

ASSEMBLY BILL NO. 414—ASSEMBLYMAN O’NEILL

MARCH 25, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the transfer of real property pursuant to a deed becoming effective upon the death of the grantor. (BDR 32-648)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 real property; revising the exemption from real property transfer taxes for the conveyance of real property under a deed which becomes effective upon the death of the grantor; revising provisions governing the enforcement of claims against real property transferred pursuant to a deed upon death; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes a person to create a deed that transfers his or her real property to a beneficiary or multiple beneficiaries pursuant to a deed that becomes effective upon the person’s death and refers to such a deed as a deed upon death. (NRS 111.661, 111.669) Under existing law, upon the death of the last grantor of a deed upon death, a declaration of the value of the real property being transferred and a copy of the death certificate must be attached to a Death of Grantor Affidavit and recorded in the office of the county recorder in which the deed upon death was recorded. (NRS 111.699) Existing law exempts from taxes on the transfer of real property any conveyance of real property by a deed upon death. (NRS 375.090) **Section 1** of this bill provides that upon the recording of the Death of Grantor Affidavit in the office of the county recorder upon the death of the grantor, the conveyance of real property is also exempt from taxes imposed on the transfer of real property. **Sections 3 and 6** of this bill provide that this exemption applies to any Death of Grantor Affidavit recorded in the office of a county recorder on or after the passage and approval of this bill.

Under existing law, if the probate estate of the grantor of a deed upon death is insufficient to satisfy certain claims or allowances against the estate, the estate is authorized to enforce the liability for the claim or allowance against the property transferred pursuant to the deed upon death. Existing law requires a proceeding to enforce this liability to be commenced not later than 18 months after the death of



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the grantor. (NRS 111.689) **Sections 2 and 4** of this bill remove this limitation and establish a procedure for claims to be made against property transferred pursuant to a deed upon death if the grantor of the deed upon death dies on or after July 1, 2021. Under **section 2**, the beneficiary or beneficiaries under a deed upon death are required to provide certain notice of the death of the grantor of the deed upon death, and a person who has a claim against the grantor or his or her probate estate is required to file the claim with the beneficiary or beneficiaries within 90 days after the notice is provided. If a claim is not filed within 90 days after the notice is provided, any claim against the grantor or his or her probate estate can no longer be made against the property transferred pursuant to the deed upon death, and the beneficiary or beneficiaries under the deed upon death are authorized to sell or distribute the property without personal liability for any claim which was not timely filed. If the beneficiary or beneficiaries under a deed upon death reject, in whole or in part, any claim that is timely filed, the beneficiary or beneficiaries are required to notify the claimant and the claimant is authorized to bring a suit in the court with jurisdiction against the beneficiary or beneficiaries but such suit must be brought within 30 days after the beneficiary or beneficiaries provided notice of the rejection of the claim. Finally, **section 2**: (1) establishes a procedure for the beneficiary or beneficiaries under a deed upon death to provide notice to the Department of Health and Human Services if the beneficiary or beneficiaries know or have reason to know that the grantor of the deed upon death was a recipient of public assistance; and (2) provides that the property transferred pursuant to such a deed upon death remains subject to any claim by the Department to recover public assistance provided to the grantor.

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

Section 1. NRS 375.090 is hereby amended to read as follows:
375.090 The taxes imposed by NRS 375.020, 375.023 and 375.026 do not apply to:
1. A mere change in identity, form or place of organization, such as a transfer between a business entity and its parent, its subsidiary or an affiliated business entity if the affiliated business entity has identical common ownership.
2. A transfer of title to the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.
3. A transfer of title recognizing the true status of ownership of the real property, including, without limitation, a transfer by an instrument in writing pursuant to the terms of a land sale installment contract previously recorded and upon which the taxes imposed by this chapter have been paid.
4. A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint tenants or tenants in common.
5. A transfer, assignment or other conveyance of real property if the owner of the property is related to the person to whom it is conveyed within the first degree of lineal consanguinity or affinity.



6. A transfer of title between former spouses in compliance with a decree of divorce.

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

8. Transfers, assignments or conveyances of unpatented mines or mining claims.

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

10. A conveyance of real property by deed which becomes effective upon the death of the grantor pursuant to NRS 111.655 to 111.699, inclusive **and a Death of Grantor Affidavit recorded in the office of the county recorder pursuant to NRS 111.699.**

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

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

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

(c) Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act,
➤ if the making, delivery or filing of instruments of transfer or conveyance occurs within 5 years after the date of the confirmation, approval or change.

