

**HB**

**60**

<TARGET><BILL>HB 60</BILL><SUBJECT>HB  
60</SUBJECT><COMM>SJUD28</COMM></TARGET>

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 60(L&C)  
Fiscal Note Number: 1  
(H) Publish Date: 3/31/14

Identifier: HB060-DNR-REC-3-14-14  
Title: UNIFORM REAL PROPERTY TRANSFERS ON DEATH  
Sponsor: GRUENBERG  
Requester: House Labor & Commerce

Department: Department of Natural Resources  
Appropriation: Administration & Support Services  
Allocation: Recorder's Office/Uniform Commercial Code  
OMB Component Number: 802

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2015 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
---------------------------	--	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

**Why this fiscal note differs from previous version:**

Initial Version
-----------------

Prepared By:	Vicky Backus, State Recorder	Phone:	(907)269-8882
Division:	Support Services	Date:	03/14/2014 12:00 PM
Approved By:	Joe Balash, Commissioner	Date:	03/14/14
Agency:	Department of Natural Resources		

**FISCAL NOTE ANALYSIS #1**

**STATE OF ALASKA  
2014 LEGISLATIVE SESSION**

**BILL NO. CSHB 60(L&C)**

**Analysis**

This bill establishes Chapter 48 relating to the Uniform Real Property Transfer on Death Act in Alaska Statute 13.

Section 1 adds AS 13.48.120, which describes a form that can be used to create a transfer on death deed. The bill also adds AS 13.48.130, which describes a "Revocation of Transfer on Death Deed" form. Both forms must be recorded in each recording district where any part of the property is located in order to be considered.

The implementation of this bill will have no fiscal impact to the Recorders/UCC Section.



## Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

### 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.

© 2013 The National Conference of Commissioners on Uniform State Laws. All Rights Reserved.

# Alaska State Legislature

## House of Representatives



Member:

Judiciary  
Rules  
Legislative Council  
Military & Veterans Affairs

**Representative Max F. Gruenberg, Jr.**  
House District 14  
Anchorage (Russian Jack, College Gate, Nunaka Valley)  
House Democratic Whip

*Interim:*  
716 W 4<sup>th</sup> Avenue, Rm 350  
Anchorage, Alaska 99501-2133  
*Phone:* (907) 269-0123  
*Fax:* (907) 269-0124

*Session:*  
Alaska State Capitol, Rm 110  
Juneau, Alaska 99801-1182  
*Phone:* (907) 465-4940  
*Toll Free:* (866) 465-4940  
*Fax:* (907) 465-3766

*Email:*  
Rep.Max.Gruenberg@akleg.gov

To: Committee Members

From: Representative Max Gruenberg

Date: January 31, 2014

RE: List of U.S. States with enacted legislation regarding Transfer on Death (TOD) deeds

As of today's date twenty jurisdictions have enacted legislation authorizing Transfer on Death deeds;

- Arizona
- Arkansas
- Colorado
- District of Columbia
- Hawaii
- Illinois
- Indiana
- Kansas
- Minnesota
- Missouri
- Montana
- Nebraska
- Nevada
- New Mexico
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Virginia
- Wisconsin

The following jurisdictions, in addition to Alaska, currently have active legislation pending regarding Transfer on Death deeds;

- Maryland
- South Dakota

- Washington
- West Virginia

Please contact my Legislative Aide, Nicoli Bailey, at 465-4940 with any questions.

**UNIFORM REAL PROPERTY  
TRANSFER ON DEATH ACT**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR  
IN SANTA FE, NEW MEXICO  
JULY 9-16, 2009

*WITH PREFATORY NOTE AND COMMENTS*

COPYRIGHT © 2009

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

September 30, 2009

## ABOUT ULC

The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 118<sup>th</sup> year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON UNIFORM REAL PROPERTY TRANSFER  
ON DEATH ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

NATHANIEL STERLING, 4180 Oak Hill Ave., Palo Alto, CA 94306, *Chair*  
TURNEY P. BERRY, 2700 PNC Plaza, Louisville, KY 40202  
RHODA B. BILLINGS, 5525 Williams Rd., Lewisville, NC 27023  
TOM BOLT, 5600 Royal Dane Mall, St. Thomas, VI 00802-6410  
THOMAS L. JONES, University of Alabama School of Law, University Station, P.O. Box  
865557, Tuscaloosa, AL 35486-0050

EDWARD F. LOWRY, JR., 4200 N. 82nd St., Suite 2001, Scottsdale, AZ 85251  
ROBERT L. MCCURLEY, JR., Alabama Law Institute, P.O. Box 861425, Tuscaloosa, AL  
35486

JAMES R. PENDER, 4001 North Rodney Parham Rd., Suite 101, Little Rock, AR 72212  
PATRICK A. RANDOLPH, JR., University of Missouri-Kansas City School of Law, 5100  
Rockhill Rd., Kansas City, MO 64110

GLEE S. SMITH, P.O. Box 667, Lawrence, KS 66044  
MICHAEL P. SULLIVAN, 80 South 8th St., 500 IDS Center, Minneapolis, MN 55402-3796  
THOMAS P. GALLANIS, University of Iowa, Boyd Law Building, Iowa City, IA 52242,  
*Reporter*

**EX OFFICIO**

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563,  
*President*

ANNE L. MCGIHON, 837 Sherman St., Denver, CO 80203, *Division Chair*

**AMERICAN BAR ASSOCIATION ADVISOR**

DENNIS M. HORN, 2099 Pennsylvania Ave. NW, Washington, DC 20006, *ABA Advisor*  
SUSAN N. GARY, University of Oregon School of Law, 1515 Agate St., Eugene, OR 97403,  
*ABA Section Advisor*

**EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.nccusl.org](http://www.nccusl.org)

# UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

## TABLE OF CONTENTS

Prefatory Note .....	1
SECTION 1. SHORT TITLE .....	2
SECTION 2. DEFINITIONS .....	2
SECTION 3. APPLICABILITY .....	3
SECTION 4. NONEXCLUSIVITY .....	4
SECTION 5. TRANSFER ON DEATH DEED AUTHORIZED .....	4
SECTION 6. TRANSFER ON DEATH DEED REVOCABLE .....	5
SECTION 7. TRANSFER ON DEATH DEED NONTESTAMENTARY. ....	5
SECTION 8. CAPACITY OF TRANSFEROR .....	6
SECTION 9. REQUIREMENTS .....	6
SECTION 10. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED .....	8
SECTION 11. REVOCATION BY INSTRUMENT AUTHORIZED; REVOCATION BY ACT NOT PERMITTED .....	8
SECTION 12. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE .....	12
SECTION 13. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH .....	14
SECTION 14. DISCLAIMER .....	18
SECTION 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES .....	21
[SECTION 16. OPTIONAL FORM OF TRANSFER ON DEATH DEED .....	22
[SECTION 17. OPTIONAL FORM OF REVOCATION .....	26
SECTION 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION .....	28
SECTION 19. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT .....	28
SECTION 20. REPEALS .....	29
SECTION 21. EFFECTIVE DATE .....	29

# UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

## Prefatory Note

One of the main innovations in the property law of the twentieth century has been the development of asset-specific will substitutes for the transfer of property at death. By these mechanisms, an owner may designate beneficiaries to receive the property at the owner's death without waiting for probate and without the beneficiary designation needing to comply with the witnessing requirements of wills. Examples of specific assets that today routinely pass outside of probate include the proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in pay on death (POD) bank accounts.

Today, nonprobate transfers are widely accepted. The trend has largely focused on assets that are personal property, such as the assets described in the preceding paragraph. However, long-standing uniform law speaks more broadly. Section 6-101 of the Uniform Probate Code (UPC) provides: "*A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary*" (emphasis supplied).

A small but growing number of jurisdictions have implemented the principle of UPC §6-101 by enacting statutes providing an asset-specific mechanism for the nonprobate transfer of land. This is done by permitting owners of interests in real property to execute and record a transfer on death (TOD) deed. By this deed, the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime, the beneficiaries have no interest in the property, and the owner retains full power to transfer or encumber the property or to revoke the TOD deed.

Thirteen states have enacted statutes authorizing TOD deeds. In the chronological order of the statutes' enactment, the states are: Missouri (1989), Kansas (1997), Ohio (2000), New Mexico (2001), Arizona (2002), Nevada (2003), Colorado (2004), Arkansas (2005), Wisconsin (2006), Montana (2007), Oklahoma (2008), Minnesota (2008), and Indiana (2009).

The time is ripe for a Uniform Act to facilitate this emerging form of nonprobate transfer and to bring uniformity and clarity to its use and operation.

## UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Real Property Transfer on Death Act.

**SECTION 2. DEFINITIONS.** In this [act]:

(1) “Beneficiary” means a person that 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 owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant[,][ and] [owner of community property with a right of survivorship[,][ and tenant by the entirety]. The term does not include a tenant in common [or owner of community property without a right of survivorship].

(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 [act].

(7) “Transferor” means an individual who makes a transfer on death deed.

### Comment

Paragraph (1) defines a beneficiary as a person that receives property under a transfer on death deed. This links the definition of a “beneficiary” to the definition of a “person.” A beneficiary can be any person, including the trustee of a revocable trust.

Paragraph (2) defines a designated beneficiary as a person designated to receive property in a transfer on death deed. This links the definition of a “designated beneficiary” to the

definition of a “person.” A designated beneficiary can be any person, including a revocable trust.

The distinction between a “beneficiary” and a “designated beneficiary” is easily illustrated. Section 13 provides that, on the transferor’s death, the property that is the subject of a transfer on death deed is transferred to the designated beneficiaries who survive the transferor. If *X* and *Y* are the designated beneficiaries but only *Y* survives the transferor, then *Y* is a beneficiary and *X* is not. A further illustration comes into play if Section 13 is made subject to the state’s antilapse statute. If *X* fails to survive the transferor but has a descendant, *Z*, who survives the transferor, the antilapse statute may create a substitute gift in favor of *Z*. In such a case, the designated beneficiaries are *X* and *Y*, but the beneficiaries are *Y* and *Z*.

Paragraph (3) provides a definition of a “joint owner” as an individual who owns property with one or more other individuals with a right of survivorship. The term is used in Sections 11 and 13.

Paragraph (4) is the standard Uniform Law Commission definition of a “person.”

The effect of paragraph (5) is that the act applies to all interests in real property located in this state that are transferable at the death of the owner.

Paragraph (6) provides that a “transfer on death deed” is a deed authorized under this act. In some states with existing transfer on death deed legislation, the legislation has instead used the term “beneficiary deed.” The term “transfer on death deed” is preferred, to be consistent with the transfer on death registration of securities. See Article 6, Part 3, of the Uniform Probate Code, containing the Uniform TOD Security Registration Act.

Paragraph (7) limits the definition of a “transferor” to an individual. The term “transferor” does not include a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any legal or commercial entity other than an individual. The term also does not include an agent or other representative. If a transfer on death deed is made by an agent on behalf of a principal or by a conservator, guardian, or judge on behalf of a ward, the principal or ward is the transferor. By way of analogy, see Uniform Trust Code §103(15) (defining “settlor”) and the accompanying Comment (excluding an individual “acting as the agent for the person who will be funding the trust”). The power of an agent to make or revoke a transfer on death deed on behalf of a principal is determined by other law, such as the Uniform Power of Attorney Act, as indicated in the Comments to Sections 9 and 11.

