

D R A F T  
FOR DISCUSSION ONLY

# **UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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Draft of March 9, 2009

*WITH PREFATORY NOTE AND COMMENTS*

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ON UNIFORM STATE LAWS

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March 9, 2009

## **DRAFTING COMMITTEE ON UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

NATHANIEL STERLING, 4180 Oak Hill Ave., Palo Alto, CA 94306, *Chair*

TURNER P. BERRY, 2700 PNC Plaza, Louisville, KY 40202

RHODA B. BILLINGS, 5525 Williams Rd., Lewisville, NC 27023

TOM BOLT, 5600 Royal Dane Mall, St. Thomas, VI 00802-6410

THOMAS L. JONES, University of Alabama School of Law, University Station, P.O. Box 865557, Tuscaloosa, AL 35486-0050

EDWARD F. LOWRY, JR., 4200 N. 82nd St., Suite 2001, Scottsdale, AZ 85251

ROBERT L. MCCURLEY, JR., Alabama Law Institute, P.O. Box 861425, Tuscaloosa, AL 35486

JAMES R. PENDER, 4001 North Rodney Parham Rd., Suite 101, Little Rock, AR 72212

PATRICK A. RANDOLPH, JR., University of Missouri-Kansas City School of Law, 5100 Rockhill Rd., Kansas City, MO 64110

GLEE S. SMITH, P.O. Box 667, Lawrence, KS 66044

MICHAEL P. SULLIVAN, 80 South 8th St., 500 IDS Center, Minneapolis, MN 55402-3796

THOMAS P. GALLANIS, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455, *Reporter*

### **EX OFFICIO**

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*

ANNE L. MCGIHON, 837 Sherman St., Denver, CO 80203, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISOR**

DENNIS M. HORN, 2099 Pennsylvania Ave. NW, Washington, DC 20006, *ABA Advisor*

SUSAN N. GARY, University of Oregon School of Law, 1515 Agate St., Eugene, OR 97403, *ABA Section Advisor*

### **EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.nccusl.org](http://www.nccusl.org)

# UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

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# UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

## Prefatory Note

One of the main innovations in the property law of the twentieth century has been the development of asset-specific will substitutes for the transfer of property at death. By these mechanisms, an owner may designate beneficiaries to receive the property at the owner's death without waiting for probate and without the beneficiary designation needing to comply with the witnessing requirements of wills. Examples of specific assets that today routinely pass outside of probate include the proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in pay on death (POD) bank accounts.

Today, nonprobate transfers are widely accepted. The trend has largely focused on assets that are personal property, such as the assets described in the preceding paragraph. However, long-standing uniform law speaks more broadly. Section 6-101 of the Uniform Probate Code (UPC) provides: "*A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary*" (emphasis supplied).

A small but emerging number of jurisdictions have implemented the principle of UPC §6-101 by enacting statutes providing an asset-specific mechanism for the nonprobate transfer of land. This is done by permitting owners of interests in real property to execute and record a transfer on death (TOD) deed. By this deed, the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime, the beneficiaries have no interest in the property, and the owner retains full power to transfer or encumber the property or to revoke the TOD deed.

Twelve states have enacted statutes authorizing TOD deeds. In the chronological order of the statutes' enactment, the states are: Missouri (1989), Kansas (1997), Ohio (2000), New Mexico (2001), Arizona (2002), Nevada (2003), Colorado (2004), Arkansas (2005), Wisconsin (2006), Montana (2007), Oklahoma (2008), and Minnesota (2008).

This draft follows from the meeting of the Committee on Style in Winter 2009.

# 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] [an owner of community property with a right of survivorship[,][ and a tenant by the entirety]. The term does not include a tenant in common [or an 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 that 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 executes and acknowledges a recorded transfer on death deed.

### Comment

Paragraph (1) defines a beneficiary as a person that receives property under a transfer on death deed. This links the definition of “beneficiary” to the definition of a “person.” A beneficiary can be any person, including a revocable trust.

1 Paragraph (2) defines a designated beneficiary as a person designated to receive property  
2 in a transfer on death deed. This links the definition of a “designated beneficiary” to the  
3 definition of a “person.” A designated beneficiary can be any person, including a revocable trust.  
4

5 The distinction between a “beneficiary” and a “designated beneficiary” is easily  
6 illustrated. Section 13 provides that, on the transferor’s death, the property that is the subject of a  
7 transfer on death deed is transferred to the designated beneficiaries who survive the transferor. If  
8 *X* and *Y* are the designated beneficiaries but only *Y* survives the transferor, then *Y* is a beneficiary  
9 and *X* is not. A further illustration comes into play if Section 13 is made subject to the state’s  
10 antilapse statute. If *X* fails to survive the transferor but has a descendant, *Z*, who survives the  
11 transferor, the antilapse statute creates a substitute gift in favor of *Z*. The designated beneficiaries  
12 are *X* and *Y*, but the beneficiaries are *Y* and *Z*.  
13

14 Paragraph (3) provides a definition of a “joint owner” as an individual who owns property  
15 with one or more other individuals with a right of survivorship. The term is used in Sections 11  
16 and 13.  
17

18 Paragraph (4) is the standard Uniform Law Commission definition of a “person.”  
19

20 The effect of Paragraph (5) is that the act applies to all interests in real property that are  
21 transferable at the death of the owner.  
22

23 Paragraph (6) provides that a “transfer on death deed” is a deed authorized under this act.  
24 In some states with existing transfer on death deed legislation, the legislation has instead used the  
25 term “beneficiary deed.” The term “transfer on death deed” is preferred, to be consistent with the  
26 transfer on death registration of securities. See Article 6, Part 3, of the Uniform Probate Code,  
27 containing the Uniform TOD Security Registration Act.  
28

