

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2188

- 02/25/2014 Authored by Hortman
The bill was read for the first time and referred to the Committee on Judiciary Finance and Policy
- 03/06/2014 Adoption of Report: Re-referred to the Committee on Civil Law
- 03/12/2014 Adoption of Report: Placed on the General Register
Read Second Time

1.1 A bill for an act
 1.2 relating to real property; making clarifying and conforming changes relating to
 1.3 ownership of real estate by spouses and mortgage redemption periods; modifying
 1.4 transfer on death deeds; amending Minnesota Statutes 2012, sections 287.20,
 1.5 subdivision 3a; 358.14; 507.02; 507.071, subdivisions 1, 2, 3, 6, 8, 10; 580.26;
 1.6 Minnesota Statutes 2013 Supplement, section 507.403, subdivision 5a.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2012, section 287.20, subdivision 3a, is amended to read:

1.9 Subd. 3a. **Designated transfer.** "Designated transfer" means any of the following:

1.10 (1) a transfer between (i) an entity owned by a sole owner, and (ii) that sole owner;

1.11 (2) a transfer between (i) an entity in which ~~a husband, a wife, or both~~ one or both
 1.12 spouses who are married to each other are the sole owners, and (ii) ~~the husband, wife, or~~
 1.13 both one or both of the spouses;

1.14 (3) a transfer between (i) an entity with multiple co-owners, and (ii) all of the
 1.15 co-owners, so long as each of the co-owners maintains the same percentage ownership
 1.16 interest in the transferred real property, whether directly or through ownership of a
 1.17 percentage of the entity;

1.18 (4) a transfer between (i) a revocable trust, and (ii) the grantor or grantors of the
 1.19 revocable trust; or

1.20 (5) a transfer of substantially all of the assets of one or more entities pursuant to a
 1.21 reorganization, as defined in section 287.20, subdivision 9.

1.22 For purposes of this definition of designated transfer, an interest in an entity that is
 1.23 owned, directly or indirectly, by or for another entity shall be considered as being owned
 1.24 proportionately by or for the owners of the other entity under provisions similar to those
 1.25 of section 267(c)(1) and (5) of the Internal Revenue Code.

2.1 Sec. 2. Minnesota Statutes 2012, section 358.14, is amended to read:

2.2 **358.14 MARRIED PERSONS.**

2.3 No separate examination of each spouse shall be required, but if ~~husband and wife~~
2.4 spouses join in and acknowledge the execution of any instrument, they shall be described
2.5 in the certificate of acknowledgment as ~~husband and wife~~ in a manner that indicates
2.6 they are married to each other; and, if they acknowledge it before different officers, or
2.7 before the same officer at different times, each shall be described in the certificate as
2.8 the spouse of the other.

2.9 Sec. 3. Minnesota Statutes 2012, section 507.02, is amended to read:

2.10 **507.02 CONVEYANCES BY SPOUSES; POWERS OF ATTORNEY.**

2.11 If the owner is married, no conveyance of the homestead, except a mortgage for
2.12 purchase money under section 507.03, a conveyance between spouses pursuant to section
2.13 500.19, subdivision 4, or a severance of a joint tenancy pursuant to section 500.19,
2.14 subdivision 5, shall be valid without the signatures of both spouses. A spouse's signature
2.15 may be made by the spouse's duly appointed attorney-in-fact.

2.16 ~~A husband and wife, by their joint deed,~~ Spouses who are married to each other may
2.17 convey the real estate of either by their joint deed. A spouse, by separate deed, may convey
2.18 any real estate owned by that spouse, except the homestead, subject to the rights of the
2.19 other spouse therein; and either spouse may, by separate conveyance, relinquish all rights in
2.20 the real estate so conveyed by the other spouse. Subject to the foregoing provisions, either
2.21 spouse may separately appoint an attorney-in-fact to sell or convey any real estate owned
2.22 by that spouse, or join in any conveyance made by or for the other spouse. Use of a power
2.23 of attorney is subject to section 518.58, subdivision 1a. A minor spouse has legal capacity
2.24 to join in a conveyance of real estate owned by the other spouse, so long as the minor
2.25 spouse is not incapacitated because of some reason other than that spouse's minor age.