**SECTION 3. APPLICABILITY.** This [act] applies to a transfer on death deed made before, on, or after [the effective date of this [act]] by a transferor dying on or after [the effective date of this [act]].

#### Comment

This section provides that the act applies to a transfer on death deed made before, on, or after the effective date of the act by a transferor dying on or after the effective date of the act. This section is consistent with the Uniform Probate Code's provisions governing transfer on death registration of securities. Those provisions "appl[y] to registrations of securities in beneficiary form made before or after [effective date], by decedents dying on or after [effective date]." Uniform Probate Code §6-311.

**SECTION 4. NONEXCLUSIVITY.** This [act] does not affect any method of transferring property otherwise permitted under the law of this state.

#### **Comment**

This section provides that the act is nonexclusive. The act does not affect any method of transferring property otherwise permitted under state law.

One such method is a present transfer with a retained legal life estate. Consider the following examples:

*Example 1.* *A* conveys Blackacre to *B* while reserving *A*'s right to remain in possession until *A*'s death. By this conveyance, *A* has made a present transfer of a future interest to *B*. The transfer is irrevocable. The future interest will ripen into possession at *A*'s death, even if *B* fails to survive *A*.

*Example 2.* *A* executes, acknowledges, and records a transfer on death deed for Blackacre, naming *B* as the designated beneficiary. During *A*'s lifetime, no interest passes to *B*, and *A* may revoke the deed. If unrevoked, the deed will transfer possession to *B* at *A*'s death only if *B* survives *A*.

As illustrated in these examples, the two methods of transfer have different effects and are governed by different rules.

**SECTION 5. 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.

#### **Comment**

This section authorizes a transfer on death deed and makes it clear that the transfer is not an inter vivos transfer. The transfer occurs at the transferor's death.

The transferor is an individual, but the singular includes the plural. Multiple individuals can readily act together to transfer property by a transfer on death deed, as in the common case of a husband and wife who own the property as joint tenants or as tenants by the entirety. On the

effect of a transfer on death deed made by joint owners, see Section 13(c) and the accompanying Comment.

The transferor may select any form of ownership, concurrent or successive, absolute or conditional, contingent or vested, valid under state law. Among many other things, this permits the transferor to reserve interests for his estate (e.g., mineral interests); to specify the nature and extent of the beneficiary's interest; and to designate one or more primary beneficiaries and one or more alternate beneficiaries to take in the event the primary beneficiaries fail to survive the transferor. This freedom to specify the form and terms of the transferee's interest comports with the fundamental principle of American law recognized by the Restatement (Third) of Property (Wills and Other Donative Transfers) §10.1 that the donor's intention should be "given effect to the maximum extent allowed by law." As the Restatement explains in Comment c to §10.1, "American law curtails freedom of disposition only to the extent that the donor attempts to make a disposition or achieve a purpose that is prohibited or restricted by an overriding rule of law."

Notwithstanding this freedom of disposition, transferors are encouraged as a practical matter to avoid formulating dispositions that would complicate title. Dispositions containing conditions or class gifts, for example, may require a court proceeding to sort out the beneficiaries' interests. Other estate planning mechanisms, such as trusts, may be more appropriate in such cases.

**SECTION 6. TRANSFER ON DEATH DEED REVOCABLE.** A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

#### **Comment**

A fundamental feature of a transfer on death deed under this Act is that the transferor retains the power to revoke the deed. Section 6 is framed as a mandatory rule, for two reasons. First, the rule prevents an off-record instrument from affecting the revocability of a transfer on death deed. Second, the rule protects the transferor who may wish later to revoke the deed.

If the transferor promises to make the deed irrevocable or not to revoke the deed, the promisee may have a remedy under other law if the promise is broken. The deed remains revocable despite the promise.

**SECTION 7. TRANSFER ON DEATH DEED NONTESTAMENTARY.** A transfer on death deed is nontestamentary.

#### **Comment**

This section is consistent with Uniform Probate Code §6-101(a), which provides: "A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement

plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary.”

As the Comment to Uniform Probate Code §6-101 explains, because the mode of transfer is declared to be nontestamentary, the instrument of transfer is not a will and does not have to be executed in compliance with the formalities for wills, nor does the instrument need to be probated.

Whether a document that is ineffective as a transfer on death deed (e.g., because it has not been recorded before the transferor’s death) should be given effect as a testamentary instrument will depend on the applicable facts and on the wills law of the jurisdiction. Section 2-503 of the Uniform Probate Code provides in pertinent part: “Although a document ... was not executed in compliance with Section 2-502, the document ... is treated as if it had been executed in compliance with that section if the proponent of the document ... establishes by clear and convincing evidence that the decedent intended the document ... to constitute ... (iii) an addition to or alteration of the [decedent’s] will ....”

**SECTION 8. CAPACITY OF TRANSFEROR.** The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

#### **Comment**

This section provides that the capacity required to make or revoke a transfer on death deed, which is a revocable will substitute, is the same as the capacity required to make a will. It is appropriate that a will and a transfer on death deed require the same level of capacity, for both mechanisms are revocable and ambulatory, the latter term meaning that they do not operate before the grantor’s death. This approach is consistent with the Restatement (Third) of Property (Wills and Other Donative Transfers) §8.1(b), which applies the standard of testamentary capacity, and not the standard of capacity for inter vivos gifts, to revocable will substitutes: “If the donative transfer is in the form of a will, a revocable will substitute, or a revocable gift, the testator or donor must be capable of knowing and understanding in a general way the nature and extent of his or her property, the natural objects of his or her bounty, and the disposition that he or she is making of that property, and must also be capable of relating these elements to one another and forming an orderly desire regarding the disposition of the property.” This section is also consistent with Uniform Trust Code §601: “The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.”

A transfer on death deed is not affected if the transferor subsequently loses capacity. On the ability of an agent under a power of attorney to make or revoke a transfer on death deed, see the Comments to Sections 9 and 11.

**SECTION 9. REQUIREMENTS.** A transfer on death deed:

(1) except as otherwise provided in paragraph (2), must contain the essential elements and

formalities of a properly recordable inter vivos deed;

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

(3) must be recorded before the transferor's death in the public records in [the office of the county recorder of deeds] of the [county] where the property is located.

*Legislative Note: Because a transfer on death deed does not have present effect and is revocable, it may be useful to title searchers and insurers if the recording or indexing of the deed identifies it as a transfer on death deed. Information about how a recorder of deeds should record and index a transfer on death deed is available from the recorders of deeds in states having experience with such deeds. By way of example, the recorder of deeds of Clay County, Missouri, uses a grantor-grantee index that is fully searchable online, at [http://recorder.claycogov.com/pages/online\\_access.asp](http://recorder.claycogov.com/pages/online_access.asp).*

#### **Comment**

Paragraph (1) requires a transfer on death deed to contain the same essential elements and formalities, other than a present intention to convey, as are required for a properly recordable inter vivos deed under state law. "Essential elements" is a term with a long usage in the law of deeds of real property. The essential elements of a deed vary from one state to another but commonly include the names of the grantor and grantee, a clause transferring title, a description of the property transferred, and the grantor's signature. In all states, the essential elements of a properly recordable deed include the requirement that the deed be acknowledged by the grantor before a notary public or other individual authorized by law to take acknowledgments. See Thompson on Real Property §92.04(c) (observing that a "certificate of acknowledgment or attestation is universally required to qualify an instrument for recordation"). In the context of transfer on death deeds, the requirement of acknowledgment fulfills at least four functions. First, it cautions a transferor that he or she is performing an act with legal consequences. Such caution is important where, as here, the transferor does not experience the wrench of delivery because the transfer occurs at death. Second, acknowledgment helps to prevent fraud. Third, acknowledgment facilitates the recording of the deed. Fourth, acknowledgment enables the rule in Section 11 that a later acknowledged deed prevails over an earlier acknowledged deed.

Paragraph (2) emphasizes an important distinction between an inter vivos transfer and a transfer on death. An inter vivos transfer reflects an intention to transfer, at the time of the conveyance, an interest in property, either a present interest or a future interest. In contrast, a transfer on death reflects an intention that the transfer occur at the transferor's death. Under no circumstances should a transfer on death be given effect inter vivos; to do so would violate the transferor's intention that the transfer occur at the transferor's death.

Paragraph (3) requires a transfer on death deed to be recorded before the transferor's death in the county (or other appropriate administrative division of a state, such as a parish)

where the land is located. If the property described in the deed is in more than one county, the deed is effective only with respect to the property in the county or counties where the deed is recorded. The requirement of recordation before death helps to prevent fraud by ensuring that all steps necessary to the effective transfer on death deed are completed during the transferor's lifetime. The requirement of recordation before death also enables all parties to rely on the recording system. For these reasons, all thirteen states that have already enacted transfer on death deed statutes require the deed to be recorded before the transferor's death.

An individual's agent may execute a transfer on death deed on the individual's behalf to the extent permitted by other law, such as the Uniform Power of Attorney Act. This act does not define, but instead relies on other law to determine, the authority of an agent.

#### **SECTION 10. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT**

**REQUIRED.** A transfer on death deed is effective without:

- (1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or
- (2) consideration.

#### **Comment**

This section makes it clear that a transfer on death deed is effective without notice or delivery to or acceptance by the beneficiary during the transferor's lifetime (paragraph (1)) and without consideration (paragraph (2)).

Paragraph (1) is consistent with the fundamental distinction under this Act between a transfer on death deed and an inter vivos deed. Under the former, but not under the latter, the transfer occurs at the transferor's death. Therefore, there is no requirement of notice, delivery, or acceptance during the transferor's life. This does not mean that the beneficiary is required to accept the property. The beneficiary may disclaim the property, as explained in Section 14 and the accompanying Comment.

Paragraph (2) is consistent with the law of donative transfers. A deed need not be supported by consideration.

#### **SECTION 11. REVOCATION BY INSTRUMENT AUTHORIZED;**

**REVOCATION BY ACT NOT PERMITTED.**

(a) Subject to subsection (b), 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; or

(C) an inter vivos deed that expressly revokes the transfer on death deed or part of the 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 public records in [the office of the county recorder of deeds] of the [county] 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.

#### **Comment**

This section concerns revocation by instrument and revocation by act. On revocation by change of circumstances, such as by divorce or homicide, see Section 13 and the accompanying Comment.

Subsection (a) provides the exclusive methods of revoking, in whole or in part, a recorded transfer on death deed by a subsequent instrument. Revocation by an instrument not specified, such as the transferor's will, is not permitted.

