



2022 South Dakota Legislature

House Bill 1115

Introduced by: **Representative** Cwach

1 **An Act to allow succession to real property by an affidavit.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added:**

4 Sixty days after the death of a decedent, any person claiming to be a successor to
 5 the decedent's interest in real property in this state may file, or cause to be filed on their
 6 behalf, an affidavit describing the real property owned by the decedent and the interest
 7 of the decedent in the property. A certified or authenticated copy of the decedent's death
 8 certificate and the affidavit must be filed with the register of deeds office in all counties
 9 where the real property of the decedent is located.

10 All persons claiming as successors or parties legally acting on their behalf shall sign
 11 the affidavit.

12 The affidavit, which is prima facie evidence of the facts included, must state:

- 13 (1) The value of the decedent's interest in all real property located in this state does
 14 not exceed fifty thousand dollars. The value of the decedent's interest is
 15 determined from the value of the property as shown on the assessment rolls for
 16 the year in which the decedent died less real estate taxes and interest thereon if
 17 any is due at the time of death;
- 18 (2) That sixty days have elapsed since the death of the decedent;
- 19 (3) That no application or petition for the appointment of a personal representative is
 20 pending or has been granted in any jurisdiction;
- 21 (4) That the claiming successor is entitled to the real property because of the
 22 homestead allowance under § 29A-2-402, the family allowance under § 29A-2-
 23 403, by intestate succession, or by devise under the will of the decedent;
- 24 (5) If succession is claimed to be by will, that the affiant has made an investigation
 25 and has been unable to determine any subsequent will;

1 (6) That no one other than a claiming successor has a right to the interest of the
 2 decedent in the described property;

3 (7) Each claiming successor's relationship to the decedent and the value of the entire
 4 estate of the decedent;

5 (8) That the transfer of title is not subject to a transfer fee pursuant to subdivision 43-
 6 4-22(18); and

7 (9) That each person making the affidavit swear or affirm that all statements in the
 8 affidavit are true and material and further acknowledge that any false statement
 9 may subject the person or persons to criminal penalties.

10 A successor named in an affidavit under this section has the same protection and
 11 liability as a distributee who has received a deed of distribution from a personal
 12 representative, as provided in § 29A-3-908, subject to § 29A-3-901.

13 Any successor named in an affidavit under this section is responsible for seeing
 14 that any property received under this section is applied to liens, encumbrances,
 15 homestead allowance, exempt property, family allowance, funeral expenses, expenses of
 16 administration, and creditor claims.

17 If an interest in real property transferred under this section is acquired by a
 18 purchaser or lender in good faith, for value and without actual notice that the transfer was
 19 improper, the purchaser or lender takes title free of any claims of the decedent's estate
 20 and incurs no personal liability to the estate, whether or not the transfer was proper.
 21 Purchasers and lenders have no duty to inquire whether a transfer was proper.

22 Nothing in this section affects the rights of a secured creditor or judgment creditor
 23 in such property, or prevents any proceeding enforcing any mortgage, pledge, or other
 24 liens upon the real property described in the affidavit.

25 **Section 2. That § 7-9-7 be AMENDED:**

26 **7-9-7.** No register of deeds may accept for record in the office of the register of
 27 deeds:

28 (1) Any deed, affidavit terminating joint tenancy or life estate interests, or oil, gas, or
 29 other mineral lease, or affidavit for succession to real property pursuant to section
 30 1 of this Act that does not include the names of the grantor and the grantee or the
 31 lessor and the lessee, the names of the joint tenant, the post office address of the
 32 grantee or lessee, and a legal description of the property conveyed or leased;

- 1 (2) Any mortgage that does not include the names of the mortgagor and the
2 mortgagee, the post office address of the mortgagee, a legal description of the
3 property, and the amount of the mortgage and when it is due;
- 4 (3) Any assignment of mortgage or oil, gas, or other mineral lease that does not include
5 the names of the assignor and the assignee, the post office address of the assignee,
6 and a legal description of the property;
- 7 (4) Any deed or contract for deed dated after July 1, 1988, used in the purchase,
8 exchange, transfer, or assignment of interest in real property that is not
9 accompanied by a certificate of value containing the name and address of the buyer
10 and seller, the legal description of the real property, the actual consideration
11 exchanged for the real property, the relationship of the seller and buyer, if any,
12 and the terms of payment if other than payment in full at the time of sale; or
- 13 (5) A transfer on death deed, pursuant to §§ 29A-6-401 to 29A-6-435, inclusive, is
14 exempt from completing and submitting the certificate of value as set forth in
15 subdivision (4) of this section.