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Bannister
3/18/14

CS FOR HOUSE BILL NO. 60()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GRUENBERG, Muñoz, Kito III

A BILL

FOR AN ACT ENTITLED

1 "An Act adopting and relating to the Uniform Real Property Transfer on Death Act;
2 relating to joint ownership of real property; and relating to disclaimers of property
3 interests."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 13 is amended by adding a new chapter to read:

6 **Chapter 48. Uniform Real Property Transfer on Death Act.**

7 **Sec. 13.48.010. Transfer on death deed authorized.** An individual may
8 transfer property to one or more beneficiaries effective at the transferor's death by a
9 transfer on death deed.

10 **Sec. 13.48.020. Transfer on death deed revocable.** A transfer on death deed
11 is revocable even if the deed or another instrument contains a contrary provision.

12 **Sec. 13.48.030. Transfer on death deed nontestamentary.** A transfer on
13 death deed is nontestamentary.

14 **Sec. 13.48.040. Capacity of transferor.** The capacity required to make or

1 revoke a transfer on death deed is the same as the capacity required to make a will.

2 **Sec. 13.48.050. Requirements.** A transfer on death deed

3 (1) except as otherwise provided in (2) of this section, must contain the
4 essential elements and formalities of a properly recordable inter vivos deed;

5 (2) must state that the transfer to the designated beneficiary is to occur
6 at the transferor's death; and

7 (3) must be recorded before the transferor's death in the public records
8 in the office of the recorder in the recording district where the property is located.

9 **Sec. 13.48.060. Notice, delivery, acceptance, consideration not required.** A
10 transfer on death deed is effective without

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

13 (2) consideration.

14 **Sec. 13.48.070. Revocation by instrument authorized; revocation by act**
15 **not permitted.** (a) Subject to (b) and (c) of this section, an instrument is effective to
16 revoke a recorded transfer on death deed, or any part of it, only if the instrument

17 (1) is one of the following:

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

20 (B) an instrument of revocation that expressly revokes the deed
21 or part of the deed;

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

24 (2) is acknowledged by the transferor after the acknowledgment of the
25 deed being revoked and recorded before the transferor's death in the recording district
26 where the deed is recorded.

27 (b) An inter vivos deed that does not expressly revoke a transfer on death
28 deed, or a part of the transfer on death deed, creates a rebuttable presumption that the
29 inter vivos deed is effective to revoke a recorded transfer on death deed, or a part of
30 the recorded transfer on death deed, if the inter vivos deed

31 (1) completely divests the transferor of the transferor's interest in the

1 real property that is the subject of the transfer on death deed; and

2 (2) satisfies (a)(2) of this section.

3 (c) If a transfer on death deed is made by more than one transferor,

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

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

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

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

12 **Sec. 13.48.080. Effect of transfer on death deed during transferor's life.**

13 During a transferor's life, a transfer on death deed does not

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

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

18 (3) affect an interest or right of a secured or unsecured creditor or
19 future creditor of the transferor, even if the creditor has actual or constructive notice of
20 the deed;

21 (4) affect the transferor's or designated beneficiary's eligibility for any
22 form of public assistance;

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

25 (6) subject the property to claims or process of a creditor of the
26 designated beneficiary.

27 **Sec. 13.48.090. Effect of transfer on death deed at transferor's death. (a)**

28 Except as otherwise provided in the transfer on death deed, in this section, or in
29 AS 13.12.203, 13.12.702, 13.12.706, 13.12.707, 13.12.803, or 13.12.804, on the death
30 of the transferor, the following rules apply to property that is the subject of a transfer
31 on death deed and owned by the transferor at death:

1 (1) subject to (2) of this subsection, the interest in the property is
2 transferred to the designated beneficiary under the deed;

3 (2) the interest of a designated beneficiary is contingent on the
4 designated beneficiary surviving the transferor; the interest of a designated beneficiary
5 that fails to survive the transferor lapses;

6 (3) subject to (4) and (5) of this subsection, concurrent interests are
7 transferred to the beneficiaries in equal and undivided shares with no right of
8 survivorship;

9 (4) if the transferor has identified two or more designated beneficiaries
10 to receive concurrent interests in the property and if the transferor has not named an
11 alternate designated beneficiary under (5) of this subsection for the share of a
12 designated beneficiary that lapses or fails for any reason, the lapsing or failing share is
13 transferred to the other remaining designated beneficiaries in proportion to the interest
14 of each remaining beneficiary in the remaining part of the property held concurrently;

15 (5) the transferor may identify one or more alternate designated
16 beneficiaries to take the share of a designated beneficiary that lapses or fails for any
17 reason.