The rule that a transfer on death deed may not be revoked by the transferor's subsequent will is a departure from the Restatement (Third) of Property (Wills and Other Donative Transfers) §7.2 comment e (see also the corresponding Reporter's Note), which encourages the revocability of will substitutes by will. However, there is a sound reason for the departure in the specific case of a transfer on death deed. A transfer on death deed operates on real property, for which certainty of title is essential. This certainty would be difficult, and in many cases impossible, to achieve if an off-record instrument, such as the grantor's will, could revoke a recorded transfer on death deed. The rule in this Act against revocation by will is also consistent with the uniform acts governing multiple-party bank accounts. See Uniform Probate Code §6-213(b) ("A right of survivorship arising from the express terms of the account, Section 6-212, or a POD designation, may not be altered by will.")

A recorded transfer on death deed may be revoked by instrument only by (1) a subsequently acknowledged transfer on death deed, (2) a subsequently acknowledged instrument of revocation, such as the form in Section 17, or (3) a subsequently acknowledged inter vivos deed containing an express revocation clause. Consider the following examples:

*Example 1.* T executes, acknowledges, and records a transfer on death deed for Blackacre. Later, T executes, acknowledges, and records a second transfer on death deed for Blackacre, containing an express revocation clause revoking "all my prior transfer on death deeds concerning this property." The second deed revokes the first deed. The revocation occurs when the second deed is recorded. (For the result if the second deed had not contained the express revocation clause, see Example 5.)

*Example 2.* T executes, acknowledges, and records two transfer on death deeds for Blackacre. Both deeds expressly revoke "all my prior transfer on death deeds concerning this property." The dates of acknowledgment determine which deed revoked the other. The first deed is acknowledged November 1; the second deed is acknowledged December 15. The second deed is the later acknowledged, so it revokes the first deed. The revocation occurs when the second deed is recorded.

*Example 3.* T executes and acknowledges a transfer on death deed for Blackacre. T later executes and acknowledges a revocation form. Both instruments are recorded. Because the revocation form is acknowledged later than the deed, the form revokes the deed. The revocation occurs when the form is recorded.

*Example 4.* T executes and acknowledges a transfer on death deed for Blackacre. T later executes and acknowledges an inter vivos deed conveying Blackacre and expressly revoking the transfer on death deed. Both instruments are recorded. Because the inter vivos deed contains an express revocation provision and is acknowledged later than the transfer on death deed, the inter vivos deed revokes the transfer on death deed. The revocation occurs when the inter vivos deed is recorded. (For the result if the inter vivos deed had not contained an express revocation clause, see the discussion below on "ademption by extinction.")

The same rules apply whether the revocation is total or partial. In the previous examples, suppose instead that the initial transfer on death deed provides for the transfer of two parcels,

Blackacre and Whiteacre, and that the subsequent instrument revokes the transfer on death deed as to Blackacre. The subsequent instrument revokes the transfer on death deed in part.

If the property described in the original deed is in more than one county, the revocation is effective only with respect to the property in the county or counties where the revoking deed or instrument is recorded.

Subsection (a)(1)(A) speaks of revocation “expressly or by inconsistency.” This provision references the well-established law of revocation by inconsistency of wills. Consider the following examples:

*Example 5.* *T* executes, acknowledges, and records a transfer on death deed for Blackacre naming *X* as the designated beneficiary. Later, *T* executes, acknowledges, and records a transfer on death deed for the same property, Blackacre, containing no express revocation of the earlier deed but naming *Y* as the designated beneficiary. Later, *T* dies. The recording of the deed in favor of *Y* revokes the deed in favor of *X* by inconsistency. At *T*’s death, *Y* is the owner of Blackacre.

*Example 6.* *T*, the owner of Blackacre in fee simple absolute, executes, acknowledges, and records a transfer on death deed for Blackacre naming *X* as the designated beneficiary. Later, *T* executes, acknowledges, and records a transfer on death deed containing no express revocation of the earlier deed but naming *Y* as the designated beneficiary of a life estate (or a mineral interest) in Blackacre. Later, *T* dies. The recording of the deed in favor of *Y* partially revokes the deed in favor of *X* by inconsistency. At *T*’s death, *Y* is the owner of a life estate (or a mineral interest) in Blackacre, and *X* is the owner of the remainder.

The question is sometimes raised whether a recorded inter vivos deed *without an express revocation clause* operates as a revocation of an earlier transfer on death deed. The answer highlights the important distinction between “revocation” and “ademption by extinction.” See Atkinson on Wills §134. Revocation means that the instrument is rendered void. Ademption by extinction means that the transfer of the property cannot occur because the property is not owned by the transferor at death. The doctrines are different.

In some instances, revocation and ademption have the same practical effect: the designated beneficiary of the property receives nothing. Nothing in this section changes that fact, as indicated in subsection (d). However, there are other instances where the doctrines have differing effects. Consider the following illustration, drawn from the law of wills.

*Example 7.* *T* executes a will devising Blackacre to *A*. Later, *T* becomes legally incompetent, and *G* is appointed as *T*’s conservator. *G*, acting within the scope of his authority, sells Blackacre to *B* for \$100,000. Later, *T* dies.

The law of wills provides that the devise to *A* is adeemed rather than revoked. This means that *A* is not entitled to Blackacre but is entitled to a pecuniary devise in the amount of \$100,000. See Atkinson on Wills §134; *Wasserman v. Cohen*, 606 N.E.2d 901, 903 (Mass. 1993); Uniform Probate Code §2-606(b). The result is designed to effectuate *T*’s presumed intention.

The Joint Editorial Board for Uniform Trust and Estate Acts has begun a conversation on whether the Uniform Probate Code's provisions on ademption should be extended to nonprobate transfers, thus harmonizing the treatment of wills and will substitutes on this aspect of the law. This act accepts the well recognized distinction between revocation and ademption in order to leave the door open for such future harmonization, which would effectuate the presumed intention of nonprobate grantors.

Subsection (b) supplies rules governing revocation by instrument in the event of a transfer on death deed made by multiple owners. Subsection (b)(1) provides that revocation by a transferor does not affect a transfer on death deed as to the interest of another transferor. Subsection (b)(2) provides that a transfer on death deed of joint owners is revoked only if it is revoked by all of the living joint owners. This rule is consistent with Uniform Probate Code §6-306, which provides in pertinent part: "A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary." Subsection (b)(2) applies only to a deed of joint owners. A joint tenant who severs the joint tenancy, thereby destroying the right of survivorship, is no longer a joint owner.

Subsection (c) provides that a recorded transfer on death deed may not be revoked by a revocatory act performed on the deed. Such an act includes burning, tearing, canceling, obliterating, or destroying the deed or any part of it.

This statute does not define, but instead looks to other law to determine, the authority of an agent. An individual's agent may revoke a transfer on death deed on the individual's behalf to the extent permitted by other law, such as the Uniform Power of Attorney Act.

## **SECTION 12. 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.

### **Comment**

A fundamental feature of a transfer on death deed under this Act is that it does not operate until the transferor's death. The transfer occurs at the transferor's death, not before.

Paragraph (1): A transfer on death deed, during the transferor's lifetime, does not affect the interests or property rights of the transferor or any other owners. Therefore, the deed does not, among many other things: affect the transferor's right to transfer or encumber the property inter vivos; sever a joint tenancy or a joint tenant's right of survivorship; trigger a due-on-sale clause in the transferor's mortgage; trigger the imposition of real estate transfer tax; or affect the transferor's homestead or real estate tax exemptions, if any.

Paragraph (2): A transfer on death deed does not affect transferees, whether or not they have notice of the deed. Like a will, the transfer on death deed is ambulatory. It has no effect on inter vivos transfers.

Paragraph (3): A transfer on death deed, during the transferor's lifetime, does not affect pre-existing or future creditors, secured or unsecured, whether or not they have an interest in the property or notice of the deed.

Paragraph (4): A transfer on death deed, during the transferor's lifetime, does not affect the transferor's or designated beneficiary's eligibility for any form of public assistance, including Medicaid. On this point, the drafting committee specifically disapproves of the contrary approach of Colo. Rev. Stat. §15-15-403.

Paragraph (5): During the transferor's lifetime, a transfer on death deed does not create a legal or equitable interest in the designated beneficiary. The beneficiary does not have an interest that can be assigned or encumbered. Note, however, that this rule would not preclude the doctrine of after-acquired title. A warranty deed from a designated beneficiary to a third party would operate to pass the beneficiary's title to the third party after the transferor's death.

Paragraph (6): A transfer on death deed, during the transferor's lifetime, does not make the property subject to claims or process of the designated beneficiary's creditors. The deed has no more effect than a will.

If a transferor combines an inter vivos transfer of an interest in property (such as a mineral interest) with a transfer on death of the remainder interest, the inter vivos transfer may have present effect even though the transfer on death does not occur until the transferor's death.

**SECTION 13. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH.**

(a) Except as otherwise provided in the transfer on death deed[,][ or] in this section[,][ or in [cite state statutes on antilapse, revocation by divorce or homicide, survival and simultaneous death, and elective share, if applicable to nonprobate transfers]], 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 paragraph (2), the interest in the property is transferred to the designated beneficiary in accordance with 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 paragraph (4), 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, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) Subject to [cite state recording act], 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 [cite state recording act], the recording of the transfer on death deed is deemed 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.

*Legislative Note: In light of the growing harmonization of the rules governing probate and nonprobate transfers, states enacting this act should consider extending to nonprobate mechanisms, such as transfer on death deeds, the probate rules governing antilapse, revocation by divorce, revocation by homicide, survival and simultaneous death, and the elective share of a surviving spouse.*

*One of the significant trends in the law of property in the twentieth century has been the growing harmonization of the constructional and substantive rules governing deathtime transfers, whether the transfers occur in or outside of the probate process. Section 7.2 of the Restatement (Third) of Property (Wills and Other Donative Transfers) provides: "Although a will substitute need not be executed in compliance with the statutory formalities required for a will, such an arrangement is, to the extent appropriate, subject to substantive restrictions on testation and to rules of construction and other rules applicable to testamentary dispositions."*

*The Uniform Probate Code contains statutory provisions treating wills and will substitutes alike for many purposes, including (1) antilapse; (2) revocation by divorce; (3) revocation by homicide (the "slayer rule"); (4) survival and simultaneous death; and (5) the elective share of a surviving spouse.*

*In some cases, the harmonization is achieved by applying the relevant rule to any "governing instrument," which is defined in Uniform Probate Code §1-201(18) as "a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profitsharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type." The Uniform Probate Code's rules on revocation by divorce, revocation by homicide, and survival and simultaneous death apply to any governing instrument. See Uniform Probate Code §§2-702 (survival and simultaneous death), 2-803 (revocation by homicide), 2-804 (revocation by divorce).*

*For the elective share, the Uniform Probate Code treats wills and will substitutes alike by defining the decedent's "augmented estate" to include both probate and nonprobate transfers. See Uniform Probate Code §2-203(a).*

*For antilapse, the Uniform Probate Code has separate sections treating wills (§2-603) and will substitutes (§§2-706, 2-707), but the latter are modeled on the former.*

*See also the Legislative Note to Section 14 on disclaimers.*

### Comment

Subsection (a) states four default rules, except as otherwise provided by the transfer on death deed, by this section, or by other provisions of state law governing nonprobate transfers. On this last, and the desirability of extending the probate rules governing antilapse, revocation on divorce or homicide, survival and simultaneous death, and the elective share of the surviving spouse to nonprobate instruments such as transfer on death deeds, see the Legislative Note.

