An Act

ENROLLED SENATE
BILL NO. 1895

By: Anderson of the Senate

and

Sherrer and McCullough of the House

An Act relating to probate procedure; amending 58 O.S. 2001, Sections 282.1, 635, 912 and 1104, which relate to probate of estates; modifying applicability of certain provision relating to request for certain order; modifying applicability of certain requirement relating to the payment of taxes; modifying exception to requirement that a certain waiver or release be issued; modifying applicability of certain requirement for appointed personal representative; providing that certain lien is not required under specified circumstances; providing for construction and application of language; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 58 O.S. 2001, Section 282.1, is amended to read as follows:

Section 282.1 If it appears there is no possibility that estate tax is due under the provisions of Sections 801 et seq. of Title 68, the executor or administrator of an estate or a surviving joint tenant or remainderman may request the district court to enter an order releasing estate tax liability. Such request may be included in a petition for distribution, in a petition to judicially

determine the death of a joint tenant or life tenant or may be made by separate petition. Such request shall be set for hearing and notice thereof shall be given by certified mail to the Tax Commission at least thirty (30) days before the hearing. The notice shall have attached thereto a statement, verified by the requesting party, containing the description of the property claimed not to be subject to taxation, the recipient thereof, their relationship to the deceased, and an estimate of the value of the property. The Tax Commission may appear at such hearing to object to the issuance of such order, or may file a written objection with the court. If the court finds that no possibility of tax liability exists under the provisions of Sections 801 et seq. of Title 68, it shall issue an order releasing estate tax liability as to the property described in the notice. Such order shall have the same legal effect as a release or waiver from the Tax Commission, and shall be a final order on the issue of estate tax liability of such estate as to the property described in the notice and order. If the court finds there is a possibility that tax liability exists, it shall refer such matter to the Tax Commission and the determination of tax liability or absence thereof shall proceed as in other cases. For deaths occurring on or after January 1, 2010, no release of estate tax liability is necessary pursuant to Section 5 of this act.

SECTION 2. AMENDATORY 58 O.S. 2001, Section 635, is amended to read as follows:

Section 635. Before any decree of distribution of an estate is made, the district court must be satisfied, by the oath of the executor or administrator, or otherwise, that all state, county, school and municipal taxes, legally levied upon personal property of the estate, and all income and estate taxes due the State of Oklahoma have been fully paid or arrangements satisfactory to the court have been made to secure the payment of same. For deaths occurring on or after January 1, 2010, no release of estate tax liability is necessary pursuant to Section 5 of this act.

SECTION 3. AMENDATORY 58 O.S. 2001, Section 912, is amended to read as follows:

Section 912. A. If title to any interest in real property is held by two or more persons in joint tenancy with right of survivorship, including but not limited to mortgages owned by two or

more persons in joint tenancy with right of survivorship, any surviving joint tenant or the personal representative or duly appointed attorney in fact of any surviving joint tenant, may evidence the termination of the interest of a deceased joint tenant in such real property by filing the documents described in subsection C of this section.

B. If title to any real property is held by two or more persons where at least one of them holds a life tenancy interest in such property and at least one of them holds a remainder interest in such property, any surviving life tenant or remainderman, or the personal representative or duly appointed attorney of any survivor of them may evidence the termination of the interest of any deceased life tenant in such real property by filing the documents described in subsection C of this section.

C. A person entitled, by subsection A or B of this section, to evidence the termination of the interest of a decedent in real property pursuant to this section may do so by filing in the office of the county clerk of the county in which said real property is located, the following:

1. A certified copy of the certificate of death of the joint tenant or life tenant issued by the court clerk as prescribed in Article 3 of the Public Health Code, Section 1-301 et seq. of Title 63 of the Oklahoma Statutes, or by the State Department of Health or comparable agency of the place of the death of the joint tenant or life tenant;

