

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1918 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/3/05

A Bill

HOUSE BILL 1137

5 By: Representative Verkamp
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE TITLE 18,
10 CHAPTER 12, SUBCHAPTER 6 TO ADD A SECTION TO
11 CREATE A BENEFICIARY DEED AS A NEW FORM OF
12 CONVEYANCE OF TITLE IN REAL PROPERTY; TO REQUIRE
13 THAT A BENEFICIARY DEED BE REVOKED BY A PERSON
14 SEEKING MEDICAL ASSISTANCE FOR LONG-TERM CARE
15 COSTS; AND FOR OTHER PURPOSES.
16

Subtitle

17 TO CREATE A BENEFICIARY DEED AS A NEW
18 FORM OF CONVEYANCE OF TITLE IN REAL
19 PROPERTY AND TO REQUIRE THAT A
20 BENEFICIARY DEED BE REVOKED BY A PERSON
21 SEEKING MEDICAL ASSISTANCE FOR LONG-TERM
22 CARE COSTS.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code Title 18, Chapter 12, Subchapter 6 is amended
29 to add an additional section to read as follows:

30 18-12-608. Beneficiary deeds – Terms – Recording required.

31 (a)(1)(A) A beneficiary deed is a deed that conveys an interest in
32 real property, including any debt secured by a lien on real property, to a
33 grantee designated by the owner and that expressly states that the deed is
34 not to take effect until the death of the owner.

35 (B)(i) A beneficiary deed transfers the interest to the



1 designated grantee beneficiary effective upon the death of the owner, subject
2 to:

3 (a) All conveyances, assignments, contracts,
4 mortgages, deeds of trust, liens, security pledges, oil, gas, or mineral
5 leases, and other encumbrances made by the owner or to which the real
6 property was subject at the time of the owner's death, whether or not the
7 conveyance or encumbrance was created before or after the execution of the
8 beneficiary deed; and

9 (b) A claim for the amount of federal or state
10 benefits that could have been recovered by the Department of Human Services
11 from the estate of the grantor under § 20-76-436 but for the transfer under
12 the beneficiary deed.

13 (ii) No legal or equitable interest shall vest in
14 the grantee until the death of the owner prior to revocation of the
15 beneficiary deed.

16 (2)(A) The owner may designate multiple grantees under a beneficiary
17 deed.

18 (B) Multiple grantees may be joint tenants with right of
19 survivorship, tenants in common, holders of a tenancy by the entirety, or any
20 other tenancy that is otherwise valid under the laws of this state.

21 (3)(A) The owner may designate a successor grantee beneficiary
22 under a beneficiary deed.

23 (B) The condition upon which the interest of the successor
24 grantee vests shall be included in the beneficiary deed.

25 (b)(1) If real property is owned as a tenancy by the entirety or as a
26 joint tenancy with the right of survivorship, a beneficiary deed that conveys
27 an interest in the real property to a grantee designated by all of the then
28 surviving owners and that expressly states the deed is not to take effect
29 until the death of the last surviving owner transfers the interest to the
30 designated grantee beneficiary effective upon the death of the last surviving
31 owner.

32 (2)(A) If a beneficiary deed is executed by fewer than all of
33 the owners of real property owned as a tenancy by the entirety or as joint
34 tenants with right of survivorship, the beneficiary deed is valid if the last
35 surviving owner is one of the persons who executes the beneficiary deed.

36 (B) If the last surviving owner did not execute the

1 beneficiary deed, the deed is invalid.

2 (c)(1) A beneficiary deed is valid only if the deed is executed before
3 the death of the owner or the last surviving owner and is recorded before the
4 death of the owner as provided by law in the office of the county recorder of
5 the county in which the property is located.

6 (2) A beneficiary deed may be used to transfer an interest in
7 real property to a trust estate even if the trust is revocable.

8 (d)(1) A beneficiary deed may be revoked at any time by the owner or,
9 if there is more than one (1) owner, by any of the owners who executed the
10 beneficiary deed.

11 (2) To be effective, the revocation must be:

12 (A) Executed before the death of the owner who executes
13 the revocation; and

14 (B) Recorded in the office of the county recorder of the
15 county in which the real property is located before the death of the owner as
16 provided by law.

17 (3) If the revocation is not executed by all the owners, the
18 revocation is not effective unless executed by the last surviving owner and
19 recorded before the death of the last surviving owner.

20 (4) A beneficiary deed that complies with this section may not
21 be revoked, altered, or amended by the provisions of the owner's will.

22 (e) If an owner executes more than one (1) beneficiary deed concerning
23 the same real property, the recorded beneficiary deed that is last signed
24 before the owner's death is the effective beneficiary deed.

25 (f) Any third party owing an obligation to the owner of an interest
26 which is made subject to a beneficiary deed may require any person claiming
27 to be entitled to any part of such interest as grantee to present reasonable
28 evidence that the owner who executed the beneficiary deed is deceased and
29 that such owner did not execute and record a revocation of such beneficiary
30 deed prior to the owner's death.

31 (g)(1) This section does not prohibit other methods of conveying
32 property that are permitted by law and that have the effect of postponing
33 enjoyment of an interest in real property until the death of the owner.

34 (2) This section does not invalidate any deed otherwise
35 effective by law to convey title to the interests and estates provided in the
36 deed that is not recorded until after the death of the owner.

1 (3) In the event of a bankruptcy or divorce, a beneficiary deed
2 shall be treated as a revocable trust.

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

5 "Beneficiary Deed

6 CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE
7 GRANTOR IN ORDER TO BE EFFECTIVE.

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

10 (Legal description)

11 _____
12 (Signature of grantor(s))

13 (acknowledgment)."

14 (i) The instrument of revocation shall be sufficient if it complies
15 with other applicable laws and is in substantially the following form:

16 "Revocation of Beneficiary Deed

17 CAUTION: THIS REVOCATION MUST BE RECORDED PRIOR TO THE DEATH OF
18 THE GRANTOR IN ORDER TO BE EFFECTIVE.

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

22 Dated: _____

23 _____
24 Signature

25 (acknowledgment)."

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28 /s/ Verkamp

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31 APPROVED: 04/11/2005

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