29 Paragraph (7) limits the definition of a “transferor” to an individual. The term  
30 “transferor” does not include a corporation, business trust, estate, trust, partnership, limited  
31 liability company, association, joint venture, public corporation, government or governmental  
32 subdivision, agency, or instrumentality, or any legal or commercial entity other than an  
33 individual. The term also does not include an agent. The power of an agent to create or revoke a  
34 transfer on death deed is determined by other law, such as the Uniform Power of Attorney Act, as  
35 indicated in the Comments to Sections 9 and 11.  
36

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

#### 40 **Comment** 41

42 This section provides that the act applies to a transfer on death deed executed before, on,  
43 or after the effective date of the act by a transferor dying on or after the effective date of the act.

1 This section is consistent with the Uniform Probate Code’s provisions governing transfer on  
2 death registration of securities. Those provisions “appl[y] to registrations of securities in  
3 beneficiary form made before or after [effective date], by decedents dying on or after [effective  
4 date].” Uniform Probate Code §6-311.

5  
6 **SECTION 4. NONEXCLUSIVITY.** This [act] does not affect any method of  
7 transferring property otherwise permitted under the law of this state.

8 **Comment**  
9

10 This section provides that the act is nonexclusive. The act does not affect any method of  
11 transferring property otherwise permitted under state law.

12  
13 One such method is the present transfer of a springing executory interest. Consider the  
14 following examples:

15  
16 *Example 1.* *A* conveys Blackacre “to *B*, to vest in possession at my death.” By this  
17 conveyance, *A* has made a present transfer of a future interest (a springing executory interest) to  
18 *B*. The transfer is irrevocable. The future interest will ripen into possession at *A*’s death, even if *B*  
19 fails to survive *A*.

20  
21 *Example 2.* *A* executes, acknowledges, and records a transfer on death deed for Blackacre,  
22 naming *B* as the designated beneficiary. During *A*’s lifetime, no interest passes to *B*, and *A* may  
23 revoke the deed. If unrevoked, the deed will transfer possession to *B* at *A*’s death only if *B*  
24 survives *A*.

25  
26 Note that these two methods of transfer have different effects and are governed by  
27 different rules.

28  
29 **SECTION 5. TRANSFER ON DEATH DEED AUTHORIZED.** An individual may  
30 transfer property to one or more beneficiaries effective at the transferor’s death by a transfer on  
31 death deed.

32 **Comment**

33 This section authorizes a transfer on death deed and makes it clear that the transfer is not  
34 an inter vivos transfer. The transfer occurs at the transferor’s death.

35  
36 The transferor is an individual, but the singular includes the plural. Multiple individuals  
37 can readily act together to transfer property by a transfer on death deed, as in the common case of  
38 a husband and wife who own the property as joint tenants or as tenants by the entirety.

39  
40 The transferor may select any form of ownership, concurrent or successive, absolute or

conditional, contingent or vested, valid under state law. Among many other things, this permits the transferor to designate one or more primary beneficiaries and one or more alternate beneficiaries to take in the event the primary beneficiaries fail to survive the transferor. This freedom to specify the form of the transferee's interest comports with the fundamental principle articulated in the Restatement (Third) of Property (Wills and Other Donative Transfers) §10.1 that the donor's intention should be "given effect to the maximum extent allowed by law." As the Restatement explains in Comment c to §10.1, "American law curtails freedom of disposition only to the extent that the donor attempts to make a disposition or achieve a purpose that is prohibited or restricted by an overriding rule of law."

Notwithstanding this freedom of disposition, transferors are encouraged as a practical matter to avoid formulating dispositions that would complicate title. Dispositions containing conditions or class gifts, for example, may require a court proceeding to sort out the beneficiaries' interests. Transferors are encouraged to use straightforward dispositions (e.g., to designated beneficiaries who are identified by name) that facilitate the smooth and uncomplicated transfer of title.

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

#### **Comment**

A fundamental feature of a transfer on death deed is that the transferor retains the power to revoke the deed. Section 6 is framed as a mandatory rule in order to protect uninformed grantors.

If the transferor promises to make the deed irrevocable or not to revoke the deed, the promisee may have a remedy under other law if the promise is broken. The deed remains revocable despite the promise.

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

#### **Comment**

This section is consistent with Uniform Probate Code §6-101(a), which provides: "A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary."

As the Comment to Uniform Probate Code §6-101 explains, because the mode of transfer is declared to be nontestamentary, the instrument of transfer is not a will and does not have to be



executed in compliance with the formalities for wills, nor does the instrument need to be probated.

Whether a document that is ineffective as a transfer on death deed (e.g., because it has not been recorded before the transferor’s death) should be given effect as a testamentary instrument will depend on the applicable facts and on the wills law of the jurisdiction. Section 2-503 of the Uniform Probate Code provides in pertinent part: “Although a document ... was not executed in compliance with Section 2-502, the document ... is treated as if it had been executed in compliance with that section if the proponent of the document ... establishes by clear and convincing evidence that the decedent intended the document ... to constitute ... (iii) an addition to or alteration of the [decedent’s] will ....”

**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.

### Comment

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

A transfer on death deed is not affected if the transferor subsequently loses capacity. On the ability of an agent under a power of attorney to make or revoke a transfer on death deed, see the Comments to Sections 9 and 11.

