

D R A F T

FOR DISCUSSION ONLY

**REAL PROPERTY
TRANSFER ON DEATH ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Draft of March 3, 2008, for review by the Drafting Committee

WITH PREFATORY AND REPORTER'S NOTES

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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REAL PROPERTY TRANSFER ON DEATH ACT

Reporter's General Prefatory Note

This draft is for review by the Drafting Committee in advance of the “first reading” of the Act. The draft is divided into four articles. Article 1 contains general provisions. Article 2 authorizes transfer on death deeds and addresses the formal and substantive issues concerning such deeds. Article 3 contains suggested statutory forms. These forms are drafts, and suggestions for improvement are encouraged. Article 4 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 **REAL PROPERTY TRANSFER ON DEATH ACT**

2

3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Real Property Transfer

6 on Death Act.

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

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

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

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

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

12 not include a tenant in common [or an owner of community property without a right of

13 survivorship].

14 (3) “Person” means an individual, corporation, business trust, estate, trust, partnership,

15 limited liability company, association, joint venture, public corporation, government or

16 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

17 (4) “Property” means an estate or interest in real property that is transferable on the death

18 of the owner.

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

20 (6) “Transferor” means an individual who executes and acknowledges a recorded transfer

21 on death deed.

22 **Reporter’s Note**

1 The definition in Paragraph (1) links the term “beneficiary” to the standard NCCUSL
2 definition of “person.” The Comment will explain that the definition includes the trustee of a
3 trust even if the trust is revocable, a rule that accords with the current transfer on death deed
4 statutes that address the issue. For example, Ark. Code §18-12-608(c)(2) provides: “A
5 beneficiary deed may be used to transfer an interest in real property to a trust estate even if the
6 trust is revocable.”

7
8 Paragraph (2) provides a definition of owners who hold concurrent interests with a right
9 of survivorship.

10
11 Paragraph (3) is a standard NCCUSL definition.

12
13 Paragraph (4) provides that the Act applies to all interests in real property that are
14 transferable at the death of the owner.

15
16 Paragraph (6) limits the use of transfer on death deeds to transferors who are individuals.
17 The term “transferor” does not include a corporation, business trust, estate, trust, partnership,
18 limited liability company, association, joint venture, public corporation, government or
19 governmental subdivision, agency, or instrumentality, or any legal or commercial entity other
20 than an individual. The Comment will explain that the term also does not include an agent acting
21 under a power of attorney. The power of an agent to create or revoke a transfer on death deed is
22 determined by other law, as indicated in Sections 204(b) and 207(d).

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

27 **Reporter’s Note**

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

32
33 **SECTION 104. NONEXCLUSIVITY.** This [act] does not affect any method of
34 transferring property permitted under the law of this state other than this [act].

35 **Reporter’s Note**

1 This section tracks the first part of Ark. Code §18-12-608(g)(1): “This section does not
2 prohibit [the committee preferred “affect”] other methods of conveying property that are
3 permitted by law and that have the effect of postponing enjoyment of an interest in real property
4 until the death of the owner.”

1 [ARTICLE] 2

2 TRANSFER ON DEATH DEED

3
4 SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED. An individual
5 may transfer property to a beneficiary effective at the transferor's death by means of a transfer on
6 death deed.

7 Reporter's Note

8 This section authorizes transfer on death deeds and makes it clear that the transfer is not
9 an inter vivos transfer. The transfer occurs at the transferor's death.
10

11 SECTION 202. TRANSFER ON DEATH DEED NONTTESTAMENTARY. A
12 transfer on death deed is nontestamentary.

13 Reporter's Note

14
15 This section is based on §101(a) of the Uniform Nonprobate Transfers on Death Act,
16 which provides: "A provision for a nonprobate transfer on death in an insurance policy, contract
17 of employment, bond, mortgage, promissory note, certificated or uncertificated security, account
18 agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual
19 retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property
20 agreement, or other written instrument of a similar nature is nontestamentary."
21

22 As the Comment to §101 explains, because the mode of transfer is declared to be
23 nontestamentary, the instrument of transfer does not have to be executed in compliance with the
24 formalities for wills, nor does the instrument need to be probated, nor does the decedent's
25 personal representative have any power or duty with respect to the asset.
26

27 SECTION 203. CAPACITY OF TRANSFEROR. The capacity required to make or
28 revoke a transfer on death deed is the same capacity required to make a will.

