

DRAFT
FOR DISCUSSION ONLY

REAL PROPERTY TRANSFER ON DEATH ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For January 29 - February 1, 2009 Style Committee Meeting

WITH PREFATORY NOTE AND COMMENTS

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ON UNIFORM STATE LAWS

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January 13, 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*

TURNEY 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

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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 drafting committee in December 2008. The draft is divided into four articles. Article 1 contains general provisions. Article 2 authorizes transfer on death deeds and addresses the formal and substantive issues concerning such deeds. Article 3 contains optional statutory forms. Article 4 contains miscellaneous provisions.

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

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

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

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

7 (1) “Beneficiary” means a person that receives property under a transfer on death deed.

8 (2) “Designated beneficiary” means a person designated to receive property in a transfer
9 on death deed.

10 (3) “Joint owner” means an individual who owns property concurrently with one or more
11 other individuals with a right of survivorship. The term includes a joint tenant[,][and] [an owner
12 of community property with a right of survivorship[,][and a tenant by the entirety]. The term
13 does not include a tenant in common [or an owner of community property without a right of
14 survivorship].

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

18 (5) “Property” means an interest in real property that is transferable on the death of the
19 owner.

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

21 (7) “Transferor” means an individual who executes and acknowledges a recorded transfer
22 on death deed.

23 **Comment**

24 Paragraph (1) defines a beneficiary as a person that receives property under a transfer on
25
26

1 death deed. This links the definition of “beneficiary” to the definition of a “person.” A
2 beneficiary can be any person, including a revocable trust.

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

7
8 The distinction between a “beneficiary” and a “designated beneficiary” is easily
9 illustrated. Section 209 provides that, on the transferor’s death, the property that is the subject of
10 a transfer on death deed is transferred to the designated beneficiaries who survive the transferor.
11 If *X* and *Y* are the designated beneficiaries but only *Y* survives the transferor, then *Y* is a
12 beneficiary and *X* is not. A further illustration comes into play if Section 209 is made subject to
13 the state’s antilapse statute. If *X* fails to survive the transferor but has a descendant, *Z*, who
14 survives the transferor, the antilapse statute creates a substitute gift in favor of *Z*. The designated
15 beneficiaries are *X* and *Y*, but the beneficiaries are *Y* and *Z*.

16
17 Paragraph (3) provides a definition of a “joint owner” as an individual who owns
18 property with one or more other individuals with a right of survivorship. The term is used in
19 Sections 207 and 209.

20
21 Paragraph (4) is the standard Uniform Law Commission definition of a “person.”

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

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

31
32 Paragraph (7) limits the definition of a “transferor” to an individual. The term
33 “transferor” does not include a corporation, business trust, estate, trust, partnership, limited
34 liability company, association, joint venture, public corporation, government or governmental
35 subdivision, agency, or instrumentality, or any legal or commercial entity other than an
36 individual. The term also does not include an agent. The power of an agent to create or revoke a
37 transfer on death deed is determined by other law, such as the Uniform Power of Attorney Act,
38 as indicated in the Comments to Sections 205 and 207.

39
40 **SECTION 103. APPLICABILITY.** This [act] applies to a transfer on death deed
41 executed before, on, or after [the effective date of this [act]] by a transferor dying on or after [the
42 effective date of this [act]].

43 **Comment**
44

This section provides that the act applies to a transfer on death deed executed before, on, or after the effective date of the act by a transferor dying on or after the effective date of the act. This section is consistent with the Uniform Probate Code’s provisions governing transfer on death registration of securities. Those provisions “appl[y] to registrations of securities in beneficiary form made before or after [effective date], by decedents dying on or after [effective date].” Uniform Probate Code §6-311.

SECTION 104. NONEXCLUSIVITY. This [act] does not affect any method of transferring property otherwise permitted under the law of this state.

Comment

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

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

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

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

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

1 [ARTICLE] 2

2 **TRANSFER ON DEATH DEED**

3
4 **SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED.** An individual

5 may transfer property to one or more beneficiaries effective at the transferor's death by a transfer
6 on death deed.

7 **Comment**

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

10
11 The transferor is an individual, but the singular includes the plural. Multiple individuals
12 can readily act together to transfer property by a transfer on death deed, as in the common case
13 of a husband and wife who own the property as joint tenants or as tenants by the entirety.

