

D R A F T

FOR DISCUSSION ONLY

TRANSFER ON DEATH FOR REAL PROPERTY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting, November 30 - December 1, 2007

WITH PREFATORY AND REPORTER'S NOTES

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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November 5, 2007

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TRANSFER ON DEATH FOR REAL PROPERTY ACT

Reporter's General Prefatory Note

This draft is for discussion at our committee meeting on November 30 and December 1. The draft is divided into six articles. Article 1 contains general provisions. Article 2 authorizes transfer on death deeds and addresses many of the formal and substantive issues concerning such deeds. Article 3 focuses on a beneficiary's liability for creditor claims and statutory allowances. Article 4 contains rules of construction on matters of survivorship, antilapse, revocation by homicide, and revocation by divorce. A question for our committee is whether to keep this article or simply to refer to these topics in a legislative note. Article 5 contains suggested statutory forms. These forms are rough drafts, and suggestions for improvement are encouraged. Article 6 contains miscellaneous provisions.

After each section, a Reporter's Note discusses the drafting of the section. These notes should be read in conjunction with the proposed statutory text.

1 **TRANSFER ON DEATH FOR REAL PROPERTY ACT**

2

3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Transfer on Death for

6 Real Property Act.

7 **Reporter’s Note**

8

9 “Transfer on Death for Real Property” is the current name of the project. The committee

10 may want to consider whether another name would be better. One change might be to replace

11 “for” with “of.” There are also other possibilities.

12

13

14 **SECTION 102. DEFINITIONS.** In this [act]:

15 (1) “Beneficiary” means a person identified as a beneficiary in a transfer on death deed.

16 The term includes a trust even if the trust is revocable.

17 (2) “Death” of a beneficiary includes the termination of a beneficiary other than an

18 individual. The term includes its derivatives, such as “dies,” “died,” “dying,” and “deceased.”

19 (3) “Governing instrument” means a deed, including a transfer on death deed; will; trust;

20 insurance or annuity policy; account with pay on death (POD) designation; security registered in

21 beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument

22 creating or exercising a power of appointment or a power of attorney; or a dispositive,

23 appointive, or nominative instrument of any similar type.

24 (4) “Joint owner” means an individual who owns property concurrently with one or more

25 other individuals with a right of survivorship. The term includes a joint tenant[, an owner of

26 community property with a right of survivorship,][and a tenant by the entirety]. The term does

1 not include a tenant in common[or an owner of community property without a right of
2 survivorship].

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

6 (6) “Property” means a recordable interest in real property that is transferable on the
7 death of the owner.

8 (7) “Surviving” means neither dying before an event, including the death of another
9 person, nor being deemed to have died before an event under [Section 402][cite state statute][the
10 Uniform Simultaneous Death Act]. The term includes its derivatives, such as “survive,”
11 “survives,” “survival,” and “survivorship.”

12 (8) “Transfer on death deed” means a deed authorized under this [act].

13 (9) “Transferor” means an individual who executes a transfer on death deed. The term
14 does not include an agent under a power of attorney.

15 **Reporter’s Note**

16
17 Paragraph (1) accords with the current transfer on death deed statutes that address the
18 issue. For example, Ark. Code §18-12-608(c)(2) provides: “A beneficiary deed may be used to
19 transfer an interest in real property to a trust estate even if the trust is revocable.”
20

21 Paragraph (2) is designed to deal with the possibility that a beneficiary other than an
22 individual (for example, a trust) might no longer exist at the transferor’s death. The concept of
23 “derivatives” is taken from Uniform Probate Code §1-201(49), which provides: “‘Survive’
24 means that an individual has neither predeceased an event, including the death of another
25 individual, nor is deemed to have predeceased an event under Section 2-104 or 2-702. The term
26 includes its derivatives, such as ‘survives,’ ‘survived,’ ‘survivor,’ and ‘surviving.’”
27

28 Paragraph (3) is based on §1-201(18) of the Uniform Probate Code. When this Act is
29 approved by NCCUSL, the UPC’s definition of “governing instrument” should be amended to
30 include a transfer on death deed.

1 Paragraph (5) is a standard NCCUSL definition.
2

3 Paragraph (6) tracks the last part of the definition in §5610 of the California
4 recommended statute: “‘Real property’ means the fee or an interest in real property. The term
5 includes but is not limited to any of the following interests in real property: (a) A leasehold. (b)
6 An interest in a common interest development within the meaning of Section 1351 of the Civil
7 Code. (c) An easement, license, permit or other right in property to the extent the right is both (1)
8 a recordable interest in property and (2) transferable on the death of the owner of the right.”
9

10 Paragraph (7) is based on §1-201(49) of the Uniform Probate Code, which provides:
11 “‘Survive’ means that an individual has neither predeceased an event, including the death of
12 another individual, nor is deemed to have predeceased an event under Section 2-104 or 2-702.
13 The term includes its derivatives, such as ‘survives,’ ‘survived,’ ‘survivor,’ and ‘surviving.’”
14

15 Paragraph (9) limits the use of transfer on death deeds to transferors who are individuals.
16 The term “transferor” does not include a corporation, business trust, estate, trust, partnership,
17 limited liability company, association, joint venture, public corporation, government or
18 governmental subdivision, agency, or instrumentality, or any legal or commercial entity other
19 than an individual. The term also does not include an agent acting under a power of attorney.
20

21 **SECTION 103. APPLICABILITY.** This [act] applies to a transfer on death deed
22 executed before or after [the effective date of this [act]], by a transferor dying on or after [the
23 effective date of this [act]].

24 **Reporter’s Note** 25

26 This section tracks §405(d) of the Uniform Nonprobate Transfers on Death Act, which
27 provides that the Act “applies to registrations of securities in beneficiary form made before or
28 after the effective date, by decedents dying on or after the effective date.”
29
30

31 **SECTION 104. NONEXCLUSIVITY.** This [act] does not prohibit any other method
32 of transferring property that is permitted under the law of this state other than this [act] and that
33 has the effect of postponing enjoyment of the property until the death of the transferor.

34 **Reporter’s Note** 35

36 This section tracks Ark. Code §18-12-608(g)(1): “This section does not prohibit other
37 methods of conveying property that are permitted by law and that have the effect of postponing

1 enjoyment of an interest in real property until the death of the owner.” The committee endorsed
2 this rule for its content and brevity.

1 [ARTICLE] 2

2 TRANSFER ON DEATH DEEDS

3
4 SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED. Property may be
5 titled in transfer on death form by executing, acknowledging, and recording a transfer on death
6 deed in accordance with this [act].

7 SECTION 202. TRANSFER ON DEATH DEED NOT TESTAMENTARY. A
8 transfer on death deed is nontestamentary.

9 Reporter's Note

10
11 This section is based on §101(a) of the Uniform Nonprobate Transfers on Death Act,
12 which provides that the specified forms of nonprobate transfers are nontestamentary, hence
13 exempt from Wills Act formalities: "A provision for a nonprobate transfer on death in an
14 insurance policy, contract of employment, bond, mortgage, promissory note, certificated or
15 uncertificated security, account agreement, custodial agreement, deposit agreement,
16 compensation plan, pension plan, individual retirement plan, employee benefit plan, trust,
17 conveyance, deed of gift, marital property agreement, or other written instrument of a similar
18 nature is nontestamentary."
19

20
21 SECTION 203. CAPACITY OF TRANSFEROR. To make or revoke a transfer on
22 death deed, a transferor must have testamentary capacity.

23 Reporter's Note

24
25 This section is consistent with Restatement (Third) of Property (Wills and Other
26 Donative Transfers) §8.1(b), which applies the standard of testamentary capacity, and not the
27 higher standard of capacity for inter vivos gifts, to revocable will substitutes: "If the donative
28 transfer is in the form of a will, a revocable will substitute, or a revocable gift, the testator or
29 donor must be capable of knowing and understanding in a general way the nature and extent of
30 his or her property, the natural objects of his or her bounty, and the disposition that he or she is
31 making of that property, and must also be capable of relating these elements to one another and
32 forming an orderly desire regarding the disposition of the property."
33
34

SECTION 204. REQUIREMENTS. A transfer on death deed must be:

(1) executed in the same manner as a recordable deed and acknowledged by the transferor before a notary public; and

(2) recorded before the transferor's death in the county where the property is located.

Reporter's Note

Paragraph (1): The committee decided that the Act should not spell out the execution formalities but instead should simply require execution in the same manner as a recordable deed under state law. I have also added the requirement of notarization in order to implement our rule in Section 207 on the “battle of recorded deeds,” which provides that the later acknowledged deed prevails over the earlier acknowledged deed.

Paragraph (2): This rule is consistent with all of the transfer on death deed statutes that address the issue.

SECTION 205. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. A transfer on death deed is effective without:

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

or

(2) consideration.

Reporter's Note

These rules are consistent with all of the transfer on death deed statutes that address the issues.

SECTION 206. CONCURRENT AND ALTERNATE BENEFICIARIES.

(a) A transfer on death deed may designate multiple beneficiaries to hold in joint tenancy, in tenancy in common,[in community property [with or without the right of survivorship]] or in any other form of concurrent ownership valid under the law of this state.

1 (b) A transfer on death deed may designate one or more primary beneficiaries and one or
2 more alternate beneficiaries. If the deed designates an alternate beneficiary, the deed must state
3 the condition under which the interest of the alternate beneficiary vests.

4 **Reporter's Note**

5 The Committee is currently divided on whether to permit alternate beneficiaries.
6
7

8
9 **SECTION 207. MORE THAN ONE RECORDED DEED.** If the transferor executes,
10 acknowledges, and records more than one transfer on death deed for the same property, the later
11 acknowledged deed is the operative instrument, and its recordation revokes the earlier
12 acknowledged deed.

13 **Reporter's Note**

14
15 The committee endorsed the essence of the California rule (the later deed prevails over
16 the earlier deed, irrespective of the date of recordation) in order to prevent fraud. However, the
17 committee decided that the rule should be framed in terms of acknowledgment, not execution.
18 The reason for using "later acknowledged" rather than "later executed" is that the transferor
19 might not date the deed, but the notary will date the acknowledgment.
20

21 A question for the drafting committee is whether this section is needed, or whether the
22 issue is adequately addressed by Section 208(a)(1).
23
24

25 **SECTION 208. REVOCATION BY SUBSEQUENT INSTRUMENT.**

26 (a) Except as otherwise provided in subsections (b) and (c), the transferor may revoke a
27 transfer on death deed or any part of it by executing, acknowledging, and recording:

28 (1) a later acknowledged transfer on death deed that revokes the previous deed or
29 any part of it expressly or by inconsistency; or

30 (2) a deed of revocation in the same manner and subject to the same conditions as
31 the execution, acknowledgment, and recordation of a transfer on death deed.