29 Reporter's Note

1 This section is drawn from §601 of the Uniform Trust Code: “The capacity required to
2 create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee
3 of a revocable trust, is the same as that required to make a will.” The rule is consistent with the
4 Restatement (Third) of Property (Wills and Other Donative Transfers) §8.1(b), which applies the
5 standard of testamentary capacity, and not the higher standard of capacity for inter vivos gifts, to
6 revocable will substitutes: “If the donative transfer is in the form of a will, a revocable will
7 substitute, or a revocable gift, the testator or donor must be capable of knowing and
8 understanding in a general way the nature and extent of his or her property, the natural objects of
9 his or her bounty, and the disposition that he or she is making of that property, and must also be
10 capable of relating these elements to one another and forming an orderly desire regarding the
11 disposition of the property.”
12

13 An earlier draft provided: “To make or revoke a transfer on death deed, a transferor must
14 have testamentary capacity.” That formulation, however, could wrongly prevent an agent under a
15 power of attorney, or a guardian, from acting on the transferor’s behalf. The Joint Editorial
16 Board for Uniform Trust and Estate Acts is currently working to correct a similar potential
17 problem in Uniform Trust Code §401(a)(1), which provides that “[a] trust is created only if ... the
18 settlor has capacity to create a trust”
19

20 **SECTION 204. REQUIREMENTS.**

21 (a) A transfer on death deed must:

22 (1) subject to subsection (a)(2), contain the essential elements of an inter vivos
23 deed;

24 (2) state that the transfer is to occur at the transferor’s death;

25 (3) be acknowledged by the transferor before an officer authorized to take
26 acknowledgments; and

27 (4) be recorded before the transferor’s death in the [county] where the property is
28 located.

29 (b) An individual’s agent may execute a transfer on death deed on the individual’s behalf
30 to the extent permitted by [applicable law][cite state statute or the Uniform Power of Attorney
31 Act].

1 **Reporter's Note**

2
3 Subsection (a)(1): The Act requires the same essential elements of a deed, other than a
4 present intention to convey, as are required for inter vivos deeds under state law. In most
5 jurisdictions, these elements are: identification of the parties, description of the land, and the
6 transferor's signature.

7
8 Subsection (a)(2): This requirement emphasizes the fundamental distinction between an
9 inter vivos deed and a transfer on death deed. An inter vivos deed evidences a present intention
10 to convey. A transfer on death deed evidences an intention that the transfer occur at the
11 transferor's death. Under no circumstances should a defective transfer on death deed be given
12 effect as an inter vivos deed; to do so would violate the transferor's intention that the transfer
13 occur at the transferor's death.

14
15 Subsection (a)(3): The requirement of acknowledgment fulfills at least four functions.
16 First, it cautions a transferor that he or she is performing an act with legal consequences. Such
17 caution is important where, as here, the transferor does not experience the wrench of delivery
18 because the transfer occurs at death. Second, acknowledgment helps to prevent fraud. Third,
19 acknowledgment facilitates the recording of the deed. Fourth, acknowledgment is important in
20 order to implement the rule in Section 207(a)(1) that a later acknowledged deed prevails over an
21 earlier acknowledged deed.

22
23 Subsection (a)(4): This rule is consistent with the transfer on death deed statutes that
24 address the issue. The Comment will explain that, if the property described in the deed is in
25 more than one county, the deed is effective only with respect to the property in the county or
26 counties where the deed is recorded.

27
28 Subsection (b) defers to other law to determine an agent's authority.
29

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

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

33 or

34 (2) consideration.

35 **Reporter's Note**

36
37 These rules are consistent with the transfer on death deed statutes that address the issues.

1
2 **SECTION 206. MULTIPLE BENEFICIARIES.** A transferor may designate multiple

3 beneficiaries to hold in any form of concurrent or successive ownership, contingent or vested,
4 valid in this state.

5 **Reporter's Note**

6 This Section comports with the fundamental principle articulated in the Restatement
7 (Third) of Property (Wills and Other Donative Transfers) §10.1 that the donor's intention should
8 be "given effect to the maximum extent allowed by law." As the Restatement explains in
9 Comment c to §10.1, "American law curtails freedom of disposition only to the extent that the
10 donor attempts to make a disposition or achieve a purpose that is prohibited or restricted by an
11 overriding rule of law."

