

Conveyances

'Non-testamentary Transfer–On-Death-Deed'. Title 58, §1251-§1258. Eff. Nov. 1, 2008.

What is the difference between testamentary and non-testamentary documents?

Answer: A testamentary document is a Last Will and Testament or some other document that meets the statutory requirements of a will. A testamentary trust is one that is set forth in a will and may continue long after the death of the testator. Many wealthy testators maintain control over their property after death through testamentary trusts.

Non-testamentary documents would be documents that are not related to a Last Will and Testament.

§1252. A. A transfer-on-death deed need not be supported by consideration.

§1252.B. ..notice to a grantee beneficiary..of a transfer-on-death deed shall not be required for any purpose during the lifetime of the record owner.

§1253. ..this deed may be withdrawn or rescinded whether or not money or any other consideration was paid or given.

..the deed is a revocable transfer-on-death..

§1254.A. ..acknowledging and recording in the office of the county clerk in the county where the real estate is located an instrument revoking the designation.

§1254.B. ..may be changed at any time prior to the death of the record owner,..

The signature, consent or agreement of or notice to the grantee beneficiary ..is not required.

§1254.C. ..Nontestamentary Transfer of Property Act may not be revoked by the provisions of a will.

§1254.D. ..may be disclaimed in whole or in part..

..must occur within nine months after the death of the landowner. The disclaimer shall be filed with the office of the county clerk in which the transfer-on-death deed was recorded.

§1255.A. The affidavit shall state the fact of the death of the record owner, state whether or not the record owner and the designated grant were husband and wife..

If the record owner and designated grantee were not husband and wife, a copy of the death certificate of the record owner and an estate tax release shall be attached to the affidavit.

§1255.B. ..beneficiaries of the transfer-on-death deed take the interest of the record owner..at death subject to all conveyances..made by the record owner..

§1258 ..shall not be considered a testamentary disposition and shall not be invalidated due to nonconformity with other provisions in Title 58 or Title 84 of the Oklahoma Statutes.

CONVEYANCES

“Nontestamentary Transfer of Property Act”

§58-1251. Short title.

Sections 1 through 8 of this act shall be known and may be cited as the “Nontestamentary Transfer of Property Act”.

Added by Laws 2008, c. 78, § 1, eff. Nov. 1, 2008.

§58-1252. Transfer-on-death deed – Notice to beneficiary.

A. An interest in real estate may be titled in transfer-on-death form by recording a deed, signed by the record owner of the interest, designating a grantee beneficiary or beneficiaries of the interest. The deed shall transfer ownership of the interest upon the death of the owner. A transfer-on-death deed need not be supported by consideration.

B. The signature, consent or agreement of or notice to a grantee beneficiary or beneficiaries of a transfer-on-death deed shall not be required for any purpose during the lifetime of the record owner.

Added by Laws 2008, c. 78, § 2, eff. Nov. 1, 2008.

§58-1253. Transfer-on-death, form.

An interest in real estate is titled in transfer-on-death form by executing, acknowledging and recording in the office of the county clerk in the county where the real estate is located, prior to the death of the owner, a deed in substantially the following form:

_____ (name of owner) being of competent mind and having the legal capacity to execute this document, as owner transfers on death to _____ (name of beneficiary) as grantee beneficiary, the following described interest in real estate: (here insert description of the interest in real estate). THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

THE STATE OF OKLAHOMA

COUNTY OF _____

Before me, on this day personally appeared _____, _____, and _____, the owner of the land described in this deed, and the witnesses, respectively, whose names are subscribed below in their respective capacities, and the owner of the land declared to me and to the witnesses in my presence that the deed is a revocable transfer-on-death of the real estate described therein, and the witnesses declared in the presence of the owner of the real estate and in my presence that the owner of the land declared to them that the deed is a revocable transfer-on-death of the real estate described therein and that the owner of the land wanted each of them to sign it as a witness, and that each witness did sign the same as witness in the presence of the owner of the land and in my presence.

(name of owner)

(witness)

(witness)

Subscribed and acknowledged before me by _____, the owner of the land, and _____ and _____, witnesses, this ____ day of _____ (month), ____ (year).

(signature of notary public)

(Seal)

My commission expires _____ (date).

Instead of the words "transfer-on-death" the abbreviation "TOD" may be used.

Added by Laws 2008, c. 78, § 3, eff. Nov. 1, 2008.

§58-1254. Revocation or change of grantee beneficiary – Effect of will - Disclaimer.

A. A designation of the grantee beneficiary may be revoked at any time prior to the death of the record owner, by executing, acknowledging and recording in the office of the county clerk in the county where the real estate is located an instrument revoking the designation. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries to the revocation is not required.

B. A designation of the grantee beneficiary may be changed at any time prior to the death of the record owner, by executing, acknowledging and recording a subsequent transfer-on-death deed in accordance with the Nontestamentary Transfer of Property Act. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required. A subsequent transfer-on-death beneficiary designation revokes all prior designations of grantee beneficiary or beneficiaries by the record owner for the interest in real estate.