2. An affidavit by the surviving joint tenant, life tenant or remainderman or the personal representative or duly appointed attorney in fact of the surviving joint tenant, life tenant or remainderman describing the real property, stating that the decedent named in such certificate of death is one and the same person as the deceased joint tenant or life tenant named in a previously recorded document which created or purported to create such joint tenancy or life tenancy in such real property and identifying such recorded document by book and page where recorded, that the survivor making or on whose behalf the affidavit is made and the decedent were husband and wife, if such is the case, and the date of death of the deceased joint tenant or life tenant. If the affidavit is filed by a personal representative or duly appointed attorney in fact, the

letters of administration, letters testamentary, letters of guardianship or the power of attorney shall accompany the affidavit and be filed with the county clerk. An affidavit properly sworn before a notarial officer shall, notwithstanding the provisions of Section 26 of Title 16 of the Oklahoma Statutes, be received for record and recorded by the county clerk without having been acknowledged and, when recorded, it shall be effective as if it had been acknowledged. An affidavit filed either before or after the effective date of this act which was either acknowledged or sworn or both acknowledged and sworn before a notarial officer is hereby validated and the title to such real property shall be deemed marketable unless otherwise defective; and

3. If such real property is held in joint tenancy other than by two persons only who were husband and wife or other than by two persons only who were husband and wife with one as the life tenant and the other as the remainderman, a waiver or release issued by the Oklahoma Tax Commission of the estate tax lien as to the deceased joint tenant or life tenant must be filed with the affidavit required by paragraph 2 of this subsection, unless the estate tax lien has otherwise been released by operation of law. For deaths occurring on or after January 1, 2010, no release of estate tax liability is necessary pursuant to Section 5 of this act.

D. The filing of the documents described in subsection C of this section shall constitute conclusive evidence of the death of such joint tenant or life tenant and of the termination of the interest of such deceased joint tenant or life tenant in such real property. The title of such real property shall be deemed marketable unless otherwise defective.

SECTION 4. AMENDATORY 58 O.S. 2001, Section 1104, is amended to read as follows:

Section 1104. A. At the time and place of such hearing or at the postponement thereof, after first receiving satisfactory proof of the giving of the notice of the hearing, and if there is no contest to the probate of the will or the appointment of the personal representative, the court shall receive proof of the will and, if satisfied thereby, may admit the will to probate and order the appointment and qualification of the surviving spouse as personal representative. Unless the will provides otherwise, the

court, in its discretion, may waive or require the giving of bond by the spouse regardless of the known or estimated value of the estate. The court, at a later time, for good cause shown, may waive or require a bond of the personal representative.

B. After being appointed personal representative, the surviving spouse shall:

1. Give notice to creditors in the manner provided in Section 331 of this title with respect to a decedent who has been dead for a period of more than five (5) years prior to the commencement of a probate proceeding for such decedent's estate, and file the appropriate affidavits as provided in Section 332 of this title;

2. Make and return to the court, as in other estate proceedings, a true inventory and appraisement of all the estate of the decedent, except that the surviving spouse alone may appraise the values thereof and shall appraise the items set out in the estate inventory at their fair market values and no appraisers need be appointed by the court. Both the estate inventory and the appraisement thereof shall be verified by the surviving spouse;

3. Prepare all returns and reports required by law with regard to estate, income and other taxes owed by the decedent or the estate and obtain receipts, releases and waivers as are required in regard thereto, or in regard to estate taxes, obtain an order releasing estate tax liability from the district court. For deaths occurring on or after January 1, 2010, no release of estate tax liability is necessary pursuant to Section 5 of this act; and

4. Carry out all other duties of a personal representative as in other estate proceedings.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 804.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

For deaths occurring on or after January 1, 2010, no lien related to estate tax shall attach to any property passing through the estate of a decedent, by joint tenancy, or otherwise. No order exempting estate tax liability shall be necessary to authorize the release of such property or for the title of real property to be

marketable. This shall not be construed as relieving an estate from lien obligations in effect for deaths occurring before January 1, 2010.

SECTION 6. This act shall become effective July 1, 2010.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 26th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 28th day of May, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 28th

day of May, 2010,

at 6:45 o'clock P M.

By: [illegible]

Approved by the Governor of the State of Oklahoma the 9th day of

June, 2010, at 8:03 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

10th day of June, 2010,

at 3:08 o'clock P M.

By: M. Susan Savage