

SENATE BILL NO. 64—SENATOR RHOADS

FEBRUARY 16, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning conveyances of property. (BDR 10-539)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the distribution of estates; providing that the owner of an interest in real property may convey his interest to a grantee in a deed which becomes effective upon the death of the owner as the sole and separate property of the grantee without the necessity of the filing of a quitclaim deed or disclaimer by the spouse of the grantee; requiring certain documents relating to the conveyance of real property by such deeds to be filed with a county recorder; exempting from the real property transfer tax a conveyance of real property by deed which becomes effective upon the death of the grantor; extending the time within which a nonvested property interest must vest or terminate; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows the owner of an interest in real property to create a deed that conveys his interest in the property to another person, called a grantee, which becomes effective upon his death. The owner may designate more than one grantee to take the title of the property as any type of tenancy recognized by the State. These types of tenancy include joint tenants, tenants in common, husband and wife as community property, and community property with rights of survivorship. (NRS 111.109) Existing law also imposes taxes on transfers of real property with the exception of certain transfers. (NRS 375.020, 375.023, 375.026, 375.090)

This bill allows the owner of an interest in real property to designate a grantee or grantees to take title as sole and separate property. The spouse of the designated grantee is not required to file a quitclaim deed or disclaimer to the property when the deed is conveyed as sole and separate property. This bill also provides that if an



owner of an interest in real property executes and records more than one deed which conveys the same real property and which becomes effective upon the death of the owner, the last deed that is recorded before the death of the owner is the effective deed. In addition, this bill requires the recording of such deeds and any revocations for such deeds with the county recorder before the death of the owner in order for the deeds and revocations to be effective. Upon the death of the last surviving owner in such a deed, a declaration of value of real property and a copy of the death certificate of each owner must be attached to a Death of Grantor Affidavit and recorded in the county recorder's office where the deed was recorded. This bill also exempts from the real property transfer tax a conveyance of real property by deed which becomes effective upon the death of the grantor.

Existing law provides that certain nonvested property interests, nongeneral powers of appointment and general testamentary powers of appointment must vest or be irrevocably exercised or terminate within 90 years after creation of that interest. (NRS 111.1031) Senate Bill No. 382 of this session increased the number of years within which such interests or powers must vest or be irrevocably exercised or terminate to 150 years after creation of the interest or power.

This bill further extends the number of years within which such interests or powers must vest or be irrevocably exercised or terminate to 365 years from the creation of the interest or power.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 111.1031 is hereby amended to read as follows:

111.1031 1. A nonvested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of a natural person then alive; or

(b) The interest either vests or terminates within ~~150~~ 365 years after its creation.

2. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of a natural person then alive; or

(b) The condition precedent either is satisfied or becomes impossible to satisfy within ~~150~~ 365 years after its creation.

3. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of a natural person then alive; or

(b) The power is irrevocably exercised or otherwise terminates within ~~150~~ 365 years after its creation.

4. In determining whether a nonvested property interest or a power of appointment is valid under paragraph (a) of subsection 1,



1 paragraph (a) of subsection 2 or paragraph (a) of subsection 3, the
2 possibility that a child will be born to a person after his or her death
3 is disregarded.

4 5. If, in measuring a period from the creation of a trust or other
5 property arrangement, language in a governing instrument seeks to
6 disallow the vesting or termination of any interest or trust beyond,
7 seeks to postpone the vesting or termination of any interest or trust
8 until, or seeks to operate in effect in any similar fashion upon, the
9 later of:

10 (a) The expiration of a period of time not exceeding 21 years
11 after the death of the survivor of specified lives in being at the
12 creation of the trust or other property arrangement; or

13 (b) The expiration of a period of time that exceeds or might
14 exceed 21 years after the death of the survivor of lives in being at
15 the creation of the trust or other property arrangement,

16 ➔ that language is inoperative to the extent it produces a period of
17 time that exceeds 21 years after the death of the survivor of the
18 specified lives.

