

First Supplement to Memorandum 86-41

Subject: Study L-1030 - Estate and Trust Code (Distribution Without Administration)

We have received a report prepared by the Missouri Bar Probate and Trust Committee proposing the Missouri Non-Probate Transfers Law. The proposed law includes a provision for a Transfer on Death Deed for real property.

The Missouri Bar proposal is summarized in the note to one of the sections of the proposed legislation. The note reads as follows:

SECTION 6. DEEDS EFFECTIVE ON DEATH OF GRANTOR; RECORDING

This section provides the procedure for implementation of Section 6-201, UPC, for conveyances of real estate. The Supreme Court of Missouri has expressly authorized a revocable non-probate transfer of real estate, through the technique of conveying the remainder and reserving a life estate with power of sale. St. Louis County National Bank v. Fielder, 260 SW2d 485 (Mo 1953). However, the procedure is cumbersome and does not conform to a donor's usual intentions to be able to easily establish the future gift and also to revoke it. This provision would validate the procedure used in Wheeler v. Renis, 375 SW2d 48 (Mo 1964), of executing a regular warranty deed with an express provision making the deed effective on death. As a substitute for the formality of executing a will, recording of a beneficiary deed is required but there are express provisions for revoking the transaction by recording a subsequent deed before death. A beneficiary deed may not be revoked by a will. Delivery to the beneficiary is not required as recording fulfills this requirement.

If the deed is executed by two or more grantors, the deed may, nevertheless, be revoked by a single grantor. The law thus negates any implication that when two or more grantors execute a beneficiary deed, the transaction constitutes a contract between them to make a gift of the property to that beneficiary. See section 9. The agreement of all owners would be needed to change a beneficiary designation

A specific provision in subsection 6.2 is included to negate any inference that the statute is the exclusive method for making a non-probate beneficiaries may be designated. An additional provision, subsection 3.2, provides a method for revoking or changing a beneficiary designation, but states that a change may not be made by a will unless the agreement expressly authorizes that procedure.

Respectfully submitted,

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