



## Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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### Real Property Transfer on Death Act Summary

Asset-specific mechanisms for the non-probate transfer of personal property and funds at death are now common. They are known informally as “will substitutes.” The proceeds of life insurance policies and pension plans, securities registered in transfer on death form, and funds held in pay on death bank accounts, are examples of personal property that have benefitted from this trend in modern law to recognize and support the use of will substitutes. However there is no generally available straightforward, inexpensive, and reliable means of passing real property, which may be a decedent’s major asset, directly to a beneficiary at death. The Uniform Real Property Transfer on Death Act (URPTODA), promulgated by the Uniform Law Commission in 2009, enables an owner of real property to pass the property to a beneficiary on the owner’s death simply, directly, and without probate.

Under URPTODA, real property passes by means of a recorded transfer on death (TOD) deed. URPTODA establishes the requirements for the creation and revocation of a TOD deed and clarifies the effect of the TOD deed on all parties while the transferor is living and after the transferor dies. URPTODA provides optional forms to create or revoke a TOD deed.

Key elements of URPTODA include:

- The TOD deed is not subject to the statute of wills and passes title directly to the named beneficiary without probate.
- The TOD deed must contain all of the essential elements and formalities of a properly recordable *inter vivos* deed. 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.
- The capacity required to create a TOD deed is the same as the capacity to make a will.
- 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 revocatory instrument such as a direct revocation of the TOD deed or a subsequent TOD deed that names a different beneficiary. If the transferor disposes of the property during lifetime, the TOD deed is ineffective.
- 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 TOD deed creates no legal or equitable interest in the designated beneficiary; it does not affect the designated beneficiary’s eligibility for public assistance; it does not subject the property to the designated beneficiary’s creditors.
- Assuming the transferor dies owning the property and has not revoked the TOD deed and assuming that the designated beneficiary survives the transferor, the TOD deed passes the property to the designated beneficiary on the transferor’s death.
- Liability of the beneficiary and property for claims against the transferor’s estate is limited to cases where the estate is insolvent.
- A designated beneficiary may disclaim all or part of the transferred interest.

Before promulgation of URPTODA some states enacted legislation to enable a TOD deed of real property. URPTODA builds on these statutes. It provides an uncomplicated, effective, and affordable option to pass this important type of asset at death.

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