

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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For December 5-7, 2008 Drafting Committee Meeting

*With Prefatory Note and Partial Comments*

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

## **TABLE OF CONTENTS**

Prefatory Note. ....	1
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### **[ARTICLE] 1 GENERAL PROVISIONS**

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

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

SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED. ....	5
SECTION 202. TRANSFER ON DEATH DEED REVOCABLE. ....	5
SECTION 203. TRANSFER ON DEATH DEED NONTESTAMENTARY. ....	5
SECTION 204. CAPACITY OF TRANSFEROR. ....	6
SECTION 205. REQUIREMENTS. ....	6
SECTION 206. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. ....	7
SECTION 207. REVOCATION. ....	8
SECTION 208. EFFECT OF DEED DURING TRANSFEROR'S LIFETIME. ....	11
SECTION 209. EFFECT OF DEED AT TRANSFEROR'S DEATH. ....	12
SECTION 210. DISCLAIMER. ....	14
SECTION 211. NO COVENANTS OR WARRANTIES. ....	15
SECTION 212. LIABILITY OF BENEFICIARY FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES. ....	15

### **[ARTICLE] 3 OPTIONAL FORMS**

SECTION 301. OPTIONAL FORM OF TRANSFER ON DEATH DEED. ....	17
SECTION 302. OPTIONAL FORM OF REVOCATION. ....	24

### **[ARTICLE] 4 MISCELLANEOUS PROVISIONS**

SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. ....	27
SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. ....	27
SECTION 403. REPEALS. ....	27
SECTION 404. EFFECTIVE DATE. ....	28

# 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 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), Montana (2007), Oklahoma (2008), and Minnesota (2008).

This draft is for the committee's consideration on December 5-7, 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  
3                   **[ARTICLE] 1**

4                   **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

## Comment

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

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

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

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

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

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

Paragraph (6) provides that a “transfer on death deed” is a deed authorized under this act. The term includes a transfer on death provision in a deed. Consider the following examples.

*Example 1.* *A*, the owner of Blackacre, executes, acknowledges, and records a deed comporting with the requirements of Section 205 to transfer Blackacre to *B* at *A*’s death. The deed is a transfer on death deed. The effect of the deed is controlled by this act.

*Example 2.* *A*, the owner of Blackacre, conveys Blackacre inter vivos by deed to *B*, who wishes to take title while naming *C* as a designated beneficiary to receive Blackacre at *B*’s death. *B* executes and acknowledges a transfer on death provision in favor of *C* in the *A*-to-*B* deed. The provision comports with the requirements of Section 205. The provision is a “transfer on death deed,” and the effect of the provision is controlled by this act.

Paragraph (7) limits the definition of a “transferor” to an individual. The term “transferor” does not include a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any legal or commercial entity other than an individual. The term also does not include an agent. The power of an agent to create or revoke a

1 transfer on death deed is determined by other law, such as the Uniform Power of Attorney Act, as  
2 indicated in the Comments to Sections 205 and 207.  
3

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

7 **Comment**  
8

9 This section provides that the act applies to a transfer on death deed executed before, on,  
10 or after the effective date of the act by a transferor dying on or after the effective date of the act.  
11 This section is consistent with the Uniform Probate Code's provisions governing transfer on  
12 death registration of securities. Those provisions "appl[y] to registrations of securities in  
13 beneficiary form made before or after [effective date], by decedents dying on or after [effective  
14 date]." Uniform Probate Code §6-311.  
15

16  
17 **SECTION 104. NONEXCLUSIVITY.** This [act] does not affect any method of  
18 transferring property otherwise permitted under the law of this state.

19 **Comment**  
20

21 This section provides that the act is nonexclusive. The act does not affect any method of  
22 transferring property otherwise permitted under state law.  
23

24 One such method is the present transfer of a springing executory interest. Consider the  
25 following examples.  
26

27 *Example 1.* *A* conveys Blackacre "to *B*, to vest in possession at my death." By this  
28 conveyance, *A* has made a present transfer of a future interest (a springing executory interest) to  
29 *B*. The transfer is irrevocable. The future interest will ripen into possession at *A*'s death, even if *B*  
30 fails to survive *A*.  
31

32 *Example 2.* *A* executes, acknowledges, and records a transfer on death deed for Blackacre,  
33 naming *B* as the designated beneficiary. During *A*'s lifetime, no interest passes to *B*, and *A* may  
34 revoke the deed. If unrevoked, the deed will transfer possession to *B* at *A*'s death only if *B*  
35 survives *A*.  
36

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

21  
22  
23 SECTION 202. TRANSFER ON DEATH DEED REVOCABLE. A transfer on death

24 deed is revocable even if the deed or a separate agreement contains a contrary provision.

