

D R A F T

FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting, February 1-2, 2008

WITH PREFATORY AND REPORTER'S NOTES

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**DRAFTING COMMITTEE ON UNIFORM TRANSFER ON DEATH
FOR REAL PROPERTY 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 72211

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

UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT

TABLE OF CONTENTS

Reporter’s General Prefatory Note..... 1
Reporter’s General Legislative Note. 1

**[ARTICLE] 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE..... 2
SECTION 102. DEFINITIONS..... 2
SECTION 103. APPLICABILITY..... 3
SECTION 104. NONEXCLUSIVITY..... 4

**[ARTICLE] 2
TRANSFER ON DEATH DEEDS**

SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED..... 5
SECTION 202. TRANSFER ON DEATH DEED NOT TESTAMENTARY..... 5
SECTION 203. CAPACITY OF TRANSFEROR..... 5
SECTION 204. REQUIREMENTS..... 6
SECTION 205. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT
REQUIRED..... 7
SECTION 206. MULTIPLE BENEFICIARIES..... 8
SECTION 207. REVOCATION BY SUBSEQUENT INSTRUMENT..... 9
SECTION 208. REVOCATION BY ACT NOT PERMITTED..... 10
SECTION 209. OWNERSHIP DURING TRANSFEROR’S LIFETIME..... 11
SECTION 210. OWNERSHIP AT TRANSFEROR’S DEATH..... 11
SECTION 211. DISCLAIMER..... 13
SECTION 212. NO COVENANTS OR WARRANTIES..... 15
SECTION 213. PROTECTION OF BONA FIDE PURCHASERS OR ENCUMBRANCERS. 15
SECTION 214. PROOF OF DEATH..... 15
SECTION 215. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED..... 16

**[ARTICLE] 3
LIABILITY OF BENEFICIARIES OF TRANSFER ON DEATH DEEDS
FOR CREDITOR CLAIMS AND [STATUTORY ALLOWANCES]**

SECTION 301. LIABILITY..... 18
SECTION 302. LIMIT ON LIABILITY..... 19

**[ARTICLE] 4
FORMS**

SECTION 401. FORM OF TRANSFER ON DEATH DEED..... 21
SECTION 402. FORM OF REVOCATION..... 27

[ARTICLE] 5
MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	30
SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	30
SECTION 503. REPEALS.....	31
SECTION 504. EFFECTIVE DATE.	31

UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT

Reporter's General Prefatory Note

This draft is for discussion at our committee meeting on February 1-2, 2008. The draft is divided into five articles. Article 1 contains general provisions. Article 2 authorizes transfer on death deeds and addresses many of the formal and substantive issues concerning such deeds. Article 3 focuses on a beneficiary's liability for creditor claims and statutory allowances. Article 4 contains suggested statutory forms. These forms are drafts, and suggestions for improvement are encouraged. Article 5 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.

Reporter's General Legislative Note

An important trend in the law of succession is the growing harmonization of the rules governing probate and nonprobate transfers. For an example of legislation applying the same rules to both kinds of transfers, see Article 2 of the Uniform Probate Code, especially Parts 2, 7 and 8. States enacting this Act are encouraged to consider extending the probate rules governing ademption of specific devises, antilapse, revocation by divorce, revocation by homicide, survivorship, and the surviving spouse's elective share to nonprobate transfers. The Uniform Law Commission can assist by providing sample statutory language.

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

2
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Real Property
6 Transfer on Death Act.

7 **Reporter’s Note**

8
9 At the drafting committee meeting on November 30, 2007, the committee recommended
10 that the name of the project be changed from “Transfer on Death for Real Property” to “Real
11 Property Transfer on Death.”
12

13
14 **SECTION 102. DEFINITIONS.** In this [act]:

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

16 (2) “Joint owner” means an individual who owns property concurrently with one or more
17 other individuals with a right of survivorship. The term includes a joint tenant[, an owner of
18 community property with a right of survivorship,][and a tenant by the entirety]. The term does
19 not include a tenant in common[or an owner of community property without a right of
20 survivorship].

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

24 (4) “Property” means an estate or interest in real property that is transferable on the death
25 of the owner.

1 (5) “Survive” means neither to die before an event, including the death of another person,
2 nor to be deemed to have died before an event under [cite state statute][the Uniform
3 Simultaneous Death Act].