14
15 The transferor may select any form of ownership, concurrent or successive, absolute or
16 conditional, contingent or vested, valid under state law. Among many other things, this permits
17 the transferor to designate one or more primary beneficiaries and one or more alternate
18 beneficiaries to take in the event the primary beneficiaries fail to survive the transferor. This
19 freedom to specify the form of the transferee's interest comports with the fundamental principle
20 articulated in the Restatement (Third) of Property (Wills and Other Donative Transfers) §10.1
21 that the donor's intention should be "given effect to the maximum extent allowed by law." As
22 the Restatement explains in Comment c to §10.1, "American law curtails freedom of disposition
23 only to the extent that the donor attempts to make a disposition or achieve a purpose that is
24 prohibited or restricted by an overriding rule of law."

25
26 Notwithstanding this freedom of disposition, transferors are encouraged as a practical
27 matter to avoid formulating dispositions that would complicate title. Dispositions containing
28 conditions or class gifts, for example, may require a court proceeding to sort out the
29 beneficiaries' interests. Transferors are encouraged to use straightforward dispositions (e.g., to
30 designated beneficiaries who are identified by name) that facilitate the smooth and
31 uncomplicated transfer of title.

32
33 **SECTION 202. TRANSFER ON DEATH DEED REVOCABLE.** A transfer on death

34 deed is revocable even if the deed or a separate instrument contains a contrary provision.

35 **Comment**

36 A fundamental feature of a transfer on death deed is that the transferor retains the power
37 to revoke the deed. Section 202 is framed as a mandatory rule in order to protect uninformed
38 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 203. TRANSFER ON DEATH DEED NONTESTAMENTARY. 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 204. 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

1 revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that
2 required to make a will.”
3

4 A transfer on death deed is not affected if the transferor subsequently loses capacity. On
5 the ability of an agent under a power of attorney to make or revoke a transfer on death deed, see
6 the Comments to Sections 205 and 207.
7

8 **SECTION 205. REQUIREMENTS.** A transfer on death deed must:

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

11 (2) state that the transfer to the designated beneficiary is to occur at the transferor’s
12 death;

13 (3) be recorded before the transferor’s death in the public records in [the office of the
14 county recorder of deeds] of the [county] where the property is located.

15 **Comment**
16

17 Paragraph (1) requires a transfer on death deed to contain the same essential elements and
18 formalities, other than a present intention to convey, as are required for a properly recordable
19 inter vivos deed under state law. In all states, this includes the requirement that the deed be
20 acknowledged by the transferor before a notary public or other individual authorized by law to
21 take acknowledgments. In the context of transfer on death deeds, the requirement of
22 acknowledgment fulfills at least four functions. First, it cautions a transferor that he or she is
23 performing an act with legal consequences. Such caution is important where, as here, the
24 transferor does not experience the wrench of delivery because the transfer occurs at death.
25 Second, acknowledgment helps to prevent fraud. Third, acknowledgment facilitates the
26 recording of the deed. Fourth, acknowledgment enables the rule in Section 207 that a later
27 acknowledged deed prevails over an earlier acknowledged deed.
28

29 Paragraph (2) emphasizes an important distinction between an inter vivos deed and a
30 transfer on death deed. An inter vivos deed evidences an intention to transfer, at the time of the
31 conveyance, an interest in property, either a present interest or a future interest. In contrast, a
32 transfer on death deed evidences an intention that the transfer occur at the transferor’s death.
33 Under no circumstances should a transfer on death deed be given effect as an inter vivos deed; to
34 do so would violate the transferor’s intention that the transfer occur at the transferor’s death.
35

36 Paragraph (3) requires a transfer on death deed to be recorded before the transferor’s
37 death in the county (or other appropriate administrative division of a state, such as a parish)
38 where the land is located. If the property described in the deed is in more than one county, the
39 deed is effective only with respect to the property in the county or counties where the deed is
40 recorded. The requirement of recordation before death helps to prevent fraud by ensuring that all

1 steps necessary to the effective transfer on death deed be completed during the transferor's
2 lifetime. The requirement of recordation before death also enables all parties to rely on the
3 recording system. For these reasons, all states that have enacted transfer on death deed statutes
4 require the deed to be recorded before the transferor's death.

5
6 The act does not define, but instead relies on other law to determine, the authority of an
7 agent. An individual's agent may execute a transfer on death deed on the individual's behalf to
8 the extent permitted by other law, such as the Uniform Power of Attorney Act.

