

D R A F T

FOR APPROVAL

# **UNIFORM 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-EIGHTEENTH YEAR  
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# **UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

*WITH PREFATORY NOTE AND PRELIMINARY COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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May 26, 2009

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

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

NATHANIEL STERLING, 4180 Oak Hill Ave., Palo Alto, CA 94306, *Chair*  
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 72212  
PATRICK A. RANDOLPH, JR., University of Missouri-Kansas City School of Law, 5100 Rockhill Rd., Kansas City, MO 64110  
GLEE S. SMITH, P.O. Box 667, Lawrence, KS 66044  
MICHAEL P. SULLIVAN, 80 South 8th St., 500 IDS Center, Minneapolis, MN 55402-3796  
THOMAS P. GALLANIS, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455, *Reporter*

**EX OFFICIO**

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*  
ANNE L. MCGIHON, 837 Sherman St., Denver, CO 80203, *Division Chair*

**AMERICAN BAR ASSOCIATION ADVISOR**

DENNIS M. HORN, 2099 Pennsylvania Ave. NW, Washington, DC 20006, *ABA Advisor*  
SUSAN N. GARY, University of Oregon School of Law, 1515 Agate St., Eugene, OR 97403, *ABA Section Advisor*

**EXECUTIVE DIRECTOR**

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

Copies of this Act may be obtained from:

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

# UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

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# UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

## Prefatory Note

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

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

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

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

This draft is for the Uniform Law Commission's annual meeting in Santa Fe.

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

2

3                   **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Real Property

4   Transfer on Death Act.

5                   **SECTION 2. DEFINITIONS.** In this [act]:

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

7                   (2) “Designated beneficiary” means a person designated to receive property in a transfer

8   on death deed.

9                   (3) “Joint owner” means an individual who owns property concurrently with one or more

10   other individuals with a right of survivorship. The term includes a joint tenant[,][ and] [owner of

11   community property with a right of survivorship[,][ and tenant by the entirety]. The term does not

12   include a tenant in common [or owner of community property without a right of survivorship].

13                   (4) “Person” means an individual, corporation, business trust, estate, trust, partnership,

14   limited liability company, association, joint venture, public corporation, government or

15   governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

16                   (5) “Property” means an interest in real property which is transferable on the death of the

17   owner.

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

19                   (7) “Transferor” means an individual who makes a transfer on death deed.

20

21                                   **Comment**

22

23                   Paragraph (1) defines a beneficiary as a person that receives property under a transfer on

24   death deed. This links the definition of “beneficiary” to the definition of a “person.” A

25   beneficiary can be any person, including the trustee of a revocable trust.

26

27                   Paragraph (2) defines a designated beneficiary as a person designated to receive property

28   in a transfer on death deed. This links the definition of a “designated beneficiary” to the

1 definition of a “person.” A designated beneficiary can be any person, including a revocable trust.

2  
3 The distinction between a “beneficiary” and a “designated beneficiary” is easily  
4 illustrated. Section 13 provides that, on the transferor’s death, the property that is the subject of a  
5 transfer on death deed is transferred to the designated beneficiaries who survive the transferor. If  
6 *X* and *Y* are the designated beneficiaries but only *Y* survives the transferor, then *Y* is a beneficiary  
7 and *X* is not. A further illustration comes into play if Section 13 is made subject to the state’s  
8 antilapse statute. If *X* fails to survive the transferor but has a descendant, *Z*, who survives the  
9 transferor, the antilapse statute may create a substitute gift in favor of *Z*. In such a case, the  
10 designated beneficiaries are *X* and *Y*, but the beneficiaries are *Y* and *Z*.

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

15  
16 Paragraph (4) is the standard Uniform Law Commission definition of a “person.”

17  
18 The effect of paragraph (5) is that the act applies to all interests in real property that are  
19 transferable at the death of the owner.

