

HOUSE BILL REPORT

ESHB 1117

As Passed House:
March 9, 2013

Title: An act relating to the transfer of real property by deed taking effect at the grantor's death.

Brief Description: Concerning the transfer of real property by deed taking effect at the grantor's death.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Hansen, Rodne and Pedersen; by request of Uniform Laws Commission).

Brief History:

Committee Activity:

Judiciary: 1/23/13, 2/5/13 [DPS].

Floor Activity:

Passed House: 3/9/13, 98-0.

Brief Summary of Engrossed Substitute Bill

- Provides a means of passing real property to beneficiaries at death without probate, by executing and recording a deed that is revocable during the transferor's lifetime.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall and Roberts.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: Omeara Harrington (786-7136).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A lifetime transfer of real property is typically accomplished through execution of a deed, which is an instrument that conveys legal title to property from one person to another. In order to be lawfully executed, the deed must be in writing and contain identification of the parties, a description of the land, words indicating that title is to pass, and an acknowledged signature of the transferor.

The real property that a person holds at death typically must pass through the probate process. Probate is the legal procedure through which a will is proven, creditor claims are paid, and the assets of the estate are distributed to beneficiaries. If the deceased person left a validly executed will, the instructions in the will govern who will inherit the property; if not, the estate assets pass pursuant to intestate succession as outlined in statute. To create a valid will, certain formal requirements must be met, and the person creating the will must have the requisite testamentary capacity. The person must be able to recognize the extent and nature of property owned, have knowledge of the beneficiaries to whom the property is to pass, and understand the testamentary significance of the will.

Not all property is subject to the probate process. Nonprobate assets, like life insurance proceeds and joint with right of survivorship bank accounts, pass on a person's death according to written instruments other than a will that designate beneficiaries. Washington law does not provide for real property to pass at death subject to a death beneficiary designation. Real property can only pass outside of probate in limited circumstances, for instance, if it is held in joint tenancy, subject to a community property agreement, or held in a trust.

Summary of Engrossed Substitute Bill:

An individual may transfer property to one or more beneficiaries effective at the transferor's death by executing and recording a transfer on death (TOD) deed. This is a nontestamentary transfer, however the capacity required to make or revoke a TOD deed is the same as the capacity required to make a will. A TOD deed must contain the essential elements and formalities of a properly recordable deed and must state that the transfer to the designated beneficiary is to occur at the transferor's death. The deed must be recorded prior to the transferor's death in the public records office of the county auditor in the county in which the property is located.

A TOD deed is fully revocable during the transferor's lifetime, even if the deed or another instrument contains a contrary provision. Once the deed is recorded, a revocatory act on the deed itself is not sufficient to revoke the deed, although various written instruments, if acknowledged and recorded before the transferor's death, are effective to revoke a TOD deed. If a TOD deed is made by more than one person, revocation by one transferor will not affect the deed as to the interest of another transferor.

Beneficiaries have no present interest in the property until the TOD deed takes effect at the transferor's death, and need not be notified of the pending interest during the transferor's lifetime in order for the TOD deed to be effective. At the transferor's death, the transferor's interest in the property passes automatically to the beneficiary, subject to applicable taxes and all other interests in the property including liens, mortgages, and other encumbrances. Beneficiaries may disclaim the interest if they do so in writing within nine months of the

interest becoming effective. If the beneficiary fails to survive the transferor, the interest lapses.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 23 relating to limitations on the power of attorneys-in-fact and agents with respect to a principal's transfer on death deeds, which takes effect if the Washington Uniform Power of Attorney Act is not enacted during the 2013 regular legislative session.

Staff Summary of Public Testimony:

(In support) This is legislation that was developed by the Uniform Law Commission and has been adopted by 13 states since 1989. It was adapted for Washington enactment by the Washington State Bar Association Real Property Probate and Trust Section.

There are certain assets that transfer at death outside of the probate process already, and this provides a mechanism to transfer land the same way. This process is simpler and carries lower cost than transferring property through probate. The beneficiary has no interest until the granting party's death, and recordation of a death certificate perfects title in the beneficiary. The property can still be transferred during the granting property owner's life.

There were a number of policy decisions made throughout the drafting process. For example, the normal timeframe in which beneficiaries may disclaim property is nine months, but this bill allows 18 months to disclaim. The extension of the disclaimer period is intended to allow additional time for beneficiaries to discover problems with the property, particularly environmental problems. Another example is the anti-lapse statute. This statute currently only applies to revocable living trusts and wills, and not to other kinds of transfer on death interests. Because transfer on death deeds are non-probate devices, the bill conforms with other non-probate transfers in not applying the anti-lapse statute.

(Opposed) None.

Persons Testifying: Representative Hansen, prime sponsor; Al Falk, Washington State Bar Association; and Anita Ramasastry, Washington Uniform Legislative Commission.

Persons Signed In To Testify But Not Testifying: None.