12 The Comment will explain that, among other things, this Section permits a transferor to
13 designate one or more primary beneficiaries and one or more alternate beneficiaries to take in the
14 event the primary beneficiaries fail to survive the transferor.
15

16 **SECTION 207. REVOCATION.**

17 (a) A transfer on death deed is revoked by recording before the transferor's death in the
18 [county] where the property is located:

19 (1) a subsequently acknowledged transfer on death deed that revokes the
20 previously acknowledged deed expressly or by inconsistency; or

21 (2) a subsequently acknowledged revocation form that revokes the previously
22 acknowledged deed either by description of the property or by reference to the recording
23 information of the deed.

24 (b) A transferor may revoke a transfer on death deed as to the interest of that transferor,
25 but the revocation does not affect the transfer on death deed as to the interest of another
26 transferor.

1 (c) A transfer on death deed executed by joint owners is revoked only if all of the living
2 joint owners have executed and acknowledged a recorded revocation.

3 (d) A transferor's agent may revoke a transfer on death deed on the transferor's behalf to
4 the extent permitted by [applicable law][cite state statute or the Uniform Power of Attorney Act].

5 (e) After a transfer on death deed is recorded, it may not be revoked by any physical act
6 performed on the deed.

7 (f) A transfer on death deed may not be revoked or modified by will.

8 **Reporter's Note**

9
10 Subsections (a)(1) and (a)(2) provide that a transfer on death deed deed can be revoked by
11 executing, acknowledging, and recording a subsequent instrument. The Comment will explain
12 that, if the property described in the deed is in more than one county, the revocation is effective
13 only with respect to the property in the county or counties where the revocation is recorded. The
14 Comment will also explain, with examples, the principle of revocation by inconsistency, drawing
15 on the well-established law of revocation by inconsistency of wills.

16
17 Subsection (b) is based on §5662(b) of the California recommended statute: "A coowner
18 may revoke the transfer on death deed as to the interest of that coowner. The revocation does not
19 affect the transfer on death deed as to the interest of another coowner."

20
21 Subsection (c) is based on the third sentence of Ariz. Stat. §33-405(F): "If the property is
22 owned as joint tenants with right of survivorship or community property with right of
23 survivorship and if the revocation is not executed by all the owners, the revocation is not
24 effective unless executed by the last surviving owner."

25
26 Subsection (d) defers to other law to determine an agent's authority. A Comment will
27 emphasize that the transferor's incapacity does not necessarily make the transfer on death deed
28 irrevocable; depending on state law and the applicable facts, the deed might be revocable by an
29 agent under a power of attorney or by a court-appointed guardian.

30
31 Subsection (e): A Comment will explain that a physical act includes burning, tearing,
32 canceling, obliterating, or destroying the deed or any part of it.

33
34 Subsection (f) is consistent with the transfer on death deed statutes that address the issue,
35 and with Uniform Probate Code §6-213(b) on multiple-party bank accounts.
36

1 **SECTION 208. EFFECT OF DEED DURING TRANSFEROR’S LIFETIME.**

2 During the transferor’s lifetime, a transfer on death deed does not:

3 (1) affect the rights of the transferor or other owners in the property;

4 (2) affect the rights of creditors in the property;

5 (3) affect the transferor’s eligibility for any form of public assistance;

6 (4) create any legal or equitable right to or transferable interest in the property in favor of
7 a beneficiary; or

8 (5) make the property subject to process of the beneficiary’s creditors.

9 **Reporter’s Note**

10 The fundamental feature of a transfer on death deed is that it does not operate until the
11 transferor’s death. During the transferor’s lifetime, the deed is both revocable and ambulatory,
12 just as is a will. A transfer on death deed has no more effect during the transferor’s lifetime than
13 a will. Thus, a transfer on death deed, during the transferor’s lifetime, does not sever a joint
14 tenancy (Paragraph (1)). It does not affect the rights of creditors, whether secured or unsecured
15 (Paragraph (2)). It does not affect the transferor’s eligibility for any form of public assistance,
16 including Medicaid (Paragraph (3)). On this point, the committee specifically disapproves of the
17 contrary approach of Colo. Rev. Stat. §15-15-403. A transfer on death deed does not create any
18 right or transferable interest in favor of the beneficiary (Paragraph (4)), nor does it make the
19 property subject to process of the beneficiary’s creditors (Paragraph (5)).
20