20  
21 Paragraph (6) provides that a “transfer on death deed” is a deed authorized under this act.  
22 In some states with existing transfer on death deed legislation, the legislation has instead used the  
23 term “beneficiary deed.” The term “transfer on death deed” is preferred, to be consistent with the  
24 transfer on death registration of securities. See Article 6, Part 3, of the Uniform Probate Code,  
25 containing the Uniform TOD Security Registration Act.

26  
27 Paragraph (7) limits the definition of a “transferor” to an individual. The term  
28 “transferor” does not include a corporation, business trust, estate, trust, partnership, limited  
29 liability company, association, joint venture, public corporation, government or governmental  
30 subdivision, agency, or instrumentality, or any legal or commercial entity other than an  
31 individual. The term also does not include an agent or other representative. If a transfer on death  
32 deed is made by an agent on behalf of a principal or by a conservator, guardian or judge on behalf  
33 of a ward, the principal or ward is the transferor. By way of analogy, see Uniform Trust Code  
34 §103(15) (defining “settlor”) and the accompanying Comment (excluding an individual “acting  
35 as the agent for the person who will be funding the trust”). The power of an agent to make or  
36 revoke a transfer on death deed on behalf of a principal is determined by other law, such as the  
37 Uniform Power of Attorney Act, as indicated in the Comments to Sections 9 and 11.

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

42 **Comment**  
43

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

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

10 **Comment**

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

14  
15 One such method is a present transfer with a retained legal life estate. Consider the  
16 following examples:

17  
18 *Example 1.* A conveys Blackacre to B while reserving A's right to remain in possession  
19 until A's death. By this conveyance, A has made a present transfer of a future interest to B. The  
20 transfer is irrevocable. The future interest will ripen into possession at A's death, even if B fails  
21 to survive A.

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

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

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

34 **Comment**

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

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

1 effect of a transfer on death deed made by joint owners, see Section 13(c) and the accompanying  
2 Comment.

3  
4 The transferor may select any form of ownership, concurrent or successive, absolute or  
5 conditional, contingent or vested, valid under state law. Among many other things, this permits  
6 the transferor to designate one or more primary beneficiaries and one or more alternate  
7 beneficiaries to take in the event the primary beneficiaries fail to survive the transferor. This  
8 freedom to specify the form of the transferee's interest comports with the fundamental principle  
9 articulated in the Restatement (Third) of Property (Wills and Other Donative Transfers) §10.1  
10 that the donor's intention should be "given effect to the maximum extent allowed by law." As the  
11 Restatement explains in Comment c to §10.1, "American law curtails freedom of disposition  
12 only to the extent that the donor attempts to make a disposition or achieve a purpose that is  
13 prohibited or restricted by an overriding rule of law."

14  
15 Notwithstanding this freedom of disposition, transferors are encouraged as a practical  
16 matter to avoid formulating dispositions that would complicate title. Dispositions containing  
17 conditions or class gifts, for example, may require a court proceeding to sort out the  
18 beneficiaries' interests. Other estate planning mechanisms, such as trusts, may be more  
19 appropriate in such cases.

20  
21 **SECTION 6. TRANSFER ON DEATH DEED REVOCABLE.** A transfer on death  
22 deed is revocable even if the deed or another instrument contains a contrary provision.

### 23 **Comment**

24 A fundamental feature of a transfer on death deed is that the transferor retains the power  
25 to revoke the deed. Section 6 is framed as a mandatory rule in order to protect uninformed  
26 grantors. The rule also prevents an off-record instrument from affecting the revocability of a  
27 transfer on death deed.

28  
29 If the transferor promises to make the deed irrevocable or not to revoke the deed, the  
30 promisee may have a remedy under other law if the promise is broken. The deed remains  
31 revocable despite the promise.

32  
33 **SECTION 7. TRANSFER ON DEATH DEED NONTTESTAMENTARY.** A transfer  
34 on death deed is nontestamentary.

### 35 **Comment**

36  
37 This section is consistent with Uniform Probate Code §6-101(a), which provides: "A  
38 provision for a nonprobate transfer on death in an insurance policy, contract of employment,  
39 bond, mortgage, promissory note, certificated or uncertificated security, account agreement,  
40 custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement  
41 plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other



1 written instrument of a similar nature is nontestamentary.”

