



# HOUSE OF REPRESENTATIVES

HB 2143

joint tenancy severance

Sponsor: Representative Brophy McGee

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**DPA** Committee on Government

**DPA** Caucus and COW

**X** As Transmitted to the Governor

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## OVERVIEW

HB 2143 outlines the process for severing the right of survivorship in the case of real property owned as joint tenants with right of survivorship.

## HISTORY

Arizona Revised Statutes (A.R.S.) § 33-431 requires all grants and devises of real property made to two or more persons to create estates in common and not in joint tenancy, except grants or devises in trust, or to executors, or to husband and wife. Statute declares that a joint tenancy with right of survivorship allows two or more persons to transfer the estate to the survivor upon the death of a grantee or devisee when expressly declared in their grant, transfer or devise. An estate in joint tenancy with right of survivorship may also be created by grant or transfer from a sole owner to themselves and others, or from two or more owners to themselves or to one or more of them and others.

Laws 1995, Chapter 287, A.R.S., stipulated that the right of survivorship is extinguished as provided in statute in the case of real property owned by a husband and wife as community property with right of survivorship. Statute also allows their right of survivorship to be extinguished on the recordation of an affidavit in the county recorder's office in the county or counties where the real property is located. Either spouse is required to record the affidavit under oath and to state their intent to terminate the survivorship right, a description of the instrument by which the right of survivorship was created, including the date the instrument was recorded and the county recorder's book and page or instrument reference number and the legal description of the real property affected by the affidavit. Statute prohibits this recordation from extinguishing the community interest of either spouse.

## PROVISIONS

- Stipulates that the right of survivorship is extinguished as provided in statute in the case of real property owned as joint tenants with right of survivorship.
- States that the right of survivorship may also be extinguished with the following information:
  - Recordation in the county recorder's office in the county or counties where the real property is located of an affidavit entitled *Affidavit Terminating Right of Survivorship* executed by any joint tenant under oath that sets forth a stated intent to terminate the survivorship right;
  - A description of the instrument by which the right of survivorship was created including the date the instrument was recorded and the county recorder's book and page or instrument reference number and the legal description of the real property affected by the affidavit.

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- Allows, with respect to a deceased joint tenant, the termination or extinguishment by death of a tenant's joint tenancy with right of survivorship to be evidenced by the recordation in the office of the recorder of the county or counties where the real property is located with all of the following information:
  - An affidavit executed by one or more of the surviving joint tenants that includes the name and the date of death of the deceased joint tenant, a description of the instrument by which the right of survivorship was created, including the date the instrument was recorded and the county recorder's book and page or instrument reference number, the legal description of the real property affected by the affidavit, and the cause of death of the deceased joint tenant.
  - An attached death certificate of the deceased joint tenant.
- Makes technical and conforming changes.