

LC003228

IN GENERAL ASSEMBLY

RELATING TO PROBATE PRACTICE AND PROCEDURE -- UNIFORM REAL PROPERTY
TRANSFER ON DEATH ACT

Referred To: Senate Judiciary

1 SECTION 1. Title 33 of the General Laws entitled "PROBATE PRACTICE AND
2 PROCEDURE" is hereby amended by adding thereto the following chapter:

4 UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

6 This chapter shall be known and may be cited as the "Uniform Real Property Transfer on
7 Death Act".

9 As used in this chapter:

11 (2) "Class gift" means a transfer to a group of persons who are classified by their
12 relationship to one another or the transferor, and who are not individually named in the transferring
13 document.

16 (4) "Individual" means a natural person.

17 (5)(i) "Joint owner" means an individual who owns property concurrently with one or more
18 other individuals with a right of survivorship.

1 (ii) "Joint owner" includes a joint tenant, owner of community property with a right of
2 survivorship, and tenant by the entirety.

3 (iii) "Joint owner" does not include a tenant in common or owner of community property
4 without a right of survivorship.

5 (6) "Natural person" means a human being.

6 (7) "Person" means an individual, corporation, business trust, estate, trust, partnership,
7 limited liability company, association, joint venture, public corporation, government or
8 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

9 (8) "Property" means an interest in real property located in this state that is transferable on
10 the death of the owner.

11 (9) "Transfer on death deed" means a deed authorized under this chapter.

12 (10) "Transferor" means an individual, in their individual capacity, who makes a transfer
13 on death deed.

14 **33-4.1-3. Applicability.**

15 This chapter applies to a transfer on death deed made before, on, or after January 1, 2027,
16 by a transferor dying on or after January 1, 2027.

17 **33-4.1-4. Nonexclusivity.**

18 This chapter does not affect any method of transferring property otherwise permitted under
19 the law of this state.

20 **33-4.1-5. Transfer on death deed authorized.**

21 (a) An individual may transfer property to one or more named beneficiaries effective at
22 the transferor's death by a transfer on death deed.

23 (b) A class gift may not be made by a transfer on death deed.

24 **33-4.1-6. Transfer on death deed revocable.**

25 A transfer on death deed is revocable even if the deed or another instrument contains a
26 contrary provision.

27 **33-4.1-7. Transfer on death deed nontestamentary.**

28 A transfer on death deed is nontestamentary.

29 **33-4.1-8. Capacity of transferor.**

30 The capacity required to make or revoke a transfer on death deed is the same as that
31 required to make a will.

32 **33-4.1-9. Requirements.**

33 A transfer on death deed shall:

34 (1) Contain the essential elements and formalities of a properly recordable inter vivos deed;

1 (2) State that the transfer to the designated beneficiary is to occur at the transferor's death;
2 and
3 (3) Be recorded before the transferor's death in the public records in the city or town
4 recorder's office where the property is located.
5 **33-4.1-10. Notice, delivery, acceptance, consideration not required.**
6 A transfer on death deed is effective without:
7 (1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's
8 life; or
9 (2) Consideration.
10 **33-4.1-11. Revocation by instrument authorized -- Revocation by act not permitted.**
11 (a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded
12 transfer on death deed, or any part of it, only if the instrument:
13 (1) Is one of the following:
14 (i) A transfer on death deed that revokes the deed or part of the deed expressly or by
15 inconsistency;
16 (ii) An instrument of revocation that expressly revokes the deed or part of the deed; or
17 (iii) An inter vivos deed that revokes the transfer on death deed or part of the deed expressly
18 or by inconsistency; and
19 (2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked
20 and recorded in the public records in the office of the city or town recorder where the deed is
21 recorded before the transferor's death.
22 (b) If a transfer on death deed is made by more than one transferor:
23 (1) Revocation by a transferor does not affect the deed as to the interest of another
24 transferor; and
25 (2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners.
26 (c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on
27 the deed.
28 (d) This section does not limit the effect of an inter vivos transfer of the property.
29 (e) Property subject to a revocation of a transfer on death deed shall adeem, and
30 nonademption statutes shall be inapplicable to the deed.
31 **33-4.1-12. Effect of transfer on death deed during transferor's life.**
32 During a transferor's life, a transfer on death deed does not:
33 (1) Affect an interest or right of the transferor or any other owner, including the right to
34 transfer or encumber the property;

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

3 (3) Affect an interest or right of the transferor's secured or unsecured creditors or future
4 creditors, even if they have actual or constructive notice of the deed;

5 (4) Affect the transferor's or designated beneficiary's eligibility for any form of public
6 assistance;

7 (5) Create a legal or equitable interest in favor of the designated beneficiary; or

8 (6) Subject the property to claims or process of the designated beneficiary's creditors.

