

IN THE SENATE

SENATE BILL NO. 1056

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO NONPROBATE TRANSFERS; AMENDING CHAPTER 6, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-6-403, IDAHO CODE, TO PROVIDE FOR A RIGHT OF SURVIVORSHIP FOR PERSONAL PROPERTY HELD AS COMMUNITY PROPERTY; AND AMENDING CHAPTER 6, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-6-404, IDAHO CODE, TO PROVIDE THAT THE RIGHT OF SURVIVORSHIP IS EXTINGUISHED IN CERTAIN INSTANCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 6, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-6-403, Idaho Code, and to read as follows:

15-6-403. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP IN PERSONAL PROPERTY. Any estate in personal property held by a husband and wife as community property with right of survivorship shall, upon the death of one (1) spouse, transfer and belong solely to the surviving spouse as a nontestamentary disposition at death. The first deceased spouse does not have a right of disposition at death of any interest in community property with right of survivorship. An estate in community property with right of survivorship is created by a grant, transfer or devise to a husband and wife when expressly declared in the grant, transfer or devise to be an estate in community property with right of survivorship. An estate in community property with right of survivorship may also be created by grant or transfer from a husband and wife, when holding title as community property or otherwise, to themselves or from either husband or wife to both husband and wife when expressly declared in the grant, transfer or devise to be an estate in community property with right of survivorship. Said grant, transfer or devise is effective upon delivery, while both husband and wife are alive, to the entity at which the personal property is held. A grant, transfer or devise includes the making of the appropriate choice on a form from the entity at which the personal property is held.

SECTION 2. That Chapter 6, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-6-404, Idaho Code, and to read as follows:

15-6-404. TERMINATION OF COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP IN PERSONAL PROPERTY. (1) The right of survivorship is extinguished by a document executed by either spouse that sets forth:

- (a) A stated intent by the spouse to terminate the survivorship right;
- (b) A description of the instrument by which the right of survivorship was created, including the date the instrument was executed; and
- (c) A description of the personal property affected by the document.

1 The execution of the document shall not extinguish the community interest of
2 either spouse.

3 (2) The right of survivorship is extinguished upon delivery, while both
4 husband and wife are alive, of the document described in subsection (1) of
5 this section to the entity at which the personal property is held.

6 (3) Divorce or annulment of the marriage of the husband and wife, unless
7 otherwise ordered by the court in which the divorce is granted, severs the
8 interests of the former spouses in property held by them at the time of the
9 divorce or annulment as community property with the right of survivorship
10 and transforms the interests of the former spouses into tenancies in com-
11 mon. A severance under this section does not affect any third party inter-
12 est in property acquired for value and in good faith reliance on an apparent
13 title by survivorship in the survivor of the former spouses unless a writ-
14 ing declaring the severance has been noted, registered, filed or recorded in
15 records appropriate to the kind and location of the property that a person
16 relied upon as evidence of ownership in the ordinary course of transactions
17 involving that property.

18 (4) If both spouses are deceased and it cannot be reasonably ascer-
19 tained which spouse was the first to die and which spouse survived, the right
20 of survivorship shall be deemed terminated and the property treated as com-
21 munity property without the right of survivorship.