

ENROLLED ACT NO. 94, HOUSE OF REPRESENTATIVES

SIXTY-SECOND LEGISLATURE OF THE STATE OF WYOMING
2013 GENERAL SESSION

AN ACT relating to nontestamentary transfers of real property; providing for the transfer of real property by deed on death of grantor; creating definitions; specifying procedures, limitations and exclusions; providing for revocation of a transfer on death deed; modifying duties of county clerks accordingly; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 2-18-101 through 2-18-106 are created to read:

CHAPTER 18
NONTTESTAMENTARY TRANSFER ON DEATH OF REAL PROPERTY

2-18-101. Short title.

This chapter shall be known as and may be cited as the "Nontestamentary Transfer of Real Property on Death Act."

2-18-102. Definitions.

(a) As used in this chapter:

(i) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real property that is the subject of the transfer on death deed;

(ii) "Owner" means a person who executes a transfer on death deed as provided in W.S. 2-18-103;

(iii) "Successor grantee beneficiary" means the person to whom an owner grants an interest in the real property that is the subject of the transfer on death deed

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if the primary grantee beneficiary does not survive the owner;

(iv) "Transfer on death deed" means a deed authorized by W.S. 2-18-103.

2-18-103. Transfer on death deed.

(a) A deed that conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the deceased owner's interest to the grantee beneficiary designated by name in the transfer on death deed effective on the death of the owner, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime. The grantee beneficiary also takes title subject to any interest in the property of which the grantee beneficiary has either actual or constructive notice.

(b) A transfer on death deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.

(c) A transfer on death deed may designate a successor grantee beneficiary. If the transfer on death deed designates a successor grantee beneficiary, the deed must state the condition on which the interest of the successor grantee beneficiary would vest.

(d) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys

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an interest in the real property to a grantee beneficiary designated by all of the then surviving owners and that expressly states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a transfer on death deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship, the transfer on death deed is valid if the last surviving owner is one of the persons who executes the transfer on death deed. If the last surviving owner did not execute the transfer on death deed, the transfer lapses and the deed is void. An estate in joint tenancy with right of survivorship is not affected by the execution of a transfer on death deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship prevail over a grantee beneficiary named in a transfer on death deed.

(e) A transfer on death deed is valid only if the deed is executed and recorded, as provided by law, in the office of the county clerk in the county in which the real property is situated, before the death of the owner or the last surviving owner. A transfer on death deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

(f) A transfer on death deed may be revoked at any time by the owner or, if there is more than one (1) owner, by any of the owners who executed the transfer on death deed. To be effective, the revocation must be executed and recorded, as provided by law, in the office of the county clerk in the county in which the real property is situated, before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship and if the revocation is not executed by

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all the owners who executed the transfer on death deed, the revocation is not effective unless executed by the last surviving owner.

(g) If an individual who is a recipient of medical assistance for which it would be permissible for the department of health to file a claim pursuant to W.S. 42-4-206 or to assert a lien pursuant to W.S. 42-4-207 conveys an interest in real property by means of a transfer on death deed, the department of health may assert a lien against the property that is the subject of the transfer on death deed for the amount which would have been recoverable against the owner's estate pursuant to W.S. 42-4-206 and may file a lien against the property pursuant to W.S. 42-4-207.

(h) If an owner executes and records more than one (1) transfer on death deed concerning the same real property, the last transfer on death deed that is recorded before the owner's death is the effective transfer on death deed.

(j) This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

(k) The signature, consent, or agreement of, or notice to, a grantee beneficiary of a transfer on death deed is not required for any purpose during the lifetime of the owner.

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(m) A transfer on death deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

(n) Proof of the death of the owner or a grantee beneficiary shall be established by affidavit as provided under W.S. 34-11-101. The affidavit shall be recorded in the office of the county clerk of the county in which the real property is situated. No affidavit shall be recorded unless a certificate of clearance, issued by the Wyoming department of health, certifies that all medical assistance claims have either been satisfied or do not exist. The certificate of clearance shall be simultaneously submitted with the affidavit for filing.

(o) Title to the interest in real property transferred by a transfer on death deed shall vest in the designated grantee beneficiary only on the death of the owner.

2-18-104. Form of transfer on death deed.

A transfer on death deed is sufficient if it complies with other applicable law and if it is in substantially the following form:

Transfer on Death Deed

I (we) (owner) hereby convey to (grantee beneficiary) effective on my (our) death the following described real property:

(Legal Description)

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If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

Become void.

Become part of the estate of the grantee beneficiary.

Dated this day of year).

.....
(Signature of grantor(s))

(Acknowledgment)

2-18-105. Form for revoking a transfer on death deed.

An instrument revoking a transfer on death deed is sufficient if it complies with other applicable law and is in substantially the following form:

Revocation of Transfer on Death Deed

The undersigned hereby revokes the transfer on death deed recorded on (date), in deed book on page, in the office of the clerk of county, Wyoming, concerning the following described real property:

(Legal Description)

Dated this day of (year).

.....
(Signature of grantor(s))

(Acknowledgment)

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2-18-106. Disclaimer.

A grantee beneficiary may refuse to accept all or any part of the real property interest conveyed by a transfer on death deed. If a grantee beneficiary refuses to accept or disclaims any real property interest, the grantee beneficiary shall have no liability under this chapter by reason of being designated as grantee beneficiary.

Section 2. W.S. 34-1-119 and 42-4-207 by creating a new subsection (k) are amended to read:

34-1-119. Duties of county clerk generally.

(a) The county clerk of each county within this state shall receive and record at length all deeds, mortgages, conveyances, patents, certificates and instruments left with him for that purpose, and he shall endorse on every such instrument the day and hour on which it was filed for record. The county clerk shall not record any document until the address of the grantee, mortgagee or assignee of the mortgagee is furnished to the county clerk, but this requirement shall not affect the validity of the recording of any instrument. Only instruments which are the originally signed documents or properly certified or authenticated copies thereof may be properly recorded. A document is properly certified if in compliance with Rule 902 of the Wyoming Rules of Evidence or other applicable rule or statute.

(b) Whenever a transfer on death deed is filed with the county clerk pursuant to W.S. 2-18-103, the county clerk shall furnish the following information to the Wyoming department of health, division of healthcare financing within fourteen (14) days of recording the deed:

(i) The name of the grantor;

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(ii) The name of the grantee;

(iii) The legal description of the property being transferred.

42-4-207. Recovery of incorrect payments; recovery of correct payments; liens.

(k) The department may file a lien upon real property pursuant to W.S. 2-18-103(g) upon the death of the grantor. The department may file such lien regardless of whether the grantee applied for a certificate of clearance pursuant to W.S. 2-18-103(n) or filed an affidavit to establish the death of the grantor pursuant to W.S. 34-11-101.

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Section 3. This act is effective July 1, 2013.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk