2005 DRAFTING REQUEST

Bill

Received: **11/17/2004**

Received By: **mlief**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **sarah**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Real Estate - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nonprobate transfer of real property at death

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mlief 11/17/2004	wjackson 11/24/2004		_____ _____			S&L
/1			pgreensl 11/29/2004	_____ _____	lemery 11/29/2004	mbarman 07/01/2005	

FE Sent For:

<END>

At Intro.

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/?	mlief	/1 wlj 11/24	11/29 PS	11/29 PS/sello			

FE Sent For:

<END>

Lief, Madelon

From: Briganti, Sarah
Sent: Wednesday, November 17, 2004 11:23 AM
To: Lief, Madelon
Subject: Drafting Request

Lonnie,

Senator Risser would like to have 2003 LRB 1498/1 redrafted for introduction in the 2005 Session. LRB 1498/1 relates to nonprobate transfers of real property upon death.

Thank you.

Sarah Briganti
Legislative Assistant
Office of Senator Fred A. Risser
Wisconsin State Senate
608-266-1627

2003 BILL

Lps: Please proof amended stats. w/folio

Regen

1 AN ACT ***to renumber*** 705.20; ***to amend*** subchapter II (title) of chapter 705
2 [precedes 705.10], 863.27, 865.201 (1), 867.046 (1m), 867.046 (2) (intro.),
3 867.046 (2) (j) and 867.046 (2m); and ***to create*** 77.25 (10m), 77.25 (11m),
4 705.15, 706.001 (2) (bm) and 867.046 (1) (c) of the statutes; **relating to:**
5 nonprobate transfer of real property at death.

Analysis by the Legislative Reference Bureau

Ownership of real property may be transferred in a number of ways to another person at the death of the owner of the property. Property that is held jointly or by spouses as survivorship marital property passes automatically to the survivor at the death of the other person, although current law contains a procedure whereby the survivor may have his or her interest in the property confirmed and the interest of the decedent terminated for purposes of keeping the real property records updated. In a summary probate procedure, real property may be transferred to an heir or guardian of a decedent who left solely owned property of not more than $20,000 in value by the affidavit of the heir or guardian, which is then recorded in the office of the register of deeds. In addition to other summary probate procedures, which may be used if an estate does not exceed $50,000 in value, real property is commonly transferred in probate, either formal or informal, as part of the decedent's estate, either by will or according to the laws of intestate succession.

This bill provides a new mechanism for the transfer of real property at the death of the owner of the property, if the property is solely owned or jointly owned, including

owned by spouses as survivorship marital property. Under the bill, a transfer on death (TOD) beneficiary may be designated on a deed that evidences the ownership interest of the property's owner. Thus, a TOD beneficiary may be designated on the original deed to the property owner or, at any time after the property is deeded to the owner, the owner may execute a deed of the property to himself or herself and designate, on the deed, a TOD beneficiary. For a designation to be effective, the deed must be recorded. To change beneficiaries, or to eliminate a beneficiary designation altogether, the property owner must execute and record another deed that changes the TOD beneficiary designation. Such later recording revokes any designation made in a previously recorded deed. A TOD beneficiary has no interest in the property during the life of the property owner or owners.

At the death of the sole owner of the property, or at the death of the last to die of joint owners, the interest in the property passes to the TOD beneficiary, subject to any liens or encumbrances. The beneficiary may have his or her interest in the property confirmed outside of probate, in the same manner as a surviving joint tenant may have his or her interest confirmed at the death of the other joint tenant, by recording in the office of the register of deeds a certificate issued by a judge upon the petition of the beneficiary that sets forth the fact of the death of the property owner and the interest of the beneficiary or by making application directly to the register of deeds and providing the necessary information for recording.

