

D R A F T

FOR DISCUSSION ONLY

# REAL PROPERTY TRANSFER ON DEATH ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR  
BIG SKY, MONTANA  
JULY 18 - JULY 25, 2008

# REAL PROPERTY TRANSFER ON DEATH ACT

*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 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*  
TURNERY 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](http://www.nccusl.org)

**REAL PROPERTY TRANSFER ON DEATH ACT**

**TABLE OF CONTENTS**

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

**[ARTICLE] 1  
GENERAL PROVISIONS**

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

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

SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED..... 6  
SECTION 202. TRANSFER ON DEATH DEED NONTESTAMENTARY. .... 6  
SECTION 203. CAPACITY OF TRANSFEROR. .... 7  
SECTION 204. REQUIREMENTS. .... 7  
SECTION 205. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT  
REQUIRED. .... 8  
SECTION 206. REVOCATION..... 8  
SECTION 207. EFFECT OF DEED DURING TRANSFEROR’S LIFETIME..... 10  
SECTION 208. EFFECT OF DEED AT TRANSFEROR’S DEATH..... 10  
SECTION 209. DISCLAIMER..... 12  
SECTION 210. NO COVENANTS OR WARRANTIES. .... 15  
SECTION 211. PROTECTION OF BONA FIDE PURCHASERS OR  
ENCUMBRANCERS. .... 15  
SECTION 212. PROOF OF DEATH..... 16  
SECTION 213. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED. .... 16  
SECTION 214. LIABILITY OF A BENEFICIARY FOR CREDITOR CLAIMS AND  
STATUTORY ALLOWANCES..... 17

**[ARTICLE] 3  
FORMS**

SECTION 301. FORM OF TRANSFER ON DEATH DEED..... 19  
SECTION 302. FORM OF REVOCATION. .... 23

**[ARTICLE] 4  
MISCELLANEOUS PROVISIONS**

SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 26  
SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
NATIONAL COMMERCE ACT. .... 26

SECTION 403. REPEALS.....	26
SECTION 404. EFFECTIVE DATE. ....	27

# REAL PROPERTY TRANSFER ON DEATH ACT

## Reporter's General Prefatory Note

One of the main innovations in the property law of the twentieth century has been the development of 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 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. The National Conference of Commissioners on Uniform State Laws has been a leader in the promulgation of laws authorizing such nonprobate transfers and in harmonizing the substantive rules governing deathtime transfers whether in or out of probate.

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 given fuller effect to the principle of UPC §6-101 by enacting statutes expressly authorizing the nonprobate transfer of land. This is done by permitting owners of interests in real property to execute and record transfer on death (TOD) deeds. By these deeds, 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.

Ten states currently authorize 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), and Montana (2007). Some other states, including California and Minnesota, are studying the issue.

This draft is for the first reading of the act at the 2008 annual meeting of the National Conference of Commissioners on Uniform State Laws in Big Sky, Montana. The draft is divided into four articles. Article 1 contains general provisions. Article 2 authorizes transfer on death deeds and addresses the formal and substantive issues concerning such deeds. Article 3 contains suggested statutory forms. Article 4 contains miscellaneous provisions. Our drafting committee welcomes comments and suggestions on all sections of the draft act, and in particular on the forms in Article 3. These are designed for readability.

After each section, a Reporter's Note discusses the drafting of the section. These notes should be read in conjunction with the proposed statutory text.

1 **REAL PROPERTY TRANSFER ON DEATH ACT**

2  
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

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

8  
9 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

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

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

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

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

24 **Reporter’s Note**  
25

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

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

10 Paragraph (3) is a standard NCCUSL definition.

11  
12  
13 The effect of Paragraph (4) is that the Act applies to all interests in real property that are  
14 transferable at the death of the owner. See Section 201.