**SECTION 9. REQUIREMENTS.** A transfer on death deed:

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

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

(3) must be recorded before the transferor's death in the public records in [the office of

the county recorder of deeds] of the [county] where the property is located.

### **Comment**

Paragraph (1) requires a transfer on death deed to contain the same essential elements and formalities, other than a present intention to convey, as are required for a properly recordable inter vivos deed under state law. In all states, this includes the requirement that the deed be acknowledged by the transferor before a notary public or other individual authorized by law to take acknowledgments. In the context of transfer on death deeds, the requirement of acknowledgment fulfills at least four functions. First, it cautions a transferor that he or she is performing an act with legal consequences. Such caution is important where, as here, the transferor does not experience the wrench of delivery because the transfer occurs at death. Second, acknowledgment helps to prevent fraud. Third, acknowledgment facilitates the recording of the deed. Fourth, acknowledgment enables the rule in Section 11 that a later acknowledged deed prevails over an earlier acknowledged deed.

Paragraph (2) emphasizes an important distinction between an inter vivos deed and a transfer on death deed. An inter vivos deed evidences an intention to transfer, at the time of the conveyance, an interest in property, either a present interest or a future interest. In contrast, a transfer on death deed evidences an intention that the transfer occur at the transferor's death. Under no circumstances should a transfer on death deed be given effect as an inter vivos deed; to do so would violate the transferor's intention that the transfer occur at the transferor's death.

Paragraph (3) requires a transfer on death deed to be recorded before the transferor's death in the county (or other appropriate administrative division of a state, such as a parish) where the land is located. If the property described in the deed is in more than one county, the deed is effective only with respect to the property in the county or counties where the deed is recorded. The requirement of recordation before death helps to prevent fraud by ensuring that all steps necessary to the effective transfer on death deed be completed during the transferor's lifetime. The requirement of recordation before death also enables all parties to rely on the recording system. For these reasons, all states that have enacted transfer on death deed statutes require the deed to be recorded before the transferor's death.

The act does not define, but instead relies on other law to determine, the authority of an agent. An individual's agent may execute a transfer on death deed on the individual's behalf to the extent permitted by other law, such as the Uniform Power of Attorney Act.

### **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.

1 **Comment**

2  
3 This section makes it clear that a transfer on death deed is effective without notice or  
4 delivery to or acceptance by the beneficiary during the transferor's lifetime (Paragraph (1)) and  
5 without consideration (Paragraph (2)).  
6

7 Paragraph (1) is consistent with the fundamental distinction between a transfer on death  
8 deed and an inter vivos deed. Under the former, but not under the latter, the transfer occurs at the  
9 transferor's death. Therefore, there is no requirement of notice, delivery or acceptance during the  
10 transferor's life. This does not mean that the beneficiary is required to accept the property. The  
11 beneficiary may disclaim the property, as explained in Section 14 and the accompanying  
12 Comment.  
13

14 Paragraph (2) is consistent with the law of real property transfers. A deed need not be  
15 supported by consideration.  
16

17 **SECTION 11. REVOCATION BY INSTRUMENT AUTHORIZED;**  
18 **REVOCATION BY ACT NOT PERMITTED.**

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

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

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

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

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

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

30 (1) revocation by a transferor does not affect the deed as to the interest of another  
31 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) Nothing in this section limits the effect of an inter vivos transfer of the property.

### **Comment**

This section concerns revocation by instrument and revocation by act. On revocation by change of circumstances, such as by divorce or homicide, see Section 13 and the accompanying Comment.

Subsection (a) provides the exclusive methods of revoking, in whole or in part, a recorded transfer on death deed by a subsequent instrument. Revocation by an instrument not specified, such as the transferor's will, is not permitted. This limitation is consistent with the uniform acts governing multiple-party bank accounts. See Uniform Probate Code §6-213(b) ("A right of survivorship arising from the express terms of the account, Section 6-212, or a POD designation, may not be altered by will.")

A recorded transfer on death deed may be revoked by instrument only by (1) a subsequently acknowledged transfer on death deed, (2) a subsequently acknowledged instrument of revocation, such as the form in Section 17, or (3) a subsequently acknowledged inter vivos deed containing an express revocation clause. Consider the following examples:

*Example 1.* T executed, acknowledged and recorded a transfer on death deed for Blackacre. Later, T executed, acknowledged and recorded a second transfer on death deed for Blackacre, containing an express revocation clause revoking "all my prior transfer on death deeds concerning this property." The second deed revoked the first deed. The revocation occurred when the second deed was recorded. (For the result if the second deed had not contained the express revocation clause, see Example 5.)

*Example 2.* T executed, acknowledged and recorded two transfer on death deeds for Blackacre. Both deeds expressly revoked "all my prior transfer on death deeds concerning this property." The dates of acknowledgment determine which deed revoked the other. The first deed was acknowledged November 1; the second deed was acknowledged December 15. The second deed is the later acknowledged, so it revoked the first deed. The revocation occurred when the second deed was recorded.

*Example 3.* T executed and acknowledged a transfer on death deed for Blackacre. T later executed and acknowledged a revocation form. Both instruments were recorded. Because the revocation form was acknowledged later than the deed, the form revoked the deed. The revocation occurred when the form was recorded.

