Aida Montano *Legislative Service Commission*

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Rep. Salerno

BILL SUMMARY

- Permits the summary release from administration of an estate and the transfer of titled assets of a decedent without appointing a fiduciary when either of the following applies:

  1. A person other than a surviving spouse pays or is obligated in writing to pay the decedent's funeral and burial expenses, and the value of the decedent's estate does not exceed the lesser of $2,000 or the decedent's funeral and burial expenses.

  2. The decedent's surviving spouse has paid or is obligated in writing to pay the decedent's funeral and burial expenses or those expenses have been prepaid, and the value of the decedent's estate does not exceed the total of the allowance for support to the spouse and the decedent's minor children and an amount not in excess of $2,000 for the decedent's funeral and burial expenses.

- In the Probate Law provision that authorizes a surviving spouse to select up to two of the deceased spouse's automobiles, replaces the requirement that the value of the selected automobiles be the appraised value with a requirement that the value of the selected automobiles be the value specified in the surviving spouse's affidavit submitted to the clerk of the common pleas court for the purpose of transferring title to the automobiles to the surviving spouse.

- Expands the definition of "automobile" in the preceding provision to include a truck that was used as a method of conveyance by the deceased spouse or the deceased spouse's family when the deceased spouse was alive, regardless of whether the deceased spouse owned an automobile.

- Extends the statutory exemption to the doctrine of ademption ("a taking away" of a specific bequest during the testator's lifetime that deprives the intended beneficiary of the bequest) in the event of a sale of specifically devised or bequeathed property to include the sale of specifically devised or bequeathed property sold under a power of attorney or under a durable power of attorney.

- Permits an owner of real property, or of an interest in real property, to execute a "transfer on death" deed that designates a grantee (who may be the grantor property owner) and one or more beneficiaries to take title to the real estate upon the grantee's death, without having to go through probate.

- Prescribes the characteristics and ramifications of real property or an interest in real property that is subject to a transfer on death beneficiary designation.

- Permits a bank to enter into a written contract with a natural person for the proceeds of the person's deposits to be payable on the death of that person to another person (not just a natural person), or to any entity or organization in accordance with law.

- Permits a natural person to enter into a written contract with any bank, building and loan or savings and loan association, credit union, or society for savings whereby the proceeds of the owner's deposits may be made payable on the death of the owner to any person, and not just to a natural person.

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CONTENT AND OPERATION

Summary release from administration

Person other than surviving spouse: application for summary release

The bill permits any person who is not a surviving spouse of the decedent and has paid or is obligated in writing to pay the decedent's burial and funeral expenses to apply to the probate court for an order granting a summary release from administration if the value of the assets of the decedent's estate does not exceed the lesser of $2,000 or the amount of the decedent's funeral and burial expenses (R.C. 2113.031(B)(1)).[1] (See "***Definitions***," below.)

[1] *The bill retains the requirement that the probate court charge and collect a fee of $60 for relieving an estate from administration under R.C. 2113.03 and additionally requires the probate court to charge and collect a fee of $60 for granting an order for a summary release from administration (R.C. 2101.16(A)(59)).*

Surviving spouse: application for summary release

The bill allows the decedent's surviving spouse to apply to the probate court for an order granting a summary release from administration if either of the following apply (R.C. 2113.031(B)(2)):[2]

(1) The decedent's funeral and burial expenses have been prepaid, and the value of the assets of the decedent's estate does not exceed the total of the following items:

(a) The allowance for support that is made to the surviving spouse and, if applicable, to the decedent's minor children and that is distributable to the surviving spouse (see **COMMENT** 1);

(b) An amount, not exceeding $2,000, for the decedent's funeral and burial expenses that are included in the funeral director's bill or that are not included in that bill but have been approved by the probate court.

(2) The decedent's funeral and burial expenses have not been prepaid, the decedent's surviving spouse has paid or is obligated in writing to pay the funeral and burial expenses, and the value of the assets of the decedent's estate does not exceed the total of the items referred to in (1)(a) and (b), above.

Requirements for issuance of summary release from administration order

The probate court must order a summary release from administration in connection with a decedent's estate only if the court finds that all of the following are satisfied (R.C. 2113.031(C)):[3]

(1) The applicant for the order is not the surviving spouse of the decedent and has paid or is obligated in writing to pay the decedent's funeral and burial expenses, and the value of the assets of the decedent's estate does not exceed the lesser of $2,000 or the amount of the decedent's funeral and burial expenses, or the applicant is the decedent's surviving spouse, and the circumstances described in (1) and (2) of "***Surviving spouse: application for summary release***," above, apply.

(2) The application for summary release does all of the following:

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[2] *See footnote 1 above.*

[3] *The bill expands the probate court's exclusive jurisdiction to include jurisdiction to hear and determine applications for an order granting a summary release from administration under the bill's procedures and to hear and determine applications for an order relieving an estate from administration under existing law (R.C. 2101.24(A)(1)(bb) and (cc)).*

(a) Describes all of the assets of the decedent's estate that are known to the applicant;

(b) Is in the form that the Supreme Court prescribes pursuant to its powers of superintendence under Section 5 of Article IV of the Ohio Constitution and is consistent with the requirements of the bill;

(c) Has been signed and acknowledged by the applicant in the presence of a notary public or a deputy clerk of the probate court;

(d) Sets forth the following information if the decedent's estate includes a described type of asset:

(i) If the decedent's estate includes a motor vehicle, the motor vehicle's year, make, model, body type, manufacturer's vehicle identification number, certificate of title number, and date of death value;

(ii) If the decedent's estate includes an account maintained by a financial institution, that institution's name and the account's complete identifying number and date of death balance;

(iii) If the decedent's estate includes one or more shares of stock or bonds, the total number of the shares and bonds, their total date of death value, and, for each share or bond, its serial number, the name of its issuer, its date of death value, and, if any, the name and address of its transfer agent.

