

2021 South Dakota Legislature

House Bill 1086**AMENDMENT 1086A FOR THE INTRODUCED BILL**

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 **29A-3-1203. Succession to real property by affidavit--Misdemeanor.**

5 ~~Thirty-Sixty~~ days after the death of a decedent, any person claiming to be a
6 successor to the decedent's interest in real property in this state, ~~except for real property~~
7 ~~classified as agricultural land for tax purposes~~, may file, or cause to be filed on their behalf,
8 an affidavit describing ~~the-such~~ real property owned by the decedent and the interest of
9 the decedent in ~~the-such~~ property. The person shall file a certified or authenticated copy
10 of the decedent's death certificate and the affidavit with the register of deeds office in all
11 counties where the real property of the decedent is located. All persons claiming as
12 successors or by parties legally acting on their behalf shall sign the affidavit.

13 The affidavit, which shall be prima facie evidence of the facts included, must state:

- 14 (1) The value of the decedent's interest in all real property located in this state does
15 not exceed fifty thousand dollars. The value of the decedent's interest shall be
16 determined from the value of the property as shown on the assessment rolls for
17 the year in which the decedent died less real estate taxes and interest thereon if
18 any is due at the time of death;
- 19 (2) That thirty 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) That the claiming successor has made an investigation and has been unable to
26 determine any subsequent will;

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

3 (7) The 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 ~~(8)~~(9) That any person claiming as a successor under the affidavit swear or affirm that all
 8 statements in the affidavit are true and material and further acknowledge that any
 9 false statement may subject the person or persons to criminal penalties.

10 A successor named in an affidavit under this section shall have the same protection
 11 as a distributee who has received a deed of distribution from a personal representative as
 12 provided in § 29A-3-908. A purchaser of real property from, or a lender to, a person
 13 named as a successor in an affidavit under this section shall have the same protection as
 14 a person purchasing from or lending to a distributee who has received a deed of
 15 distribution from a personal representative as provided in § 29A-3-910.

16 Nothing in this section affects or prevents any proceeding enforcing any mortgage,
 17 pledge, or other liens upon the real property described in the affidavit.

18 **Section 2.** That § 7-9-7 be AMENDED.

19 **7-9-7. Names, addresses, and descriptions required in recorded**
 20 **instruments--Certificate of value.**

21 No register of deeds may accept for record in the office of the register of deeds:

22 (1) Any deed, affidavit terminating joint tenancy or life estate interests, or oil, gas, or
 23 other mineral lease, or affidavit for succession to real property pursuant to § 29A-
 24 3-1203 that does not include the names of the grantor and the grantee or the lessor
 25 and the lessee, the names of the joint tenant, the post office address of the grantee
 26 or lessee, and a legal description of the property conveyed or leased;

27 (2) Any mortgage that does not include the names of the mortgagor and the
 28 mortgagee, the post office address of the mortgagee, a legal description of the
 29 property, and the amount of the mortgage and when it is due;

30 (3) Any assignment of mortgage or oil, gas, or other mineral lease that does not include
 31 the names of the assignor and the assignee, the post office address of the assignee,
 32 and a legal description of the property;

33 (4) Any deed or contract for deed dated after July 1, 1988, used in the purchase,
 34 exchange, transfer, or assignment of interest in real property that is not

1 accompanied by a certificate of value containing the name and address of the buyer
2 and seller, the legal description of the real property, the actual consideration
3 exchanged for the real property, the relationship of the seller and buyer, if any, and
4 the terms of payment if other than payment in full at the time of sale; or
5 (5) A transfer on death deed, pursuant to §§ 29A-6-401 to 29A-6-435, inclusive, is
6 exempt from completing and submitting the certificate of value as set forth in
7 subdivision (4) of this section.