

SENATE BILL REPORT

HB 1078

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 23, 1993

Brief Description: Regulating the passing of interests at death.

SPONSORS: Representatives Appelwick, Padden, Ludwig, Orr and Johanson

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, McCaslin, Nelson, Niemi, Rinehart, Roach, and Spanel.

Staff: Tom Fender (786-7414)

Hearing Dates: March 19, 1993; March 23, 1993

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.

SUMMARY:

RCW 11.02.090 is repealed and a new statute is adopted providing that an otherwise effective written instrument is not testamentary solely because the instrument contains a provision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.

Joint tenancy of safety deposit boxes is recodified in a separate section.

SUMMARY OF PROPOSED SENATE AMENDMENT:

The striking amendment provides that the affidavit probate alternative is facilitated by increasing the size of the eligible estate from \$25,000 to \$60,000.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

These changes will increase certainty and facilitate transfers of property on death.

TESTIMONY AGAINST: None

TESTIFIED: Mark Roberts, Michael Carrico, Washington State Bar Association (pro)