9
10 **SECTION 206. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT**

11 **REQUIRED.** A transfer on death deed is effective without:

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

14 (2) consideration.

15 **Comment**

16
17 This section makes it clear that a transfer on death deed is effective without notice or
18 delivery to or acceptance by the beneficiary during the transferor's lifetime (Paragraph (1)) and
19 without consideration (Paragraph (2)).

20
21 Paragraph (1) is consistent with the fundamental distinction between a transfer on death
22 deed and an inter vivos deed. Under the former, but not under the latter, the transfer occurs at the
23 transferor's death. Therefore, there is no requirement of notice, delivery or acceptance during the
24 transferor's lifetime. This does not mean that the beneficiary is required to accept the property.
25 The beneficiary may disclaim the property as explained in Section 210 and the accompanying
26 Comment.

27
28 Paragraph (2) is consistent with the law of real property transfers. A deed need not be
29 supported by consideration.

30
31 **SECTION 207. REVOCATION BY INSTRUMENT AUTHORIZED;**
32 **REVOCATION BY ACT NOT PERMITTED.**

33 (a) Subject to subsection (b), the only instrument that revokes a recorded transfer on
34 death deed, or any part of it, is an instrument that is acknowledged by the transferor after the
35 acknowledgment of the deed and recorded before the transferor's death in the public records in
36 [the office of the county recorder of deeds] of the [county] where the property is located and is:

- (1) a transfer on death deed that revokes the deed or part, expressly or by inconsistency;
- (2) an instrument of revocation that expressly revokes the deed or part; or
- (3) an inter vivos deed that expressly revokes the transfer on death deed or part.

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

- (1) revocation by a transferor does not affect the deed as to the interest of another transferor; and
- (2) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed has been recorded, it may not be revoked by a physical act performed on the deed.

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 302, 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 8.)

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

1 deed is the later acknowledged, so it revoked the first deed. The revocation occurred when the
2 second deed was recorded.

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

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

16
17 The same rules apply whether the revocation is total or partial. In the previous examples,
18 suppose instead that the initial transfer on death deed provided for the transfer of two parcels,
19 Blackacre and Whiteacre, and that the subsequent instrument revoked the transfer on death deed
20 as to Blackacre. The subsequent instrument revoked the transfer on death deed in part.

21
22 If the property described in the original deed is in more than one county, the revocation is
23 effective only with respect to the property in the county or counties where the revoking deed or
24 instrument is recorded.

25
26 The question is sometimes raised whether a deed of conveyance to a third party *without*
27 *an express revocation clause* operates as a revocation of an earlier transfer on death deed. The
28 answer highlights the important distinction between “revocation” and “ademption by extinction.”
29 Ademption by extinction can have the same practical effect as revocation. However, the
30 doctrines are different. Revocation means that the transfer on death deed is rendered void. The
31 revocation occurs when the revoking deed or instrument is recorded. Ademption by extinction
32 means that the transfer cannot occur because the property to be transferred is not owned by the
33 transferor at death. The ademption occurs at the transferor’s death. Consider the following
34 examples:

35
36 *Example 5.* *T* executed, acknowledged and recorded a transfer on death deed for
37 Blackacre, naming *X* as the designated beneficiary. Later, *T* executed, acknowledged and
38 recorded a revocation form for Blackacre. When the revocation form was recorded, the transfer
39 on death deed was revoked.

40
41 *Example 6.* *T* executed, acknowledged and recorded a transfer on death deed for
42 Blackacre naming *X* as the designated beneficiary. Later, *T* conveyed Blackacre to *Y*. Later, *T*
43 died. The deed conveying Blackacre to *Y* did not revoke the transfer on death deed. However, at
44 *T*’s death, Blackacre was not owned by *T*. Therefore, the attempted transfer on death of
45 Blackacre from *T* to *X* was adeemed by extinction. *Y* is the owner of Blackacre.

46
47 *Example 7.* *T* executed, acknowledged and recorded a transfer on death deed for

Blackacre naming *X* as the designated beneficiary. Later, *T* conveyed Blackacre to *Y*. Later, *Y* conveyed Blackacre back to *T*. Later, *T* died, owning Blackacre. There is no revocation or ademption. At *T*'s death, the transfer on death deed is effective to transfer Blackacre to *X*.

The inter vivos conveyance from *T* to *Y* had the same practical effect as a revocation in Example 6, but not in Example 7.

