

1 **REAL PROPERTY RECORDING AMENDMENTS**

2 2008 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Dennis E. Stowell**

5 House Sponsor: Stephen H. Urquhart

6

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses the recording of documents concerning real property.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses policies and procedures established by a county recorder;
- 13 ▶ requires a county recorder to endorse a document upon acceptance, instead of upon
- 14 receipt;
- 15 ▶ addresses a tenancy by the entirety;
- 16 ▶ requires an affidavit concerning a terminated interest in real property due to death to
- 17 be accompanied by a government-issued document certifying the death;
- 18 ▶ forbids certain documents from being presented for recording; and
- 19 ▶ makes technical changes.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **17-21-1**, as last amended by Laws of Utah 2003, Chapter 211

27 **17-21-12**, as last amended by Laws of Utah 2007, Chapter 268



- 28 **57-1-5**, as last amended by Laws of Utah 2006, Chapter 236
- 29 **57-1-5.1**, as last amended by Laws of Utah 2007, Chapter 268
- 30 **57-3-105**, as last amended by Laws of Utah 2007, Chapter 268
- 31 **57-3-106**, as last amended by Laws of Utah 2007, Chapters 268 and 287



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **17-21-1** is amended to read:

35 **17-21-1. Recorder -- Document custody responsibility -- Electronic submission**
36 **procedures and guidelines.**

37 The county recorder:

- 38 (1) is custodian of all recorded documents and records required by law to be recorded;
- 39 (2) shall establish policies and procedures that the recorder considers necessary to
- 40 protect recorded documents and records in the recorder's custody, including determining the
- 41 appropriate method for the public to obtain copies of the public record under Section 17-21-19
- 42 and supervision of those who search and make copies of the public record; and
- 43 (3) may establish procedures and guidelines to govern the electronic submission of
- 44 plats, records, and other documents to the county recorder's office consistent with Title 46,
- 45 Chapter 4, Uniform Electronic Transactions Act.

46 Section 2. Section **17-21-12** is amended to read:

47 **17-21-12. Recording procedures -- Endorsements of entry number required on**
48 **documents.**

- 49 (1) [~~¶~~] When a document is accepted by the recorder's office for recording, the
- 50 recorder shall:
 - 51 (a) endorse upon the first page of the document an entry number and the time when the
 - 52 document was [~~received~~] accepted, noting the year, month, day, hour, and minute of its
 - 53 reception, and the amount of fees for recording it; and
 - 54 (b) record the document during office hours in the order it was accepted.
- 55 (2) Each county recorder shall place an entry number or a book and page reference on
- 56 each page of a document that the recorder accepts for recording only if the original document
- 57 or a copy of the document is kept as a public record under Section 17-21-3.
- 58 (3) (a) A county recorder may [~~, but is not required to,~~] endorse each document that the

59 recorder accepts for recording with a book and page reference.

60 (b) If a county recorder elects not to endorse a document with a book and page
61 reference, the book and page reference may be omitted:

62 (i) in each index required by statute; and

63 (ii) on each document presented for recording that is required to recite recording data.

64 (4) Subject to Section 17-21-3, the county recorder shall return the document to the
65 person that the recorder considers appropriate.

66 Section 3. Section **57-1-5** is amended to read:

67 **57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of**
68 **joint tenancy -- Tenants by the entirety.**

69 (1) (a) Beginning on May 5, 1997, every ownership interest in real estate granted to
70 two persons in their own right who are designated as husband and wife in the granting
71 documents is presumed to be a joint tenancy interest with rights of survivorship, unless
72 severed, converted, or expressly declared in the grant to be otherwise.

73 (b) Every ownership interest in real estate that does not qualify for the joint tenancy
74 presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest
75 unless expressly declared in the grant to be otherwise.

76 (2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the
77 survivor of them" or words of similar import means a joint tenancy.

78 (b) Use of words "tenancy in common" or "with no rights of survivorship" or
79 "undivided interest" or words of similar import declare a tenancy in common.