1 (b) A transferor may revoke the transfer on death deed as to the interest of that transferor,
2 but the revocation does not affect the transfer on death deed as to the interest of another
3 transferor.

4 (c) A transfer on death deed executed by joint owners is revoked only if:

5 (1) the recorded revocation is executed and acknowledged by all of the joint
6 owners then living; or

7 (2) the recorded revocation is executed and acknowledged by the last surviving
8 joint owner.

9 (d) The transferor's agent under a power of attorney may execute or revoke a transfer on
10 death deed only to the extent permitted by [applicable law][cite state statute][the Uniform Power
11 of Attorney Act].

12 (e) A transfer on death deed cannot be revoked or modified by will.

13 **Reporter's Note**

14
15 Subsection (a) reflects the consensus of the committee, and all transfer on death deed
16 statutes, that the deed can be revoked by executing a subsequent instrument. The language is
17 based on Uniform Probate Code §2-507(a), concerning revocation of a will by writing.

18
19 Subsection (b) is based on §5662(b) of the California recommended statute: "A coowner
20 may revoke the transfer on death deed as to the interest of that coowner. The revocation does not
21 affect the transfer on death deed as to the interest of another coowner."
22

23 Subsection (c) is based on the third sentence of Ariz. Stat. §33-405(F): "If the property is
24 owned as joint tenants with right of survivorship or community property with right of
25 survivorship and if the revocation is not executed by all the owners, the revocation is not
26 effective unless executed by the last surviving owner."
27

28 Subsection (d) defers to other law to determine an agent's authority under a power of
29 attorney.
30

31 Subsection (e) is consistent with the transfer on death deed statutes that address the issue,
32 and with Uniform Probate Code §6-213(b) on multiple-party bank accounts.

SECTION 209. REVOCATION BY ACT NOT PERMITTED. After a transfer on death deed is recorded, it cannot be revoked by performing a revocatory act on the deed. For purpose of this section, “revocatory act on the deed” includes burning, tearing, canceling, obliterating, or destroying the deed or any part of it.

Reporter's Note

The rule of this section is consistent with, though not explicit in, the existing transfer on death deed statutes, which provide only for revocation by subsequent instrument. The second sentence is drawn from Uniform Probate Code §2-507(a)(2).

SECTION 210. OWNERSHIP DURING TRANSFEROR’S LIFETIME. During the transferor’s lifetime, a transfer on death deed does not:

(a) affect the ownership rights of the transferor or the rights of the transferor's creditors in the property;

(b) create any legal or equitable right to or transferable interest in the property in favor of the beneficiary; or

(c) make the property subject to process of the beneficiary's creditors.

Reporter's Note

The division into “Ownership During Lifetime” and “Ownership at Death” tracks §§211 and 212 of the Uniform Nonprobate Transfers on Death Act.

Subsection (a) is a shortened version of §5650(a) of the California recommended statute: “During the transferor’s life, execution and recordation of a revocable transfer on death deed: (a) Does not affect the ownership rights of the transferor, and the transferor or the transferor’s agent or other fiduciary may convey, assign, contract, encumber, or otherwise death with the property, and the property is subject to process of the transferor’s creditors, as if no revocable transfer on death deed were executed or recorded.”

Subsections (b) and (c) are based on §5650(b) of the California recommended statute:

1 “During the transferor’s life, execution and recordation of a revocable transfer on death deed: ...
2 (b) Does not create any legal or equitable right in the beneficiary, and the property is not subject
3 to process of the beneficiary’s creditors.” The committee suggested inserting “or transferable
4 interest” after “legal or equitable right.”
5

6 The committee suggested that a Comment might state: “A purported conveyance of the
7 property by the beneficiary before the transferor’s death is void.”
8

9 **SECTION 211. OWNERSHIP AT TRANSFEROR’S DEATH.**

10 **Committee Alternative 1**

11 (a) Except as otherwise provided in subsections (b) and (c) [and in Section 403], on the
12 death of the transferor, the following rules apply to the property that is the subject of the transfer
13 on death deed:

14 (1) The property belongs to the beneficiaries who survive the transferor. Unless
15 the deed provides otherwise, if more than one beneficiary survives the transferor:

16 (A) the beneficiaries who survive the transferor receive equal and
17 undivided shares in the property; and

18 (B) there is no right of survivorship in the event of the death of a
19 beneficiary after the transferor’s death [unless two of the beneficiaries are husband and wife, in
20 which event they receive their interests in the property as [tenants by the entirety][owners of
21 community property with right of survivorship].

22 (2) If no beneficiary survives the transferor, the property belongs to the
23 transferor’s estate.

24 (b) On the death of a joint owner who executes a transfer on death deed, the property
25 belongs to the surviving joint owner or owners, and the right of survivorship continues between
26 or among the surviving joint owners. A transfer on death deed is effective at the death of the last

1 surviving joint owner if that owner is a transferor on the deed.

2 (c) A beneficiary who receives the transferor's interest at the transferor's death does so
3 subject to:

4 (1) all conveyances made during the transferor's lifetime and to all encumbrances,
5 assignments, contracts, mortgages, liens, and other interests affecting title to the property,
6 whether created before or after the recording of the transfer on death deed, to which the property
7 is subject at the the transferor's death; and

8 (2) any interest in the property of which the beneficiary has actual or constructive
9 notice at the transferor's death.

10 (d) The transferor's death is deemed to be at 11:59 p.m. on the day on which the
11 transferor dies.

12 **Committee Alternative 2**

13 (a) Except as otherwise provided in subsections (b) and (c) [and in Section 403], on the
14 death of the transferor, the following rules apply to the property that is the subject of the transfer
15 on death deed:

16 (1) The property belongs to the persons identified as primary beneficiaries in the
17 deed who survive the transferor.

18 (2) If no person identified as a primary beneficiary survives the transferor, the
19 property belongs to the persons identified as alternate beneficiaries in the deed who survive the
20 transferor.

21 (3) Unless the deed provides otherwise:

22 (A) the beneficiaries entitled to the property receive equal and undivided

1 shares in the property; and

2 (B) there is no right of survivorship in the event of the death of a
3 beneficiary after the transferor's death [unless two of the beneficiaries are husband and wife, in
4 which event they receive their interests in the property as [tenants by the entirety][owners of
5 community property with right of survivorship].

6 (4) If no beneficiary survives the transferor, the property belongs to the
7 transferor's estate.

8 (b) On the death of a joint owner who executes a transfer on death deed, the property
9 belongs to the surviving joint owner or owners, and the right of survivorship continues between
10 or among the surviving joint owners. A transfer on death deed is effective at the death of the last
11 surviving joint owner if that owner is a transferor on the deed.

12 (c) A beneficiary who receives the transferor's interest at the transferor's death does so
13 subject to:

14 (1) all conveyances made during the transferor's lifetime and to all encumbrances,
15 assignments, contracts, mortgages, liens, and other interests affecting title to the property,
16 whether created before or after the recording of the transfer on death deed, to which the property
17 is subject at the the transferor's death; and

18 (2) any interest in the property of which the beneficiary has actual or constructive
19 notice at the transferor's death.

20 (d) The transferor's death is deemed to be at 11:59 p.m. on the day on which the
21 transferor dies.

22 **Reporter's Note**
23

1 The committee is currently divided on whether to permit primary and alternate
2 beneficiaries.

3
4 Subsection (a) is modeled in part on Uniform Probate Code §6-212 governing multiple-
5 party accounts.

6
7 Subsection (b) is consistent with the majority rule, namely that the survivorship right
8 trumps the transfer on death deed.

9
10 Subsection (c) is modeled on Colo. Rev. Stat. §15-15-407(2): “A grantee-beneficiary of a
11 beneficiary deed takes title to the owner’s interest in the real property conveyed by the
12 beneficiary deed at the death of the owner subject to all conveyances, encumbrances,
13 assignments, contracts, mortgages, liens, and other interests, affecting title to the property,
14 whether created before or after the recording of the beneficiary deed, or to which the owner was
15 subject during the owner’s lifetime including, but not limited to, any executory contract of sale,
16 option to purchase, lease, license, easement, mortgage, deed of trust, or other lien. The grantee-
17 beneficiary also takes title subject to any interest in the property of which the grantee-beneficiary
18 has either actual or constructive notice.” The committee rejected the requirement of California
19 recommended §5652(c) that the limitation must be “of record,” because the beneficiary should
20 merely step into the transferor’s shoes; the beneficiary should not be in a better position (i.e. free
21 of limitations not of record) than the transferor.

22
23 Subsection (d) is designed to avoid disputes about the precise time of the transferor’s
24 death. Such disputes currently arise in the context of durable powers of attorney, because it
25 often happens that the time listed on the death certificate is the time when the certificate is
26 completed, not the actual time of death. Commissioner Berry suggested having a fixed rule on
27 the subject to avoid litigation, for example: “The transferor’s death is deemed to be at the end of
28 the day on which the transferor died.” The committee provisionally agreed with the concept of
29 such a rule. Commissioner Billings suggested replacing “the end of the day” with a specific
30 time.

31
32 The committee suggested that, in the Comment, we should refer approvingly to *In re*
33 *Estate of Roloff*, 143 P.3d 406 (Kan. Ct. App. 2006) (holding that crops should be transferred
34 with the land under a transfer on death deed because this result would be reached on the same
35 facts with any other deed).

36 37 **SECTION 212. NONADEMPTION IN CERTAIN CIRCUMSTANCES.**

38 **Committee Alternative 1**

39 If property subject to a transfer on death deed is not owned by the transferor at death, the
40 beneficiary has the right to:

1 (a) any balance of the purchase price, together with any security agreement, owed by a
2 purchaser at the transferor's death by reason of a sale of the property;

3 (b) any amount of a condemnation award unpaid at the transferor's death for the taking
4 of the property; and

5 (c) any proceeds unpaid at the transferor's death on fire or casualty insurance or on other
6 recovery for injury to the property.

