

**UNIFORM REAL PROPERTY
TRANSFER ON DEATH ACT**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

SECTION 1. SHORT TITLE . This act may be cited as the Uniform Real Property Transfer on Death Act.

SECTION 2. DEFINITIONS . In this act:

(1) “Beneficiary” means a person that receives property under a transfer on death deed.

(2) “Designated beneficiary” means a person designated to receive property in a transfer on death deed.

(3) “*Joint owner*” means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant with the right of survivorship and tenant by the entirety with the right of survivorship. The term does not include a tenant in common.

(4) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) “Property” means an interest in real property located in this state which is transferable on the death of the owner.

(6) “Transfer on death deed” means a deed authorized under this act.

(7) “Transferor” means an individual who makes a transfer on death deed.

SECTION 3. APPLICABILITY . This act applies to a transfer on death deed made before, on, or after the effective date of this act by a transferor dying on or after the effective date of this act.

SECTION 4. NONEXCLUSIVITY . This act does not affect any method of transferring property otherwise permitted under the law of this state.

SECTION 5. TRANSFER ON DEATH DEED AUTHORIZED . An individual may transfer property to one or more beneficiaries effective at the transferor’s death by a transfer on death deed.

SECTION 6. TRANSFER ON DEATH DEED REVOCABLE . A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

SECTION 7. TRANSFER ON DEATH DEED NONTTESTAMENTARY . A transfer on death deed is nontestamentary.

SECTION 8. CAPACITY OF TRANSFEROR . The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

SECTION 9. REQUIREMENTS . A transfer on death deed:

(1) except as otherwise provided in paragraph (2), must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) must state that the transfer to the designated beneficiary is to occur at the transferor's death;

(3) *must be recorded before the transferor's death in the land records of the clerk's office of the circuit court in the jurisdiction where the property is located;*

(4) *shall comply with the requirements for recordation set forth in Chapter 6 of Title 55 and shall be indexed by the Clerk of Court under the name of the transferor as grantor and the designated beneficiary as grantee; and*

(5) *unless the transfer is for consideration, shall be exempt from recordation tax as if a deed of gift exempt under § 58.1-811D except such transfer on death deed shall not be required to state that it is a deed of gift.*

Legislative Note: *Because a transfer on death deed does not have present effect and is revocable, it may be useful to title searchers and insurers if the recording or indexing of the deed identifies it as a transfer on death deed. Information about how a recorder of deeds should record and index a transfer on death deed is available from the recorders of deeds in states having experience with such deeds. By way of example, the recorder of deeds of Clay County, Missouri, uses a grantor-grantee index that is fully searchable online, at http://recorder.claycogov.com/pages/online_access.asp.*

SECTION 10. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOTREQUIRED . A transfer on death deed is effective without:

(1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) consideration.

SECTION 11. REVOCATION BY INSTRUMENT AUTHORIZED; REVOCATION BY ACT NOT PERMITTED .

(a) Subject to subsection (b), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) is one of the following:

(A) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) an instrument of revocation that expressly revokes the deed or part of the deed; or

(C) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(2) *is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the land records in the land records of the clerk's office of the circuit court where the deed is recorded.*

(b) If a transfer on death deed is made by more than one transferor:

(1) revocation by a transferor does not affect the deed as to the interest of another

transferor; and

(2) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

SECTION 12. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE . During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) create a legal or equitable interest in favor of the designated beneficiary; or

(6) subject the property to claims or process of a creditor of the designated beneficiary.

SECTION 13. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH .

(a) Except as otherwise provided in the transfer on death deed, in this section or in § 64.1-59 or § 20-111.1. (revocation by divorce), Chapter 22 of Title 55 (homicide), § 64.1-59, Chapter 4 of Title 64.1 (survival and simultaneous death), and § 64.1-16 (elective share), 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:

(1) Subject to paragraph (2), the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(3) Subject to paragraph (4), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which 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.

(b) Subject to [cite state recording act], 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 and [cite state recording act], the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

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

(1) 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

(2) the last surviving joint owner, the transfer on death deed is effective.