19 **Sec. 2.** NRS 111.1035 is hereby amended to read as follows:

20 111.1035 Upon the petition of an interested person, a court
21 shall reform a disposition in the manner that most closely
22 approximates the transferor's manifested plan of distribution and is
23 within the ~~150~~ 365 years allowed by paragraph (b) of subsection 1,
24 paragraph (b) of subsection 2 or paragraph (b) of subsection 3 of
25 NRS 111.1031 if:

26 1. A nonvested property interest or a power of appointment
27 becomes invalid under NRS 111.1031;

28 2. A class gift is not but might become invalid under NRS
29 111.1031 and the time has arrived when the share of any class
30 member is to take effect in possession or enjoyment; or

31 3. A nonvested property interest that is not validated by
32 paragraph (a) of subsection 1 of NRS 111.1031 can vest but not
33 within ~~150~~ 365 years after its creation.

34 **Sec. 3.** NRS 111.109 is hereby amended to read as follows:

35 111.109 1. The owner of an interest in real property may
36 create a deed that conveys his interest in real property to a grantee
37 which becomes effective upon the death of the owner. Such a
38 conveyance is subject to liens on the property in existence on the
39 date of the death of the owner.

40 2. The owner of an interest in real property who creates a deed
41 pursuant to subsection 1 may designate in the deed:

42 (a) Multiple grantees who will take title to the property upon his
43 death as joint tenants with right of survivorship, tenants in common,
44 husband and wife as community property, community property with



1 right of survivorship or any other tenancy that is recognized in this
2 State.

3 (b) ~~[A successor in interest to the grantee. If a successor in~~
4 ~~interest is designated, the deed must include a provision stating the~~
5 ~~condition precedent for the interest of the successor to vest.] A~~
6 ~~grantee or multiple grantees who will take title to the property~~
7 ~~upon his death as the sole and separate property of the grantee or~~
8 ~~grantees without the necessity of the filing of a quitclaim deed or~~
9 ~~disclaimer by the spouse of any grantee.~~

10 3. If the owner of the real property which is the subject of a
11 deed created pursuant to subsection 1 holds the interest in the
12 property as a joint tenant with right of survivorship or as community
13 property with the right of survivorship and:

14 (a) The deed includes a conveyance of the interest from each of
15 the other owners, the deed becomes effective on the date of the
16 death of the last surviving owner; or

17 (b) The deed does not include a conveyance of the interest from
18 each of the other owners, the deed becomes effective on the date of
19 the death of the owner who created the deed only if the owner who
20 conveyed his interest in real property to the grantee is the last
21 surviving owner.

22 4. If an owner of an interest in real property who creates a deed
23 pursuant to subsection 1 transfers his interest in the real property to
24 another person during his lifetime, the deed created pursuant to
25 subsection 1 is void.

26 5. *If an owner of an interest in real property who creates a*
27 *deed pursuant to subsection 1 executes and records more than one*
28 *deed concerning the same real property, the deed that is last*
29 *recorded before the death of the owner is the effective deed.*

30 6. *A deed created pursuant to subsection 1 is valid only if*
31 *executed and recorded as provided by law in the office of the*
32 *county recorder of the county in which the property is located*
33 *before the death of the owner or the death of the last surviving*
34 *owner. The deed must be in substantially the following form:*

35 DEED

36
37
38 *I (We) _____ (owner) hereby convey to _____*
39 *(grantee), effective on my (our) death, the following described real*
40 *property:*
41 *(Legal Description)*

42
43 *THIS DEED IS REVOCABLE. THIS DEED DOES NOT*
44 *TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE*
45 *GRANTOR. THIS DEED REVOKES ALL PRIOR DEEDS BY*



1 **THE GRANTOR WHICH CONVEY THE SAME REAL**
2 **PROPERTY PURSUANT TO SUBSECTION 1 OF NRS 111.109**
3 **REGARDLESS OF WHETHER THE PRIOR DEEDS FAILED**
4 **TO CONVEY THE GRANTOR'S ENTIRE INTEREST IN THE**
5 **SAME REAL PROPERTY.**

