

HOUSE BILL NO. 310

INTRODUCED BY DUTTON, RICE, LAKE, ROSS, K. PETERSON, KEANE, DRISCOLL, BRANAE, STOKER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TRANSFER OF REAL PROPERTY BY A BENEFICIARY DEED; PROVIDING A FORM FOR A BENEFICIARY DEED; PROVIDING FOR THE REVOCATION OF A BENEFICIARY DEED; PROVIDING FOR THE RIGHTS OF CREDITORS AND OTHERS; AMENDING SECTION 72-6-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Beneficiary deed -- form -- definitions.** (1) A deed that conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the DECEASED OWNER'S interest to the ~~designated~~ grantee beneficiary DESIGNATED BY NAME IN THE BENEFICIARY DEED effective on the death of the owner, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime.

(2) A beneficiary deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.

(3) A beneficiary deed may designate a successor grantee beneficiary. If the beneficiary deed designates a successor grantee beneficiary, the deed must state the condition on which the interest of the successor grantee beneficiary would vest.

(4) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys an interest in the real property to a grantee beneficiary designated by all of the then surviving owners and that expressly states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a beneficiary deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship, the beneficiary deed is valid if the last surviving owner is one of the persons who executes the beneficiary deed. If the last surviving owner did not execute the beneficiary deed, the transfer lapses and the deed is void. An estate in joint tenancy with right of survivorship is not affected by the execution of a beneficiary deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship

~~prevails~~ PREVAIL over a grantee beneficiary named in a beneficiary deed.

(5) A beneficiary deed is valid only if the deed is executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the property is located, before the death of the owner or the last surviving owner. A beneficiary deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

(6) A beneficiary deed may be revoked at any time by the owner or, if there is more than one owner, by any of the owners who executed the beneficiary deed. To be effective, the revocation must be executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the real property is located, before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship and if the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner.

(7) IF AN INDIVIDUAL WHO IS A RECIPIENT OF MEDICAID PURSUANT TO 53-6-131 CONVEYS AN INTEREST IN REAL PROPERTY BY MEANS OF A BENEFICIARY DEED, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY ASSERT A CLAIM PURSUANT TO 53-6-167 AGAINST THE PROPERTY THAT IS THE SUBJECT OF A BENEFICIARY DEED TO THE EXTENT OF MEDICAL ASSISTANCE GRANTED BY THE DEPARTMENT.

~~(7)~~(8) If an owner executes and records more than one beneficiary deed concerning the same real property, the last beneficiary deed that is recorded before the owner's death is the effective beneficiary deed.

~~(8)~~(9) This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

~~(9)~~(10) The signature, consent, or agreement of, or notice to, a grantee beneficiary of a beneficiary deed is not required for any purpose during the lifetime of the owner.

~~(10)~~(11) A beneficiary deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

~~(11)~~(12) The death of an owner of real property must, for the purposes of this section, be proved by affidavit or certificate of death.

~~(12)~~(13) A beneficiary deed is sufficient if it complies with other applicable law and if it is in substantially the following form:

Beneficiary Deed

I (we) _____ (owner) hereby convey to _____ (grantee

beneficiary) effective on my (our) death the following described real property:

(Legal description)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

- Become void.
- Become part of the estate of the grantee beneficiary.

.....

(DATED)

(Signature of grantor(s))

(acknowledgment)

~~(13)~~(14) An instrument revoking a beneficiary deed is sufficient if it complies with other applicable laws and is in substantially the following form:

Revocation of Beneficiary Deed

The undersigned hereby revokes the beneficiary deed recorded on _____ (date), in docket or book _____ at page _____, or instrument number _____, records of _____ County, Montana, concerning the following described real property:

(Legal description)

Dated: _____

Signature

(acknowledgment)

~~(14)~~(15) As used in this section, the following definitions apply:

- (a) "Beneficiary deed" means a deed authorized by this section.
- (b) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real property that is the subject of the beneficiary deed.
- (c) "Owner" means a person who executes a beneficiary deed as provided in this section.

NEW SECTION. SECTION 2. RIGHTS OF CREDITORS AND OTHERS. (1) IF OTHER ASSETS OF THE ESTATE ARE INSUFFICIENT, A TRANSFER RESULTING FROM A BENEFICIARY DEED, AS PROVIDED FOR IN [SECTION 1], IS NOT EFFECTIVE AGAINST THE ESTATE AND STATUTORY ALLOWANCES TO THE SURVIVING SPOUSE AND CHILDREN.

(2) A SURVIVING PARTY WHO RECEIVES TITLE TO REAL PROPERTY PURSUANT TO A BENEFICIARY DEED IS LIABLE TO ACCOUNT TO THE PERSONAL REPRESENTATIVE OF THE DECEDENT FOR THE VALUE OF THE PROPERTY TO THE EXTENT NECESSARY TO DISCHARGE THE CLAIMS AND ALLOWANCES DESCRIBED IN SUBSECTION (1) REMAINING UNPAID AFTER APPLICATION OF THE DECEDENT'S ESTATE. A PROCEEDING TO ASSERT THE LIABILITY MAY NOT BE COMMENCED UNLESS THE PERSONAL REPRESENTATIVE HAS RECEIVED A WRITTEN DEMAND BY THE SURVIVING SPOUSE, A CREDITOR, A CHILD, OR A PERSON ACTING FOR A CHILD OF THE DECEDENT. THE PROCEEDING MUST BE COMMENCED WITHIN 1 YEAR AFTER DEATH OF THE DECEDENT.

(3) A SURVIVING PARTY AGAINST WHOM A PROCEEDING TO ACCOUNT IS BROUGHT MAY JOIN AS A PARTY TO THE PROCEEDING ANY OTHER PERSON CLAIMING AN INTEREST IN THE REAL PROPERTY.

(4) SUMS RECOVERED BY THE PERSONAL REPRESENTATIVE MUST BE ADMINISTERED AS PART OF THE DECEDENT'S ESTATE.

Section 3. Section 72-6-111, MCA, is amended to read:

"72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, beneficiary deed, as defined in [section 1], marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state."

NEW SECTION. Section 4. Codification instruction. ~~[Section 1] is [SECTIONS 1 AND 2] ARE~~ intended to be codified as an integral part of ~~Title 70, chapter 20, TITLE 72, CHAPTER 6,~~ part 1, and the provisions of Title

~~70, chapter 20, TITLE 72, CHAPTER 6, part 1, apply to [section 1] [SECTIONS 1 AND 2].~~

NEW SECTION. **Section 5. Applicability.** [This act] applies to a beneficiary deed filed by an owner, as both are defined in [section 1], who dies after October 1, 2007.

- END -