C. A transfer-on-death deed executed, acknowledged and recorded in accordance with the Nontestamentary Transfer of Property Act may not be revoked by the provisions of a will.

D. A transfer-on-death deed executed, acknowledged and recorded in accordance with the Nontestamentary Transfer of Property Act may be disclaimed in whole or in part or with reference to specific parts by the grantee beneficiary or beneficiaries. The disclaimer must occur within nine (9) months after the death of the landowner. The disclaimer shall be filed with the office of the county clerk in which the transfer-on-death deed was recorded. If a grantee beneficiary exerts dominion over the real estate within the nine-month period, the disclaimer is waived. Dominion may be evidenced by acts including, but not limited to, possession or the execution of any conveyance, assignment, contract, mortgage, security pledge, executory contract for sale, option to purchase, lease, license, easement or right-of-way. A guardian, executor, administrator or other personal representative of a minor or legally incompetent beneficiary may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim, if the guardian, executor, administrator or other personal representative deems it in the best interests of and not detrimental to the best interests of the beneficiary.

Added by Laws 2008, c. 78, § 4, eff. Nov. 1, 2008.

§58-1255. Vesting of interest – Affidavit – Grantee interest subject to encumbrances – Lapse of transfer.

A. Title to the interest in real estate recorded in transfer-on-death form shall vest in the designated grantee beneficiary or beneficiaries on the death of the record owner. The death of the record owner shall be evidenced by the recording of an affidavit in the office of the county clerk of the county where the real estate is located. The affidavit shall be executed by the grantee beneficiary or beneficiaries. The affidavit shall state the fact of the death of the record owner, state whether or not the record owner and the designated grantee were husband and wife, and provide the legal description of the real estate. The affidavit shall be notarized. If the record owner and designated grantee were not husband and wife, a copy of the death certificate of the record owner and an estate tax release shall be attached to the affidavit.

B. Grantee beneficiaries of a transfer-on-death deed take the interest of the record owner in the real estate at death subject to all conveyances, assignments, contracts, mortgages, liens and security pledges made by the record owner or to which the record owner was subject during the lifetime of the record owner including, but not limited to, any executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust or lien, and to any interest conveyed by the record owner that is less than all of the record owner's interest in the property.

C. If a grantee beneficiary dies prior to the death of the record owner and an alternative grantee beneficiary has not been designated on the deed, the transfer shall lapse.

Added by Laws 2008, c. 78, § 5, eff. Nov. 1, 2008.

§58-1256. Effect of deed on joint tenancy – “Joint owner” defined.

A. A record joint owner of an interest in real estate may use the procedures in the Nontestamentary Transfer of Property Act to title the interest in transfer-on-death form. However, title to the interest shall vest in the designated grantee beneficiary or beneficiaries only if the record joint owner is the last to die of all of the record joint owners of the interest. A deed in transfer-on-death form shall not sever a joint tenancy.

B. As used in this section, "joint owner" means a person who owns an interest in real estate as a joint tenant with right of survivorship.

Added by Laws 2008, c. 78, § 6, eff. Nov. 1, 2008.

§58-1257. Record owner considered absolute owner.

A record owner who executes a transfer-on-death deed remains the legal and equitable owner until the death of the owner and during the lifetime of the owner is considered an absolute owner as regards creditors and purchasers.

Added by Laws 2008, c. 78, § 7, eff. Nov. 1, 2008.

§58-1258. Transfer-on-death deed not considered testamentary disposition.

A deed in transfer-on-death form, executed in conformity with the Nontestamentary Transfer of Property Act, shall not be considered a testamentary disposition and shall not be invalidated due to nonconformity with other provisions in Title 58 or Title 84 of the Oklahoma Statutes.

Added by Laws 2008, c. 78, § 8, eff. Nov. 1, 2008.

A **life estate** is a term used in common law to describe the ownership of land for the duration of a person's life. In legal terms it is an estate in real property that ends at death. The owner of a life estate is called a life tenant.

Although the ownership of a life estate is technically temporary because it ends at a person's death (a tenancy), it is treated as complete ownership (fee simple) for the duration of the person's life, subject to limitations. Because a life estate ceases to exist upon death, the owner of the life estate cannot leave it to heirs, and the life estate cannot be inherited.

A life estate is typically used as an estate planning tool. The use of a life estate can avoid probate and ensure an intended heir will receive title to real property. For example, 'A' may own a home and desire that 'B' inherit the home after 'A's' death. 'A' can effectuate that desire by transferring title to the home to 'B' and retaining a life estate in the home. 'A' keeps a life estate interest and 'B' receives a vested fee simple remainder interest. As soon as 'A' dies, the life estate interest merges with 'B's' remainder interest and 'B' has a fee simple title. This avoids the use of a will and the probate process. The danger to 'A' though, is that the grant to 'B' is irrevocable.

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