6
7
8 _____
9 (Signature of Grantor)

10 7. A deed created pursuant to subsection 1 may be revoked at
11 any time by the owner or, if there is more than one owner, by any
12 of the owners who created the deed. The revocation is valid only if
13 executed and recorded as provided by law in the office of the
14 county recorder of the county in which the property is located
15 before the death of the owner who executes the revocation. If the
16 property is held as joint tenants with right of survivorship or as
17 community property with the right of survivorship and the
18 revocation is not executed by all of the owners, the revocation does
19 not become effective unless the revocation is executed and
20 recorded by the last surviving owner. The revocation of deed must
21 be in substantially the following form:

22
23 **REVOCATION OF DEED**

24
25 The undersigned hereby revokes the deed recorded on
26 _____ (date), in docket or book _____, at page
27 _____, or instrument number _____, records of
28 _____ County, Nevada.

29 _____
30 (Date)

_____ (Signature)

31
32 8. Upon the death of the last grantor of a deed created
33 pursuant to subsection 1, a declaration of value of real property
34 pursuant to NRS 375.060 and a copy of the death certificate of
35 each grantor must be attached to a Death of Grantor Affidavit and
36 recorded in the office of the county recorder where the deed was
37 recorded. The Death of Grantor Affidavit must be in substantially
38 the following form:

39
40 **DEATH OF GRANTOR AFFIDAVIT**

41
42 _____ (affiant name), being duly sworn, deposes
43 and says that _____ (name of deceased), the decedent
44 mentioned in the attached certified copy of the Certificate of
45 Death, is the same person as _____ (name of



1 *grantor), named as the grantor or as one of the grantors in the*
2 *deed recorded on _____ (date), in docket or book*
3 *_____, at page _____, or instrument number _____,*
4 *records of _____ County, Nevada, covering the*
5 *following described property:*
6 *(Legal Description)*

7 _____ *(affiant name) is the grantee or at least one*
8 *of the grantees to whom the real property is conveyed upon the*
9 *death of the grantor _____ (name of deceased)*
10 *or is the authorized representative of the grantee or at least one of*
11 *the grantees.*

12 _____
13 *(Date)*

_____ *(Signature)*

14
15 **9.** The provisions of this section must not be construed to limit
16 the recovery of benefits paid for Medicaid.

17 **Sec. 4.** NRS 375.090 is hereby amended to read as follows:

18 375.090 The taxes imposed by NRS 375.020, 375.023 and
19 375.026 do not apply to:

20 1. A mere change in identity, form or place of organization,
21 such as a transfer between a corporation and its parent corporation, a
22 subsidiary or an affiliated corporation if the affiliated corporation
23 has identical common ownership.

24 2. A transfer of title to the United States, any territory or state
25 or any agency, department, instrumentality or political subdivision
26 thereof.

27 3. A transfer of title recognizing the true status of ownership of
28 the real property.

29 4. A transfer of title without consideration from one joint
30 tenant or tenant in common to one or more remaining joint tenants
31 or tenants in common.

32 5. A transfer of title between spouses, including gifts, or to
33 effect a property settlement agreement or between former spouses in
34 compliance with a decree of divorce.

35 6. A transfer of title to or from a trust without consideration if a
36 certificate of trust is presented at the time of transfer.

37 7. Transfers, assignments or conveyances of unpatented mines
38 or mining claims.

39 8. A transfer, assignment or other conveyance of real property
40 to a corporation or other business organization if the person
41 conveying the property owns 100 percent of the corporation or
42 organization to which the conveyance is made.