Subsection (a)(1) speaks of revocation "expressly or by inconsistency." This provision references the well-established law of revocation by inconsistency of wills. Consider the following examples:

Example 8. *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 transfer on death deed for the same property, Blackacre, containing no express revocation of the earlier deed but naming *Y* as the designated beneficiary. Later, *T* died. The recording of the deed in favor of *Y* revoked the deed in favor of *X* by inconsistency. At *T*'s death, *Y* is the owner of Blackacre.

Example 9. *T*, the owner of Blackacre in fee simple absolute, executed, acknowledged and recorded a transfer on death deed for Blackacre naming *X* as the designated beneficiary. Later, *T* executed, acknowledged and recorded a transfer on death deed containing no express revocation of the earlier deed but naming *Y* as the designated beneficiary of a life estate (or a mineral interest) in Blackacre. Later, *T* died. The recording of the deed in favor of *Y* partially revoked the deed in favor of *X* by inconsistency. At *T*'s death, *Y* is the owner of a life estate (or a mineral interest) in Blackacre, and *X* is the owner of the remainder.

Subsection (b) supplies rules governing revocation 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 physical act performed on the deed. A physical act includes burning, tearing, canceling, obliterating, or destroying the deed or any part of it.

This act 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 208. EFFECT OF TRANSFER ON DEATH DEED DURING
TRANSFEROR'S LIFETIME. During the transferor's lifetime, a transfer on death deed does not:

(1) affect the interests or rights of the transferor or any other owners, including the right to transfer or encumber the property;

(2) affect the interests or rights of transferees, whether or not they have actual or constructive notice of the deed;

(3) affect the interests or rights of the transferor's pre-existing or future creditors, secured or unsecured, whether or not 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 doctrine of after-acquired title. A warranty deed from a designated beneficiary to a third party

1 would operate to pass the beneficiary's title to the third party after the transferor's death.

2
3 Paragraph (6): A transfer on death deed, during the transferor's lifetime, does not make
4 the property subject to claims or process of the designated beneficiary's creditors. The deed has
5 no more effect than a will.

6
7 **SECTION 209. EFFECT OF TRANSFER ON DEATH DEED AT**
8
9 **TRANSFEROR'S DEATH.**

10
11 (a) Except as otherwise provided in the transfer on death deed[,][or] in this section[,][or
12 in [cite state statutes on antilapse, revocation by divorce or homicide, survival and simultaneous
13 death, and elective share, if applicable to nonprobate transfers]], on the death of the transferor,
14 the following rules apply to property that is the subject of an effective transfer on death deed and
15 owned by the transferor at death:

16 (1) Subject to subsection (3), the interests in the property are transferred to the
17 designated beneficiaries in accordance with the deed.

18 (2) Concurrent beneficiaries receive equal and undivided interests in the property
19 with no right of survivorship among them.

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

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

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

1 state recording act], the recording of the transfer on death deed is deemed to have occurred at the
2 transferor's death.

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

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

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

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

10 ***Legislative Note:*** States should determine whether their statutes on antilapse, revocation by
11 divorce or homicide, survival and simultaneous death, and the elective share of the surviving
12 spouse apply to nonprobate instruments such as transfer on death deeds. On the desirability of
13 extending these probate rules to nonprobate transfers, see the Legislative Note and Comment to
14 Section 403.

15
16 ***Legislative Note on state death tax apportionment [confer with Turney Berry].***

17
18 **Comment**

19 Subsection (a) states four default rules, except as otherwise provided by the transfer on
20 death deed, by this section, or by other provisions of state law governing nonprobate transfers.
21 On this last, and the desirability of extending the probate rules governing antilapse, revocation
22 on divorce or homicide, survival and simultaneous death, and the elective share of the surviving
23 spouse to nonprobate instruments such as transfer on death deeds, see the Comment to Section
24 403.

25
26 The four default rules established by subsection (a) are these. First, the property that is
27 the subject of an effective transfer on death deed and owned by the transferor at death is
28 transferred at the transferor's death to the designated beneficiaries as provided in the deed. The
29 rule implements the transferor's intention as described in the deed. Consider the following
30 example:

31
32 *Example 1.* A executes, acknowledges and records a transfer on death deed for Blackacre
33 naming X as the primary beneficiary and Y as the alternate beneficiary if X fails to survive A.
34 Both X and Y survive A. Blackacre is transferred to X at A's death in accordance with the
35 provisions of the deed.

