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Bannister
4/6/14

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 establishing the law governing certain trusts; and relating to disclaimers of**
3 **property interests."**

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

5 *** Section 1.** AS 13.36.035 is amended by adding new subsections to read:

6 (f) Unless the laws of this state govern the validity, construction, and
7 administration of the trust under (c) of this section, the laws of this state govern the
8 administration of a trust and the courts of this state have exclusive jurisdiction over the
9 trust and its trustees while the trust is administered in this state unless the governing
10 instrument of the trust

11 (1) specifies that the law of a jurisdiction other than this state governs
12 the administration of the trust;

13 (2) expressly prohibits a change in the choice of law for the
14 administration of the trust; and

(3) expressly states that a change in the choice of law for the administration of the trust may not occur, even if a trustee from another jurisdiction becomes a trustee of the trust.

(g) In (f) of this section, a trust is considered to be administered in this state if

(1) the governing instrument of the trust specifies that the trust is to be administered in this state;

(2) the principal office of the trustee having custody of the trust's principal assets and records is located in this state, unless the trustee elects to maintain the administration of the trust in the state whose law is specified in the governing instrument to govern;

(3) the only trustee who is acting to administer the trust is a qualified person, unless the trustee elects to maintain the administration of the trust in the state whose law is specified in the governing instrument to govern;

(4) a majority of all trustees acting to administer the trust consists of qualified persons, unless a majority of the trustees elects to maintain the administration of the trust in the state whose law is specified in the governing instrument to govern; or

(5) a majority of the trustees are not qualified persons and a majority of the trustees, including at least one trustee who is a qualified person, executes an acknowledged instrument that this state shall be the primary place of administration for the trust.

(h) The trustee shall make the election in (g)(2) - (4) of this section by an instrument that is acknowledged and filed in a court of the state whose law is specified in the governing instrument to govern.

* **Sec. 2.** AS 13 is amended by adding a new chapter to read:

Chapter 48. Uniform Real Property Transfer on Death Act.

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

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

1 **Sec. 13.48.030. Transfer on death deed nontestamentary.** A transfer on
2 death deed is nontestamentary.

3 **Sec. 13.48.040. Capacity of transferor.** The capacity required to make or
4 revoke a transfer on death deed is the same as the capacity required to make a will.

5 **Sec. 13.48.045. When certain deeds void; challenges to deed.** (a) A transfer
6 on death deed or an instrument revoking a transfer on death deed is void if it is
7 obtained by fraud, duress, or undue influence.

8 (b) A proceeding must be commenced within 12 months after the transferor's
9 death to

10 (1) contest the capacity of the transferor; or

11 (2) determine whether a transfer on death deed or an instrument
12 revoking a transfer on death deed is void because it was obtained by fraud, duress, or
13 undue influence.

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

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

18 (2) must state that the transfer to the designated beneficiary is to occur
19 at the transferor's death;

20 (3) may not use a beneficiary designation that only identifies
21 beneficiaries as members of a class; a transfer on death deed that uses a beneficiary
22 designation that only identifies beneficiaries as members of a class is void; and

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

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

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

29 (2) consideration.

30 **Sec. 13.48.070. Revocation by instrument authorized; revocation by act**
31 **not permitted.** (a) Subject to (b) of this section, an instrument is effective to revoke a

recorded transfer on death deed, or any part of it, only if the instrument

(1) is one of the following:

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

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

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

(D) to the extent of the interest transferred by the inter vivos deed, an inter vivos deed that transfers an interest in property that is the subject of a transfer on death deed; and

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

(e) If a recorded power of attorney or the transfer on death deed expressly grants a designated agent of the transferor the power to revoke a transfer on death deed, the designated agent may revoke the transfer on death deed as provided in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) the transferor may identify one or more alternate designated

beneficiaries to take the share of a designated beneficiary that lapses or fails for any reason.

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

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

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

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

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

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. A proceeding to enforce the liability under (a) of this section may not be commenced unless the personal representative of the transferor's estate has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent.

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

Marital status

Printed name

Mailing address

Marital status

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

Marital status

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

Marital status

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.

AUTHORITY OF DESIGNATED AGENT TO REVOKE THIS DEED

I authorize the following designated agent to revoke this deed
before my death:

Printed name

Mailing address

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

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

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

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

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

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

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

29 **Do I need to tell the beneficiaries about the TOD deed?** No,
30 but it is recommended. Secrecy can cause later complications and
31 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.

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

Marital status

Printed name

Mailing address

Marital status

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 family member, friend, or 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.

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

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

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

Sec. 13.48.190. Definitions. In this chapter,

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

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

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

(4) "person" means an individual, corporation, business trust, estate,

trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(5) "property" means an interest in real property located in this state 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. 3.** 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. 4.** 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. 5.** 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

1 interest or power passes by reason of the disclaimer.

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

4 **APPLICABILITY.** (a) Sections 2 - 5 of this Act apply to a transfer on death deed
5 made on or after the effective date of this Act. In this section, "transfer on death deed" has the
6 meaning given in AS 13.48.190, enacted by sec. 2 of this Act.

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