7 **Committee Alternative 2**

8 If the property subject to a transfer on death deed is not owned by the transferor at death,
9 the beneficiary has the right to:

10 (a) any amount of a condemnation award unpaid at the transferor's death for the taking of
11 the property; and

12 (b) any proceeds unpaid at the transferor's death on fire or casualty insurance or on other
13 recovery for injury to the property.

14 **Reporter's Note**

15
16 The committee is divided on whether the beneficiary should be entitled to the unpaid
17 proceeds of a voluntary sale of the property. The law of wills would answer in the affirmative
18 (Alternative 1, based on Uniform Probate Code §2-606). On the other hand, a more restrictive
19 approach would entitle the beneficiary to unpaid proceeds only for involuntary condemnation or
20 damage (Alternative 2).
21

22 **SECTION 213. DISCLAIMER.**

23 (a) Subject to subsection (b), a beneficiary may disclaim all or any part of the
24 beneficiary's interest by any method valid under the law of this state.

25 (b) A disclaimer by a beneficiary of property subject to a transfer on death deed is not
26 effective until the disclaimer is recorded in the county where the property that is the subject of

1 the disclaimer is located.

2 **Reporter's Note**

3
4 Subsection (a) is modeled on the only state statute to address the issue of disclaimer,
5 Colo. Rev. Stat. §15-15-414: "A grantee-beneficiary may refuse to accept all or any part of the
6 real property interest described in a beneficiary deed. A grantee-beneficiary may disclaim all or
7 any part of the real property interest described in a beneficiary deed by any method provided by
8 law. If a grantee-beneficiary refuses to accept or disclaims any real property interest, the
9 grantee-beneficiary shall have no liability by reason of being designated as a grantee-beneficiary
10 under this part 4."

11
12 The committee asked for more information about the delivery of a disclaimer. The
13 Uniform Disclaimer of Property Interests Act (UDPIA) provides the following in §12:

14
15 (f) In the case of an interest created by a beneficiary designation made before the
16 time the designation becomes irrevocable, a disclaimer must be delivered to the person
17 making the beneficiary designation.

18 (g) In the case of an interest created by a beneficiary designation made after the
19 time the designation becomes irrevocable, a disclaimer must be delivered to the person
20 obligated to distribute the interest.

21
22 With a transfer on death deed, there is no required third party intermediary. UDPIA does not
23 address our fact-pattern, except to say (erroneously) in the Comment: "A disclaimer is required
24 to be filed in court only when there is no one person or entity to whom delivery can be made."
25 This is incorrect. UDPIA requires filing in court only when there is no person to receive a
26 disclaimer concerning an interest created by will, intestate succession, or trust. UDPIA
27 §§12(c)(2), (d)(2), (e)(2). UDPIA is silent on the delivery of a disclaimer concerning an interest
28 arising by beneficiary designation where, as here, there is no "person obligated to distribute the
29 interest."

30
31 Rather than establish a rule on delivery, the draft establishes a rule of recordation in
32 subsection (b). The purpose of delivery is to force the disclaimant to communicate the
33 disclaimer, hence putting at least one person on notice of it. A rule of recordation accomplishes
34 this, and more, by putting the world on notice.

35
36 **SECTION 214. NO COVENANTS OR WARRANTIES.** Notwithstanding a contrary
37 provision in the deed, a transfer on death deed transfers the property without covenant or
38 warranty of title.

39 **Reporter's Note**

1 This provision tracks §5652(d) of the California recommended statute: “Notwithstanding
2 a contrary provision in the deed, a revocable transfer on death deed transfers the property
3 without covenant or warranty of title.” This rule is mandatory, not a default as in Colo. Rev.
4 Stat. §15-15-404(2) [“Unless the owner designates otherwise ...”], in order to prevent mishaps
5 from uninformed grantors.
6

7 **SECTION 215. PROTECTION OF BONA FIDE PURCHASERS.**

8 (a) In this section, “purchaser” means a person to whom property is transferred for a
9 valuable consideration.

10 (b) A bona fide purchaser from the beneficiary after the transferor’s death has the same
11 rights and protections as if the purchaser had made the transaction with the grantee of an inter
12 vivos deed.

13 **Reporter’s Note**

14
15 The committee observed that it is hard to articulate a substantive rule on bona fide
16 purchasers (BFPs), because some jurisdictions are notice jurisdictions (protecting BFPs
17 regardless of when the BFP files), some are race-notice jurisdictions (protecting only BFPs who
18 file first), and a couple are race jurisdictions (protecting anyone who files first). Instead, the
19 committee decided to articulate the rule that a BFP from the beneficiary of a transfer on death
20 deed is in the same position as a BFP in the standard inter vivos transaction.
21

22 **SECTION 216. PROOF OF DEATH.**

23 **Committee Alternative 1**

24 Proof of the death of a transferor or beneficiary of a transfer on death deed must be
25 established in the same manner as proof of the death of a joint tenant[under [cite state statute]].

26 **Committee Alternative 2**

27 Proof of the death of a transferor or beneficiary of a transfer on death deed must be
28 established by an affidavit of death substantially in the form provided in Section 503, together
29 with a certified copy of the death certificate, recorded in the county or counties where the

1 transfer on death deed was recorded.

2 **Reporter's Note**

3
4 The committee was uncertain whether a Uniform Act should spell out a procedure for the
5 proof of death. The Uniform Nonprobate Transfers on Death Act, for example, refers in §§223
6 and §307 to “proof of death” without elaboration.

7
8 If we wish to provide some guidance, one approach would be to incorporate the state’s
9 existing procedures for proving the death of a joint tenant (Alternative 1, which essentially tracks
10 Colo. Rev. Stat. §15-15-413: “Proof of the death of the owner or a grantee beneficiary shall be
11 established in the same manner as for proving the death of a joint tenant.”). A second, more
12 detailed approach is to require the recordation of a certified copy of the death certificate together
13 with an affidavit providing specific information (Alternative 2, which is based to some extent on
14 Nev. Rev. Stat. §111.109(8): “Upon the death of the last grantor of a deed created pursuant to
15 subsection 1, a declaration of value of real property pursuant to NRS 375.060 and a copy of the
16 death certificate of each grantor must be attached to a Death of Grantor Affidavit and recorded in
17 the office of the county recorder where the deed was recorded. The Death of Grantor Affidavit
18 must be in substantially the following form ...”).

19 20 21 **SECTION 217. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED.**

22 (a) After the transferor’s death, the transferor’s personal representative or an interested
23 person may contest the validity of a transfer on death deed on the basis of fraud, undue influence,
24 duress, mistake, or other invalidating cause.

25 (b) The venue for a proceeding to contest the validity of a transfer on death deed is the
26 venue for the administration of the transferor’s estate.

27 (c) On beginning the contest proceeding, the contestant may record a lis pendens in the
28 county where the transfer on death deed is recorded.

29 (d) A proceeding to contest the validity of a transfer on death deed must be begun within
30 the earlier of:

31 (1) [three years] after the transferor’s death; or

32 (2) [one year] after the beneficiary establishes the transferor’s death.

1 (e) If the court determines that a transfer on death deed is invalid, the court shall:

2 (1) if the proceeding was begun and a lis pendens recorded within [90 days] after
3 the transferor's death, void the deed and order the transfer of the property to the person entitled
4 to it; or

5 (2) if the proceeding was not begun or a lis pendens not recorded within [90 days]
6 after the transferor's death, grant appropriate relief.

7 (f) In an order under this section, the court may not affect the rights in the property
8 acquired in good faith by a bona fide purchaser or encumbrancer for value before the beginning
9 of the proceeding and recordation of a lis pendens.

10 **Reporter's Note**

11
12 The committee suggested that the first draft should essentially track §§5690, 5692, and
13 5694 of the California recommended statute, but with the time-periods in brackets. The
14 committee also suggested that the grounds of contest, here in subsection (a), should be drawn
15 from §5696 of the California recommended statute: "Nothing in this chapter limits the
16 application of principles of fraud, undue influence, duress, mistake, or other invalidating cause to
17 a transfer of property by a revocable transfer on death deed."
18

1 [ARTICLE] 3

2 LIABILITY OF [NONPROBATE TRANSFEREES]

3 [BENEFICIARIES OF TRANSFER ON DEATH DEEDS] FOR CREDITOR CLAIMS

4 AND STATUTORY ALLOWANCES

5
6 SECTION 301. LIABILITY.

7 Committee Alternative 1

8 (a) In this section, “nonprobate transfer” means a valid transfer effective at death, other
9 than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose
10 last domicile was in this state to the extent that the transferor immediately before death had
11 power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the
12 property for the benefit of the transferor or apply it to discharge claims against the transferor’s
13 probate estate.

14 (b) Except as otherwise provided by statute, a transferee of a nonprobate transfer is
15 subject to liability to any probate estate of the decedent for allowed claims against the decedent’s
16 probate estate and statutory allowances to the decedent’s spouse and children to the extent the
17 estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate
18 transferee may not exceed the value of nonprobate transfers received or controlled by that
19 transferee.

20 (c) Nonprobate transferees are liable for the insufficiency described in subsection (b) in
21 the following order of priority:

22 (1) a transferee designated in the decedent’s will or any other governing

1 instrument, as provided in the instrument;

2 (2) the trustee of a trust serving as the principal nonprobate instrument in the
3 decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate
4 or by other facts or circumstances, to the extent of the value of the nonprobate transfer received
5 or controlled;

6 (3) other nonprobate transferees, in proportion to the values received.

7 (d) Unless otherwise provided by the trust instrument, interests of beneficiaries in all
8 trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of
9 the trust instruments were a single will and the interests were devised under it.

10 (e) A provision made in one instrument may direct the apportionment of the liability
11 among the nonprobate transferees taking under that or any other governing instrument. If a
12 provision in one instrument conflicts with a provision in another, the later one prevails.

13 (f) Upon due notice to a nonprobate transferee, the liability imposed by this section is
14 enforceable in proceedings in this state, whether or not the transferee is located in this State.

15 (g) A proceeding under this section may not be commenced unless the personal
16 representative of the decedent's estate has received a written demand for the proceeding from the
17 surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If
18 the personal representative declines or fails to commence a proceeding after demand, a person
19 making demand may commence the proceeding in the name of the decedent's estate, at the
20 expense of the person making the demand and not of the estate. A personal representative who
21 declines in good faith to commence a requested proceeding incurs no personal liability for
22 declining.