25 Comment

26 A fundamental feature of a transfer on death deed is that the transferor retains the power  
27 to revoke the deed. Section 202 is framed as a mandatory rule in order to protect uniformed  
28 grantors.

29  
30 If the transferor promises to make the deed irrevocable or not to revoke the deed, the  
31 promisee may have a remedy under other law if the promise is broken. The deed remains  
32 revocable despite the promise.

33  
34 SECTION 203. TRANSFER ON DEATH DEED NONTTESTAMENTARY. An

35 effective transfer on death deed is nontestamentary.



1 **Comment**

2  
3 This section is consistent with Uniform Probate Code §6-101(a), which provides: “A  
4 provision for a nonprobate transfer on death in an insurance policy, contract of employment,  
5 bond, mortgage, promissory note, certificated or uncertificated security, account agreement,  
6 custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement  
7 plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other  
8 written instrument of a similar nature is nontestamentary.”  
9

10 As the Comment to Uniform Probate Code §6-101 explains, because the mode of transfer  
11 is declared to be nontestamentary, the instrument of transfer does not have to be executed in  
12 compliance with the formalities for wills, nor does the instrument need to be probated.  
13

14 **SECTION 204. CAPACITY OF TRANSFEROR.** The capacity required to make or  
15 revoke a transfer on death deed is the same as the capacity required to make a will.

16 **Comment**

17  
18 This section is consistent with Restatement (Third) of Property (Wills and Other Donative  
19 Transfers) §8.1(b), which applies the standard of testamentary capacity, and not the higher  
20 standard of capacity for inter vivos gifts, to revocable will substitutes: “If the donative transfer is  
21 in the form of a will, a revocable will substitute, or a revocable gift, the testator or donor must be  
22 capable of knowing and understanding in a general way the nature and extent of his or her  
23 property, the natural objects of his or her bounty, and the disposition that he or she is making of  
24 that property, and must also be capable of relating these elements to one another and forming an  
25 orderly desire regarding the disposition of the property.” This section is also consistent with  
26 Uniform Trust Code §601: “The capacity required to create, amend, revoke, or add property to a  
27 revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that  
28 required to make a will.”  
29

30 A transfer on death deed is not affected if the transferor subsequently loses capacity. On  
31 the ability of an agent under a power of attorney to make or revoke a transfer on death deed, see  
32 the Comments to Sections 205 and 207.  
33

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

35 (1) contain the essential elements of a recordable inter vivos deed, except as otherwise  
36 provided in paragraph (2);

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

38 (3) be acknowledged by the transferor before a notary public or other individual

1 authorized by law to take acknowledgments; and

2 (4) be recorded before the transferor's death in the [county] where the property is located.

### 3 **Comment**

4  
5 Paragraph (1) requires a transfer on death deed to contain the same essential elements of a  
6 recordable deed, other than a present intention to convey, as are required for inter vivos deeds  
7 under state law.

8  
9 Paragraph (2) emphasizes an important distinction between an inter vivos deed and a  
10 transfer on death deed. An inter vivos deed evidences a intention to transfer, at the time of the  
11 conveyance, an interest in property, either a present interest or a future interest. In contrast, a  
12 transfer on death deed evidences an intention that the transfer occur at the transferor's death.  
13 Under no circumstances should a transfer on death deed be given effect as an inter vivos deed; to  
14 do so would violate the transferor's intention that the transfer occur at the transferor's death.

15  
16 Paragraph (3) requires a transfer on death deed to be acknowledged by the transferor  
17 before a notary public or other individual authorized by law to take acknowledgments. The  
18 requirement of acknowledgment fulfills at least four functions. First, it cautions a transferor that  
19 he or she is performing an act with legal consequences. Such caution is important where, as here,  
20 the transferor does not experience the wrench of delivery because the transfer occurs at death.  
21 Second, acknowledgment helps to prevent fraud. Third, acknowledgment facilitates the recording  
22 of the deed. Fourth, acknowledgment enables the rule in Section 207 that a later acknowledged  
23 deed prevails over an earlier acknowledged deed.

