

SENATE BILL NO. 19

INTRODUCED BY J. SHOCKLEY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FILING OF AN AFFIDAVIT OF DEATH FOR THE PURPOSES OF NONPROBATE TRANSFERS OF REAL PROPERTY; AND AMENDING SECTION 72-6-121, MCA."

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

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10 **Section 1.** Section 72-6-121, MCA, is amended to read:11 **"72-6-121. Beneficiary deed -- form -- definitions.** (1) A deed that conveys an interest in real property,
12 including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that
13 expressly states that the deed is effective on the death of the owner transfers the deceased owner's interest to
14 the grantee beneficiary designated by name in the beneficiary deed effective on the death of the owner, subject
15 to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other
16 encumbrances made by the owner or to which the owner was subject during the owner's lifetime.17 (2) A beneficiary deed may designate multiple grantees who take title as joint tenants with right of
18 survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.19 (3) A beneficiary deed may designate a successor grantee beneficiary. If the beneficiary deed designates
20 a successor grantee beneficiary, the deed must state the condition on which the interest of the successor grantee
21 beneficiary would vest.22 (4) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys
23 an interest in the real property to a grantee beneficiary designated by all of the ~~then-surviving~~ then-surviving
24 owners and that expressly states that the deed is effective on the death of the last surviving owner transfers the
25 interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a beneficiary
26 deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship,
27 the beneficiary deed is valid if the last surviving owner is one of the persons who executes the beneficiary deed.
28 If the last surviving owner did not execute the beneficiary deed, the transfer lapses and the deed is void. An estate
29 in joint tenancy with right of survivorship is not affected by the execution of a beneficiary deed that is executed
30 by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of

1 survivorship prevail over a grantee beneficiary named in a beneficiary deed. A surviving person with an interest
2 in real property subject to a beneficiary deed as provided in this section may execute an acknowledged statement
3 that another person with an interest in the property is deceased. The statement must contain those matters
4 specified in 7-4-2613(1)(c) AND BE RECORDED WITH THE CLERK AND RECORDER IN EACH COUNTY IN WHICH THE REAL
5 PROPERTY OR ANY PART OF THE REAL PROPERTY IS LOCATED.

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

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

16 (7) If an individual who is a recipient of medicaid pursuant to 53-6-131 conveys an interest in real
17 property by means of a beneficiary deed, the department of public health and human services may assert a claim
18 pursuant to 53-6-167 against the property that is the subject of a beneficiary deed to the extent of medical
19 assistance granted by the department.

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

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

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

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

30 (12) The death of an owner of real property must, for the purposes of this section, be proved by affidavit

1 ~~or certificate of death~~ AN ACKNOWLEDGED STATEMENT THAT A PERSON WITH AN INTEREST IN THE PROPERTY IS
 2 DECEASED. THE STATEMENT MUST CONTAIN THE MATTERS SPECIFIED IN 7-4-2613(1)(C) AND BE RECORDED WITH THE
 3 CLERK AND RECORDER IN EACH COUNTY IN WHICH THE REAL PROPERTY OR ANY PART OF THE REAL PROPERTY IS LOCATED.

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

6 Beneficiary Deed

7 I (we) (owner) hereby convey to (grantee beneficiary)
 8 effective on my (our) death the following described real property:

9 (Legal description)

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

12 Become void.

13 Become part of the estate of the grantee beneficiary.

14

15 (Dated)

16

17 (Signature of grantor(s))

18 (acknowledgment)

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

21 Revocation of Beneficiary Deed

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

25 (Legal description)

26 Dated:

27

28 Signature

29 (acknowledgment)

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

1 (a) "Beneficiary deed" means a deed authorized by this section.

2 (b) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real
3 property that is the subject of the beneficiary deed.

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

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