2  
3 As the Comment to Uniform Probate Code §6-101 explains, because the mode of transfer  
4 is declared to be nontestamentary, the instrument of transfer is not a will and does not have to be  
5 executed in compliance with the formalities for wills, nor does the instrument need to be  
6 probated.

7  
8 Whether a document that is ineffective as a transfer on death deed (e.g., because it has not  
9 been recorded before the transferor’s death) should be given effect as a testamentary instrument  
10 will depend on the applicable facts and on the wills law of the jurisdiction. Section 2-503 of the  
11 Uniform Probate Code provides in pertinent part: “Although a document ... was not executed in  
12 compliance with Section 2-502, the document ... is treated as if it had been executed in  
13 compliance with that section if the proponent of the document ... establishes by clear and  
14 convincing evidence that the decedent intended the document ... to constitute ... (iii) an addition  
15 to or alteration of the [decedent’s] will ....”

16 **SECTION 8. CAPACITY OF TRANSFEROR.** The capacity required to make or  
17 revoke a transfer on death deed is the same as the capacity required to make a will.

18 **Comment**  
19

20 This section is consistent with the Restatement (Third) of Property (Wills and Other  
21 Donative Transfers) §8.1(b), which applies the standard of testamentary capacity, and not the  
22 standard of capacity for inter vivos gifts, to revocable will substitutes: “If the donative transfer is  
23 in the form of a will, a revocable will substitute, or a revocable gift, the testator or donor must be  
24 capable of knowing and understanding in a general way the nature and extent of his or her  
25 property, the natural objects of his or her bounty, and the disposition that he or she is making of  
26 that property, and must also be capable of relating these elements to one another and forming an  
27 orderly desire regarding the disposition of the property.” This section is also consistent with  
28 Uniform Trust Code §601: “The capacity required to create, amend, revoke, or add property to a  
29 revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that  
30 required to make a will.”  
31

32 A transfer on death deed is not affected if the transferor subsequently loses capacity. On  
33 the ability of an agent under a power of attorney to make or revoke a transfer on death deed, see  
34 the Comments to Sections 9 and 11.  
35

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

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

39 (2) must state that the transfer to the designated beneficiary is to occur at the transferor’s

1 death; and

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

#### 4 **Comment**

5  
6 Paragraph (1) requires a transfer on death deed to contain the same essential elements and  
7 formalities, other than a present intention to convey, as are required for a properly recordable  
8 inter vivos deed under state law. In all states, this includes the requirement that the deed be  
9 acknowledged by the transferor before a notary public or other individual authorized by law to  
10 take acknowledgments. See Thompson on Real Property §92.04(c) (observing that a "certificate  
11 of acknowledgment or attestation is universally required to qualify an instrument for  
12 recordation"). In the context of transfer on death deeds, the requirement of acknowledgment  
13 fulfills at least four functions. First, it cautions a transferor that he or she is performing an act  
14 with legal consequences. Such caution is important where, as here, the transferor does not  
15 experience the wrench of delivery because the transfer occurs at death. Second, acknowledgment  
16 helps to prevent fraud. Third, acknowledgment facilitates the recording of the deed. Fourth,  
17 acknowledgment enables the rule in Section 11 that a later acknowledged deed prevails over an  
18 earlier acknowledged deed.

19  
20 Paragraph (2) emphasizes an important distinction between an inter vivos deed and a  
21 transfer on death deed. An inter vivos deed evidences an intention to transfer, at the time of the  
22 conveyance, an interest in property, either a present interest or a future interest. In contrast, a  
23 transfer on death deed evidences an intention that the transfer occur at the transferor's death.  
24 Under no circumstances should a transfer on death deed be given effect as an inter vivos deed; to  
25 do so would violate the transferor's intention that the transfer occur at the transferor's death.

