

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill makes a variety of technical changes to real estate laws.

#### Article 1: Transfer on death deeds

##### Overview

This article tidies up some technical loose ends from the 2008 legislation that authorized transfer on death deeds. A transfer on death deed permits an owner of real estate to record a new type of deed that provides for an automatic transfer of title to the real estate to one or more specified persons upon the owner's future death without having the property go through probate.

#### Section

- 1 Proof of survivorship and clearance from public assistance liens.** This section affects an affidavit of identity and survivorship recorded in the real estate records together with a lien clearance certificate to prove the absence of a Medical Assistance lien on a parcel of real estate in connection with a transfer on death deed. Requires that the affidavit include the name of the person and mailing address to which the county should send future property tax statements.
- 2 Jurisdiction.** Provides that jurisdiction in an action to enforce a medical assistance lien against property conveyed by a transfer on death deed is in the probate division of the district court in counties in which the district court has a probate division, and in the district court in all other counties.
- 3 To get tax statements.** Takes into account that a person to whom future property tax statements should be sent may not be the grantee of a deed or contract for deed.
- 4 Exceptions.** Provides that the statute amended in section 3 of this article does not apply to a transfer on death deed or a Medical Assistance clearance certificate obtained under section

2 of this article.

- 5      **Instruments to have name and address.** Same as section 4 above, but applies to Torrens real estate.
- 6      **Instruments to have name and address.** Same as sections 4 and 5, but applies to real estate registered under a streamlined Torrens procedure in chapter 508A.
- 7      **Effective dates.** Provides effective dates retroactive to August 1, 2008, which was the effective date of the 2008 transfer on death deeds legislation.

## **Article 2: Common Element Certificates**

### **Overview**

This article makes changes in the certificate of title issued by the office of the county registrar of titles for common interest communities (“CICs”). The county registrar of titles is the office that handles real estate records for property that has had its title registered in the Torrens system. A common interest community (CIC) is a condominium, cooperative, townhouse, or planned community, in which at least some parts of the real estate are owned in common by the owners and are called “the common elements.”

- 1      **Common interest community certificate.** Amends the chapter of statutes dealing with registration of title under the Torrens system to add “planned communities” to the system now used for condominiums. (Planned communities are common interest communities that are not condominiums or cooperatives, and are mostly developments consisting of high-density single-family homes with small yards and a shared community open space or park.) Provides that entering a memorial (record of a change in a property interest) on the Common Interest Community Certificate of Title (CICCT) for the CIC as a whole has the same effect as entering it on the certificates of title of each of the individual units in a condominium and those for all the common elements in a planned community. This avoids the expense of entering these items on the certificate of title for each unit in the planned community.
- 2      **Common interest community certificate.** Similar to section 1 but applies to the simplified Torrens registration system in chapter 508A.

## **Article 3: Miscellaneous**

- 1      **Requirement.** This section conforms to the section that follows. Provides that a deed or other document transferring real estate need not be accompanied by the filing of a certificate of real estate value with the county auditor if it meets a requirement listed in section 2 of this article.
- 2      **Designated transfer exemption.** Provides that the certificate of real estate value referenced in the preceding section is not required for transfers referenced in this section, which are called “designated transfers.” Those transfers are all between related parties, and under existing law are (almost) exempt from the state deed tax; the tax is a flat \$1.65. The

deed or other instrument transferring title must state on the front page or signature page that it is a “designated transfer.” Transfers between related parties are not considered a reliable measure of the market value of real estate. This treats those transfers the same way as transfers for \$1,000 or less.

- 3      **Procedure.** Adds to an existing law dealing with requests for a city to create a cartway, which is a right-of-way across someone else’s land. Provides that a city must follow the same procedures now required for cartway requests presented to a town board. The cartway statute that applies to town boards has much more detail regarding the procedures to be followed.
- 4      **Real property transactions on behalf of entities.** Provides that an affidavit of attorney-in-fact, otherwise required for a person signing a deed or other real estate transfer document under a power of attorney, is not required for a signature of a person who signs under a power of attorney granted by a corporation, partnership, limited liability company, or trust. (An affidavit of attorney-in-fact is a sworn statement that specifies the recording information for the power of attorney document, says that the power of attorney has not been revoked, and says the legal description of the property to be sold attached to the power of attorney has not been changed.)