24  
25 Paragraph (4) requires a transfer on death deed to be recorded before the transferor's  
26 death in the county (or other appropriate administrative division of a state, such as a parish)  
27 where the land is located. If the property described in the deed is in more than one county, the  
28 deed is effective only with respect to the property in the county or counties where the deed is  
29 recorded. The requirement of recordation before death helps to prevent fraud and enables all  
30 parties to rely on the recording system.

31  
32 The act does not define, but instead relies on other law to determine, the authority of an  
33 agent. An individual's agent may execute a transfer on death deed on the individual's behalf to  
34 the extent permitted by other law, such as the Uniform Power of Attorney Act.

35  
36 **SECTION 206. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT**  
37 **REQUIRED.** A transfer on death deed is effective without:

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

1 (2) consideration.

2 **Comment**

3  
4 This section makes it clear that a transfer on death deed is effective without notice or  
5 delivery to or acceptance by the beneficiary during the transferor's lifetime (Paragraph (1)) and  
6 without consideration (Paragraph (2)).  
7

8 Paragraph (1) is consistent with the fundamental distinction between a transfer on death  
9 deed and an inter vivos deed. Under the former, but not under the latter, the transfer occurs at the  
10 transferor's death. Therefore, there is no requirement of notice, delivery or acceptance during the  
11 transferor's lifetime. This does not mean that the beneficiary is required to accept the property.  
12 The beneficiary may disclaim the property as explained in Section 210 and the accompanying  
13 Comment.  
14

15 Paragraph (2) is consistent with the law of inter vivos deeds. An inter vivos deed need not  
16 be supported by consideration.  
17

18  
19 **SECTION 207. REVOCATION.**

20 (a) Except as provided in this section, no instrument revokes a recorded transfer on death  
21 deed.

22 (b) Subject to subsection (c), a transferor may revoke a recorded transfer on death deed by  
23 an instrument, recorded before the transferor's death in the [county] where the property is  
24 located, that is either:

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

27 (2) the transferor's subsequently acknowledged revocation form that revokes the  
28 previously acknowledged deed either by description of the property or by reference to the  
29 recording information of the deed.

30 (c) The following rules apply to a transfer on death deed made by more than one  
31 transferor:

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

transferor.

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

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

### Comment

Subsections (a) and (b) provide that a recorded transfer on death deed may be revoked by instrument only (1) by a subsequently acknowledged transfer on death deed or (2) a subsequently acknowledged revocation form. Consider the following examples:

*Example 1.* 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. Deed 1 was acknowledged November 1; Deed 2 was acknowledged December 15. Deed 2 is the subsequently acknowledged deed, so it revoked Deed 1. The revocation occurred when Deed 2 was recorded.

*Example 2.* T executed and acknowledged a transfer on death deed for Blackacre. T later executed and acknowledged a revocation form. Both instruments were recorded. Because the revocation form was acknowledged later than the deed, the form revoked the deed. The revocation occurred when the form was recorded.

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

By the terms of subsection (a), subsection (b) provides the exclusive methods of revocation by instrument. Revocation by another instrument, such as the transferor’s will, is not permitted.

The question is sometimes raised whether a deed of conveyance to a third party operates as a revocation. The answer highlights the important distinction between revocation and ademption by extinction. Ademption by extinction can have the same practical effect as revocation. However, the doctrines are different. Revocation means that the transfer on death deed is rendered void. The revocation occurs when the instrument of revocation is recorded. Ademption by extinction means that the transfer cannot occur because the property to be transferred is not owned by the transferor at death. The ademption occurs at the transferor’s death. Consider the following examples:

*Example 3.* T executed, acknowledged and recorded a transfer on death deed for Blackacre, identifying X as the designated beneficiary. Later, T executed, acknowledged and

1 recorded a revocation form for Blackacre. When the revocation form was recorded, the transfer  
2 on death deed was revoked.

3  
4 *Example 4.* *T* executed, acknowledged and recorded a transfer on death deed for  
5 Blackacre identifying *X* as the designated beneficiary. Later, *T* conveyed Blackacre to *Y*. Later, *T*  
6 died. The deed conveying Blackacre to *Y* did not revoke the transfer on death deed. However, at  
7 *T*'s death, Blackacre was not owned by *T*. Therefore, the attempted transfer on death of  
8 Blackacre from *T* to *X* was adeemed by extinction. *Y* is the owner of Blackacre.

