



Legislative Council Staff

Research Note

Version: Final

Date: 6/21/2016

Bill Number

Senate Bill 16-133

Sponsors

Senator Tate
Representatives Pabon and
Willett

Short Title

Transfer Of Property Rights At
Death

Research Analyst

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Status

This research note reflects the final version of the bill, which was signed by the Governor on May 4, 2016, and became effective August 10, 2016.

Summary

This bill makes changes to the probate code and to laws governing the transfer of property upon death. First, the bill changes procedures for affirming the death of a decedent with shared ownership of real property. Specifically, it strikes the part of law that prohibits a person with record interest in real property from signing a supplementary affidavit affirming the death of a person who owned a share in that real property.

Second, the bill makes changes to probate law for determining heirs, devisees, and property interests. It changes the definition of "interested person" to include an owner by descent or succession and to exclude any person holding a non-ownership interest in a decedent's property. The bill also allows persons who may be affected by the ownership of such property to petition the court to determine the heirs of the decedent and the descent of all or any portion of property. The bill outlines new requirements for petitioning the court in these cases, depending upon whether or not the decedent died with or without a valid will. The admission of a previously unprobated will applies only to the decedent's property interests described in the petition.

Background

In addition to other matters, probate generally concerns the distribution of the property of a deceased person, called a decedent. If the decedent has a will, that person is said to have died

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testate, and the property is distributed in accordance with the directions of the will to beneficiaries. Such distribution is made by a personal representative, who is named in the will. State laws or court rules may be applied when determining whether a will governs the distribution of a decedent's property. If the decedent does not have a will, he or she is said to have died intestate, and the personal representative, who is appointed by the court, distributes the decedent's property in accordance with state laws or rules.

Senate Action

Senate Judiciary Committee (March 14, 2016). The committee heard testimony in favor of the bill from representatives of the Colorado Bar Association. Representatives of Families Against Court Embezzlement Unethical Standards and private citizens testified in opposition to the bill.

The committee adopted amendments L.001, L.002, and L.004, and referred the bill, as amended, to the Senate Committee of the Whole. Amendment L.001 added a provision requiring the Revisor of Statutes to include the official Uniform Law Commission comments to the Colorado Uniform Power of Appointment Act in the Colorado Revised Statutes. Amendment L.002 removed provisions relating to exempting individual retirement accounts from levy and sale under certain writs issued by a court. Amendment L.004 added a provision stating that rights granted to a powerholder's creditors in appointive property are subject to the Colorado Uniform Fraudulent Transfers Act.

Senate second reading (March 22, 2016). The Senate Committee of the Whole adopted the Judiciary Committee report and amendments L.005 and L.009, and passed the bill, as amended, on second reading.

Amendment L.005 required that a supplementary affidavit to a death certificate used to prove the death of a person who was a joint tenant include a statement that the person referred to in the death certificate was the joint tenant. Amendment L.009 amended the Judiciary Committee report to remove provisions relating to the rights of a powerholder's creditors in appointive property, including the limitations in amendment L.004, and to amend the bill title.

Senate third reading (March 24, 2016). The Senate adopted the bill on third reading.

House Action

House Judiciary Committee (April 5, 2016). The committee heard testimony from representatives of the Colorado Bar Association in favor of the bill. The committee referred the bill, unamended, to the House Committee of the Whole.

House second reading (April 7, 2016). The House Committee of the Whole passed the bill on second reading.

House third reading (April 8, 2016). The House adopted the bill on third reading.

Relevant Research

Legislative Council Staff, *Colorado Probate Law*, Issue Brief, April 2016: <http://tinyurl.com/zxyk3n2> (pdf).