26  
27 Paragraph (3) requires a transfer on death deed to be recorded before the transferor's  
28 death in the county (or other appropriate administrative division of a state, such as a parish)  
29 where the land is located. If the property described in the deed is in more than one county, the  
30 deed is effective only with respect to the property in the county or counties where the deed is  
31 recorded. The requirement of recordation before death helps to prevent fraud by ensuring that all  
32 steps necessary to the effective transfer on death deed be completed during the transferor's  
33 lifetime. The requirement of recordation before death also enables all parties to rely on the  
34 recording system. For these reasons, all twelve states that have already enacted transfer on death  
35 deed statutes require the deed to be recorded before the transferor's death.

36  
37 An individual's agent may execute a transfer on death deed on the individual's behalf to  
38 the extent permitted by other law, such as the Uniform Power of Attorney Act. This act does not  
39 define, but instead relies on other law to determine, the authority of an agent.

#### 40 **SECTION 10. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT**

41  
42 **REQUIRED.** A transfer on death deed is effective without:

1 (1) notice or delivery to or acceptance by the designated beneficiary during the  
2 transferor's life; or

3 (2) consideration.

#### 4 **Comment**

5  
6 This section makes it clear that a transfer on death deed is effective without notice or  
7 delivery to or acceptance by the beneficiary during the transferor's lifetime (paragraph (1)) and  
8 without consideration (paragraph (2)).  
9

10 Paragraph (1) is consistent with the fundamental distinction between a transfer on death  
11 deed and an inter vivos deed. Under the former, but not under the latter, the transfer occurs at the  
12 transferor's death. Therefore, there is no requirement of notice, delivery or acceptance during the  
13 transferor's life. This does not mean that the beneficiary is required to accept the property. The  
14 beneficiary may disclaim the property, as explained in Section 14 and the accompanying  
15 Comment.  
16

17 Paragraph (2) is consistent with the law of donative transfers. A deed need not be  
18 supported by consideration.  
19

### 20 **SECTION 11. REVOCATION BY INSTRUMENT AUTHORIZED;**

### 21 **REVOCATION BY ACT NOT PERMITTED.**

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

24 (1) is:

25 (A) a transfer on death deed that revokes the deed or part of the deed  
26 expressly or by inconsistency;

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

29 (C) an inter vivos deed that expressly revokes the transfer on death deed or  
30 part of the deed; and

31 (2) is acknowledged by the transferor after the acknowledgment of the deed being

revoked and recorded before the transferor's death in the public records in [the office of the county recorder of deeds] of the [county] where the deed is recorded.

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

(1) revocation by a transferor does not affect the deed as to the interest of another transferor; and

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

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

(d) This section does not limit the effect of an inter vivos transfer of the property.

### Comment

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

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

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

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

*Example 2.* *T* executed, acknowledged and recorded two transfer on death deeds for

1 Blackacre. Both deeds expressly revoked “all my prior transfer on death deeds concerning this  
2 property.” The dates of acknowledgment determine which deed revoked the other. The first deed  
3 was acknowledged November 1; the second deed was acknowledged December 15. The second  
4 deed is the later acknowledged, so it revoked the first deed. The revocation occurred when the  
5 second deed was recorded.  
6

7 *Example 3.* *T* executed and acknowledged a transfer on death deed for Blackacre. *T* later  
8 executed and acknowledged a revocation form. Both instruments were recorded. Because the  
9 revocation form was acknowledged later than the deed, the form revoked the deed. The  
10 revocation occurred when the form was recorded.  
11

12 *Example 4.* *T* executed and acknowledged a transfer on death deed for Blackacre. *T* later  
13 executed and acknowledged an inter vivos deed conveying Blackacre and expressly revoking the  
14 transfer on death deed. Both instruments were recorded. Because the inter vivos deed contained  
15 an express revocation provision and was acknowledged later than the transfer on death deed, the  
16 inter vivos deed revoked the transfer on death deed. The revocation occurred when the inter  
17 vivos deed was recorded. (For the result if the inter vivos deed had not contained an express  
18 revocation clause, see the discussion below on “ademption by extinction.”)  
19