1 (h) A proceeding under this section must be commenced within one year after the
2 decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after
3 proceedings challenging disallowance of the claim may be commenced within 60 days after final
4 allowance of the claim.

5 (i) Unless a written notice asserting that a decedent's probate estate is nonexistent or
6 insufficient to pay allowed claims and statutory allowances has been received from the
7 decedent's personal representative, the following rules apply:

8 (1) Payment or delivery of assets by a financial institution, registrar, or other
9 obligor, to a nonprobate transferee in accordance with the terms of the governing instrument
10 controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

11 (2) A trustee receiving or controlling a nonprobate transfer is released from
12 liability under this section with respect to any assets distributed to the trust's beneficiaries. Each
13 beneficiary to the extent of the distribution received becomes liable for the amount of the
14 trustee's liability attributable to assets received by the beneficiary.

15 **Committee Alternative 2**

16 (a) In this section, "nonprobate transfer" means a valid transfer effective at death, other
17 than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose
18 last domicile was in this state to the extent that the transferor immediately before death had
19 power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the
20 property for the benefit of the transferor or apply it to discharge claims against the transferor's
21 probate estate.

22 (b) Except as otherwise provided by statute and by subsections (c) and (d), a beneficiary

1 of a transfer on death deed is subject to liability to a probate estate of the decedent for allowed
2 claims against the decedent's probate estate and statutory allowances to the decedent's spouse
3 and children to the extent the estate is insufficient to satisfy those claims and allowances.

4 (c) For the purpose of calculating the extent of the liability imposed under subsection (b)
5 and not for the purpose of imposing liability on persons other than a beneficiary, the following
6 rules apply:

7 (1) All nonprobate transferees are liable for the insufficiency described in
8 subsection (b) in the following order of priority:

9 (A) a transferee designated in the decedent's will or any other governing
10 instrument, as provided in the instrument;

11 (B) the trustee of a trust serving as the principal nonprobate instrument in
12 the decedent's estate plan as shown by its designation as devisee of the decedent's residuary
13 estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer
14 received or controlled;

15 (C) other nonprobate transferees, in proportion to the values received.

16 (2) Unless otherwise provided by the trust instrument, interests of transferees in
17 all trusts incurring liabilities under paragraph (1) abate as necessary to satisfy the liability, as if
18 all of the trust instruments were a single will and the interests were devised under it.

19 (3) A provision made in one instrument may direct the apportionment of the
20 liability among the nonprobate transferees taking under that or any other governing instrument.
21 If a provision in one instrument conflicts with a provision in another, the later one prevails.

22 (d) The liability of a beneficiary for the insufficiency described in subsection (b) may not

1 exceed the value as of the date of the decedent's death of the property subject to the deed
2 received or controlled by that beneficiary.

3 (e) Upon due notice to a beneficiary, the liability imposed by this section is enforceable
4 in proceedings in this state, whether or not the beneficiary is located in this state.

5 (f) A proceeding under this section may not be commenced unless the personal
6 representative of the decedent's estate has received a written demand for the proceeding from the
7 surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If
8 the personal representative declines or fails to commence a proceeding after demand, a person
9 making demand may commence the proceeding in the name of the decedent's estate, at the
10 expense of the person making the demand and not of the estate. A personal representative who
11 declines in good faith to commence a requested proceeding incurs no personal liability for
12 declining.

13 (g) A proceeding under this section must be commenced within one year after the
14 decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after
15 proceedings challenging disallowance of the claim may be commenced within 60 days after final
16 allowance of the claim.

17 **Committee Alternative 3**

18 (a) In this section, "nonprobate transfer" means a valid transfer effective at death, other
19 than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose
20 last domicile was in this state to the extent that the transferor immediately before death had
21 power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the
22 property for the benefit of the transferor or apply it to discharge claims against the transferor's

1 probate estate.

2 (b) Except as otherwise provided by statute and by subsections (c) and (d), a beneficiary
3 of a transfer on death deed is subject to liability to a probate estate of the decedent for allowed
4 claims against the decedent's probate estate and statutory allowances to the decedent's spouse
5 and children to the extent the estate is insufficient to satisfy those claims and allowances.

6 (c) For the purpose of calculating the extent of the liability imposed under subsection (b)
7 and not for the purpose of imposing liability on persons other than a beneficiary, the following
8 rules apply:

9 (1) All nonprobate transferees are liable for the insufficiency described in
10 subsection (b) in proportion to the values received.

11 (2) Unless otherwise provided by the trust instrument, interests of transferees in
12 all trusts incurring liabilities under paragraph (1) abate as necessary to satisfy the liability, as if
13 all of the trust instruments were a single will and the interests were devised under it.

14 (3) A provision made in one instrument may direct the apportionment of the
15 liability among the nonprobate transferees taking under that or any other governing instrument.
16 If a provision in one instrument conflicts with a provision in another, the later one prevails.

17 (d) The liability of a beneficiary for the insufficiency described in subsection (b) may not
18 exceed the value as of the date of the decedent's death of the property subject to the deed
19 received or controlled by that beneficiary.

20 (e) Upon due notice to a beneficiary, the liability imposed by this section is enforceable
21 in proceedings in this state, whether or not the beneficiary is located in this State.

22 (f) A proceeding under this section may not be commenced unless the personal

1 representative of the decedent's estate has received a written demand for the proceeding from the
2 surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If
3 the personal representative declines or fails to commence a proceeding after demand, a person
4 making demand may commence the proceeding in the name of the decedent's estate, at the
5 expense of the person making the demand and not of the estate. A personal representative who
6 declines in good faith to commence a requested proceeding incurs no personal liability for
7 declining.

8 (g) A proceeding under this section must be commenced within one year after the
9 decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after
10 proceedings challenging disallowance of the claim may be commenced within 60 days after final
11 allowance of the claim.

12 **Reporter's Note**

13
14 Alternative 1 is the complete, original text of §102 of the Uniform Nonprobate Transfers
15 on Death Act, not modified in any way to focus on transfer on death deeds. This alternative
16 maintains a holistic approach to the rights of creditors and family members in nonprobate
17 transfers.

18
19 Alternative 2 is designed to apply the rules of §102, but only to the beneficiary of a
20 transfer on death deed. Recipients of other nonprobate transfers are not subject to liability. The
21 alternative pretends that they are so subject for the sole purpose of calculating the beneficiary's
22 liability.

23
24 Alternative 3 is a somewhat simplified version of Alternative 2. Rather than replicating
25 all of §102(c)'s rules of priority, Alternative 3 adopts only the principle of §102(c)(3):
26 proportionate liability.

27
28 The committee's advice about how to proceed would be most welcome.
29
30

31 **SECTION 302. RETURN OF PROPERTY.**

32 (a) Subject to subsection (b), the liability under Section 301 of a beneficiary of a transfer

on death deed is discharged by the restitution to the transferor's estate of the property the beneficiary received under the deed, together with:

(1) the net income the beneficiary received from the property; and
(2) if the beneficiary encumbered the property after the transferor's death, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.

(b) The property and amount to be restored under subsection (a) are reduced by any property transferred or amount paid by the beneficiary to satisfy a liability of the transferor.

Reporter's Note

This section is designed to permit a beneficiary to satisfy Section 301 by returning the property to the transferor's estate. If the beneficiary no longer has the property, this section does not apply. The section is drawn from §5676(a)(1) and (c) of the California recommended statute:

“§ 5676. Return of property to estate for benefit of creditors

(a) Subject to subdivisions (b), (c), and (d), if proceedings for the administration of the transferor's estate are commenced, each beneficiary is liable for:

(1) The restitution to the transferor's estate of the property the beneficiary received pursuant to the revocable transfer on death deed if the beneficiary still has the property, together with (A) the net income the beneficiary received from the property and (B) if the beneficiary encumbered the property after the transferor's death, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.

(2) The restitution to the transferor's estate of the fair market value of the property if the beneficiary no longer has the property, together with (A) the net income the beneficiary received from the property prior to disposing of it and (B) interest from the date of disposition at the rate payable on a money judgment on the fair market value of the property. For the purposes of this paragraph, the “fair market value of the property” is the fair market value, determined as of the time of the disposition of the property, of the property the beneficiary received pursuant to the revocable transfer on death deed, less the amount of any liens and encumbrances on the property at the time of the transferor's death.

(b) Subject to subdivision (c), if proceedings for the administration of the transferor's estate are commenced and a beneficiary made a significant improvement to the property received by the beneficiary pursuant to the revocable transfer on death deed,

1 the beneficiary is liable for whichever of the following the transferor's estate elects:

2 (1) The restitution of the property, as improved, to the estate of the
3 transferor upon the condition that the estate reimburse the beneficiary for (A) the amount
4 by which the improvement increases the fair market value of the property restored,
5 determined as of the time of restitution, and (B) the amount paid by the beneficiary for
6 principal and interest on any liens or encumbrances that were on the property at the time
7 of the transferor's death.

8 (2) The restoration to the transferor's estate of the fair market value of the
9 property, determined as of the time of the transferor's death, less the amount of any liens
10 and encumbrances on the property at that time, together with interest on the net amount at
11 the rate payable on a money judgment running from the time of the transferor's death.

12 (c) The property and amount required to be restored to the estate under this
13 section shall be reduced by any property or amount paid by the beneficiary to satisfy a
14 liability under Section 5672. [§5672 concerns the transferor's unsecured debts. –TPG]

15 (d) An action to enforce the liability under this section may be brought only by
16 the personal representative of the estate of the transferor. Whether or not the personal
17 representative brings an action under this section, the personal representative may
18 enforce the liability only to the extent necessary to protect the interests of creditors of the
19 transferor.

20 (e) An action to enforce the liability under this section is forever barred three
21 years after the transferor's death. The three-year period specified in this subdivision is
22 not tolled for any reason.”
23

1 **[[ARTICLE] 4**

2 **RULES OF CONSTRUCTION]**

3 **Reporter's Prefatory Note**

4
5 This article is drawn from the Uniform Probate Code's provisions that apply to all
6 governing instruments. The article is designed for states that have not enacted the UPC but that
7 might wish to apply some or all of these constructional rules to transfer on death deeds.
8

9 A question for the committee to consider is whether to include this article, or whether
10 simply to have a legislative note identifying these issues.
11
12

13 **SECTION 401. SCOPE.** In the absence of a finding of a contrary intention, the rules of
14 construction in this [article] control the construction of a transfer on death deed.