2.26 Sec. 4. Minnesota Statutes 2012, section 507.071, subdivision 1, is amended to read:

2.27 Subdivision 1. **Definitions.** For the purposes of this section the following terms
2.28 have the meanings given:

2.29 (a) "Beneficiary" or "grantee beneficiary" means a person or entity named as a
2.30 grantee beneficiary in a transfer on death deed, including a successor grantee beneficiary.

2.31 (b) "County agency" means the county department or office designated to recover
2.32 medical assistance benefits from the estates of decedents.

2.33 (c) "Grantor owner" means an owner, whether individually, as a joint tenant, or as
2.34 a tenant in common, named as a grantor in a transfer on death deed upon whose death

3.1 the conveyance or transfer of the described real property is conditioned. Grantor owner
 3.2 does not include a spouse who joins in a transfer on death deed solely for the purpose
 3.3 of conveying or releasing statutory or other marital interests in the real property to be
 3.4 conveyed or transferred by the transfer on death deed.

3.5 (d) "Owner" means a person having an ownership or other interest in all or part of
 3.6 the real property to be conveyed or transferred by a transfer on death deed either at the
 3.7 time the deed is executed or at the time the transfer becomes effective. Owner does not
 3.8 include a spouse who joins in a transfer on death deed solely for the purpose of conveying
 3.9 or releasing statutory or other marital interests in the real property to be conveyed or
 3.10 transferred by the transfer on death deed.

3.11 (e) "Property" and "interest in real property" mean any interest in real property
 3.12 located in this state which is transferable on the death of the owner and includes, without
 3.13 limitation, an interest in real property defined in chapter 500, a mortgage, a deed of trust, a
 3.14 security interest in, or a security pledge of, an interest in real property, including the rights
 3.15 to payments of the indebtedness secured by the security instrument, a judgment, a tax lien,
 3.16 both the seller's and purchaser's interest in a contract for deed, land contract, purchase
 3.17 agreement, or earnest money contract for the sale and purchase of real property, including
 3.18 the rights to payments under such contracts, or any other lien on, or interest in, real property.

3.19 (e) (f) "Recorded" means recorded in the office of the county recorder or registrar of
 3.20 titles, as appropriate for the real property described in the instrument to be recorded.

3.21 (f) (g) "State agency" means the Department of Human Services or any successor
 3.22 agency.

3.23 (g) (h) "Transfer on death deed" means a deed authorized under this section.

3.24 Sec. 5. Minnesota Statutes 2012, section 507.071, subdivision 2, is amended to read:

3.25 Subd. 2. **Effect of transfer on death deed.** A deed that conveys or assigns an
 3.26 interest in real property, ~~including a mortgage, judgment, or any other lien on real property,~~
 3.27 to a grantee beneficiary and that expressly states that the deed is only effective on the
 3.28 death of one or more of the grantor owners, transfers the interest to the grantee beneficiary
 3.29 upon the death of the grantor owner upon whose death the conveyance or transfer is stated
 3.30 to be effective, but subject to the survivorship provisions and requirements of section
 3.31 524.2-702. A transfer on death deed must comply with all provisions of Minnesota law
 3.32 applicable to deeds of real property including, but not limited to, the provisions of sections
 3.33 507.02, 507.24, 507.34, 508.48, and 508A.48.