12. A transfer to an educational foundation. As used in this subsection, "educational foundation" has the meaning ascribed to it in subsection 3 of NRS 388.750.

13. A transfer to a university foundation. As used in this subsection, "university foundation" has the meaning ascribed to it in subsection 3 of NRS 396.405.

14. A transfer to a library foundation. As used in this subsection, "library foundation" has the meaning ascribed to it in NRS 379.0056.

Sec. 2. NRS 111.689 is hereby amended to read as follows:

111.689 1. To the extent the grantor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred pursuant to a deed upon death.

2. If more than one property is transferred pursuant to one or more deeds upon death, the liability for any claim must be apportioned among the properties in proportion to their net values at the grantor's death.



3. ~~[A proceeding to enforce the liability under this section must be commenced not later than 18 months after the grantor's death.]~~

The beneficiary or beneficiaries under a deed upon death must, after the death of the grantor, cause to be published a notice in the manner specified in paragraph (b) of subsection 1 of NRS 155.020 and mail a copy of the notice to known or readily ascertainable creditors of the grantor or the probate estate of the grantor.

4. *The notice published pursuant to subsection 3 must be in substantially the following form:*

NOTICE TO CREDITORS

Notice is hereby given that the undersigned is/are the beneficiary or beneficiaries under a deed upon death executed by (grantor(s)) on the day of, and that said grantor(s) died on the day of A creditor having a claim against the grantor(s) or their estate must file a claim with the undersigned at the address given below within 90 days after the first publication of this notice.

Dated this day of,

Beneficiary or Beneficiaries:

*Address:
.....*

5. *A person having a claim, due or to become due, against a grantor or his or her probate estate, as applicable, must file the claim with the beneficiary or beneficiaries within 90 days after the mailing, for those required to be mailed, or 90 days after publication of the first notice to creditors pursuant to subsection 3. Any claim against a grantor or the probate estate of a grantor, as applicable, not filed within that time is forever barred. After the expiration of the time to file a claim as provided in this section, the beneficiary or beneficiaries may sell or distribute the property transferred pursuant to the deed upon death, without personal liability for any claim which has not been timely filed with the beneficiary or beneficiaries.*

6. *If the beneficiary or beneficiaries under the deed upon death know or have reason to believe that the grantor received public assistance during the lifetime of the grantor, the beneficiary or beneficiaries shall give notice within 30 days after the death of the grantor to the Department of Health and Human Services in*



1 *the manner provided in NRS 155.010. If notice to the Department*
2 *is required by this subsection but is not given, the property*
3 *transferred by the deed upon death remains subject to the right of*
4 *the Department to recover public assistance received by the*
5 *grantor.*

6 *7. If a claim is rejected by the beneficiary or beneficiaries*
7 *under the deed upon death, in whole or in part, the beneficiary or*
8 *beneficiaries must, within 10 days after the rejection, notify the*
9 *claimant of the rejection by written notice sent by registered or*
10 *certified mail to the mailing address of the claimant. The claimant*
11 *must bring suit in the proper court against the beneficiary or*
12 *beneficiaries within 30 days after the notice is sent, whether the*
13 *claim is due or not, or the claim is barred forever and the*
14 *beneficiary or beneficiaries under the deed upon death may*
15 *distribute the property transferred by the deed upon death without*
16 *personal liability to any creditor whose claim is barred forever.*

17 *8. A title company that is engaged regarding the transfer of*
18 *the property identified in a deed upon death must recognize that*
19 *the notices provided pursuant to this section constitute adequate*
20 *notice required by law.*

21 **Sec. 3.** The amendatory provisions of section 1 of this act
22 apply to a Death of Grantor Affidavit recorded in the office of a
23 county recorder pursuant to NRS 111.699 on or after the effective
24 date of section 1 of this act.

25 **Sec. 4.** The amendatory provisions of section 2 of this act
26 apply only if the death of a grantor who makes a deed upon death
27 pursuant to NRS 111.655 to 111.699, inclusive, occurs on or after
28 July 1, 2021.

29 **Sec. 5.** Notwithstanding the provisions of NRS 218D.430 and
30 218D.435, a committee, other than the Assembly Standing
31 Committee on Ways and Means and the Senate Standing Committee
32 on Finance, may vote on this act before the expiration of the period
33 prescribed for the return of a fiscal note in NRS 218D.475. This
34 section applies retroactively from and after March 22, 2021.

35 **Sec. 6.** 1. This section and sections 1, 3 and 5 of this act
36 become effective upon passage and approval.

37 2. Sections 2 and 4 of this act become effective on July 1,
38 2021.

