

**HOUSE BILL NO. 265**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE GRUENBERG**

**Introduced: 1/13/12**

**Referred: Prefiled**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act adopting and relating to the Uniform Real Property Transfer on Death Act."**

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

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

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

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

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

10 **Sec. 13.48.030. Transfer on death deed nontestamentary.** A transfer on  
11 death deed is nontestamentary.

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

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

15 (1) except as otherwise provided in (2) of this section, must contain the

1 essential elements and formalities of a properly recordable inter vivos deed;

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

4 (3) must be recorded before the transferor's death in the public records  
5 in the office of the recorder located in the judicial district where the property is  
6 located.

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

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

11 (2) consideration.

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

15 (1) is one of the following:

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

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

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

22 (2) is acknowledged by the transferor after the acknowledgment of the  
23 deed being revoked and recorded before the transferor's death in the office of the  
24 recorder for the recording district where the deed is recorded.

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

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

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

30 (c) After a transfer on death deed is recorded, it may not be revoked by a  
31 revocatory act on the deed.

1 (d) This section does not limit the effect of an inter vivos transfer of the  
2 property.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (4) if the transferor has identified two or more designated beneficiaries  
31 to receive concurrent interests in the property, the share of one that lapses or fails for

1 any reason is transferred to the other or to the others in proportion to the interest of  
2 each in the remaining part of the property held concurrently.

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

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

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

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

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

16 **Sec. 13.48.100. Disclaimer.** A beneficiary may disclaim all or part of the  
17 beneficiary's interest as provided by AS 13.70 (Uniform Disclaimer of Property  
18 Interests Act).

19 **Sec. 13.48.110. Liability for creditor claims and statutory allowances.** (a)  
20 To the extent the transferor's probate estate is insufficient to satisfy an allowed claim  
21 against the estate or a statutory allowance to a surviving spouse or child, the estate  
22 may enforce the liability against property transferred at the transferor's death by a  
23 transfer on death deed.

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

27 (c) A proceeding to enforce the liability under this section must be  
28 commenced not later than 18 months after the transferor's death.

29 **Sec. 13.48.120. Optional form of transfer on death deed.** The following  
30 form may be used to create a transfer on death deed. The provisions of this chapter  
31 govern the effect of this or any other instrument used to create a transfer on death

1 deed.

2 (front of form)

3 REVOCABLE TRANSFER ON DEATH DEED

4 NOTICE TO OWNER

5 You should carefully read all information on the other side of  
6 this form. **You may want to consult a lawyer before using this form.**

7 This form must be recorded before your death, or it will not be  
8 effective.

9 IDENTIFYING INFORMATION

10 Owner or Owners Making This Deed:

11 \_\_\_\_\_  
12 Printed name Mailing address

13 \_\_\_\_\_  
14 Printed name Mailing address

15 Legal description of the property:

16 \_\_\_\_\_

17 PRIMARY BENEFICIARY

18 I designate the following beneficiary if the beneficiary survives  
19 me:

20 \_\_\_\_\_  
21 Printed name Mailing address, if available

22 ALTERNATE BENEFICIARY - Optional

23 If my primary beneficiary does not survive me, I designate the  
24 following alternate beneficiary if that beneficiary survives me:

25 \_\_\_\_\_  
26 Printed name Mailing address, if available

27 TRANSFER ON DEATH

28 At my death, I transfer my interest in the described property to  
29 the beneficiaries as designated above.

30 Before my death, I have the right to revoke this deed.

31 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

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\_\_\_\_\_  
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 judicial district where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

1                   **Is the "legal description" of the property necessary?** Yes.

2                   **How do I find the "legal description" of the property?** This  
3 information may be on the deed you received when you became an  
4 owner of the property. This information may also be available in the  
5 office of the recorder in the judicial district where the property is  
6 located. If you are not absolutely sure, consult a lawyer.

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

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

16                  **Can I later revoke the TOD deed if I change my mind?** Yes.  
17 You can revoke the TOD deed. No one, including the beneficiaries, can  
18 prevent you from revoking the deed.

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

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

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

1 might make it easier for others to commit fraud.

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, you are encouraged to consult a lawyer.

5 **Sec. 13.48.130. Optional form of revocation.** The following form may be  
6 used to create an instrument of revocation under this chapter. The provisions of this  
7 chapter govern the effect of this or any other instrument used to revoke a transfer on  
8 death deed.

9 (front of form)

10 **REVOCATION OF TRANSFER ON DEATH DEED**

11 **NOTICE TO OWNER**

12 This revocation must be recorded before you die or it will not  
13 be effective. This revocation is effective only as to the interests in the  
14 property of owners who sign this revocation.

15 **IDENTIFYING INFORMATION**

16 Owner or Owners Making This Revocation:

17 \_\_\_\_\_

18 Printed name

\_\_\_\_\_ Mailing address

19 \_\_\_\_\_

20 Printed name

\_\_\_\_\_ Mailing address

21 Legal description of the property:

22 \_\_\_\_\_

23 **REVOCATION**

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

26 **SIGNATURE OF OWNER OR OWNERS MAKING THIS**  
27 **REVOCATION**

28 \_\_\_\_\_

29 Signature

\_\_\_\_\_ Date

30 \_\_\_\_\_

31 Signature

\_\_\_\_\_ Date

1 ACKNOWLEDGMENT

2 State of \_\_\_\_\_ Judicial  
3 District (or County of \_\_\_\_\_ or Municipality of  
4 \_\_\_\_\_)

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

7 \_\_\_\_\_  
8 Signature of Person Taking  
9 Acknowledgment

10 \_\_\_\_\_  
11 Title or Rank

12 \_\_\_\_\_  
13 Serial Number, if any

14 (back of form)

15 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

16 **How do I use this form to revoke a Transfer on Death**  
17 **(TOD) deed?** Complete this form. Have it acknowledged before a  
18 notary public or other individual authorized to take acknowledgments.  
19 Record the form in the public records in the office of the recorder in  
20 each judicial district where the property is located. The form must be  
21 acknowledged and recorded before your death or it has no effect.

22 **How do I find the "legal description" of the property?** This  
23 information may be on the TOD deed. It may also be available in the  
24 office of the recorder in the judicial district where the property is  
25 located. If you are not absolutely sure, consult a lawyer.

26 **How do I "record" the form?** Take the completed and  
27 acknowledged form to the office of the recorder in the judicial district  
28 where the property is located. Follow the instructions given by the  
29 recorder to make the form part of the official property records. If the  
30 property is located in more than one judicial district, you should record  
31 the form in each of those judicial districts.

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

4                   **I have other questions about this form. What should I do?**  
 5 This form is designed to fit some but not all situations. If you have  
 6 other questions, consult a lawyer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **(2) real property shall be recorded in the office of the recorder of**  
20 **the judicial district where the real property that is the subject of the disclaimer is**  
21 **located.**

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

23 **Sec. 13.70.130. Recording of disclaimer.** If an instrument transferring an  
24 interest in or power over property subject to a disclaimer is required or permitted by  
25 law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or  
26 registered as required or permitted by law. **Except as otherwise provided in**  
27 **AS 13.70.100(f)(2), failure** [FAILURE] to file, record, or register the disclaimer does  
28 not affect its validity as between the disclaimant and persons to whom the property  
29 interest or power passes by reason of the disclaimer.

30 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1           APPLICABILITY. This Act applies to a transfer on death deed made before, on, or  
2 after the effective date of this Act by a transferor dying on or after the effective date of this  
3 Act. In this section, "transfer on death deed" and "transferor" have the meanings given in  
4 AS 13.48.190, enacted by sec. 1 of this Act.