The four default rules established by subsection (a) are these. First, the property that is the subject of an effective transfer on death deed and owned by the transferor at death is transferred at the transferor's death to the designated beneficiaries as provided in the deed. The rule implements the transferor's intention as described in the deed. Consider the following example:

*Example 1.* *A* executes, acknowledges, and records a transfer on death deed for Blackacre naming *X* as the primary beneficiary and *Y* as the alternate beneficiary if *X* fails to survive *A*. Both *X* and *Y* survive *A*. Blackacre is transferred to *X* at *A*'s death in accordance with the provisions of the deed.

This default rule implements the fundamental principle that the provisions of the deed control the disposition of the property, unless otherwise provided by state law.

The drafting committee approves of the result in *In re Estate of Roloff*, 143 P.3d 406 (Kan. Ct. App. 2006) (holding that crops should be transferred with the land under a transfer on death deed because this result would be reached on the same facts with any other deed).

The bracketed language at the beginning of subsection (a) enables a state to make the default rules subject to other statutes, such as an antilapse statute or a statute providing for revocation on divorce. Consider the following examples:

*Example 2.* *A* executes, acknowledges, and records a transfer on death deed for Blackacre naming *X* as the primary beneficiary and *Y* as the alternate beneficiary if *X* fails to survive *A*. In fact, *X* and *Y* fail to survive *A*, who is survived only by *X*'s child, *Z*. Assume that the state's antilapse statute applies to transfer on death deeds and creates a substitute gift in *Z*. (For such a statute, see Uniform Probate Code §2-706.) Blackacre is transferred to *Z* at *A*'s death in accordance with the provisions of the deed as modified by the antilapse statute.

*Example 3.* *A* executes, acknowledges, and records a transfer on death deed for Blackacre naming her spouse, *X*, as the primary beneficiary and *Y* as the alternate beneficiary if *X* fails to survive *A*. Later, *A* and *X* divorce. Assume that the state's statute on revocation by divorce applies to transfer on death deeds and revokes the designation in favor of *X*, with the effect that the provisions of the transfer on death deed are given effect as if *X* had disclaimed. (For such a

statute, see Uniform Probate Code §2-804.) Assume further that the effect of the putative disclaimer is that *X* is treated as having failed to survive *A*. (See the Uniform Disclaimer of Property Interests Act §6(a)(3)(B).) Blackacre is transferred to *Y* at *A*'s death in accordance with the provisions of the deed as modified by the revocation on divorce and disclaimer statutes.

Note that the property must be owned by the transferor at death. Property no longer owned by the transferor at death cannot be transferred by a transfer on death deed, just as it cannot be transferred by a will. This is the principle of ademption by extinction, discussed in the Comment to Section 11.

In almost every instance, the transferor will own the property not only at death but also when the transfer on death deed is executed, but the latter is not imperative. Consider the following example. *H* and *W*, a married couple, hold Blackacre as tenants by the entirety. *H* executes, acknowledges, and records a transfer on death deed for Blackacre in favor of *X*. *W* later dies, at which point *H* owns Blackacre in fee simple absolute. Later, *H* dies. Under the law of some states, there may be a question whether the transfer on death deed is effective, given that *H* executed it when Blackacre was owned, not by *H* and *W*, but by the marital entity. The correct answer is that the transfer on death deed is effective at *H*'s death because Blackacre is owned by *H* at *H*'s death. See, e.g., *Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055 (Del. Ch. 1982) (mortgage granted by one tenant by the entirety is not void upon execution but remains inchoate during the lives of both spouses, and becomes a valid lien if the spouse who executed the mortgage survives the other spouse or if the spouses get divorced).

The second default rule established by subsection (a) is that the interest of a designated beneficiary is contingent on surviving the transferor. This default rule treats wills and will substitutes alike. The interest of a designated beneficiary who fails to survive the transferor lapses. On the desirability of extending statutory antilapse protection to will substitutes such as transfer on death deeds, see the Legislative Note.

The third default rule established by subsection (a) is that concurrent beneficiaries receive equal and undivided interests with no right of survivorship among them. This default rule is consistent with the general presumption in favor of tenancy in common. See Powell on Real Property §51.02. The rule is also consistent with Uniform Probate Code §6-212 governing multiple-party accounts and §6-307 governing the transfer on death registration of securities.

The fourth and last default rule established by subsection (a) is that, in the event of the lapse or failure of an interest to be held concurrently, the share that lapses or fails passes proportionately to the surviving concurrent beneficiaries. Consider the following example:

*Example 4.* *A* executes, acknowledges, and records a transfer on death deed for Blackacre naming *X*, *Y*, and *Z* as the designated beneficiaries. *X* and *Y* survive *A*, but *Z* fails to survive *A*. The transfer on death deed is effective and, in the absence of an antilapse statute, transfers Blackacre to *X* and *Y*. This default rule is consistent with the transferor's probable intention in the absence of an antilapse statute and also with Uniform Probate Code §2-604(b) on the lapse of a residuary devise. On the desirability of extending statutory antilapse protection to will substitutes such as transfer on death deeds, see the Legislative Note.

Subsection (b) concerns the effect of transactions during the transferor's life. The subsection states an intermediate rule between two extremes. One extreme would provide that transactions during the transferor's life affect the beneficiary only if the transactions are recorded before the transferor's death. This would unfairly disadvantage the transferor's creditors and inter vivos transferees. The other extreme would provide that transactions during the transferor's life always supersede the beneficiary's interest, even if the recording act would provide otherwise. Between these two positions is the rule of subsection (b).

Subsection (b) provides that the beneficiary's interest is subject to *all* conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. "Liens" includes liens arising by operation of law, such as state Medicaid liens.

The only exception to this rule arises when the state recording act so provides. The state recording act will so provide only when two conditions are met: (1) the inter vivos conveyance or encumbrance is unrecorded throughout the transferor's life (the legal fiction in this subsection protects persons who transact with the transferor and record any time before the transferor's death); and (2) the beneficiary is protected by the recording act. These two conditions will be met only in rare instances. Most beneficiaries of transfer on death deeds are gratuitous, whereas state recording acts typically protect only purchasers for value. See Powell on Real Property §82.02.

Subsection (c) provides that the survivorship right of a joint owner takes precedence over the transfer on death deed. This rule is consistent with the law of joint tenancy and wills: the right of survivorship takes precedence over a provision in a joint tenant's will.

Subsection (d) states the mandatory rule that a transfer on death deed transfers the property without covenant or warranty of title. The rule is mandatory for two reasons: first, to prevent mishaps by uninformed grantors; and second, to recognize that a transfer on death deed is a will substitute. The rule of this section is consistent with the longstanding law of wills. As stated by Sir Edward Coke, "an express warranty cannot be created by will." Coke on Littleton 386a.

**SECTION 14. DISCLAIMER.** A beneficiary may disclaim all or part of the beneficiary's interest as provided by [cite state statute or the Uniform Disclaimer of Property Interests Act].

*Legislative Note: States should check their disclaimer statutes for any necessary amendments. The following are conforming amendments to the Uniform Disclaimer of Property Interests Act:*

**SECTION 12. DELIVERY OR FILING.**

(a) *In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:*

- (1) *an annuity or insurance policy;*
- (2) *an account with a designation for payment on death;*

(3) a security registered in beneficiary form;  
(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust :

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation which is disclaimed made before the time the designation becomes irrevocable, ~~α~~ the disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation which is disclaimed made after the time the designation becomes irrevocable;:

(1) α the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) the disclaimer of an interest in real property must be recorded in [the office of the county recorder of deeds] of the [county] where the real property that is the subject of the disclaimer is located.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power ; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

#### **Comment**

~~The rules set forth in Section 12 are designed so that anyone who has the duty to distribute the disclaimed interest will be notified to provide notice of the disclaimer. For example, a disclaimer of an interest in a decedent's estate must be delivered to the personal representative of the estate. A disclaimer is required to be filed in court only when there is no one person or entity to whom delivery can be made in very limited circumstances.~~

**SECTION 15. 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 so filed, recorded, or registered. Except as otherwise provided in Section 12(g)(2), 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.*

#### **Comment**

*This section permits the recordation of a disclaimer of an interest in property ownership of or title to which is the subject of a recording system. This section expands on the corresponding provision of previous Uniform Acts which ~~only~~ referred to permissive recording of a disclaimer of an interest in real property. While local practice may vary, disclaimants should realize that in order to establish the chain of title to real property, and to ward off creditors and bona fide purchasers, the disclaimer may have to be recorded. This section does not change the law of the state governing notice. The reference to Section 12(g)(2) concerns the disclaimer of an interest in real property created by a "beneficiary designation" as that term is defined in Section 12(a). Such a disclaimer must be recorded.*

#### **Comment**

A beneficiary of a transfer on death deed may disclaim the property interest the deed attempts to transfer. While this section relies on other law, such as the Uniform Disclaimer of

Property Interests Act, to govern the disclaimer, two general principles should be noted.

First, there is no need under the law of disclaimers to execute a disclaimer in advance. During the transferor's life, a designated beneficiary has no interest in the property. See Section 12. Nothing passes to the designated beneficiary while the transferor is alive, hence there is no need to execute a disclaimer during that time.

Second, an effective disclaimer executed after the testator's death "relates back" to the moment of the attempted transfer, here the death of the transferor. Because the disclaimer "relates back," the beneficiary is regarded as never having had an interest in the disclaimed property. The Uniform Disclaimer of Property Interests Act (UDPIA) reaches this result, without using the language of relation back, in UDPIA §6(b)(1): "The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable ...." As the Comment to UDPIA §6 explains, "This Act continues the effect of the relation back doctrine, not by using the specific words, but by directly stating what the relation back doctrine has been interpreted to mean."

## **SECTION 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES.**

### **Alternative A**

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [cite state statute or Section 6-102 of the Uniform Probate Code].

### **Alternative B**

(a) To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against 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 subsection (a) 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 [18 months] after the transferor's death.

## End of Alternatives

**Legislative Note:** *Alternative A is for a state with an existing statute governing creditors' rights in nonprobate transfers, such as Uniform Probate Code §6-102. States are encouraged to enact such statutes, thereby treating nonprobate transfers comprehensively. Alternative B is a second-best approach, supplying creditor protection but governing only transfer on death deeds and not other nonprobate mechanisms.*

## Comment

Alternative A defers to other law, such as Uniform Probate Code §6-102, to establish the liability of a beneficiary of a transfer on death deed for creditor claims and statutory allowances.

Uniform Probate Code (UPC) §6-102 was added in 1998 to establish the principle that recipients of nonprobate transfers can be required to contribute to pay allowed claims and statutory allowances to the extent the probate estate is insufficient. The fundamental rule of liability is contained in UPC §6-102(b): “Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent’s probate estate and statutory allowances to the decedent’s spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.” The other provisions of UPC §6-102 implement this liability rule.

