

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.

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

# A Bill

HOUSE BILL 1362

4  
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:

36 (a) All conveyances, assignments, contracts,



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

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

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

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

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

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

22 (B) The condition upon which the interest of ~~the a~~  
 23 successor grantee vests, such as the failure of the original grantee to  
 24 survive the grantor, 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 beneficiary deed is not to  
 29 take effect until the death of the last surviving owner transfers the  
 30 interest to the designated grantee ~~beneficiary~~ effective upon the death of  
 31 the last surviving 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 a person who executed the beneficiary deed.

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

1 beneficiary deed, the beneficiary deed is invalid.

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

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

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

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

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

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

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

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

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

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

35 ~~(g)(1)(f)(1)~~ This section does not prohibit other methods of conveying  
36 real property that are permitted by law and that have the effect of

1 postponing enjoyment of an interest in real property until the death of the  
2 owner.

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

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

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

10  
11 "Beneficiary Deed

12  
13 CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN  
14 ORDER TO BE EFFECTIVE.

15  
16 KNOW ALL PERSONS BY THESE PRESENTS THAT:

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

20  
21 (Legal description)

22  
23 \_\_\_\_\_  
24 (Signature of grantor(s))  
25 (acknowledgment)."

26  
27 ~~(i)~~(h) The instrument of revocation shall be sufficient if it complies  
28 with other applicable laws and is in substantially the following form:

29  
30 "Revocation of Beneficiary Deed

31  
32 CAUTION: THIS REVOCATION MUST BE RECORDED PRIOR TO THE DEATH OF THE  
33 GRANTOR IN ORDER TO BE EFFECTIVE.

34  
35 The undersigned hereby revokes the beneficiary deed recorded on  
36 \_\_\_\_\_ (date), in docket or book \_\_\_\_\_ at page

1 \_\_\_\_\_, or instrument number \_\_\_\_\_, records of  
2 \_\_\_\_\_ County, Arkansas.

3  
4 Dated: \_\_\_\_\_

5  
6 \_\_\_\_\_  
7 Signature  
8 (acknowledgment)."

9  
10 SECTION 2. Arkansas Code § 20-76-436 is amended to read as follows:  
11 20-76-436. Recovery of benefits from recipients' estates.

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

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

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

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

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

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

1 608.

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

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

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

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

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

19 (E) There are other compelling circumstances.

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

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

27  
 28 SECTION 3. Arkansas Code § 26-60-102, concerning the exemptions from  
 29 the real property transfer tax, is amended to add an additional subdivision  
 30 to read as follows:

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