15 **Reporter's Note**

16
17 This provision is drawn from §2-701 of the Uniform Probate Code: "In the absence of a
18 finding of contrary intention, the rules of construction in this Part control the construction of a
19 governing instrument. The rules of construction in this Part apply to a governing instrument of
20 any type, except as the application of a particular section is limited by its terms to a specific type
21 or types of provision or governing instrument."
22
23

24 **SECTION 402. REQUIREMENT OF SURVIVAL BY 120 HOURS.**

25 (a) Except as otherwise provided in subsection (b), a person who is not established by
26 clear and convincing evidence to have survived an event, including the death of another person,
27 by 120 hours is deemed to have died before the event.

28 (b) Survival by 120 hours is not required if:

29 (1) the transfer on death deed contains language dealing explicitly with
30 simultaneous deaths or deaths in a common disaster and that language is operable under the facts
31 of the case;

32 (2) the transfer on death deed expressly indicates that a person is not required to

1 survive an event, including the death of another person, by any specified period or expressly
2 requires the person to survive the event by a specified period; but survival of the event or the
3 specified period must be established by clear and convincing evidence;

4 (3) the imposition of a 120-hour requirement of survival would cause a nonvested
5 property interest to fail to qualify for validity under an applicable rule against perpetuities; but
6 survival must be established by clear and convincing evidence; or

7 (4) the application of a 120-hour requirement of survival to multiple governing
8 instruments would result in an unintended failure or duplication of a disposition; but survival
9 must be established by clear and convincing evidence.

10 (d) A third party is not liable for having transferred property to a beneficiary who, under
11 this section, is not entitled to the property, or for having taken any other action in good faith
12 reliance on the beneficiary's apparent entitlement under the terms of the transfer on death deed,
13 before the third party received written notice of a claimed lack of entitlement under this section.
14 A third party is liable for an action taken after the third party received written notice of a claimed
15 lack of entitlement under this section.

16 (e) A person who purchases property for value and without notice, or who receives
17 property in partial or full satisfaction of a legally enforceable obligation, is neither obligated
18 under this section to return the property nor is liable under this section for the value of the
19 property.

20 **Reporter's Note**

21
22 This section is based on §2-702 of the Uniform Probate Code:

23
24 (a) **[Requirement of Survival by 120 Hours Under Probate Code.]** For the
25 purposes of this Code, except as provided in subsection (d), an individual who is not

1 established by clear and convincing evidence to have survived an event, including the
2 death of another individual, by 120 hours is deemed to have predeceased the event.

3 **(b) [Requirement of Survival by 120 Hours under Governing Instrument.]**

4 Except as provided in subsection (d), for purposes of a provision of a governing
5 instrument that relates to an individual surviving an event, including the death of another
6 individual, an individual who is not established by clear and convincing evidence to have
7 survived the event by 120 hours is deemed to have predeceased the event.

8 **(c) [Co-owners With Right of Survivorship; Requirement of Survival by 120**

9 **Hours.]** Except as provided in subsection (d), if (i) it is not established by clear and
10 convincing evidence that one of two co-owners with right of survivorship survived the
11 other co-owner by 120 hours, one-half of the property passes as if one had survived by
12 120 hours and one-half as if the other had survived by 120 hours and (ii) there are more
13 than two co-owners and it is not established by clear and convincing evidence that at
14 least one of them survived the others by 120 hours, the property passes in the proportion
15 that one bears to the whole number of co-owners. For the purposes of this subsection,
16 “co-owners with right of survivorship” includes joint tenants, tenants by the entireties,
17 and other co-owners of property or accounts held under circumstances that entitles one or
18 more to the whole of the property or account on the death of the other or others.

19 **(d) [Exceptions.]** Survival by 120 hours is not required if:

20 (1) the governing instrument contains language dealing explicitly with
21 simultaneous deaths or deaths in a common disaster and that language is operable under
22 the facts of the case;

23 (2) the governing instrument expressly indicates that an individual is not
24 required to survive an event, including the death of another individual, by any specified
25 period or expressly requires the individual to survive the event by a specified period; but
26 survival of the event or the specified period must be established by clear and convincing
27 evidence;

28 (3) the imposition of a 120-hour requirement of survival would cause a
29 nonvested property interest or a power of appointment to fail to qualify for validity under
30 Section 2-901(a)(1), (b)(1), or (c)(1) or to become invalid under Section 2-901(a)(2),
31 (b)(2), or (c)(2); but survival must be established by clear and convincing evidence; or

32 (4) the application of a 120-hour requirement of survival to multiple
33 governing instruments would result in an unintended failure or duplication of a
34 disposition; but survival must be established by clear and convincing evidence.

35 **(e) [Protection of Payors and Other Third Parties.]**

36 (1) A payor or other third party is not liable for having made a payment or
37 transferred an item of property or any other benefit to a beneficiary designated in a
38 governing instrument who, under this section, is not entitled to the payment or item of
39 property, or for having taken any other action in good faith reliance on the beneficiary’s
40 apparent entitlement under the terms of the governing instrument, before the payor or
41 other third party received written notice of a claimed lack of entitlement under this
42 section. A payor or other third party is liable for a payment made or other action taken
43 after the payor or other third party received written notice of a claimed lack of
44 entitlement under this section.

(2) Written notice of a claimed lack of entitlement under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the Court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the Court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The Court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the Court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the Court.

(f) [Protection of Bona Fide Purchasers; Personal Liability of Recipient.]

(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

SECTION 403. DECEASED BENEFICIARY.

(a) In this section:

(1) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the transfer on death deed and, under the terms of the deed, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the transferor or failure to survive the transferor, whether an event is expressed in

1 condition-precedent, condition-subsequent, or any other form.

2 (2) “Beneficiary” means the beneficiary of a transfer on death deed under which
3 the beneficiary must survive the decedent and includes (i) a class member if the beneficiary
4 designation is in the form of a class gift and (ii) an individual or class member who was deceased
5 at the time the beneficiary designation was executed as well as an individual or class member
6 who was then living but who failed to survive the transferor, but excludes a joint owner.

7 (3) “Beneficiary designation” includes an alternative beneficiary designation and
8 a beneficiary designation in the form of a class gift.

9 (4) “Class member” includes an individual who fails to survive the transferor but
10 who would have taken under a beneficiary designation in the form of a class gift had he [or she]
11 survived the transferor.

12 (5) “Stepchild” means a child of the transferor’s surviving, deceased, or former
13 spouse, and not of the transferor.

14 (6) “Surviving beneficiary” or “surviving descendant” means a beneficiary or a
15 descendant who neither died before the transferor nor is deemed to have died before the
16 transferor under [Section 402][cite state statute][the Uniform Simultaneous Death Act].

17 (b) If a beneficiary fails to survive the transferor and is a grandparent, a descendant of a
18 grandparent, or a stepchild of the transferor, the following apply:

19 (1) Except as otherwise provided in paragraph (4), if the beneficiary designation
20 is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a
21 substitute gift is created in the beneficiary’s surviving descendants. They take by representation
22 the property to which the beneficiary would have been entitled had the beneficiary survived the

1 transferor.

2 (2) Except as otherwise provided in paragraph (4), if the beneficiary designation
3 is in the form of a class gift, other than a beneficiary designation to “issue,” “descendants,”
4 “heirs of the body,” “heirs,” “next of kin,” “relatives,” or “family,” or a class described by
5 language of similar import, a substitute gift is created in the surviving descendants of any
6 deceased beneficiary. The property to which the beneficiaries would have been entitled, had all
7 of them survived the transferor, passes to the surviving beneficiaries and the surviving
8 descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he
9 [or she] would have been entitled had the deceased beneficiaries survived the transferor. Each
10 deceased beneficiary’s surviving descendants who are substituted for the deceased beneficiary
11 take by representation the share to which the deceased beneficiary would have been entitled had
12 the deceased beneficiary survived the decedent. For the purposes of this paragraph, “deceased
13 beneficiary” means a class member who failed to survive the transferor and left one or more
14 surviving descendants.

15 (3) For the purposes of Section 401, words of survivorship, such as in a
16 beneficiary designation to an individual “if he survives me,” or in a beneficiary designation to
17 “my surviving children,” are not, in the absence of additional evidence, a sufficient indication of
18 an intent contrary to the application of this section.

19 (4) If a transfer on death deed creates an alternative beneficiary designation with
20 respect to a beneficiary designation for which a substitute gift is created by paragraph (1) or (2),
21 the substitute gift is superseded by the alternative beneficiary designation only if an expressly
22 designated beneficiary of the alternative beneficiary designation is entitled to take.

1 (c) If, under subsection (b), substitute gifts are created and not superseded with respect
2 to more than one beneficiary designation and the beneficiary designations are alternative
3 beneficiary designations, one to the other, the determination of which of the substitute gifts takes
4 effect is resolved as follows:

5 (1) Except as otherwise provided in paragraph (2), the property passes under the
6 primary substitute gift.

7 (2) If there is a younger-generation beneficiary designation, the property passes
8 under the younger-generation substitute gift and not under the primary substitute gift.

9 (3) In this subsection:

10 (A) “Primary beneficiary designation” means the beneficiary designation
11 that would have taken effect had all the deceased beneficiaries of the alternative beneficiary
12 designations who left surviving descendants survived the transferor.

13 (B) “Primary substitute gift” means the substitute gift created with respect
14 to the primary beneficiary designation.

15 (C) “Younger-generation beneficiary designation” means a beneficiary
16 designation that is:

17 (i) to a descendant of a beneficiary of the primary beneficiary
18 designation;

19 (ii) an alternative beneficiary designation with respect to the
20 primary beneficiary designation;

21 (iii) a beneficiary designation for which a substitute gift is created,
22 and

(iv) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the transferor except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(D) “Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation beneficiary designation.

(d) If, under this section, property passes “by representation” to a beneficiary’s descendants, the property is divided into as many equal shares as there are (1) surviving descendants in the generation nearest to the beneficiary which contains one or more surviving descendants and (2) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the beneficiary.

(e) A third party is protected from liability in making a transfer under the terms of the beneficiary designation until the third party has received written notice of a claim to a substitute gift under this section. A third party is liable for a transfer made after the third party has received written notice of the claim.