Current law has similar provisions for transferring other types of property outside of probate at the death of the property owner. Pay on death (POD) accounts, which may be any kind of deposit account at a financial institution, allow for the designation of a beneficiary to whom the account transfers at the death of the account owner, and transfer on death security registration allows for the designation of a beneficiary to whom a security transfers at the death of the security owner.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.25 (10m) of the statutes is created to read:

2 77.25 **(10m)** Solely to designate a TOD beneficiary under s. 705.15.

3 **SECTION 2.** 77.25 (11m) of the statutes is created to read:

4 77.25 **(11m)** By nonprobate transfer on death under s. 705.15.

5 **SECTION 3.** Subchapter II (title) of chapter 705 [precedes 705.10] of the statutes

6 is amended to read:

7 **CHAPTER 705**

SUBCHAPTER II

NONPROBATE TRANSFERS AT DEATH;

NONPROBATE TRANSFER OF REAL

PROPERTY

SECTION 4. 705.15 of the statutes is created to read:

705.15 Nonprobate transfer of real property on death. (1) An interest in real property that is solely owned, owned by spouses as survivorship marital property, or owned by 2 or more persons as joint tenants may be transferred without probate to a designated TOD beneficiary as provided in this section on the death of the sole owner or the last to die of the multiple owners.

(2) A TOD beneficiary may be designated on a deed that evidences ownership of the property interest in the owner or owners by including the words "transfer on death" or "pay on death," or the abbreviation "TOD" or "POD," after the name of the owner or owners of the property and before the name of the beneficiary or beneficiaries. The designation may be included on the original deed that passes the property interest to the owner or owners or may be made at a later time by the sole owner or all then surviving owners by executing and recording another deed that designates a TOD beneficiary. A TOD beneficiary designation is not effective unless the deed on which the designation is made is recorded.

(3) The designation of a TOD beneficiary on a deed does not affect ownership of the property until the owner's death. The designation may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the beneficiary, by executing and recording another deed that designates a different beneficiary or no beneficiary. The recording of a deed that designates a TOD

beneficiary or no beneficiary revokes any designation made in a previously recorded deed relating to the same property interest.

(4) On the death of the sole owner or the last to die of multiple owners, ownership of the interest in the real property passes, subject to any lien or other encumbrance, to the designated TOD beneficiary or beneficiaries who survive all owners and to any predeceased beneficiary's issue who would take under s. 854.06 (3). If no beneficiary or predeceased beneficiary's issue who would take under s. 854.06 (3) survives the death of all owners, the interest in the real property passes to the estate of the deceased sole owner or the estate of the last to die of the multiple owners.

(5) A TOD beneficiary's interest in the property on the death of the sole owner or the last to die of multiple owners may be confirmed as provided in s. 863.27, 865.201, or 867.046.

(6) Chapter 854 applies to transfers on death under this section.

SECTION 5. 705.20 of the statutes is renumbered 705.10.

SECTION 6. 706.001 (2) (bm) of the statutes is created to read:

706.001 **(2)** (bm) By nonprobate transfer on death under s. 705.15; or

SECTION 7. 863.27 of the statutes is amended to read:

863.27 Contents of final judgment. In the final judgment the court shall approve the final account, designate the persons to whom assignment and distribution ~~is~~ <u>are</u> being made, and assign to each of them the property or proportions or parts of the estate or the amounts to which each is entitled. The findings of fact which support the judgment shall include a determination of the heirs of the decedent; facts showing that all jurisdictional requirements have been met; the date of death of the decedent and the decedent's testacy or intestacy; facts relating to the

payment of state death tax, state income tax, and claims and charges against the estate. If immediately before death the decedent had an estate for life or an interest as a joint tenant in any property in regard to which a certificate of termination has not been issued under s. 867.04 or an interest in marital property for which a certificate has not been issued under s. 865.201 or 867.046, the findings of fact which support the judgment shall set forth the termination of the life estate, the right of survivorship of any joint tenant, or the decedent's interest in marital property and, upon the petition of the decedent's spouse, the confirmation of the one–half interest held by the surviving spouse in marital property immediately before the death of the decedent spouse. In addition, the findings of fact shall, upon petition of a designated person, trust, or other entity under s. 766.58 (3) (f) or of a TOD beneficiary under s. 705.15, set forth the confirmation, of an interest in property passing by nontestamentary disposition under s. 705.15 or 766.58 (3) (f). Every tract of real property in which an interest is assigned or terminated shall be specifically described. If a fund is withheld from distribution for the payment of contingent claims, for meeting possible tax liability, or for any other reasonable purpose, the judgment shall provide for the distribution of the fund if all or a part of it is not needed.

