
HOUSE BILL 2539

State of Washington

64th Legislature

2016 Regular Session

By Representatives Nealey, Manweller, Hansen, Tharinger, Harris, and Walsh

1 AN ACT Relating to the inheritance exemption for the real estate
2 excise tax; amending RCW 82.45.197; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that state and local
5 real estate excise taxes apply to the sale or other transfer of real
6 property for consideration unless one of several statutory exceptions
7 apply. The legislature further finds that one such exception involves
8 real property transferred as a result of inheritance. The legislature
9 further finds that RCW 82.45.197 requires specific types of
10 documentation to be provided to qualify for this inheritance
11 exemption. The legislature further finds that in some cases, property
12 passes from a decedent to an heir with no written documentation or
13 court record that satisfies the requirements of RCW 82.45.197. The
14 legislature further finds that an heir will sometimes file a lack of
15 probate affidavit at some later point thereby maintaining a recorded
16 chain of title on the property. The legislature further finds that
17 some counties are imposing state and local real estate excise taxes
18 when a lack of probate affidavit is filed in these circumstances. It
19 is the legislature's intent to clarify that state and local real
20 estate excise taxes do not apply when an heir files a lack of probate
21 affidavit where no additional documentation exists to substantiate

1 that the heir is legally entitled to the property as a result of an
2 inheritance.

3 **Sec. 2.** RCW 82.45.197 and 2014 c 58 s 25 are each amended to
4 read as follows:

5 (1) In order to receive an exemption under RCW 82.45.010(3)(a)
6 from the tax in this chapter on real property transferred as a result
7 of inheritance ~~((under RCW 82.45.010(3)(a),))~~ the following
8 documentation must be provided to the county treasurer:

9 ~~((1))~~ (a) If the property is being transferred under the terms
10 of a community property agreement, a copy of the recorded agreement
11 and a certified copy of the death certificate;

12 ~~((2))~~ (b) If the property is being transferred under the terms
13 of a trust instrument, a certified copy of the death certificate and
14 a copy of that portion of the trust instrument showing the authority
15 of the grantor;

16 ~~((3))~~ (c) If the property is being transferred under the terms
17 of a probated will, a certified copy of the letters testamentary or
18 in the case of intestate administration, a certified copy of the
19 letters of administration showing that the grantor is the court-
20 appointed executor, executrix, or administrator ~~((, and a certified~~
21 ~~copy of the death certificate))~~;

22 ~~((4))~~ (d) In the case of joint tenants with right of
23 survivorship and remainder interests, a certified copy of the death
24 certificate is recorded to perfect title;

25 ~~((5))~~ (e) If the property is being transferred pursuant to a
26 court order, ~~((a certified copy of the court order requiring the~~
27 ~~transfer, and confirming that the grantor is required to do so under~~
28 ~~the terms of the order))~~ information identifying the filing location
29 and number of the court order, which must be specified on the real
30 estate excise tax affidavit;

31 ~~((6))~~ (f) If the community property interest of the decedent is
32 being transferred to a surviving spouse or surviving domestic partner
33 absent the documentation set forth in ~~((subsections (1) through (5))~~
34 (a) through (e) of this ~~((section))~~ subsection, a certified copy of
35 the death certificate and a signed lack of probate affidavit from the
36 surviving spouse or surviving domestic partner affirming that he or
37 she is the sole and rightful heir to the property; ~~((or~~

38 ~~(7))~~ (g) If the real property is transferred to one or more
39 heirs, as defined in RCW 11.02.005, by operation of law but absent

1 the documentation set forth in (a) through (e) of this subsection, a
2 certified copy of the death certificate and a signed lack of probate
3 affidavit affirming that the affiant is the sole and rightful heir to
4 the property or that all of the decedent's heirs at law are
5 identified in the affidavit; or

6 (h) If the property is being transferred pursuant to a transfer
7 on death deed, a certified copy of the death certificate is recorded
8 to perfect title.

9 (2) The documentation provided to the county treasurer under this
10 section must also be recorded with the county auditor.

11 (3) For the purposes of this section, "lack of probate affidavit"
12 means a signed and notarized document declaring that the affiant or
13 affiants are the rightful heir or heirs to the property and
14 containing the following information:

15 (a) The names of the affiant or affiants;

16 (b) The relationship of the affiant or affiants to the decedent;

17 (c) A description of the real property; and

18 (d) Any other information the department may require.

19 NEW SECTION. Sec. 3. RCW 82.32.805 and 82.32.808 do not apply
20 to this act.

21 NEW SECTION. Sec. 4. This act applies to decedents dying on or
22 after January 1, 2017.

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