



State of Wisconsin 2017 - 2018 LEGISLATURE

LRB-2804/1
FFK:amn

2017 ASSEMBLY BILL 607

October 27, 2017 - Introduced by Representatives BALLWEG, SUMMERFIELD, KATSMA, HORLACHER, MURPHY and KULP, cosponsored by Senators LASEE and OLSEN. Referred to Committee on Housing and Real Estate.

1 AN ACT **to renumber and amend** 705.15 (1), 705.15 (2), 708.15 (3) (f) and 867.03
2 (2m) (a); **to amend** 705.15 (3), 705.15 (4), 708.15 (3) (d) (intro.) and 867.03 (1g)
3 (intro.); and **to create** 705.15 (1b), 705.15 (1m) (a) to (e), 705.15 (2) (a) 2., 3. and
4 4., 705.15 (7), 705.15 (8), 708.15 (3) (f) 2., 867.03 (1p), 867.03 (2m) (a) 1. and 2.
5 and 867.03 (2m) (c) of the statutes; **relating to:** nonprobate transfers of real
6 estate, the transfer by affidavit procedure for small estates, and the payoff
7 amount in a mortgage payoff statement.

Analysis by the Legislative Reference Bureau

NONPROBATE TRANSFERS OF REAL PROPERTY ON DEATH

Under current law, a person may transfer an interest in real property that is solely owned, owned by spouses as survivorship marital property, or owned by two or more persons as joint tenants to a designated beneficiary without probate by designating a beneficiary on a transfer of death (TOD) deed. A beneficiary designation on a TOD deed does not affect ownership of the interest in real property until the owner's death.

Under the bill, a person may designate a TOD beneficiary in any document, not solely in a deed. The bill also provides that the interests in real property that may be transferred using a TOD document include a fractional interest in real property owned as tenants in common and an interest in real property owned by a spouse as

ASSEMBLY BILL 607

marital property without a right of survivorship. Under the bill, a TOD beneficiary designation is not effective unless the TOD document and any fees required to record the document are submitted to the register of deeds office of the county in which the real property is located prior to the death of the owner.

Lastly, the bill creates a statute of limitations for claims to recover real property transferred to a beneficiary using a TOD document. Under the bill, such a claim is barred unless, within 120 days after the death of the sole owner or the last to die of the multiple owners who executed the TOD document, a complaint is filed and a lis pendens is filed or recorded in each county where any part of the real property is located.

TRANSFER BY AFFIDAVIT PROCEDURE FOR SMALL ESTATES

Under current law, an heir, trustee, or person who was a guardian of a decedent at the time of the decedent's death may use a transfer by affidavit procedure to settle a decedent's estate if the value of the decedent's property does not exceed \$50,000. This bill specifies that the transfer by affidavit procedure may be utilized only if the gross value of the decedent's estate does not exceed \$50,000. If the transfer by affidavit procedure is used to transfer an interest in or lien on real property, the bill requires the person making the affidavit to provide notice to the decedent's heirs at least 30 days before recording the affidavit in the office of the register of deeds in each county where the real property is located. Under current law and under the bill, the recording of the affidavit constitutes the transfer of real property to the affiant under the transfer by affidavit procedure. Finally, under the bill, if an interest in real property transferred using the transfer by affidavit procedure is subsequently acquired by a purchaser or lender in good faith, for value and without actual notice that the transfer was improper, the purchaser or lender takes title to the real property free of any claims of the decedent's estate, regardless of whether the transfer was proper.

MORTGAGE PAYOFF STATEMENTS

Under current law, a secured creditor must provide a payoff statement to certain persons, upon request. Under current law, a secured creditor may not qualify a payoff amount or state that the payoff amount is subject to change before the payoff date. Under the bill, a secured creditor may qualify a payoff amount, state that the payoff amount is not practicably determinable, or state that the payoff amount is subject to change before the payoff date if the security instrument secures nonresidential real property and the payoff statement provides instructions for how to obtain an updated payoff amount at no charge.

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

- 1 **SECTION 1.** 705.15 (1) of the statutes is renumbered 705.15 (1m) (intro.) and
- 2 amended to read:

ASSEMBLY BILL 607

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

6 **SECTION 2.** 705.15 (1b) of the statutes is created to read:

7 **705.15 (1b)** In this section:

8 (a) “Person” means an individual, corporation, business trust, estate, trust,
9 partnership, limited liability company, association, joint venture, government,
10 government subdivision, agency or instrumentality, public corporation, or any other
11 legal or commercial entity.

12 (b) “Sole owner” means the owner of an interest in real property described in
13 sub. (1m) (a) to (c).