1       *Example 4.* *T* executed and acknowledged a transfer on death deed for Blackacre. *T* later  
2 executed and acknowledged an inter vivos deed conveying Blackacre and expressly revoking the  
3 transfer on death deed. Both instruments were recorded. Because the inter vivos deed contained  
4 an express revocation provision and was acknowledged later than the transfer on death deed, the  
5 inter vivos deed revoked the transfer on death deed. The revocation occurred when the inter  
6 vivos deed was recorded. (For the result if the inter vivos deed had not contained an express  
7 revocation clause, see Example 8.)  
8

9       The same rules apply whether the revocation is total or partial. In the previous examples,  
10 suppose instead that the initial transfer on death deed provided for the transfer of two parcels,  
11 Blackacre and Whiteacre, and that the subsequent instrument revoked the transfer on death deed  
12 as to Blackacre. The subsequent instrument revoked the transfer on death deed in part.  
13

14       If the property described in the original deed is in more than one county, the revocation is  
15 effective only with respect to the property in the county or counties where the revoking deed or  
16 instrument is recorded.  
17

18       Subsection (a)(1)(A) speaks of revocation “expressly or by inconsistency.” This provision  
19 references the well-established law of revocation by inconsistency of wills. Consider the  
20 following examples:  
21

22       *Example 5.* *T* executed, acknowledged and recorded a transfer on death deed for  
23 Blackacre naming *X* as the designated beneficiary. Later, *T* executed, acknowledged and recorded  
24 a transfer on death deed for the same property, Blackacre, containing no express revocation of the  
25 earlier deed but naming *Y* as the designated beneficiary. Later, *T* died. The recording of the deed  
26 in favor of *Y* revoked the deed in favor of *X* by inconsistency. At *T*’s death, *Y* is the owner of  
27 Blackacre.  
28

29       *Example 6.* *T*, the owner of Blackacre in fee simple absolute, executed, acknowledged  
30 and recorded a transfer on death deed for Blackacre naming *X* as the designated beneficiary.  
31 Later, *T* executed, acknowledged and recorded a transfer on death deed containing no express  
32 revocation of the earlier deed but naming *Y* as the designated beneficiary of a life estate (or a  
33 mineral interest) in Blackacre. Later, *T* died. The recording of the deed in favor of *Y* partially  
34 revoked the deed in favor of *X* by inconsistency. At *T*’s death, *Y* is the owner of a life estate (or a  
35 mineral interest) in Blackacre, and *X* is the owner of the remainder.  
36

37       The question is sometimes raised whether a recorded deed of conveyance to a third party  
38 *without an express revocation clause* operates as a revocation of an earlier transfer on death  
39 deed. The answer highlights the important distinction between “revocation” and “ademption by  
40 extinction.” Ademption by extinction can sometimes have the same practical effect as revocation,  
41 namely that the transfer on death deed is ineffective to transfer the property to the designated  
42 beneficiary at the transferor’s death. Nothing in this section changes the fact, as indicated in  
43 subsection (d). However, depending on the circumstances, the practical effect of ademption can  
44 sometimes be different from revocation, and the doctrines are different. Revocation means that  
45 the transfer on death deed is rendered void. The revocation occurs when the revoking deed or  
46 instrument is recorded. Ademption by extinction means that the transfer of the specified property

cannot occur because the property is not owned by the transferor at death. The ademption occurs at the transferor's death. Consider the following examples:

*Example 7.* *T* executed, acknowledged and recorded a transfer on death deed for Blackacre, naming *X* as the designated beneficiary. Later, *T* executed, acknowledged and recorded a revocation form for Blackacre. When the revocation form was recorded, the transfer on death deed was revoked.

*Example 8.* *T* executed, acknowledged and recorded a transfer on death deed for Blackacre naming *X* as the designated beneficiary. Later, *T* conveyed Blackacre to *Y* and recorded the *T*-to-*Y* deed. Later, *T* died. The deed to *Y* did not revoke the transfer on death deed. However, at *T*'s death, Blackacre was not owned by *T*. Therefore, the attempted transfer on death of Blackacre from *T* to *X* was adeemed by extinction. *Y* is the owner of Blackacre.

The distinction between "revocation" and "ademption by extinction" can have practical consequences depending on how state law evolves. The law of wills, governing probate transfers, typically provides that if specifically devised property is not in the testator's estate at death, the designated beneficiary is still entitled, for example, to any balance of a purchase price remaining to be paid and, to take another example, to any proceeds remaining to be paid on fire or casualty insurance covering the property. See Uniform Probate Code §2-606(a), which currently applies only to wills, not to will substitutes. The Joint Editorial Board for Uniform Trust and Estate Acts has begun a conversation on whether the Uniform Probate Code's provisions on ademption by extinction should be extended to nonprobate transfers, thus harmonizing the treatment of wills and will substitutes on this aspect of the law. This act takes no position on the question. However, by accepting the well recognized distinction between revocation and ademption by extinction, the act leaves the door open for such future harmonization.

Subsection (b) supplies rules governing revocation by instrument in the event of multiple owners. Subsection (b)(1) provides that revocation by a transferor does not affect a transfer on death deed as to the interest of another transferor. Subsection (b)(2) provides that a transfer on death deed of joint owners is revoked only if it is revoked by all of the living joint owners. This rule is consistent with Uniform Probate Code §6-306, which provides in pertinent part: "A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary."

Subsection (c) provides that a recorded transfer on death deed may not be revoked by a revocatory act performed on the deed. Such an act includes burning, tearing, canceling, obliterating, or destroying the deed or any part of it.

This statute does not define, but instead looks to other law to determine, the authority of an agent. An individual's agent may revoke a transfer on death deed on the individual's behalf to the extent permitted by other law, such as the Uniform Power of Attorney Act.

**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.

#### **Comment**

The fundamental feature of a transfer on death deed is that it does not operate until the transferor's death. The transfer occurs at the transferor's death, not before.