(3) The application is accompanied by all of the following that apply:

(a) A receipt, contract, or other document that confirms the applicant's payment or obligation to pay the decedent's funeral and burial expenses or, if applicable in the case of the applicant surviving spouse, the prepayment of the decedent's funeral and burial expenses;

(b) An application for a certificate of transfer, if an interest in real property is included in the assets of the decedent's estate;

(c) The fee required by the bill (see footnote 1);

(4) At the time of its determination on the application, there are no pending proceedings for the administration of the decedent's estate and no pending proceedings for relief of the decedent's estate from administration.

(5) At the time of its determination on the application, there are no known assets of the decedent's estate other than the assets described in the application.

Effect of summary release from administration order

If the probate court determines that the requirements listed above are satisfied, the court must issue an order that grants a summary release from administration in connection with the decedent's estate. The order has, and must specify that it has, all of the following effects (R.C. 2113.031(D)):

(1) It relieves the decedent's estate from administration.

(2) It directs the delivery to the applicant of the decedent's personal property together with the title to that property.

(3) It directs the transfer to the applicant of the title to any interests in real property included in the decedent's estate.

(4) It eliminates the duty of all persons to file an estate tax return and certificate in connection with the decedent's estate.[4]

(5) It eliminates the need for a financial institution, corporation, or other entity or person to obtain the written consent of the Tax Commissioner prior to the delivery, transfer, or payment to the applicant of an asset of the decedent's estate. (See "***Written consent of Tax Commissioner prior to transfer of decedent's assets***," below.)

Definitions

The bill defines several terms for use in its summary release provisions as follows (R.C. 2113.031(A)):

(1) "Financial institution" has the same meaning as in the existing Financial Institutions Taxation Law. R.C. 5725.01, referred to in the bill, defines "financial institution" as any of the following (R.C. 5725.01(A)):

(a) A national bank organized and existing as a national bank association pursuant to the "National Bank Act";

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[4] *The bill states that, if a probate court issues an order that grants a summary release from administration in connection with a decedent's estate under the bill, that order eliminates the duty of all persons to file with respect to the estate for which the order was granted an estate tax return and a certificate stating that the return was filed, the date of filing, that all estate taxes have been paid, that all inventoried real property is listed in the return, and that all real property not inventoried also is listed in the return (R.C. 5731.21(A)(3)).*

(b) A federal savings association or federal savings bank that is chartered under federal law (12 U.S.C. 1464);

(c) A bank, banking association, trust company, savings and loan association, savings bank, or other banking institution that is incorporated or organized under the laws of any state;

(d) Any corporation organized under the federal law governing corporations organized for the purpose of engaging in international or foreign banking or financial operations (12 U.S.C. 611 to 631);

(e) Any agency or branch of a foreign depository as defined in federal law governing foreign banks participating in domestic markets (12 U.S.C. 3101);

(f) A company licensed as a small business investment company under the "Small Business Investment Act of 1958";

(g) A company chartered under the "Farm Credit Act of 1933."

Corporations or institutions organized under the "Federal Farm Loan Act," insurance companies, and *credit unions* are *not* considered financial institutions within the meaning of the Financial Institutions Taxation Law (R.C. 5725.01(A)). However, under the bill, "financial institution" also includes a *credit union* and a fiduciary that is not a trust company but that does trust business.

(2) "Funeral and burial expenses" means whichever of the following applies:

(a) The funeral and burial expenses of the decedent that are included in the bill of a funeral director;

(b) The funeral expenses of the decedent that are not included in the bill of a funeral director and that have been approved by the probate court;

(c) The funeral and burial expenses of the decedent that are described in (2)(a) and (b), above.

(3) "Surviving spouse" means either of the following:

(a) The surviving spouse of a decedent who died leaving the surviving spouse and no minor children;

(b) The surviving spouse of a decedent who died leaving the surviving spouse and minor children, all of whom are children of the decedent and the surviving spouse.

Effect of R.C. 2113.03: Release from administration

Existing law. An estate may be released from administration under existing law if either of the following applies (R.C. 2113.03(A)):

(1) The value of the assets of the estate is $35,000 or less.

(2) The value of the assets of the estate is $100,000 or less, and either of the following applies:

(a) The decedent devised and bequeathed in a valid will all of the estate assets to a person who is named in the will as the decedent's spouse, and the decedent is survived by that person.

(b) The decedent is survived by a spouse whose marriage to the decedent was solemnized in a manner consistent with the Ohio law governing marriages or with a similar law of another state or nation, the decedent died without a valid will, and the decedent's surviving spouse is entitled to receive all of the estate assets under the Ohio statute of intestate succession or by operation of that statute and the statutory provisions governing the allowance for support.

The probate court, when satisfied that either of the above circumstances is satisfied, may enter an order relieving the estate from administration and directing delivery of personal property and transfer of real estate to the persons entitled to the personal property or real estate. The court may enter this order upon the application of any interested party, after notice of the filing of the application has been given to the surviving spouse and heirs at law in a manner and for the length of time the probate court directs, and after notice to all interested parties by publication in a newspaper of general circulation in the county, unless the notices are waived or found unnecessary. (R.C. 2113.03(B).)