18 (b) Subject to AS 40.17, a beneficiary takes the property subject to all
19 conveyances, encumbrances, assignments, contracts, mortgages, liens, and other
20 interests to which the property is subject at the transferor's death. For purposes of this
21 subsection and AS 40.17, the recording of the transfer on death deed is considered to
22 have occurred at the transferor's death.

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

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

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

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

31 **Sec. 13.48.100. Disclaimer.** A beneficiary may disclaim all or part of the

beneficiary's interest as provided by AS 13.70 (Uniform Disclaimer of Property Interests Act).

Sec. 13.48.110. Liability for creditor claims and statutory allowances. (a)

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

(b) If more than one property is transferred by one or more transfer on death deeds, the liability under (a) of this section 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 12 months after the transferor's death.

Sec. 13.48.120. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The provisions of this chapter 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

NOTICE TO OWNER

You should carefully read all information on the other side of this form. **Transferring real property by using a transfer on death deed may have important legal consequences in addition to designating who will receive the real property on the transferor's death. These consequences may include, but are not limited to, (1) affecting the beneficiary's eligibility for public assistance; and (2) affecting creditors' rights. If you have any questions, you should consult an attorney.**

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/BENEFICIARIES

(Please list one or more primary beneficiaries. You may want to obtain legal advice before listing more than one primary beneficiary. There is more than one way to transfer property to several persons.)

I designate the following beneficiary if the beneficiary survives me:

Printed name

Mailing address, if available

ALTERNATE BENEFICIARY/BENEFICIARIES - Optional

(You may list one or more alternate beneficiaries. You may want to obtain legal advice before listing more than one alternate beneficiary. There is more than one way to transfer property to several persons.)

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

Date

Signature

Date

ACKNOWLEDGMENT

State of _____ Judicial
District (or County of _____ or Municipality of
_____)

The foregoing instrument was acknowledged before me this
(date) by (name of person who acknowledged).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(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) on the property at your death. 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 recording district 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

1 owner of the property. This information may also be available in the
2 office of the recorder in the recording district where the property is
3 located. If you are not absolutely sure, consult a lawyer.

4 **Can I change my mind before I record the TOD deed?** Yes.
5 If you have not yet recorded the deed and want to change your mind,
6 simply tear up or otherwise destroy the deed.

7 **How do I "record" the TOD deed?** Take the completed and
8 acknowledged form to the office of the recorder in the recording district
9 where the property is located. Follow the instructions given by the
10 recorder to make the form part of the official property records. If the
11 property is in more than one recording district, you should record the
12 deed in each recording district.

13 **Can I later revoke the TOD deed if I change my mind?** Yes.
14 You can revoke the TOD deed. Except for a court, no one, including
15 the beneficiaries, can prevent you from revoking the deed.

16 **How do I revoke the TOD deed after it is recorded?** There
17 are three ways to revoke a recorded TOD deed: (1) Complete and
18 acknowledge a revocation form, and record it in each recording district
19 where the property is located. (2) Complete and acknowledge a new
20 TOD deed that disposes of the same property, and record it in each
21 recording district where the property is located. (3) Transfer the
22 property to someone else during your lifetime by a recorded deed that
23 expressly revokes the TOD deed. You may not revoke the TOD deed
24 by will.

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

28 **Do I need to tell the beneficiaries about the TOD deed?** No,
29 but it is recommended. Secrecy can cause later complications and
30 might make it easier for others to commit fraud.

31 **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.