Paragraph (1): A transfer on death deed, during the transferor's lifetime, does not affect the interests or rights of the transferor or any other owners. The deed does not affect the transferor's right to transfer or encumber the property, nor does it sever a joint tenancy, nor should it trigger a due-on-sale clause in the transferor's mortgage.

Paragraph (2): A transfer on death deed does not affect transferees, whether or not they have notice of the deed. Like a will, the transfer on death deed is ambulatory. It has no effect on inter vivos transfers.

Paragraph (3): A transfer on death deed, during the transferor's lifetime, does not affect pre-existing or future creditors, secured or unsecured, whether or not they have an interest in the property or notice of the deed.

Paragraph (4): A transfer on death deed, during the transferor's lifetime, does not affect the transferor's or designated beneficiary's eligibility for any form of public assistance, including Medicaid. On this point, the drafting committee specifically disapproves of the contrary approach of Colo. Rev. Stat. §15-15-403.

Paragraph (5): During the transferor's lifetime, a transfer on death deed does not create a legal or equitable interest in the designated beneficiary. The beneficiary does not have an interest that can be assigned or encumbered. Note, however, that this rule would not preclude the

1 doctrine of after-acquired title. A warranty deed from a designated beneficiary to a third party  
2 would operate to pass the beneficiary's title to the third party after the transferor's death.

3  
4 Paragraph (6): A transfer on death deed, during the transferor's lifetime, does not make  
5 the property subject to claims or process of the designated beneficiary's creditors. The deed has  
6 no more effect than a will.

7  
8 **SECTION 13. EFFECT OF TRANSFER ON DEATH DEED AT**  
9  
10 **TRANSFEROR'S DEATH.**  
11

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

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

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

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

24 (4) If the transferor has identified two or more designated beneficiaries to receive  
25 concurrent interests in the property, the share of one that lapses or fails for any reason passes to  
26 the other, or to the others in proportion to the interest of each in the remaining part of the  
27 property to be held concurrently.

28 (b) Subject to [cite state recording act], a beneficiary takes the property subject to all  
29 conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to



1 which the property is subject at the transferor's death. For purposes of this subsection and [cite  
2 state recording act], the recording of the transfer on death deed is deemed to have occurred at the  
3 transferor's death.

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

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

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

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

11 **Legislative Note:** *One of the significant trends in the law of family property in the twentieth*  
12 *century has been the growing harmonization of the constructional and substantive rules*  
13 *governing deathtime transfers, whether the transfers occur in or outside of the probate process.*  
14 *Section 7.2 of the Restatement (Third) of Property (Wills and Other Donative Transfers)*  
15 *provides: "Although a will substitute need not be executed in compliance with the statutory*  
16 *formalities required for a will, such an arrangement is, to the extent appropriate, subject to*  
17 *substantive restrictions on testation and to rules of construction and other rules applicable to*  
18 *testamentary dispositions."*  
19

20 *The Uniform Probate Code contains statutory provisions treating wills and will*  
21 *substitutes alike for many purposes, including (1) antilapse; (2) revocation by divorce; (3)*  
22 *revocation by homicide (the "slayer rule"); (4) survival and simultaneous death; and (5) the*  
23 *elective share of a surviving spouse.*  
24

25 *In some cases, the harmonization is achieved by applying the relevant rule to any*  
26 *"governing instrument," which is defined in Uniform Probate Code §1-201(18) as "a deed, will,*  
27 *trust, insurance or annuity policy, account with POD designation, security registered in*  
28 *beneficiary form (TOD), pension, profitsharing, retirement, or similar benefit plan, instrument*  
29 *creating or exercising a power of appointment or a power of attorney, or a dispositive,*  
30 *appointive, or nominative instrument of any similar type." The Uniform Probate Code's rules on*  
31 *revocation by divorce, revocation by homicide, and survival and simultaneous death apply to any*  
32 *governing instrument. See Uniform Probate Code §§2-702 (survival and simultaneous death), 2-*  
33 *803 (revocation by homicide), 2-804 (revocation by divorce).*  
34

35 *For the elective share, the Uniform Probate Code treats wills and will substitutes alike by*  
36 *defining the decedent's "augmented estate" to include both probate and nonprobate transfers.*

1 *See Uniform Probate Code §2-203(a).*

2  
3 *For antilapse, the Uniform Probate Code has separate sections treating wills (§2-603)*  
4 *and will substitutes (§§2-706, 2-707), but the latter are modeled on the former.*

5  
6 *In light of the growing harmonization of the rules governing probate and nonprobate*  
7 *transfers, states enacting this act may wish to consider extending to nonprobate mechanisms,*  
8 *such as transfer on death deeds, the probate rules governing antilapse, revocation by divorce,*  
9 *revocation by homicide, survival and simultaneous death, and the elective share of a surviving*  
10 *spouse. See also the Legislative Note to Section 14 on disclaimers.*

## 11 12 **Comment**

13 Subsection (a) states four default rules, except as otherwise provided by the transfer on  
14 death deed, by this section, or by other provisions of state law governing nonprobate transfers.  
15 On this last, and the desirability of extending the probate rules governing antilapse, revocation on  
16 divorce or homicide, survival and simultaneous death, and the elective share of the surviving  
17 spouse to nonprobate instruments such as transfer on death deeds, see the Comment to Section  
18 13.