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

SECTION 14. DISCLAIMER . A beneficiary may disclaim all or part of the beneficiary's interest as provided by Chapter 8.1 (§ 64.1-196.1 et seq.) of Title 64.1.

SECTION 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES .

(a) After the death of the transferor, and subject to the transferor's right to direct the source from which liabilities will be paid, property transferred at the transferor's death by a transfer on death deed is subject to claims of the transferor's creditors, costs of administration of the transferor's estate, the expenses of the transferor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children of the transferor including the family allowance, the right to exempt property, and the homestead allowance to the extent the transferor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. This section shall not apply to life insurance proceeds under § 38.2-3122.

(b) If more than one property is transferred by one or more transfer on death deeds, the liability under subsection (a) is apportioned among the properties in proportion to their net values at the transferor's death.

(c) A proceeding to enforce the liability under this section must be commenced not later than *one year* after the transferor's death.

[SECTION 16. OPTIONAL FORM OF TRANSFER ON DEATH DEED . The following form may be used to create a transfer on death deed. The other sections of this [act] govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

PRIMARY BENEFICIARY

deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each [county] where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each [county] where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.]

Legislative Note: *This section and the next section are bracketed for states wishing to provide optional statutory forms. An enacting jurisdiction should review its statutory requirements for deeds and for acknowledgments and amend the statutory forms provided in Sections 16 and 17 where necessary for conformity with those requirements. If an enacting jurisdiction changes the act, the jurisdiction should review the answers to the common questions in Sections 16 and 17 to ensure the answers remain accurate.*

[SECTION 17. OPTIONAL FORM OF REVOCATION . The following form may be used to create an instrument of revocation under this [act]. The other sections of this [act] govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature

[(SEAL)]

Date

Signature

[(SEAL)]_____
Date

ACKNOWLEDGMENT

(insert acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in [the office of the county recorder of deeds] of each [county] where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the “legal description” of the property? This information may be on the TOD deed. It may also be available in [the office of the county recorder of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.

How do I “record” the form? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is located in more than one [county], you should record the form in each of those [counties].

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.]

SECTION 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION . In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 19. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT . This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 20. REPEALS . The following are repealed:

SECTION 21. EFFECTIVE DATE . This [act] takes effect July 1, 2011.

***Legislative Note:** States should check their disclaimer statutes for any necessary amendments. The following are conforming amendments to the Uniform Disclaimer of Property Interests Act:*

SECTION 12. DELIVERY OR FILING.

(a) In this section, “beneficiary designation” means an instrument, other

than an instrument creating a trust, naming the beneficiary of:

- (1) an annuity or insurance policy;
- (2) an account with a designation for payment on death;
- (3) a security registered in beneficiary form;
- (4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust :

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation which is disclaimed ~~made before the time~~ the designation becomes irrevocable, ~~the~~ disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation which is disclaimed ~~made after the time~~ the designation becomes irrevocable;:

(1) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) the disclaimer of an interest in real property must be recorded in [the office of the county recorder of deeds] of the [county] where the real property that is the subject of the disclaimer is located.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power ; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

Comment

~~The rules set forth in Section 12 are designed so that anyone who has the duty to distribute the disclaimed interest will be notified to provide notice of the disclaimer. For example, a disclaimer of an interest in a decedent's estate must be delivered to the personal representative of the estate. A disclaimer is required to be filed in court only when there is no one person or entity to whom delivery can be made in very limited circumstances.~~

SECTION 15. RECORDING OF DISCLAIMER. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in Section 12(g)(2), failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

Comment

This section permits the recordation of a disclaimer of an interest in property ownership of or title to which is the subject of a recording system. This section expands on the corresponding provision of previous Uniform Acts which ~~only~~ referred to permissive recording of a disclaimer of an interest in real property. While local practice may vary, disclaimants should realize that in order to establish the chain of title to real property, and to ward off creditors and bona fide purchasers, the disclaimer may have to be recorded. This section does not change the law of the state governing notice. The reference to Section 12(g)(2) concerns the disclaimer of an interest in real property created by a "beneficiary designation" as that term is defined in Section 12(a). Such a disclaimer must be recorded.