Operation of the bill. The bill provides that the existing release from administration provisions do not affect the ability of qualified persons to file an application for a summary release from administration under the bill or to file an application for the grant of letters testamentary or letters of administration. It also provides that its summary release provisions do not affect the ability of qualified persons to file an application to relieve an estate from administration or an application for the grant of letters testamentary or letters of administration in connection with the decedent's estate. (R.C. 3113.031(F) and 3113.03(E).)

Records

The bill requires the probate court to keep a summary release from administration docket. The docket must show the date of the filing of the

application for a summary release from administration, the decedent's name, the applicant's name, whether the applicant is the decedent's surviving spouse or a person described in the summary release provisions as qualified to file an application, and a brief note of the grant of the order of summary release from administration and of any other order or proceeding relating to the decedent's estate, with reference to the journal or other record in which the order or proceeding is found. (R.C. 2101.12(L).)

Written consent of Tax Commissioner prior to transfer of decedent's assets

Existing law generally requires a corporation, safe deposit company, life insurance company, trust company, financial institution, or other person to obtain the written consent of the Tax Commissioner prior to transferring specific assets or portions of an asset of the decedent's estate to any person and prior to permitting specified items to be removed from the decedent's safe deposit box. (R.C. 5731.39, not in the bill.)

The bill allows a certified copy of an order that grants a summary release from administration together with a certified copy of the application for that order to constitute sufficient authority for a financial institution, corporation, or other entity or person described in the preceding paragraph or for a clerk of a court of common pleas to transfer title to an asset of the decedent's estate to the applicant for the summary release from administration. (R.C. 2113.031(E).)

Election of mansion house

A surviving spouse may elect under existing law to receive, as part of the surviving spouse's share of an intestate estate and the allowance for support, the decedent spouse's entire interest in the mansion house. The surviving spouse currently is allowed to make an election of that nature in an estate relieved from administration under R.C. 2113.03. The bill allows the surviving spouse to make an election to receive the entire interest of the decedent spouse in the mansion house in an estate that is subject to an order granting a summary release from administration. The election must be made at the time of or prior to the entry of the order granting a summary release from administration. Either the surviving spouse or the applicant for the order must file the application for the certificate of transfer as to real property included in the estate assets. (R.C. 2106.10(D).)

Certificate of transfer

Under existing law, when real property passes by the laws of intestate succession or under a will, the administrator or executor must file in probate court,

prior to the filing of the administrator or executor's final account, an application requesting the court to issue a certificate of transfer as to the real property. This requirement does not apply to real property sold by a executor or administrator or to cases in which an order relieving an estate from administration is made and the order may be substituted for the certificate of transfer. (R.C. 2113.61(A).)

The bill requires that an application for a certificate of transfer of an interest in real property included in the assets of the decedent's estate accompany an application for a summary release from administration under the bill. The bill provides that the existing law dealing with certificates of transfer of real property applies to the application for and the issuance of the requested certificate of transfer except to the extent that the probate court determines that the nature of any of the provisions of the existing law is inconsistent with the nature of a grant of a summary release from administration. (R.C. 2113.61(A)(2).) (See **COMMENT** 2.)

Under existing law, if an executor or administrator failed to file an application for a certificate of transfer before being discharged, the application may be filed by an heir or devisee, or a successor in interest, in the probate court in which the will was probated or, in the case of an intestate estate, in the probate court in which administration was had. If no administration was had on an estate and if no administration is contemplated, an application for a certificate of transfer may be filed by an heir or devisee, or a successor in interest, in the probate court of the county in which the decedent was a resident at the time of death. (R.C. 2113.61(D).)

The bill provides that if no administration was had on an estate and if no administration is contemplated, *except in the case of the grant of or contemplated application for a grant of an order of a summary release from administration* (added by the bill), an application for a certificate of transfer may be filed by an heir or devisee, or a successor in interest, in the probate court of the county in which the decedent was a resident at the time of death (R.C. 2113.61(D)).

Estate recovery program

Existing law requires the Department of Human Services (to the extent federal law permits) to institute an estate recovery program against the property and estates of medical assistance recipients for the purpose of recovering the cost of services correctly paid under the medical assistance program to a recipient age 55 or older (R.C. 5111.11(B)). The bill includes in the definition of "estate" for this provision of law property that would be administered under Title XXI of the Revised Code if not for the relief from administration provisions of section

2113.03 (as in existing law) or for the bill's *summary release provisions* in section 2113.031 (R.C. 5111.11(A)).

Right of surviving spouse to automobiles of decedent

Selection of automobiles

Existing law. Under existing law, upon the death of a married resident who owned at least one automobile at the time of death, the surviving spouse may select the interest of the deceased spouse in up to two automobiles that are not transferred to the surviving spouse due to joint ownership with right of survivorship and that are not otherwise specifically disposed of by testamentary disposition. This interest immediately passes to the surviving spouse upon transfer of the title or titles. Under existing law, the sum total of the *appraised* values of the automobiles selected by a surviving spouse must not exceed $40,000. Each automobile that passes to a surviving spouse is not considered an estate asset and is not to be included and stated in the estate inventory.