19  
20 The four default rules established by subsection (a) are these. First, the property that is the  
21 subject of an effective transfer on death deed and owned by the transferor at death is transferred  
22 at the transferor's death to the designated beneficiaries as provided in the deed. The rule  
23 implements the transferor's intention as described in the deed. Consider the following example:

24  
25 *Example 1. A executes, acknowledges and records a transfer on death deed for Blackacre*  
26 *naming X as the primary beneficiary and Y as the alternate beneficiary if X fails to survive A.*  
27 *Both X and Y survive A. Blackacre is transferred to X at A's death in accordance with the*  
28 *provisions of the deed.*

29  
30 This default rule implements the fundamental principle that the provisions of the deed  
31 control the disposition of the property, unless otherwise provided by state law.

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

36  
37 The bracketed language at the beginning of subsection (a) enables a state to make the  
38 default rules subject to other statutes, such as an antilapse statute or a statute providing for  
39 revocation on divorce. Consider the following examples:

40  
41 *Example 2. A executes, acknowledges and records a transfer on death deed for Blackacre*  
42 *naming X as the primary beneficiary and Y as the alternate beneficiary if X fails to survive A. In*  
43 *fact, X fails to survive A, who is survived by Y and by X's child, Z. Assume that the state's*  
44 *antilapse statute applies to transfer on death deeds and creates a substitute gift in Z that*  
45 *supersedes the alternative designation in favor of Y. (For such a statute, see Uniform Probate*

1 Code §2-706.) Blackacre is transferred to Z at A's death in accordance with the provisions of the  
2 deed as modified by the antilapse statute.

3  
4 *Example 3.* A executes, acknowledges and records a transfer on death deed for Blackacre  
5 naming her spouse, X, as the primary beneficiary and Y as the alternate beneficiary if X fails to  
6 survive A. Later, A and X divorce. Assume that the state's statute on revocation by divorce  
7 applies to transfer on death deeds and revokes the designation in favor of X, with the effect that  
8 the provisions of the transfer on death deed are given effect as if X had disclaimed. (For such a  
9 statute, see Uniform Probate Code §2-804.) Assume further that the effect of the putative  
10 disclaimer is that X is treated as having failed to survive A. (See the Uniform Disclaimer of  
11 Property Interests Act §6(a)(3)(B).) Blackacre is transferred to Y at A's death in accordance with  
12 the provisions of the deed as modified by the revocation on divorce and disclaimer statutes.

13  
14 Note that the property must be owned by the transferor at death. Property no longer  
15 owned by the transferor at death cannot be transferred by a transfer on death deed, just as it  
16 cannot be transferred by a will. This is the principle of ademption by extinction, discussed in the  
17 Comment to Section 11.

18  
19 In almost every instance, the transferor will own the property not only at death but also  
20 when the transfer on death deed is executed, but the latter is not imperative. Consider the  
21 following example. H and W, a married couple, held Blackacre as tenants by the entirety. H  
22 executed, acknowledged and recorded a transfer on death deed for Blackacre in favor of X. W  
23 later died, at which point H owned Blackacre in fee simple absolute. Under the law of some  
24 states, there may be a question whether the transfer on death deed is effective, given that H  
25 executed it when Blackacre was owned, not by H and W, but by the marital entity. The correct  
26 answer is that the transfer on death deed is effective at H's death because Blackacre is owned by  
27 H at H's death. See, e.g., *Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055 (Del. Ch. 1982)  
28 (mortgage granted by one tenant by the entirety is not void upon execution but remains inchoate  
29 during the lives of both spouses, and becomes a valid lien if the spouse who executed the  
30 mortgage survives the other spouse or if the spouses get divorced).

31  
32 The second default rule established by subsection (a) is that the interest of a designated  
33 beneficiary is contingent on surviving the transferor. This default rule treats wills and will  
34 substitutes alike. The interest of a designated beneficiary who fails to survive the transferor  
35 lapses. On the desirability of extending statutory antilapse protection to will substitutes such as  
36 transfer on death deeds, see the Comment to Section 13.

37  
38 The third default rule established by subsection (a) is that concurrent beneficiaries receive  
39 equal and undivided interests with no right of survivorship among them. This default rule is  
40 consistent with the general presumption in favor of tenancy in common. See Powell on Real  
41 Property §51.02. The rule is also consistent with Uniform Probate Code §6-212 governing  
42 multiple-party accounts and §6-307 governing the transfer on death registration of securities.

43  
44 The fourth and last default rule established by subsection (a) is that, in the event of the  
45 lapse or failure of an interest to be held concurrently, the share that lapses or fails passes  
46 proportionately to the surviving concurrent beneficiaries. Consider the following example:

1       *Example 4.* *A* executed, acknowledged and recorded a transfer on death deed for  
2 Blackacre naming *X*, *Y*, and *Z* as the designated beneficiaries. *X* and *Y* survived *A*, but *Z* failed to  
3 survive *A*. The transfer on death deed is effective and, in the absence of an antilapse statute,  
4 transfers Blackacre to *X* and *Y*. This default rule is consistent with the transferor’s probable  
5 intention in the absence of an antilapse statute and also with Uniform Probate Code §2-604(b) on  
6 the lapse of a residuary devise. On the desirability of extending statutory antilapse protection to  
7 will substitutes such as transfer on death deeds, see the Comment to Section 13.