(f) A person who purchases property for value and without notice, or who receives property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the property nor is liable under this section for the value of the property.

Reporter’s Note

1 This section is based on Uniform Probate Code §2-706:
2

3 (a) **[Definitions.]** In this section:

4 (1) “Alternative beneficiary designation” means a beneficiary designation
5 that is expressly created by the governing instrument and, under the terms of the
6 governing instrument, can take effect instead of another beneficiary designation on the
7 happening of one or more events, including survival of the decedent or failure to survive
8 the decedent, whether an event is expressed in condition-precedent,
9 condition-subsequent, or any other form.

10 (2) “Beneficiary” means the beneficiary of a beneficiary designation under
11 which the beneficiary must survive the decedent and includes (i) a class member if the
12 beneficiary designation is in the form of a class gift and (ii) an individual or class
13 member who was deceased at the time the beneficiary designation was executed as well
14 as an individual or class member who was then living but who failed to survive the
15 decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and
16 a party to a joint and survivorship account.

17 (3) “Beneficiary designation” includes an alternative beneficiary
18 designation and a beneficiary designation in the form of a class gift.

19 (4) “Class member” includes an individual who fails to survive the
20 decedent but who would have taken under a beneficiary designation in the form of a class
21 gift had he [or she] survived the decedent.

22 (5) “Stepchild” means a child of the decedent’s surviving, deceased, or
23 former spouse, and not of the decedent.

24 (6) “Surviving beneficiary” or “surviving descendant” means a beneficiary
25 or a descendant who neither predeceased the decedent nor is deemed to have predeceased
26 the decedent under Section 2-702.

27 (b) **[Substitute Gift.]** If a beneficiary fails to survive the decedent and is a
28 grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following
29 apply:

30 (1) Except as provided in paragraph (4), if the beneficiary designation is
31 not in the form of a class gift and the deceased beneficiary leaves surviving descendants,
32 a substitute gift is created in the beneficiary’s surviving descendants. They take by
33 representation the property to which the beneficiary would have been entitled had the
34 beneficiary survived the decedent.

35 (2) Except as provided in paragraph (4), if the beneficiary designation is in
36 the form of a class gift, other than a beneficiary designation to “issue,” “descendants,”
37 “heirs of the body,” “heirs,” “next of kin,” “relatives,” or “family,” or a class described
38 by language of similar import, a substitute gift is created in the surviving descendants of
39 any deceased beneficiary. The property to which the beneficiaries would have been
40 entitled, had all of them survived the decedent, passes to the surviving beneficiaries and
41 the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes
42 the share to which he [or she] would have been entitled had the deceased beneficiaries
43 survived the decedent. Each deceased beneficiary’s surviving descendants who are
44 substituted for the deceased beneficiary take by representation the share to which the

1 deceased beneficiary would have been entitled had the deceased beneficiary survived the
2 decedent. For the purposes of this paragraph, “deceased beneficiary” means a class
3 member who failed to survive the decedent and left one or more surviving descendants.

4 (3) For the purposes of Section 2-701, words of survivorship, such as in a
5 beneficiary designation to an individual “if he survives me,” or in a beneficiary
6 designation to “my surviving children,” are not, in the absence of additional evidence, a
7 sufficient indication of an intent contrary to the application of this section.

8 (4) If a governing instrument creates an alternative beneficiary designation
9 with respect to a beneficiary designation for which a substitute gift is created by
10 paragraph (1) or (2), the substitute gift is superseded by the alternative beneficiary
11 designation only if an expressly designated beneficiary of the alternative beneficiary
12 designation is entitled to take.

13 (c) **[More Than One Substitute Gift; Which One Takes.]** If, under subsection
14 (b), substitute gifts are created and not superseded with respect to more than one
15 beneficiary designation and the beneficiary designations are alternative beneficiary
16 designations, one to the other, the determination of which of the substitute gifts takes
17 effect is resolved as follows:

18 (1) Except as provided in paragraph (2), the property passes under the
19 primary substitute gift.

20 (2) If there is a younger-generation beneficiary designation, the property
21 passes under the younger-generation substitute gift and not under the primary substitute
22 gift.

23 (3) In this subsection:

24 (i) “Primary beneficiary designation” means the beneficiary
25 designation that would have taken effect had all the deceased beneficiaries of the
26 alternative beneficiary designations who left surviving descendants survived the
27 decedent.

28 (ii) “Primary substitute gift” means the substitute gift created with
29 respect to the primary beneficiary designation.

30 (iii) “Younger-generation beneficiary designation” means a
31 beneficiary designation that (A) is to a descendant of a beneficiary of the primary
32 beneficiary designation, (B) is an alternative beneficiary designation with respect to the
33 primary beneficiary designation, (C) is a beneficiary designation for which a substitute
34 gift is created, and (D) would have taken effect had all the deceased beneficiaries who left
35 surviving descendants survived the decedent except the deceased beneficiary or
36 beneficiaries of the primary beneficiary designation.

37 (iv) “Younger-generation substitute gift” means the substitute gift
38 created with respect to the younger-generation beneficiary designation.

39 (d) **[Protection of Payors.]**

40 (1) A payor is protected from liability in making payments under the terms
41 of the beneficiary designation until the payor has received written notice of a claim to a
42 substitute gift under this section. Payment made before the receipt of written notice of a
43 claim to a substitute gift under this section discharges the payor, but not the recipient,
44 from all claims for the amounts paid. A payor is liable for a payment made after the payor

1 has received written notice of the claim. A recipient is liable for a payment received,
2 whether or not written notice of the claim is given.

3 (2) The written notice of the claim must be mailed to the payor's main
4 office or home by registered or certified mail, return receipt requested, or served upon the
5 payor in the same manner as a summons in a civil action. Upon receipt of written notice
6 of the claim, a payor may pay any amount owed by it to the court having jurisdiction of
7 the probate proceedings relating to the decedent's estate or, if no proceedings have been
8 commenced, to the court having jurisdiction of probate proceedings relating to decedents'
9 estates located in the county of the decedent's residence. The court shall hold the funds
10 and, upon its determination under this section, shall order disbursement in accordance
11 with the determination. Payment made to the court discharges the payor from all claims
12 for the amounts paid.

13 **(e) [Protection of Bona Fide Purchasers; Personal Liability of Recipient.]**

14 (1) A person who purchases property for value and without notice, or who
15 receives a payment or other item of property in partial or full satisfaction of a legally
16 enforceable obligation, is neither obligated under this section to return the payment, item
17 of property, or benefit nor is liable under this section for the amount of the payment or
18 the value of the item of property or benefit. But a person who, not for value, receives a
19 payment, item of property, or any other benefit to which the person is not entitled under
20 this section is obligated to return the payment, item of property, or benefit, or is
21 personally liable for the amount of the payment or the value of the item of property or
22 benefit, to the person who is entitled to it under this section.

23 (2) If this section or any part of this section is preempted by federal law
24 with respect to a payment, an item of property, or any other benefit covered by this
25 section, a person who, not for value, receives the payment, item of property, or any other
26 benefit to which the person is not entitled under this section is obligated to return the
27 payment, item of property, or benefit, or is personally liable for the amount of the
28 payment or the value of the item of property or benefit, to the person who would have
29 been entitled to it were this section or part of this section not preempted.

30 Subsection (d) is based on §2-106(b) of the Uniform Probate Code:

31 If, under Section 2-103(1), a decedent's intestate estate or a part thereof passes
32 "by representation" to the decedent's descendants, the estate or part thereof is divided
33 into as many equal shares as there are (1) surviving descendants in the generation nearest
34 to the decedent which contains one or more surviving descendants and (2) deceased
35 descendants in the same generation who left surviving descendants, if any. Each
36 surviving descendant in the nearest generation is allocated one share. The remaining
37 shares, if any, are combined and then divided in the same manner among the surviving
38 descendants of the deceased descendants as if the surviving descendants who were
39 allocated a share and their surviving descendants had predeceased the decedent.

40
41
42 **SECTION 404. EFFECT OF HOMICIDE.**

43 (a) The felonious and intentional killing of the transferor revokes a transfer made by the

1 transferor to the killer in a transfer on death deed. Provisions of a transfer on death deed are
2 given effect as if the killer disclaimed all provisions revoked by this section.

3 (b) After all right to appeal has been exhausted, a judgment of conviction establishing
4 criminal accountability for the felonious and intentional killing of the transferor conclusively
5 establishes the convicted individual as the transferor's killer for purposes of this section. In the
6 absence of a conviction, the court, upon the petition of an interested person, must determine
7 whether, under the preponderance of evidence standard, the individual would be found
8 criminally accountable for the felonious and intentional killing of the transferor. If the court
9 determines that, under that standard, the individual would be found criminally accountable for
10 the felonious and intentional killing of the transferor, the determination conclusively establishes
11 that individual as the transferor's killer for purposes of this section.

12 (c) A third party is not liable for having transferred property to a beneficiary designated
13 in a transfer on death deed affected by an intentional and felonious killing, or for having taken
14 any other action in good faith reliance on the validity of the transfer on death deed, upon request
15 and satisfactory proof of the transferor's death, before the third party received written notice of a
16 claimed forfeiture or revocation under this section. A third party is liable for an action taken after
17 the third party received written notice of a claimed forfeiture or revocation under this section.

18 (d) A person who purchases property for value and without notice, or who receives
19 property in partial or full satisfaction of a legally enforceable obligation, is neither obligated
20 under this section to return the property nor is liable under this section for the value of the
21 property.

22 **Reporter's Note**
23

1 This section is based on Uniform Probate Code §2-803:
2

3 (a) **[Definitions.]** In this section:

4 (1) “Disposition or appointment of property” includes a transfer of an item
5 of property or any other benefit to a beneficiary designated in a governing instrument.

6 (2) “Governing instrument” means a governing instrument executed by the
7 decedent.

8 (3) “Revocable,” with respect to a disposition, appointment, provision, or
9 nomination, means one under which the decedent, at the time of or immediately before
10 death, was alone empowered, by law or under the governing instrument, to cancel the
11 designation, in favor of the killer, whether or not the decedent was then empowered to
12 designate himself [or herself] in place of his [or her] killer and whether or not the
13 decedent then had capacity to exercise the power.