15  
16 Paragraph (6) limits the definition of a “transferor” to an individual. The term  
17 “transferor” does not include a corporation, business trust, estate, trust, partnership, limited  
18 liability company, association, joint venture, public corporation, government or governmental  
19 subdivision, agency, or instrumentality, or any legal or commercial entity other than an  
20 individual. The Comment will explain that the term also does not include an agent. The power of  
21 an agent to create or revoke a transfer on death deed is determined by other law, as indicated in  
22 the Comments to Sections 204 and 206.  
23

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

27 **Reporter’s Note**

28  
29 This section essentially tracks Uniform Probate Code §6-311, which provides that the Act  
30 “applies to registrations of securities in beneficiary form made before or after the effective date,  
31 by decedents dying on or after the effective date.”  
32

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

36 **Reporter’s Note**

37  
38 This section tracks the essence of the first part of Ark. Code §18-12-608(g)(1): “This  
39 section does not prohibit [the committee preferred “affect”] other methods of conveying property  
40 that are permitted by law and that have the effect of postponing enjoyment of an interest in real



1 property until the death of the owner.”

1 [ARTICLE] 2

2 TRANSFER ON DEATH DEED

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

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

7 Reporter’s Note

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

22 SECTION 202. TRANSFER ON DEATH DEED NONTTESTAMENTARY. A

23 transfer on death deed is nontestamentary.

24 Reporter’s Note

25  
26 This section is based on Uniform Probate Code §6-101(a), which provides: “A provision  
27 for a nonprobate transfer on death in an insurance policy, contract of employment, bond,  
28 mortgage, promissory note, certificated or uncertificated security, account agreement, custodial  
29 agreement, deposit agreement, compensation plan, pension plan, individual retirement plan,  
30 employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other  
31 written instrument of a similar nature is nontestamentary.”  
32

33 As the Comment to UPC §6-101 explains, because the mode of transfer is declared to be  
34 nontestamentary, the instrument of transfer does not have to be executed in compliance with the  
35 formalities for wills, nor does the instrument need to be probated, nor does the decedent’s  
36 personal representative have any power or duty with respect to the asset.  
37

1           **SECTION 203. CAPACITY OF TRANSFEROR.** The capacity required to make or  
2 revoke a transfer on death deed is the same as the capacity required to make a will.

3                           **Reporter’s Note**  
4

5           This section is drawn from Uniform Trust Code §601: “The capacity required to create,  
6 amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a  
7 revocable trust, is the same as that required to make a will.” The rule is consistent with the  
8 Restatement (Third) of Property: Wills and Other Donative Transfers §8.1(b), which applies the  
9 standard of testamentary capacity, and not the higher standard of capacity for inter vivos gifts, to  
10 revocable will substitutes: “If the donative transfer is in the form of a will, a revocable will  
11 substitute, or a revocable gift, the testator or donor must be capable of knowing and  
12 understanding in a general way the nature and extent of his or her property, the natural objects of  
13 his or her bounty, and the disposition that he or she is making of that property, and must also be  
14 capable of relating these elements to one another and forming an orderly desire regarding the  
15 disposition of the property.”  
16

17           **SECTION 204. REQUIREMENTS.** A transfer on death deed must:

- 18           (1) contain the essential elements of an inter vivos deed, except as otherwise provided in  
19 paragraph (2);
- 20           (2) state that the transfer is to occur at the transferor’s death;
- 21           (3) be acknowledged by the transferor before a notary public or other individual  
22 authorized to take acknowledgments; and
- 23           (4) be recorded before the transferor’s death in the [county] where the property is located.

24                           **Reporter’s Note**  
25

26           Paragraph (1): The Act requires the same essential elements of a deed, other than a  
27 present intention to convey, as are required for inter vivos deeds under state law. In most  
28 jurisdictions, these elements are: identification of the parties, description of the property, and the  
29 transferor’s signature.  
30

31           Paragraph (2): This requirement emphasizes the fundamental distinction between an inter  
32 vivos deed and a transfer on death deed. An inter vivos deed evidences a present intention to  
33 convey. A transfer on death deed evidences an intention that the transfer occur at the transferor’s  
34 death. Under no circumstances should a defective transfer on death deed be given effect as an  
35 inter vivos deed; to do so would violate the transferor’s intention that the transfer occur at the  
36 transferor’s death.

