House Research
Act Summary

CHAPTER: 32 **SESSION:** 2015 Regular Session

TOPIC: Plats; contract for deed; probate

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Overview

This act changes provisions of law related to government approval of plats, the recording of a cancellation of a contract for deed, and provides for apportionment of estate taxes.

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1 **City, town, and county approval.** Allows cities, towns, and counties to use other evidence of title to approve plats and requires the abstract of title, certificate of title, title opinion, title commitment, or title policy to be used as satisfactory evidence for the purposes of approval of the plat.

2 **Examiner of titles directive; cancellation of contract for deed.** Provides a procedure for the removal of the documents relating to the cancellation of a contract for deed from the record of registered real property when the removal is ordered by a court or written examiner. This new section requires the registrar to maintain the documents related to the cancellation of a contract for deed until their removal is ordered by the court or a written examiner's directive. This section provides the necessary paperwork that can demonstrate a proper cancellation and requires that the cancellation has been on the certificate of title or certificate of possessory title for at least five years.

3 **Examiner of titles directive; foreclosure by action.** Adds the term "foreclosure by action" to the header in this subdivision to provide clarity because the section applies to land acquired through a mortgage foreclosure by action.

4 **Examiner of titles directive; cancellation of contract for deed.** Provides a procedure for the removal of the documents relating to the cancellation of a contract for deed from land registered under a certificate of possessory title ("CPT") when the removal is ordered by a court or written examiner. This section provides the necessary paperwork that can

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demonstrate a proper cancellation and requires that the cancellation has been on the CPT for at least five years.

5 **Apportionment of estate taxes and generation-skipping taxes.** Modifies the default rule that determines which heirs of an estate are responsible for paying the estate's federal and state estate tax obligations, if the will or trust documents do not provide who pays them (i.e., which bequest or share is reduced to pay the taxes).

Under prior law the tax obligations were apportioned based on each heir's share of the total property of the gross estate. If an heir's (or a beneficiary's for a trust) share is one-quarter of the estate's property, then one-quarter of the estate tax (federal and state) would be apportioned to and would reduce that heir's bequest or share. These calculations are based on property in the gross estate and are not affected by how much that property actually contributes to the tax obligation (e.g., if the property is deductible in computing estate tax).

This act changes that general rule for qualified terminable interest property (QTIP). (See below for a description of what QTIPs are and how they are used.) This act requires QTIPs pay the proportional amount of the estate tax that their inclusion in the taxable estate yields. That means that on the death of the first spouse, the nonelected portion of the QTIP (i.e., the part that qualifies for the marital deduction) would be apportioned no responsibility for paying estate taxes. On the death of the surviving spouse, the QTIP property would pay its proportionate share (based on the amount of property in the gross estate) of the marginal tax generated by the QTIP property. As noted above, this is a default rule; if the documents provide some other method of determining who pays the estate tax that method would govern.

Effective date. This section applies to decedent's estates who die after December 31, 2015.

Background on QTIPs. QTIP trusts are a standard estate tax planning tool for married couples. They allow electing the amount of the trust that will qualify for the marital deduction under the federal estate tax (and typically under a state estate tax). The rest or nonelected part of the QTIP trust can be used to remove property from the estate of the surviving spouse for estate tax purposes, while still providing income to the surviving spouse and limiting to whom the property will ultimately go. QTIPs are most commonly used in blended family situations, where there are children from a prior marriage and the individual wants to preserve a portion of the estate for the children from the prior marriage, while providing support to the surviving spouse during his or her lifetime. Use of a QTIP allows doing that, while not losing the value of the marital deduction under the estate tax on the death of the first spouse.

To qualify as QTIP property, the federal estate tax law requires that:

- The property must be owned by the decedent
- The surviving spouse must have a right to all of the income, payable at least annually, from the property for life
- No one else may have a power of appointment over the property until the surviving spouse dies
- A QTIP election must be made