

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

WITHOUT PREFATORY NOTE OR COMMENTS

COPYRIGHT © 2009

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 15, 2009

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

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

SECTION 2. DEFINITIONS. In this [act]:

- (1) “Beneficiary” means a person that receives property under a transfer on death deed.
- (2) “Designated beneficiary” means a person designated to receive property in a transfer on death deed.
- (3) “Joint owner” means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant[,][and] [owner of community property with a right of survivorship[,][and tenant by the entirety]. The term does not include a tenant in common [or owner of community property without a right of survivorship].
- (4) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (5) “Property” means an interest in real property located in this state which is transferable on the death of the owner.
- (6) “Transfer on death deed” means a deed authorized under this [act].
- (7) “Transferor” means an individual who makes a transfer on death deed.

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

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

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

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

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

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

SECTION 9. REQUIREMENTS. A transfer on death deed:

- (1) except as otherwise provided in paragraph (2), must contain the essential elements and formalities of a properly recordable inter vivos deed;
- (2) must state that the transfer to the designated beneficiary is to occur at the transferor's death;
- and
- (3) must be recorded before the transferor's death in the public records in [the office of the county recorder of deeds] of the [county] where the property is located.

SECTION 10. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. A transfer on death deed is effective without:

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

(2) consideration.

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

- (a) Subject to subsection (b), an instrument is effective to revoke a recorded transfer on death deed, or any

part of it, only if the instrument:

(1) is:

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

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

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

(2) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in [the office of the county recorder of deeds] of the [county] where the deed is recorded.

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

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

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

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

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

SECTION 12. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE.

During a transferor's life, a transfer on death deed does not:

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

the property;

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

(3) affect an interest or right of the transferor's secured or unsecured creditors or future creditors, even if they have actual or constructive notice of the deed;

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

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

(6) subject the property to claims or process of the designated beneficiary's creditors.

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

(a) Except as otherwise provided in the transfer on death deed[,][or] in this section[,][or in [cite state statutes on antilapse, revocation by divorce or homicide, survival and simultaneous death, and elective share, if applicable to nonprobate transfers]], on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to paragraph (2), the interests in the property are transferred to the designated beneficiaries in accordance with the deed.

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

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

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) Subject to [cite state recording act], a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and [cite state recording act], the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

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

(1) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

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

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

SECTION 14. DISCLAIMER. A beneficiary may disclaim all or part of the beneficiary's interest as provided by [cite state statute or the Uniform Disclaimer of Property Interests Act].

SECTION 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES.

Alternative A

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [cite state

statute or Section 6-102 of the Uniform Probate Code].

Alternative B

- (a) To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed.
- (b) If more than one property is transferred by one or more transfer on death deeds, the liability under subsection (a) is apportioned among the properties in proportion to their net values at the transferor's death.
- (c) A proceeding to enforce the liability under this section must be commenced not later than [18 months] after the transferor's death.

End of Alternatives

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

(front of form)

REVOCABLE TRANSFER ON DEATH DEED FORM

NOTICE TO OWNER

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

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

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name

Mailing
address

Printed name

Mailing
address

Legal description of the property:

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

Printed name

Mailing address, if
available

ALTERNATE BENEFICIARY – Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

Printed name

Mailing address, if
available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

| | |
|-----------|---------------|
| _____ | [(SEAL)]_____ |
| | _____ |
| Signature | Date |

| | |
|-----------|---------------|
| _____ | [(SEAL)]_____ |
| | _____ |
| Signature | Date |

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other

individual authorized by law to take acknowledgments. Record the form in each [county] where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the “legal description” of the property necessary? Yes.

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 of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up the deed.

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

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

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

I am being pressured to complete this form. What should I do? Do not complete this form under pressure.

Seek help from a trusted family member, a friend, or a lawyer.

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

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

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

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

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

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

| | | |
|--|--------------|-----------------|
| | | |
| | Printed name | Mailing address |

| | | |
|--|--------------|-----------------|
| | | |
| | Printed name | Mailing address |

Legal description of the property:

REVOCATION

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

| | |
|-----------|---------------|
| _____ | [(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 acknowledged before a notary public or other individual authorized to take acknowledgments.

Record the form in the public records in [the office of the county recorder of deeds] of each [county] where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

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

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

I am being pressured to complete this form. What should I do? Do not complete this form under pressure.

Seek help from a trusted family member, a friend, or a lawyer.

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

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

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

SECTION 20. REPEALS. The following are repealed:

SECTION 21. EFFECTIVE DATE. This [act] takes effect