1 Paragraph (3): The requirement of acknowledgment fulfills at least four functions. First, it  
2 cautions a transferor that he or she is performing an act with legal consequences. Such caution is  
3 important where, as here, the transferor does not experience the wrench of delivery because the  
4 transfer occurs at death. Second, acknowledgment helps to prevent fraud. Third,  
5 acknowledgment facilitates the recording of the deed. Fourth, acknowledgment is important in  
6 order to implement the rule in Section 206(a)(1) that a later acknowledged deed prevails over an  
7 earlier acknowledged deed.  
8

9 Paragraph (4): The rule requiring recordation before the transferor's death is consistent  
10 with the transfer on death deed statutes that address the issue. The Comment will explain that, if  
11 the property described in the deed is in more than one county, the deed is effective only with  
12 respect to the property in the county or counties where the deed is recorded.  
13

14 The Act does not define, but instead relies on other law to determine, the authority of an  
15 agent. An individual's agent may execute a transfer on death deed on the individual's behalf to  
16 the extent permitted by other law, such as the Uniform Power of Attorney Act.  
17

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

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

21 or

22 (2) consideration.

### 23 **Reporter's Note**

24 These rules are consistent with the transfer on death deed statutes that address the issues.  
25  
26  
27

### 28 **SECTION 206. REVOCATION.**

29 (a) Subject to subsection (b), a transfer on death deed is revoked by recording, before the  
30 transferor's death, in the [county] where the property is located:

31 (1) the transferor's subsequently acknowledged transfer on death deed that  
32 revokes the previously acknowledged deed expressly or by inconsistency; or

33 (2) the transferor's subsequently acknowledged revocation form that revokes the  
34 previously acknowledged deed either by description of the property or by reference to the

1 recording information of the deed.

2 (b) The following rules apply to a transfer on death deed made by more than one  
3 transferor:

4 (1) Revocation by a transferor does not affect the deed as to the interest of another  
5 transferor.

6 (2) A deed made by joint owners is revoked only if it is revoked by all of the  
7 surviving joint owners.

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

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

#### 11 **Reporter's Note**

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

18  
19 Subsection (b)(1) is based on §5662(b) of the California draft statute: “A coowner may  
20 revoke the transfer on death deed as to the interest of that coowner. The revocation does not  
21 affect the transfer on death deed as to the interest of another coowner.”

22  
23 Subsection (b)(2) is based on the third sentence of Ariz. Stat. §33-405(F): “If the property  
24 is owned as joint tenants with right of survivorship or community property with right of  
25 survivorship and if the revocation is not executed by all the owners, the revocation is not  
26 effective unless executed by the last surviving owner.” The rule is consistent with Uniform  
27 Probate Code §6-306, which provides in pertinent part: “A registration of a security in  
28 beneficiary form may be canceled or changed at any time by the sole owner or all then surviving  
29 owners without the consent of the beneficiary.”

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

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

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

4  
5 The Comment will mention ademption by extinction as the practical equivalent of  
6 revocation.

7  
8  
9 **SECTION 207. EFFECT OF DEED DURING TRANSFEROR’S LIFETIME.**

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

- 11 (1) affect the rights of the transferor or other owners in the property;
- 12 (2) affect the rights of creditors in the property;
- 13 (3) affect the transferor’s or beneficiary’s eligibility for any form of public assistance;
- 14 (4) create a legal or equitable right to the property in favor of 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, a transfer on death deed, during the transferor’s lifetime, does not sever a joint  
21 tenancy (Paragraph (1)). It does not affect the rights of creditors, whether secured or unsecured  
22 (Paragraph (2)). It does not affect the transferor’s or beneficiary’s eligibility for any form of  
23 public assistance, including Medicaid (Paragraph (3)). On this point, the committee specifically  
24 disapproves of the contrary approach of Colo. Rev. Stat. §15-15-403. A transfer on death deed  
25 does not create any legal or equitable right in the beneficiary (Paragraph (4)), nor does it make  
26 the property subject to process of the beneficiary’s creditors (Paragraph (5)).

27  
28  
29 **SECTION 208. EFFECT OF DEED AT TRANSFEROR’S DEATH.**

30 (a) Except as otherwise provided in this section [and in [cite state statute on antilapse, if  
31 applicable to nonprobate transfers]], on the death of the transferor, the following rules apply to  
32 property that is the subject of a transfer on death deed:

- 33 (1) The property owned by the transferor at death is transferred to the beneficiaries

1 that survive the transferor in accordance with the deed.

2 (2) Unless the deed provides otherwise, concurrent beneficiaries receive equal and  
3 undivided interests in the property with no right of survivorship among them [unless two of the  
4 beneficiaries are husband and wife, in which event they receive their interests in the property as  
5 [joint tenants][tenants by the entirety][owners of community property with right of  
6 survivorship]].