14 (b) **[Forfeiture of Statutory Benefits.]** An individual who feloniously and
15 intentionally kills the decedent forfeits all benefits under this Article with respect to the
16 decedent’s estate, including an intestate share, an elective share, an omitted spouse’s or
17 child’s share, a homestead allowance, exempt property, and a family allowance. If the
18 decedent died intestate, the decedent’s intestate estate passes as if the killer disclaimed
19 his [or her] intestate share.

20 (c) **[Revocation of Benefits Under Governing Instruments.]** The felonious and
21 intentional killing of the decedent:

22 (1) revokes any revocable (i) disposition or appointment of property made
23 by the decedent to the killer in a governing instrument, (ii) provision in a governing
24 instrument conferring a general or nongeneral power of appointment on the killer, and
25 (iii) nomination of the killer in a governing instrument, nominating or appointing the
26 killer to serve in any fiduciary or representative capacity, including a personal
27 representative, executor, trustee, or agent; and

28 (2) severs the interests of the decedent and killer in property held by them
29 at the time of the killing as joint tenants with the right of survivorship transforming the
30 interests of the decedent and killer into equal tenancies in common.

31 (d) **[Effect of Severance.]** A severance under subsection (c)(2) does not affect
32 any third-party interest in property acquired for value and in good faith reliance on an
33 apparent title by survivorship in the killer unless a writing declaring the severance has
34 been noted, registered, filed, or recorded in records appropriate to the kind and location
35 of the property which are relied upon, in the ordinary course of transactions involving
36 such property, as evidence of ownership.

37 (e) **[Effect of Revocation.]** Provisions of a governing instrument are given effect
38 as if the killer disclaimed all provisions revoked by this section or, in the case of a
39 revoked nomination in a fiduciary or representative capacity, as if the killer predeceased
40 the decedent.

41 (f) **[Wrongful Acquisition of Property.]** A wrongful acquisition of property or
42 interest by a killer not covered by this section must be treated in accordance with the
43 principle that a killer cannot profit from his [or her] wrong.

44 (g) **[Felonious and Intentional Killing; How Determined.]** After all right to

1 appeal has been exhausted, a judgment of conviction establishing criminal accountability
2 for the felonious and intentional killing of the decedent conclusively establishes the
3 convicted individual as the decedent's killer for purposes of this section. In the absence
4 of a conviction, the court, upon the petition of an interested person, must determine
5 whether, under the preponderance of evidence standard, the individual would be found
6 criminally accountable for the felonious and intentional killing of the decedent. If the
7 court determines that, under that standard, the individual would be found criminally
8 accountable for the felonious and intentional killing of the decedent, the determination
9 conclusively establishes that individual as the decedent's killer for purposes of this
10 section.

11 **(h) [Protection of Payors and Other Third Parties.]**

12 (1) A payor or other third party is not liable for having made a payment or
13 transferred an item of property or any other benefit to a beneficiary designated in a
14 governing instrument affected by an intentional and felonious killing, or for having taken
15 any other action in good faith reliance on the validity of the governing instrument, upon
16 request and satisfactory proof of the decedent's death, before the payor or other third
17 party received written notice of a claimed forfeiture or revocation under this section. A
18 payor or other third party is liable for a payment made or other action taken after the
19 payor or other third party received written notice of a claimed forfeiture or revocation
20 under this section.

21 (2) Written notice of a claimed forfeiture or revocation under paragraph
22 (1) must be mailed to the payor's or other third party's main office or home by registered
23 or certified mail, return receipt requested, or served upon the payor or other third party in
24 the same manner as a summons in a civil action. Upon receipt of written notice of a
25 claimed forfeiture or revocation under this section, a payor or other third party may pay
26 any amount owed or transfer or deposit any item of property held by it to or with the
27 court having jurisdiction of the probate proceedings relating to the decedent's estate, or if
28 no proceedings have been commenced, to or with the court having jurisdiction of probate
29 proceedings relating to decedents' estates located in the county of the decedent's
30 residence. The court shall hold the funds or item of property and, upon its determination
31 under this section, shall order disbursement in accordance with the determination.
32 Payments, transfers, or deposits made to or with the court discharge the payor or other
33 third party from all claims for the value of amounts paid to or items of property
34 transferred to or deposited with the court.

35 **(i) [Protection of Bona Fide Purchasers; Personal Liability of Recipient.]**

36 (1) A person who purchases property for value and without notice, or who
37 receives a payment or other item of property in partial or full satisfaction of a legally
38 enforceable obligation, is neither obligated under this section to return the payment, item
39 of property, or benefit nor is liable under this section for the amount of the payment or
40 the value of the item of property or benefit. But a person who, not for value, receives a
41 payment, item of property, or any other benefit to which the person is not entitled under
42 this section is obligated to return the payment, item of property, or benefit, or is
43 personally liable for the amount of the payment or the value of the item of property or
44 benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

SECTION 405. REVOCATION BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.

(a) In this section:

(1) “Divorce or annulment” means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) “Divorced individual” includes an individual whose marriage has been annulled.

(3) “Transfer on death deed” means a transfer on death deed executed by the divorced individual before the divorce or annulment of his [or her] marriage to his [or her] former spouse.

(4) “Relative of the divorced individual’s former spouse” means an individual who is related to the divorced individual’s former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(b) Except as otherwise provided by the express terms of a transfer on death deed, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a

1 marriage revokes a transfer made by a divorced individual to his [or her] former spouse or to a
2 relative of his [or her] former spouse in a transfer on death deed.

3 (c) Provisions of a transfer on death deed are given effect as if the former spouse and
4 relatives of the former spouse died immediately before the divorce or annulment.

5 (d) Provisions revoked solely by this section are revived by the divorced individual's
6 remarriage to the former spouse or by a nullification of the divorce or annulment.

7 (e) No change of circumstances other than as described in this section and in Section 404
8 effects a revocation.

9 (f) A third party is not liable for having transferred property to a beneficiary designated
10 in a transfer on death deed affected by a divorce, annulment, or remarriage, or for having taken
11 any other action in good faith reliance on the validity of the transfer on death deed, before the
12 third party received written notice of the divorce, annulment, or remarriage. A third party is
13 liable for an action taken after the third party received written notice of a claimed forfeiture or
14 revocation under this section.

15 (g) A person who purchases property for value and without notice, or who receives
16 property in partial or full satisfaction of a legally enforceable obligation, is neither obligated
17 under this section to return the property nor is liable under this section for the value of the
18 property.

19
20 **Reporter's Note**
21

22 We might wish to include a legislative note on the topic of marriage-like relationships
23 recognized in some states by law, such as civil unions. The current revision to Article 2 of the
24 Uniform Probate Code proposes the following legislative note:
25

1 *Legislative Note.* Throughout Article II, the word “spouse” appears. States that
2 recognize civil unions, domestic partnerships, or similar relationships between unmarried
3 individuals should add appropriate language after “spouse” wherever that word appears
4 in Article II. States that do not recognize such relationships between unmarried
5 individuals, or marriages between same-sex partners, should also consider whether to
6 recognize the spousal-type rights that partners acquired under the law of another
7 jurisdiction in which the relationship was formed but who die domiciled in this state.
8 Doing so would not be the equivalent of recognizing such relationships in this state but
9 simply allowing those who move to and die in this state to retain the rights they
10 previously acquired elsewhere. Section 405 is based on §2-804 of the Uniform
11 Probate Code:

12 (a) **[Definitions.]** In this section:

13 (1) “Disposition or appointment of property” includes a transfer of an item
14 of property or any other benefit to a beneficiary designated in a governing instrument.

15 (2) “Divorce or annulment” means any divorce or annulment, or any
16 dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a
17 surviving spouse within the meaning of Section 2-802. A decree of separation that does
18 not terminate the status of husband and wife is not a divorce for purposes of this section.

19 (3) “Divorced individual” includes an individual whose marriage has been
20 annulled.

21 (4) “Governing instrument” means a governing instrument executed by the
22 divorced individual before the divorce or annulment of his [or her] marriage to his [or
23 her] former spouse.

24 (5) “Relative of the divorced individual’s former spouse” means an
25 individual who is related to the divorced individual’s former spouse by blood, adoption,
26 or affinity and who, after the divorce or annulment, is not related to the divorced
27 individual by blood, adoption, or affinity.

28 (6) “Revocable,” with respect to a disposition, appointment, provision, or
29 nomination, means one under which the divorced individual, at the time of the divorce or
30 annulment, was alone empowered, by law or under the governing instrument, to cancel
31 the designation in favor of his [or her] former spouse or former spouse’s relative, whether
32 or not the divorced individual was then empowered to designate himself [or herself] in
33 place of his [or her] former spouse or in place of his [or her] former spouse’s relative and
34 whether or not the divorced individual then had the capacity to exercise the power.

35 (b) **[Revocation Upon Divorce.]** Except as provided by the express terms of a
36 governing instrument, a Court Order, or a contract relating to the division of the marital
37 estate made between the divorced individuals before or after the marriage, divorce, or
38 annulment, the divorce or annulment of a marriage:

39 (1) revokes any revocable (i) disposition or appointment of property made
40 by a divorced individual to his [or her] former spouse in a governing instrument and any
41 disposition or appointment created by law or in a governing instrument to a relative of
42 the divorced individual’s former spouse, (ii) provision in a governing instrument
43 conferring a general or nongeneral power of appointment on the divorced individual’s
44 former spouse or on a relative of the divorced individual’s former spouse, and (iii)

1 nomination in a governing instrument, nominating a divorced individual's former spouse
2 or a relative of the divorced individual's former spouse to serve in any fiduciary or
3 representative capacity, including a personal representative, executor, trustee,
4 conservator, agent, or guardian; and

5 (2) severs the interests of the former spouses in property held by them at the time
6 of the divorce or annulment as joint tenants with the right of survivorship transforming
7 the interests of the former spouses into equal tenancies in common.

8 (c) **[Effect of Severance.]** A severance under subsection (b)(2) does not affect
9 any third-party interest in property acquired for value and in good faith reliance on an
10 apparent title by survivorship in the survivor of the former spouses unless a writing
11 declaring the severance has been noted, registered, filed, or recorded in records
12 appropriate to the kind and location of the property which are relied upon, in the ordinary
13 course of transactions involving such property, as evidence of ownership.

14 (d) **[Effect of Revocation.]** Provisions of a governing instrument are given effect
15 as if the former spouse and relatives of the former spouse disclaimed all provisions
16 revoked by this section or, in the case of a revoked nomination in a fiduciary or
17 representative capacity, as if the former spouse and relatives of the former spouse died
18 immediately before the divorce or annulment.

