

SENATE BILL REPORT

ESHB 1117

As of March 22, 2013

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.

Committee Activity: Law & Justice: 3/22/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Sharon Swanson (786-7447)

Background: A lifetime transfer of real property is typically accomplished through 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 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 must 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.

Section 23 relating to limitations on the power of attorneys-in-fact and agents with respect to a principal's transfer on death deeds takes effect only if the Washington Uniform Power of Attorney Act is not enacted during the 2013 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 provides an easy, cost-effective way for people to transfer real property. Currently, there exist many non-probate methods for the transferring of assets after death, although there is no such mechanism for real property. None of the issues that were raised as a concern about this bill were created because of this bill. Concerns about a person inheriting land that is environmentally damaged or contains toxins are larger issues that apply to existing means of transfers. If this bill were amended to leave open the ability to disclaim indefinitely, property would never vest. The current period of time for a person to disclaim under the bill is nine months, which is consistent with current

law and is tied to federal gift tax laws. A different period of time to disclaim, such as 18 months would create inconsistencies in the law. This legislation was developed by the Uniform Law Commission and has been adopted by 13 states since 1989. The states that adopted this legislation are not reporting any problems.

OTHER: The bill has several problems such as a lack of notice for a person who received land through the deed process created in the bill. The current provisions provide for a period of nine months for a person to disclaim the property. Is that nine months from the date of death? Is it nine months from the period that the person became aware that they inherited property? How does a person know, under the bill, that they received the property? Under current law, there is a process that allows for a person to receive notice of a gift and to accept the gift. This bill creates a process where there is no notice and no acceptance but there may be a liability. There are also unresolved issues related to the real estate excise tax that may not be paid under the provisions of the bill.

Persons Testifying: PRO: Representative Hansen, prime sponsor; Al Falk, WAState Bar Assn. Real Property, Probate & Trust Section.

OTHER: Watson Blair, citizen.