8  
9       Subsection (b) concerns the effect of transactions during the transferor’s life. The  
10 subsection states an intermediate rule between two extremes. One extreme would provide that  
11 transactions during the transferor’s life affect the beneficiary only if the transactions are recorded  
12 before the transferor’s death. This would unfairly disadvantage the transferor’s creditors and  
13 transferees. The other extreme would provide that transactions during the transferor’s life always  
14 supersede the beneficiary’s interest, even if the recording act would provide otherwise. Between  
15 these two positions is the rule of subsection (b). The subsection provides, as a general rule, that  
16 the beneficiary’s interest is subject to all conveyances, encumbrances, assignments, contracts,  
17 mortgages, liens, and other interests to which the property is subject at the transferor’s death.  
18 However, there is an exception to this general rule when the state recording act so provides. The  
19 state recording act will so provide when two conditions are met: (1) the inter vivos conveyance or  
20 encumbrance is unrecorded throughout the transferor’s life (the legal fiction in this subsection  
21 protects persons who transact with the transferor and record any time before the transferor’s  
22 death); and (2) the beneficiary is protected by the recording act. These two conditions will both  
23 be met only in rare instances. Most beneficiaries of transfer on death deeds are gratuitous,  
24 whereas state recording acts protect only purchasers for value. See Powell on Real Property  
25 §82.02.

26  
27       Subsection (c) provides that the survivorship right of a joint owner takes precedence over  
28 the transfer on death deed. This rule is consistent with the law of joint tenancy and wills: the right  
29 of survivorship takes precedence over a provision in a joint tenant’s will.

30  
31       Subsection (d) states the mandatory rule that a transfer on death deed transfers the  
32 property without covenant or warranty of title. The rule is mandatory for two reasons: first, to  
33 prevent mishaps by uninformed grantors; and second, to recognize that a transfer on death deed is  
34 a will substitute. The rule of this section is consistent with the longstanding law of wills. As  
35 stated by Sir Edward Coke, “an express warranty cannot be created by will.” Coke on Littleton  
36 386a.

37  
38       **SECTION 14. DISCLAIMER.** A beneficiary may disclaim all or part of the  
39 beneficiary’s interest as provided by [cite state statute or the Uniform Disclaimer of Property  
40 Interests Act].

41       ***Legislative Note:** States should check their disclaimer statutes for any necessary amendments.*  
42       *The following are conforming amendments to the Uniform Disclaimer of Property Interests Act:*  
43

1           **SECTION 12. DELIVERY OR FILING.**

2           (a) In this section, “beneficiary designation” means an instrument, other  
3           than an instrument creating a trust, naming the beneficiary of:

- 4                   (1) an annuity or insurance policy;  
5                   (2) an account with a designation for payment on death;  
6                   (3) a security registered in beneficiary form;  
7                   (4) a pension, profit-sharing, retirement, or other employment-related  
8           benefit plan; or  
9                   (5) any other nonprobate transfer at death.

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

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

- 15                   (1) a disclaimer must be delivered to the personal representative of  
16           the decedent’s estate; or  
17                   (2) if no personal representative is then serving, it must be filed with a  
18           court having jurisdiction to appoint the personal representative.

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

- 20                   (1) a disclaimer must be delivered to the trustee then serving, or if no  
21           trustee is then serving, to the personal representative of the decedent’s estate; or  
22                   (2) if no personal representative is then serving, it must be filed with a  
23           court having jurisdiction to enforce the trust.

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

- 25                   (1) a disclaimer must be delivered to the trustee then serving;  
26                   (2) if no trustee is then serving, it must be filed with a court having  
27           jurisdiction to enforce the trust; or  
28                   (3) if the disclaimer is made before the time the instrument creating  
29           the trust becomes irrevocable, it must be delivered to the settlor of a revocable  
30           trust or the transferor of the interest.

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

34           (g) In the case of an interest created by a beneficiary designation ~~made~~  
35           after ~~the time~~ the designation becomes irrevocable;\_

- 36                   (1) a disclaimer of an interest in personal property must be  
37           delivered to the person obligated to distribute the interest;\_ and  
38                   (2) a disclaimer of an interest in real property must be recorded in  
39           [the office of the county recorder of deeds] of the [county] where the real  
40           property that is the subject of the disclaimer is located.

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

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

- 46                   (1) the disclaimer must be delivered to the holder of the power or to

*the fiduciary acting under the instrument that created the power; or*

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

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

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

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

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

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

**Comment**

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

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

**Comment**

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

1  
2 **Comment**  
3

4 A beneficiary of a transfer on death deed may disclaim the property interest the deed  
5 attempts to transfer. While this section relies on other law, such as the Uniform Disclaimer of  
6 Property Interests Act, to govern the disclaimer, two general principles should be noted.  
7

8 First, there is no need under the law of disclaimers to execute a disclaimer in advance.  
9 During the transferor's life, a designated beneficiary has no interest in the property. See Section  
10 12. Nothing passes to the designated beneficiary while the transferor is alive, hence there is no  
11 need to execute a disclaimer during that time.  
12

13 Second, an effective disclaimer executed after the testator's death "relates back" to the  
14 moment of the attempted transfer, here the death of the transferor. Because the disclaimer  
15 "relates back," the beneficiary is regarded as never having had an interest in the disclaimed  
16 property. The Uniform Disclaimer of Property Interests Act reaches this result, without using the  
17 language of relation back, in §6(b)(1): "The disclaimer takes effect as of the time the instrument  
18 creating the interest becomes irrevocable ...." As the Comment to §6 explains, "This Act  
19 continues the effect of the relation back doctrine, not by using the specific words, but by directly  
20 stating what the relation back doctrine has been interpreted to mean."  
21

22 **SECTION 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY**  
23 **ALLOWANCES.**  
24

25 **Alternative A**

26 A beneficiary of a transfer on death deed is liable for an allowed claim against the  
27 transferor's probate estate and statutory allowances to a surviving spouse and children to the  
28 extent provided in [cite state statute or Section 6-102 of the Uniform Probate Code].  
29

30 **Alternative B**

31 (a) To the extent the transferor's probate estate is insufficient to satisfy an allowed claim  
32 against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce  
33 the liability against property transferred at the transferor's death by a transfer on death deed.

