S-3922.1

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**SENATE BILL 6367**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Hewitt and Hobbs

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

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

NEW SECTION. **Sec.**  The legislature finds that state and local real estate excise taxes apply to the sale or other transfer of real property for consideration unless one of several statutory exceptions apply. The legislature further finds that one such exception involves real property transferred as a result of inheritance. The legislature further finds that RCW 82.45.197 requires specific types of documentation to be provided to qualify for this inheritance exemption. The legislature further finds that in some cases, property passes from a decedent to an heir with no written documentation or court record that satisfies the requirements of RCW 82.45.197. The legislature further finds that an heir will sometimes file a lack of probate affidavit at some later point thereby maintaining a recorded chain of title on the property. The legislature further finds that some counties are imposing state and local real estate excise taxes when a lack of probate affidavit is filed in these circumstances. It is the legislature's intent to clarify that state and local real estate excise taxes do not apply when an heir files a lack of probate affidavit where no additional documentation exists to substantiate that the heir is legally entitled to the property as a result of an inheritance.

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

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

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

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

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

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

((~~(5)~~)) (e) If the property is being transferred pursuant to a court order, ((~~a certified copy of the court order requiring the transfer, and confirming that the grantor is required to do so under the terms of the order~~)) information identifying the filing location and number of the court order, which must be specified on the real estate excise tax affidavit;

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

~~(7)~~)) (g) If the real property is transferred to one or more heirs, as defined in RCW 11.02.005, by operation of law but absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit affirming that the affiant is the sole and rightful heir to the property or that all of the decedent's heirs at law are identified in the affidavit; or

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

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

(3) For the purposes of this section, "lack of probate affidavit" means a signed and notarized document declaring that the affiant or affiants are the rightful heir or heirs to the property and containing the following information:

(a) The names of the affiant or affiants;

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

(c) A description of the real property; and

(d) Any other information the department may require.

NEW SECTION. **Sec.**  RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec.**  This act applies to decedents dying on or after January 1, 2017.

**--- END ---**