

Real Estate Law updates to the 2015 Cadastral Mapping Manual

This update talks about some of the noteworthy changes to the Utah Code since the last revision of the Cadastral Mapping Manual.

NOTARIES PUBLIC AMENDMENTS

HB 320 from the 2017 general session made some changes to notarial certificates.

AMENDS: 46-1-2, 46-1-3, 46-1-4, 46-1-7, 46-1-15, 46-1-16, 46-1-18, 46-1-20, and 46-4-205

ENACTS: 46-1-6.5 REPEALS AND REENACTS: 46-1-6 REPEALS: 46-1-5

This bill: defines terms; clarifies provisions related to the notarization of documents; narrows provisions related to a jurat; includes signature witnessing as a notarial act; removes the authority of the Office of Risk Management to execute a bond for a notary; clarifies reapplication requirements for an individual whose notarial commission expires; provides standard language for a notarial certificate; allows a licensed escrow agent who is also a notary public to notarize certain documents the licensed escrow agent signs; and makes technical and conforming changes.

COMMON AREA LAND USE AMENDMENTS

HB 243 from the 2017 general session made some changes to common area ownership and plat conveyances. AMENDS: 10-9a-604, 10-9a-606, 17-27a-604, 17-27a-606, and 57-8-32

This bill: addresses ownership, conveyance, and modification of a parcel designated as a common area or a common area and facility on a recorded plat; reduces the percentage of landowners required to approve certain conveyances; amends requirements for recording a certain subdivision plat; and makes technical and conforming changes.

LAW ENFORCEMENT PROTECTION AMENDMENTS

SB 230 from the 2018 general session. AMENDS: 53-18-102 AND 53-18-103

This bill: creates a process by which a law enforcement officer may have their own personal information removed from publicly available state or local government sites for up to four years; requires that the law enforcement officer deliver copies of a form to the affected state or local government agency; and makes conforming and technical amendments.

COUNTY RECORDER AMENDMENTS

HB 61 from the 2018 general session removes a restriction on the provision of county recorder services in certain circumstances. AMENDS: 17-21-18

17-21-18. Fees must be paid in advance.

The recorder may not record any instrument, furnish any copies, or provide any service connected with the office, until the fees prescribed by law have been paid or have been authorized to be paid electronically.

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

HB 94 from the 2018 general session. ENACTS: 75-6-401, 75-6-402, 75-6-403, 75-6-404, 75-6-405, 75-6-406, 75-6-407, 75-6-408, 75-6-409, 75-6-410, 75-6-411, 75-6-412, 75-6-413, 75-6-414, 75-6-415, 75-6-416, 75-6-417, 75-6-418, and 75-6-419

This bill: creates a new part in the Utah Uniform Probate Code; specifically applies only to deeds created by a person who dies on or after May 8, 2018; provides that the act is nonexclusive and does not affect any other method of transferring real property allowed under Utah law; the transfer of property only occurs upon the transferor's death; provides that a transfer on death deed is revocable; and requires that the transferor have the same capacity as that required to make a will at the time the deed is made.

75-6-409. Requirements.

A transfer on death deed shall:

- (1) contain the essential elements and formalities of a properly recordable inter vivos deed;
- (2) state that the transfer to the designated beneficiary is to occur at the transferor's death; and
- (3) be recorded before the transferor's death in the public records in the county recorder's office of the county where the property is located.

75-6-413. Effect of transfer on death deed at transferor's death.

(1) Except as otherwise provided in the transfer on death deed, Sections 75-2-205, 75-2-702, 75-2-803, and 75-2-804 on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death.

(a) Subject to Subsection (1)(b), the interests in the property are transferred to the designated beneficiaries in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. Notwithstanding Section 75-2-706, the interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to Subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship, unless otherwise specified in the transfer on death deed.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one that lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to Title 57, Chapter 3, Recording of Documents, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this Subsection (2) and Title 57, Chapter 3, Recording of Documents, the recording of the transfer on death deed is considered to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

- (a) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or
- (b) the last surviving joint owner, the transfer on death deed is effective.

(4) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

(5) Following the death of the transferor, an affidavit in substantially the form found in Section 57-1-5.1 shall be recorded in the office of the recorder of the county in which the affected property is located.

Each affidavit shall:

- (a) contain a legal description of the real property that is affected;
- (b) reference the entry number and the book and page of the previously recorded transfer on death deed; and
- (c) have attached as an exhibit, a copy of the death certificate or other document issued by a governmental agency as described in Section 75-1-107 certifying the transferor's death.