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

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

7 **Reporter’s Note**

8
9 The definition in Paragraph (1) links the term “beneficiary” to the standard NCCUSL
10 definition of “person.” The Comment will explain that the definition includes the trustee of a
11 trust even if the trust is revocable, a rule that accords with the current transfer on death deed
12 statutes that address the issue. For example, Ark. Code §18-12-608(c)(2) provides: “A
13 beneficiary deed may be used to transfer an interest in real property to a trust estate even if the
14 trust is revocable.”

15
16 Paragraph (2) provides a definition of owners who hold concurrent interests with a right
17 of survivorship.

18
19 Paragraph (3) is a standard NCCUSL definition.

20
21 Paragraph (4) provides that the Act applies to all interests in real property that are
22 transferable at the death of the owner.

23
24 Paragraph (5) incorporates state law on the required period of survival. The Uniform
25 Simultaneous Death Act, for example, provides for a 120-hour period of survival.

26
27 Paragraph (7) limits the use of transfer on death deeds to transferors who are individuals.
28 The term “transferor” does not include a corporation, business trust, estate, trust, partnership,
29 limited liability company, association, joint venture, public corporation, government or
30 governmental subdivision, agency, or instrumentality, or any legal or commercial entity other
31 than an individual. The term also does not include an agent acting under a power of attorney.
32

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

1 effective date of this [act]].

2 **Reporter’s Note**

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4
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6
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8

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

9 **SECTION 104. NONEXCLUSIVITY.** This [act] does not affect any method of

10 transferring property that is permitted under the law of this state other than this [act] and that has
11 the effect of postponing enjoyment of the property until the death of the transferor.

12 **Reporter’s Note**

13
14
15
16
17

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

1 [ARTICLE] 2

2 TRANSFER ON DEATH DEEDS

3
4 SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED. A transfer on

5 death deed is effective to transfer at the transferor’s death the property owned by the transferor at
6 death and described in the deed to the beneficiary as provided in this [act].

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 An earlier draft of this section provided: “Property may be titled in transfer on death form
12 by executing, acknowledging, and recording a transfer on death deed in accordance with this
13 [act].” The committee suggested much of the revised wording at its meeting on November 30,
14 2007.
15

16 SECTION 202. TRANSFER ON DEATH DEED NOT TESTAMENTARY. A

17 transfer on death deed is nontestamentary.

18 Reporter’s Note

19
20 This section is based on §101(a) of the Uniform Nonprobate Transfers on Death Act,
21 which provides: “A provision for a nonprobate transfer on death in an insurance policy, contract
22 of employment, bond, mortgage, promissory note, certificated or uncertificated security, account
23 agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual
24 retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property
25 agreement, or other written instrument of a similar nature is nontestamentary.”
26

27 As the Comment to §101 explains, because the mode of transfer is declared to be
28 nontestamentary, the instrument of transfer does not have to be executed in compliance with the
29 formalities for wills, nor does the instrument need to be probated, nor does the decedent’s
30 personal representative have any power or duty with respect to the asset.
31

32
33 SECTION 203. CAPACITY OF TRANSFEROR. The capacity required to make or

1 revoke a transfer on death deed is the same as that required to make a will.

2 **Reporter’s Note**

3
4 This section is drawn from §601 of the Uniform Trust Code: “The capacity required to
5 create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee
6 of a revocable trust, is the same as that required to make a will.” The rule is consistent with the
7 Restatement (Third) of Property (Wills and Other Donative Transfers) §8.1(b), which applies the
8 standard of testamentary capacity, and not the higher standard of capacity for inter vivos gifts, to
9 revocable will substitutes: “If the donative transfer is in the form of a will, a revocable will
10 substitute, or a revocable gift, the testator or donor must be capable of knowing and
11 understanding in a general way the nature and extent of his or her property, the natural objects of
12 his or her bounty, and the disposition that he or she is making of that property, and must also be
13 capable of relating these elements to one another and forming an orderly desire regarding the
14 disposition of the property.”
15

16 An earlier draft provided: “To make or revoke a transfer on death deed, a transferor must
17 have testamentary capacity.” That formulation, however, could wrongly prevent an agent under a
18 power of attorney, or a guardian, from acting on the transferor’s behalf. The Joint Editorial
19 Board for Uniform Trust and Estate Acts is currently working to correct a similar potential
20 problem in Uniform Trust Code §401(a)(1), which provides that “[a] trust is created only if ... the
21 settlor has capacity to create a trust”
22
23

24 **SECTION 204. REQUIREMENTS.**

25 (a) A transfer on death deed must:

26 (1) contain the essential elements of a deed, except a present intention to convey,
27 required under the law of this state governing inter vivos deeds;

28 (2) evidence the transferor’s intention that the transfer occur at the transferor’s
29 death;

30 (3) be acknowledged by the transferor before a notary public; and

31 (4) be recorded before the transferor’s death in the [county or counties] where the
32 property is located.