9  
10 *Example 5.* *T* executed, acknowledged and recorded a transfer on death deed for  
11 Blackacre identifying *X* as the designated beneficiary. Later, *T* conveyed Blackacre to *Y*. Later, *Y*  
12 conveyed Blackacre back to *T*. Later, *T* died, owning Blackacre. There is no revocation or  
13 ademption. At *T*'s death, the transfer on death deed is effective to transfer Blackacre to *X*.

14  
15 The inter vivos conveyance from *T* to *Y* had the same practical effect as a revocation in  
16 Example 4, but not in Example 5.

17  
18 Subsection (b)(1) speaks of revocation "expressly or by inconsistency." This provision  
19 references the well-established law of revocation by inconsistency of wills. Consider the  
20 following examples:

21  
22 *Example 6.* *T* executed, acknowledged and recorded a transfer on death deed for  
23 Blackacre designating *X* as the beneficiary. Later, *T* executed, acknowledged and recorded a  
24 transfer on death deed for the same property, Blackacre, containing no express revocation of the  
25 earlier deed but designating *Y* as the beneficiary. Later, *T* died. The recording of the deed in favor  
26 of *Y* revoked the deed in favor of *X* by inconsistency. At *T*'s death, *Y* is the owner of Blackacre.

27  
28 *Example 7.* *T*, the owner of Blackacre in fee simple absolute, executed, acknowledged  
29 and recorded a transfer on death deed for Blackacre designating *X* as the beneficiary. Later, *T*  
30 executed, acknowledged and recorded a transfer on death deed containing no express revocation  
31 of the earlier deed but designating *Y* as the beneficiary of a life estate in Blackacre. Later, *T* died.  
32 The recording of the deed in favor of *Y* partially revoked the deed in favor of *X* by inconsistency.  
33 At *T*'s death, *Y* is the owner of a life estate in Blackacre, and *X* is the owner of the remainder.

34  
35 Subsection (c) supplies rules governing revocation in the event of multiple owners.  
36 Subsection (c)(1) provides that revocation by a transferor does not affect a transfer on death deed  
37 as to the interest of another transferor. Subsection (c)(2) provides that a transfer on death deed of  
38 joint owners is revoked only if it is revoked by all of the living joint owners. This rule is  
39 consistent with Uniform Probate Code §6-306, which provides in pertinent part: "A registration  
40 of a security in beneficiary form may be canceled or changed at any time by the sole owner or all  
41 then surviving owners without the consent of the beneficiary."

42  
43 Subsection (d) provides that a recorded transfer on death deed may not be revoked by a  
44 physical act performed on the deed. A physical act includes burning, tearing, canceling,  
45 obliterating, or destroying the deed or any part of it.

1 This 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  
6 **SECTION 208. EFFECT OF DEED DURING TRANSFEROR'S LIFETIME.**

7 During the transferor's lifetime, a transfer on death deed does not:

8 (1) affect the interests or rights of the transferor or any other owners;

9 (2) affect the interests or rights of creditors or transferees, whether or not they have notice  
10 of the deed;

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

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

14 (5) create an expectancy in favor of the designated beneficiary that can be assigned or  
15 encumbered in law or equity; or

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

18 **Comment**

19 The fundamental feature of a transfer on death deed is that it does not operate until the  
20 transferor's death. The transfer occurs at the transferor's death, not before. Thus, a transfer on  
21 death deed, during the transferor's lifetime, does not affect the interests or rights of the transferor  
22 or any other owners (Paragraph (1)). It does not affect the transferor's right to transfer or  
23 encumber the property, nor does it sever a joint tenancy, nor should it trigger a due-on-sale clause  
24 in the transferor's mortgage (Paragraph (1)). It does not affect the interests or rights of pre-  
25 existing or future creditors, secured or unsecured, whether or not they have an interest in the  
26 property or notice of the deed (Paragraph (2)). It does not affect transferees, whether or not they  
27 have notice of the deed (Paragraph (2)). It does not affect the transferor's or designated  
28 beneficiary's eligibility for any form of public assistance, including Medicaid (Paragraph (3)). On  
29 this point, the drafting committee specifically disapproves of the contrary approach of Colo. Rev.  
30 Stat. §15-15-403. During the transferor's lifetime, a transfer on death deed does not create a legal  
31 or equitable interest in the designated beneficiary (Paragraph (4)). It does not create an  
32 expectancy in favor of the designated beneficiary that can be assigned or encumbered in law or  
33 equity. The property is not subject to any anticipatory alienation or encumbrance (Paragraph (5)).