Sec. 13.48.130. Optional form of revocation. The following form may be used to create an instrument of revocation under this chapter. The provisions of this chapter 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 Making This Revocation:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature

Date

Signature

Date

ACKNOWLEDGMENT

State of _____ Judicial

District (or County of _____) or Municipality of
_____)

The foregoing instrument was acknowledged before me this
(date) by (name of person who acknowledged).

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

(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 recorder in each recording district 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 recorder in the recording district 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 recorder in the recording district where the property is located. Follow the instructions given by the recorder to make the form part of the official property records. If the property is located in more than one recording district, you should record the form in each of those recording districts.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted

1 family member, friend, or lawyer.

2 **I have other questions about this form. What should I do?**

3 This form is designed to fit some but not all situations. If you have
4 other questions, consult a lawyer.

5 **Sec. 13.48.140. Nonexclusivity.** The provisions of this chapter do not affect
6 any method of transferring property otherwise permitted under the law of this state.

7 **Sec. 13.48.150. Uniformity of application and construction.** In applying and
8 construing this uniform act, consideration shall be given to the need to promote
9 uniformity of the law with respect to its subject matter among the states that enact it.

10 **Sec. 13.48.160. Relationship to Electronic Signatures in Global and**
11 **National Commerce Act.** The provisions of this chapter modify, limit, and supersede
12 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act),
13 but do not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic
14 delivery of any of the notices described in 15 U.S.C. 7003(b).

15 **Sec. 13.48.190. Definitions.** In this chapter,

16 (1) "beneficiary" means a person who receives property under a
17 transfer on death deed;

18 (2) "designated beneficiary" means a person designated to receive
19 property in a transfer on death deed;

20 (3) "joint owner" means an individual who is a joint tenant, who is a
21 tenant by the entirety, who is an owner of community property with a right of
22 survivorship, or who otherwise owns property concurrently with one or more other
23 individuals with a right of survivorship, but does not include an individual who is a
24 tenant in common or other owner of community property without a right of
25 survivorship;

26 (4) "person" means an individual, corporation, business trust, estate,
27 trust, partnership, limited liability company, association, joint venture, public
28 corporation, government or governmental subdivision, agency, or instrumentality, or
29 any other legal or commercial entity;

30 (5) "property" means an interest in real property located in this state
31 which is transferable on the death of the owner;

(6) "transfer on death deed" means a deed authorized under this chapter;

(7) "transferor" means an individual who makes a transfer on death deed.

Sec. 13.48.195. Short title. This chapter may be cited as the Uniform Real Property Transfer on Death Act.

* **Sec. 2.** AS 13.70.100(e) is amended to read:

(e) In the case of an interest created by a beneficiary designation that is disclaimed [MADE] before [THE TIME] the designation becomes irrevocable, the [A] disclaimer shall be delivered to the person making the beneficiary designation.

* **Sec. 3.** AS 13.70.100(f) is amended to read:

(f) In the case of an interest created by a beneficiary designation that is disclaimed [MADE] after [THE TIME] the designation becomes irrevocable, the [A] disclaimer of an interest in

(1) personal property shall be delivered to the person obligated to distribute the interest; and

(2) real property shall be recorded in the office of the recorder in the recording district where the real property that is the subject of the disclaimer is located.

* **Sec. 4.** AS 13.70.130 is amended to read:

Sec. 13.70.130. 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 filed, recorded, or registered as required or permitted by law. Except as otherwise provided in AS 13.70.100(f)(2), failure [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.

* **Sec. 5.** AS 34.15.130 is repealed.

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 1 - 4 of this Act apply to a transfer on death deed

1 made on or after the effective date of this Act. In this section, "transfer on death deed" has the
2 meaning given in AS 13.48.190, enacted by sec. 1 of this Act.

3 (b) AS 13.70.100(e), as amended by sec. 2 of this Act, AS 13.70.100(f), as amended
4 by sec. 3 of this Act, and 13.70.130, as amended by sec. 4 of this Act, apply to a disclaimer
5 that is made under AS 13.70 on or after the effective date of this Act.

6 (c) Section 5 of this Act applies to real property, including an interest in real property,
7 that is transferred on or after the effective date of this Act.