9 **33-4.1-13. Effect of transfer on death deed at transferor's death.**

10 (a) Except as otherwise provided in the transfer on death deed and chapter 1.1 of this title,
11 on the death of the transferor, the following rules apply to property that is the subject of a transfer
12 on death deed and owned by the transferor at death.

13 (1) Subject to subsection (a)(2) of this section, the interests in the property are transferred
14 to the designated beneficiaries in accordance with the deed.

15 (2) The interest of a designated beneficiary is contingent on the designated beneficiary
16 surviving the transferor and the interest of a designated beneficiary that fails to survive the
17 transferor lapses.

18 (3) Subject to subsection (a)(4) of this section, concurrent interests are transferred to the
19 beneficiaries in equal and undivided shares with no right of survivorship, unless otherwise specified
20 in the transfer on death deed.

21 (4) If the transferor has identified two (2) or more designated beneficiaries to receive
22 concurrent interests in the property, the share of one that lapses or fails for any reason is transferred
23 to the other, or to the others in proportion to the interest of each in the remaining part of the property
24 held concurrently.

25 (b) A beneficiary takes the property subject to all conveyances, encumbrances,
26 assignments, contracts, mortgages, liens, and other interests to which the property is subject at the
27 transferor's death. For purposes of this subsection, the recording of the transfer on death deed is
28 considered to have occurred at the transferor's death.

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

30 (1) Survived by one or more other joint owners, the property that is the subject of a transfer
31 on death deed belongs to the surviving joint owners with right of survivorship; or

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

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

1 (e) Following the death of the transferor, an affidavit shall be recorded in the office of the
2 recorder of the city or town in which the affected property is located. Each affidavit shall:

3 (1) Contain a legal description of the real property that is affected;

4 (2) Reference the entry number and the book and page of the previously recorded transfer
5 on death deed; and

6 (3) Have attached as an exhibit, a copy of the death certificate or other document issued by
7 a governmental agency certifying the transferor's death.

8 **33-4.1-14. Disclaimer.**

9 A beneficiary may disclaim all or part of the beneficiary's interest.

10 **33-4.1-15. Liability for creditor claims and statutory allowances.**

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

14 (b) If more than one property is transferred by one or more transfer on death deeds, the
15 liability under subsection (a) of this section is apportioned among the properties in proportion to
16 their net values at the transferor's death.

17 (c) A probate proceeding to enforce the liability under this section shall be commenced not
18 later than twelve (12) months after the transferor's death.

19 (d) The estate may expressly waive the estate's claim against the property.

20 **33-4.1-16. Form of transfer on death deed.**

21 The following form may be used to create a transfer on death deed. The other sections of
22 this chapter govern the effect of this or any other instrument used to create a transfer on death deed:

23 (FRONT OF FORM)

24 REVOCABLE TRANSFER ON DEATH DEED FORM

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

27 This form must be recorded before your death, or it will not be effective. The beneficiary
28 must be a named person.

29 IDENTIFYING INFORMATION -- Owner or Owners Making This Deed:

30 _____

31 Printed name

_____ Mailing address

32 _____

33 Printed name

_____ Mailing address

34 Legal description of the property: _____

1 _____

2 PRIMARY BENEFICIARY -- I designate the following beneficiary if the beneficiary

3 survives me:

4 _____

5 Printed name Mailing address, if available

6 ALTERNATE BENEFICIARY (Optional) -- If my primary beneficiary does not survive

7 me, I designate the following alternate beneficiary if that beneficiary survives me:

8 _____

9 Printed name Mailing address, if available

10 TRANSFER ON DEATH -- At my death, I transfer my interest in the described property

11 to the beneficiaries as designated above. Before my death, I have the right to revoke this deed.

12 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

13 _____ [(SEAL)]

14 Signature Date

15 _____ [(SEAL)]

16 Signature Date

17 ACKNOWLEDGMENT (insert acknowledgment for deed here)

18 (BACK OF FORM)

19 COMMON QUESTIONS ABOUT THE USE OF THIS FORM Q. What does the Transfer

20 on Death (TOD) deed do? A. When you die, this deed transfers the described property, subject to

21 any liens or mortgages (or other encumbrances) on the property at your death. Probate is not

22 required. The TOD deed has no effect until you die. You can revoke it at any time. You are also

23 free to transfer the property to someone else during your lifetime. If you do not own any interest in

24 the property when you die, this deed will have no effect. Q. How do I make a TOD deed? A.