1 Finally, it does not make the property subject to claims or process of the designated beneficiary's  
2 creditors (Paragraph (6)).  
3  
4

5 **SECTION 209. EFFECT OF DEED AT TRANSFEROR'S DEATH.**

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

11 (1) The property is transferred to the designated beneficiaries that survive the  
12 transferor in accordance with the deed.

13 (2) Unless the deed provides otherwise, concurrent beneficiaries receive equal and  
14 undivided interests in the property with no right of survivorship among them.

15 (3) If no designated beneficiary survives the transferor, the property is transferred  
16 to the transferor's estate.

17 (b) Except as otherwise provided by [cite state recording act], a beneficiary's interest in  
18 the property is subject to all conveyances, encumbrances, assignments, contracts, mortgages,  
19 liens, and other interests to which the property is subject at the transferor's death. For purposes of  
20 this subsection and [cite state recording act], the recording of the transfer on death deed is  
21 deemed to have occurred at the transferor's death.

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

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

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

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

### Comment

Subsection (a) states three basic rules, except as otherwise provided by this section or other provisions of state law governing nonprobate transfers: (1) property that is the subject of an effective transfer on death deed and owned by the transferor at death is transferred at the transferor's death to the designated beneficiaries as provided in the deed; (2) unless the deed specifies otherwise, concurrent beneficiaries receive equal and undivided interests, with no right of survivorship among them; and (3) if no designated beneficiary survives the transferor, the property passes to the transferor's estate.

On the desirability of extending the probate rules governing antilapse, revocation on divorce or homicide, survivorship and simultaneous death, and the elective share of the surviving spouse to nonprobate transfers such as transfer on death deeds, see the Comment to Section 403.

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

Subsection (a)(2) states a rule of construction in the event of concurrent beneficiaries. Unless the deed provides otherwise, concurrent beneficiaries receive equal and undivided interests in the property with no right of survivorship among them. This rule of construction is consistent with the general presumption in favor of tenancy in common. See Powell on Real Property §51.02. The rule is also consistent with Uniform Probate Code §6-212 governing multiple-party accounts and §6-307 governing the transfer on death registration of securities.

Subsection (b) concerns the effect of transactions during the transferor's lifetime. The subsection states an intermediate rule between two extremes. One extreme would provide that transactions during the transferor's lifetime affect the beneficiary only if the transactions are



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

15  
16 Subsection (d) provides that the survivorship right of a joint owner takes precedence over  
17 the transfer on death deed. This rule is consistent with the law of joint tenancy and wills: the right  
18 of survivorship takes precedence over a provision in a joint tenant's will.

19  
20 The drafting committee approves of the result in *In re Estate of Roloff*, 143 P.3d 406  
21 (Kan. Ct. App. 2006) (holding that crops should be transferred with the land under a transfer on  
22 death deed because this result would be reached on the same facts with any other deed).

23  
24  
25 **SECTION 210. DISCLAIMER.** A beneficiary may disclaim all or part of the  
26 beneficiary's interest as provided by [cite state statute or the Uniform Disclaimer of Property  
27 Interests Act].

28 **Legislative Note:** States should check their disclaimer statutes for any necessary amendments.  
29 For many states, including states with the Uniform Disclaimer of Property Interests Act (1999),  
30 the principal amendment would be to replace the usual requirement that the disclaimer be  
31 delivered (for here, after the transferor's death, there is no obvious individual to whom delivery  
32 can be made) with a requirement that the disclaimer be recorded in the county where the  
33 property that is the subject of the disclaimer is located. For a state with the superseded  
34 disclaimer provisions of pre-1999 Uniform Probate Code Section 2-801, an amendment should  
35 also be made to the provisions governing the time of disclaimer, to treat the beneficiary's  
36 interest under a transfer on death deed as if it had devolved under a testamentary instrument.

#### 37 38 **Comment**

39  
40 A beneficiary of a transfer on death deed may disclaim the property interest the deed  
41 attempts to transfer. While this section relies on other law, such as the Uniform Disclaimer of  
42 Property Interests Act, to govern the disclaimer, two general principles should be noted.

