

CHAPTER 75

PROPERTY

HOUSE BILL 06-1254

BY REPRESENTATIVE(S) Cerbo, Coleman, Frangas, Green, Massey, and Todd;
also SENATOR(S) Veiga.

AN ACT**CONCERNING CO-OWNERSHIP OF REAL PROPERTY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 31 of title 38, Colorado Revised Statutes, is amended to read:

ARTICLE 31
Co-ownership of Real Property

PART 1
JOINT TENANCY IN REAL PROPERTY -
PROOF OF DEATH

38-31-101. Joint tenancy expressed in instrument - when. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION AND IN SECTION 38-31-201, no CONVEYANCE OR DEVISE OF REAL PROPERTY TO TWO OR MORE NATURAL PERSONS SHALL CREATE AN estate in joint tenancy in real property ~~except when conveyed or devised to executors, trustees, or fiduciaries, shall be created or established~~ unless, in the instrument conveying the REAL property or in the will devising the ~~same~~ REAL PROPERTY, it is declared that the REAL property is conveyed or devised in joint tenancy or TO SUCH NATURAL PERSONS as joint tenants. The abbreviation "JT WROS" and the phrase "as joint tenants with right of survivorship" or "in joint tenancy with right of survivorship" shall have the same meaning AS THE PHRASES "IN JOINT TENANCY" AND "AS JOINT TENANTS". Any grantor in any such instrument of conveyance may also be one of the grantees therein.

(2) ~~Any such instrument of conveyance or will executed prior to July 1, 1996;~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~conveying or devising property in compliance with subsection (1) of this section shall be deemed to have created an estate in joint tenancy.~~

(3) A CONVEYANCE OR DEVISE TO TWO OR MORE PERSONAL REPRESENTATIVES, TRUSTEES, OR OTHER FIDUCIARIES SHALL BE PRESUMED TO CREATE AN ESTATE IN JOINT TENANCY IN REAL PROPERTY AND NOT A TENANCY IN COMMON.

(4) AN ESTATE IN JOINT TENANCY IN REAL PROPERTY SHALL ONLY BE CREATED IN NATURAL PERSONS; EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO A CONVEYANCE OR DEVISE OF REAL PROPERTY TO TWO OR MORE PERSONAL REPRESENTATIVES, TRUSTEES, OR OTHER FIDUCIARIES. ANY CONVEYANCE OR DEVISE OF REAL PROPERTY TO TWO OR MORE PERSONS THAT DOES NOT CREATE OR IS NOT PRESUMED TO CREATE AN ESTATE IN JOINT TENANCY IN THE MANNER DESCRIBED IN THIS SECTION SHALL BE A CONVEYANCE OR DEVISE IN TENANCY IN COMMON OR TO TENANTS IN COMMON.

38-31-102. Proof of death - certificate of death available - definitions. (1) A CERTIFICATE OF DEATH OR a certified copy ~~of the certificate of death required by the provisions of section 25-2-110, C.R.S.,~~ THEREOF OF A PERSON WHO IS A JOINT TENANT may be placed of record with the county clerk and recorder of the county in which the real ~~estate concerned~~ PROPERTY AFFECTED BY THE JOINT TENANCY is located, together with a supplementary affidavit. THE SUPPLEMENTARY AFFIDAVIT, WHICH SHALL BE PROPERLY SWORN TO OR AFFIRMED ~~by one~~ A PERSON of legal age having personal knowledge of the ~~fact-stating~~ FACTS AND HAVING NO RECORD INTEREST IN THE REAL PROPERTY, SHALL INCLUDE THE LEGAL DESCRIPTION OF THE REAL PROPERTY AND A STATEMENT that the person referred to in the ~~death~~ certificate was at the time of death the owner ~~in~~ OF A joint tenancy ~~of the~~ INTEREST IN THE REAL property. ~~described in the affidavit. Said certificate and affidavit~~ When recorded, THE ORIGINAL CERTIFICATE AND SUPPLEMENTARY AFFIDAVIT, or certified copies thereof, shall be accepted in all courts of the state of Colorado as prima facie proof of the ~~decease~~ DEATH of ~~such~~ THE joint tenant. ~~Such supplementary affidavit may not be made by anyone who has record interest in the real property described in such affidavit.~~ THE CERTIFICATE AND SUPPLEMENTARY AFFIDAVIT PROVIDED FOR IN THIS SECTION MAY ALSO BE USED TO PROVIDE PROOF OF THE DEATH OF A LIFE TENANT OR ANY OTHER PERSON WHOSE RECORD INTEREST IN REAL PROPERTY TERMINATES UPON THE DEATH OF SUCH PERSON TO THE SAME EXTENT AS A JOINT TENANT AS PROVIDED IN THIS SECTION.