80 (3) A sole owner of real property creates a joint tenancy in himself and another or
81 others:

82 (a) by making a transfer to himself and another or others as joint tenants by use of the
83 words as provided in Subsection (2)(a); or

84 (b) by conveying to another person or persons an interest in land in which an interest is
85 retained by the grantor and by declaring the creation of a joint tenancy by use of the words as
86 provided in Subsection (2)(a).

87 (4) In all cases, the interest of joint tenants shall be equal and undivided.

88 (5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide
89 conveyance of the joint tenant's interest in property held in joint tenancy to himself or another,

90 the joint tenancy is severed and converted into a tenancy in common.

91 (b) If there is more than one joint tenant remaining after a joint tenant severs a joint
92 tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in
93 joint tenancy.

94 (6) The amendments to this section in Chapter 124, Laws of Utah 1997 have no
95 retrospective operation and shall govern instruments executed and recorded on or after May 5,
96 1997.

97 (7) Tenants by the entirety are considered to be joint tenants.

98 Section 4. Section **57-1-5.1** is amended to read:

99 **57-1-5.1. Termination of an interest in real estate -- Affidavit.**

100 (1) Joint tenancy, tenancy by the entirety, life estate, or determinable or conditional
101 interest in real estate may be terminated by an affidavit that:

102 (a) meets the requirements of Subsection (2); and

103 (b) is recorded in the office of the recorder of the county in which the affected property
104 is located.

105 (2) Each affidavit required by Subsection (1) shall:

106 (a) cite the interest [~~which~~] that is being terminated;

107 (b) contain a legal description of the real property that is affected;

108 (c) reference the entry number and the book and page of the instrument creating the
109 interest to be terminated; and

110 (d) if the termination is the result of a death, have attached as an exhibit, a copy of the
111 death certificate or other document [~~witnessing~~] issued by a governmental agency certifying the
112 death.

113 (3) The affidavit required by Subsection (1) may be in substantially the following form:

114 "Affidavit

115 State of Utah)

116) ss

117 County of _____)

118 I, (name of affiant), being of legal age and being first duly sworn, depose and state as
119 follows:

120 (The name of the deceased person), the decedent in the attached certificate of death or

121 other document witnessing death is the same person as (the name of the deceased person)
122 named as a party in the document dated (date of document) as entry _____ in book _____,
123 page _____ in the records of the (name of county) County Recorder.

124 This affidavit is given to terminate the decedent's interest in the following described
125 property located in _____ County, State of Utah: (description of the
126 property).

127 Dated this _____ day of _____, _____.

128 _____

129 (Signature of affiant)

130 Subscribed to and sworn before me this _____ day of _____,

131 _____.

132 _____

133 Notary public"

134 Section 5. Section **57-3-105** is amended to read:

135 **57-3-105. Legal description of real property and names and addresses required in**
136 **documents.**

137 (1) Except as otherwise provided by statute, a person may not present a document for
138 recording unless [it] the document complies with [~~the requirements of~~] this section.

139 (2) A document executed after July 1, 1983, [~~is entitled to~~] may be recorded in the
140 office of the recorder of the county in which the property described in the document is located
141 only if the document contains a legal description of the real property [~~affected~~].

142 (3) (a) A document conveying title to real property presented for recording after July 1,
143 1981, [~~is entitled to~~] may be recorded in the office of the recorder of the county in which the
144 property described in the document is located only if the document contains the names and
145 mailing addresses of the grantees in addition to the legal description required under Subsection
146 (2).

147 (b) The address of the management committee may be used as the mailing address of a
148 grantee as required in Subsection (3)(a) if the interest conveyed is a timeshare interest as
149 defined by Section 57-19-2.

150 (4) A person may not present and a county recorder may refuse to accept a document
151 for recording if the document does not conform to [~~the requirements of~~] this section.

152 (5) Notwithstanding Subsections (2), (3), and (4), a master form, as defined in Section
153 57-3-201, that does not meet the requirements of Subsections (2) and (3) is entitled to be
154 recorded in the office of the recorder of the county in which the property described in the
155 master form is located if it complies with Part 2, Master Mortgage and Trust Deeds.

