

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 407
93RD GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 15, 2005, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

1768S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 461.005, RSMo, and to enact in lieu thereof one new section relating to beneficiary deeds.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 461.005, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 461.005, to read as follows:

461.005. In sections 461.003 to 461.081, unless the context otherwise requires, the following terms mean:

(1) "Beneficiary", a person or persons designated or entitled to receive property pursuant to a nonprobate transfer on surviving one or more persons;

(2) "Beneficiary designation", a provision in writing that is not a will that designates the beneficiary of a nonprobate transfer, including the transferee in an instrument that makes the transfer effective on death of the owner, and that complies with the conditions of any governing instrument, the rules of any transferring entity and applicable law;

(3) "Death of the owner", in the case of joint owners, means death of the last surviving owner;

(4) "In proper form", a phrase which applies to a beneficiary designation or a revocation or change thereof, or a request to make, revoke or change a beneficiary designation, which complies with the terms of the governing instrument, the rules of the transferring entity and applicable law, including any requirements with respect to supplemental documents;

(5) "Joint owners", persons who hold property as joint tenants with right of survivorship and a husband and wife who hold property as tenants by the entirety;

(6) "LDPS", an abbreviation of lineal descendants per stirpes which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 461.045;

(7) "Nonprobate transfer", a transfer of property taking effect upon the death of the owner, pursuant to a beneficiary designation. A nonprobate transfer under sections 461.003 to 461.081 does not include survivorship rights in property held as joint tenants or tenants by the entirety, a transfer to a remainderman on termination of a life tenancy, a transfer under a trust established by an individual, either inter vivos or testamentary, a transfer pursuant to the exercise or nonexercise of a power of appointment, or a transfer made on death of a person who did not have the right to designate his or her estate as the beneficiary of the transfer;

(8) "Owner", a person or persons having a right, exercisable alone or with others, **regardless of the terminology used to refer to the owner in any written beneficiary designation**, to designate the beneficiary of a nonprobate transfer, and includes joint owners. **The provisions of this subdivision shall apply to all beneficiary deeds executed and filed at any time, including, but not limited to, those executed and filed on or before August 28, 2005;**

(9) "Ownership in beneficiary form", holding property pursuant to a registration in beneficiary form or other writing that names the owner of the property followed by a transfer on death direction and the designation of a beneficiary;

(10) "Person", living individuals, entities capable of owning property and fiduciaries;

(11) "Proof of death", includes a death certificate or record or report that is prima facie proof or evidence of death under section 472.290, RSMo;

(12) "Property", any present or future interest in property, real or personal, tangible or intangible, legal or equitable. Property includes a right to direct or receive payment of a debt, money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust or law, a right to receive performance remaining due under a contract, a right to receive payment under a promissory note or a debt maintained in a written account record, rights under a certificated or uncertificated security, rights under an instrument evidencing ownership of property issued by a governmental agency and rights under a document of title within the meaning of section 400.1-201,

RSMo;

(13) "Registration in beneficiary form", titling of an account record, certificate, or other written instrument evidencing ownership of property in the name of the owner followed by a transfer on death direction and the designation of a beneficiary;

(14) "Security", a certificated or uncertificated security as defined in section 400.8-102, RSMo, including securities as defined in section 409.401, RSMo;

(15) "Transfer on death direction", the phrase "transfer on death to" or the phrase "pay on death to" or the abbreviation "TOD" or "POD" after the name of the owners and before the designation of the beneficiary; and

(16) "Transferring entity", a person who owes a debt or is obligated to pay money or benefits, render contract performance, deliver or convey property, or change the record of ownership of property on the books, records and accounts of an enterprise or on a certificate or document of title that evidences property rights, and includes any governmental agency, business entity or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property.

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