33 (b) The transferor’s agent under a power of attorney may execute a transfer on death deed

1 on the transferor's behalf to the extent permitted by [applicable law][cite state statute][the
2 Uniform Power of Attorney Act].

3 **Reporter's Note**
4

5 Subsection (a)(1): The Act requires the same essential elements of a deed, other than a
6 present intention to convey, as are required for inter vivos deeds under state law. In most
7 jurisdictions, these essential elements are: identification of the parties, description of the land,
8 and the transferor's signature.
9

10 Subsection (a)(2): This requirement emphasizes the fundamental distinction between an
11 inter vivos deed and a transfer on death deed. An inter vivos deed evidences a present intention
12 to convey. A transfer on death deed evidences an intention that the transfer occur at the
13 transferor's death. Under no circumstances should a defective transfer on death deed be given
14 effect as an inter vivos deed; to do so would violate the transferor's intention that the transfer
15 occur at the transferor's death.
16

17 Subsection (a)(3): The requirement of notarization fulfills at least two functions. First, it
18 cautions the transferor that he is performing an act with legal consequences. Such caution is
19 important where, as here, the transferor does not experience the wrench of delivery because the
20 transfer occurs at death. Second, notarization is important in order to implement the rule in
21 Section (a)(1) that a later acknowledged deed prevails over an earlier acknowledged deed.
22

23 Subsection (a)(4): This rule is consistent with the transfer on death deed statutes that
24 address the issue.
25

26 Subsection (b) defers to other law to determine an agent's authority under a power of
27 attorney.
28

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

36 **Reporter's Note**

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

2
3
4 **SECTION 206. MULTIPLE BENEFICIARIES.**

5 **Committee Alternative 1**

6 The transferor may designate multiple beneficiaries to hold in any form of concurrent or
7 successive ownership, or both, valid under the law of this state.

8 **Reporter’s Note**

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

15 **Committee Alternative 2**

16 (a) The transferor may designate multiple beneficiaries to hold in joint tenancy, in tenancy
17 in common,[in tenancy by the entirety,][in community property[with or without the right of
18 survivorship],] or in any other form of concurrent ownership valid under the law of this state.

19 (b) The transferor may designate one or more primary beneficiaries and one or more
20 alternate beneficiaries[to take in the event the primary beneficiaries fail to survive the
21 transferor]. [If the transferor designates an alternate beneficiary, the deed must state the
22 condition under which the interest of the alternate beneficiary vests.]

23 [(c) The transferor may designate one or more beneficiaries as life tenants and one or
24 more beneficiaries as remaindermen.]

25 (d)[(c)] A transfer on death deed designating multiple beneficiaries other than as
26 authorized by this section [is void][is valid as a transfer on death deed but must be construed

1 within the limits of this section].

2 **Reporter’s Note**

3 The committee asked to consider this alternative at the February 2008 meeting. The
4 brackets in subsections (b), (c) and (d) present choices for the committee, not for enacting states.

5
6 A Comment could explain that the term “life tenant” includes the holder of a life estate
7 *pur autre vie* (accord, Restatement (Third) of Property (Wills and Other Donative Transfers)
8 §24.5 (P.D. No. 12, 2007)).
9

10 **SECTION 207. REVOCATION BY SUBSEQUENT INSTRUMENT.**

11 (a) Except as otherwise provided in subsections (b) and (c), the transferor may revoke a
12 transfer on death deed by:

13 (1) executing a transfer on death deed acknowledged after the previous deed and
14 recorded before the transferor’s death that revokes the previous deed expressly or by
15 inconsistency;

16 (2) executing a revocation form acknowledged after the deed and recorded before
17 the transferor’s death that evidences the transferor’s intention to revoke the deed and that
18 contains a sufficient description of the property for the property to be identified; or

19 (3) conveying by one or more inter vivos deeds during the transferor’s lifetime all
20 the property that is the subject of the transfer on death deed.