20 The same rules apply whether the revocation is total or partial. In the previous examples,  
21 suppose instead that the initial transfer on death deed provided for the transfer of two parcels,  
22 Blackacre and Whiteacre, and that the subsequent instrument revoked the transfer on death deed  
23 as to Blackacre. The subsequent instrument revoked the transfer on death deed in part.  
24

25 If the property described in the original deed is in more than one county, the revocation is  
26 effective only with respect to the property in the county or counties where the revoking deed or  
27 instrument is recorded.  
28

29 Subsection (a)(1)(A) speaks of revocation “expressly or by inconsistency.” This provision  
30 references the well-established law of revocation by inconsistency of wills. Consider the  
31 following examples:  
32

33 *Example 5.* *T* executed, acknowledged and recorded a transfer on death deed for  
34 Blackacre naming *X* as the designated beneficiary. Later, *T* executed, acknowledged and recorded  
35 a transfer on death deed for the same property, Blackacre, containing no express revocation of the  
36 earlier deed but naming *Y* as the designated beneficiary. Later, *T* died. The recording of the deed  
37 in favor of *Y* revoked the deed in favor of *X* by inconsistency. At *T*’s death, *Y* is the owner of  
38 Blackacre.  
39

40 *Example 6.* *T*, the owner of Blackacre in fee simple absolute, executed, acknowledged  
41 and recorded a transfer on death deed for Blackacre naming *X* as the designated beneficiary.  
42 Later, *T* executed, acknowledged and recorded a transfer on death deed containing no express  
43 revocation of the earlier deed but naming *Y* as the designated beneficiary of a life estate (or a  
44 mineral interest) in Blackacre. Later, *T* died. The recording of the deed in favor of *Y* partially  
45 revoked the deed in favor of *X* by inconsistency. At *T*’s death, *Y* is the owner of a life estate (or a  
46 mineral interest) in Blackacre, and *X* is the owner of the remainder.

1       The question is sometimes raised whether a recorded inter vivos deed *without an express*  
2 *revocation clause* operates as a revocation of an earlier transfer on death deed. The answer  
3 highlights the important distinction between “revocation” and “ademption by extinction.” See  
4 Atkinson on Wills §134. Revocation means that the instrument is rendered void. Ademption by  
5 extinction means that the transfer of the property cannot occur because the property is not owned  
6 by the transferor at death. The doctrines are different.

7  
8       In some instances, revocation and ademption have the same practical effect: the  
9 designated beneficiary of the property receives nothing. Nothing in this section changes that fact,  
10 as indicated in subsection (d). However, there are other instances where the doctrines have  
11 differing effects. Consider the following illustration, drawn from the law of wills.

12  
13       *Example 7.* *T* executed a will devising Blackacre to *A*. Later, *T* sold Blackacre to *B* for  
14 \$100,000. At *T*’s death, *B* still owed \$25,000 of the purchase price.

15  
16       The law of wills provides that the devise to *A* is adeemed rather than revoked. This means  
17 that *A* is not entitled to Blackacre but is entitled to the \$25,000 unpaid balance of the purchase  
18 price. See Uniform Probate Code §2-606(a)(1). The result is designed to effectuate *T*’s presumed  
19 intention.

20  
21       The Joint Editorial Board for Uniform Trust and Estate Acts has begun a conversation on  
22 whether the Uniform Probate Code’s provisions on ademption should be extended to nonprobate  
23 transfers, thus harmonizing the treatment of wills and will substitutes on this aspect of the law.  
24 This act accepts the well recognized distinction between revocation and ademption in order to  
25 leave the door open for such future harmonization, which would effectuate the presumed  
26 intention of nonprobate grantors.

27  
28       Subsection (b) supplies rules governing revocation by instrument in the event of a transfer  
29 on death deed made by multiple owners. Subsection (b)(1) provides that revocation by a  
30 transferor does not affect a transfer on death deed as to the interest of another transferor.  
31 Subsection (b)(2) provides that a transfer on death deed of joint owners is revoked only if it is  
32 revoked by all of the living joint owners. This rule is consistent with Uniform Probate Code §6-  
33 306, which provides in pertinent part: “A registration of a security in beneficiary form may be  
34 canceled or changed at any time by the sole owner or all then surviving owners without the  
35 consent of the beneficiary.” Subsection (b)(2) applies only to a deed of joint owners. A joint  
36 tenant who severs the joint tenancy, thereby destroying the right of survivorship, is no longer a  
37 joint owner.

