



SPONSOR: Rep. Baumbach & Rep. Ramone & Rep. Dorsey Walker
& Sen. Gay & Sen. Hansen & Sen. Lockman
Reps. Carson, Griffith, Lambert, Phillips, K. Williams;
Sens. Huxtable, Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 147

AN ACT TO AMEND TITLE 12, TITLE 25, AND TITLE 30 OF THE DELAWARE CODE RELATING TO THE
UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Part I, Title 25 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 2. Uniform Real Property Transfer on Death Act.

4 § 201. Short title.

5 This chapter may be cited as the Uniform Real Property Transfer on Death Act.

6 § 202. Definitions.

7 For purposes of this chapter:

8 (1) “Beneficiary” means a person that receives property under a transfer on death deed.

9 (2) “Designated beneficiary” means a person designated to receive property in a transfer on death deed.

10 (3)a. “Joint owner” means an individual who owns property concurrently with one or more other individuals
11 with a right of survivorship.

12 b. “Joint owner” includes a joint tenant and tenant by the entirety.

13 c. “Joint owner” does not include a tenant in common.

14 (4) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability
15 company, association, joint venture, public corporation, government or governmental subdivision, agency, or
16 instrumentality, or any other legal or commercial entity.

17 (5) “Property” means an interest in real property located in this State which is transferable on the death of the
18 owner.

19 (6) “Transfer on death deed” means a deed authorized under this chapter.

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

21 § 203. Applicability.

22 This chapter applies to a transfer on death deed made before, on, or after [the effective date of this Act] by a
23 transferor dying on or after [the effective date of this Act].

24 § 204. Nonexclusivity.

25 This chapter does not affect any method of transferring property otherwise permitted under the law of this State.

26 § 205. Transfer on death deed authorized.

27 An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on
28 death deed.

29 § 206. Transfer on death deed revocable.

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

31 § 207. Transfer on death deed nontestamentary.

32 A transfer on death deed is nontestamentary.

33 § 208. Capacity of transferor.

34 The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a
35 will.

36 § 209. Requirements.

37 A transfer on death deed must meet all of the following:

38 (1) Except as otherwise provided in paragraph (2) of this section, contain the essential elements and
39 formalities of a properly recordable inter vivos deed.

40 (2) State that the transfer to the designated beneficiary is to occur at the transferor's death.

41 (3) Be recorded before the transferor's death in the public records in the office of the recorder of deeds of the
42 county where the property is located.

43 § 210. Notice, delivery, acceptance, consideration not required.

44 A transfer on death deed is effective without any of the following:

45 (1) Notice or delivery to, or acceptance by, the designated beneficiary during the transferor's life.

46 (2) Consideration.

47 § 211. Revocation by instrument authorized; revocation by act not permitted.

48 (a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed,
49 or any part of it, only if the instrument meets all of the following:

50 (1) Is one of the following:

51 a. A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency.

- 52 b. An instrument of revocation that expressly revokes the deed or part of the deed.
- 53 c. An inter vivos deed that expressly revokes the transfer on death deed or part of the deed.
- 54 (2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded
- 55 before the transferor's death in the public records in the office of the recorder of deeds of the county where the deed is
- 56 recorded.
- 57 (b) If a transfer on death deed is made by more than one transferor, all of the following applies:
- 58 (1) Revocation by a transferor does not affect the deed as to the interest of another transferor.
- 59 (2) A deed of joint owners is revoked only if the deed is revoked by all of the living joint owners.
- 60 (c) After a transfer on death deed is recorded, the deed may not be revoked by a revocatory act on the deed.
- 61 (d) This section does not limit the effect of an inter vivos transfer of the property.
- 62 § 212. Effect of transfer on death deed during transferor's life.
- 63 During a transferor's life, a transfer on death deed does not do any of the following:
- 64 (1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber
- 65 the property.
- 66 (2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the
- 67 deed.
- 68 (3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the
- 69 creditor has actual or constructive notice of the deed.
- 70 (4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance.
- 71 (5) Create a legal or equitable interest in favor of the designated beneficiary.
- 72 (6) Subject the property to claims or process of a creditor of the designated beneficiary.
- 73 § 213. Effect of transfer on death deed at transferor's death.
- 74 (a) Except as otherwise provided in the transfer on death deed, in this section, in § 209, § 504, § 2313, or § 2322 of
- 75 Title 12, or in Chapter 9 of Title 12, on the death of the transferor, the following rules apply to property that is the subject
- 76 of a transfer on death deed and owned by the transferor at death:
- 77 (1) Subject to paragraph (a)(2) of this section, the interest in the property is transferred to the designated
- 78 beneficiary in accordance with the deed.
- 79 (2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the
- 80 transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.
- 81 (3) Subject to paragraph (a)(4) of this section, concurrent interests are transferred to the beneficiaries in equal

82 and undivided shares with no right of survivorship.

83 (4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the
84 property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion
85 to the interest of each in the remaining part of the property held concurrently.

86 (b) Subject to subchapter III of Chapter 1 of this title, a beneficiary takes the property subject to all conveyances,
87 encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the
88 transferor's death. For purposes of this subsection and subchapter III of Chapter 1 of this title, the recording of the transfer
89 on death deed is deemed to have occurred at the transferor's death.

