

AMENDMENTS TO LB 345

Introduced by Schumacher

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 76-2,126, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 76-2,126 If a conveyance of real estate was pursuant to
6 (1) a transfer on death deed due to the death of the transferor
7 or the death of a surviving joint tenant of the transferor, (2)
8 a joint tenancy deed due to the death of a joint tenant, or (3)
9 the expiration of a life estate, then a death certificate shall
10 be filed with the register of deeds to document the transfer of
11 title to the beneficiary of the transfer on death deed, to the
12 surviving joint tenant or joint tenants, or to the holder of an
13 interest in real estate which receives that interest as a result
14 of the death of a life tenant. A cover sheet indicating the title
15 of the document, the previously recorded document data, and the
16 grantor, surviving grantee, and legal description of the property
17 being transferred shall be attached to the death certificate and
18 recorded.

19 Sec. 2. Section 76-3402, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 76-3402 For purposes of the Nebraska Uniform Real
22 Property Transfer on Death Act:

23 (1) Beneficiary means a person that receives property

1 under a transfer on death deed;

2 (2) Designated beneficiary means a person designated to
3 receive property in a transfer on death deed;

4 (3) Disinterested witness to a transfer on death deed
5 means any individual who acts as a witness to a transfer on death
6 deed at the date of its execution and who is not a designated
7 beneficiary or an heir, a child, or a spouse of a designated
8 beneficiary;

9 ~~(3)~~ (4) Joint owner means an individual who owns property
10 concurrently with one or more other individuals with a right of
11 survivorship. The term includes a joint tenant. The term does not
12 include a tenant in common without a right of survivorship;

13 ~~(4)~~ (5) Person means an individual, a corporation, an
14 estate, a trustee of a trust, a partnership, a limited liability
15 company, an association, a joint venture, a public corporation, a
16 government or governmental subdivision, agency, or instrumentality,
17 or any other legal or commercial entity;

18 ~~(5)~~ (6) Property means an interest in real property
19 located in this state which is transferable on the death of the
20 owner;

21 ~~(6)~~ (7) Transfer on death deed means a deed authorized
22 under the Nebraska Uniform Real Property Transfer on Death Act; and

23 ~~(7)~~ (8) Transferor means an individual who makes a
24 transfer on death deed.

25 Sec. 3. Section 76-3410, Revised Statutes Cumulative
26 Supplement, 2012, is amended to read:

27 76-3410 (a) A transfer on death deed:

1 (1) Except as otherwise provided in subdivision (2)
2 of this subsection, must contain the essential elements and
3 formalities of a properly recordable inter vivos deed;

4 (2) Must state that the transfer to the designated
5 beneficiary is to occur at the transferor's death;

6 (3) Must contain the warnings provided in subsection (b)
7 of this section; and

8 (4) Must be recorded (i) within thirty days after
9 being executed as required in section 76-3409, (ii) before the
10 transferor's death, and (iii) in the public records in the office
11 of the register of deeds of the county where the property is
12 located.

13 (b)(1) A transfer on death deed shall contain the
14 following warnings:

15 WARNING: The property transferred remains subject to
16 inheritance taxation in Nebraska to the same extent as if owned by
17 the transferor at death. Failure to timely pay inheritance taxes is
18 subject to interest and penalties as provided by law.

19 WARNING: The designated beneficiary is personally liable,
20 to the extent of the value of the property transferred, to account
21 for medicaid reimbursement to the extent necessary to discharge
22 any such claim remaining after application of the assets of
23 the transferor's estate. The designated beneficiary may also be
24 personally liable, to the extent of the value of the property
25 transferred, for claims against the estate, statutory allowances to
26 the transferor's surviving spouse and children, and the expenses
27 of administration to the extent needed to pay such amounts by the

1 personal representative.

2 WARNING: The Department of Health and Human Services may
3 require revocation of this deed by a transferor, a transferor's
4 spouse, or both a transferor and the transferor's spouse in order
5 to qualify or remain qualified for medicaid assistance.

6 (2) No recorded transfer on death deed shall be
7 invalidated because of any defects in the wording of the warnings
8 required by this subsection.

9 (c) No action may be commenced to set aside a transfer
10 on death deed, based on failure to comply with the requirement
11 of disinterested witnesses pursuant to section 76-3409, more than
12 ninety days after the date of death of the transferor or, if there
13 is more than one transferor, more than ninety days after the date
14 of death of the last surviving transferor.

15 (d) Notwithstanding subsection (c) of this section, an
16 action to set aside a transfer on death deed, based on failure to
17 comply with the requirement of disinterested witnesses pursuant to
18 section 76-3409, in which the transferor or, if there is more than
19 one transferor, the last surviving transferor, has died prior to
20 the effective date of this act, shall be commenced by the later of
21 (1) ninety days after the date of death of the transferor or, if
22 there is more than one transferor, ninety days after the date of
23 death of the last surviving transferor, or (2) ninety days after
24 the effective date of this act.

25 Sec. 4. Section 76-3420, Revised Statutes Cumulative
26 Supplement, 2012, is amended to read:

27 76-3420 (a) Except as otherwise provided in subsection

1 (b) of this section and subject to a determination of the rights
2 of any parties to an action commenced pursuant to subsection (c)
3 or (d) of section 76-3410, if property or any interest therein
4 transferred to a beneficiary by a transfer on death deed is
5 acquired by a purchaser or lender for value from a beneficiary of
6 a transfer on death deed, the purchaser or lender takes title free
7 of any claims of the estate, personal representative, surviving
8 spouse, creditors, and any other person claiming by or through
9 the transferor of the transfer on death deed, including any heir
10 or beneficiary of the estate of the transferor, and the purchaser
11 or lender shall not incur any personal liability to the estate,
12 personal representative, surviving spouse, creditors, or any other
13 person claiming by or through the transferor of the transfer on
14 death deed, including any heir or beneficiary of the estate of the
15 transferor, whether or not the conveyance by the transfer on death
16 deed was proper. Except as otherwise provided in subsection (b) of
17 this section, to be protected under this section, a purchaser or
18 lender need not inquire whether a transferor or beneficiary of the
19 transfer on death deed acted properly in making the conveyance to
20 the beneficiary by the transfer on death deed.

21 (b) A purchaser or lender for value from a beneficiary of
22 a transfer on death deed does not take title free of any lien for
23 inheritance tax under section 77-2003.

24 Sec. 5. Sections 1 and 6 of this act become operative
25 three calendar months after the adjournment of this legislative
26 session. Sections 2 and 7 of this act become operative on January
27 1, 2013. The other sections of this act become operative on their

1 effective date.

2 Sec. 6. Original section 76-2,126, Revised Statutes
3 Cumulative Supplement, 2012, is repealed.

4 Sec. 7. Original section 76-3402, Revised Statutes
5 Cumulative Supplement, 2012, is repealed.

6 Sec. 8. Original sections 76-3410 and 76-3420, Revised
7 Statutes Cumulative Supplement, 2012, are repealed.

8 Sec. 9. Since an emergency exists, this act takes effect
9 when passed and approved according to law.