For states not favoring the comprehensive approach of UPC §6-102(b) or the equivalent, Alternative B provides an *in rem* liability rule applying to transfer on death deeds. The property transferred under a transfer on death deed is liable to the transferor’s probate estate for properly allowed claims and statutory allowances to the extent the estate is insufficient.

One of the functions of probate is creditor protection. UPC §6-102, referenced in Alternative A, attempts to provide comprehensive creditor protection within the realm of nonprobate transfers. In addition, this Act in Alternative B provides more creditor protection than is typically available under current law. For many transferors, the transfer on death deed will be used in lieu of joint tenancy with right of survivorship. Under the usual law of joint tenancy, the unsecured creditors of a deceased joint tenant have no recourse against the property or against the other joint tenant. Instead, the property passes automatically to the survivor, free of the decedent’s debts. See Comment 5 to UPC §6-102. If the debts cannot be paid from the probate estate, the creditor is out of luck. Under Alternative B, in contrast, the property transferred under a transfer on death deed is liable to the probate estate for properly allowed claims and statutory allowances to the extent the estate is insufficient.

**[SECTION 16. OPTIONAL FORM OF TRANSFER ON DEATH DEED.** The following form may be used to create a transfer on death deed. The other sections of this [act] 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. You May Want to Consult a Lawyer Before Using This Form.

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

I designate the following beneficiary if the beneficiary survives me.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Mailing address, if available

ALTERNATE BENEFICIARY – Optional

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



How do I find the “legal description” of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in [the office of the county recorder of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.

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

How do I “record” the TOD deed? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is in more than one [county], you should record the deed in each [county].

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

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each [county] where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each [county] where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

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.

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

**Legislative Note:** *This section and the next section are bracketed for states wishing to provide optional statutory forms. An enacting jurisdiction should review its statutory requirements for deeds and for acknowledgments and amend the statutory forms provided in Sections 16 and 17 where necessary for conformity with those requirements. If an enacting jurisdiction changes the act, the jurisdiction should review the answers to the common questions in Sections 16 and 17 to ensure the answers remain accurate.*

### Comment

The form in this section is optional. The section is based on Section 4 of the Uniform Health-Care Decisions Act.

Ten of the thirteen states with transfer on death deed statutes provide a statutory form. See Ariz. Stat. §33-405(K); Ark. Stat. §18-12-608(h), Colo. Stat. §15-15-404; Kans. Stat. §59-3502; Minn. Stat. §507.071(24); Mont. Stat. §72-6-121(13); Nev. Stat. §111.109(6); N.M. Stat. §45-6-401(C); Ohio Code §5302.22(A); Okla. H.B. 2639 §3.

The transfer on death deed is likely to be used by consumers for whom the preparation of a tailored inter vivos revocable trust is too costly. The form in this section is designed to be understandable and consumer friendly.

For examples of statutory forms containing answers to questions likely to be asked by consumers, see the Illinois statutory forms for powers of attorney. 755 Ill. Comp. Stat. 45/3-3 (power of attorney for property); 755 Ill. Comp. Stat. 45/4-10 (power of attorney for health care).

**[SECTION 17. OPTIONAL FORM OF REVOCATION.** The following form may be used to create an instrument of revocation under this [act]. The other sections of this [act] 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 of Property 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

[(SEAL)] \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

[(SEAL)] \_\_\_\_\_  
Date

### ACKNOWLEDGMENT

(insert acknowledgment here)

(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 county recorder of deeds] of each [county] 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 county recorder of deeds] for the

[county] 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 county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is located in more than one [county], you should record the form in each of those [counties].

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.]

#### **Comment**

The form in this section is optional. The section is based on Section 4 of the Uniform Health-Care Decisions Act.

Six of the thirteen states with transfer on death deed statutes provide a statutory form for revocation. See Ariz. Stat. §33-405(L); Ark. Stat. §18-12-608(i), Colo. Stat. §15-15-405; Minn. Stat. §507.071(25); Mont. Stat. §72-6-121(14); Nev. Stat. §111.109(7).

The aim of the form in this section is to be understandable and consumer friendly.

**SECTION 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**SECTION 19. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15

U.S.C. Section 7003(b).

**SECTION 20. REPEALS.** The following are repealed:

*Legislative Note: This section is for states wishing to replace their transfer on death deed statutes with this Act.*

**SECTION 21. EFFECTIVE DATE.** This [act] takes effect ....



**Uniform Law Commission**  
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

**Benjamin Orzeske**  
Legislative Counsel  
111 N. Wabash Ave. Suite 1010  
Chicago, IL 60602  
(312) 450-6621 direct  
(312) 450-6601 fax  
borzeske@uniformlaws.org  
www.uniformlaws.org

**Written Testimony of Ben Orzeske**  
**Legislative Counsel for the Uniform Law Commission**  
**on House Bill 60 to adopt the**  
**UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**  
**before the House Labor and Commerce Committee at a public hearing on March 21, 2014.**

Chairman Olson, Vice Chair Reinbold and Members of the Committee:

Thank you for the opportunity to testify on behalf of House Bill 60, which would enact the Uniform Real Property Transfer-on-Death Act in Alaska.

Asset-specific mechanisms for the non-probate transfer of personal property at death have become common over the last thirty years. The beneficiary designation on an IRA account, securities registered in transfer-on-death (TOD) form, and funds held in payable-on-death (POD) bank accounts, are all examples of non-probate transfers. Alaska residents routinely take advantage of this modern legal trend to pass money and *personal* property to a named beneficiary outside of probate. House Bill 60 would allow Alaska residents to similarly transfer *real* property to a named beneficiary at the time of the owner's death.

In 1989, Missouri became the first state to allow non-probate transfers of real property. By 2002, five states allowed such transfers at death, and the Uniform Law Commission (ULC) began to study the issue. The Uniform Real Property Transfer-on-Death Act (URPTODA) was completed by the ULC and recommended to the states in 2009. Today, twenty-one states and the District of Columbia permit TOD deeds, and more states are expected to follow suit. So far four states, including Alaska, have URPTODA bills under consideration for the 2014 legislative session.

URPTODA is sometimes referred to as the average person's alternative to expensive estate planning. For many families, a home is their single most valuable asset. URPTODA allows the owner of real estate to name a beneficiary on a TOD deed to receive the property at the owner's death simply, directly, and without probate. The owner retains full control of the property while living, and may sell the property, name a new beneficiary, or revoke the TOD deed at any time. Filing a TOD deed does not create any property interest in the beneficiary, and has no effect on any creditor's interest in the property. Finally, TOD deeds must contain

the same information as any other recordable deed, including a legally sufficient description of the property to be conveyed and an acknowledgment by an authorized notary.

URPTODA is not a substitute for estate planning, and with very large or complex estates, it may not be the best solution. However, for many estates, and especially for those in which a home is the largest asset to be transferred at death, a TOD deed is a simple, effective tool that can be easily used by estate planning attorneys and other advisors. Let me use an example to illustrate how a TOD deed works.

Mary owns a residential property in Alaska worth \$100,000, and she has only one child, David, to whom she would like to leave the property with as little bother and expense as possible. She has very few other assets to deal with, and no creditors. Under present law, Mary has these options:

1. Leave the house to David in a Last Will and Testament. This will require a full probate proceeding to transfer the title.
2. Transfer the house to a living trust and name David as the successor trustee and/or beneficiary. This is a flexible and effective solution and will avoid probate, but it is unnecessarily complex and expensive for simple estates.
3. Deed the house to David while she lives. This accomplishes the transfer but Mary loses control of a major asset. If Mary later wants to sell the house to help pay for an assisted living facility, David must agree to the terms of the sale. The house is also exposed to David's creditors, one of whom could force a sale and force Mary out of the house.

If you enact House Bill 60, Mary will have a fourth, and much better option. Mary can execute a TOD deed naming David as the beneficiary. The deed must be recorded in public land records before Mary's death to be valid. While she is alive, Mary retains 100% ownership of her house, with full power to sell or mortgage the property, to name a new beneficiary, or to cancel the TOD deed. If Mary dies and the deed is still in effect, the property is automatically transferred to David without a probate hearing.

URPTODA was developed with the assistance of the estate planning, real property, title insurance, banking, and senior legal communities. The act has strong support nationally from the American Bar Association's Real Property Trust and Estate Section (ABA-RPTE), the ABA

Commission on Law and Aging, the American College of Real Estate Lawyers (ACREL), and AARP. In the states that have enacted URPTODA, the questions I hear most often are “what took you so long” and “why didn’t we have this available earlier?” Those are good questions.

In summary, HB 60 provides a simple and effective new method to transfer real property at death – the TOD deed. This bill would not prevent estate planners from using any of the other methods now available when appropriate, but it would provide a new, affordable, and highly flexible tool, and thus potentially save Alaska residents hundreds of thousands of dollars in legal fees and probate expenses.

I urge you to recommend enactment of the Uniform Real Property Transfer-on-Death Act, and I thank you for your consideration.

## Key Provisions of HB 60

### The Uniform Real Property Transfer on Death Act

Non-probate transfer: The TOD deed is not subject to the statute of wills and instead passes title to real property directly to the named beneficiary without probate.

A familiar recording procedure: The TOD deed must contain all of the essential elements and formalities of a properly recordable deed, including a legally sufficient description of the property to be transferred. 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.

Almost anyone can have a TOD deed: The capacity required to execute a TOD deed is the same as the capacity to make a will.