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

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

12 (c) A beneficiary receives a transferor's interest at the transferor's death subject to all:

13 (1) conveyances made during the transferor's lifetime; and

14 (2) encumbrances, assignments, contracts, mortgages, liens, and other interests,  
15 whether recorded and whether created before or after the recording of the transfer on death deed,  
16 to which the property is subject at the transferor's death.

17 **Reporter's Note**

18 Subsection (a)(2) is modeled on Uniform Probate Code §6-212 governing multiple-party  
19 accounts. There will be a Legislative Note explaining that states without tenancy by the entirety  
20 or community property with right of survivorship should delete these references in brackets.  
21 States preferring no right of survivorship between beneficiaries who are husband and wife should  
22 delete the entire bracketed material.

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

26  
27 Subsection (c) is modeled on Colo. Rev. Stat. §15-15-407(2): "A grantee-beneficiary of a  
28 beneficiary deed takes title to the owner's interest in the real property conveyed by the  
29 beneficiary deed at the death of the owner subject to all conveyances, encumbrances,

1 assignments, contracts, mortgages, liens, and other interests, affecting title to the property,  
2 whether created before or after the recording of the beneficiary deed, or to which the owner was  
3 subject during the owner's lifetime including, but not limited to, any executory contract of sale,  
4 option to purchase, lease, license, easement, mortgage, deed of trust, or other lien. The grantee-  
5 beneficiary also takes title subject to any interest in the property of which the grantee-beneficiary  
6 has either actual or constructive notice." The committee rejected the requirement of California  
7 draft §5652(c) that the limitation must be "of record," because the beneficiary should merely step  
8 into the transferor's shoes; the beneficiary should not be in a better position (i.e. free of  
9 limitations not of record) than the transferor.

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

14  
15 The Comment will also address the following fact-pattern. H and W are married and own  
16 property as tenants by the entirety. H executes, acknowledges and records a transfer on death  
17 deed in favor of X. W later dies, at which point H owns the property in fee simple absolute.  
18 Under the law of some states, there may be a question whether the transfer on death deed is valid,  
19 given that H executed it when the property was owned, not by H and W, but by the marital entity.  
20 The transfer on death deed is effective at H's death because the property is owned by H at H's  
21 death. See, e.g., *Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055 (Del. Ch. 1982) (mortgage  
22 granted by one tenant by the entirety is not void upon execution but remains inchoate during the  
23 lives of both spouses, and becomes a valid lien if the spouse who executed the mortgage survives  
24 the other spouse or if the spouses get divorced). The act does not require the transferor to have an  
25 interest in the property when the transfer on death deed is executed, acknowledged or recorded.  
26 As a practical matter, however, it is unwise and may be unfeasible, especially in a recording  
27 system using a grantor-grantee index, to attempt to record a deed before acquiring the interest the  
28 deed purports to transfer.

29  
30  
31 **SECTION 209. DISCLAIMER.**

32 **Alternative 1**

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

35 **Alternative 2**

36 Subject to the law of this state limiting the right to disclaim property, a beneficiary under  
37 a transfer on death deed may disclaim all or part of the beneficiary's interest by recording a  
38 disclaimer in the [county] where the property that is the subject of the disclaimer is located.



1 **End of Alternatives**

2 **Reporter’s Note**

3  
4 There will be a Legislative Note explaining that Alternative 1 is for a state with a  
5 disclaimer statute, such as the Uniform Disclaimer of Property Interests Act, providing a  
6 mechanism for disclaiming interests created in a transfer on death deed. The statute need not  
7 have contemplated the transfer on death deed specifically, but the statutory scheme applies, or  
8 can be readily amended to apply, to such deeds. In most cases, the only necessary amendment  
9 would be to replace the usual requirement that the disclaimer be delivered (for here, after the  
10 transferor’s death, there is no obvious individual to whom delivery can be made) with a  
11 requirement that the disclaimer be recorded in the county where the property that is the subject of  
12 the disclaimer is located. Along these lines, the committee recommends the following technical  
13 amendments to Sections 12 and 15 of the Uniform Disclaimer of Property Interests Act:  
14

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

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

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

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

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

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

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

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

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

- 39 (1) a disclaimer must be delivered to the trustee then serving;
- 40 (2) if no trustee is then serving, it must be filed with a court having  
41 jurisdiction to enforce the trust; or

42 (3) if the disclaimer is made before the time the instrument creating  
43 the trust becomes irrevocable, it must be delivered to the settlor of a revocable  
44 trust or the transferor of the interest.