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

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

25 (1) the recorded revocation is executed and acknowledged by all of the joint

1 owners then living; or

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

4 (d) The transferor’s agent under a power of attorney may revoke a transfer on death deed
5 on the transferor’s behalf to the extent permitted by [applicable law][cite state statute][the
6 Uniform Power of Attorney Act].

7 (e) A transfer on death deed cannot 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. Subsection (a)(3) reflects the
12 reality that a transfer on death deed is effectively revoked if it concerns only property no longer
13 owned by the transferor at death.
14

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

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

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

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

32 **SECTION 208. REVOCATION BY ACT NOT PERMITTED.** After a transfer on
33 death deed is recorded, it cannot be revoked by a revocatory act performed on the deed. A

1 revocatory act includes burning, tearing, canceling, obliterating, or destroying the deed or any
2 part of it.

3 **Reporter's Note**

4 The rule of this section is consistent with, though not explicit in, the existing transfer on
5 death deed statutes, which provide only for revocation by subsequent instrument. The second
6 sentence is drawn from Uniform Probate Code §2-507(a)(2).
7

8 **SECTION 209. OWNERSHIP DURING TRANSFEROR'S LIFETIME.** During the
9 transferor's lifetime, a transfer on death deed does not:

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

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

12 (3) affect the transferor's eligibility for [Medicaid];

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

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

16 **Reporter's Note**

17 The fundamental feature of a transfer on death deed is that it does not operate until the
18 transferor's death. During the transferor's lifetime, the deed is both revocable and ambulatory,
19 just as is a will. A transfer on death deed has no more effect during the transferor's lifetime than
20 a will. Thus, for example, a transfer on death deed, during the transferor's lifetime, does not
21 sever a joint tenancy (Paragraph (1)) nor should it affect the transferor's eligibility for
22 governmental medical assistance (Paragraph (3)). On this latter point, the committee specifically
23 disapproves of the contrary approach of Colo. Rev. Stat. §15-15-403.
24

25 **SECTION 210. OWNERSHIP AT TRANSFEROR'S DEATH.**

26 (a) Except as otherwise provided in subsections (b) and (c) [and in [cite state statute on
27 antilapse, if applicable to nonprobate transfers]], on the death of the transferor, the following

1 rules apply to the property that is the subject of the transfer on death deed and owned by the
2 transferor at death:

3 (1) The property belongs to the beneficiaries who survive the transferor in
4 accordance with the provisions of the deed.

5 (2) Unless the deed provides otherwise, if the deed designates primary and
6 alternate beneficiaries, the property belongs to the persons identified as primary beneficiaries
7 who survive the transferor or, if none, to the persons identified as alternate beneficiaries who
8 survive the transferor.

9 (3) Unless the deed provides otherwise, beneficiaries receiving concurrent
10 interests receive equal and undivided shares in the property, but there is no right of survivorship
11 between them in the event of the death of a beneficiary after the transferor's death [unless two of
12 the beneficiaries are husband and wife, in which event they receive their interests in the property
13 as [tenants by the entirety][owners of community property with right of survivorship]].

14 (4) If no beneficiary survives the transferor, the deed is void.

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

19 (c) A beneficiary who receives the transferor's interest at the transferor's death does so
20 subject to all conveyances made during the transferor's lifetime and to all encumbrances,
21 assignments, contracts, [mortgages], liens, and other interests affecting the property, whether or
22 not recorded and whether created before or after the recording of the transfer on death deed, to

1 which the property is subject at the the transferor’s death.

2 **Reporter’s Note**

3 Subsection (a)(3) is modeled on Uniform Probate Code §6-212 governing multiple-party
4 accounts. Legislatures in states without tenancy by the entirety or community property with right
5 of survivorship, or states having these forms of ownership but preferring no right of survivorship,
6 should delete the material in brackets.

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

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

23
24 The committee suggested that, in the Comment, we should refer approvingly to *In re*
25 *Estate of Roloff*, 143 P.3d 406 (Kan. Ct. App. 2006) (holding that crops should be transferred
26 with the land under a transfer on death deed because this result would be reached on the same
27 facts with any other deed).

