2017 SENATE BILL 507

November 6, 2017 – Introduced by Senators Lasee and Olsen, cosponsored by Representatives Ballweg, Summerfield, Katsma, Hurlacher, Murphy and Kulp. Referred to Committee on Revenue, Financial Institutions and Rural Issues.

AN ACT to renumber and amend 705.15 (1), 705.15 (2), 708.15 (3) (f) and 867.03 (2m) (a); to amend 705.15 (3), 705.15 (4), 708.15 (3) (d) (intro.) and 867.03 (1g) (intro.); 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.

Analysis by the Legislative Reference Bureau

NONPROBATE TRANSFERS OF REAL PROPERTY ON DEATH

Under current law, a person may transfer an interest in real property that is solely owned, owned by spouses as survivorship marital property, or owned by two or more persons as joint tenants to a designated beneficiary without probate by designating a beneficiary on a transfer of death (TOD) deed. A beneficiary designation on a TOD deed does not affect ownership of the interest in real property until the owner’s death.

Under the bill, a person may designate a TOD beneficiary in any document, not solely in a deed. The bill also provides that the interests in real property that may be transferred using a TOD document include a fractional interest in real property owned as tenants in common and an interest in real property owned by a spouse as
marital property without a right of survivorship. Under the bill, a TOD beneficiary designation is not effective unless the TOD document and any fees required to record the document are submitted to the register of deeds office of the county in which the real property is located prior to the death of the owner.

Lastly, the bill creates a statute of limitations for claims to recover real property transferred to a beneficiary using a TOD document. Under the bill, such a claim is barred unless, within 120 days after the death of the sole owner or the last to die of the multiple owners who executed the TOD document, a complaint is filed and a lis pendens is filed or recorded in each county where any part of the real property is located.

**TRANSFER BY AFFIDAVIT PROCEDURE FOR SMALL ESTATES**

Under current law, an heir, trustee, or person who was a guardian of a decedent at the time of the decedent’s death may use a transfer by affidavit procedure to settle a decedent’s estate if the value of the decedent’s property does not exceed $50,000. This bill specifies that the transfer by affidavit procedure may be utilized only if the gross value of the decedent’s estate does not exceed $50,000. If the transfer by affidavit procedure is used to transfer an interest in or lien on real property, the bill requires the person making the affidavit to provide notice to the decedent’s heirs at least 30 days before recording the affidavit in the office of the register of deeds in each county where the real property is located. Under current law and under the bill, the recording of the affidavit constitutes the transfer of real property to the affiant under the transfer by affidavit procedure. Finally, under the bill, if an interest in real property transferred using the transfer by affidavit procedure is subsequently 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 to the real property free of any claims of the decedent’s estate, regardless of whether the transfer was proper.

**MORTGAGE PAYOFF STATEMENTS**

Under current law, a secured creditor must provide a payoff statement to certain persons, upon request. Under current law, a secured creditor may not qualify a payoff amount or state that the payoff amount is subject to change before the payoff date. Under the bill, a secured creditor may qualify a payoff amount, state that the payoff amount is not practicably determinable, or state that the payoff amount is subject to change before the payoff date if the security instrument secures nonresidential real property and the payoff statement provides instructions for how to obtain an updated payoff amount at no charge.

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1. **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” 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.
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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.) 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. 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.
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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 is amended to read:

867.03 (1g) **Generally.** (intro.) When **Subject to sub. (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, 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, 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 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 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 1st class 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.

**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.

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