

HOUSE BILL NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES GRUENBERG, Muñoz, Kito III, Lynn

Introduced: 1/16/13

Referred: Labor and Commerce, Judiciary

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 in the recording district where the property is located.

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

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

10 (2) consideration.

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

14 (1) is one of the following:

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

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

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

21 (D) an inter vivos deed that completely divests the transferor of
22 the transferor's interest in the real property that is the subject of the transfer on
23 death 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) If a transfer on death deed is made by more than one transferor,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 survivorship;

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

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

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

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

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

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

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

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

27 **Sec. 13.48.110. Liability for creditor claims and statutory allowances.** (a)
28 To the extent the transferor's probate estate is insufficient to satisfy an allowed claim
29 against the estate, the costs of administration of the estate, or a statutory allowance to a
30 surviving spouse or child, the estate may enforce the liability against property
31 transferred at the transferor's death by a transfer on death deed.

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

4 (c) A proceeding to enforce the liability under this section must be
5 commenced not later than 12 months after the transferor's death.

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

10 (front of form)

11 **REVOCABLE TRANSFER ON DEATH DEED**

12 **NOTICE TO OWNER**

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

20 This form must be recorded before your death, or it will not be
21 effective.

22 **IDENTIFYING INFORMATION**

23 Owner or Owners Making This Deed:

24 _____
25 Printed name Mailing address

26 _____
27 Printed name Mailing address

28 Legal description of the property:
29 _____

30 **PRIMARY BENEFICIARY/BENEFICIARIES**

31 (Please list one or more primary beneficiaries. You may want to

1 obtain legal advice before listing more than one primary beneficiary.
2 There is more than one way to transfer property to several persons.)

3 I designate the following beneficiary if the beneficiary survives
4 me:

5 _____
6 Printed name Mailing address, if available

7 ALTERNATE BENEFICIARY/BENEFICIARIES - Optional

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

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

14 _____
15 Printed name Mailing address, if available

16 TRANSFER ON DEATH

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

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

20 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

21 _____
22 Signature Date

23 _____
24 Signature Date

25 ACKNOWLEDGMENT

26 State of _____ Judicial
27 District (or County of _____ or Municipality of
28 _____)

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

31 _____

1 Signature of Person Taking

2 Acknowledgment

3 _____
4 Title or Rank

5 _____
6 Serial Number, if any

7 (back of form)

8 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

9 **What does the Transfer on Death (TOD) deed do?** When you
10 die, this deed transfers the described property, subject to any liens or
11 mortgages (or other encumbrances) on the property at your death.
12 Probate is not required. The TOD deed has no effect until you die. You
13 can revoke it at any time. You are also free to transfer the property to
14 someone else during your lifetime. If you do not own any interest in the
15 property when you die, this deed will have no effect.

16 **How do I make a TOD deed?** Complete this form. Have it
17 acknowledged before a notary public or other individual authorized by
18 law to take acknowledgments. Record the form in each recording
19 district where any part of the property is located. The form has no
20 effect unless it is acknowledged and recorded before your death.

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

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

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

30 **How do I "record" the TOD deed?** Take the completed and
31 acknowledged form to the office of the recorder in the recording district

1 where the property is located. Follow the instructions given by the
 2 recorder to make the form part of the official property records. If the
 3 property is in more than one recording district, you should record the
 4 deed in each recording district.

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

8 **How do I revoke the TOD deed after it is recorded?** There
 9 are three ways to revoke a recorded TOD deed: (1) Complete and
 10 acknowledge a revocation form, and record it in each recording district
 11 where the property is located. (2) Complete and acknowledge a new
 12 TOD deed that disposes of the same property, and record it in each
 13 recording district where the property is located. (3) Transfer the
 14 property to someone else during your lifetime by a recorded deed that
 15 expressly revokes the TOD deed. You may not revoke the TOD deed
 16 by will.

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

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

23 **I have other questions about this form.** What should I do?
 24 This form is designed to fit some but not all situations. If you have
 25 other questions, you are encouraged to consult a lawyer.

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

30 (front of form)

31 **REVOCATION OF TRANSFER ON DEATH DEED**

1 NOTICE TO OWNER

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

5 IDENTIFYING INFORMATION

6 Owner or Owners Making This Revocation:

7 _____

8 Printed name Mailing address

9 _____

10 Printed name Mailing address

11 Legal description of the property:

12 _____

13 REVOCATION

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

16 SIGNATURE OF OWNER OR OWNERS MAKING THIS
17 REVOCATION

18 _____

19 Signature Date

20 _____

21 Signature Date

22 ACKNOWLEDGMENT

23 State of _____ Judicial
24 District (or County of _____ or Municipality of
25 _____)

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

28 _____

29 Signature of Person Taking

30 Acknowledgment

31 _____

1 Title or Rank

2 _____
3 Serial Number, if any

4 (back of form)

5 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

6 **How do I use this form to revoke a Transfer on Death**
7 **(TOD) deed?** Complete this form. Have it acknowledged before a
8 notary public or other individual authorized to take acknowledgments.
9 Record the form in the public records in the office of the recorder in
10 each recording district where the property is located. The form must be
11 acknowledged and recorded before your death or it has no effect.

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

16 **How do I "record" the form?** Take the completed and
17 acknowledged form to the office of the recorder in the recording district
18 where the property is located. Follow the instructions given by the
19 recorder to make the form part of the official property records. If the
20 property is located in more than one recording district, you should
21 record the form in each of those recording districts.

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

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

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

30 **Sec. 13.48.150. Uniformity of application and construction.** In applying and
31 construing this uniform act, consideration shall be given to the need to promote

1 uniformity of the law with respect to its subject matter among the states that enact it.

2 **Sec. 13.48.160. Relationship to Electronic Signatures in Global and**
3 **National Commerce Act.** The provisions of this chapter modify, limit, and supersede
4 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act),
5 but do not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic
6 delivery of any of the notices described in 15 U.S.C. 7003(b).

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

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

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

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

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

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

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

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

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

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

31 (e) In the case of an interest created by a beneficiary designation **that is**

1 **disclaimed** [MADE] before [THE TIME] the designation becomes irrevocable, **the**
 2 [A] disclaimer shall be delivered to the person making the beneficiary designation.

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

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

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

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

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

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

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

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