36
37 This default rule implements the fundamental principle that the provisions of the deed

1 control the disposition of the property, unless otherwise provided by state law.

2
3 The drafting committee approves of the result in *In re Estate of Roloff*, 143 P.3d 406
4 (Kan. Ct. App. 2006) (holding that crops should be transferred with the land under a transfer on
5 death deed because this result would be reached on the same facts with any other deed).

6
7 The bracketed language at the beginning of subsection (a) enables a state to make the
8 default rules subject to other statutes, such as an antilapse statute or a statute providing for
9 revocation on divorce. Consider the following examples:

10
11 *Example 2.* A executes, acknowledges and records a transfer on death deed for Blackacre
12 naming X as the primary beneficiary and Y as the alternate beneficiary if X fails to survive A. In
13 fact, X fails to survive A, who is survived by Y and by X's child, Z. Assume that the state's
14 antilapse statute applies to transfer on death deeds and creates a substitute gift in Z that
15 supersedes the alternative designation in favor of Y. (For such a statute, see Uniform Probate
16 Code §2-706.) Blackacre is transferred to Z at A's death in accordance with the provisions of the
17 deed as modified by the antilapse statute.

18
19 *Example 3.* A executes, acknowledges and records a transfer on death deed for Blackacre
20 naming her spouse, X, as the primary beneficiary and Y as the alternate beneficiary if X fails to
21 survive A. Later, A and X divorce. Assume that state's statute on revocation by divorce applies to
22 transfer on death deeds and revokes the designation in favor of X, with the effect that the
23 provisions of the transfer on death deed are given effect as if X had disclaimed. (For such a
24 statute, see Uniform Probate Code §2-804.) Assume further that the effect of the putative
25 disclaimer is that X is treated as having failed to survive A. (See the Uniform Disclaimer of
26 Property Interests Act §6(a)(3)(B).) Blackacre is transferred to Y at A's death in accordance with
27 the provisions of the deed as modified by the revocation on divorce and disclaimer statutes.

28
29 Note that the property must be owned by the transferor at death. Property no longer
30 owned by the transferor at death cannot be transferred by a transfer on death deed, just as it
31 cannot be transferred by a will. This is the principle of ademption by extinction, discussed in the
32 Comment to Section 207.

33
34 In almost every instance, the transferor will own the property not only at death but also
35 when the transfer on death deed is executed, but the latter is not imperative. Consider the
36 following example. H and W, a married couple, held Blackacre as tenants by the entirety. H
37 executed, acknowledged and recorded a transfer on death deed for Blackacre in favor of X. W
38 later died, at which point H owned Blackacre in fee simple absolute. Under the law of some
39 states, there may be a question whether the transfer on death deed is effective, given that H
40 executed it when Blackacre was owned, not by H and W, but by the marital entity. The correct
41 answer is that the transfer on death deed is effective at H's death because Blackacre is owned by
42 H at H's death. See, e.g., *Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055 (Del. Ch. 1982)
43 (mortgage granted by one tenant by the entirety is not void upon execution but remains inchoate
44 during the lives of both spouses, and becomes a valid lien if the spouse who executed the
45 mortgage survives the other spouse or if the spouses get divorced).

46
47 The second default rule established by subsection (a) is that concurrent beneficiaries

1 receive equal and undivided interests with no right of survivorship among them. This default rule
2 is consistent with the general presumption in favor of tenancy in common. See Powell on Real
3 Property §51.02. The rule is also consistent with Uniform Probate Code §6-212 governing
4 multiple-party accounts and §6-307 governing the transfer on death registration of securities.

5
6 The third default rule established by subsection (a) is that the interest of a designated
7 beneficiary is contingent on surviving the transferor. This default rule treats wills and will
8 substitutes alike. The interest of a designated beneficiary who fails to survive the transferor
9 lapses. On the desirability of extending statutory antilapse protection to will substitutes such as
10 transfer on death deeds, see the Comment to Section 403.

11
12 The fourth and last default rule established by subsection (a) is that, in the event of the
13 lapse or failure of an interest to be held concurrently, the share that lapses or fails passes
14 proportionately to the surviving concurrent beneficiaries. Consider the following example:

15
16 *Example 4.* A executed, acknowledged and recorded a transfer on death deed for
17 Blackacre naming X, Y, and Z as the designated beneficiaries. X and Y survived A, but Z failed to
18 survive A. The transfer on death deed is effective and transfers Blackacre to X and Y. This
19 default rule is consistent with the transferor's probable intention in the absence of an antilapse
20 statute and also with Uniform Probate Code §2-604(b) on the lapse of a residuary devise. On the
21 desirability of extending statutory antilapse protection to will substitutes such as transfer on
22 death deeds, see the Comment to Section 403.

