

FINAL BILL REPORT

2ESHB 1117

C 58 L 14
Synopsis as Enacted

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).

House Committee on Judiciary
Senate Committee on Law & Justice

Background:

A lifetime transfer of real property is typically accomplished through execution of a deed, which is an instrument that conveys legal title to property from one person to another. In order to be lawfully executed, a 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.

In most circumstances, the real property that a person holds at death 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 generally govern who will inherit the property; if not, the estate assets pass pursuant to intestate succession. 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. Real property can only pass outside of probate in limited circumstances, for instance, if it is held in joint tenancy, subject to a community property agreement, or held in a trust.

Summary:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

An individual may transfer real property to one or more beneficiaries effective at the transferor's death by executing and recording a transfer on death (TOD) deed. A transfer by TOD deed is a nontestamentary 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 is to occur at the transferor's death. The deed must be recorded prior to the transferor's death in the public records office of the county auditor in the county in which 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.

Votes on Final Passage:

House	98	0	
House	97	0	
Senate	49	0	(Senate amended)
House	91	7	(House concurred)

Effective: June 12, 2014
Contingent (Section 23)