

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 243 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1362

5 By: Representatives Harrelson, Walters
6
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE LAW REGARDING BENEFICIARY
10 DEEDS; TO PROVIDE FOR THE RECOVERY OR DISCLAIMER
11 OF REIMBURSEMENT OF BENEFITS BY THE DEPARTMENT OF
12 HEALTH AND HUMAN SERVICES; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 TO CLARIFY THE LAW REGARDING BENEFICIARY
16 DEEDS AND TO PROVIDE FOR THE RECOVERY OR
17 DISCLAIMER OF REIMBURSEMENT OF BENEFITS
18 BY THE DEPARTMENT OF HEALTH AND HUMAN
19 SERVICES.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 18-12-608 is amended to read as follows:
26 18-12-608. Beneficiary deeds - Terms - Recording required.

27 (a)(1)(A) A beneficiary deed is a deed without current tangible
28 consideration that conveys upon the death of the owner an ownership interest
29 in real property, ~~including any debt secured by a lien on real property,~~
30 other than a leasehold or lien interest to a grantee designated by the owner
31 and that expressly states that the deed is not to take effect until the death
32 of the owner.

33 (B)(i) A beneficiary deed transfers the interest to the
34 designated grantee ~~beneficiary~~ effective upon the death of the owner, subject
35 to:



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

7 (b) A claim for ~~the amount~~ reimbursement of
 8 federal or state benefits ~~that could have been recovered~~ by the Department of
 9 Health and Human Services from the estate of the grantor or the interest
 10 acquired by a grantee of the beneficiary deed under § 20-76-436 ~~but for the~~
 11 ~~transfer under the beneficiary deed.~~

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

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

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

20 (3)(A) The owner may designate ~~a successor grantee beneficiary~~
 21 one (1) or more successor grantees, including one (1) or more unnamed heirs
 22 of the original grantee or grantees, under a beneficiary deed.

23 (B) The condition upon which the interest of ~~the a~~
 24 successor grantee vests, such as the failure of the original grantee to
 25 survive the grantor, shall be included in the beneficiary deed.

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

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

1 (B) If the last surviving owner did not execute the
2 beneficiary deed, the beneficiary deed is invalid.

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

8 (2) A beneficiary deed may be used to transfer an interest in
9 real property to a trustee of a trust estate even if the trust is revocable,
10 and may include one (1) or more unnamed successor trustees as successor
11 grantees.

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

15 (2) To be effective, the revocation shall be:

16 (A) Executed before the death of the owner who executes
17 the revocation; and

18 (B) Recorded in the office of the county recorder of the
19 county in which the real property is located before the death of the owner as
20 provided by law.

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

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

26 (e) If an owner executes more than one (1) beneficiary deed concerning
27 the same real property, the recorded beneficiary deed that is last signed
28 before the owner's death is the effective beneficiary deed, regardless of the
29 sequence of recording.

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

36 ~~(g)(1)~~(f)(1) This section does not prohibit other methods of conveying

1 real property that are permitted by law and that have the effect of
2 postponing enjoyment of an interest in real property until the death of the
3 owner.

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

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

9 ~~(h)~~(g) A beneficiary deed is sufficient if it complies with other
10 applicable laws and if it is in substantially the following form:

11
12 "Beneficiary Deed

13
14 CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN
15 ORDER TO BE EFFECTIVE.

16
17 KNOW ALL PERSONS BY THESE PRESENTS THAT:

18 For a non-monetary, intangible consideration, of value to the Grantor, I (we)
19 hereby convey to _____ (grantee) effective
20 on my (our) death the following described real property:

21
22 (Legal description)

23
24 _____
25 (Signature of grantor(s))
26 (acknowledgment)."

27
28 ~~(i)~~(h) The instrument of revocation shall be sufficient if it complies
29 with other applicable laws and is in substantially the following form:

30
31 "Revocation of Beneficiary Deed

32
33 CAUTION: THIS REVOCATION MUST BE RECORDED PRIOR TO THE DEATH OF THE
34 GRANTOR IN ORDER TO BE EFFECTIVE.

35
36 The undersigned hereby revokes the beneficiary deed recorded on

1 _____ (date), in docket or book _____ at page
2 _____, or instrument number _____, records of
3 _____ County, Arkansas.
4

5 Dated: _____
6

7 _____
8 Signature

9 (acknowledgment)."
10

11 SECTION 2. Arkansas Code § 20-76-436 is amended to read as follows:
12 20-76-436. Recovery of benefits from recipients' estates.

13 (a)(1) Federal or state benefits in cash or in kind, including, but
14 not limited to, Medicaid, Aid to Families with Dependent Children,
15 Transitional Employment Assistance, Temporary Assistance for Needy Families,
16 and food stamps distributed or paid by the Department of Health and Human
17 Services as well as charges levied by the department for services rendered
18 shall upon the death of the recipient constitute a debt to be paid.

19 (2)(A) The department may make a claim against the estate of a
20 deceased recipient or the interest acquired from the deceased recipient by a
21 grantee of a beneficiary deed under § 18-12-608 for the amount of any
22 benefits distributed or paid or charges levied by the department.

23 (B) If a grantee of a beneficiary deed under § 18-12-608
24 makes a written request for a release or disclaimer of the department's
25 interest in the real property described in the beneficiary deed, the
26 department shall within thirty (30) calendar days of the request either:

27 (i) Make a claim against the interest acquired from
28 the deceased recipient by a grantee of the beneficiary deed; or

29 (ii) Provide the requested disclaimer and a release
30 suitable for recording in the real estate records of the county where the
31 real property is located.

32 (b)(1) The department shall not seek recovery against the estate of a
33 deceased recipient or the interest acquired from the deceased recipient by a
34 grantee of a beneficiary deed under § 18-12-608 for the amount of any
35 benefits distributed or paid or charges levied if the recovery is not cost
36 effective or if the recovery works an undue hardship on the heirs or devisees

1 of the decedent's estate or the grantee of a beneficiary deed under § 18-12-
2 608.

3 (2) In determining the existence of an undue hardship, the
4 department shall consider factors including, but not limited to, the
5 following:

6 (A) The ~~estate~~ asset subject to recovery is the sole
7 income-producing asset of the beneficiaries of the estate or the grantee of a
8 beneficiary deed under § 18-12-608;

9 (B) Without receipt of the beneficiary deed or proceeds of
10 the estate, a grantee or beneficiary would become eligible for federal or
11 state benefits;

12 (C) Allowing a grantee of a beneficiary deed under § 18-
13 12-608 to receive the interest under the beneficiary deed or a beneficiary to
14 receive the inheritance from the estate would enable a the grantee or
15 beneficiary to discontinue eligibility for federal or state benefits;

16 (D) The ~~estate~~ asset subject to recovery is a home with a
17 value of fifty percent (50%) or less of the average price of homes in the
18 county where the homestead is located, as of the date of the ~~beneficiary's~~
19 deceased recipient's death; or

20 (E) There are other compelling circumstances.

21 (c) To the extent that there is any conflict between the preceding
22 criteria and the standards that may be specified by the Secretary of the
23 Department of Health and Human Services, the federal standards shall prevail.

24 (d) Applicants for federal or state benefits shall be notified in
25 writing in prominent type on the application form that the department may
26 make a claim against their estate or the interest acquired from the applicant
27 by a grantee of a beneficiary deed under § 18-12-608.

28
29 SECTION 3. Arkansas Code § 26-60-102, concerning the exemptions from
30 the real property transfer tax, is amended to add an additional subdivision
31 to read as follows:

32 (12) A beneficiary deed under § 18-12-608.

33
34 APPROVED: 3/9/2007