As used in the preceding provision, "automobile" includes a truck *if the deceased spouse did not own an automobile* and if the truck was used as a method of conveyance by the deceased spouse or the deceased spouse's family when the deceased spouse was alive. (R.C. 2106.18(A) and (D).)

Operation of the bill. The bill replaces the requirement that the automobiles selected by the surviving spouse be appraised with a requirement that the value of the automobiles is the value specified in the affidavit that the surviving spouse executes pursuant to section 4505.10(B). Under section 4505.10(B), which is not in the bill, the surviving spouse must submit to the clerk of the court of common pleas (for the purpose of having the title to the automobiles transferred to the surviving spouse) the titles to the automobiles and *an affidavit that* in addition to other information *provides an approximate value for each automobile selected to be transferred to the surviving spouse* (see **COMMENT** 3). The bill expands the definition of automobile that is used for this provision to also include a truck that was used as a method of conveyance by the deceased spouse or the deceased spouse's family when the deceased spouse was alive, regardless of whether the deceased spouse owned an automobile. (R.C. 2106.18(A) and (D).)

Effect on allowance for support

Existing law. If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both are entitled

to receive, pursuant to a statutorily defined allocation formula, in money or property the sum of $40,000 as an allowance for support (see **COMMENT** 1). If the surviving spouse selected two automobiles from the decedent spouse's estate under the provision of law discussed in "***Selection of automobiles***," above, the prescribed allowance for support must be reduced by the *appraised* value of the automobile having the lower *appraised* value of the two automobiles so selected. The money or property set off as an allowance are considered estate assets.

If the surviving spouse selected two automobiles from the decedent spouse's estate, the probate court, in considering the respective needs of the surviving spouse and the minor children when allocating an allowance for support, must consider the benefit derived by the surviving spouse from the transfer of the automobile having the lower *appraised* value of the two automobiles so selected. (R.C. 2106.13(A) and (C).)

Operation of the bill. The bill replaces the requirement that the value of the automobiles selected by the surviving spouse be the appraised value with a requirement that the value of the automobiles be the value that the surviving spouse specifies for the automobiles in the affidavit executed pursuant to section 4505.10(B). See **COMMENT** 3 and discussion under "***Operation of the bill***" in "***Selection of automobiles***," above. (R.C. 2106.13(A), (C), and (D).)

The doctrine of ademption and Ohio's statutory exemption to the doctrine

Existing law

The principle of ademption refers to "a taking away" of a specific bequest or devise and occurs when the object of the legacy ceases to exist. *Bool v. Bool* (1956), 165 Ohio St. 262, 267. In *Bool*, the Ohio Supreme Court held, at paragraph one of the syllabus, that "[w]here the subject of a specific bequest has been extinguished in the lifetime of a testator, such bequest is adeemed, and the designated beneficiary thereof is wholly deprived of it or any property in lieu of it, in the absence of a contrary expression in the will."

Section 2107.501(B) sets forth a narrow exception to the ademption doctrine. The section provides, in part:

* * *

> (B) If specifically devised or bequeathed property is sold by a guardian, or if a condemnation award or insurance proceeds are paid to a guardian as a result of condemnation, fire, or casualty to the

> property, the specific devisee or legatee has the right to a general pecuniary devise or bequest equal to the net proceeds of sale, the condemnation award, or the insurance proceeds, and such a devise or bequest shall be treated as property subject to section 2107.54 of the Revised Code. This section does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. * * *

In *In re Estate of Hegel* (1996), 76 Ohio St.3d 476, the Ohio Supreme Court held that R.C. 2107.501(B) is strictly limited to the sale of specifically devised or bequeathed property by *a guardian* and does not extend to the sale of specifically devised or bequeathed property by an attorney-in-fact acting within the authority of a durable power of attorney for an incapacitated individual. Therefore, under current law, a specific devisee's or legatee's rights are protected and are not extinguished when a guardian sells specifically devised or bequeathed property, but those same rights are not protected when an attorney-in-fact, pursuant to a durable power of attorney, sells specifically devised or bequeathed property.

Operation of the bill

The bill extends the protection of the existing exception to the ademption doctrine to the sale of specifically devised or bequeathed property by an agent acting within the authority of a power of attorney or a durable power of attorney. Therefore, under the bill, if an agent acting within the authority of a power of attorney or a durable power of attorney sells specifically devised or bequeathed property, the specific devisee or legatee has the right to a general pecuniary devise or bequest equal to the net proceeds of the sale. Similarly, if an agent acting within the authority of a power of attorney or durable power of attorney receives a condemnation award or insurance proceeds as a result of condemnation, fire, or casualty to specifically devised or bequeathed property, the specific devisee or legatee has a right to a general pecuniary devise or bequest equal to the condemnation award or insurance proceeds. The above provisions do not apply if, subsequent to the sale, condemnation, *fire*, or casualty, the testator is adjudicated as no longer being under a disability and survives the adjudication by one year. (R.C. 2107.501(B).)

Creation of a transfer on death interest

Generally

The bill specifies that a deed conveying any interest in real property, and in substance following the form described below (see "***Form of a transfer on death deed***"), when duly executed in accordance with the existing provisions contained in Chapter 5301. that pertain to conveyances of real property and when recorded in the office of the county recorder: (1) creates a present interest as sole owner, tenant in common, or survivorship tenant in the grantee, and a "transfer on death interest" in the beneficiary or beneficiaries, and (2) upon the death of the grantee, or the last to die of all survivorship tenant grantees, vests the interest of the decedent in the beneficiary or beneficiaries. The transfer mechanism is described below in "***Transfer of property upon property owner's death***." (R.C. 5302.22(A).)