45 (f) In the case of a disclaimer of an interest created by a beneficiary

1 designation made before ~~the time~~ the designation becomes irrevocable, a the  
2 disclaimer must be delivered to the person making the beneficiary designation.

3 (g) In the case of a disclaimer of an interest created by a beneficiary  
4 designation made after ~~the time~~ the designation becomes irrevocable;

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

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

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

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

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

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

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

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

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

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

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

### 30 **Comment**

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

37  
38 **SECTION 15. RECORDING OF DISCLAIMER.** If an instrument  
39 transferring an interest in or power over property subject to a disclaimer is  
40 required or permitted by law to be filed, recorded, or registered, the disclaimer  
41 may be so filed, recorded, or registered. Except as otherwise provided in Section  
42 12(g)(2), Failure to file, record, or register the disclaimer does not affect its  
43 validity as between the disclaimant and persons to whom the property interest or  
44 power passes by reason of the disclaimer.

### 45 **Comment**

46 This section permits the recordation of a disclaimer of an interest in

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

11  
12 Alternative 2 is for a state without a disclaimer statute that can be readily amended to  
13 apply to transfer on death deeds.

14  
15 The Comment will mention the state-law doctrine of “relation back”: an effective  
16 disclaimer typically relates back to the time of the initial transfer (here, the transferor’s death).

17  
18 The Comment will also mention that a beneficiary need not disclaim before the  
19 transferor’s death just as a devisee under the transferor’s will need not disclaim before the  
20 transferor’s death.

21  
22 **SECTION 210. NO COVENANTS OR WARRANTIES.** A transfer on death deed  
23 transfers property without covenant or warranty of title even if there is a contrary provision in the  
24 deed.

25 **Reporter’s Note**

26 This provision is based on §5652(d) of the California draft statute: “Notwithstanding a  
27 contrary provision in the deed, a revocable transfer on death deed transfers the property without  
28 covenant or warranty of title.” The rule is mandatory, not a default as in Colo. Rev. Stat. §15-15-  
29 404(2) [“Unless the owner designates otherwise ...”], to prevent mishaps by uninformed grantors.

30  
31 **SECTION 211. PROTECTION OF BONA FIDE PURCHASERS OR**  
32 **ENCUMBRANCERS.** A bona fide purchaser or encumbrancer to whom a beneficiary transfers  
33 an interest in the property received under a transfer on death deed has the same rights and  
34 protections as if the transfer had been made by a grantee of an inter vivos deed.

35 **Reporter’s Note**

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

7  
8  
9 **SECTION 212. PROOF OF DEATH.** Proof of the death of a transferor or a  
10 beneficiary of a transfer on death deed must be established in the same manner as proof of the  
11 death of a joint tenant [under [cite state statute]].

### 12 **Reporter’s Note**

13 The committee was initially uncertain whether a Uniform Act should spell out a  
14 procedure for the proof of death. The Uniform Probate Code, for example, refers in §6-223 and  
15 §6-307 to “proof of death” without elaboration.

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

### 21 22 **SECTION 213. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED.**

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

26 (b) A contest proceeding under this section must be brought in the [ ] court in the  
27 [county] where [the administration of the transferor’s estate would be proper][the property that is  
28 the subject of the transfer on death deed is located].

29 (c) A contest proceeding under this section must be commenced within the earlier of:

30 (1) [three years] after the transferor’s death; or

31 (2) [one year] after the beneficiary establishes the transferor’s death.

1 [(d) Upon initiation of a contest proceeding, the contestant may record a notice of lis  
2 pendens in the [county] where the transfer on death deed is recorded.]

### 3 **Reporter’s Note**

4  
5 The grounds of contest in subsection (a) are drawn from §5696 of the California draft  
6 statute: “Nothing in this chapter limits the application of principles of fraud, undue influence,  
7 duress, mistake, or other invalidating cause to a transfer of property by a revocable transfer on  
8 death deed.”