(2) AS USED IN THIS PART 1, UNLESS THE CONTEXT OTHERWISE REQUIRES, A "CERTIFICATE OF DEATH OR CERTIFIED COPY THEREOF" MEANS A CERTIFICATE OF DEATH MEETING THE REQUIREMENTS SET FORTH IN SECTION 38-35-112 TO BE ADMITTED AS EVIDENCE OR A COPY OF SUCH A CERTIFICATE OF DEATH CERTIFIED BY THE PUBLIC OFFICE THAT ISSUED IT.

38-31-103. Proof of death - certificate of death unavailable. ~~In the event that such joint tenant may have died outside the state of Colorado, and a certified copy of said~~ If a certificate of death OR A CERTIFIED COPY THEREOF ~~referred to in section 25-2-110, C.R.S.,~~ cannot be procured, an affidavit properly sworn to OR AFFIRMED by two or more ~~disinterested persons who are residents of the state of Colorado and who have~~ OF LEGAL AGE HAVING PERSONAL KNOWLEDGE OF THE FACTS AND HAVING no record interest in the REAL property affected by ~~such~~ THE joint tenancy may be

placed of record in the office of the county clerk and recorder of the county in which ~~such~~ THE real estate PROPERTY is ~~situated~~ LOCATED. THE AFFIDAVIT SHALL INCLUDE A STATEMENT THAT A CERTIFICATE OF DEATH OR CERTIFIED COPY THEREOF CANNOT BE PROCURED, AND THE REASON THEREFOR, THE LEGAL DESCRIPTION OF THE REAL PROPERTY, THE DATE AND PLACE OF DEATH OF THE DECEASED PERSON, AND A STATEMENT THAT THE PERSON REFERRED TO IN THE AFFIDAVIT WAS AT THE TIME OF DEATH AN OWNER OF A JOINT TENANCY INTEREST IN THE REAL PROPERTY. When recorded, the original AFFIDAVIT, or a certified copy thereof, shall be accepted in all courts in the state of Colorado as prima facie proof of the ~~facts therein stated~~ DEATH OF THE JOINT TENANT AND THE DATE AND PLACE OF DEATH OF THE JOINT TENANT. The affidavit ~~shall state the last place of residence of such decedent, the time and place of death, a description of the real estate affected by the joint tenancy, and that the deceased person was in fact an owner in joint tenancy of said real estate at the time of his death~~ PROVIDED FOR IN THIS SECTION MAY ALSO BE USED TO PROVIDE PROOF OF THE DEATH OF A LIFE TENANT OR ANY OTHER PERSON WHOSE RECORD INTEREST IN REAL PROPERTY TERMINATES UPON THE DEATH OF THE PERSON AND THE DATE AND PLACE OF DEATH OF THE LIFE TENANT OR OTHER PERSON TO THE SAME EXTENT AS A JOINT TENANT AS PROVIDED IN THIS SECTION.

38-31-104. False swearing or affirming - penalty. Anyone falsely swearing to OR AFFIRMING any affidavit provided for in sections 38-31-102 and 38-31-103 is guilty of perjury in the second degree and in addition thereto is liable for damages to any person for any loss consequent on ~~such~~ THE false swearing OR AFFIRMING or on the recording of the affidavit so falsely sworn to OR AFFIRMED.

PART 2 TENANCY BY THE ENTIRETY

38-31-201. Tenancy by the entirety. (1) NO CONVEYANCE OF REAL PROPERTY LOCATED IN THIS STATE EXECUTED BEFORE OR AFTER JULY 1, 2006, SHALL CREATE A TENANCY BY THE ENTIRETY.

(2) A CONVEYANCE OF REAL PROPERTY LOCATED IN THIS STATE EXECUTED BEFORE JULY 1, 2006, THAT PURPORTS TO CREATE A TENANCY BY THE ENTIRETY SHALL BE PRESUMED TO CREATE A JOINT TENANCY.

(3) A CONVEYANCE OF REAL PROPERTY LOCATED IN THIS STATE EXECUTED ON OR AFTER JULY 1, 2006, THAT PURPORTS TO CREATE A TENANCY BY THE ENTIRETY SHALL CREATE A JOINT TENANCY.

SECTION 2. Effective date. This act shall take effect July 1, 2006.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 31, 2006