Execution of a transfer on death deed

The bill specifies that any person who, under the Revised Code or Ohio common law, owns real property or any interest in real property as a sole owner, a tenant in common, a survivorship tenant, or a joint tenant with a right of survivorship may create an interest in the real property that is transferable on death by executing and recording a deed as provided in the bill that (1) conveys the person's entire, separate interest in the real property to one or more individuals, including the grantor (these individuals are the *grantees* of the property or interest; hereafter, they are referred to as the *property owners*), and (2) designates one or more other persons, identified in the deed by name, as "transfer on death beneficiaries."

A deed conveying an interest in real property that includes a transfer on death beneficiary designation does not have to be supported by consideration or be delivered to the transfer on death beneficiary to be effective. (R.C. 5302.22(B).)

Transfer of property upon property owner's death

Under the bill, upon the death of any individual who owns real property or an interest in real property that is subject to a "transfer on death beneficiary designation" made under a "transfer on death deed" as described above, or upon the death of the last to die of all survivorship tenants who own property of that nature, the deceased owner's interest is to be transferred *only to the transfer on death beneficiaries who are identified in the deed by name and who are living or in existence on the date of the deceased owner's death.* The transfer of the deceased owner's interest must be recorded by presenting to the county auditor and

filing with the county recorder an affidavit, accompanied by a certified copy of a death certificate for the deceased owner. The affidavit must recite: (1) the name and address of each designated transfer on death beneficiary who is living or in existence on the date of the deceased owner's death, (2) the date of the deceased owner's death, (3) a description of the subject real property or real property interest, and (4) the names of each designated transfer on death beneficiary who is not living or in existence on the date of the deceased owner's death. It must be accompanied by a certified copy of a death certificate for each designated transfer on death beneficiary who is not living on the date of the deceased owner's death. The county recorder must make an index reference to any affidavit so filed in the record of deeds.

If the title to real property that is subject to a transfer on death beneficiary designation made under a transfer on death deed under the bill is registered under the existing Registration of Land Titles Law (contained in Chapter 5309.--often referred to as Ohio's Torrens Act), upon the death of the person holding the property or an interest in it, the procedure for the transfer of the interest of the deceased owner shall be pursuant to R.C. 5309.081 (see **COMMENT** 4). (R.C. 5302.22(C).)

Liberal construction of deeds--clear intent to create a transfer on death interest

The bill provides that any deed containing language that shows a clear intent to designate a transfer on death beneficiary must be liberally construed to do so (R.C. 5302.23(A)).

Characteristics and ramifications of transfer on death beneficiary designation

Under the bill, real property or an interest in real property that is subject to a transfer on death beneficiary designation created in accordance with the bill or as described in the preceding paragraph has all of the following characteristics and ramifications (R.C. 5302.23(B)):

(1) ***Designation of contingent transfer on death beneficiaries***. A transfer on death deed may contain a designation of one or more persons as "contingent transfer on death beneficiaries," who will take the interest of the deceased owner if a named designated transfer on death beneficiary is not living or in existence on the date of death of the deceased owner. Contingent transfer on death beneficiaries must be identified in the deed by name.

(2) ***Transfer only to living/existing beneficiaries; multiple living/existing beneficiaries***. An interest of a deceased owner may be transferred only to transfer on death beneficiaries who are identified in the deed by name and who are living or in existence on the date of the deceased owner's death. If more than one transfer on death beneficiary is designated, the beneficiaries will take title in the interest as "tenants in common" (see **COMMENT** 5) unless the designation clearly shows an intent to create a "survivorship tenancy" (see **COMMENT** 5) among the named beneficiaries.

(3) ***Reversion of property to the owner's probate estate***. The interest in real property that otherwise would have passed to a designated transfer on death beneficiary but that fails to pass because no designated transfer on death beneficiary is living or in existence on the date of the deceased owner's death must be distributed as part of the probate estate of the deceased owner of the interest.

(4) ***Ramifications, prior to the owner's death, of a designation***. The designation of a transfer on death beneficiary has no effect on the ownership of real property, and a designated transfer on death beneficiary, as such, has no interest in the real property, until either the death of the sole owner or the tenant in common or the death of all survivorship tenants.

(5) ***Revocation or modification of a designation***. The designation in a deed of any transfer on death beneficiary may be revoked or changed at any time, without the consent of that designated transfer on death beneficiary, by a sole owner, a tenant in common, or a survivorship tenant, by executing in accordance with the existing provisions contained in Chapter 5301. that pertain to conveyances of real property and recording a deed conveying the grantor's entire, separate interest in the real property to one or more persons, including the grantor, with or without the designation of another transfer on death beneficiary.

(6) ***Types of interests that may be subjected to a designation***. A fee simple title, leasehold interest, or land contract vendee's interest in real property, or any fractional interest in any of these interests, may be subjected to a transfer on death beneficiary designation.

(7) ***Extent of an interest that is transferred***. A designated transfer on death beneficiary takes only the interest that the deceased owner or owners held on the date of death, subject to all encumbrances, reservations, and exceptions.

