

## LEGISLATIVE BILL 345

Approved by the Governor May 7, 2013

Introduced by Wightman, 36.

FOR AN ACT relating to real estate transfers; to amend sections 76-2,126, 76-3402, 76-3410, and 76-3420, Revised Statutes Cumulative Supplement, 2012; to change provisions relating to certain real estate filings and transfer on death deeds; to define a term; to provide operative dates; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-2,126, Revised Statutes Cumulative Supplement, 2012, is amended to read:

76-2,126 If a conveyance of real estate was pursuant to (1) a transfer on death deed due to the death of the transferor or the death of a surviving joint tenant of the transferor, (2) a joint tenancy deed due to the death of a joint tenant, or (3) the expiration of a life estate, then a death certificate shall be filed with the register of deeds to document the transfer of title to the beneficiary of the transfer on death deed, to the surviving joint tenant or joint tenants, or to the holder of an interest in real estate which receives that interest as a result of the death of a life tenant. A cover sheet indicating the title of the document, the previously recorded document data, and the grantor, surviving grantee, and legal description of the property being transferred shall be attached to the death certificate and recorded.

Sec. 2. Section 76-3402, Revised Statutes Cumulative Supplement, 2012, is amended to read:

76-3402 For purposes of the Nebraska Uniform Real Property Transfer on Death Act:

(1) Beneficiary means a person that receives property under a transfer on death deed;

(2) Designated beneficiary means a person designated to receive property in a transfer on death deed;

(3) Disinterested witness to a transfer on death deed means any individual who acts as a witness to a transfer on death deed at the date of its execution and who is not a designated beneficiary or an heir, a child, or a spouse of a designated beneficiary;

~~(3)~~ (4) Joint owner means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common without a right of survivorship;

~~(4)~~ (5) Person means an individual, a corporation, an estate, a trustee of a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

~~(5)~~ (6) Property means an interest in real property located in this state which is transferable on the death of the owner;

~~(6)~~ (7) Transfer on death deed means a deed authorized under the Nebraska Uniform Real Property Transfer on Death Act; and

~~(7)~~ (8) Transferor means an individual who makes a transfer on death deed.

Sec. 3. Section 76-3410, Revised Statutes Cumulative Supplement, 2012, is amended to read:

76-3410 (a) A transfer on death deed:

(1) Except as otherwise provided in subdivision (2) of this subsection, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death;

(3) Must contain the warnings provided in subsection (b) of this section; and

(4) Must be recorded (i) within thirty days after being executed as required in section 76-3409, (ii) before the transferor's death, and (iii) in the public records in the office of the register of deeds of the county where the property is located.

(b) (1) A transfer on death deed shall contain the following warnings:

WARNING: The property transferred remains subject to inheritance

taxation in Nebraska to the same extent as if owned by the transferor at death. Failure to timely pay inheritance taxes is subject to interest and penalties as provided by law.

WARNING: The designated beneficiary is personally liable, to the extent of the value of the property transferred, to account for medicaid reimbursement to the extent necessary to discharge any such claim remaining after application of the assets of the transferor's estate. The designated beneficiary may also be personally liable, to the extent of the value of the property transferred, for claims against the estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration to the extent needed to pay such amounts by the personal representative.

WARNING: The Department of Health and Human Services may require revocation of this deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order to qualify or remain qualified for medicaid assistance.

(2) No recorded transfer on death deed shall be invalidated because of any defects in the wording of the warnings required by this subsection.

(c) No action may be commenced to set aside a transfer on death deed, based on failure to comply with the requirement of disinterested witnesses pursuant to section 76-3409, more than ninety days after the date of death of the transferor or, if there is more than one transferor, more than ninety days after the date of death of the last surviving transferor.

(d) Notwithstanding subsection (c) of this section, an action to set aside a transfer on death deed, based on failure to comply with the requirement of disinterested witnesses pursuant to section 76-3409, in which the transferor or, if there is more than one transferor, the last surviving transferor, has died prior to the operative date of this section, shall be commenced by the later of (1) ninety days after the date of death of the transferor or, if there is more than one transferor, ninety days after the date of death of the last surviving transferor, or (2) ninety days after the operative date of this section.

Sec. 4. Section 76-3420, Revised Statutes Cumulative Supplement, 2012, is amended to read:

76-3420 (a) Except as otherwise provided in subsection (b) of this section and subject to a determination of the rights of any parties to an action commenced pursuant to subsection (c) or (d) of section 76-3410, if property or any interest therein transferred to a beneficiary by a transfer on death deed is acquired by a purchaser or lender for value from a beneficiary of a transfer on death deed, the purchaser or lender takes title free of any claims of the estate, personal representative, surviving spouse, creditors, and any other person claiming by or through the transferor of the transfer on death deed, including any heir or beneficiary of the estate of the transferor, and the purchaser or lender shall not incur any personal liability to the estate, personal representative, surviving spouse, creditors, or any other person claiming by or through the transferor of the transfer on death deed, including any heir or beneficiary of the estate of the transferor, whether or not the conveyance by the transfer on death deed was proper. Except as otherwise provided in subsection (b) of this section, to be protected under this section, a purchaser or lender need not inquire whether a transferor or beneficiary of the transfer on death deed acted properly in making the conveyance to the beneficiary by the transfer on death deed.

(b) A purchaser or lender for value from a beneficiary of a transfer on death deed does not take title free of any lien for inheritance tax under section 77-2003.

Sec. 5. Sections 1 and 6 of this act become operative three calendar months after the adjournment of this legislative session. Sections 2 and 7 of this act become operative on January 1, 2013. The other sections of this act become operative on their effective date.

Sec. 6. Original section 76-2,126, Revised Statutes Cumulative Supplement, 2012, is repealed.

Sec. 7. Original section 76-3402, Revised Statutes Cumulative Supplement, 2012, is repealed.

Sec. 8. Original sections 76-3410 and 76-3420, Revised Statutes Cumulative Supplement, 2012, are repealed.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.