



Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Benjamin Orzeske
Legislative Counsel
111 N. Wabash Ave. Suite 1010
Chicago, IL 60602
(312) 450-6621 direct
(312) 450-6601 fax
borzeske@uniformlaws.org
www.uniformlaws.org

Written Testimony of Ben Orzeske
Legislative Counsel for the Uniform Law Commission
on House Bill 60 to adopt the
UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT
before the House Labor and Commerce Committee at a public hearing on March 21, 2014.

Chairman Olson, Vice Chair Reinbold and Members of the Committee:

Thank you for the opportunity to testify on behalf of House Bill 60, which would enact the Uniform Real Property Transfer-on-Death Act in Alaska.

Asset-specific mechanisms for the non-probate transfer of personal property at death have become common over the last thirty years. The beneficiary designation on an IRA account, securities registered in transfer-on-death (TOD) form, and funds held in payable-on-death (POD) bank accounts, are all examples of non-probate transfers. Alaska residents routinely take advantage of this modern legal trend to pass money and *personal* property to a named beneficiary outside of probate. House Bill 60 would allow Alaska residents to similarly transfer *real* property to a named beneficiary at the time of the owner's death.

In 1989, Missouri became the first state to allow non-probate transfers of real property. By 2002, five states allowed such transfers at death, and the Uniform Law Commission (ULC) began to study the issue. The Uniform Real Property Transfer-on-Death Act (URPTODA) was completed by the ULC and recommended to the states in 2009. Today, twenty-one states and the District of Columbia permit TOD deeds, and more states are expected to follow suit. So far four states, including Alaska, have URPTODA bills under consideration for the 2014 legislative session.

URPTODA is sometimes referred to as the average person's alternative to expensive estate planning. For many families, a home is their single most valuable asset. URPTODA allows the owner of real estate to name a beneficiary on a TOD deed to receive the property at the owner's death simply, directly, and without probate. The owner retains full control of the property while living, and may sell the property, name a new beneficiary, or revoke the TOD deed at any time. Filing a TOD deed does not create any property interest in the beneficiary, and has no effect on any creditor's interest in the property. Finally, TOD deeds must contain

the same information as any other recordable deed, including a legally sufficient description of the property to be conveyed and an acknowledgment by an authorized notary.

URPTODA is not a substitute for estate planning, and with very large or complex estates, it may not be the best solution. However, for many estates, and especially for those in which a home is the largest asset to be transferred at death, a TOD deed is a simple, effective tool that can be easily used by estate planning attorneys and other advisors. Let me use an example to illustrate how a TOD deed works.

Mary owns a residential property in Alaska worth \$100,000, and she has only one child, David, to whom she would like to leave the property with as little bother and expense as possible. She has very few other assets to deal with, and no creditors. Under present law, Mary has these options:

1. Leave the house to David in a Last Will and Testament. This will require a full probate proceeding to transfer the title.
2. Transfer the house to a living trust and name David as the successor trustee and/or beneficiary. This is a flexible and effective solution and will avoid probate, but it is unnecessarily complex and expensive for simple estates.
3. Deed the house to David while she lives. This accomplishes the transfer but Mary loses control of a major asset. If Mary later wants to sell the house to help pay for an assisted living facility, David must agree to the terms of the sale. The house is also exposed to David's creditors, one of whom could force a sale and force Mary out of the house.

If you enact House Bill 60, Mary will have a fourth, and much better option. Mary can execute a TOD deed naming David as the beneficiary. The deed must be recorded in public land records before Mary's death to be valid. While she is alive, Mary retains 100% ownership of her house, with full power to sell or mortgage the property, to name a new beneficiary, or to cancel the TOD deed. If Mary dies and the deed is still in effect, the property is automatically transferred to David without a probate hearing.

URPTODA was developed with the assistance of the estate planning, real property, title insurance, banking, and senior legal communities. The act has strong support nationally from the American Bar Association's Real Property Trust and Estate Section (ABA-RPTE), the ABA

Commission on Law and Aging, the American College of Real Estate Lawyers (ACREL), and AARP. In the states that have enacted URPTODA, the questions I hear most often are “what took you so long” and “why didn’t we have this available earlier?” Those are good questions.

In summary, HB 60 provides a simple and effective new method to transfer real property at death – the TOD deed. This bill would not prevent estate planners from using any of the other methods now available when appropriate, but it would provide a new, affordable, and highly flexible tool, and thus potentially save Alaska residents hundreds of thousands of dollars in legal fees and probate expenses.

I urge you to recommend enactment of the Uniform Real Property Transfer-on-Death Act, and I thank you for your consideration.

Key Provisions of HB 60

The Uniform Real Property Transfer on Death Act

Non-probate transfer: The TOD deed is not subject to the statute of wills and instead passes title to real property directly to the named beneficiary without probate.

