

One Hundred Second Legislature - First Session - 2011

Introducer's Statement of Intent

LB536

Chairperson: Senator Brad Ashford

Committee: Judiciary

Date of Hearing: February 17, 2011

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 536 enacts the Nebraska Uniform Real Property Transfer on Death Act. The bill provides an asset-specific mechanism for the non-probate transfer of land. The Nebraska Uniform Real Property Transfer on Death Act mirrors the Uniform Real Property Transfer on Death Act, promulgated by the Uniform Law Commission in 2009.

Last year I introduced LB 736 for discussion purposes, as first draft of a Uniform Real Property Transfer on Death Act. Over the interim an depth study was conducted pursuant to LR 488. Changes were made to conform the Uniform Law Commissioner's Act to Nebraska law and to address concerns that were raised. It is the intent that the interim study report developed pursuant to LR 488 be made a part of the permanent record of LB 536.

LB 536 permits owners of interests in real property to execute and record a transfer on death (TOD) deed which enables an owner of real property to pass the property to a beneficiary on the owner's death simply, directly, and without probate. By this deed, the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime, the beneficiaries have no interest in the property, and the owner retains full power to transfer or encumber the property or to revoke the TOD deed.

The Nebraska Uniform Real Property Transfer on Death Act establishes the requirements for the creation and revocation of a TOD deed and clarifies the effect of the TOD deed on all parties while the transferor is living and after the transferor dies. The Nebraska Real Property Transfer on Death Act provides optional forms to create or revoke a TOD deed. The TOD deed must contain all of the essential elements and formalities of a properly recordable inter vivos deed. The TOD deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located. The capacity required to create a TOD deed is the same as the capacity to make a will.

A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a revocatory instrument such as a direct revocation of the TOD deed or a subsequent TOD deed that names a different beneficiary. If the transferor disposes of the property during lifetime, the TOD deed is ineffective.

Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The TOD deed creates no legal or equitable interest in the designated beneficiary. Liability of the beneficiary and property for claims against the transferor's estate is limited to cases where the estate is insolvent. A designated beneficiary may disclaim all or part of the transferred interest.

The Nebraska Uniform Real Property Transfer on Death Act provides an uncomplicated, effective, and affordable option to pass this important type of asset at death.

Principal Introducer: _____

Senator John Wightman