3.34 Sec. 6. Minnesota Statutes 2012, section 507.071, subdivision 3, is amended to read:

4.1 Subd. 3. **Rights of creditors and rights of state and county under sections**
 4.2 **246.53, 256B.15, 256D.16, 261.04, and 514.981.** The interest transferred to a beneficiary
 4.3 under a transfer on death deed after the death of a grantor owner is transferred subject
 4.4 to all effective conveyances, assignments, contracts, mortgages, deeds of trust, liens,
 4.5 security pledges, judgments, tax liens, and any other matters or encumbrances made by
 4.6 the grantor owner or to which the property interest was subject during on the date of
 4.7 death of the grantor owner's lifetime owner, upon whose death the transfer becomes
 4.8 effective including, but not limited to, any claim by a surviving spouse or who did not join
 4.9 in the execution of, or consent in writing to, the transfer on death deed, and any claim
 4.10 or lien by the state or county agency authorized by section sections 246.53, 256B.15,
 4.11 256D.16, 261.04, or and 514.981, if other assets of the deceased owner's grantor's estate
 4.12 are insufficient to pay the amount of any such claim. If a spouse who is neither a grantor
 4.13 owner nor an owner joins in the execution of, or consents in writing to, the transfer on
 4.14 death deed, such joinder or consent shall be conclusive proof that upon the transfer
 4.15 becoming effective the spouse no longer has or can claim any statutory interest or other
 4.16 marital interest in the interest in real property transferred by the transfer on death deed. A
 4.17 beneficiary to whom the interest is transferred after the death of a grantor owner shall be
 4.18 liable to account to the state or county agency with a claim or lien authorized by section
 4.19 246.53, 256B.15, 256D.16, 261.04, or 514.981, to the extent necessary to discharge
 4.20 any such claim remaining unpaid after application of the assets of the deceased grantor
 4.21 owner's estate, but such liability shall be limited to the value of the interest transferred
 4.22 to the beneficiary. To establish compliance with this subdivision and subdivision 23, the
 4.23 beneficiary must record a clearance certificate issued in accordance with subdivision 23 in
 4.24 each county in which the real property described in the transfer on death deed is located.

4.25 Sec. 7. Minnesota Statutes 2012, section 507.071, subdivision 6, is amended to read:

4.26 Subd. 6. **Multiple joint tenant grantors.** If an interest in real property is owned as
 4.27 joint tenants, a transfer on death deed executed by all of the owners and, if required by
 4.28 section 507.02, their respective spouses, if any, that conveys an interest in real property
 4.29 to one or more grantee beneficiaries transfers the interest to the grantee beneficiary or
 4.30 beneficiaries effective only after the death of the last surviving grantor owner. If the
 4.31 last surviving joint tenant owner did not execute the transfer on death deed, the deed is
 4.32 ineffective to transfer any interest and the deed is void. An estate in joint tenancy is not
 4.33 severed or affected by the subsequent execution of a transfer on death deed and the right of
 4.34 a surviving joint tenant owner who did not execute the transfer on death deed shall prevail

5.1 over a grantee beneficiary named in a transfer on death deed unless the deed specifically
5.2 states that it severs the joint tenancy ownership.

5.3 Sec. 8. Minnesota Statutes 2012, section 507.071, subdivision 8, is amended to read:

5.4 Subd. 8. **Recording requirements and authorization.** A transfer on death deed
5.5 is valid if the deed is recorded in a county in which at least a part of the real property
5.6 described in the deed is located and is recorded before the death of the grantor owner
5.7 upon whose death the conveyance or transfer is effective. A transfer on death deed is not
5.8 effective for purposes of section 507.34, 508.47, or 508A.47 until the deed is recorded in
5.9 the county in which the real property is located. When a transfer on death deed is presented
5.10 for recording, no certification by the county auditor as to transfer of ownership and current
5.11 and delinquent taxes shall be required or made and the transfer on death deed shall not
5.12 be required to be accompanied by a certificate of real estate value. A transfer on death
5.13 deed that otherwise satisfies all statutory requirements for recording may be recorded and
5.14 shall be accepted for recording in the county in which the property described in the deed is
5.15 located. If any part of the property described in the transfer on death deed is registered
5.16 property, the registrar of titles shall accept the transfer on death deed for recording only if
5.17 at least one of the grantors who executes the transfer on death deed appears of record to
5.18 have an ownership interest or other interest in the real property described in the deed. No
5.19 certification or approval of a transfer on death deed shall be required of the examiner of
5.20 titles prior to recording of the deed in the office of the registrar of titles.