90 (c)(1) If a transferor is a joint owner and is survived by one or more other joint owners, the property that is the
91 subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship.

92 (2) If a transferor is a joint owner and is the last surviving joint owner, the transfer on death deed is effective.

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

95 § 214. Disclaimer.

96 A beneficiary may disclaim all or part of the beneficiary's interest as provided by Chapter 6 of Title 12.

97 § 215. Liability for creditor claims and statutory allowances.

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

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

103 (c) A proceeding to enforce the liability under this section must be commenced not later than 8 months after the
104 transferor's death.

105 § 216. Optional form of transfer on death deed.

106 The following form may be used to create a transfer on death deed. The other sections of this chapter govern the
107 effect of this or any other instrument used to create a transfer on death deed.

108 (front of form)

109 REVOCABLE TRANSFER ON DEATH DEED

110 NOTICE TO OWNER

111 You should carefully read all information on the other side of this form. You May Want to Consult a

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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

TRANSFER ON DEATH

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

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

_____ [(SEAL)] _____

Signature Date

_____ [(SEAL)] _____

Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

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COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

Is the “legal description” of the property necessary? Yes.

How do I find the “legal description” of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the 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 recorder of deeds of the county where the property is located. Follow the instructions given by the recorder of deeds 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.

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

174 § 217. Optional form of revocation.

175 The following form may be used to create an instrument of revocation under this chapter. The other sections of
176 this chapter govern the effect of this or any other instrument used to revoke a transfer on death deed.

177 (front of form)

178 REVOCATION OF TRANSFER ON DEATH DEED

179 NOTICE TO OWNER

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

182 IDENTIFYING INFORMATION

183 Owner or Owners of Property Making This Revocation:

184 _____

185 Printed name _____ Mailing address

186 _____

187 Printed name _____ Mailing address

188 Legal description of the property:

189 _____

190 REVOCATION

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

192 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

193 _____ [(SEAL)] _____

194 Signature _____ Date

195 _____ [(SEAL)] _____

196 Signature _____ Date

197 ACKNOWLEDGMENT

198 (insert acknowledgment here)

199 (back of form)

200 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

201 How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it

202 acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in
203 the public records in the office of the recorder of deeds of each county where the property is located. The form
204 must be acknowledged and recorded before your death or it has no effect.

205 How do I find the “legal description” of the property? This information may be on the TOD deed. It may
206 also be available in the office of the recorder of deeds for the county where the property is located. If you are not
207 absolutely sure, consult a lawyer.

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

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

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

216 § 218. Uniformity of application and construction.

217 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the
218 law with respect to its subject matter among the states that enact it.

219 § 219. Relation to Electronic Signatures in Global and National Commerce Act.

220 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce
221 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
222 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section
223 7003(b).

224 Section 2. Amend § 612, Title 12 of the Delaware Code by making deletions as shown by strike through and
225 insertions as shown by underline as follows:

226 § 612. Delivery and recording requirements.

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

230 (f) In the case of an interest created by a beneficiary ~~designation made after the time~~ designation, which is
231 disclaimed after the designation becomes irrevocable, the following applies:

232 (1) a The disclaimer of an interest in personal property must be delivered to the person obligated to distribute
233 the interest.

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

236 Section 3. Amend § 5401, Title 30 of the Delaware Code by making deletions as shown by strike through and
237 insertions as shown by underline as follows:

238 § 5401. Definitions.

239 As used in this subchapter, except where the context clearly indicates a different meaning:

240 (1) “Document” means any deed, instrument or writing whereby any real estate within this State, or any
241 interest therein, shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, but shall not
242 include the following:

243 a. Any ~~will~~; will or transfer on death deed authorized under Chapter 2 of Title 25;

244 Section 4. Amend § 5402, Title 30 of the Delaware Code by making deletions as shown by strike through and
245 insertions as shown by underline as follows:

246 § 5402. Rate of tax; when payable; exception.

247 (g) A transfer on death deed authorized under Chapter 2 of Title 25 does not require any of the following to be
248 recorded with or accepted by a Recorder of Deeds to be effective:

249 (1) A transfer-tax affidavit under § 5409 of this title.

250 (2) Form 5403 regardless of whether derived from § 1126, § 1606, or § 1909 of this title.

251 (3) Any other form otherwise required under this chapter or a law enacted by a county or municipality.

SYNOPSIS

This Act provides a mechanism for the nonprobate transfer of real estate. This is done by permitting an owner of an interest in real estate to execute and record a transfer on death (TOD) deed designating a beneficiary who will automatically receive the real estate on the owner's death without a probate procedure. During the owner's lifetime the beneficiary of a TOD deed has no interest in the real estate and the owner retains full power to transfer or encumber the real estate or to revoke the deed.

This Act adopts the Uniform Real Property Transfer on Death Act authored by the Uniform Law Commission. The Uniform Law Commission “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”

The Uniform Real Property Transfer on Death Act has been enacted in 17 states, the District of Columbia, and the U.S. Virgin Islands, and a substantially similar law has been enacted in 11 states. The Uniform Real Property Transfer on Death Act has been introduced in 5 states this year.