25 Complete this form. Have it acknowledged before a notary public or other individual authorized by

26 law to take acknowledgments. Record the form in each city or town where any part of the property

27 is located. The form has no effect unless it is acknowledged and recorded before your death. Q. Is

28 the "legal description" of the property necessary? A. Yes. Q. How do I find the "legal description"

29 of the property? A. This information may be on the deed you received when you became an owner

30 of the property. This information may also be available in the office of the city or town recorder

31 where the property is located. If you are not absolutely sure, consult a lawyer. Q. Can I change my

32 mind before I record the TOD deed? A. Yes. If you have not yet recorded the deed and want to

33 change your mind, simply tear up or otherwise destroy the deed. Q. How do I "record" the TOD

34 deed? A. Take the completed and acknowledged form to the office of the city or town recorder

1 [where the property is located. Follow the instructions given by the city or town recorder to make](#)
2 [the form part of the official property records. If the property is in more than one city or town, you](#)
3 [should record the deed in each city or town. Q. Can I later revoke the TOD deed if I change my](#)
4 [mind? A. Yes. The TOD deed is revocable. No one, including the beneficiaries, can prevent you](#)
5 [from revoking the deed. Q. How do I revoke the TOD deed after it is recorded? A. There are three](#)
6 [\(3\) ways to revoke a recorded TOD deed: \(1\) Complete and acknowledge a revocation form, and](#)
7 [record it in each city or town where the property is located. \(2\) Complete and acknowledge a new](#)
8 [TOD deed that disposes of the same property, and record it in each city or town where the property](#)
9 [is located. \(3\) Transfer the property to someone else during your lifetime by a recorded deed that](#)
10 [expressly revokes the TOD deed. You may not revoke the TOD deed by will. Q. I am being](#)
11 [pressured to complete this form. What should I do? A. Do not complete this form under pressure.](#)
12 [Seek help from a trusted family member, a friend, or a lawyer. Q. Do I need to tell the beneficiaries](#)
13 [about the TOD deed? A. No, but it is recommended. Secrecy can cause later complications and](#)
14 [might make it easier for others to commit fraud. Q. If I sign a TOD deed and designate my two \(2\)](#)
15 [children as beneficiaries, and one of them dies before me, does the interest of my child that dies](#)
16 [before me pass to his or her children? A. No. Everything will go to your surviving child unless you](#)
17 [record a new transfer on death deed to state otherwise. If you have questions regarding how to word](#)
18 [a new transfer on death deed, you are encouraged to consult a lawyer. Q. I have other questions](#)
19 [about this form. What should I do? A. This form is designed to fit some but not all situations. If](#)
20 [you have other questions, you are encouraged to consult a lawyer.](#)

21 **33-4.1-17. Optional form of revocation.**

22 [The following form may be used to create an instrument of revocation under this chapter.](#)
23 [The other sections of this chapter govern the effect of this or any other instrument used to revoke a](#)
24 [transfer on death deed.](#)

25 [\(FRONT OF FORM\)](#)

26 [FULL REVOCATION OF TRANSFER ON DEATH DEED](#)

27 [NOTICE TO OWNER -- This revocation must be recorded before you die or it will not be](#)
28 [effective. This revocation is effective only as to the interests in the property of owners who sign](#)
29 [this revocation.](#)

30 [IDENTIFYING INFORMATION -- Owner or Owners of Property Making This Revocation:](#)

31 _____

32 [Printed name](#)

[Mailing address](#)

33 _____

34 [Printed name](#)

[Mailing address](#)

Legal description of the property:

REVOCATION -- I revoke all my previous transfers of this property by transfer on death

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

Q. How do I use this form to make a Transfer on Death (TOD) deed? A. Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the county records in the office of the city or town recorder where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

Q. How do I find the "legal description" of the property? A. This information may be on the TOD deed. It may also be on a plat or map in the office of the city or town recorder where the property is located. If you are not sure, consult a lawyer.

Q. How do I "record" the form? A. Take the completed and acknowledged form to the office of the city or town recorder where the property is located. Follow the instructions given by the city or town recorder to make the form part of the official property records.

If the property is located in more than one city or town, you should record the form in each city or town.

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

Q. Can this form be used for a partial revocation of a previously filed TOD deed? A. No. This form is to be used for full revocation of a deed. In the case of a partial revocation, a new TOD deed must be filed.

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

33-4.1-18. Uniformity of application and construction.

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

33-4.1-19. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global
tional Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede §

1 [101\(c\) of that act, 15 U.S.C. § 7001\(c\), or authorize electronic delivery of any of the notices](#)
2 [described in § 103\(b\) of that act, 15 U.S.C. § 7003\(b\).](#)

3 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROBATE PRACTICE AND PROCEDURE -- UNIFORM REAL PROPERTY
TRANSFER ON DEATH ACT

- 1
- This act would allow an owner or owners of real property to execute a deed that names one
- 2
- or more beneficiaries who will obtain title to the property at the owner's death without the necessity
- 3
- of probate. The act would apply to a transfer on death deed made before, on, or after January 1,
- 4
- 2027, by a transferor dying on or after that date.
- 5
- This act would take effect upon passage.

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