28
29 The Comment should also address the following fact-pattern. H and W are married and
30 own property as tenants by the entirety. H executes, acknowledges and records a transfer on
31 death deed in favor of X. W later dies, at which point H owns the property in fee simple
32 absolute. Under the law of some states, there may be a question whether the transfer on death
33 deed is valid, given that H executed it when the property was owned, not by H and W, but by the
34 marital entity. The correct answer is yes. The transfer on death deed is effective at H’s death
35 because the property is owned by H at H’s death (recall the first sentence of subsection (a):
36 “...and owned by the transferor at death”). This is a straightforward application of the doctrine of
37 after-acquired property.

38
39 **SECTION 211. DISCLAIMER.**

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

3 (b) A disclaimer by a beneficiary of property subject to a transfer on death deed is not
4 effective until the disclaimer is recorded in the [county or counties] where the property that is the
5 subject of the disclaimer is located.

6 **Reporter’s Note**
7

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

16 The committee asked for more information about the delivery of a disclaimer. The
17 Uniform Disclaimer of Property Interests Act (UDPIA) provides the following in §12:
18

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

22 (g) In the case of an interest created by a beneficiary designation made after the
23 time the designation becomes irrevocable, a disclaimer must be delivered to the person
24 obligated to distribute the interest.
25

26 With a transfer on death deed, there is no required third party intermediary. UDPIA does not
27 address our fact-pattern, except to say (erroneously) in the Comment: “A disclaimer is required
28 to be filed in court only when there is no one person or entity to whom delivery can be made.”
29 This is incorrect. UDPIA requires filing in court only when there is no person to receive a
30 disclaimer concerning an interest created by will, intestate succession, or trust. UDPIA
31 §§12(c)(2), (d)(2), (e)(2). UDPIA is silent on the delivery of a disclaimer concerning an interest
32 arising by beneficiary designation where, as here, there is no “person obligated to distribute the
33 interest.”
34

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

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

3
4
5 **SECTION 212. NO COVENANTS OR WARRANTIES.** Notwithstanding a contrary
6 provision in the deed, a transfer on death deed transfers the property without covenant or
7 warranty of title.

8 **Reporter’s Note**

9
10 This provision tracks §5652(d) of the California recommended statute: “Notwithstanding
11 a contrary provision in the deed, a revocable transfer on death deed transfers the property without
12 covenant or warranty of title.” This rule is mandatory, not a default as in Colo. Rev. Stat. §15-
13 15-404(2) [“Unless the owner designates otherwise ...”], in order to prevent mishaps from
14 uninformed grantors.
15

16 **SECTION 213. PROTECTION OF BONA FIDE PURCHASERS OR**
17 **ENCUMBRANCERS.** A bona fide purchaser or encumbrancer transacting with the beneficiary
18 after the transferor’s death has the same rights and protections as if the transaction had been
19 made with the grantee of an inter vivos deed.

20 **Reporter’s Note**

21
22 The committee observed that it is hard to articulate a substantive rule on bona fide
23 purchasers or encumbrancers (BFPs), because some jurisdictions are notice jurisdictions
24 (protecting BFPs regardless of when the BFP files), some are race-notice jurisdictions (protecting
25 only BFPs who file first), and a few are race jurisdictions (protecting anyone who files first).
26 Instead, the committee decided to articulate the rule that a BFP from the beneficiary of a transfer
27 on death deed is in the same position as a BFP in the standard inter vivos transaction.
28

29 **SECTION 214. PROOF OF DEATH.** Proof of the death of a transferor or beneficiary
30 of a transfer on death deed must be established in the same manner as proof of the death of a
31 joint tenant[under [cite state statute]].

1 **Reporter’s Note**

2
3 The committee was initially uncertain whether a Uniform Act should spell out a
4 procedure for the proof of death. The Uniform Nonprobate Transfers on Death Act, for example,
5 refers in §§223 and §307 to “proof of death” without elaboration.
6

7 The committee decided to incorporate the state’s existing procedures for proving the
8 death of a joint tenant, essentially tracking Colo. Rev. Stat. §15-15-413: “Proof of the death of
9 the owner or a grantee beneficiary shall be established in the same manner as for proving the
10 death of a joint tenant.”
11

12 **SECTION 215. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED.**

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

16 (b) The contestant[:]

17 [(1)] must begin the contest proceeding within the earlier of [three years] after the
18 transferor’s death or [one year] after the beneficiary establishes the transferor’s death[.]; and]

19 [(2) may, on beginning the contest proceeding, record a notice of lis pendens in
20 the [county or counties] where the transfer on death deed is recorded.]