21 **SECTION 209. EFFECT OF DEED AT TRANSFEROR’S DEATH.**

22 (a) Except as otherwise provided in subsections (b) and (c) [and in [cite state statute on
23 antilapse, if applicable to nonprobate transfers]], on the death of the transferor, the following
24 rules apply to the property that is the subject of the transfer on death deed:

25 (1) The property owned by the transferor at death is transferred to the beneficiaries
26 who survive the transferor in accordance with the deed.

27 (2) Unless the deed provides otherwise, beneficiaries receiving concurrent

1 interests receive equal and undivided shares in the property with no right of survivorship if a
2 beneficiary dies after the transferor's death [unless two of the beneficiaries are husband and wife,
3 in which event they receive their interests in the property as [tenants by the entirety][owners of
4 community property with right of survivorship]].

5 (3) If no beneficiary survives the transferor, a transfer on death deed is void.

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

10 (c) A beneficiary receives a transferor's interest at the transferor's death subject to all
11 conveyances made during the transferor's lifetime and all encumbrances, assignments, contracts,
12 mortgages, liens, and other interests affecting the property, whether or not recorded and whether
13 created before or after the recording of the transfer on death deed, to which the property is
14 subject at the the transferor's death.

15 **Reporter's Note**

16 Subsection (a)(2) is modeled on Uniform Probate Code §6-212 governing multiple-party
17 accounts. There will be a Legislative Note explaining that states without tenancy by the entirety
18 or community property with right of survivorship, or states having these forms of ownership but
19 preferring no right of survivorship, should delete the material in brackets.
20

21 Subsection (b) is consistent with the majority rule, namely that the survivorship right
22 trumps the transfer on death deed.
23

24 Subsection (c) is modeled on Colo. Rev. Stat. §15-15-407(2): "A grantee-beneficiary of a
25 beneficiary deed takes title to the owner's interest in the real property conveyed by the
26 beneficiary deed at the death of the owner subject to all conveyances, encumbrances,
27 assignments, contracts, mortgages, liens, and other interests, affecting title to the property,
28 whether created before or after the recording of the beneficiary deed, or to which the owner was

1 subject during the owner’s lifetime including, but not limited to, any executory contract of sale,
2 option to purchase, lease, license, easement, mortgage, deed of trust, or other lien. The grantee-
3 beneficiary also takes title subject to any interest in the property of which the grantee-beneficiary
4 has either actual or constructive notice.” The committee rejected the requirement of California
5 recommended §5652(c) that the limitation must be “of record,” because the beneficiary should
6 merely step into the transferor’s shoes; the beneficiary should not be in a better position (i.e. free
7 of limitations not of record) than the transferor.
8

9 The Comment will refer approvingly to *In re Estate of Roloff*, 143 P.3d 406 (Kan. Ct.
10 App. 2006) (holding that crops should be transferred with the land under a transfer on death deed
11 because this result would be reached on the same facts with any other deed).
12

13 The Comment will also address the following fact-pattern. H and W are married and own
14 property as tenants by the entirety. H executes, acknowledges and records a transfer on death
15 deed in favor of X. W later dies, at which point H owns the property in fee simple absolute.
16 Under the law of some states, there may be a question whether the transfer on death deed is valid,
17 given that H executed it when the property was owned, not by H and W, but by the marital entity.
18 The correct answer is yes. The transfer on death deed is effective at H’s death because the
19 property is owned by H at H’s death (recall the first sentence of subsection (a): “...and owned by
20 the transferor at death”). This is a straightforward application of the doctrine of after-acquired
21 property.
22

23 **SECTION 210. DISCLAIMER.**

24 **Alternative 1**

25 A beneficiary under a transfer on death deed may disclaim all or part of the beneficiary’s
26 interest as provided by [cite state statute or the Uniform Disclaimer of Property Interests Act].

27 **Alternative 2**

28 (a) Subject to a law of this state limiting the right to disclaim property, a beneficiary
29 under a transfer on death deed may disclaim all or part of the beneficiary’s interest by recording a
30 disclaimer in the [county] where the property that is the subject of the disclaimer is located.

