

**ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012**  
**COMMITTEE STATEMENT**  
**LB536**

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**Hearing Date:** Thursday February 17, 2011  
**Committee On:** Judiciary  
**Introducer:** Wightman  
**One Liner:** Adopt the Nebraska Uniform Real Property Transfer on Death Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Ashford, Coash, Council, Harr, Larson, Lathrop, Lautenbaugh, McGill  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Proponents:**

SEN. JOHN WIGHTMAN  
MATT STERLING  
KORBY GILBERTSON  
WILLIAM LINDSEY

**Representing:**

INTRODUCER  
UNIFORM LAW COMMISSION  
NEBRASKA REALTORS  
SELF

**Opponents:**

JOHN EDWARDS  
SEAN KELLEY  
JOE KOHOUT

**Representing:**

NACO  
DOUGLAS COUNTY BOARD OF COMMISSIONERS  
LANCASTER COUNTY BOARD OF COMMISSIONERS

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

Legislative Bill 536 would enact the Nebraska Real Property Transfer on Death Act. The bill would provide an asset specific mechanism for the non-probate transfer of land. The Nebraska Real Property Transfer on Death Act mirrors the Uniform Real Property Transfer on Death Act, promulgated by the Uniform Law Commission in 2009. The Act would permit owners of interests in real property to execute and record a transfer on death (TOD) deed which would enable an owner of real property to pass the property to a beneficiary on the owner's death without probate. By this deed, the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime, the beneficiaries would have no interest in the property, and the owner would retain full power to transfer or encumber the property or to revoke the TOD deed.

The Nebraska Real Property Transfer on Death Act would establish the requirements for the creation and revocation of a TOD deed and clarifies the effect of the TOD deed on all parties while the transferor is living and after the transferor dies. The Nebraska Real Property Transfer on Death Act would provide optional forms to create or revoke a TOD deed. The TOD deed must contain all of the essential elements and formalities of a properly recordable inter vivos deed. The TOD deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located. The capacity required to create a TOD deed is the same as the capacity to make a will.

A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording an instrument of revocation such as a direct revocation of the TOD deed or a subsequent TOD deed that names a different beneficiary. If the transferor disposes of the property during lifetime, the TOD deed is ineffective. Until the transferor's death, a recorded TOD deed has no effect -- it does not affect any right or interest of the transferor or any other person in the property. The TOD deed creates no legal or equitable interest in the designated beneficiary. Liability of the beneficiary and property for claims against the transferor's estate is limited to cases where the estate is insolvent. A designated beneficiary may disclaim all or part of the transferred interest.

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**Explanation of amendments:**

Committee Amendment AM 1668 is a white copy amendment that replaces the original bill. The amendment incorporates substantive and technical changes that eliminate the opposition expressed at the hearing on the bill. On pages 19 and 20, the amendment would change the filing requirements for Form 521, which must be filed with the register of deeds upon a transfer of property. Under the amendment, the Form 521 would have to be accompanied by a death certificate when a transfer of property occurs by way of a transfer on death deed, a joint tenancy deed, or the expiration of a life estate. The intent of this change is to give counties additional notice of property being transferred on death for purposes of collecting inheritance taxes. The transfer on death deed form would be removed from the bill under AM 1668. On page 1, the definition of "person" would be changed to specify that a "person" under a trust means the trustee of the trust and the term "business trust" would be removed from the definition. On page 4, the amendment would clarify the revocation provisions to state that a deed recorded during the owner's life may revoke a previously recorded transfer on death deed expressly or by inconsistency. On page 15, the amendment would change language to clarify that a renunciation would be ineffective to the extent that the property has been assigned, conveyed encumbered, pledged, or transferred. Language would be added under AM 1668 on page 21 to clarify the effect of a transfer on death deed. On page 24, the amendment would add a stamp tax exemption for certified or authenticated death certificates pertaining to transfer on death deeds.

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Brad Ashford, Chairperson