1 First, there is no need under the law of disclaimers to execute a disclaimer in advance.  
2 During the transferor's lifetime, a designated beneficiary has no interest in the property. See  
3 Section 208. Nothing passes to the designated beneficiary while the transferor is alive, hence  
4 there is no need to execute a disclaimer during that time.  
5

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

16 **SECTION 211. NO COVENANTS OR WARRANTIES.** A transfer on death deed  
17 transfers property without covenant or warranty of title even if the deed contains a contrary  
18 provision.  
19

#### 20 **Comment**

21 This section states the mandatory rule that a transfer on death deed transfers the property  
22 without covenant or warranty of title. The rule is mandatory for two reasons: first, to prevent  
23 mishaps by uninformed grantors; and second, to recognize that a transfer on death deed is a will  
24 substitute. The rule of this section is consistent with the longstanding law of wills. As stated by  
25 Sir Edward Coke, "an express warranty cannot be created by will." Coke on Littleton 386a.

26 **[SECTION 212. LIABILITY OF BENEFICIARY FOR CREDITOR CLAIMS**  
27 **AND STATUTORY ALLOWANCES.**

#### 28 **Alternative A**

29 A beneficiary of a transfer on death deed is liable for allowed claims against the  
30 transferor's probate estate and statutory allowances to a surviving spouse and children to the  
31 extent provided in [cite state statute or Section 6-102 of the Uniform Probate Code].  
32

#### 32 **Alternative B**

33 (1) A beneficiary of a transfer on death deed is liable for allowed claims against the

transferor's probate estate and statutory allowances to a surviving spouse and children to the extent the transferor's probate estate is inadequate to satisfy those claims and allowances. The beneficiary's liability under this section may not exceed the value of the property received by the beneficiary under the transfer on death deed.

#### 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.*

*The section is bracketed because some states do not extend creditors' rights to nonprobate transfers.*

#### 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), Alternative B provides a liability rule focusing on transfer on death deeds. The beneficiary is liable to the extent the transferor's probate estate is insufficient. The beneficiary's liability is limited to the value of the property received by the beneficiary under the transfer on death deed.]

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**Legislative Note:**  
An enacting jurisdiction may wish to acknowledge the necessity for completion of the following forms in the caption of this [act] governing the deed under this [act].

**SECTION**

following forms must be completed by the owner of this [act] governing the deed under this [act].

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**PRIMARY BENEFICIARY**

I revoke all my previous transfer on death deeds affecting the described property, and designate the following beneficiary if he or she survives me.

Printed name	Mailing address, if available
--------------	-------------------------------

<hr/>	<hr/>
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**ALTERNATE BENEFICIARY – Optional**

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

Printed name	Mailing address, if available
--------------	-------------------------------

<hr/>	<hr/>
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**TRANSFER ON DEATH**

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

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

**SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED:**

<hr/>	[(SEAL)]	<hr/>
-------	----------	-------

(signature)

(date)

<hr/>	[(SEAL)]	<hr/>
-------	----------	-------

1 (signature)

(date)

2 ACKNOWLEDGMENT

3 [insert acknowledgment for deed here]

4 (back of form)

5 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

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

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

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

HOW DO I REVOKE THE TOD DEED? There are two 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. In addition, you can  
transfer the property to someone else during your lifetime.

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.

(2)

(front of form)

## REVOCABLE TRANSFER ON DEATH DEED

### LONG FORM

#### NOTICE TO OWNER

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

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

#### IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

\_\_\_\_\_

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

3 (printed name) (mailing address)

4 Legal description of the property:  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9 PRIMARY BENEFICIARY DESIGNATION

10 I revoke all my previous transfer on death deeds affecting the described property, and  
11 designate the following beneficiaries who survive me to receive the property. They will receive it  
12 in equal and undivided shares with no right of survivorship among them, unless I say otherwise  
13 here:  
14 \_\_\_\_\_

15 I have checked “Yes” or “No” in the far right column to indicate whether, if a beneficiary  
16 fails to survive me, the share should instead be transferred to the beneficiary’s descendants who  
17 survive me, by operation of state law (known as the “antilapse statute”).

