consensual lien against the grantee beneficiary shall not attach to  
4 the property until the recording of the affidavit described in  
5 Section 1252 of this title.

6 C. B. If a one or more of the grantee beneficiary beneficiaries  
7 dies prior to the death of the record grantor owner ~~and an~~  
8 ~~alternative grantee beneficiary has not been designated on the deed,~~  
9 the transfer to that beneficiary shall lapse, unless the remaining  
10 beneficiaries were joint tenants with the deceased beneficiary or  
11 beneficiaries.

12 SECTION 4. This act shall become effective November 1, 2011.

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