23
24 Subsection (b) concerns the effect of transactions during the transferor's lifetime. The
25 subsection states an intermediate rule between two extremes. One extreme would provide that
26 transactions during the transferor's lifetime affect the beneficiary only if the transactions are
27 recorded before the transferor's death. This would unfairly disadvantage the transferor's
28 creditors and transferees. The other extreme would provide that transactions during the
29 transferor's lifetime always supersede the beneficiary's interest, even if the recording act would
30 provide otherwise. Between these two positions is the rule of subsection (b). The subsection
31 provides, as a general rule, that the beneficiary's interest is subject to all conveyances,
32 encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property
33 is subject at the transferor's death. However, there is an exception to this general rule when the
34 state recording act so provides. The state recording act will so provide when two conditions are
35 met: (1) the inter vivos conveyance or encumbrance is unrecorded throughout the transferor's
36 lifetime (the legal fiction in this subsection protects persons who transact with the transferor and
37 record any time before the transferor's death); and (2) the beneficiary is protected by the
38 recording act. These two conditions will both be met only in rare instances. Most beneficiaries of
39 transfer on death deeds are gratuitous, whereas state recording acts protect only purchasers for
40 value. See Powell on Real Property §82.02.

41
42 Subsection (c) provides that the survivorship right of a joint owner takes precedence over
43 the transfer on death deed. This rule is consistent with the law of joint tenancy and wills: the
44 right of survivorship takes precedence over a provision in a joint tenant's will.

45
46 Subsection (d) states the mandatory rule that a transfer on death deed transfers the
47 property without covenant or warranty of title. The rule is mandatory for two reasons: first, to

1 prevent mishaps by uninformed grantors; and second, to recognize that a transfer on death deed
2 is a will substitute. The rule of this section is consistent with the longstanding law of wills. As
3 stated by Sir Edward Coke, “an express warranty cannot be created by will.” Coke on Littleton
4 386a.

5
6 **SECTION 210. DISCLAIMER.** A beneficiary may disclaim all or part of the
7 beneficiary’s interest as provided by [cite state statute or the Uniform Disclaimer of Property
8 Interests Act].

9 ***Legislative Note:*** States should check their disclaimer statutes for any necessary amendments.
10 *The following are conforming amendments to the Uniform Disclaimer of Property Interests Act:*
11

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

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

- 15 (1) *an annuity or insurance policy;*
16 (2) *an account with a designation for payment on death;*
17 (3) *a security registered in beneficiary form;*
18 (4) *a pension, profit-sharing, retirement, or other employment-related*
19 *benefit plan; or*
20 (5) *any other nonprobate transfer at death.*

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

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

- 26 (1) *a disclaimer must be delivered to the personal representative of*
27 *the decedent’s estate; or*
28 (2) *if no personal representative is then serving, it must be filed with a*
29 *court having jurisdiction to appoint the personal representative.*

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

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

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

- 36 (1) *a disclaimer must be delivered to the trustee then serving;*
37 (2) *if no trustee is then serving, it must be filed with a court having*
38 *jurisdiction to enforce the trust; or*
39 (3) *if the disclaimer is made before the time the instrument creating*
40 *the trust becomes irrevocable, it must be delivered to the settlor of a revocable*
41 *trust or the transferor of the interest.*

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

1 (g) In the case of an interest created by a beneficiary designation ~~made~~
2 after ~~the time~~ the designation becomes irrevocable;:

3 (1) a disclaimer of an interest in personal property must be
4 delivered to the person obligated to distribute the interest;:

5 (2) a disclaimer of an interest in real property must be recorded in
6 [the office of the county recorder of deeds] of the [county] where the real
7 property that is the subject of the disclaimer is located.

