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**SUBSTITUTE HOUSE BILL 2539**

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**State of Washington**

**64th Legislature**

**2016 Regular Session**

**By** House Finance (originally sponsored by Representatives Nealey, Manweller, Hansen, Tharinger, Harris, Walsh, Magendanz, Wilson, Haler, Springer, Johnson, Muri, Hayes, and Dent)

READ FIRST TIME 01/29/16.

1 AN ACT Relating to the inheritance exemption for the real estate  
2 excise tax; amending RCW 82.45.197; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that state and local  
5 real estate excise taxes apply to the sale of real property unless  
6 one of several statutory exceptions apply. The legislature further  
7 finds that one such exception involves real property transferred as a  
8 result of a devise by will or inheritance. The legislature further  
9 finds that RCW 82.45.197 requires specific types of documentation to  
10 be provided to qualify for this inheritance exemption. The  
11 legislature further finds that in some cases, property passes from a  
12 decedent to a devisee or an heir with no written documentation or  
13 court record that satisfies the requirements of RCW 82.45.197. The  
14 legislature further finds that real estate excise tax does not apply  
15 to transfers of real property by operation of law, but that the  
16 process for documenting such transfers should be clarified. It is the  
17 legislature's intent to clarify that state and local real estate  
18 excise taxes do not apply when a devisee or an heir files a lack of  
19 probate affidavit where no additional documentation exists to  
20 substantiate that the devisee or heir is legally entitled to the  
21 property as a result of a will or inheritance.

1       **Sec. 2.** RCW 82.45.197 and 2014 c 58 s 25 are each amended to  
2 read as follows:

3       (1) In order to receive an exemption under RCW 82.45.010(3)(a)  
4 from the tax in this chapter on real property transferred as a result  
5 of a devise by will or inheritance (~~(under RCW 82.45.010(3)(a))~~), the  
6 following documentation must be provided to the county treasurer:

7       ~~((1))~~ (a) If the property is being transferred under the terms  
8 of a community property agreement, a copy of the recorded agreement  
9 and a certified copy of the death certificate;

10       ~~((2))~~ (b) If the property is being transferred under the terms  
11 of a trust instrument, a certified copy of the death certificate and  
12 a copy of that portion of the trust instrument showing the authority  
13 of the grantor;

14       ~~((3))~~ (c) If the property is being transferred under the terms  
15 of a probated will, a certified copy of the letters testamentary or  
16 in the case of intestate administration, a certified copy of the  
17 letters of administration showing that the grantor is the court-  
18 appointed executor, executrix, or administrator (~~(, and a certified~~  
19 ~~copy of the death certificate)~~);

20       ~~((4))~~ (d) In the case of joint tenants with right of  
21 survivorship and remainder interests, a certified copy of the death  
22 certificate (~~(is recorded to perfect title)~~);

23       ~~((5))~~ (e) If the property is being transferred pursuant to a  
24 court order, a certified copy of the court order requiring the  
25 transfer, and confirming that the grantor is required to do so under  
26 the terms of the order;

27       ~~((6))~~ (f) If the community property interest of the decedent is  
28 being transferred to a surviving spouse or surviving domestic partner  
29 absent the documentation set forth in (~~(subsections (1) through (5))~~)  
30 (a) through (e) of this (~~(section))~~ subsection, a certified copy of  
31 the death certificate and a signed lack of probate affidavit from the  
32 surviving spouse or surviving domestic partner affirming that he or  
33 she is the sole and rightful heir to the property; (~~(or~~

34 ~~(7))~~ (g) If the real property is transferred to one or more  
35 heirs by operation of law, or transferred under a will that has not  
36 been probated, but absent the documentation set forth in (a) through  
37 (e) of this subsection, a certified copy of the death certificate and  
38 a signed lack of probate affidavit affirming that the affiant or  
39 affiants are the sole and rightful heirs to the property;

1       (h) When real property is transferred as described in (g) of this  
2 subsection (1) and the decedent-transferor had also inherited the  
3 property from his or her spouse or domestic partner but never  
4 transferred title to the property into the decedent-transferor's  
5 name, the transferee or transferees must provide: (i) A certified  
6 copy of the death certificates for the decedent-transferor and the  
7 spouse or domestic partner from whom the decedent-transferor  
8 inherited the real property; and (ii) a lack of probate affidavit  
9 affirming that the affiant or affiants are the rightful heirs to the  
10 property; or

11       (i) If the property is being transferred pursuant to a transfer  
12 on death deed, a certified copy of the death certificate (~~is~~  
13 recorded to perfect title)).

14       (2) The documentation provided to the county treasurer under this  
15 section must also be recorded with the county auditor.

16       (3) The definitions in this subsection apply throughout this  
17 section unless the context clearly requires otherwise.

18       (a) "Heir" has the same meaning as provided in RCW 11.02.005;

19       (b) "Lack of probate affidavit" means a signed and notarized  
20 document declaring that the affiant or affiants are the rightful heir  
21 or heirs to the property and containing the following information:

22       (i) The names of the affiant or affiants;

23       (ii) The relationship of the affiant or affiants to the decedent;

24       (iii) The names of all other heirs of the decedent living at the  
25 time of the decedent's death;

26       (iv) A description of the real property;

27       (v) Whether the decedent left a will that includes a devise of  
28 real property; and

29       (vi) Any other information the department may require.

30       NEW SECTION. Sec. 3. RCW 82.32.805 and 82.32.808 do not apply  
31 to this act.

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