38  
39       Subsection (c) provides that a recorded transfer on death deed may not be revoked by a  
40 revocatory act performed on the deed. Such an act includes burning, tearing, canceling,  
41 obliterating, or destroying the deed or any part of it.

42  
43       This statute does not define, but instead looks to other law to determine, the authority of  
44 an agent. An individual’s agent may revoke a transfer on death deed on the individual’s behalf to  
45 the extent permitted by other law, such as the Uniform Power of Attorney Act.

1                   **SECTION 12. EFFECT OF TRANSFER ON DEATH DEED DURING**  
2                   **TRANSFEROR’S LIFE.** During a transferor’s life, a transfer on death deed does not:

3                   (1) affect an interest or right of the transferor or any other owner, including the right to  
4                   transfer or encumber the property;

5                   (2) affect an interest or right of a transferee, even if the transferee has actual or  
6                   constructive notice of the deed;

7                   (3) affect an interest or right of the transferor’s secured or unsecured creditors or future  
8                   creditors, even if they have actual or constructive notice of the deed;

9                   (4) affect the transferor’s or designated beneficiary’s eligibility for any form of public  
10                  assistance;

11                  (5) create a legal or equitable interest in favor of the designated beneficiary; or

12                  (6) subject the property to claims or process of the designated beneficiary’s creditors.

13                                   **Comment**

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

16  
17                  Paragraph (1): A transfer on death deed, during the transferor’s lifetime, does not affect  
18                  the interests or rights of the transferor or any other owners. The deed does not affect the  
19                  transferor’s right to transfer or encumber the property, nor does it sever a joint tenancy or a joint  
20                  tenant’s right of survivorship, nor should it trigger a due-on-sale clause in the transferor’s  
21                  mortgage.

22  
23                  Paragraph (2): A transfer on death deed does not affect transferees, whether or not they  
24                  have notice of the deed. Like a will, the transfer on death deed is ambulatory. It has no effect on  
25                  inter vivos transfers.

26  
27                  Paragraph (3): A transfer on death deed, during the transferor’s lifetime, does not affect  
28                  pre-existing or future creditors, secured or unsecured, whether or not they have an interest in the  
29                  property or notice of the deed.

30  
31                  Paragraph (4): A transfer on death deed, during the transferor’s lifetime, does not affect  
32                  the transferor’s or designated beneficiary’s eligibility for any form of public assistance, including  
33                  Medicaid. On this point, the drafting committee specifically disapproves of the contrary approach

1 of Colo. Rev. Stat. §15-15-403.

2  
3 Paragraph (5): During the transferor's lifetime, a transfer on death deed does not create a  
4 legal or equitable interest in the designated beneficiary. The beneficiary does not have an interest  
5 that can be assigned or encumbered. Note, however, that this rule would not preclude the  
6 doctrine of after-acquired title. A warranty deed from a designated beneficiary to a third party  
7 would operate to pass the beneficiary's title to the third party after the transferor's death.

8  
9 Paragraph (6): A transfer on death deed, during the transferor's lifetime, does not make  
10 the property subject to claims or process of the designated beneficiary's creditors. The deed has  
11 no more effect than a will.

12  
13 **SECTION 13. EFFECT OF TRANSFER ON DEATH DEED AT**  
14  
15 **TRANSFEROR'S DEATH.**

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

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

24 (2) The interest of a designated beneficiary is contingent on the designated  
25 beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive  
26 the transferor lapses.

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

29 (4) If the transferor has identified two or more designated beneficiaries to receive  
30 concurrent interests in the property, the share of one which lapses or fails for any reason is  
31 transferred to the other, or to the others in proportion to the interest of each in the remaining part



1 of the property held concurrently.

