

SENATE BILL NO. 357
INTRODUCED BY L. LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TRANSFER OF REAL PROPERTY BY A BENEFICIARY DEED; PROVIDING FOR RECORDING OF BENEFICIARY DEEDS; DESIGNATING FORMS FOR TRANSFERRING REAL PROPERTY BY BENEFICIARY DEEDS AND FOR REVOKING BENEFICIARY DEEDS; AND PROVIDING DEFINITIONS."

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

NEW SECTION. Section 1. Beneficiary deed -- recording -- definitions. (1) A beneficiary deed that conveys an interest in real property to a grantee beneficiary designated by the owner and that expressly states that the beneficiary deed is effective on the death of the owner transfers the interest to the designated grantee beneficiary 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 beneficiary deed must state the condition upon which the interest of the successor grantee beneficiary would vest.

(4) (a) If real property is owned as joint tenants with the right of survivorship, a beneficiary 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 beneficiary 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.

(b) (i) 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 executed the beneficiary deed.

(ii) If the last surviving owner did not execute the beneficiary deed, the transfer lapses and the beneficiary deed is void.

(c) 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 prevail over a grantee beneficiary named in a beneficiary deed.

(5) (a) A beneficiary deed is valid only if the beneficiary 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.

(b) 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) 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.

(b) 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 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) (a) 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.

(b) This section does not invalidate any deed other than a beneficiary deed to convey title to the interests and estates provided in the deed that is otherwise effective by law and that is not recorded until after the death of the owner.

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

(11) A beneficiary deed is sufficient if it complies with other applicable laws and if it is in substantially the following form:

Beneficiary Deed

I (we) _____ (owner) 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.

(Signature of grantor(s))

(acknowledgment)

(12) The instrument of revocation is sufficient if it complies with other applicable laws and is in substantially the following form:

Revocation of Beneficiary Deed

The undersigned revokes the beneficiary deed recorded on _____ (date), in docket or book _____ at page _____, or instrument number _____, records of _____ County, Montana.

Dated: _____

Signature

(acknowledgment)

(13) For the purposes of this section, the following definitions apply:

(a) "Beneficiary deed" means a deed authorized under this section.

(b) "Owner" means any person who executes a beneficiary deed as provided in this section.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 20, part 1, and the provisions of Title 70, chapter 20, part 1, apply to [section 1].

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