156 Section 6. Section **57-3-106** is amended to read:

157 **57-3-106. Original documents required -- Captions -- Legibility.**

158 (1) A person may not present and a county recorder may refuse to accept a document
159 for recording if the document does not comply with this section.

160 ~~[(1)]~~ (2) (a) Unless otherwise provided, ~~[documents]~~ a document presented for
161 recording in the office of the county recorder shall:

162 (i) be ~~[originals]~~ an original;

163 (ii) contain a brief caption on the first page of the document stating the nature of the
164 document; and

165 (iii) contain a legal description of the property as required under Section 57-3-105.

166 (b) If a document is a master form, as defined in Section 57-3-201, the caption required
167 by Subsection ~~[(1)]~~ (2)(a)(ii) shall state that the document is a master form.

168 ~~[(2)]~~ (3) A court judgment or an abstract of a court judgment presented for recording in
169 the office of the county recorder in compliance with Section 78-22-1 shall:

170 (a) be an original or certified copy; and

171 (b) include the information identifying the judgment debtor as referred to in Subsection
172 78-22-1.5(4) either:

173 (i) in the judgment or abstract of judgment; or

174 (ii) as a separate information statement of the judgment creditor as referred to in
175 Subsection 78-22-1.5(5).

176 ~~[(3) Judgments, abstracts of judgments, and separate information statements]~~

177 (4) A judgment, abstract of judgment, and separate information statement of the
178 judgment creditor ~~[do]~~ does not require an acknowledgment or a legal description to be
179 recorded.

180 ~~[(4)]~~ (5) A foreign judgment or an abstract of a foreign judgment recorded in the office
181 of a county recorder shall include the affidavit as required in Section 78-22a-3.

182 ~~[(5)]~~ (6) Any document recorded in the office of the county recorder to release or

183 assign a judgment lien shall include:

184 (a) the name of any judgment creditor, debtor, assignor, or assignee;

185 (b) the date of recording; and

186 (c) the entry number of the instrument creating the judgment lien.

187 [~~(6) Documents~~] (7) A document presented for recording shall [~~also~~] be sufficiently
188 legible for the recorder to make certified copies of the document.

189 [~~(7)~~] (8) (a) (i) A document that is of record in the office of the appropriate county
190 recorder in compliance with this chapter may not be recorded again in that same county
191 recorder's office unless the original document has been reexecuted by all parties who executed
192 the document.

193 (ii) Unless exempt by statute, an original [~~documents~~] document that [~~are~~] is
194 reexecuted [~~must also~~] shall contain the appropriate acknowledgment, proof of execution, jurat,
195 or other notarial certification for all parties who are reexecuting the document as required by
196 Title 46, Chapter 1, Notaries Public Reform Act, and Title 57, Chapter 2, Acknowledgments.

197 (iii) [~~Documents~~] A document submitted for rerecording shall contain a brief statement
198 explaining the reason for rerecording.

199 (b) A person may not present and a county recorder may refuse to accept a document
200 for rerecording if that document does not conform to [~~the requirements of~~] this section.

201 (c) This Subsection [~~(7)~~] (8) applies only to documents executed after July 1, 1998.

202 [~~(8)~~] (9) Minor typographical or clerical errors in a document of record may be
203 corrected by the recording of an affidavit or other appropriate instrument.

204 [~~(9)~~] (10) Subject to federal bankruptcy law, neither the recordation of an affidavit
205 under Subsection [~~(8)~~] (9) nor the reexecution and rerecording of a document under Subsection
206 [~~(7) shall~~] (8):

207 (a) [~~divest~~] divests a grantee of any real property interest; [~~or~~]

208 (b) [~~alter~~] alters an interest in real property; or [~~return~~]

209 (c) returns to the grantor an interest in real property conveyed by statute.

Legislative Review Note
as of 1-14-08 2:02 PM

Office of Legislative Research and General Counsel

S.B. 92 - Real Property Recording Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