14 (c) “TOD beneficiary” means a person designated as a beneficiary in a
15 document that complies with sub. (2) (a).

16 **SECTION 3.** 705.15 (1m) (a) to (e) of the statutes are created to read:

17 **705.15 (1m) (a)** An interest in real property that is owned by one individual and
18 is not concurrently owned by any other person.

19 (b) A fractional interest in real property that is owned by an individual as a
20 tenant in common.

21 (c) An interest in real property that is owned by a spouse as marital property.
22 This paragraph does not include an interest in real property owned as survivorship
23 marital property.

24 (d) An interest in real property owned by spouses as survivorship marital
25 property.

1 (e) An interest in real property owned by 2 or more individuals as joint tenants.

2 **SECTION 4.** 705.15 (2) of the statutes is renumbered 705.15 (2) (a) (intro.) and
3 amended to read:

4 705.15 (2) (a) (intro.) A TOD beneficiary may be designated on a deed document
5 that evidences ownership of the property interest in includes all of the following:

6 1. The name of the owner or owners of the interest in real property that will be
7 transferred.

8 (b) The designation of a TOD beneficiary may be made by including use of the
9 words “transfer on death” or “pay on death,” or the abbreviation “TOD” or “POD,”
10 after the name of the owner or owners of the property and before the name of the TOD
11 beneficiary or beneficiaries. The owner or owners may designate one or more persons
12 as a primary TOD beneficiary and may designate one or more persons as a contingent
13 TOD beneficiary if a primary TOD beneficiary does not survive the sole owner or the
14 last to die of multiple owners. The designation may be included on the original deed
15 document that passes the property interest to the owner or owners or may be made
16 at a later time by the sole owner or all then surviving owners by executing and
17 recording another deed document that designates a TOD beneficiary.

18 (c) A TOD beneficiary designation is not effective unless the deed document on
19 which the designation is made is recorded, and any fees required to record the
20 document, are submitted for recording to the register of deeds office of the county in
21 which the real property is located before the death of the sole owner or the last to die
22 of multiple owners.

23 **SECTION 5.** 705.15 (2) (a) 2., 3. and 4. of the statutes are created to read:

24 705.15 (2) (a) 2. The name of the designated TOD beneficiary.

25 3. That the transfer is effective only upon the death of the owner or owners.

ASSEMBLY BILL 607

1 4. If the interest that will be transferred is an interest in real property owned
2 by a spouse as marital property, the signatures of both spouses who have an interest
3 in the marital property.

4 **SECTION 6.** 705.15 (3) of the statutes is amended to read:

5 705.15 (3) The designation of a TOD beneficiary on a deed document does not
6 affect ownership of the property until the owner's death of the sole owner or the last
7 to die of multiple owners regardless of whether the document provides otherwise.
8 The designation may be canceled or changed at any time by the sole owner or all then
9 surviving owners, without the consent of the TOD beneficiary, by executing and
10 recording another deed document that designates a different TOD beneficiary or no
11 beneficiary. The recording of a deed document that designates a TOD beneficiary or no
12 beneficiary revokes any designation made in a previously recorded deed document
13 relating to the same property interest.

14 **SECTION 7.** 705.15 (4) of the statutes is amended to read:

15 705.15 (4) On the death of the sole owner or the last to die of multiple owners,
16 ownership of the interest in the real property passes, subject to any lien or other
17 encumbrance against the real property, to the designated TOD beneficiary or
18 beneficiaries who survive all owners and to any predeceased beneficiary's issue who
19 would take under s. 854.06 (3). If no TOD beneficiary or predeceased TOD
20 beneficiary's issue who would take under s. 854.06 (3) survives the death of all
21 owners, the interest in the real property passes to the estate of the deceased sole
22 owner or the estate of the last to die of the multiple owners.

23 **SECTION 8.** 705.15 (7) of the statutes is created to read:

ASSEMBLY BILL 607

1 705.15 (7) The capacity required to designate a TOD beneficiary or to revoke
2 a designation of a TOD beneficiary is the same as the capacity to make or revoke a
3 will under s. 853.01.

4 **SECTION 9.** 705.15 (8) of the statutes is created to read:

5 705.15 (8) Unless previously adjudicated in a formal testacy proceeding or
6 otherwise barred, the claim of any claimant to recover real property transferred to
7 a TOD beneficiary under this section is barred unless, by no later than 120 days after
8 the death of the sole owner or the last to die of multiple owners, a complaint is filed
9 in an action in which the relief demanded may confirm or change interests in the real
10 property transferred under this section and a lis pendens is filed or recorded in each
11 county where any part of the real property is located.