21 (c) A contest proceeding does not affect rights in the property acquired in good faith by a
22 bona fide purchaser or encumbrancer for value before the beginning of the proceeding.

23 **Reporter’s Note**

24
25 The grounds of contest in subsection (a) are drawn from §5696 of the California
26 recommended statute: “Nothing in this chapter limits the application of principles of fraud, undue
27 influence, duress, mistake, or other invalidating cause to a transfer of property by a revocable
28 transfer on death deed.”
29

30 Subsection (b) is drawn from §§5690(c) and 5692(b) of the California recommended
31 statute. Section 5690(c) provides: “On commencement of a contest proceeding, the contestant

1 may record a lis pendens in the county in which the revocable transfer on death deed is
2 recorded.” Section 5692(b) provides: “A contest proceeding shall be commenced within the
3 earlier of the following times: (1) Three years after the transferor’s death. (2) One year after the
4 beneficiary establishes the fact of the transferor’s death....” A Legislative Note will explain that
5 states not using, or not wishing to refer to, the notice of lis pendens should not enact Subsection
6 (b)(2).

7
8 Subsection (c) is drawn from, but departs substantially from, §5694(b) of the California
9 recommended statute, which provides: “If the proceeding was not commenced and a lis pendens
10 was not recorded within 90 days after the transferor’s death, the court shall grant appropriate
11 relief but the court order shall not affect the rights in the property of a purchaser or encumbrancer
12 for value and in good faith acquired before commencement of the proceeding and recordation of
13 a lis pendens.”

14
15 The Comment will emphasize that the venue should be determined by state law, and that
16 the limitations period for commencement of the contest should be the same as for other
17 nonprobate transfer contests (if state law already provides a limitations period for such contests)
18 or (if not) for will contests.

1 [ARTICLE] 3

2 LIABILITY OF BENEFICIARIES OF TRANSFER ON DEATH DEEDS
3 FOR CREDITOR CLAIMS AND [STATUTORY ALLOWANCES]
4

5 SECTION 301. LIABILITY.

6 (a) After the transferor’s death, the property that is the subject of an otherwise effective
7 transfer on death deed is subject to claims of the transferor’s creditors, costs of administration of
8 the transferor’s estate, the expenses of the transferor’s funeral and disposal of remains, and
9 [statutory allowances] to a surviving spouse and children to the extent the transferor’s probate
10 estate is inadequate to satisfy those claims, costs, expenses, and [allowances].

11 (b) 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
14 final allowance of the claim.

15 Reporter’s Note

16 Provisions concerning creditors’ rights and statutory allowances should be incorporated,
17 to the extent possible, into the jurisdiction’s existing procedures. The aim of this Section is
18 simply to establish the principle of liability and to state the limitations period.
19

20
21 Subsection (a) is based on Uniform Trust Code §505(a)(3): “After the death of a settlor,
22 and subject to the settlor’s right to direct the source from which liabilities will be paid, the
23 property of a trust that was revocable at the settlor’s death is subject to claims of the settlor’s
24 creditors, costs of administration of the settlor’s estate, the expenses of the settlor’s funeral and
25 disposal of remains, and [statutory allowances] to a surviving spouse and children to the extent
26 the settlor’s probate estate is inadequate to satisfy those claims, costs, expenses, and
27 [allowances].”
28

29 Subsection (b) is the same as §102(h) of the Uniform Nonprobate Transfers at Death Act,

1 with the time-periods in brackets. The first period (one year) is drawn from Uniform Probate
2 Code §3-804(a)(1); the second (60 days) is drawn from UPC §3-804(a)(2) (referencing UPC §3-
3 801(b)).
4

5 **SECTION 302. LIMIT ON LIABILITY.**

6 (a) Subject to subsection (b), the liability under Section 301 of a beneficiary of a transfer
7 on death deed is discharged by the restitution to the transferor’s estate of the property the
8 beneficiary received under the deed, together with:

9 (1) the net income the beneficiary received from the property;

10 (2) if the beneficiary encumbered the property after the transferor’s death, the
11 amount necessary to satisfy the balance of the encumbrance as of the date the property is restored
12 to the estate; and

13 (3) if the beneficiary permitted any waste of the property after the transferor’s
14 death, the amount necessary to compensate for the waste.

