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41ST ASSEMBLY DISTRICT

**AB 607: Non-probate Transfers of Real Estate, the Transfer by Affidavit Procedure for Small Estates, and the Payoff Amount in a Mortgage Payoff Statement.
Testimony of State Representative Joan Ballweg
Assembly Committee on Housing and Real Estate
January 3rd, 2018**

Thank you, Chairmen Jagler, and members of the Assembly Housing and Real Estate Committee for holding this public hearing on AB 607.

AB 607 makes a minor fix to how creditors can qualify mortgage payoff statements, and it makes changes to the transfer-on-death deed process and transfer by affidavit process, which are two types of non-probate transactions that individuals use for estate planning to transfer property to beneficiaries. A non-probate transfer of property is when a deceased person's property is distributed by means other than probate, which is the court-supervised process.

Under current law, an individual can transfer real property to a beneficiary by designating them on a transfer-on-death (TOD) deed without going through probate. The bill's main change to the TOD deed process is the creation of a 120 day statute of limitations under which another individual can file a complaint and lis pendens (i.e. a pending legal action) to claim the property. It is common for other types of property transfer to include a statute of limitations, however one does not exist for the TOD process. The purpose of the statute of limitations is to ensure an individual's right to claim property if they have a legitimate claim or believe a transfer was fraudulent; however, it makes the property transfer process more uncertain if the ability of an individual to lodge a complaint is indefinite.

AB 607 also cleans up who may designate TOD beneficiaries, what documents can be used to designate a TOD beneficiary, and the types of property that can be transferred under this process.

AB 607 also makes changes to the transfer by affidavit process, which can be used to transfer small estates under \$50,000 of value. It is common to use this process for recreational land, like a family's hunting land, or for properties with less value, like a manufactured home.

Regarding the transfer by affidavit process, the bill creates a notification process that must be used to notify the decedent's heirs that the transfer of affidavit process is being used and a 30-day waiting period before the property transfer can be finalized. This ensures a fair process so heirs are aware and have the opportunity to claim the property. The other change creates a provision to ensure that if property that is transferred by affidavit is acquired by a third-party purchaser in good faith, that the third-party purchaser takes title without any liability if the original transfer was done incorrectly.

It is necessary to provide certainty in real estate transactions and transparency so that all stakeholders are treated fairly. I believe the changes in AB 607 will accomplish both of these goals. The Wisconsin Land Title Association, State Bar of Wisconsin, and the Wisconsin Register of Deeds Association support this bill. Thank you for your consideration of AB 607. I am happy to answer any questions that you may have.



ROB SUMMERFIELD

STATE REPRESENTATIVE • 67th ASSEMBLY DISTRICT

January 3, 2018

Representative Jagler, Chair
Representative Allen, Vice-Chair
Members of the Assembly Committee on Housing & Real Estate

Testimony on 2017 Assembly Bill 607

Relating to: nonprobate transfers of real estate, the transfer by affidavit procedure for small estates, and the payoff amount in a mortgage payoff statement

Dear Chairman Jagler, Vice-Chairman Allen, and Committee Members:

Thank you for providing me with the opportunity to provide written testimony at today's Assembly Committee on Housing and Real Estate's public hearing on 2017 Assembly Bill 607 relating to nonprobate transfers of real estate, the transfer by affidavit procedure for small estates, and the payoff amount in a mortgage payoff statement. I appreciate your time and consideration of this important legislation.

AB 607 makes a series of technical changes and updates to Wisconsin's current real property system. Firstly, the bill creates more flexibility for the transferring of real property upon death by allowing designated beneficiaries to be named in any document; not solely a transfer of death (TOD) deed alone. However, all and all regulations and fees regarding their document of choice must be met and paid for; ensuring the legality of the substitute document. Secondly, Wisconsin's transfer by affidavit procedure is modified so it may be used when the gross value of the decedent's estate does not exceed \$50,000. Should the procedure be utilized for real property, the decedent's heirs must be notified (new), and the recording of the affidavit with the county's register of deeds constitutes the transfer of the real property (current law – remains unchanged). In the case of purchasers or lenders who acquire improperly transferred real property, if they have done so in good faith, they will be held harmless. Finally, under current law, secured creditors (for example, the bank that holds someone's mortgage), must provide payoff statements (in the case of a mortgage, a statement showing the remaining terms on a mortgage), in certain scenarios. However, they cannot qualify the amount or state it is subject to change before the payoff date – creating a difficult situation for the creditor. This legislation allows the secured creditor more options by allowing them to: qualify a payment amount, state the payoff amount cannot be determined, or state that the amount is subject to change under certain conditions. This also serves to give borrowers more concise information in their payoff statement(s).

Altogether, AB 607 is a good bill that streamlines the real property and title process(es) by updating burdensome procedures and providing increased flexibility; while also guaranteeing that this flexibility is legally enforceable and solidified in law. I appreciate and applaud both Representative Ballweg's and Senator Lasee's hard work and leadership on this bill, and will allow them to get into the details more. Thank you again for reading, and I implore you to seriously consider the passage of this commonsense legislation.

REAL PROPERTY, PROBATE & TRUST LAW SECTION

To: Assembly Committee on Housing and Real Estate

Date: January 3, 2018

Re: Support of AB 607 – Relating to: nonprobate transfers of real estate, the transfer by affidavit procedure for small estates, and the payoff amount in a mortgage payoff statement.

The Real Property Probate Trust (RPPT) of the State Bar of Wisconsin supports AB 607 and would like to thank Representative Ballweg for sponsoring the legislation. AB 607 will create more certainty when determining ownership rights for real property transferred utilizing a transfer on death (TOD) document under Wis. Stat. §705.15 or for property transferred pursuant to an affidavit under Wis. Stat. §867.03. The bill will also provide additional guidelines for secured creditors to follow when issuing payoff statements under Wis. Stat. §708.15.

Utilizing a TOD document under Wis. Stat. §705.15 or an affidavit under Wis. Stat. §867.03, provides for an inexpensive and efficient method to transfer property at death. Currently, uncertainty exists under Wis. Stat. §705.15 regarding whether or not ownership interests in real property held as tenants in common or as marital property without right of survivorship can be transferred using a TOD deed. The bill clarifies this issue so that such interests are specifically included and also expands the manner by which one may designate TOD beneficiaries. In addition, the bill specifically provides that successor TOD beneficiaries may be designated in the TOD document. Having the specific authority to designation successor TOD beneficiaries will allow for more flexibility when using TOD documents to transfer real property at death.

The bill provides for additional safeguards under Wis. Stat. §705.15 by specifying that the person making the TOD designation or revocation of such designation must have the same capacity needed to make or revoke a Will. The bill also creates a statute of limitations for an individual to file a claim to recover real property transferred pursuant to a TOD document.

In addition, the bill clarifies that the *gross* value of the estate cannot exceed \$50,000 when utilizing an affidavit under Wis. Stat. §867.03 and adds a requirement that the decedent's heirs receive notice of a transfer of an interest in or lien on real property prior to the recording of the affidavit in the office of the register of deeds and provides protections to subsequent purchasers or lenders.

For additional information contact Cale Battles, Government Relations Coordinator, at (608) 695-5686 or cbattles@wisbar.org.

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