43 9. A transfer, assignment or other conveyance of real property
44 if the owner of the property is related to the person to whom it is
45 conveyed within the first degree of consanguinity **or affinity.**



1 10. *A conveyance of real property by deed which becomes*
2 *effective upon the death of the grantor pursuant to NRS 111.109.*

3 11. The making, delivery or filing of conveyances of real
4 property to make effective any plan of reorganization or adjustment:

5 (a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C.
6 §§ 101 et seq.;

7 (b) Approved in an equity receivership proceeding involving a
8 railroad, as defined in the Bankruptcy Act; or

9 (c) Approved in an equity receivership proceeding involving a
10 corporation, as defined in the Bankruptcy Act,

11 ➤ if the making, delivery or filing of instruments of transfer or
12 conveyance occurs within 5 years after the date of the confirmation,
13 approval or change.

14 ~~11.1~~ 12. The making or delivery of conveyances of real
15 property to make effective any order of the Securities and Exchange
16 Commission if:

17 (a) The order of the Securities and Exchange Commission in
18 obedience to which the transfer or conveyance is made recites that
19 the transfer or conveyance is necessary or appropriate to effectuate
20 the provisions of section 11 of the Public Utility Holding Company
21 Act of 1935, 15 U.S.C. § 79k;

22 (b) The order specifies and itemizes the property which is
23 ordered to be transferred or conveyed; and

24 (c) The transfer or conveyance is made in obedience to the
25 order.

26 ~~11.2~~ 13. A transfer to an educational foundation. As used in
27 this subsection, "educational foundation" has the meaning ascribed
28 to it in subsection 3 of NRS 388.750.

29 ~~11.3~~ 14. A transfer to a university foundation. As used in this
30 subsection, "university foundation" has the meaning ascribed to it in
31 subsection 3 of NRS 396.405.

32 **Sec. 5.** NRS 388.750 is hereby amended to read as follows:

33 388.750 1. An educational foundation:

34 (a) Shall comply with the provisions of chapter 241 of NRS;

35 (b) Except as otherwise provided in subsection 2, shall make its
36 records public and open to inspection pursuant to NRS 239.010; and

37 (c) Is exempt from the taxes imposed by NRS 375.020, 375.023
38 and 375.026 pursuant to subsection ~~11.2~~ 13 of NRS 375.090.

39 2. An educational foundation is not required to disclose the
40 names of the contributors to the foundation or the amount of their
41 contributions. The educational foundation shall, upon request, allow
42 a contributor to examine, during regular business hours, any record,
43 document or other information of the foundation relating to that
44 contributor.



1 3. As used in this section, "educational foundation" means a
2 nonprofit corporation, association or institution or a charitable
3 organization that is:

4 (a) Organized and operated exclusively for the purpose of
5 supporting one or more kindergartens, elementary schools, junior
6 high or middle schools or high schools, or any combination thereof;

7 (b) Formed pursuant to the laws of this State; and

8 (c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

9 **Sec. 6.** NRS 396.405 is hereby amended to read as follows:

10 396.405 1. A university foundation:

11 (a) Shall comply with the provisions of chapter 241 of NRS;

12 (b) Except as otherwise provided in subsection 2, shall make its
13 records public and open to inspection pursuant to NRS 239.010;

14 (c) Is exempt from the taxes imposed by NRS 375.020, 375.023
15 and 375.026 pursuant to subsection ~~133~~ 14 of NRS 375.090; and

16 (d) May allow a president or an administrator of the university
17 or community college which it supports to serve as a member of its
18 governing body.

19 2. A university foundation is not required to disclose the name
20 of any contributor or potential contributor to the university
21 foundation, the amount of his contribution or any information which
22 may reveal or lead to the discovery of his identity. The university
23 foundation shall, upon request, allow a contributor to examine,
24 during regular business hours, any record, document or other
25 information of the foundation relating to that contributor.

26 3. As used in this section, "university foundation" means a
27 nonprofit corporation, association or institution or a charitable
28 organization that is:

29 (a) Organized and operated exclusively for the purpose of
30 supporting a university or a community college;

31 (b) Formed pursuant to the laws of this State; and

32 (c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

33 **Sec. 7.** 1. This section and sections 3 to 6, inclusive, of this
34 act become effective on July 1, 2005.

35 2. Sections 1 and 2 of this act become effective at 12:01 a.m.
36 on October 1, 2005.