31 (b) The effect of a disclaimer under subsection (a) is determined by state law other than
32 this [act].

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Reporter's Note

Alternative 1 is for a state with a disclaimer statute, such as the Uniform Disclaimer of Property Interests Act, providing a mechanism for disclaiming interests created in a transfer on death deed. The statute need not have contemplated the transfer on death deed specifically, but the statutory scheme applies to, or can be readily amended to apply to, such deeds. Alternative 2 is for a state without such a disclaimer statute.

The Comment will mention the state-law doctrine of “relation back”: an effective disclaimer typically relates back to the time of the initial transfer, here the transferor’s death.

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SECTION 211. NO COVENANTS OR WARRANTIES. A transfer on death deed transfers the property without covenant or warranty of title even if there is a contrary provision in the deed.

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Reporter's Note

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

SECTION 212. PROTECTION OF BONA FIDE PURCHASERS OR ENCUMBRANCERS. A bona fide purchaser or encumbrancer to whom a beneficiary transfers an interest in the property received under a transfer on death deed has the same rights and protections as if the transfer had been made by a grantee of an inter vivos deed.

Reporter's Note

The committee observed that it is hard to articulate a substantive rule on bona fide purchasers or encumbrancers (BFPs), because some jurisdictions are notice jurisdictions (protecting BFPs regardless of when the BFP files), some are race-notice jurisdictions (protecting only BFPs who file first), and a few are race jurisdictions (protecting anyone who files first). Instead, the committee decided to articulate the rule that a BFP from the beneficiary of a transfer

1 on death deed is in the same position as a BFP in the standard inter vivos transaction.
2

3 **SECTION 213. PROOF OF DEATH.** Proof of the death of a transferor or beneficiary
4 of a transfer on death deed must be established in the same manner as proof of the death of a
5 joint tenant [under [cite state statute]].

6 **Reporter's Note**
7

8 The committee was initially uncertain whether a Uniform Act should spell out a
9 procedure for the proof of death. The Uniform Nonprobate Transfers on Death Act, for example,
10 refers in §§223 and §307 to “proof of death” without elaboration.
11

12 The committee decided to incorporate the state’s existing procedures for proving the
13 death of a joint tenant, essentially tracking Colo. Rev. Stat. §15-15-413: “Proof of the death of
14 the owner or a grantee beneficiary shall be established in the same manner as for proving the
15 death of a joint tenant.”
16

17 **SECTION 214. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED.**

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

21 (b) A contest proceeding under this section must be brought in the [] court in the
22 [county] where the administration of the transferor’s estate would be proper.

23 (c) A contestant[:]
24 [(1)] must begin the contest proceeding not later than the earlier of [three years]
25 after the transferor’s death or [one year] after the beneficiary establishes the transferor’s death
26 under Section 213[.][; and]

27 [(2) may, on beginning the contest proceeding, record a notice of lis pendens in

1 the [county] where the transfer on death deed is recorded.]

3 **Reporter's Note**

5 The grounds of contest in subsection (a) are drawn from §5696 of the California
6 recommended statute: "Nothing in this chapter limits the application of principles of fraud, undue
7 influence, duress, mistake, or other invalidating cause to a transfer of property by a revocable
8 transfer on death deed."

10 Subsection (b) will be accompanied by a Legislative Note explaining that the blank in
11 brackets should be filled in to refer to the court where one would contest an inter vivos deed.

13 Subsection (c) is drawn from §§5690(c) and 5692(b) of the California recommended
14 statute. Section 5690(c) provides: "On commencement of a contest proceeding, the contestant
15 may record a lis pendens in the county in which the revocable transfer on death deed is
16 recorded." Section 5692(b) provides: "A contest proceeding shall be commenced within the
17 earlier of the following times: (1) Three years after the transferor's death. (2) One year after the
18 beneficiary establishes the fact of the transferor's death...." A Legislative Note will explain that
19 subsection (c)(2) is in brackets so that it can be deleted by states not using, or not wishing to refer
20 to, the notice of lis pendens.

22 The Comment will emphasize that the limitations period for commencement of the
23 contest should be the same as for other nonprobate transfer contests (if state law already provides
24 a limitations period for such contests) or (if not) for will contests.

