

## REAL PROPERTY, PROBATE & TRUST LAW SECTION

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**To: Senate Committee on Revenue, Financial Institutions and Rural Issues**  
**Date: February 7, 2018**  
**Re: Support of SB 507/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.**

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The Real Property Probate Trust (RPPT) of the State Bar of Wisconsin supports SB507/AB 607 and would like to thank Senator Olsen and Representative Ballweg for sponsoring the legislation. SB 507/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.

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

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only. The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*



STATE BAR OF WISCONSIN



## Luther S. Olsen

State Senator

14th District

**TO:** Senate Committee on Revenue, Financial Institutions, & Rural Issues

**FROM:** Senator Luther Olsen

**DATE:** February 7, 2018

**SUBJECT:** Testimony in favor of Senate Bill 507/Assembly Bill 607

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Thank you Chairman Marklein and the Senate Committee on Revenue, Financial Institutions, and Rural Issues for holding a hearing and allowing me to testify in favor of Senate Bill 507 and Assembly Bill 607.

This legislation cleans up parts of the law that individuals use for estate planning to transfer property to beneficiaries, makes a minor fix to how creditors can qualify mortgage payoff statements, and it adds provisions to ensure heirs are properly notified and have a fair chance to claim property.

A nonprobate 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 of death (TOD) deed.

This legislation cleans up who may designate TOD beneficiaries, what documents can be used to designate a TOD beneficiary, the types of property that can be transferred under this process, and it creates a 120 day statute of limitations under which another individual can file a complaint to claim the property. 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.

In addition, this legislation makes changes to the transfer by affidavit process, which can be used to transfer small estates under \$50,000 of value. This process is meant to provide a streamlined process for individuals with small estates to transfer property. It is common to use this for recreational land, like a family's hunting land, or for properties with less value, like a manufactured home.

Furthermore, it 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. In addition, it creates a provision to ensure that if property that is transferred under this process 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.

Lastly, this legislation allows the secured creditors 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 will give borrowers more accurate information about their payoff statement.

I believe these changes will treat all stakeholders fairly by providing certainty and transparency in real estate transactions. The Wisconsin Land Title Association, Wisconsin State Bar, and the Wisconsin Register of Deeds support this proposal.

Thank you, members. I ask for your support and would be more than happy to answer any questions.

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# ROB SUMMERFIELD

STATE REPRESENTATIVE • 67<sup>th</sup> ASSEMBLY DISTRICT

February 7, 2018

Senator Marklein, Chair

Senator LeMahieu, Vice-Chair

Members of the Senate Committee on Revenue, Financial Institutions, & Rural Issues

**Testimony on 2017 Assembly Bill 607/Senate Bill 507**

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

Good Morning Chairman Marklein, Vice-Chairman LeMahieu, and Committee Members:

Thank you for providing me with the opportunity to provide written testimony at today's public hearing on 2017 Assembly Bill 607 and its companion, Senate Bill 507, 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 legislation.

AB 607/SB 507 make 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/SB 507 are good bills that streamline 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 Former Senator Lasee's hard work and leadership on this bill, and will allow their testimony to get into the details more. Thank you again for reading, and I implore you to seriously consider the passage of this commonsense legislation.

SB 507: 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  
Senate Committee on Revenue, Financial Institutions and Rural Issues  
February 7<sup>th</sup>, 2018

Thank you, Chairmen Marklein, and members of the Senate Committee on Revenue, Financial Institutions and Rural Issues for holding this public hearing on SB 507.

SB 507 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.

SB 507 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.

SB 507 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. One amendment that we passed in the Assembly, requires this notice to be through certified mail to ensure the heir actually receives the notice. 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.

The second amendment we passed is purely a technical amendment to fix an issue that arose after 2017 Act 90. It does not affect substance of SB 507. For the transfer by affidavit process, the amendment clarifies that if someone is named a personal representative and is also an heir, trustee of a revocable trust, or guardian of the decedent, that the limitations of the process do not apply to them. This is needed since there are limitations if someone is only a personal representative.

The Wisconsin Land Title Association, State Bar of Wisconsin, and the Wisconsin Register of Deeds Association support this bill. The Assembly companion, AB 607, was passed by the Assembly on the January 23<sup>rd</sup> calendar date with a voice vote. Thank you for your consideration of SB 507. I am happy to answer any questions that you may have.