19 (e) **[Revival if Divorce Nullified.]** Provisions revoked solely by this section are
20 revived by the divorced individual's remarriage to the former spouse or by a nullification
21 of the divorce or annulment.

22 (f) **[No Revocation for Other Change of Circumstances.]** No change of
23 circumstances other than as described in this section and in Section 2-803 effects a
24 revocation.

25 (g) **[Protection of Payors and Other Third Parties.]**

26 (1) A payor or other third party is not liable for having made a payment or
27 transferred an item of property or any other benefit to a beneficiary designated in a
28 governing instrument affected by a divorce, annulment, or remarriage, or for having
29 taken any other action in good faith reliance on the validity of the governing instrument,
30 before the payor or other third party received written notice of the divorce, annulment, or
31 remarriage. A payor or other third party is liable for a payment made or other action
32 taken after the payor or other third party received written notice of a claimed forfeiture or
33 revocation under this section.

34 (2) Written notice of the divorce, annulment, or remarriage under
35 subsection (g)(2) must be mailed to the payor's or other third party's main office or home
36 by registered or certified mail, return receipt requested, or served upon the payor or other
37 third party in the same manner as a summons in a civil action. Upon receipt of written
38 notice of the divorce, annulment, or remarriage, a payor or other third party may pay any
39 amount owed or transfer or deposit any item of property held by it to or with the court
40 having jurisdiction of the probate proceedings relating to the decedent's estate or, if no
41 proceedings have been commenced, to or with the court having jurisdiction of probate
42 proceedings relating to decedents' estates located in the county of the decedent's
43 residence. The court shall hold the funds or item of property and, upon its determination
44 under this section, shall order disbursement or transfer in accordance with the

1 determination. Payments, transfers, or deposits made to or with the court discharge the
2 payor or other third party from all claims for the value of amounts paid to or items of
3 property transferred to or deposited with the Court.

4 (h) **[Protection of Bona Fide Purchasers; Personal Liability of Recipient.]**

5 (1) A person who purchases property from a former spouse, relative of a
6 former spouse, or any other person for value and without notice, or who receives from a
7 former spouse, relative of a former spouse, or any other person a payment or other item
8 of property in partial or full satisfaction of a legally enforceable obligation, is neither
9 obligated under this section to return the payment, item of property, or benefit nor is
10 liable under this section for the amount of the payment or the value of the item of
11 property or benefit. But a former spouse, relative of a former spouse, or other person
12 who, not for value, received a payment, item of property, or any other benefit to which
13 that person is not entitled under this section is obligated to return the payment, item of
14 property, or benefit, or is personally liable for the amount of the payment or the value of
15 the item of property or benefit, to the person who is entitled to it under this section.

16 (2) If this section or any part of this section is preempted by federal law
17 with respect to a payment, an item of property, or any other benefit covered by this
18 section, a former spouse, relative of the former spouse, or any other person who, not for
19 value, received a payment, item of property, or any other benefit to which that person is
20 not entitled under this section is obligated to return that payment, item of property, or
21 benefit, or is personally liable for the amount of the payment or the value of the item of
22 property or benefit, to the person who would have been entitled to it were this section or
23 part of this section not preempted.
24

1 [ARTICLE] 5

2 FORMS

3
4 **Reporter's Prefatory Note**

5
6 These forms are rough drafts, designed to provide the basis for discussion. Suggestions
7 for improving the forms are encouraged.
8

9
10 **SECTION 501. FORM OF TRANSFER ON DEATH DEED.** A document
11 substantially in the following form satisfies the requirements for a transfer on death deed under
12 this [act].

13 REVOCABLE TRANSFER ON DEATH DEED

14
15 Notice to Owner: This deed will transfer ownership of the property described below
16 when you die. You should carefully read all of the information on the other side of this form.
17 You may wish to consult a lawyer before using this form.

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

19 Identifying Information

20 Owner(s) of Property Who Join in This Deed:

21 _____
22 _____

23 Address or Legal Description of Property:

24 _____

25 Beneficiary or Beneficiaries

26 I revoke all my prior transfer on death deeds concerning the property, and name the
27 following beneficiary(ies) to receive the property (in equal shares, unless I say

otherwise):

Primary Beneficiary(ies)

If no primary beneficiary survives me, I name the following alternate beneficiary(ies) to receive the property (in equal shares, unless I say otherwise):

Transfer on Death

I transfer my interest in the described property to the beneficiary(ies) on my death.

Before my death, I may revoke this deed.

Signature(s) of Owner(s) Who Join in this Deed

(signature)

(date)

(signature)

(date)

Acknowledgment

(acknowledgment)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

1 *What does the Transfer on Death (TOD) Deed do?* When you die, your beneficiary will
2 become owner of the property described in the TOD deed, subject to any debts or liens or
3 mortgages (or other encumbrances) you have put on the property during your lifetime. Probate is
4 not required. The TOD deed has no effect until you die. It can be revoked at any time.

5 *How Do I Use the TOD Deed?* Complete this form. Have it notarized. Record the form in
6 the county where the property is located. The form must be recorded before your death or it has
7 no effect.

8 *How Do I “Record” the Form?* Take the completed and notarized form to the County
9 Recorder for the county in which the property is located. Follow the instructions given by the
10 County Recorder to make the form part of the official property records.

11 *Can I Revoke the TOD Deed If I Change My Mind?* Yes. You may revoke the TOD deed
12 at any time. No one, including your beneficiary, can prevent you from revoking the deed.

13 *How Do I Revoke the TOD Deed?* There are two ways to revoke a recorded TOD deed:
14 (1) Complete, notarize, and record a revocation form. (2) Complete, notarize, and record a new
15 TOD deed that disposes of the same property.

16 *I Am Being Pressured to Complete This Form. What Should I Do?* Do not complete this
17 form unless you freely choose to do so. If you are being pressured to dispose of your property in
18 a way that you do not want, you may want to alert a family member, friend, the district attorney,
19 or a senior service agency.

20 *Do I Need to Tell My Beneficiary About the TOD Deed?* No, but secrecy can cause later
21 complications and might make it easier for others to commit fraud.

What If I Name More Than One Beneficiary? You can name one or more primary beneficiaries and one or more alternate beneficiaries. Unless you specify otherwise, the primary beneficiaries (or if none survives you, the alternate beneficiaries) will become co-owners in equal shares.

What Is The Effect of a TOD Deed on Property That I Own in Joint Tenancy [or Tenancy by the Entirety][or Community Property With Right of Survivorship]? If you are the first to die, the deed has no effect at that time. The property transfers to your co-tenant [or surviving spouse]and not according to the deed. If you are the last to die, the deed takes effect and controls the ownership of your property when you die.

Reporter's Note

This form is based on the the California proposed form. The committee is currently divided on whether to permit alternate beneficiaries. If the committee decides not to permit alternate beneficiaries, the form will need to be revised accordingly.

SECTION 502. FORM OF DEED OF REVOCATION. A document substantially in the following form satisfies the requirements for a deed of revocation under this [act].

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 of owners who join in this revocation.

Identifying Information

Owner(s) of Property Who Join in This Revocation

1 Address or Legal Description of Property:

2 _____

3 Revocation

4 I/we revoke the described transfer on death deed.

5 Signature(s) of Owner(s) Who Join in this Revocation

6 _____

7 (signature)

(date)

8 _____

9 (signature)

(date)

10 Acknowledgment

11 (acknowledgment)

12
13
14 **SECTION 503. FORM OF AFFIDAVIT OF DEATH.** A document substantially in
15 the following form satisfies the requirements for an affidavit of death under this [act].

16 AFFIDAVIT OF DEATH

17 IN CONNECTION WITH A TRANSFER ON DEATH DEED

18 Notice: This form plus a certified copy of the death certificate must be recorded in the
19 office of the County Recorder, in order to prove the death of an owner or beneficiary of property
20 under a transfer on death deed.

21 Name of Deceased:

22 _____

1 Date of Death:

2 _____

3 Address or Legal Description of Property Under the Transfer on Death Deed

4 The deceased was an owner [] a beneficiary [] (check one)

5 of the property at:

6 _____

7 (address or legal description)

8 Marital Status of Deceased

9 When he or she died, the deceased was married [] unmarried [] (check one).

10 If married: the name and address of the spouse is: _____.

11 Beneficiaries of the Deed Who Are Living [120 Hours] After the Transferor's Death:

12 _____

13 _____

14 _____

15 Signature of Person Completing This Form

16 _____

17 (signature)

(date)

18 _____

19 (relationship to deceased)

20 Acknowledgment

21 (acknowledgment)

22 **Reporter's Note**

1 This form is needed only if the committee endorses Alternative 2 of Section 216, on
2 proof of death.

1 [ARTICLE] 6

2 MISCELLANEOUS PROVISIONS

3
4 SECTION 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

5 applying and construing this uniform act, consideration must be given to the need to promote
6 uniformity of the law with respect to its subject matter among the states that enact it.

7 Reporter's Note

8
9 This provision is standard in all uniform acts.
10

11
12 SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

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

18 Reporter's Note

19
20 The NCCUSL Drafting Rules state: "If an act contains a provision requiring a notice or
21 other record *or a signature, whether electronic or written*, [this] section should be included"
22 (emphasis supplied).
23

24 Commissioner Patricia Fry has encouraged our committee to include this section, in order
25 to ensure that we can achieve our aim of harmonizing the execution of transfer on death deeds
26 with the execution of inter vivos deeds (see our Section 204(1)). The federal Electronic
27 Signatures in Global and National Commerce Act ("E-Sign"), 15 U.S.C. §§ 7001 *et seq.*, applies
28 to instruments transferring interests in land. 15 U.S.C. §7006(13)(B) defines "transaction" to
29 include "the sale, lease, exchange, or other disposition of any interest in real property...." E-Sign
30 also permits states to supersede it. If a state has done so with respect to inter vivos deeds, our
31 Section 602 would be required in order to permit the state to do so with respect to transfer on
32 death deeds. If a state has not superseded, hence follows, E-Sign with respect to inter vivos

1 deeds, our Section 602 poses no problem, because our Section 204(1) incorporates the applicable
2 formalities.
3
4

5 **SECTION 603. EFFECTIVE DATE.** This [act] takes effect