2 (b) Subject to [cite state recording act], a beneficiary takes the property subject to all  
3 conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to  
4 which the property is subject at the transferor's death. For purposes of this subsection and [cite  
5 state recording act], the recording of the transfer on death deed is deemed to have occurred at the  
6 transferor's death.

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

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

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

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

14 **Legislative Note:** *In light of the growing harmonization of the rules governing probate and*  
15 *nonprobate transfers, states enacting this act should consider extending to nonprobate*  
16 *mechanisms, such as transfer on death deeds, the probate rules governing antilapse, revocation*  
17 *by divorce, revocation by homicide, survival and simultaneous death, and the elective share of a*  
18 *surviving spouse.*

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

27  
28 *The Uniform Probate Code contains statutory provisions treating wills and will*  
29 *substitutes alike for many purposes, including (1) antilapse; (2) revocation by divorce; (3)*  
30 *revocation by homicide (the "slayer rule"); (4) survival and simultaneous death; and (5) the*  
31 *elective share of a surviving spouse.*

32  
33 *In some cases, the harmonization is achieved by applying the relevant rule to any*

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

9  
10 For the elective share, the Uniform Probate Code treats wills and will substitutes alike by  
11 defining the decedent’s “augmented estate” to include both probate and nonprobate transfers.  
12 See Uniform Probate Code §2-203(a).

13  
14 For antilapse, the Uniform Probate Code has separate sections treating wills (§2-603)  
15 and will substitutes (§§2-706, 2-707), but the latter are modeled on the former.

16  
17 See also the Legislative Note to Section 14 on disclaimers.

## 18 19 **Comment**

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

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

30  
31 *Example 1.* A executes, acknowledges and records a transfer on death deed for Blackacre  
32 naming X as the primary beneficiary and Y as the alternate beneficiary if X fails to survive A.  
33 Both X and Y survive A. Blackacre is transferred to X at A’s death in accordance with the  
34 provisions of the deed.

35  
36 This default rule implements the fundamental principle that the provisions of the deed  
37 control the disposition of the property, unless otherwise provided by state law.

38  
39 The drafting committee approves of the result in *In re Estate of Roloff*, 143 P.3d 406  
40 (Kan. Ct. App. 2006) (holding that crops should be transferred with the land under a transfer on  
41 death deed because this result would be reached on the same facts with any other deed).

42  
43 The bracketed language at the beginning of subsection (a) enables a state to make the  
44 default rules subject to other statutes, such as an antilapse statute or a statute providing for  
45 revocation on divorce. Consider the following examples:

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

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

18  
19       Note that the property must be owned by the transferor at death. Property no longer  
20 owned by the transferor at death cannot be transferred by a transfer on death deed, just as it  
21 cannot be transferred by a will. This is the principle of ademption by extinction, discussed in the  
22 Comment to Section 11.

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

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

42  
43       The third default rule established by subsection (a) is that concurrent beneficiaries receive  
44 equal and undivided interests with no right of survivorship among them. This default rule is  
45 consistent with the general presumption in favor of tenancy in common. See Powell on Real  
46 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.

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

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

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

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

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

**SECTION 14. DISCLAIMER.** A beneficiary may disclaim all or part of the beneficiary's interest as provided by [cite state statute or the Uniform Disclaimer of Property

Interests Act].

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

**SECTION 12. DELIVERY OR FILING.**

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

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

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

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

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

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

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

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

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

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

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

(g) In the case of an interest created by a beneficiary designation which is to be disclaimed ~~made~~ after ~~the time~~ the designation becomes irrevocable;:

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

(h) In the case of a disclaimer by a surviving holder of jointly held

*property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.*

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

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

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

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

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

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

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

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

**Comment**

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

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

**Comment**

*This section permits the recordation of a disclaimer of an interest in property ownership of or title to which is the subject of a recording system. This section expands on the corresponding provision of previous Uniform Acts which ~~only~~ referred to permissive recording of a disclaimer of an interest in real property. While local practice may vary, disclaimants should realize that in order to establish the chain of title to real property, and to ward off creditors and bona*