12 **SECTION 10.** 708.15 (3) (d) (intro.) of the statutes is amended to read:

13 708.15 (3) (d) (intro.) ~~A~~ Except as provided in par. (f) 2., a payoff statement
14 must shall contain all of the following:

15 **SECTION 11.** 708.15 (3) (f) of the statutes is renumbered 708.15 (3) (f) 1. and
16 amended to read:

17 708.15 (3) (f) 1. ~~A~~ If the security instrument secures an interest in residential
18 real property, a secured creditor may not qualify a payoff amount or state that the
19 payoff amount is subject to change before the payoff date.

20 **SECTION 12.** 708.15 (3) (f) 2. of the statutes is created to read:

21 708.15 (3) (f) 2. A secured creditor may qualify a payoff amount or state that
22 the payoff amount is not practicably determinable or is subject to change before the
23 payoff date if all of the following apply:

24 a. The security instrument secures an interest in real property that is not
25 residential real property.

1 b. The payoff statement provides instructions for how the entitled person or an
2 authorized agent of the entitled person may obtain an updated payoff amount at no
3 charge during the secured creditor's normal business hours on the payoff date or the
4 immediately preceding business day.

5 **SECTION 13.** 867.03 (1g) (intro.) of the statutes is amended to read:

6 **867.03 (1g) GENERALLY.** (intro.) When Subject to sub. (1p), when a decedent
7 leaves property subject to administration in this state which that does not exceed
8 \$50,000 in gross value, any heir of the decedent, trustee of a revocable trust created
9 by the decedent, or person who was guardian of the decedent at the time of the
10 decedent's death may collect any money due the decedent, receive the property of the
11 decedent, and have any evidence of interest, obligation to, or right of the decedent
12 transferred to the affiant if the heir, trustee, or guardian provides to the person owing
13 the money, having custody of the property, or acting as registrar or transfer agent of
14 the evidences of interest, obligation to, or right, or, if the property is an interest in
15 or lien on real property, provides to the register of deeds preliminary to the recording
16 required under sub. (2m), proof of prior mailed notice under sub. (1m) if applicable
17 and an affidavit in duplicate showing all of the following:

18 **SECTION 14.** 867.03 (1p) of the statutes is created to read:

19 **867.03 (1p) REAL PROPERTY; NOTICE.** If the affidavit under sub. (1g) describes
20 an interest in or lien on real property, at least 30 days before submitting the affidavit
21 to an office of register of deeds under sub. (2m), the heir, trustee, or person who was
22 a guardian of the decedent at the time of the decedent's death shall provide to the
23 decedent's heirs a copy of the affidavit under sub. (1g) and notice that the heir,
24 trustee, or person who was a guardian intends to record the affidavit under sub. (1g)
25 in the office of the register of deeds in each county in this state in which the real

ASSEMBLY BILL 607**SECTION 14**

1 property is located. The heir, trustee, or person who was a guardian of the decedent
2 at the time of the decedent's death shall give the notice required under this
3 paragraph by 1st class mail or by personal service.

4 **SECTION 15.** 867.03 (2m) (a) of the statutes is renumbered 867.03 (2m) (a)
5 (intro.) and amended to read:

6 **867.03 (2m) (a) (intro.)** If an affidavit under sub. (1g) describes an interest in
7 or lien on real property ~~a certified copy or duplicate original of the affidavit shall be~~
8 ~~recorded, the heir, trustee, or person who was a guardian of the decedent at the time~~
9 ~~of the decedent's death shall submit for recording~~ in the office of the register of deeds
10 in each county in this state in which the real property is located. ~~a certified copy or~~
11 ~~duplicate original of the affidavit under sub. (1g) with all of the following attached:~~

12 **SECTION 16.** 867.03 (2m) (a) 1. and 2. of the statutes are created to read:

13 **867.03 (2m) (a) 1.** Proof of providing notice under sub. (1p), as described in s.
14 879.07 (1) or (2), at least 30 days before submitting the affidavit under sub. (1g) to
15 the office of the register of deeds.

16 **2.** Proof of prior mailed notice under sub. (1m), if applicable.

17 **SECTION 17.** 867.03 (2m) (c) of the statutes is created to read:

18 **867.03 (2m) (c)** If an interest in real property transferred under this section is
19 acquired by a purchaser or lender in good faith, for value and without actual notice
20 that the transfer was improper, the purchaser or lender takes title free of any claims
21 of the decedent's estate and incurs no personal liability to the estate, whether or not
22 the transfer was proper. Purchasers and lenders have no duty to inquire whether
23 a transfer was proper.