18	Printed name	Mailing address, if available	Descendants instead?	
19	_____	_____	yes <input type="checkbox"/>	no <input type="checkbox"/>
20	_____	_____	yes <input type="checkbox"/>	no <input type="checkbox"/>
21	_____	_____	yes <input type="checkbox"/>	no <input type="checkbox"/>

22 ALTERNATE BENEFICIARY DESIGNATION – Optional

23 If no primary beneficiaries survive me (and, if applicable, state law has not transferred the



property to their descendants by the antilapse statute), I designate the following alternate beneficiaries who survive me to receive the property. They will receive it in equal and undivided shares with no right of survivorship among them, unless I say otherwise here:

Printed name	Mailing address, if available	Descendants instead?	
_____	_____	yes <input type="checkbox"/>	no <input type="checkbox"/>
_____	_____	yes <input type="checkbox"/>	no <input type="checkbox"/>
_____	_____	yes <input type="checkbox"/>	no <input type="checkbox"/>

#### TRANSFER ON DEATH

I transfer my interest in the described property to the beneficiaries on my death.

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

#### SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED:

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

(signature)

(date)

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

(signature)

(date)

#### ACKNOWLEDGMENT

[insert acknowledgment for deed here]

(back of form)

#### COMMON QUESTIONS ABOUT THE USE OF THIS FORM

WHAT DOES THE TRANSFER ON DEATH (TOD) DEED DO? When you die, this deed transfers the described property, subject to any debts or liens or mortgages (or other encumbrances) you have put on the property during your lifetime. Probate is not required. The

1 TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer  
2 the property to someone else during your lifetime. If you do not own any interest in the property  
3 when you die, this deed will have no effect.

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

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

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

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

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

23 I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT SHOULD I DO? Do not complete

1 this form under pressure. Seek help from a trusted family member, a friend, or a lawyer.

2 Do I NEED TO TELL THE BENEFICIARIES ABOUT THE TOD DEED? No, but it is  
3 recommended. Secrecy can cause later complications and might make it easier for others to  
4 commit fraud.

### 5 **Comment**

6 The forms in this section are optional. The section is based on Section 4 of the Uniform  
7 Health-Care Decisions Act.

8  
9 Ten of the twelve states with transfer on death deed statutes provide a statutory form. See  
10 Ariz. Stat. §33-405(K); Ark. Stat. §18-12-608(h), Colo. Stat. §15-15-404; Kans. Stat. §59-3502;  
11 Minn. Stat. §507.071(24); Mont. Stat. §72-6-121(13); Nev. Stat. §111.109(6); N.M. Stat. §45-6-  
12 401(C); Ohio Code §5302.22(A); Okla. H.B. 2639 §3.

13  
14 The transfer on death deed is likely to be used by consumers for whom the preparation of  
15 a tailored inter vivos revocable trust is too costly. The forms in this section are designed to be  
16 understandable and consumer-friendly.

17  
18 For examples of statutory forms containing answers to questions likely to be asked by  
19 consumers, see the Illinois statutory forms for powers of attorney. 755 Ill. Comp. Stat. 45/3-3  
20 (power of attorney for property); 755 Ill. Comp. Stat. 45/4-10 (power of attorney for health care).

21  
22  
23 **SECTION 302. OPTIONAL FORM OF REVOCATION.** The following form may,  
24 but need not, be used to create a form of revocation under this [act]. The other sections of this  
25 [act] govern the effect of this or any other writing used to create a form of revocation under this  
26 [act].

27 (front of form)

### 28 **REVOCATION OF TRANSFER ON DEATH DEED**

#### 29 **NOTICE TO OWNER**

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

#### 32 **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

[(SEAL)]

(signature)

(date)

[(SEAL)]

(signature)

(date)

## ACKNOWLEDGMENT

[insert acknowledgment here]

(back of form)

## COMMON QUESTIONS ABOUT THE USE OF THIS FORM

HOW DO I USE THIS FORM TO REVOKE A TRANSFER ON DEATH (TOD) DEED? Complete this

1 form. Have it acknowledged before a notary public or other individual authorized to take  
2 acknowledgments. Record the form in each [county] where the property is located. The form  
3 must be acknowledged and recorded before your death or it has no effect.

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

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

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

#### 14 **Comment**

15  
16 The form in this section is optional. The section is based on Section 4 of the Uniform  
17 Health-Care Decisions Act.

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

22  
23 The aim of the form in this section is to be understandable and consumer-friendly.]

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

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

15 (1) .....

16 (2) .....

17 (3) .....

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

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”), survivorship and simultaneous death, and the elective  
4 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 survivorship and simultaneous death apply to  
13 any governing instrument. See Uniform Probate Code §§2-702 (survivorship and simultaneous  
14 death), 2-803 (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. See  
18 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  
24           **SECTION 404. EFFECTIVE DATE.** This [act] takes effect .....