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

17 **Reporter’s Note**

18
19 This section is designed to permit a beneficiary to satisfy Section 301 by returning the
20 property to the transferor’s estate. If the beneficiary no longer has the property, this section does
21 not apply. The section is drawn from §5676(a)(1) and (c) of the California recommended statute:
22

23 **“§ 5676. Return of property to estate for benefit of creditors**

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

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

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

10 (b) Subject to subdivision (c), if proceedings for the administration of the
11 transferor's estate are commenced and a beneficiary made a significant improvement to
12 the property received by the beneficiary pursuant to the revocable transfer on death deed,
13 the beneficiary is liable for whichever of the following the transferor's estate elects:

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

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

24 (c) The property and amount required to be restored to the estate under this
25 section shall be reduced by any property or amount paid by the beneficiary to satisfy a
26 liability under Section 5672 [concerning the transferor's unsecured debts].

27 (d) An action to enforce the liability under this section may be brought only by the
28 personal representative of the estate of the transferor. Whether or not the personal
29 representative brings an action under this section, the personal representative may enforce
30 the liability only to the extent necessary to protect the interests of creditors of the
31 transferor.

32 (e) An action to enforce the liability under this section is forever barred three
33 years after the transferor's death. The three-year period specified in this subdivision is not
34 tolled for any reason."
35

1 [ARTICLE] 4

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 401 and 402.*

12
13 **SECTION 401. FORM OF TRANSFER ON DEATH DEED.** A document

14 substantially in one of the following forms satisfies the requirements for a transfer on death deed
15 under this [act]:

16 (1)

17 [front of form]

18 TRANSFER ON DEATH DEED

19
20 Notice to Owner: You should carefully read all information on the other side of this
21 form. YOU MAY 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 Beneficiary or Beneficiaries

4 I revoke all my prior transfer on death deeds affecting the property, and name the
5 following beneficiary(ies) to receive the property (in equal shares, unless I say otherwise):

6 Beneficiary(ies) – include mailing addresses if available

7 _____

8 _____

9 _____

10 Transfer on Death

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

12 Before my death, I may choose to revoke this deed.

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

14 _____ (SEAL) _____

15 (signature) (date)

16 _____ (SEAL) _____

17 (signature) (date)

18 Acknowledgment

19 (acknowledgment)

20 [back of form]

21 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

22 *What does the Transfer on Death (TOD) deed do? When you die, the beneficiaries will*

1 become owners of the property described in the TOD deed, subject to any debts or liens or
2 [mortgages] (or other encumbrances) you have put on the property during your lifetime. Probate
3 is not required. The TOD deed has no effect until you die. It can be revoked at any time.

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

7 *How do I find the “legal description” of the property?* This information should be on the
8 deed you received when you became an owner of the property. This information is also available
9 from the [County Recorder].

10 *How do I “record” the TOD deed?* Take the completed and notarized form to the
11 [County Recorder] for the [county or counties] where the property is located. Follow the
12 instructions given by the [County Recorder] to make the form part of the official property
13 records.

14 *Can I revoke the TOD deed if I change my mind?* Yes. You can revoke the TOD deed at
15 any time. No one, including the beneficiaries, can prevent you from revoking the deed.

16 *How do I revoke the TOD deed?* There are three ways to revoke a recorded TOD deed:
17 (1) Complete, notarize, and record a revocation form. (2) Complete, notarize, and record a new
18 TOD deed that disposes of the same property. (3) Transfer the property away during your
19 lifetime.

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

22 *Do I need to tell the beneficiaries about the TOD deed?* No, but it is recommended.

1 Secrecy can cause later complications and might make it easier for others to commit fraud.

2 *What if I name more than one beneficiary?* Feel free to name one or more beneficiaries.

