ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 521

By: Crain of the Senate

and

Sherrer of the House

[nontestamentary transfer of property - documents to be recorded - modifying procedures for revocation - effective date]

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

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

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

SECTION 1. AMENDATORY Section 2, Chapter 78, O.S.L. 2008, as amended by Section 1, Chapter 205, O.S.L. 2010 (58 O.S. Supp. 2010, 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.

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 ~~a notarized~~ 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. ~~If the grantee beneficiary was not the record owner's spouse, he or she~~ The grantee shall attach a copy of the record owner's death certificate ~~and an estate tax release~~ 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.

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

Section 1254. A. A designation of the grantee beneficiary may be 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 may be changed 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. 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~~ sworn to and notarized, 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 whole or in part or with reference to specific parts by the grantee beneficiary or beneficiaries. The disclaimer must occur within nine (9) months after the death of the landowner. The disclaimer shall be filed with the office of the county clerk in which the transfer-on-death deed was recorded. If a grantee beneficiary exerts dominion over the real estate within the nine-month period, the disclaimer is waived. Dominion may be evidenced by acts including, but not limited to, possession or the execution of any conveyance, assignment, contract, mortgage, security pledge, executory contract for sale, option to purchase, lease, license, easement or right-of-way. A guardian, executor, administrator or other personal representative of a minor or legally incompetent~~

~~beneficiary may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim, if the guardian, executor, administrator or other personal representative deems it in the best interests of and not detrimental to the best interests of the beneficiary.~~

SECTION 3. AMENDATORY Section 5, Chapter 78, O.S.L. 2008 (58 O.S. Supp. 2010, 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 the grantee beneficiary or beneficiaries. The affidavit shall state the fact of the death of the record owner, state whether or not the record owner and the designated grantee were husband and wife, and provide the legal description of the real estate. The affidavit shall be notarized. If the record owner and designated grantee were not husband and wife, a copy of the death certificate of the record owner and 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 against the grantee beneficiary shall not attach to the property until the recording of the affidavit described in Section 1252 of this title.

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

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

Passed the House of Representatives the 18th day of April, 2011.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

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Presiding Officer of the Senate