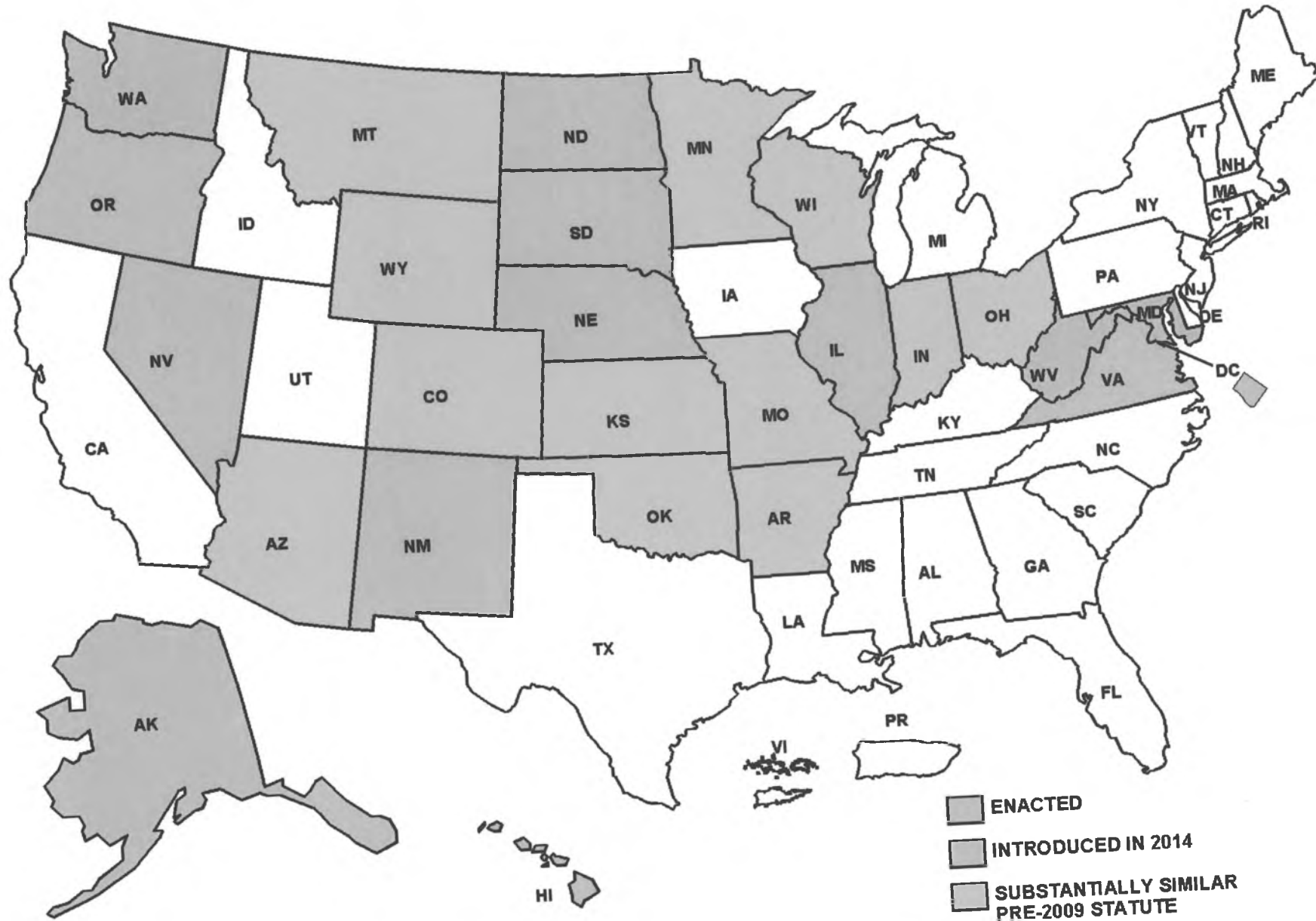
The transferor can change his or her mind: A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a new instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary.

No effect on property rights until the transferor dies: 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 transferor retains full power to sell or mortgage the property or to revoke the deed. The beneficiary has no legal or equitable interest that could be subject to creditor's claims. The deed does not affect either the transferor's or the beneficiary's eligibility for public assistance and it does not trigger mortgage acceleration clauses or property tax reassessments.

Creditors of the transferor are protected: If the transferor's probate estate is insufficient to satisfy all claims, the estate may enforce the liability against any property transferred using a TOD deed. The property transferred remains part of the transferor's taxable estate.

No obligation for the beneficiary: A designated beneficiary may disclaim all or part of the transferred interest in the same manner as any other inherited property.

# UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT (2009)



March 2014

# Alaska State Legislature

## House of Representatives

Member:

Judiciary  
Rules  
Legislative Council  
Military & Veterans Affairs



**Representative Max F. Gruenberg, Jr.**  
**House District 14**  
**Anchorage (Russian Jack, College Gate, Nunaka Valley)**  
**House Democratic Whip**

*Interim:*  
716 W 4<sup>th</sup> Avenue, Rm 350  
Anchorage, Alaska 99501-2133  
*Phone:* (907) 269-0123  
*Fax:* (907) 269-0124

*Session:*  
Alaska State Capitol, Rm 110  
Juneau, Alaska 99801-1182  
*Phone:* (907) 465-4940  
*Toll Free:* (866) 465-4940  
*Fax:* (907) 465-3766

*Email:*  
Rep.Max.Gruenberg@akleg.gov

### Sponsor Statement

#### CS House Bill 60 - Uniform Real Property Transfer on Death Act

*"An Act governing the administration of trusts and adopting the Uniform Real Property Transfer on Death Act"*

#### Trust Administration

Section 1 of HB 60 enacts a statutory provision (AS 13.36.035) on the conditions under which Alaska law will govern the administration of trusts administered in Alaska. A trust is administered in Alaska when the only trustee is a resident, bank or trust company, when a majority of the trustees are Alaska qualified persons, or when a majority of the trustees vote to make Alaska the primary place of the trust's administration.

#### The Uniform Real Property Transfer on Death Act

The remainder of HB 60, is the Uniform Real Property Transfer on Death Act (URPTODA). This provides a simple, effective, and affordable option for Alaskans wishing to transfer real property upon their death. It will avoid the potentially lengthy and expensive process of probate. It was suggested by a retired constituent, who supported it as an important alternative to expedite the transfer of real property and avoid the delay and expense of probate.

Currently, 23 states plus the District of Columbia have adopted the Act, or had previously enacted similar legislation to allow Transfer on Death (TOD) deeds before URPTODA.<sup>1</sup> South Dakota, Washington, and West Virginia have already enacted it this year. Two other states are currently considering such bills.<sup>2</sup> Non-probate death transfers of personal property, known as "will substitutes" or TODs, are now permitted in most states, including Alaska.

Under HB 60, real property can automatically pass at death by a TOD deed. The deed is clearly written to become effective upon the transferor's death. It is recorded before death with the

<sup>1</sup> Arizona, Arkansas, Colorado, Hawaii, Illinois, Indiana, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Virginia, Wisconsin, Wyoming, the District of Columbia, Washington and West Virginia.

<sup>2</sup> Alaska and Maryland are considering the Uniform Real Property Transfer on Death Act this year.

district recorder and is not effective until death. Upon the transferor's death, the deed automatically becomes effective. A TOD deed is revocable until the transferor's death. It is ineffective if the transferor disposes of the property during his or her lifetime and the transfer is recorded. The beneficiary can also disclaim the transferred property. Before the transferor's death when the deed becomes effective, it does not affect the beneficiary's eligibility for public assistance or subject the property to the beneficiary's creditors. It allows a stepped-up basis (favorable tax treatment) upon the transferor's death. HB 60 will provide a valuable option to Alaskans who may not need or cannot afford a trust or require probate to pass property upon death. And the bill does not prohibit any other method of passing the property (e.g. gifts, wills, trusts, etc.); it simply provides another less expensive and more efficient way of transferring real property upon death.

Transfer on death deeds provide an attractive alternative for people engaged in estate planning. The bill is supported by AARP, the Alaska Council on Aging, the Alaska Bankers Association, and the Alaska Association of Realtors.

If you have any questions, please contact Representative Gruenberg's legislative aide, Nicoli Bailey, at 465-4940.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 7, 2014

**SUBJECT:** Sectional summary of CSHB 60( ) relating to the Uniform Real Property Transfer on Death Act, the law governing certain trusts, and disclaimers of property interests (Work Order No. 28-LS0265\Y)

**TO:** Representative Max Gruenberg  
Attn: Nicoli Bailey

**FROM:**  Terry Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Bill section 1.** Indicates that, unless certain circumstances are met, the laws of this state govern the administration of a trust and that the courts of this state have exclusive jurisdiction over the trust and its trustees while the trust is administered in this state.

**Bill section 2.** Adopts the Uniform Real Property Transfer on Death Act as AS 13.48.

**Sec. 13.48.010.** Authorizes an individual (Transferor) to use a transfer on death deed (TOD deed) to transfer property to another person (Beneficiary) when the individual dies.

**Sec. 13.48.020.** Allows a TOD deed to be revoked.

**Sec. 13.48.030.** States that a TOD deed is not testamentary.

**Sec. 13.48.040.** Establishes what capacity a Transferor must have to make or revoke a TOD deed. It is the same as for a will.

**Sec. 13.48.045.** Indicates that a TOD deed and an instrument revoking a TOD deed are void if obtained by fraud, duress, or undue influence. Requires that a proceeding must be brought within 12 months to contest the capacity of the transferor or to determine that a TOD deed or an instrument revoking a TOD deed is void because obtained by fraud, duress, or undue influence.

Sec. 13.48.050. Requires a TOD deed to (1) have the elements and formalities of a recordable inter vivos deed, (2) contain a statement that the transfer will occur when the Transferor dies, and (3) to be recorded before the Transferor's death. Prohibits using a beneficiary designation that only identifies a class of people.

Sec. 13.48.060. States that a TOD deed is effective without consideration, and without notice to, delivery to, or acceptance by the Beneficiary during the Transferor's life.

Sec. 13.48.070. In (a), describes what types of instruments will revoke a recorded TOD deed. In (b), addresses revocation when there is more than one Transferor. In (c), prohibits revocation of a recorded TOD deed by a revocatory act on the deed. In (d), states that the section does not limit the effect of an inter vivos transfer of property. In (e), allows an agent expressly given the power in a TOD deed or in a power of attorney to revoke a TOD deed.

Sec. 13.48.080. Lists the effects that a TOD deed does not have during a Transferor's life. Does not affect an interest or right of the Transferor, another owner, or a transferee. Does not affect the interests or rights of the Transferor's creditors. Does not affect eligibility for public assistance. Does not create legal or equitable interests for the Beneficiary. Does not subject the property to the claims of the Beneficiary's creditors.

Sec. 13.48.090. Describes the effects of a TOD deed on the property when the Transferor dies still owning the property. States that the property is transferred to the Beneficiary, subject to the Beneficiary surviving the Transferor. States that the Beneficiary's interest is contingent on surviving the Transferor. States how concurrent and joint interests are transferred. Allows the Transferor to identify alternate Beneficiaries. States that, subject to AS 40.17 (the recording chapter), a Beneficiary takes the property subject to all conveyances and other interests to which the property is subject at the Transferor's death. States that a TOD deed transfers property without covenant or warranty of title.

Sec. 13.48.100. Allows a Beneficiary to disclaim the Beneficiary's interest in a TOD deed as provided by the Uniform Disclaimer of Property Interests Act in AS 13.70.

Sec. 13.48.110. Indicates when the property transferred under a TOD deed is liable for testamentary estate claims, estate administration costs, spousal allowances, and children's allowances when the Transferor dies. Provides for apportionment of the liabilities among properties if there are multiple properties or TOD deeds. Requires a person to start a proceeding to enforce the liability within 12 months after the Transferor dies. Requires that the personal representative receive a written demand from the spouse, creditor, or child before the proceeding may be started to enforce liability under this section.

Sec. 13.48.120. Sets out an optional form that may be used to create a TOD deed. Contains notices about the use and possible consequences of using a TOD deed. Contains answers to common questions about TOD deeds.

Representative Max Gruenberg  
April 7, 2014  
Page 3

Sec. 13.48.130. Sets out an optional form that may be used to revoke a TOD deed. Contains answers to common questions about using the form.

Sec. 13.48.140. States that this chapter does not affect other ways of transferring property.

Sec. 13.48.150. Directs the chapter to be applied and interpreted to give consideration to the need for uniformity.

Sec. 13.48.160. Indicates how this chapter interacts with the federal Electronic Signatures in Global and National Commerce Act.

Sec. 13.48.190. Defines terms for the chapter.

Sec. 13.48.195. Gives the chapter a short title.