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

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

13 (1) the disclaimer must be delivered to the holder of the power or to
14 the fiduciary acting under the instrument that created the power; or

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

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

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

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

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

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

30 **Comment**

31
32 The rules set forth in Section 12 are designed ~~so that anyone who has the~~
33 ~~duty to distribute the disclaimed interest will be notified to provide notice~~ of the
34 disclaimer. For example, a disclaimer of an interest in a decedent's estate must
35 be delivered to the personal representative of the estate. A disclaimer is required
36 to be filed in court only ~~when there is no one person or entity to whom delivery~~
37 ~~can be made in very limited circumstances.~~

38
39 **SECTION 15. RECORDING OF DISCLAIMER.** If an instrument
40 transferring an interest in or power over property subject to a disclaimer is
41 required or permitted by law to be filed, recorded, or registered, the disclaimer
42 may be so filed, recorded, or registered. Except as otherwise provided in Section
43 12(g)(2), ~~F~~failure to file, record, or register the disclaimer does not affect its
44 validity as between the disclaimant and persons to whom the property interest or
45 power passes by reason of the disclaimer.

46 **Comment**

properly allowed claims against the estate and statutory allowances to a surviving spouse and children to the extent the estate is inadequate to satisfy those claims and allowances.

(2) If more than one property is transferred by one or more transfer on death deeds, the liability under subsection (1) is apportioned among the properties in proportion to their net values at the transferor's death.

(3) A proceeding to enforce the liability under this section must be commenced within [eighteen 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. There is a credible argument that the growing use of nonprobate instruments has disadvantaged creditors by enabling decedents to transfer property outside of probate. It is important to bear in mind, however, that Uniform Probate Code §6-102, referenced in Alternative A, attempts to provide comprehensive creditor protection. In addition, this Act in Alternative B provides more creditor protection than is

1 typically available. For many transferors, the transfer on death deed will be used in lieu of joint
2 tenancy with right of survivorship. Under the usual law of joint tenancy, the unsecured creditors
3 of a deceased joint tenant have no recourse against the property or against the other joint tenant.
4 Instead, the property passes automatically to the survivor, free of the decedent's debts. See
5 Comment 5 to UPC §6-102. If the debts cannot be paid from the probate estate, the creditor is
6 out of luck. Under Alternative B, in contrast, the property transferred under a transfer on death
7 deed is liable to the probate estate for properly allowed claims and statutory allowances to the
8 extent the estate is insufficient.

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Legislative Note: This article is 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 301 and 302 where necessary for conformity with those requirements.

following form may, but need not, 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)

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 – Required

Owner or Owners Making This Deed:

(printed name) (mailing address)

(printed name)

(mailing address)

Legal description of the property:

1 _____
2 _____
3 PRIMARY BENEFICIARY – Required

4 I designate the following beneficiary if he or she survives me.

5 Printed name Mailing address, if available

6 _____
7 ALTERNATE BENEFICIARY – Optional

8 If my primary beneficiary does not survive me, I designate the following alternate
9 beneficiary if he or she survives me.

10 Printed name Mailing address, if available

11 _____
12 TRANSFER ON DEATH

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

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

16 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED – Required:

17 _____[(SEAL)] _____

18 (signature)

(date)

19 _____[(SEAL)] _____

20 (signature)

(date)

21 ACKNOWLEDGMENT – Required

22 [insert acknowledgment for deed here]

23 (back of form)

24 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

1 WHAT DOES THE TRANSFER ON DEATH (TOD) DEED DO? When you die, this deed
2 transfers the described property, subject to any debts or liens or mortgages (or other
3 encumbrances) you have put on the property during your lifetime. Probate is not required. The
4 TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer
5 the property to someone else during your lifetime. If you do not own any interest in the property
6 when you die, this deed will have no effect.

7 HOW DO I MAKE A TOD DEED? Complete this form. Have it acknowledged before a
8 notary public or other individual authorized by law to take acknowledgments. Record the form in
9 each [county] where any part of the property is located. The form must be acknowledged and
10 recorded before your death or it has no effect.

11 HOW DO I FIND THE “LEGAL DESCRIPTION” OF THE PROPERTY? This information may be
12 on the deed you received when you became an owner of the property. This information may also
13 be available in [the office of the county recorder of deeds] for the [county] where the property is
14 located. If you are not absolutely sure, consult a lawyer.

15 IS THE “LEGAL DESCRIPTION” NECESSARY? Yes.

16 CAN I CHANGE MY MIND BEFORE I RECORD THE TOD DEED? Yes. If you have not yet
17 recorded the deed and want to change your mind, simply tear up the deed.

18 HOW DO I “RECORD” THE TOD DEED? Take the completed and acknowledged form to [the
19 office of the county recorder of deeds] of the [county] where the property is located. Follow the
20 instructions given by the [county recorder] to make the form part of the official property records.
21 If the property is in more than one [county], you must record the deed in each [county].