SECTION 8. 865.201 (1) of the statutes is amended to read:

865.201 **(1)** As an alternative to s. 867.046 the personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest in marital property or in which any designated person, trust, or other entity has an interest passing by nontestamentary disposition under s. 705.15 or 766.58 (3) (f), including the recording data, if any, of the document

creating the interest and any right of survivorship. Valuations need not be set forth in the statement.

SECTION 9. 867.046 (1) (c) of the statutes is created to read:

867.046 **(1)** (c) "TOD beneficiary" means a person designated on a deed as a transfer on death beneficiary under s. 705.15.

SECTION 10. 867.046 (1m) of the statutes is amended to read:

867.046 **(1m)** UPON DEATH; GENERALLY. If a domiciliary of this state dies who immediately prior to death had an interest in property in this state, including an interest in survivorship marital property, or if a person not domiciled in this state dies having an interest in property in this state, including an interest in survivorship marital property, upon petition of the decedent's spouse or upon petition of a beneficiary of a marital property agreement <u>or a TOD beneficiary</u> to the court of the county of domicile of the decedent or, if the decedent was not domiciled in this state, of any county where the property is situated, the court shall issue a certificate under the seal of the court. The certificate shall set forth the fact of the death of the decedent, the termination or transfer of the decedent's interest in the property, the interest of the petitioner in the property, and any other facts essential to a determination of the rights of persons interested. The certificate is prima facie evidence of the facts recited, and if the certificate relates to an interest in real property or to a debt secured by an interest in real property, the petitioner shall record a certified copy or duplicate original of the certificate in the office of the register of deeds in each county in this state in which the real property is located.

SECTION 11. 867.046 (2) (intro.) of the statutes is amended to read:

867.046 **(2)** UPON DEATH; INTEREST IN PROPERTY. (intro.) As an alternative to sub. (1m), upon the death of any person having an interest in any real property, a vendor's

interest in a land contract, an interest in a savings or checking account, an interest in a security, or a mortgagee's interest in a mortgage, including an interest in survivorship marital property, the decedent's spouse or a beneficiary of a marital property agreement or TOD beneficiary may obtain evidence of the termination of that interest of the decedent and confirmation of the petitioner's interest in the property by providing to the register of deeds of the county in which the property is located the certified death certificate for the decedent and, on applications supplied by the register of deeds for that purpose, all of the following information:

SECTION 12. 867.046 (2) (j) of the statutes is amended to read:

867.046 **(2)** (j) In the case of a joint tenancy ~~or~~, life estate, or TOD beneficiary designation, a copy of the deed that creates the interest.

SECTION 13. 867.046 (2m) of the statutes is amended to read:

867.046 **(2m)** THIRD–PARTY CONFIRMATION. If the personal representative~~,~~ or decedent's spouse or a beneficiary of a marital property agreement or TOD beneficiary does not commence proceedings to confirm an interest under this section or s. 863.27 or 865.201 within 90 days after the decedent's death, any interested person may petition or apply under this section.

(END)

Barman, Mike

From: Briganti, Sarah
Sent: Friday, July 01, 2005 11:50 AM
To: LRB.Legal
Subject: Draft review: LRB 05-0888/1 Topic: Nonprobate transfer of real property at death

It has been requested by <Briganti, Sarah> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-0888/1 Topic: Nonprobate transfer of real property at death