9  
10 Subsection (b) will be accompanied by a Legislative Note explaining that the blank in  
11 brackets should be filled in, as appropriate, by each enacting state.

12  
13 Subsection (c) is drawn from §§5690(c) and 5692(b) of the California draft statute.  
14 Section 5690(c) provides: “On commencement of a contest proceeding, the contestant may  
15 record a lis pendens in the county in which the revocable transfer on death deed is recorded.”  
16 Section 5692(b) provides: “A contest proceeding shall be commenced within the earlier of the  
17 following times: (1) Three years after the transferor’s death. (2) One year after the beneficiary  
18 establishes the fact of the transferor’s death....”

19  
20 Subsection (d): A Legislative Note will explain that subsection (d) is in brackets so that it  
21 can be deleted by states not using, or not wishing to refer to, the notice of lis pendens.

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

26  
27 The Comment will also cross-reference the rule governing bona fide purchasers or  
28 encumbrancers in Section 211 and the provision on proof of death in Section 212.

29  
30 **SECTION 214. LIABILITY OF A BENEFICIARY FOR CREDITOR CLAIMS**  
31 **AND STATUTORY ALLOWANCES.** A beneficiary of a transfer on death deed is liable for  
32 allowed claims against the transferor’s probate estate and statutory allowances to the extent  
33 provided in [cite state statute or Section 6-102 of the Uniform Probate Code].  
34

### 35 **Reporter’s Note**

36 This section defers to other law, such as Uniform Probate Code §6-102, to establish the  
37 liability of a beneficiary of a transfer on death deed for creditor claims and statutory allowances.  
38 For these purposes, the committee believes as a matter of policy that a state should treat a  
39 beneficiary of a transfer on death deed the same as a beneficiary of any other nonprobate transfer

1 outside of trust, for example a beneficiary of a pay on death bank account. The state’s approach  
2 to such beneficiaries should be consistent.  
3

4 Uniform Probate Code §6-102 was added in 1998 to establish the principle that recipients  
5 of nonprobate transfers can be required to contribute to pay allowed claims and statutory  
6 allowances to the extent the probate estate is insufficient. The fundamental rule of liability is  
7 contained in §6-102(b): “Except as otherwise provided by statute, a transferee of a nonprobate  
8 transfer is subject to liability to any probate estate of the decedent for allowed claims against the  
9 decedent’s probate estate and statutory allowances to the decedent’s spouse and children to the  
10 extent the estate is insufficient to satisfy those claims and allowances. The liability of a  
11 nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by  
12 that transferee.” The other provisions of UPC §6-102 implement this liability rule.  
13

14 For states not favoring UPC §6-102 in its entirety but wishing to adopt a simple statement  
15 of a liability rule, the drafting committee is considering providing an Alternative that would  
16 largely track language from Uniform Trust Code §505(a)(3). This alternative would provide:  
17 “After the transferor’s death, the property that is the subject of an effective transfer on death deed  
18 is subject to claims of the transferor’s creditors, costs of administration of the transferor’s estate,  
19 the expenses of the transferor’s funeral and disposal of remains, and statutory allowances to a  
20 surviving spouse and children to the extent the transferor’s probate estate is inadequate to satisfy  
21 those claims, costs, expenses, and allowances.”

1 [ARTICLE] 3

2 FORMS

3  
4 **Reporter’s Prefatory Note**

5  
6 These forms are drafts, designed to provide a 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 the statutory forms provided in Sections 301 and 302  
11 where necessary for conformity with those requirements.*  
12

13 **SECTION 301. FORM OF TRANSFER ON DEATH DEED.** A document

14 substantially in the following form satisfies the requirements for a transfer on death deed under

15 this [act]:

16 (front of form)

17 TRANSFER ON DEATH DEED

18  
19 NOTICE TO OWNER

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

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

23 IDENTIFYING INFORMATION

24 Owner or Owners Making This Deed:

25 \_\_\_\_\_

26 (printed name)

(mailing address)

27 \_\_\_\_\_

28 (printed name)

(mailing address)

29 Provide the legal description of the property:

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

5 **BENEFICIARY OR BENEFICIARIES**

6 I revoke all my previous transfer on death deeds affecting the described property, and  
7 designate the following beneficiary or beneficiaries who survive me to receive the property (in  
8 equal and undivided shares with no right of survivorship between them, unless I say otherwise in  
9 this deed):