(8) ***Effect of a designation on a lienholder's rights***. No rights of any lienholder, including but not limited to any mortgagee, judgment creditor, or mechanic's lienholder, are affected by the designation of a transfer on death beneficiary pursuant to the bill. If any lienholder takes action to enforce the lien,

by foreclosure or otherwise through a court proceeding, it is not necessary to join the transfer on death beneficiary as a party defendant in the action unless the transfer on death beneficiary has another interest in the real property that is vested at the time of the action.

(9) ***Non-testamentary nature of a transfer pursuant to a designation***. Any transfer on death of real property or an interest in real property that results from a deed designating a transfer on death beneficiary is not testamentary.

Form of a transfer on death deed

The bill provides that a deed containing a transfer on death designation under its provisions must in substance conform to the following form (R.C. 5302.22(A)):

"Transfer on Death Deed

.....(Marital status), of ..... County, ...(for valuable consideration paid, if any), grant(s) (with covenants, if any), to ..... whose tax mailing address is ....., transfer on death to ....., beneficiary(s), the following real property:

(Description of land or interest in land and encumbrances, reservations, and exceptions, if any.)

Prior Instrument Reference: ....., Wife (husband) of the grantor, releases all rights of dower therein.

Witness ..... hand this ..... day of ....."

(Execution in accordance with Chapter 5301. of the Revised Code)

County auditor real estate transfer fees

Existing law provides, in pertinent part, that the county auditor must charge and receive fees for receiving statements of value and administering section 319.202 of the Revised Code regarding real property conveyance fees and taxes and indorsement of conveyance. The fee for such a transaction is one dollar, or ten cents per hundred dollars for each one hundred dollars, or fraction of one hundred dollars, of the value of real property transferred, whichever is greater. There are

23 exceptions where no fee may be charged when the transfer is made. (R.C. 319.54(F)(3).)

The bill expands the exceptions to the fee, providing that no fee may be charged between persons pursuant to R.C. 5302.18 (a deed in which a grantor is also a grantee is effective to convey the grantor's interest in the title to all of the grantees)--not in the bill or R.C. 5302.22 (see "***Creation of a transfer on death interest***," above) or to one or more persons who are transfer on death beneficiaries pursuant to the bill's provisions in R.C. 5302.22 (R.C. 319.54(F)(3)(x)).

Disclaimer of succession to property

Existing law provides that a disclaimant, other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in R.C. 1339.68.[5] A disclaimant who is a fiduciary under an instrument may disclaim, in whole or in part, any right, power, privilege, or immunity, by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in that section. If the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument must be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed. If the interest disclaimed is

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[5] *"Disclaimant" means any person, any guardian or personal representative of a person or estate of a person, or any attorney-in-fact or agent of a person having a general or specific authority to act granted in a written instrument, who is any of the following: (a) with respect to testamentary instruments and intestate succession, an heir, next of kin, devisee, legatee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a testamentary instrument, or person designated to take pursuant to a power of appointment exercised by a testamentary instrument, (b) with respect to nontestamentary instruments, a grantee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a nontestamentary instrument, or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument, (c) with respect to fiduciary rights, privileges, powers, and immunities, a fiduciary under a testamentary or nontestamentary instrument, or (d) any person entitled to take an interest in property upon the death of a person or upon the occurrence of any other event.*

"Property" means all forms of property, real and personal, tangible and intangible. (R.C. 1339.68(A).)

created by a testamentary instrument or by intestate succession, the disclaimer instrument must be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument must be delivered personally or by certified mail to the personal representative of the decedent's estate. (R.C. 1339.68(A), (B)(1) and (2), and (F)(1) and (2).)

The bill provides that, *subject to the provision as described below,* if the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument must be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed. If the interest disclaimed is created by a testamentary instrument, by intestate succession, *or by a transfer on death deed pursuant to the bill's provisions in R.C. 5302.22,* the disclaimer instrument must be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument must be delivered personally or by certified mail to the personal representative of the decedent's estate. (R.C. 1339.68(F)(1) and (2).)

Estate tax return certificates

Existing law provides that, with certain exceptions, the executor, administrator, or such other person in possession of property that is subject to estate taxes upon transfer under R.C. 5731.02 (estate taxes levied on the transfer of taxable estates of decedents who were Ohio residents at death) or R.C. 5731.19(A) (estate taxes levied on the transfer of taxable estates of nonresident decedents), must file an estate tax return within nine months of the date of the decedent's death, in the form prescribed by the Tax Commissioner, in duplicate, with the probate court of the county. The return must include all property that is subject to estate taxes upon transfer, whether the property is transferred under the last will and testament of the decedent or otherwise. The estate tax return must be accompanied by a certificate that is signed by the person required to file the return, and that states all of the following: (1) the fact that the return was filed, (2) the date of the filing of the return, (3) the fact that the estate taxes under R.C. 5731.02 or R.C. 5731.19(A) that are shown to be due in the return, have been paid in full, (4) if applicable, the fact that real property listed in the inventory for the decedent's estate is included in the return, and (5) if applicable, the fact that real property not listed in the inventory for the decedent's estate, including, but not limited to, survivorship tenancy property as described in R.C. 5302.17 (see **COMMENT** 6), also is included in the return. (R.C. 5731.21(A)(1).) The bill expands that final provision, providing that, if applicable, the certificate must state the fact that real property not listed in the inventory for the decedent's estate, including, but not

limited to, survivorship tenancy property as described in R.C. 5302.17 *or transfer on death property as described in the bill's provisions in R.C. 5302.22 and R.C. 5302.23* also is included in the return. (R.C. 5731.21(A)(1)(b)(v).)

