



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 332
[2017 Assembly Bill 607]

**Transfer on Death, Transfers by
Affidavit, and Payoff Statements**

2017 Wisconsin Act 332 revises the processes under state law for: transfers on death; transfers by affidavit; and provision of payoff statements by secured creditors.

TRANSFERS ON DEATH

The Act expands the use of transfers on death to allow a person to designate a transfer on death beneficiary in any document, if certain conditions are satisfied. Prior law required the use of a transfer on death deed. The Act also expands the types of property interests that may be transferred via a transfer on death document to include fractional interests in real property owned as tenants in common and interests in real property owned by a spouse as marital property without right of survivorship.

Additionally, the Act creates a 120-day statute of limitations for claims to recover real property transferred by a transfer on death document.

TRANSFERS BY AFFIDAVIT

Under state law, when a decedent leaves property subject to administration in this state which does not exceed \$50,000 in value, an individual with one of certain statutorily specified relationships to the decedent may collect assets of the decedent by submitting an affidavit to the person, bank, or other institution holding the decedent's assets.

The Act specifies that the size of a qualifying estate must not exceed \$50,000 in **gross** value. Additionally, when the transfer by affidavit procedure is used to transfer an interest in or lien on real property, the Act specifies that the person making the affidavit must provide notice to the decedent's heirs at least 30 days before recording the affidavit. The Act also specifies that a buyer or lender who acquires an interest in a property in good faith, for value and without actual notice that a previous transfer by affidavit was improper takes title free of

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

any claims of the decedent's estate and incurs no personal liability to the estate, whether or not the transfer was proper.

With regard to 2017 Wisconsin Act 90, which also affected the transfer by affidavit process, the Act specifies that certain processes created by Act 90 do not apply to a transfer by affidavit made by a person named in a will to act as a personal representative if the person is also an heir or guardian of the decedent or a trustee of a revocable trust created by the decedent.

PAYOFF STATEMENTS BY SECURED CREDITORS

Under prior law, a secured creditor could not qualify a payoff amount, or state that a payoff amount is subject to change prior to the payoff date. For nonresidential real property, the Act specifies that a payoff amount may be qualified; stated to be subject to change; or stated to be indeterminable, if the creditor who provides the statement also provides instructions for how to obtain an updated payoff amount at no charge.

Effective date: April 18, 2018

Prepared by: Scott Grosz, Principal Attorney

May 9, 2018

SG:mcm;ty