**Bill section 3.** Amends AS 13.70.100(e) of the state's Uniform Disclaimer of Property Interests Act (AS 13.70). Improves the language and adapts it for use under the Uniform Real Property Transfer on Death Act.

**Bill section 4.** Amends AS 13.70.100(f) of the state's Uniform Disclaimer of Property Interests Act (AS 13.70). Improves the language and adapts it for use under the Uniform Real Property Transfer on Death Act. Requires that the disclaimer of a real property interest created by a beneficiary designation be recorded if the disclaimer is made after the designation becomes irrevocable.

**Bill section 5.** Amends AS 13.70.130 of the state's Uniform Disclaimer of Property Interests Act (AS 13.70). Adds a cross-reference to AS 13.70.100(f)'s recording requirements for real property disclaimers.

**Bill section 6.** Provides applicability provisions for the bill.

If I may be of further assistance, please advise.

TLB:med  
14-040.med



ALASKA ASSOCIATION OF REALTORS, INC.  
4205 Minnesota Drive Anchorage, Alaska 99503  
Telephone (907) 563-7133 Fax (907) 561-1779  
www.alaskarealtors.com

---

TO: Alaska State Legislature

March 2013

From: Alaska Association of REALTORS®

RE: 2013 Legislative Priorities

**RE: HB 60 - "An act adopting and relating to the Uniform Real Property Transfer on Death Act."**

**Sponsor:** Representative Max Gruenberg

The Alaska Association of REALTORS® supports House Bill 60, which provides an option for people wanting to transfer real property upon their death.

The Alaska Association of REALTORS® believes that HB 60 is a proactive way for Alaskans to avoid unnecessary paperwork and court fees that are incurred from a lengthy probate process.

This bill would enable the owner to retain full power and control over the property and the beneficiary would have no interest in the property until the owner's death and would not be able to affect or challenge the owner's use of the property or the owner's decision to encumber or sell the property.

In addition, this bill does not prohibit the owner to transfer property in another means; gifts, wills or trusts. House Bill 60 provides another simple and efficient option to transfer property upon death.

The Association encourages the passage of House Bill 60.



**Law Office of Caroline Wanamaker**

caroline@wanamakerlaw.com  
P.O. Box 244791  
Anchorage, AK 99524  
907.222.1909 tel

March 20, 2014

Rep. Max F. Gruenberg  
State Capitol, Room 110  
Juneau, AK 99801

Dear Representative Gruenberg:

I understand that the Legislature is considering HB60 relating to the Uniform Real Property Transfer on Death Act. I believe that a revocable beneficiary designation on real property, as provided for under the Act, would be a very useful and efficient estate planning tool.

Very truly yours,

LAW OFFICE OF CAROLINE WANAMAKER



Caroline P. Wanamaker



**PRESIDENT**

**Kevin L. Shepherd**  
750 East Pratt St., Suite 900  
Baltimore, MD 21202  
(410) 244-7772

**PRESIDENT-ELECT**

**Linda A. Striefsky**  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216  
(216) 566-5733

**VICE-PRESIDENT**

**Ann M. Saegert**  
2323 Victory Avenue  
Suite 700  
Dallas, TX 75219-7673  
(214) 651-5594

**SECRETARY**

**Jonathan R. Shils**  
1170 Peachtree Street, NE  
Suite 2100  
Atlanta, GA 30309-7649  
(404) 443-5706

**TREASURER**

**Earl L. Segal**  
1152 15th St., NW, Suite 950  
Washington, DC 20005  
(202) 292-0105

**IMMEDIATE  
PAST PRESIDENT**

**Philip D. Weller**  
1717 Main Street, Suite 4600  
Dallas, TX 75201-4629  
(214) 743-4502

**BOARD OF GOVERNORS**

**Ann P. Cargile (2010)**  
Nashville, TN

**Angela M. Christy (2012)**  
Minneapolis, MN

**Rod Clement (2012)**  
Jackson, MS

**Dianne S. Coscarelli (2011)**  
Cleveland, OH

**Jack Fersko (2010)**  
Westfield, NJ

**Michael D. Goodwin (2010)**  
Washington, DC

**David S. Gordon (2010)**  
Woodbridge, NJ

**Raymond S. Iwamoto (2012)**  
Honolulu, HI

**Kenneth M. Jacobson (2011)**  
Chicago, IL

**Thomas F. Kaufman (2011)**  
Washington, DC

**Marilyn C. Maloney (2010)**  
Houston, TX

**Jo Anne P. Stubblefield (2012)**  
Atlanta, GA

**Gordon W. Tanner (2011)**  
Seattle, WA

**Ira J. Waldman (2011)**  
Los Angeles, CA

**Roger D. Winston (2012)**  
Bethesda, MD

**EXECUTIVE DIRECTOR**  
**Jill H. Pace**

March 31, 2010

National Conference of Commissioners on Uniform State Laws  
Attention: Robert A. Stein, President  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602

Re: **Uniform Real Property Transfer on Death Act**

Dear Bob:

I am pleased to inform you that the Board of Governors of the American College of Real Estate Lawyers voted unanimously at its meeting earlier this month to endorse the Uniform Real Property Transfer on Death Act for enactment by the States of the United States. We encourage NCCUSL in its efforts to secure such enactments. Our delegates to the Joint Editorial Board for Uniform Real Property Acts ("JEBURPA"), Ira Waldman and Ann Burkhart, are available through the JEBURPA to assist in the enactment process.

Please let me know if you have any questions or comments on this matter.

Very truly yours,

Kevin L. Shepherd  
President

cc: Ira Waldman (via e-mail)  
Ann M. Burkhart (via e-mail)  
Board of Governors (via e-mail)

American College of Real Estate Lawyers  
11300 Rockville Pike • Suite 903  
Rockville, Maryland 20852  
Telephone (301) 816-9811 • Fax (301) 816-9786 • Internet [www.acrel.org](http://www.acrel.org)

**AMERICAN BAR ASSOCIATION**

**Commission on Law and Aging**  
740 15th Street, N.W.  
Washington, D.C. 20005-1019  
Phone: 202-662-8690  
Fax: 202-662-8698  
E-mail: [abaaging@abanet.org](mailto:abaaging@abanet.org)  
Internet: <http://www.abanet.org/aging>

**CHAIRPERSON**  
Jeffrey J. Snell  
Sagamore Hills, OH

Dr. Arthur Darse  
Milwaukee, WI

Israel Doron  
Haifa, Israel

David M. English  
Columbia, MO

Robert B. Friedland  
Washington, DC

Maria Greene  
Marietta, GA

Allison Hirschel  
Lansing, MI

Sarah Lenz Lock  
Washington, DC

Rudolph N. Patterson  
Macon, GA

Robert L. Roth  
Washington, DC

Barbara A. Soniat  
Washington, DC

Hon. John M. Vittoni  
Washington, DC

Linda S. Whitton  
Valparaiso, IN

Kathleen Wilber  
Los Angeles, CA

Hon. Rhonda Reid Winston  
Washington, DC

**BOARD OF GOVERNORS LIAISON**  
Charles E. English  
Bowling Green, KY

**STAFF**

Charles P. Sabatino, Director  
Erica F. Wood  
Lori A. Siegel  
Leslie B. Fried  
David M. Godfrey  
Ellen M. Klem  
Jamie Philpotts  
Sonia M. Arce  
Trisha Bullock

January 14, 2010

Robert A. Stein, President  
Uniform Law Commission  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602

Dear Mr. <sup>Rob</sup>Stein,

I am writing on behalf of the American Bar Association Commission on Law and Aging in support of the Uniform Real Property Transfer on Death Act (Act).

The Act, promulgated by the Uniform Law Commission (formerly known as the National Conference of Commissioners on Uniform State Laws), enables an owner of real property to pass the property simply and directly to a beneficiary on the owner's death without probate. The property passes by operation of law by means of a recorded transfer on death (TOD) deed.

Non-probate transfers of personal property to beneficiaries have become common in our society. Examples include beneficiary designations in life insurance policies or pension plans, registration of securities in TOD form, and payable on death bank accounts. These mechanisms are inexpensive, user-friendly, and help to avoid probate. However, a straightforward, inexpensive, and reliable means of passing real property (which may be the decedent's major asset) directly to a beneficiary is not generally available.

The Act makes this option available by building on the existing state statutes to provide an uncomplicated, effective, and affordable option to pass this important type of asset at death. It spells out the operation and effect of the TOD deed and provides a standardized method for the straightforward non-probate transfer of real property after the owner's death. During the owner's lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the deed. On the owner's death, the property passes to the beneficiary, much like the survivorship feature of joint tenancy.

The TOD deed offers a number of advantages over joint tenancy. Because the TOD deed does not convey an immediate interest to the beneficiary, the property is not subject partition or to the beneficiary's creditors. The deed remains

revocable, enabling the owner to make a different disposition of the property. It does not trigger an acceleration clause in a mortgage or a property tax reassessment during the transferor's life. Nor does it create adverse Medicaid consequences for either the owner or the beneficiary.

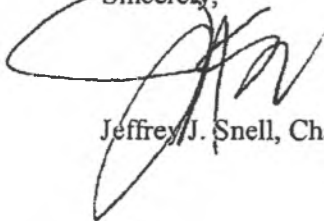
The American Bar Association Commission on Law and Aging along with the estate planning, real property, title insurance, banking, and senior legal communities, participated in the development of the Act. It has the endorsement not only of the American Bar Association Commission on Law and Aging, but also the American Bar Association Real Property, Trust & Estate Law Section.

Thirteen states currently authorize real property transfers on death, and the Act is currently pending in some additional 17 states. In addition, several of the remaining states are studying the Act for future consideration.

My state of Ohio has had TOD deeds since August 2000. I have found them to be very useful in my practice.

As more and more states adopt the concept of real property transfers on death, the need for adoption of a uniform act increases. The American Bar Association Commission on Law and Aging urges states and territories to adopt the Uniform Real Property Transfer on Death Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey J. Snell', written over the word 'Sincerely,'.

Jeffrey J. Snell, Chair



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of  
Health and Social Services

ALASKA COMMISSION ON AGING

P.O. Box 110693  
Juneau, Alaska 99811-0693  
Main: 907.465.3250  
Fax: 907.465.1398

March 27, 2014

Representative Max Gruenberg  
Alaska Capitol, Room 110  
Juneau, Alaska 99801-1182

Regarding: Support CSHB 60, Uniform Real Property Transfer on Death

Dear Representative Gruenberg:

The Alaska Commission on Aging is pleased to express our support for CSHB 60, as authored by you and co-sponsored by Representatives Cathy Mufloz and Sam Kito III, to provide older Alaskans and other citizens with a simple and inexpensive means to transfer title of real property to a beneficiary on the owner's death without probate. While non-probate transfers of personal property to beneficiaries is possible for liquid assets such as bank accounts and life insurance policies through existing statute, current law does not allow for the transfer of real property directly to a beneficiary. Oftentimes, a senior's home is their major asset to pass on to loved ones. Based on our understanding, CSHB 60 would build on existing state statute and provide the mechanism to execute a recorded transfer on death (TOD) deed to transfer real property to a beneficiary after the owner's death without probate.