26 The Comment will also cross-reference the rule governing bona fide purchasers or
27 encumbrancers in Section 212.

29 **[SECTION 215. LIABILITY OF BENEFICIARIES FOR CREDITOR CLAIMS** 30 **AND STATUTORY ALLOWANCES.**

31 (a) In this section, "nonprobate transfer" means a valid transfer effective at death, other
32 than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose
33 last domicile was in this state to the extent that the transferor immediately before death had
34 power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the
35 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, a transferee of a nonprobate transfer is
3 subject to liability to any probate estate of the decedent for allowed claims against the decedent's
4 probate estate and statutory allowances to the decedent's spouse and children to the extent the
5 estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate
6 transferee may not exceed the value of nonprobate transfers received or controlled by that
7 transferee.

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

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

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

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

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

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

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

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

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

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

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

21 (2) A trustee receiving or controlling a nonprobate transfer is released from
22 liability under this section with respect to any assets distributed to the trust's beneficiaries. Each

beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.]

Reporter's Note

This section is bracketed. For purpose of liability for creditor claims and statutory allowances, a state should treat a beneficiary of a transfer on death deed the same as a beneficiary of any other nonprobate transfer outside of trust, for example a beneficiary of pension proceeds, life insurance, or a "pay on death" bank account. The state's approach to such beneficiaries should be consistent.

States without existing statutes on point may wish to consider enacting this bracketed section. The text of this section is the same as Section 102 of the Uniform Nonprobate Transfers on Death Act (UNTDA), which was promulgated by the Conference in 1989. It represents the Conference's most recent statute governing the liability of beneficiaries of nonprobate transfers for creditor claims and statutory allowances. States need to be aware, however, that the Conference's Joint Editorial Board for Uniform Trust and Estate Acts is considering whether UNTDA Section 102 should be revised.

In considering whether (and if so, how) to revise Section 102 of the Uniform Nonprobate Transfers on Death Act, the Conference may take note of an idea generated by the California Law Revision Commission's project on transfer on death deeds. The idea is to permit a beneficiary of a transfer on death deed to limit liability by returning the property to the transferor's estate. Our drafting committee did some work on this idea and formulated the following draft language, here framed as a separate section:

SECTION XXX. LIMIT ON LIABILITY.

(a) Subject to subsection (b), the liability under Section XXX 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;
- (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; and
- (3) if the beneficiary, with knowledge of a claim under Section 301, committed any voluntary waste of the property after the transferor's death, the amount necessary to compensate for the waste.

(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.

(c) The liability under Section 301 of a beneficiary of a transfer on death

- 1 deed may not exceed the value as of the date of the transferor's death of the
- 2 property subject to the deed received or controlled by the beneficiary.

1 [ARTICLE] 3

2 FORMS

3
4 **Reporter's Prefatory Note**

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

9 **Legislative Note:** *An enacting jurisdiction should review its statutory requirements for deeds*
10 *and for acknowledgments and amend, where necessary for conformity with those requirements,*
11 *the statutory forms provided in Sections 301 and 302.*
12

13 **SECTION 301. FORM OF TRANSFER ON DEATH DEED.** A document
14 substantially in the following form satisfies the requirements for a transfer on death deed under
15 this [act]:

16 [front of form]

17 TRANSFER ON DEATH DEED

18
19 **Notice to Owner**

20 You should carefully read all information on the other side of this form. YOU MAY
21 WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

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

23 **Identifying Information**

24 Owner(s) Making This Deed:

25 _____

26 (name)

(mailing address)

27 _____

28 (name)

(mailing address)

1 **Legal Description of the Property:**

2 _____

3 _____

4 _____

5 **Beneficiary or Beneficiaries**

6 I revoke all my previous transfer on death deeds affecting the property, and name the

7 following beneficiary(ies) who survive me to receive the property (in equal and undivided shares

8 with no right of survivorship between them, unless I say otherwise in this deed):

9 **Beneficiary(ies)** – include mailing addresses if available

10 _____

11 _____

12 _____

13 **Alternate Beneficiary(ies) – Optional**

14 If no above beneficiary survives me, I name the following alternate beneficiary(ies) who

15 survive me to receive the property (in equal and undivided shares with no right of survivorship

16 between them, unless I say otherwise in this deed):

17 Alternate Beneficiary(ies) – include mailing addresses if available

18 _____

19 _____

20 _____

21 **Transfer on Death**

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

Before my death, I have the right to revoke this deed.