34 (b) If more than one property is transferred by one or more transfer on death deeds, the  
35 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 no later than [18 months] after the transferor's death.

### End of Alternatives

**Legislative Note:** *Alternative A is for a state with an existing statute governing creditors' rights in nonprobate transfers, such as Uniform Probate Code §6-102. States are encouraged to enact such statutes, thereby treating nonprobate transfers comprehensively. Alternative B is a second-best approach, supplying creditor protection but governing only transfer on death deeds and not other nonprobate mechanisms.*

### Comment

Alternative A defers to other law, such as Uniform Probate Code §6-102, to establish the liability of a beneficiary of a transfer on death deed for creditor claims and statutory allowances.

Uniform Probate Code §6-102 was added in 1998 to establish the principle that recipients of nonprobate transfers can be required to contribute to pay allowed claims and statutory allowances to the extent the probate estate is insufficient. The fundamental rule of liability is contained in §6-102(b): "Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee." The other provisions of UPC §6-102 implement this liability rule.

For states not favoring the comprehensive approach of UPC §6-102(b) or the equivalent, Alternative B provides an *in rem* liability rule applying to transfer on death deeds. The property transferred under a transfer on death deed is liable to the transferor's probate estate for properly allowed claims and statutory allowances to the extent the estate is insufficient.

One of the functions of probate is creditor protection. Uniform Probate Code §6-102, referenced in Alternative A, attempts to provide comprehensive creditor protection within the realm of nonprobate transfers. In addition, this Act in Alternative B provides more creditor protection than is typically available under current law. For many transferors, the transfer on death deed will be used in lieu of joint tenancy with right of survivorship. Under the usual law of joint tenancy, the unsecured creditors of a deceased joint tenant have no recourse against the property or against the other joint tenant. Instead, the property passes automatically to the survivor, free of the decedent's debts. See Comment 5 to UPC §6-102. If the debts cannot be paid from the probate estate, the creditor is out of luck. Under Alternative B, in contrast, the property transferred under a transfer on death deed is liable to the probate estate for properly allowed claims and statutory allowances to the extent the estate is insufficient.

**Legislative Note:** *The next two sections are bracketed for states wishing to provide optional statutory forms. An enacting jurisdiction should review its statutory requirements for deeds and*



*for acknowledgments and amend the statutory forms provided in Sections 16 and 17 where necessary for conformity with those requirements.*

**[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

\_\_\_\_\_  
Signature

[(SEAL)]\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

[(SEAL)]\_\_\_\_\_  
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) you have put on the property during your lifetime. 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 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 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.

Is the “legal description” necessary? Yes.

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? 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.

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.

***Legislative Note:*** *If an enacting jurisdiction changes the act, the jurisdiction should review the answers to the common questions in Sections 16 and 17 to ensure the answers remain accurate.*

### Comment

The form in this section is optional. The section is based on Section 4 of the Uniform Health-Care Decisions Act.

Ten of the twelve states with transfer on death deed statutes provide a statutory form. See Ariz. Stat. §33-405(K); Ark. Stat. §18-12-608(h), Colo. Stat. §15-15-404; Kans. Stat. §59-3502; Minn. Stat. §507.071(24); Mont. Stat. §72-6-121(13); Nev. Stat. §111.109(6); N.M. Stat. §45-6-401(C); Ohio Code §5302.22(A); Okla. H.B. 2639 §3.

The transfer on death deed is likely to be used by consumers for whom the preparation of a tailored inter vivos revocable trust is too costly. The form in this section is designed to be understandable and consumer-friendly.

For examples of statutory forms containing answers to questions likely to be asked by consumers, see the Illinois statutory forms for powers of attorney. 755 Ill. Comp. Stat. 45/3-3 (power of attorney for property); 755 Ill. Comp. Stat. 45/4-10 (power of attorney for health care).

**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:

---

1 Printed name Mailing address

2  
3  
4 Printed name Mailing address

5  
6 Legal description of the property:

7  
8 REVOCATION

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

10 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

11 Signature [(SEAL)]  
12 Date

13  
14 Signature [(SEAL)]  
15 Date

16  
17 ACKNOWLEDGMENT

18 [insert acknowledgment here]

19 (back of form)

20 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

22 Have it acknowledged before a notary public or other individual authorized to take  
23 acknowledgments. Record the form in the public records in [the office of the county recorder of  
24 deeds] of each [county] where the property is located. The form must be acknowledged and  
25 recorded before your death or it has no effect.

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

29 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.

### **Comment**

The form in this section is optional. The section is based on Section 4 of the Uniform Health-Care Decisions Act.

Six of the twelve states with transfer on death deed statutes provide a statutory form for revocation. See Ariz. Stat. §33-405(L); Ark. Stat. §18-12-608(i), Colo. Stat. §15-15-405; Minn. Stat. §507.071(25); Mont. Stat. §72-6-121(14); Nev. Stat. §111.109(7).

The aim of the form in this section is to be understandable and consumer-friendly.

**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 acts and parts of acts are hereby repealed:

1           (1) .....

2           (2) .....

3           (3) .....

4       ***Legislative Note:** This section is for states wishing to replace their transfer on death deed*  
5       *statutes with this Act.*

6  
7           **SECTION 21. EFFECTIVE DATE.** This [act] takes effect .....  
8