



2022 South Dakota Legislature

House Bill 1115

HOUSE JUDICIARY ENGROSSED

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. For real estate classified as non-agricultural, the
 15 value of the decedent's interest in property may be determined as shown on the
 16 assessment rolls for the year in which the decedent died. For real estate classified
 17 as agricultural, the value of the decedent's interest shall be the fair market value
 18 thereof on the date of the decedent's death.

19 (2) That sixty days have elapsed since the death of the decedent;

20 (3) That no application or petition for the appointment of a personal representative is
 21 pending or has been granted in any jurisdiction;

22 (4) That the claiming successor is entitled to the real property because of the
 23 homestead allowance under § 29A-2-402, the family allowance under § 29A-2-
 24 403, by intestate succession, or by devise under the will of the decedent;

25 (5) If succession is claimed to be by will, that the affiant has made an investigation
 26 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);

7 (9) The decedent has not incurred any indebtedness to the Department of Social
8 Services for medical assistance for nursing home or other medical institutional
9 care; and

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

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

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

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

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

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

29 **7-9-7.** No register of deeds may accept for record in the office of the register of
30 deeds:

31 (1) Any deed, affidavit terminating joint tenancy or life estate interests, or oil, gas, or
32 other mineral lease, or affidavit for succession to real property pursuant to section
33 1 of this Act that does not include the names of the grantor and the grantee or the

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