10 PRIMARY BENEFICIARY OR BENEFICIARIES – include mailing addresses if available

11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_

14 ALTERNATE BENEFICIARY OR BENEFICIARIES – OPTIONAL

15 If no above beneficiary survives me, I designate the following alternate beneficiary or  
16 beneficiaries who survive me to receive the property (in equal and undivided shares with no right  
17 of survivorship between them, unless I say otherwise in this deed):

18 Alternate Beneficiary or Beneficiaries – include mailing addresses if available

19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_

22 **TRANSFER ON DEATH**

23 I transfer my interest in the described property to the beneficiary or beneficiaries on my



1 death.

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

3 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED:

4 \_\_\_\_\_[(SEAL)] \_\_\_\_\_  
5 (signature) (date)

6 \_\_\_\_\_[(SEAL)] \_\_\_\_\_  
7 (signature) (date)

8 ACKNOWLEDGMENT

9 [insert acknowledgment here]

10 (back of form)

11 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

12 WHAT DOES THE TRANSFER ON DEATH (TOD) DEED DO? When you die, the beneficiaries  
13 will become owners of the property described in the TOD deed, subject to any debts or liens or  
14 mortgages (or other encumbrances) you have put on the property during your lifetime. Probate is  
15 not required. The TOD deed has no effect until you die. You can revoke it at any time. If you  
16 transfer the property to someone else during your lifetime, the beneficiary under this deed will  
17 not receive it.

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

22 HOW DO I FIND THE “LEGAL DESCRIPTION” OF THE PROPERTY? This information may be on  
23 the deed you received when you became an owner of the property. This information may also be

1 available in the office of the [county recorder] for the [county] where the property is located. If  
2 you are not absolutely sure, consult a lawyer.

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

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

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

14 I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT SHOULD I DO? Do not complete  
15 this form under pressure. Seek help from a trusted family member, a friend, or a lawyer.

16 DO I NEED TO TELL THE BENEFICIARIES ABOUT THE TOD DEED? No, but it is  
17 recommended. Secrecy can cause later complications and might make it easier for others to  
18 commit fraud.

19 WHAT IF I NAME MORE THAN ONE BENEFICIARY? You may name more than one  
20 beneficiary. Unless you say otherwise in the deed, the primary beneficiaries who survive you (or  
21 if none survives you, the alternate beneficiaries) will become co-owners in equal shares.

### 22 **Reporter’s Note**

23 This form is based on the California proposed form, with modifications.  
24

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**SECTION 302. FORM OF REVOCATION.**

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

(front of form)

**REVOCATION OF TRANSFER ON DEATH DEED**

**NOTICE TO OWNER**

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

**IDENTIFYING INFORMATION**

Owner or Owners of Property Making This Revocation:

\_\_\_\_\_  
(printed name) (mailing address)

\_\_\_\_\_  
(printed name) (mailing address)

Provide either (1) the legal description of the property or (2) the recording information of the transfer on death deed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REVOCATION**

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

**SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION**

1 \_\_\_\_\_[(SEAL)] \_\_\_\_\_

2 (signature) (date)

3 \_\_\_\_\_[(SEAL)] \_\_\_\_\_

4 (signature) (date)

5 ACKNOWLEDGMENT

6 [insert acknowledgment here]

7 (back of form)

8 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

13 HOW DO I FIND THE “LEGAL DESCRIPTION” OF THE PROPERTY OR THE “RECORDING  
14 INFORMATION” OF THE TOD DEED TO BE REVOKED? This information may be on the TOD deed. It  
15 may also be available in the office of the [county recorder] for the [county] where the property is  
16 located. If you are not absolutely sure, consult a lawyer.

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

21 I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT SHOULD I DO? Do not complete  
22 this form under pressure. Seek help from a trusted family member, a friend, or a lawyer.

23 **Reporter’s Note**

24

1

This form is based on the form in Section 301.

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

3  
4  
5 SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

8 Reporter’s Note

9 This provision is standard in all uniform acts.  
10

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

17 Reporter’s Note

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

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

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

- 26 (1) .....  
27 (2) .....  
28 (3) .....

1 **Reporter’s Note**

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

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