

January 5, 2015

Transfer on Death Deeds

Purpose

To provide advice on how to process real property transfers due to a transfer on death deed after the passage of LB 780.

Statutory Authority

LB 780 was enacted into law amending the procedures that allow transfers on death deeds to serve as a method of transferring real property without probate. Now, only a death certificate related to a transfer on death deed requires the filing of the Real Estate Transfer Statement, Form 521. LB 780 also provides that a filer of a death certificate unrelated to a transfer on death deed does not need to file the specific cover sheet prescribed by Neb. Rev. Stat. § 76-2,126.

Procedure and Implementation

Transfer on Death Deeds

A transfer on death deed is an instrument that transfers an interest and/or title in real property upon the death of the grantor. When the grantor dies, interest and/or title to the real property will pass to the named beneficiaries in a manner similar to how property passes in joint tenancy. No probate is required, as the real property never becomes part of the estate of the deceased. Transfer on death deeds are revocable at any point prior to the grantor's death, which means no interest and/or title in real estate will pass to the grantee until interest and/or title to the real estate has vested (only when the grantor has died). Under section 76-214(2)(b) the Real Estate Transfer Statement, Form 521 is not to be filed at the time that a transfer on death deed is filed or at the time that an instrument of revocation of a transfer on death deed is filed.

Typically, either the grantee or the grantor will file the transfer on death deed when it is first executed. Section 76-902(16) exempts transfer on death deeds and revocations of transfer on death deeds from the documentary stamp tax.

To perfect the transfer of title and/or interest in real estate pursuant to a transfer on death deed, the grantee will file a death certificate as evidence of the grantor's death. All certified or authenticated death certificates are exempt from the documentary stamp tax whether or not pertaining to a transfer on death deeds. See, Neb. Rev. Stat. § 76-902(17). The Form 521 must be filed with the death certificate, which will be processed and forwarded to the county assessor.

Section 76-214(1) provides that the Form 521 may require a date of death, name of decedent, and whether interest and/or title is affected as a result of the transfer on death deed, joint tenancy deed, or the expiration of a life estate. The Form 521 will be filled in as follows:

1. The date of death is the date of sale;
2. The name of the decedent is the grantor, who is also the grantor on the transfer on death deed; and
3. The filing of the Form 521 is effectively a statement that interest and/or title has been affected.

Death Certificate Cover Sheet for Transfers on a Death Deed

If the conveyance of real estate was pursuant to a transfer on death deed, then a cover sheet indicating the title of the document, the previously recorded document data, and the grantor, surviving grantee, and legal description of the property being transferred must be attached to the death certificate and recorded.

Other Transfers Requiring a Death Certificate

In addition to the transfers on death deeds, a death certificate is required to be filed for transfers of: (1) real property held under a joint tenancy deed as a result of the death of a joint tenant; and (2) real property held under a life estate as a result of the death of a life tenant. The Form 521 is not required to be filed with these types of transfers.

APPROVED:

/s

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January 5, 2015

APPROVED:

/s

Kim Conroy
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January 5, 2015