

LEGAL SERVICES

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MEMORANDUM

April 7, 2014

SUBJECT: Sectional summary of CSHB 60() relating to the Uniform Real Property Transfer on Death Act, the law governing certain trusts, and disclaimers of property interests (Work Order No. 28-LS0265\Y)

TO: Representative Max Gruenberg
Attn: Nicoli Bailey

FROM:  Terry Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Bill section 1. Indicates that, unless certain circumstances are met, the laws of this state govern the administration of a trust and that the courts of this state have exclusive jurisdiction over the trust and its trustees while the trust is administered in this state.

Bill section 2. Adopts the Uniform Real Property Transfer on Death Act as AS 13.48.

Sec. 13.48.010. Authorizes an individual (Transferor) to use a transfer on death deed (TOD deed) to transfer property to another person (Beneficiary) when the individual dies.

Sec. 13.48.020. Allows a TOD deed to be revoked.

Sec. 13.48.030. States that a TOD deed is not testamentary.

Sec. 13.48.040. Establishes what capacity a Transferor must have to make or revoke a TOD deed. It is the same as for a will.

Sec. 13.48.045. Indicates that a TOD deed and an instrument revoking a TOD deed are void if obtained by fraud, duress, or undue influence. Requires that a proceeding must be brought within 12 months to contest the capacity of the transferor or to determine that a TOD deed or an instrument revoking a TOD deed is void because obtained by fraud, duress, or undue influence.

Sec. 13.48.050. Requires a TOD deed to (1) have the elements and formalities of a recordable inter vivos deed, (2) contain a statement that the transfer will occur when the Transferor dies, and (3) to be recorded before the Transferor's death. Prohibits using a beneficiary designation that only identifies a class of people.

Sec. 13.48.060. States that a TOD deed is effective without consideration, and without notice to, delivery to, or acceptance by the Beneficiary during the Transferor's life.

Sec. 13.48.070. In (a), describes what types of instruments will revoke a recorded TOD deed. In (b), addresses revocation when there is more than one Transferor. In (c), prohibits revocation of a recorded TOD deed by a revocatory act on the deed. In (d), states that the section does not limit the effect of an inter vivos transfer of property. In (e), allows an agent expressly given the power in a TOD deed or in a power of attorney to revoke a TOD deed.

Sec. 13.48.080. Lists the effects that a TOD deed does not have during a Transferor's life. Does not affect an interest or right of the Transferor, another owner, or a transferee. Does not affect the interests or rights of the Transferor's creditors. Does not affect eligibility for public assistance. Does not create legal or equitable interests for the Beneficiary. Does not subject the property to the claims of the Beneficiary's creditors.

Sec. 13.48.090. Describes the effects of a TOD deed on the property when the Transferor dies still owning the property. States that the property is transferred to the Beneficiary, subject to the Beneficiary surviving the Transferor. States that the Beneficiary's interest is contingent on surviving the Transferor. States how concurrent and joint interests are transferred. Allows the Transferor to identify alternate Beneficiaries. States that, subject to AS 40.17 (the recording chapter), a Beneficiary takes the property subject to all conveyances and other interests to which the property is subject at the Transferor's death. States that a TOD deed transfers property without covenant or warranty of title.

Sec. 13.48.100. Allows a Beneficiary to disclaim the Beneficiary's interest in a TOD deed as provided by the Uniform Disclaimer of Property Interests Act in AS 13.70.

Sec. 13.48.110. Indicates when the property transferred under a TOD deed is liable for testamentary estate claims, estate administration costs, spousal allowances, and children's allowances when the Transferor dies. Provides for apportionment of the liabilities among properties if there are multiple properties or TOD deeds. Requires a person to start a proceeding to enforce the liability within 12 months after the Transferor dies. Requires that the personal representative receive a written demand from the spouse, creditor, or child before the proceeding may be started to enforce liability under this section.

Sec. 13.48.120. Sets out an optional form that may be used to create a TOD deed. Contains notices about the use and possible consequences of using a TOD deed. Contains answers to common questions about TOD deeds.

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Sec. 13.48.130. Sets out an optional form that may be used to revoke a TOD deed. Contains answers to common questions about using the form.

Sec. 13.48.140. States that this chapter does not affect other ways of transferring property.

Sec. 13.48.150. Directs the chapter to be applied and interpreted to give consideration to the need for uniformity.

Sec. 13.48.160. Indicates how this chapter interacts with the federal Electronic Signatures in Global and National Commerce Act.

Sec. 13.48.190. Defines terms for the chapter.

Sec. 13.48.195. Gives the chapter a short title.

Bill section 3. Amends AS 13.70.100(e) of the state's Uniform Disclaimer of Property Interests Act (AS 13.70). Improves the language and adapts it for use under the Uniform Real Property Transfer on Death Act.

Bill section 4. Amends AS 13.70.100(f) of the state's Uniform Disclaimer of Property Interests Act (AS 13.70). Improves the language and adapts it for use under the Uniform Real Property Transfer on Death Act. Requires that the disclaimer of a real property interest created by a beneficiary designation be recorded if the disclaimer is made after the designation becomes irrevocable.

Bill section 5. Amends AS 13.70.130 of the state's Uniform Disclaimer of Property Interests Act (AS 13.70). Adds a cross-reference to AS 13.70.100(f)'s recording requirements for real property disclaimers.

Bill section 6. Provides applicability provisions for the bill.

If I may be of further assistance, please advise.

TLB:med

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