5.21 Sec. 9. Minnesota Statutes 2012, section 507.071, subdivision 10, is amended to read:

5.22 Subd. 10. **Revocation or modification of transfer on death deed.** (a) A transfer on
5.23 death deed may be revoked at any time by the grantor owner or, if there is more than one
5.24 grantor owner, by any of the grantor owners. A revocation revokes the transfer on death
5.25 deed in its entirety. To be effective, the revocation must be recorded in the a county in
5.26 which at least a part of the real property is located before the death of the grantor owner or
5.27 owners who execute the revocation. The revocation is not effective for purposes of section
5.28 507.34, 508.47, or 508A.47 until the revocation is recorded in the a county in which the
5.29 real property is located. ~~Subject to subdivision 6, if the real property is owned as joint~~
5.30 ~~tenants and if the revocation is not executed by all of the grantor owners, the revocation is~~
5.31 ~~not effective unless executed by the last surviving grantor owner.~~

5.32 (b) If a grantor owner conveys to a third party, subsequent to the recording of the
5.33 transfer on death deed, by means other than a transfer on death deed, all or a part of such
5.34 grantor owner's interest in the property described in the transfer on death deed, no transfer

6.1 of the conveyed interest shall occur on such grantor owner's death and the transfer on
 6.2 death deed shall be ineffective as to the conveyed or transferred interests, but the transfer
 6.3 on death deed remains effective with respect to the conveyance or transfer on death of
 6.4 any other interests described in the transfer on death deed owned by the grantor owner
 6.5 at the time of the grantor owner's death.

6.6 (c) A transfer on death deed is a "governing instrument" within the meaning of
 6.7 section 524.2-804 and, except as may otherwise be specifically provided for in the
 6.8 transfer on death deed, is subject to the same provisions as to revocation, revival, and
 6.9 nonrevocation set forth in section 524.2-804.

6.10 Sec. 10. Minnesota Statutes 2013 Supplement, section 507.403, subdivision 5a,
 6.11 is amended to read:

6.12 Subd. 5a. **Liability.** Execution or recording of a wrongful, erroneous, or
 6.13 unauthorized certificate under this section does not relieve the mortgagor or the
 6.14 mortgagor's successors or assigns from any personal liability on the obligations secured by
 6.15 the mortgage, and, in addition to any other remedies provided by law, a person or entity
 6.16 who wrongfully, erroneously, or without authority executes ~~or records~~ the certificate ~~and~~
 6.17 ~~any entity on whose behalf the certificate is wrongfully, erroneously, or without authority~~
 6.18 ~~executed or recorded~~, is liable to the mortgagee, the mortgagee's assigns, ~~or~~ and any person
 6.19 or entity for actual damages sustained due to the execution or recording of the certificate,
 6.20 together with reasonable attorney fees, costs, and disbursements incurred by the damaged
 6.21 party as a result. ~~For purposes of this section, "entity" does not include a natural person.~~

6.22 Sec. 11. Minnesota Statutes 2012, section 580.26, is amended to read:

6.23 **580.26 CERTIFICATE OF REDEMPTION; RECORD.**

6.24 The person or officer from whom such redemption is made shall make and deliver to
 6.25 the person redeeming a certificate executed and acknowledged in the same manner as a
 6.26 conveyance, containing:

6.27 (1) the name of the person redeeming, and the amount paid by the person on such
 6.28 redemption;

6.29 (2) a description of the sale for which such redemption is made, and of the property
 6.30 redeemed;

6.31 (3) a statement of the claim upon which such redemption is made and, if upon a lien,
 6.32 the amount claimed to be due thereon at the date of redemption.

6.33 If redemption is made by the owner of the property sold, the owner's heirs, personal
 6.34 representatives, or assigns, such certificate shall be recorded within four days after the

7.1 expiration of the ~~year~~ period allowed by law to the owner for redemption and, if made
7.2 by a creditor holding a lien, the certificate shall be recorded within four days after such
7.3 redemption. Unless so recorded, the certificate shall be void as against any person in good
7.4 faith redeeming from the same person or lien.