Conforming changes

Existing R.C. 5302.01 specifies, in relevant part, that the forms set forth in existing R.C. 5302.05 (a general warranty deed), 5302.07 (a limited warranty deed), 5302.09 (a deed of an executor, administrator, trustee, guardian, receiver, or commissioner), 5302.11 (a quit-claim deed), 5302.12 (a mortgage), 5302.14 (a statutory condition), and 5302.17 (a survivorship tenancy deed) may be used and are sufficient for their respective purposes. They are known as, and may be referred to as, "Statutory Forms." They may be altered as circumstances require, and the authorization of such forms does not prevent the use of other forms. The bill expands these provisions to add a reference to R.C. 5302.22 (a transfer on death deed), as enacted in the bill, to the list of "Statutory Forms." (R.C. 5302.01.)

Existing R.C. 5302.02 provides that the rules and definitions contained in existing R.C. 5302.03 ("grant" as a sufficient word of conveyance), 5302.04 (all interest is conveyed, unless stated to the contrary), 5302.06 (effect of "general warranty covenants"), 5302.08 (effect of "limited warranty covenants"), 5302.10 (effect of "fiduciary covenants"), 5302.13 (effect of "mortgage covenants"), 5302.17 (establishment and effect of survivorship tenancies), 5302.18 (effect of deed where grantor also is grantee), 5302.19 (presumption of tenancies in common), 5302.20 (establishment and effect of survivorship tenancies), and 5302.21 (recognition of prior tenancies by the entirety and joint and survivorship tenancies) apply to all deeds or other instruments relating to real estate, whether the statutory forms or other forms are used, where the instruments are executed on or after October 1, 1965. The bill expands this provision to include a reference to section 5302.22, as enacted in the bill, to the list of sections included in the provision, provided the instrument in question is executed on or after the bill's effective date. (R.C. 5302.02.)

"Payment on death" (P.O.D.) account distribution

Existing law states that when a deposit is made in the name of two or more persons, payable to either person or the survivor, the bank may pay all of the deposit, any part of the deposit, or any interest earned on the deposit, to either of the named persons, or the guardian of the estate of either of the named persons, whether or not the other person is living. The receipt or acquittance of the person paid is a sufficient release and discharge of the bank for any payments made from the account to that person. A bank may enter into a written contract with a natural person for the proceeds of the person's deposits to be payable on the death of that

person to another natural person in accordance with the terms, restrictions, and limitations set forth in R.C. 2131.10 (beneficiaries of P.O.D. accounts) and R.C. 2131.11 (Probate Law provisions regarding beneficiaries of P.O.D. accounts and release and discharge upon payment). (R.C. 1109.07.) Existing law also states that a natural person, adult or minor, may enter into a written contract with any bank, building and loan or savings and loan association, credit union, or society for savings, authorized to receive money on an investment share certificate, share account, deposit, or stock deposit, and transacting business in this state, whereby the proceeds of the owner's investment share certificate, share account, deposit, or stock deposit may be made payable on the death of the owner to another natural person *or to any entity or organization*, notwithstanding any provisions of law to the contrary. (R.C. 2131.10.)

The bill permits P.O.D. account proceeds to be paid to any person and not just to a natural person (R.C. 1109.07(B) and R.C. 2131.10). In addition, a minor conflict exists in existing law. A person may contract to have P.O.D. account proceeds paid to another natural person or to any entity or organization, but a bank may only pay those proceeds to another natural person. The bill resolves the conflict by permitting the bank to pay the P.O.D. proceeds to another person or to any entity or organization. (R.C. 1109.07(B).)

COMMENT

1. ***Allowance for support***. If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both generally are entitled to receive "in money or property the sum of $40,000" as an allowance for support. The money or property set off as an allowance for support is considered an "estate asset." (R.C. 2106.13(A).)

A probate court must order the distribution of an allowance for support in one of the following manners (R.C. 2106.13(B)):

(a) If the decedent died leaving a surviving spouse and no minor children, 100% to the surviving spouse;

(b) If the decedent died leaving a surviving spouse and minor children and if all of the minor children are the children of the surviving spouse, 100% to the surviving spouse;

(c) If the decedent died leaving a surviving spouse and minor children and if not all of the minor children are children of the surviving spouse, in equitable

shares, as fixed by the probate court, to the surviving spouse and the minor children who are not the children of the surviving spouse.

(d) If the decedent died leaving minor children and no surviving spouse, in equitable shares, as fixed by the probate court, to the minor children.

2. Subject to the bill's provision on the qualified applicability of existing law, the application for a certificate of transfer must contain all of the following under R.C. 2113.61(B):

> (1) The name, place of residence at death, and date of death of the decedent;
>
> (2) A statement whether the decedent died testate or intestate;
>
> (3) The fact and date of the filing and probate of the will, if applicable, and the fact and date of the appointment of the administrator or executor;
>
> (4) A description of each parcel of real property situated in this state that is owned by the decedent at the time of his death;
>
> (5) Insofar as they can be ascertained, the names, ages, places of residence, and relationship to the decedent of the persons to whom each parcel of real property described in division (B)(4) of this section passed by descent or devise;
>
> (6) A statement that all the known debts of the decedent's estate have been paid or secured to be paid, or that sufficient other assets are in hand to complete the payment of those debts;
>
> (7) Other pertinent information that the court requires.