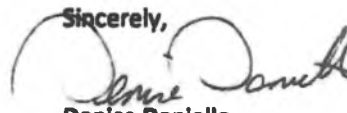
CSHB 60 has many benefits to be considered. First, CSHB 60 incorporates provisions from the model Uniform Power of Attorney Act used by most states which help to eliminate problems when the older adult and beneficiary live in different states. Second, the process is simple, straight forward and provides a standardized method to transfer real property. Most importantly, this bill may help prevent elder financial exploitation by encouraging older Alaskans to get their affairs in order early before a guardian is needed. While alive, the owner retains full power over the property including the ability to revoke the TOD deed. The beneficiary only assumes ownership of the TOD property upon the death of the owner.

The Commission supports CSHB 60 because it provides an important tool in estate planning. Twenty-one states have adopted the TOD deed as a means to transfer property without a will or probate. This method is a low-cost, effective method that minimizes the stress of settling one's affairs for older Alaskans and other adults. Thank you for your leadership on CSHB 60.

Sincerely,

  
Mary E. Shields  
Chair, Alaska Commission on Aging

Sincerely,

  
Denise Daniello  
ACoA Executive Director

Cc: Representative Cathy Mufloz  
Representative Sam Kito III



**AARP Alaska**  
3601 C Street  
Suite 1420  
Anchorage, AK 99503

T 1-866-227-7447  
F 907-341-2270  
[www.aarp.org/ak](http://www.aarp.org/ak)

March 21, 2014

Representative Max Gruenberg  
Alaska State Capitol, Room 110  
Juneau, AK 99801-1182

Re: HB 60 – Uniform Real Property Transfer on Death Act - SUPPORT

Dear Representative Gruenberg,

On behalf of the more than 90,000 members of AARP Alaska, I wish to extend our support for HB 60, The Uniform Real Property Transfer on Death Act. This bill would help seniors and other citizens of Alaska by providing a simple and inexpensive alternative method for transferring title to their real estate upon their death. Similar laws have been in effect for many years in other states and have been considered successful.

The primary advantage of a TOD deed is that it would provide Alaska's citizens with an additional option they might use to transfer real property upon their death. The convenience of Alaska's citizens and the protection of their rights are, and should be, the main considerations of all proposed legislation. There are many issues and statutes that are not unique to particular states, but rather have general applicability across the country. For this reason, the effort to adopt uniform laws across states is very useful to individuals and families that might live in different places. The Transfer on Death deed, as well as Joint Tenancy with Right of Survivorship, are examples of the how uniform laws work for the citizen's advantage.

As the TOD and Joint Tenancy with Right of Survivorship address needs that occur at a person's death and which are important tools in estate planning, they are very relevant to AARP's age 50+ membership group. We believe HB 60 would go a long way to easing the stress of settling affairs at a time of life that is already difficult enough. We appreciate your efforts to streamline the transfer of property at the time of death, and we support the passage and adoption of HB 60 into Alaska law.

AARP Alaska is available to elaborate on our support of the bill or to answer any questions you might have.

Respectfully,

Ken Helander  
Advocacy Director  
762-3314  
[khelander@aarp.org](mailto:khelander@aarp.org)

# Alaska Bankers Association

P.O. Box 241489 • Anchorage, Alaska 99524-1489 • T: 907-261-3525 • F: 907-562-1758

April 9, 2014

The Honorable Wes Keller, Chair  
House Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

RE: Support for HB 60 (28-LS0265\Y)

Dear Representatives Keller:

The Alaska Bankers Association wishes to extend its support for HB 60. In addition to providing a more simple means of transferring title of real property to a beneficiary on an owner's death without probate, HB 60 would help maintain Alaska's position as one of the most favorable trust jurisdictions in the country.

Leading U.S. trust jurisdictions have been experiencing growth in recent years from both the creation of new trusts and the migration of existing trusts to take advantage of more favorable administrative laws. It has become common to optimize planning through careful jurisdiction selection, migrating existing trusts to advantageous jurisdictions such as Alaska.

HB 60 clarifies when Alaska law governs the administration of trusts migrating to Alaska, the Alaska court's jurisdiction and its role with respect to trust modifications, instructions and other matters.

The ABA supports efforts to help keep Alaska competitive in the trust industry.

Sincerely,

A handwritten signature in black ink, appearing to be 'JE', written in a cursive style.

Joe Everhart, Chair

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 18, 2014

**SUBJECT:** CSHB 60( ) relating to property interests  
(Work Order No. 28-LS0265C)

**TO:** Representative Max Gruenberg  
Attn: Nicoli Bailey

**FROM:**  Terry Bannister  
Legislative Counsel

This memo accompanies the bill described above. This memo describes the changes between this bill (Version C) and the original HB 60 Version A.

1. Overview of changes. This version incorporates the contents of HB 61, which repeals AS 34.15.130. AS 34.15.130 abolishes the use of joint tenancy for real property. This version also makes some changes in sec. 13.48.070, which relates to revocation of transfer on death deeds.

2. Changes to title. The title in this version reflects the addition of HB 61 (joint ownership of real property). This version also adds language disclosing that the bill addresses disclaimers of property interests. This adjustment is not caused by the addition of HB 61 and is an adjustment to correct the title of HB 60 (Version A). Although the disclaimer sections (bill secs. 2 - 4) were inserted to improve the language in response to the adoption of the Uniform Real Property Transfer on Death Act (URPTODA), the changes in bill secs. 2 and 3 apply to more than the URPTODA.

As a result, the bill's single subject is essentially "property interests." This is a very broad single subject, but, due to the court's past liberal interpretation of this requirement and the logical connection among the bill sections, it appears to satisfy the single subject rule.

3. Changes to sec. 13.48.070. Former sec. 13.48.070 listed four situations when an instrument is effective to revoke all (or part) of a recorded transfer on a death deed (TOD deed). This version rewrites the fourth listed situation (non-express inter vivos deed) to make it a rebuttable presumption (rather than a conclusion) that the inter-vivos deed revokes the TOD deed. To accomplish this change, former sec. 13.48.070(a)(1)(D) has been deleted and placed in a new sec. 13.48.070(b). And, as a result, the lettering of the following subsections is changed. In addition, a reference to the new subsec. (b) is added at the beginning of sec. 13.48.070(a).

Representative Max Gruenberg  
March 18, 2014  
Page 2

4. Change to definition of "joint owner" in sec. 13.48.190. Because joint tenancies will no longer be abolished, the definition of "joint owner" in the bill has been changed to expressly include a person who is a joint tenant and to delete the exclusion of joint tenants.

5. Addition of repealer. The repeal of AS 34.15.130 (the section that currently abolishes joint tenancy) has been added at bill sec. 5.

6. Applicability provision for the uniform act. The applicability provision (bill sec. 6(a)) for the uniform act in HB 60 has been changed to apply the new URPTODA deed provisions to deeds made on or after the effective date of the Act. Before this, the applicability section covered deeds made before the effective date of the Act for persons dying on or after the effective date. The reason for deleting the retroactivity is to avoid applying the repeal of the joint tenancy provision to deeds that were made before the HB 61 repealer takes effect.

7. Applicability provision for the disclaimer sections. Bill sec. 6(b) has been added to provide an applicability provision for bill secs. 2 - 4 because they cover more than the URPTODA deeds.

8. Applicability provision for the added HB 61 material. The applicability section from HB 61 has been added to the bill as bill sec. 6(c).

If I may be of further assistance, please advise.

TLB:lem  
14-145.lem

Enclosure

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 7, 2014

**SUBJECT:** CSHB 60( ) relating to the Uniform Real Property Transfer on Death Act, the law governing certain trusts, and disclaimers of property interests (Work Order No. 28-LS0265\Y)

**TO:** Representative Max Gruenberg  
Attn: Nicoli Bailey

**FROM:**  Terry Bannister  
Legislative Counsel

This memo describes the changes between CSHB 60( ) (Version Y) and CSHB 60(L&C) (Version P). Please note the comments and questions in the paragraph on the title changes.

- 1. Title.** First, the title in Version Y reflects the addition of the material in bill section 1. The new title material reads "relating to establishing the law governing certain trusts." Second, the title in this version reflects the removal of the material relating to the repeal of AS 34.15.130. AS 34.15.130 currently abolishes the use of joint tenancy for real property transfers.
- 2. Bill section 1.** This bill section adds new subsections (sec. 13.36.035(f) and (g)) to the statutory section dealing with choice of law and court jurisdiction over trusts. Indicates that, unless certain circumstances are met, the laws of this state govern the administration of a trust and that the courts of this state have exclusive jurisdiction over the trust and its trustees while the trust is administered in this state.
- 3. Sec. 13.48.045.** This is a new section. It indicates that a TOD deed and an instrument revoking a TOD deed are void if obtained by fraud, duress, or undue influence. Requires that a proceeding must be brought within 12 months to contest the capacity of the transferor or to determine that a TOD deed or an instrument revoking a TOD deed is void because obtained by fraud, duress, or undue influence.
- 4. Sec. 13.48.050.** Sec. 13.48.050(3) is new and prohibits using a beneficiary designation that only identifies beneficiaries as members of a class. It also states that a TOD deed is void if a class designation is used. Former sec. 13.48.050(3) became (4).
- 5. Sec. 13.48.070.** Adds (D) to subsection (a)(1) to describe another type of instrument that revokes a TOD deed. Removes former (b) that provided a rebuttable presumption of

Representative Max Gruenberg

April 7, 2014

Page 2

revocation for certain inter vivos deeds. As a result, removes "and (b)" from the beginning of (a) and reletters the rest of the subsections. Also adds (e), which allows a transferor's agent to revoke a TOD deed, if the agent is expressly granted the power in a recorded power of attorney or in the TOD deed .

**6. Sec. 13.48.090.** Removes a reference to AS 13.12.706 and 13.12.707 from (a).

**7. Sec. 13.48.110.** Adds a new sentence in (c). This language requires that the personal representative receive a written demand from the spouse, creditor, or child before the proceeding may be started to establish a liability under the section.

**8. Sec. 13.48.120.** In the TOD deed form, adds lines for identifying the marital status of the transferor(s) and the primary and alternate beneficiaries. As a practical matter, an indication of marital status is required for recording.

**9. Sec. 13.48.130.** In the TOD revocation form, adds lines for identifying the marital status of the owner(s) revoking the TOD deed. As a practical matter, an indication of marital status is required for recording.

**10. Sec. 13.48.190.** In the definition of "joint owner," makes conforming changes to reflect that the repealer of AS 34.15.130 has been removed and, therefore, that joint tenancy is still abolished in the state. Removes "who is a joint tenant" from the beginning of the definition, and inserts "or who is a joint tenant, other than an individual who is a tenant by the entirety" at the end of the definition.

**11. Former bill section 5.** This section was deleted. It repealed AS 34.15.130, which currently abolishes the use of joint tenancy for real property transfers.

**12. Bill section 6.** Former subsection (c) was deleted. It addressed the applicability of the former section that repealed AS 34.15.130.

If I may be of further assistance, please advise.

TLB:Ind  
14-171.Ind