

SENATE BILL REPORT

2ESHB 1117

As of February 27, 2014

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: Passed House: 3/09/13, 98-0; 2/17/14, 97-0.

Committee Activity: Law & Justice: 2/26/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Prior to death, any person typically will transfer real property through the execution of a deed. 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

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instance, if it is held in joint tenancy, subject to a community property agreement, or held in a trust.

Summary of 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 non-testamentary 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 must occur at the transferor's death. The deed must be recorded prior to the transferor's death in the public records in the office of the county auditor where 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.

Section 23 relating to limitations on the power of attorneys-in-fact and agents with respect to a principal's TOD deeds takes effect only if the Washington Uniform Power of Attorney Act is not enacted during the 2014 regular legislative session.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill is a request of the Uniform Laws Commission. It streamlines the process for passing real property after death without the cost of probate. The bill will not affect the collection of taxes and the estate tax will still apply. It reduces costs. The title of real property will automatically vest in the beneficiary upon death of the transferor. It is not intended to cut off the state's ability to recover Medicaid payments from a recipient's estate.

Persons Testifying: PRO: Representative Hansen, prime sponsor; Al Falk, WA State Bar Assn.