

HOUSE BILL REPORT

HB 1078

As Passed Legislature

Title: An act relating to nontestamentary characterization of interests passing at death.

Brief Description: Regulating the passing of interests at death.

Sponsors: Representatives Appelwick, Padden, Ludwig, Orr and Johanson.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1993, DP;
Passed House, February 22, 1993, 96-0;
Amended by Senate;
Passed Legislature, April 19, 1993, 95-1.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 17 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Forner;
Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt;
Scott; Tate; and Wineberry.

Staff: Patricia Shelledy (786-7149).

Background: RCW 11.02.090 provides that a variety of instruments can effectively dispose of property at death without being signed with the formalities of a Washington will. For example, property may transfer through an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, joint tenancy, community property agreement, or other instruments. RCW 11.02.090 sets forth the criteria for a valid transfer of property through the instruments.

In 1988, the Washington Supreme Court interpreted RCW 11.02.090 as validating those arrangements regardless of whether they were otherwise valid, if abundant evidence existed that the property owner intended that ownership pass at death.

Apparently disputes have arisen over a variety of otherwise invalid lifetime estate planning arrangements. The Washington State Bar Association recommends that the law be clarified to state clearly that estate planning instruments of transfer must be otherwise valid before they are effective.

RCW 11.02.090 also contains a provision governing provisions purporting to create a joint tenancy in a safety deposit box. No change is recommended.

Special rules apply to small estates of decedents whose estates consist entirely of personal property. The successor in interest to the decedent's personal property which is possessed by others has a right to obtain that personal property from the entity or person in possession of it. For example, a bank may be in possession of money in the decedent's bank account. To obtain the personal property, the successor in interest must give the person or entity in possession an affidavit which states, among other things, that the property's value does not exceed the value of the homestead exemption. The current value of the homestead exemption is \$30,000. The person or entity who gives the successor the property is released from liability for the transfer unless the person or entity has actual knowledge that the affidavit is false. California has a similar procedure but the limit on the estate value is \$50,000 instead of \$30,000.

Summary of Bill: RCW 11.02.090 is repealed. A new statute replacing RCW 11.02.090 is adopted. The new statute provides that an otherwise effective written instrument is not testamentary solely because the instrument contains a provision for a nonprobate transfer of property at death. An instrument of transfer is effective if the instrument would be effective if it did not contain the provision for the nonprobate transfer at death.

The new provision explicitly provides that the only purpose of the section is to eliminate any requirement that instruments of transfer comply with formalities for executing wills. The provision does not make a written instrument effective as a contract, gift, conveyance, deed, or trust that would not otherwise be effective.

The provisions governing joint tenancy of safety deposit boxes is recodified in a separate section but is not amended.

For small estates which consist entirely of personal property, an affidavit procedure may be used for estates with a value not exceeding \$60,000. In addition, the link

between the value of the homestead exemption and the affidavit procedure is removed.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Many people make gifts other than by will. This statute was intended to eliminate the need for complying with the requirements of a will when making gifts in other instruments of transfer. The Washington case was incorrectly decided and has created uncertainty and lawsuits. The law should be rewritten to reflect the Uniform Probate Code's provision.

Testimony Against: None.

Witnesses: Michael D. Carrico, Washington State Bar Association Real Property, Probate, and Trust Section (pro).