Subject to the bill's provision on the qualified applicability of existing law, under R.C. 2113.61(C), the court must issue a certificate of transfer for record in each county in Ohio in which real property so passing is situated and the certificate must recite all of the following:

> (1) The name and date of death of the decedent;

(2) Whether the decedent died testate or intestate and, if testate, the volume and page of the record of the will;

(3) The volume and page of the probate court record of the administration of the estate;

(4) The names and places of residence of the devisees, the interests passing to them, the names and places of residence of the persons inheriting intestate, and the interests inherited by them, in each parcel of real property described in division (B)(4) of this section [see above];

(5) A description of each parcel of real property described in division (B)(4) of this section [see above];

(6) Other information that in the opinion of the court should be included.

3. Section 4505.10(B) (not in the bill) specifies that the clerk of the court of common pleas of the county in which the last certificate of title was issued for any automobiles selected by a surviving spouse from the decedent spouse's estate must transfer the decedent's interest in the automobiles to the surviving spouse of the decedent upon receipt of the titles to the automobiles. An affidavit executed by the surviving spouse must be submitted to the clerk along with the titles. The affidavit must give the date of death of the decedent, state that each automobile for which the decedent's interest is to be transferred is not disposed of by testamentary disposition, and *must provide an approximate value for each automobile selected to be transferred by the surviving spouse*. The affidavit also must contain a description for each automobile for which the decedent's interest is to be transferred. The transfer does not affect any liens upon any automobile for which the decedent's interest is transferred.

4. R.C. Chapter 5309. contains the Registration of Land Titles Law, also referred to as Ohio's Torrens Act. It permits a person who owns land in a county that has not abolished the land registration system (R.C. 5310.31 to 5310.54 permit a county to abolish land registration) to register it in the county. The person must apply to the probate court or the court of common pleas of the county in which the land is located. Under R.C. 5309.23 (not in the bill), if the court finds at a hearing that the applicant has title in whole or in part as stated in the application, and that it is proper for registration, then, to the extent of the title so found, the court must enter a decree of confirmation and registration. The decree has the effect of a

decree *in rem* and, subject only to certain exceptions listed in R.C. 5309.28, it binds the land and all interests and rights in it and liens and charges on it. Generally, after the expiration of a specified time for appeal: (a) the decree of confirmation and registration is absolutely conclusive against all persons, including the state or any political subdivision, regardless of whether the person is mentioned by name in the application, notice, or other papers in the case, etc., and (b) no such person may assert in any Ohio court, in any manner, any claim to an interest in or lien or charge upon registered land in derogation of or contrary to the purport of the decree. The Law contains protections for persons injured by a fraud committed in the registration process and provisions governing the transfer of land that has been so registered.

R.C. 5309.081 (not in the bill but referred to in the bill) provides that, when an interest in title to registered land is vested in two or more persons as a survivorship tenancy and one of the survivorship tenants dies, the interest of the decedent is transferred by presenting to the county auditor and filing with the county recorder either a certificate of transfer as provided in R.C. 2113.61, or an affidavit accompanied by a certified copy of a death certificate and by an owner's duplicate of the relevant certificate of title. The affidavit must certify that the owner of a survivorship tenancy interest in the title to a parcel or parcels of registered land has died and recite the names of the surviving tenants, the current residence address of each surviving tenant, the decedent's date of death, a description of the land, and the number of the certificate of title where the land is registered. The county recorder must: (a) register the title in the surviving tenants, upon a new *folium* in the register of titles, (b) enter all memorials, notations, and memoranda to which the land is subject at the time of transfer, and (c) issue a new certificate of title to the surviving tenants setting forth specified information as to each.

5. R.C. 5302.19 (not in the bill) provides that, except as provided in R.C. 5302.17, 5302.20, and 5302.21 (see below), if any interest in real property is conveyed or devised to two or more persons, those persons hold title as "tenants in common," and the joint interest created is a "tenancy in common." Generally, co-tenants under a tenancy in common all have the right of possession to the subject property at the same time. Ohio case law has established numerous rules relative to the use, maintenance, encumbrance, transfer, and partition, etc., of property that is held under a tenancy in common. See, generally, 19 Ohio Jurisprudence 3d (1980, Supp. 1998), Cotenancy and Partition, sections 1-30.

R.C. 5302.17 identifies the manner in which a "survivorship tenancy" may be created, and a Statutory Form for so doing. R.C. 5302.20 provides that, except as provided in R.C. 5302.21, if any interest in real property is conveyed or devised

to two or more persons for their joint lives and then to the survivor or survivors of them, those persons hold title as "survivorship tenants," and the joint interest created is a "survivorship tenancy." If two or more persons hold an interest in real property as survivorship tenants, each of them holds an equal share of the title during their joint lives (unless otherwise provided in the instrument creating the survivorship tenancy), and, upon the death of any of them, the title of the decedent vests proportionately in the surviving tenants as survivorship tenants. This process continues until only one survivorship tenant remains alive, at which time the survivor is fully vested with title to the real property as the sole title holder. If the circumstances of death of the last two or more survivorship tenants are such that the survivor cannot be determined, title passes as if those last survivors had been tenants in common. R.C. 5302.20(C) identifies the characteristics and ramifications of survivorship tenancies.

R.C. 5302.21 recognizes estates by the entirety and joint and survivorship estates that were created prior to April 4, 1985, which was the effective date of R.C. 5302.20, and specifies that, generally, R.C. 5302.20 does not affect those prior estates or the transfer of property under them.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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