

2005 ASSEMBLY BILL 650

September 9, 2005 – Introduced by Representatives SHERMAN, HAHN, BERCEAU, CULLEN, LEHMAN, MCCORMICK, SEIDEL, OTT, VOS, AINSWORTH, BOYLE, DAVIS, HEBL, HINES, LOTHIAN and PETROWSKI, cosponsored by Senators RISSER, ERPENBACH, MILLER, HANSEN, LASSA and BROWN. Referred to Committee on Judiciary.

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

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SUBCHAPTER II

NONPROBATE TRANSFERS AT DEATH;

NONPROBATE TRANSFER OF REALPROPERTY

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

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

3 (4) On the death of the sole owner or the last to die of multiple owners,
4 ownership of the interest in the real property passes, subject to any lien or other
5 encumbrance, to the designated TOD beneficiary or beneficiaries who survive all
6 owners and to any predeceased beneficiary's issue who would take under s. 854.06
7 (3). If no beneficiary or predeceased beneficiary's issue who would take under s.
8 854.06 (3) survives the death of all owners, the interest in the real property passes
9 to the estate of the deceased sole owner or the estate of the last to die of the multiple
10 owners.

11 (5) A TOD beneficiary's interest in the property on the death of the sole owner
12 or the last to die of multiple owners may be confirmed as provided in s. 863.27,
13 865.201, or 867.046.

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

15 **SECTION 5.** 705.20 of the statutes is renumbered 705.10.

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

17 706.001 (2) (bm) By nonprobate transfer on death under s. 705.15; or

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

19 **863.27 Contents of final judgment.** In the final judgment the court shall
20 approve the final account, designate the persons to whom assignment and
21 distribution is are being made, and assign to each of them the property or proportions
22 or parts of the estate or the amounts to which each is entitled. The findings of fact
23 which support the judgment shall include a determination of the heirs of the
24 decedent; facts showing that all jurisdictional requirements have been met; the date
25 of death of the decedent and the decedent's testacy or intestacy; facts relating to the

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1 payment of state death tax, state income tax, and claims and charges against the
2 estate. If immediately before death the decedent had an estate for life or an interest
3 as a joint tenant in any property in regard to which a certificate of termination has
4 not been issued under s. 867.04 or an interest in marital property for which a
5 certificate has not been issued under s. 865.201 or 867.046, the findings of fact which
6 support the judgment shall set forth the termination of the life estate, the right of
7 survivorship of any joint tenant, or the decedent's interest in marital property and,
8 upon the petition of the decedent's spouse, the confirmation of the one-half interest
9 held by the surviving spouse in marital property immediately before the death of the
10 decedent spouse. In addition, the findings of fact shall, upon petition of a designated
11 person, trust, or other entity under s. 766.58 (3) (f) or of a TOD beneficiary under s.
12 705.15, set forth the confirmation, of an interest in property passing by
13 nontestamentary disposition under s. 705.15 or 766.58 (3) (f). Every tract of real
14 property in which an interest is assigned or terminated shall be specifically
15 described. If a fund is withheld from distribution for the payment of contingent
16 claims, for meeting possible tax liability, or for any other reasonable purpose, the
17 judgment shall provide for the distribution of the fund if all or a part of it is not
18 needed.

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

20 865.201 (1) As an alternative to s. 867.046 the personal representative may file
21 with the probate registrar a verified statement describing property in which the
22 decedent had an interest in marital property or in which any designated person,
23 trust, or other entity has an interest passing by nontestamentary disposition under
24 s. 705.15 or 766.58 (3) (f), including the recording data, if any, of the document

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

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

4 867.046 (1) (c) “TOD beneficiary” means a person designated on a deed as a
5 transfer on death beneficiary under s. 705.15.

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

7 867.046 (1m) UPON DEATH; GENERALLY. If a domiciliary of this state dies who
8 immediately prior to death had an interest in property in this state, including an
9 interest in survivorship marital property, or if a person not domiciled in this state
10 dies having an interest in property in this state, including an interest in survivorship
11 marital property, upon petition of the decedent’s spouse or upon petition of a
12 beneficiary of a marital property agreement or a TOD beneficiary to the court of the
13 county of domicile of the decedent or, if the decedent was not domiciled in this state,
14 of any county where the property is situated, the court shall issue a certificate under
15 the seal of the court. The certificate shall set forth the fact of the death of the
16 decedent, the termination or transfer of the decedent’s interest in the property, the
17 interest of the petitioner in the property, and any other facts essential to a
18 determination of the rights of persons interested. The certificate is prima facie
19 evidence of the facts recited, and if the certificate relates to an interest in real
20 property or to a debt secured by an interest in real property, the petitioner shall
21 record a certified copy or duplicate original of the certificate in the office of the
22 register of deeds in each county in this state in which the real property is located.

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

24 867.046 (2) UPON DEATH; INTEREST IN PROPERTY. (intro.) As an alternative to sub.
25 (1m), upon the death of any person having an interest in any real property, a vendor’s

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

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

10 867.046 (2) (j) In the case of a joint tenancy ~~or~~, life estate, or TOD beneficiary
11 designation, a copy of the deed that creates the interest.

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

13 867.046 (2m) THIRD-PARTY CONFIRMATION. If the personal representative, or
14 decedent's spouse or a beneficiary of a marital property agreement or TOD
15 beneficiary does not commence proceedings to confirm an interest under this section
16 or s. 863.27 or 865.201 within 90 days after the decedent's death, any interested
17 person may petition or apply under this section.

18

(END)