A familiar recording procedure: The TOD deed must contain all of the essential elements and formalities of a properly recordable deed, including a legally sufficient description of the property to be transferred. The TOD deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located.

Almost anyone can have a TOD deed: The capacity required to execute a TOD deed is the same as the capacity to make a will.

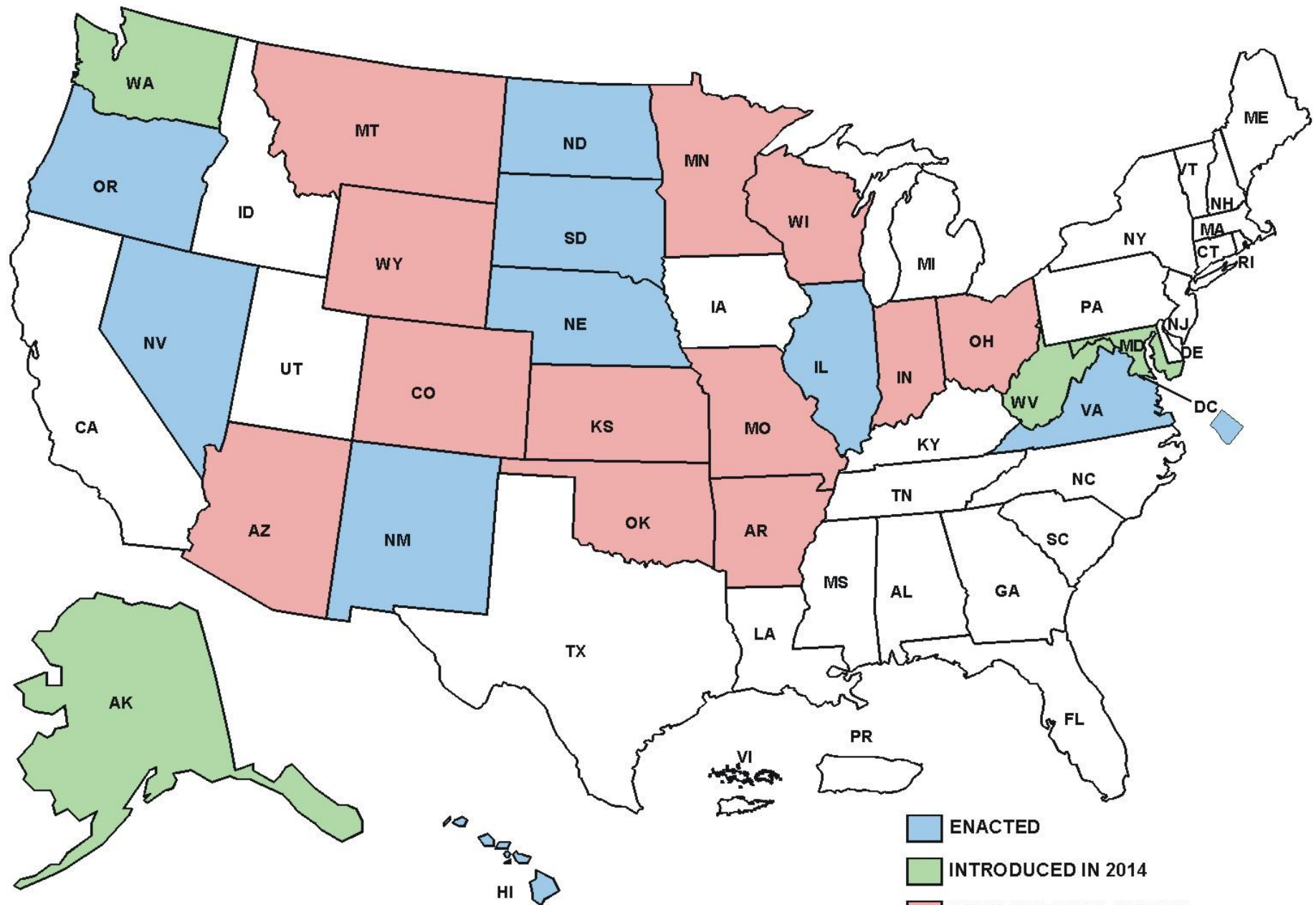
The transferor can change his or her mind: A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a new instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary.

No effect on property rights until the transferor dies: Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The transferor retains full power to sell or mortgage the property or to revoke the deed. The beneficiary has no legal or equitable interest that could be subject to creditor's claims. The deed does not affect either the transferor's or the beneficiary's eligibility for public assistance and it does not trigger mortgage acceleration clauses or property tax reassessments.

Creditors of the transferor are protected: If the transferor's probate estate is insufficient to satisfy all claims, the estate may enforce the liability against any property transferred using a TOD deed. The property transferred remains part of the transferor's taxable estate.

No obligation for the beneficiary: A designated beneficiary may disclaim all or part of the transferred interest in the same manner as any other inherited property.

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT (2009)



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