

State of Wisconsin



2017 Assembly Bill 607

Date of enactment: April 16, 2018
Date of publication*: April 17, 2018

2017 WISCONSIN ACT 332

AN ACT to renumber and amend 705.15 (1), 705.15 (2), 708.15 (3) (f), 867.03 (1j) and 867.03 (2m) (a); to amend 705.15 (3), 705.15 (4), 708.15 (3) (d) (intro.), 867.03 (1g) (intro.) and 867.03 (1h); and to create 705.15 (1b), 705.15 (1m) (a) to (e), 705.15 (2) (a) 2., 3. and 4., 705.15 (7), 705.15 (8), 708.15 (3) (f) 2., 867.03 (1p), 867.03 (2m) (a) 1. and 2. and 867.03 (2m) (c) of the statutes; 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 people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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

705.15 (1m) (intro.) ~~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~~ Any of the following interests in real property 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:;

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

705.15 (1b) In this section:

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

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

(c) "TOD beneficiary" means a person designated as a beneficiary in a document that complies with sub. (2) (a).

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

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

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

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

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

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

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

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

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

(b) The designation of a TOD beneficiary may be made by including use of the words "transfer on death"

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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 TOD beneficiary or beneficiaries. The owner or owners may designate one or more persons as a primary TOD beneficiary and may designate one or more persons as a contingent TOD beneficiary if a primary TOD beneficiary does not survive the sole owner or the last to die of multiple owners. The designation may be included on the original ~~deed~~ document 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~~ document that designates a TOD beneficiary.

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

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

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

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

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

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

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

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

705.15 (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 against the real property, 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 TOD beneficiary or predeceased TOD 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.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 13. 867.03 (1g) (intro.) of the statutes, as affected by 2017 Wisconsin Act 90, is amended to read:

867.03 (1g) GENERALLY. (intro.) Except as provided in sub. (1h) and subject to ~~sub.~~ subs. (1j) and (1p), when a decedent leaves property subject to administration in this state ~~which that~~ does not exceed \$50,000 in gross value, any heir of the decedent, trustee of a revocable trust created by the decedent, a person named in the will to act as personal representative, or person who was guardian of the decedent at the time of the decedent's

death may collect any money due the decedent, receive the property of the decedent, and have any evidence of interest, obligation to, or right of the decedent transferred to the affiant if the heir, trustee, person named in the will to act ~~as~~ as personal representative, or guardian provides to the person owing the money, having custody of the property, or acting as registrar or transfer agent of the evidences of interest, obligation to, or right, ~~or, if the property is an interest in or lien on real property, provides to the register of deeds preliminary to the recording required under sub. (2m),~~ proof of prior mailed notice under sub. (1m) if applicable and an affidavit ~~in duplicate~~ showing all of the following:

SECTION 13d. 867.03 (1h) of the statutes, as created by 2017 Wisconsin Act 90, is amended to read:

867.03 (1h) EXCEPTION FOR REAL PROPERTY. A person named in the will as personal representative may not receive any real property of the decedent by providing an affidavit under sub. (1g) or have any evidence of interest, obligation to, or right of the decedent in any real property of the decedent transferred to the person named in the will as personal representative by providing an affidavit under sub. (1g). This subsection does not apply to a person named in the will to act as personal representative if the person is also an heir of the decedent, a trustee of a revocable trust created by the decedent, or a person who was guardian of the decedent at the time of the decedent's death.

SECTION 13g. 867.03 (1j) of the statutes, as created by 2017 Wisconsin Act 90, is renumbered 867.03 (1j) (a) and amended to read:

867.03 (1j) (a) ~~A~~ Subject to par. (b), a person who receives an affidavit under sub. (1g) from a person named in the will to act as personal representative may not transfer any money due the decedent, the property of the decedent, or any evidence of interest, obligation to, or right of the decedent to the affiant until 30 days after the day on which the affidavit is received. This paragraph does not apply to an affidavit under sub. (1g) received from a person named in the will to act as personal representative if the person is also an heir of the decedent, a trustee of a revocable trust created by the decedent, or a person who was guardian of the decedent at the time of the decedent's death.

(b) If, during the 30-day period under par. (a), the person who received the affidavit under par. (a) receives an affidavit under sub. (1g) for the same decedent from another person, the person who received the affidavits may not transfer any money due the decedent, the property of the decedent, or any evidence of interest, obliga-

tion to, or right of the decedent under this section unless ordered to do so by a court.

(c) Subsection (2) does not apply to a transfer if the transferor did not comply with this subsection.

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

867.03 (1p) REAL PROPERTY; NOTICE. If the affidavit under sub. (1g) describes an interest in or lien on real property, at least 30 days before submitting the affidavit to an office of register of deeds under sub. (2m), the heir, trustee, or person who was a guardian of the decedent at the time of the decedent's death shall provide to the decedent's heirs a copy of the affidavit under sub. (1g) and notice that the heir, trustee, or person who was a guardian intends to record the affidavit under sub. (1g) in the office of the register of deeds in each county in this state in which the real property is located. The heir, trustee, or person who was a guardian of the decedent at the time of the decedent's death shall give the notice required under this paragraph by certified mail or by personal service.

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

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

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

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

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

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

867.03 (2m) (c) If an interest in real property transferred under this section is 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 free of any claims of the decedent's estate and incurs no personal liability to the estate, whether or not the transfer was proper. Purchasers and lenders have no duty to inquire whether a transfer was proper.