Signature(s) of Owner(s) Making This Deed:

_____[(SEAL)] _____

(signature)

(date)

_____[(SEAL)] _____

(signature)

(date)

Acknowledgment

[insert acknowledgment here]

[back of form]

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, the beneficiaries will become owners of the property described in the TOD deed, subject to any debts or liens or mortgages (or other encumbrances) you have put on the property during your lifetime. Probate is not required. The TOD deed has no effect until you die. It can be revoked at any time. If you transfer the property to someone else during your lifetime, the beneficiary under the deed will not receive it.

How do I make a TOD deed? Complete this form. Have it notarized. Record the form in each [county] where the property is located. The form must be notarized and recorded before your death or it has no effect.

How do I find the “legal description” of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the [county recorder] for the [county] where the property is located. If

1 you are not absolutely sure, consult a lawyer.

2 *How do I “record” the TOD deed?* Take the completed and notarized form to the [county
3 recorder] for the [county] where the property is located. Follow the instructions given by the
4 [county recorder] to make the form part of the official property records. If the property is in more
5 than one [county], you must record the deed in each [county].

6 *Can I revoke the TOD deed if I change my mind?* Yes. The TOD deed is revocable. No
7 one, including the beneficiaries, can prevent you from revoking the deed.

8 *How do I revoke the TOD deed?* There are two ways to revoke a recorded TOD deed: (1)
9 Complete and notarize a revocation form, and record it in each [county] where the property is
10 located. (2) Complete and notarize a new TOD deed that disposes of the same property, and
11 record it in each [county] where the property is located. In addition, you can transfer the property
12 to someone else during your lifetime.

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

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

17 *What if I name more than one beneficiary?* You may name more than one beneficiary.
18 Unless you specify otherwise, the primary beneficiaries (or if none survives you, the alternate
19 beneficiaries) will become co-owners in equal shares.

20 **Reporter’s Note**

21 These forms are based on the California proposed form, with modifications.
22
23

SECTION 302. FORM OF REVOCATION.

A document substantially in the following form satisfies the requirements for a form of revocation under this [act].

[front of form]

REVOCATION OF TRANSFER ON DEATH DEED

Notice to Owner

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

Identifying Information

Owner(s) of Property Making This Revocation

(name)

(mailing address)

(name)

(mailing address)

Legal Description of the Property:

Revocation

I revoke all my previous transfer on death deeds affecting this property.

Signature(s) of Owner(s) Making This Revocation

[(SEAL)]

(signature)

(date)

_____[(SEAL)]_____

(signature)

(date)

Acknowledgment

[insert acknowledgment here]

[back of form]

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form.

Have it notarized. Record the form in each [county] where the property is located. The form must be notarized and recorded before your death or it has no effect.

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

How do I “record” the form? Take the completed and notarized form to the [county recorder] for the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is located in more than one [county], you must record the deed in each [county].

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

Reporter’s Note

The form is based on the form in Section 301.

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

3
4 SECTION 401. 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 SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
12 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal
13 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et. seq.,
14 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
15 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
16 U.S.C. Section 7003(b).

17 Reporter's Note

18
19 The NCCUSL Drafting Rules state: "If an act contains a provision requiring a notice or
20 other record *or a signature, whether electronic or written*, [this] section should be included"
21 (emphasis supplied).
22

23 A Legislative Note will explain that jurisdictions with the Uniform Electronic
24 Transactions Act do not need this Section.
25

26 SECTION 403. REPEALS. The following acts and parts of acts are hereby repealed:

27 (1)

1 (2)

2 (3)

3 **Reporter's Note**

4
5 There will be a Legislative Note, either here or at the beginning of the Act, drawing
6 states' attention to the growing harmonization of the rules governing probate and nonprobate
7 transfers. The Legislative Note will encourage states enacting this Act to consider extending
8 probate rules to transfer on death deeds and other nonprobate transfers, with respect to the
9 following: (1) ademption of specific devises; (2) antilapse; (3) revocation by divorce; (4)
10 revocation by homicide (also known as the "slayer rule"); (5) survivorship; and (6) the surviving
11 spouse's elective share.
12

13 **SECTION 404. EFFECTIVE DATE.** This [act] takes effect
14