3 Unless you specify otherwise, the beneficiaries will become co-owners in equal shares.

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

9 (2)

10 [front of form]

11 **TRANSFER ON DEATH DEED**

12 **WITH PRIMARY AND ALTERNATE BENEFICIARIES**

13 Notice to Owner: You should carefully read all information on the other side of this
14 form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.
15

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

17 Identifying Information

18 Owner(s) Making This Deed:

19 _____

20 (name)

(mailing address)

21 _____

22 (name)

(mailing address)

23 Legal Description of the Property:

1 _____

2 Beneficiary or Beneficiaries

3 I revoke all my prior transfer on death deeds affecting the property, and name the
4 following beneficiary(ies) to receive the property (in equal shares, unless I say otherwise):

5 Primary Beneficiary(ies) – include mailing addresses if available

6 _____

7 _____

8 _____

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

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

12 _____

13 _____

14 _____

15 Transfer on Death

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

17 Before my death, I may choose to revoke this deed.

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

19 _____ (SEAL) _____

20 (signature) (date)

21 _____ (SEAL) _____

22 (signature) (date)

1 Acknowledgment
2 (acknowledgment)

3 [back of form]

4 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

5 *What does the Transfer on Death (TOD) deed do?* When you die, the beneficiaries will
6 become owners of the property described in the TOD deed, subject to any debts or liens or
7 [mortgages] (or other encumbrances) you have put on the property during your lifetime. Probate
8 is not required. The TOD deed has no effect until you die. It can be revoked at any time.

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

12 *How do I find the “legal description” of the property?* This information should be on the
13 deed you received when you became an owner of the property. This information is also available
14 from the [County Recorder].

15 *How do I “record” the TOD deed?* Take the completed and notarized form to the
16 [County Recorder] for the [county or counties] where the property is located. Follow the
17 instructions given by the [County Recorder] to make the form part of the official property
18 records.

19 *Can I revoke the TOD deed if I change my mind?* Yes. You can revoke the TOD deed at
20 any time. No one, including the beneficiaries, can prevent you from revoking the deed.

21 *How do I revoke the TOD deed?* There are three ways to revoke a recorded TOD deed:
22 (1) Complete, notarize, and record a revocation form. (2) Complete, notarize, and record a new

1 TOD deed that disposes of the same property. (3) Transfer the property away during your
2 lifetime.

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

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

7 *What if I name more than one beneficiary?* Feel free to name one or more primary
8 beneficiaries and one or more alternate beneficiaries. Unless you specify otherwise, the primary
9 beneficiaries (or if none survives you, the alternate beneficiaries) will become co-owners in equal
10 shares.

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

16 **Reporter's Note**

17 These forms are based on the California proposed form, with modifications.
18
19

20 **SECTION 402. FORM OF REVOCATION.**

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

23 [front of form]

1 REVOCATION OF TRANSFER ON DEATH DEED

2 Notice to Owner: This revocation must be recorded before you die, or it will not be
3 effective. This revocation is effective only as to the interests of owners who sign this revocation.

4 Identifying Information

5 Owner(s) of Property Making This Revocation

6 _____
7 (name) (mailing address)

8 _____
9 (name) (mailing address)

10 Legal Description of the Property:
11 _____

12 Revocation

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

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

15 _____(SEAL) _____
16 (signature) (date)

17 _____(SEAL) _____
18 (signature) (date)

19 Acknowledgment

20 (acknowledgment)

21 [back of form]

22 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

1 [ARTICLE] 5

2 MISCELLANEOUS PROVISIONS

3
4 SECTION 501. 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 502. 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 Commissioner Patricia Fry has encouraged our committee to include this section, in order
24 to ensure that we can achieve our aim of harmonizing the execution of transfer on death deeds
25 with the execution of inter vivos deeds (see our Section 204(1)). The federal Electronic
26 Signatures in Global and National Commerce Act (“E-Sign”), 15 U.S.C. §§ 7001 *et seq.*, applies
27 to instruments transferring interests in land. 15 U.S.C. §7006(13)(B) defines “transaction” to
28 include “the sale, lease, exchange, or other disposition of any interest in real property....” E-Sign
29 also permits states to supersede it. If a state has done so with respect to inter vivos deeds, our
30 Section 602 would be required in order to permit the state to do so with respect to transfer on

1 death deeds. If a state has not superseded, hence follows, E-Sign with respect to inter vivos
2 deeds, our Section 402 poses no problem, because our Section 204(1) incorporates the applicable
3 formalities.

4
5 A Legislative Note will explain that jurisdictions with the Uniform Electronic
6 Transactions Act do not need this Section.
7

8 **SECTION 503. REPEALS.** The following acts and parts of acts are hereby repealed:

9 (1)

10 (2)

11 (3)

12 **SECTION 504. EFFECTIVE DATE.** This [act] takes effect