22 CAN I LATER REVOKE THE TOD DEED IF I CHANGE MY MIND? Yes. The TOD deed is
23 revocable. No one, including the beneficiaries, can prevent you from revoking the deed.

24 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.

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 302. OPTIONAL FORM OF REVOCATION. The following form may, but need not, 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

1 deed.

2 (front of form)

3 REVOCATION OF TRANSFER ON DEATH DEED

4 NOTICE TO OWNER

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

7 IDENTIFYING INFORMATION – Required

8 Owner or Owners of Property Making This Revocation:

9 _____
10 (printed name)

_____ (mailing address)

11 _____
12 (printed name)

_____ (mailing address)

13 Legal description of the property:

14 _____
15 _____
16 _____
17 _____

18 REVOCATION

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

20 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION – Required

21 _____ [(SEAL)]

22 (signature)

_____ (date)

23 _____ [(SEAL)]

24 (signature)

_____ (date)

ACKNOWLEDGMENT – Required

[insert acknowledgment here]

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

HOW DO I USE THIS FORM TO REVOKE A TRANSFER ON DEATH (TOD) DEED? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in [the office of the county recorder of deeds] of each [county] where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

HOW DO I FIND THE “LEGAL DESCRIPTION” OF THE PROPERTY? This information may be on the TOD deed. It may also be available in [the office of the county recorder of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.

HOW DO I “RECORD” THE FORM? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is located in more than one [county], you must 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.

1 Six of the twelve states with transfer on death deed statutes provide a statutory form for
2 revocation. See Ariz. Stat. §33-405(L); Ark. Stat. §18-12-608(i), Colo. Stat. §15-15-405; Minn.
3 Stat. §507.071(25); Mont. Stat. §72-6-121(14); Nev. Stat. §111.109(7).
4

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

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

3 SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

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

12 SECTION 403. CONFORMING AMENDMENTS. The following acts and parts of
13 acts are hereby amended:

14 (1)

15 (2)

16 (3)

17 *Legislative Note: In light of the growing harmonization of the rules governing probate and*
18 *nonprobate transfers, states may wish to consider extending to nonprobate mechanisms, such as*
19 *transfer on death deeds, the probate rules governing antilapse, revocation by divorce,*
20 *revocation by homicide, survival and simultaneous death, and the elective share of a surviving*
21 *spouse. See also the Legislative Note to Section 210 on disclaimers.*

22 Comment

23 One of the significant trends in the law of family property in the twentieth century has
24 been the growing harmonization of the constructional and substantive rules governing wills and
25 will substitutes. Section 7.2 of the Restatement (Third) of Property (Wills and Other Donative
26 Transfers) provides: “Although a will substitute need not be executed in compliance with the
27 statutory formalities required for a will, such an arrangement is, to the extent appropriate, subject
28 to substantive restrictions on testation and to rules of construction and other rules applicable to
29 testamentary dispositions.”

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

5
6 In some cases, the harmonization is achieved by applying the relevant rule to any
7 “governing instrument,” which is defined in Uniform Probate Code §1-201(18) as “a deed, will,
8 trust, insurance or annuity policy, account with POD designation, security registered in
9 beneficiary form (TOD), pension, profitsharing, retirement, or similar benefit plan, instrument
10 creating or exercising a power of appointment or a power of attorney, or a dispositive,
11 appointive, or nominative instrument of any similar type.” The Uniform Probate Code’s rules on
12 revocation by divorce, revocation by homicide, and survival and simultaneous death apply to any
13 governing instrument. See Uniform Probate Code §§2-702 (survival and simultaneous death), 2-
14 803 (revocation by homicide), 2-804 (revocation by divorce).

15
16 For the elective share, the Uniform Probate Code treats wills and will substitutes alike by
17 defining the decedent’s “augmented estate” to include both probate and nonprobate transfers.
18 See Uniform Probate Code §2-203(a).

19
20 For antilapse, the Uniform Probate Code has separate sections treating wills (§2-603) and
21 will substitutes (§§2-706, 2-707), but the latter are modeled on the former.

22
23 **SECTION 404. REPEALS.** The following acts and parts of acts are hereby repealed:

24 (1)

25 (2)

26 (3)

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

29
30 **SECTION 405. EFFECTIVE DATE.** This [act] takes effect
31