1 *fide purchasers, the disclaimer may have to be recorded. This section does not*  
2 *change the law of the state governing notice. The reference to Section 12(g)(2)*  
3 *concerns the disclaimer of an interest in real property created by a “beneficiary*  
4 *designation” as that term is defined in Section 12(a). Such a disclaimer must be*  
5 *recorded.*

### 6 7 **Comment**

8  
9 A beneficiary of a transfer on death deed may disclaim the property interest the deed  
10 attempts to transfer. While this section relies on other law, such as the Uniform Disclaimer of  
11 Property Interests Act, to govern the disclaimer, two general principles should be noted.

12  
13 First, there is no need under the law of disclaimers to execute a disclaimer in advance.  
14 During the transferor’s life, a designated beneficiary has no interest in the property. See Section  
15 12. Nothing passes to the designated beneficiary while the transferor is alive, hence there is no  
16 need to execute a disclaimer during that time.

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

## 26 27 **SECTION 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY** 28 29 **ALLOWANCES.**

### 30 **Alternative A**

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

### 34 **Alternative B**

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

38 (b) If more than one property is transferred by one or more transfer on death deeds, the

liability under subsection (a) is apportioned among the properties in proportion to their net values at the transferor's death.

(c) A proceeding to enforce the liability under this section must be commenced not later than [18 months] after the transferor's death.

### End of Alternatives

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

### Comment

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

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

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

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



allowances to the extent the estate is insufficient.

**[SECTION 16. OPTIONAL FORM OF TRANSFER ON DEATH DEED.** The following form may be used to create a transfer on death deed. The other sections of this [act] govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

## REVOCABLE TRANSFER ON DEATH DEED FORM

### NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

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

### IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Mailing address

Legal description of the property:

### PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Mailing address, if available

### ALTERNATE BENEFICIARY – Optional

If my primary beneficiary does not survive me, I designate the following alternate

beneficiary if that beneficiary survives me.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Mailing address, if available

## TRANSFER ON DEATH

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

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

## SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

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

## ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

## COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) you have put on the property during your lifetime. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each [county] where any part of the property is located. The form has no effect unless it is

acknowledged and recorded before your death.

Is the “legal description” of the property necessary? Yes.

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

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up the deed.

How do I “record” the TOD deed? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is in more than one [county], you should record the deed in each [county].

Can I later revoke the TOD deed if I change my mind? Yes. The TOD deed is revocable. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each [county] where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each [county] where the property is located. (3) Transfer the property to someone else during your lifetime by a deed that expressly revokes the TOD deed.

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

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

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

I have other questions about this form. What should I do? This form is designed to fit

some but not all situations. If you have other questions, you are encouraged to consult a lawyer.]

**Legislative Note:** *This section and the next section are bracketed for states wishing to provide optional statutory forms. An enacting jurisdiction should review its statutory requirements for deeds and for acknowledgments and amend the statutory forms provided in Sections 16 and 17 where necessary for conformity with those requirements. If an enacting jurisdiction changes the act, the jurisdiction should review the answers to the common questions in Sections 16 and 17 to ensure the answers remain accurate.*

### Comment

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

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

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

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

**[SECTION 17. OPTIONAL FORM OF REVOCATION.** The following form may be used to create an instrument of revocation under this [act]. The other sections of this [act] govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

## REVOCATION OF TRANSFER ON DEATH DEED

## NOTICE TO OWNER

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

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

REVOCATION

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature

[(SEAL)]

Date

Signature

[(SEAL)]

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 form.

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

How do I find the "legal description" of the property? This information may be on the

TOD deed. It may also be available in [the office of the county recorder of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.

How do I “record” the form? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is located in more than one [county], you should record the form in each of those [counties].

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

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.]

### **Comment**

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

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

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

**SECTION 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**SECTION 19. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or

1 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
2 U.S.C. Section 7003(b).

3 **SECTION 20. REPEALS.** The following are repealed:

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

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