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Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
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

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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 as Grantor or Grantors:

Printed name _____ Mailing address

Printed name _____ Mailing address

Legal description of the property:

PRIMARY BENEFICIARY/GRANTEE

I designate the following beneficiary if the beneficiary survives me.

Printed name _____ Mailing address, if available

ALTERNATE BENEFICIARY/GRANTEE – 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.

I acknowledge that the instruction to transfer the property described above in this deed to the beneficiary/grantee named above will take precedence over any contrary instruction in a will to transfer the same property at my death.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

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Signature _____ Date

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[(SEAL)]

Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

Which controls at my death, my will or the TOD deed? The TOD deed controls over a contrary instruction in a will.

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)

170 Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county
171 where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed
172 that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

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

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

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

179 § 217. Optional form of revocation.

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

182 (front of form)

183 REVOCATION OF TRANSFER ON DEATH DEED

184 NOTICE TO OWNER

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

187 IDENTIFYING INFORMATION

188 Owner or Owners of Property Making This Revocation as Grantor or Grantors:

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190 Printed name _____ Mailing address

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192 Printed name _____ Mailing address

193 Legal description of the property:

194 _____

195 REVOCATION

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

197 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

198 _____ [(SEAL)] _____

199 Signature _____ Date

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Signature _____

_____ 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 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.

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 TOD deed. It 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.

How do I "record" the form? 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 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.

§ 218. Form for notice of death of transferor; filing of transferor's death certificate; beneficiary right to obtain transferor's death certificate.

(a) A register of wills may adopt a form to be used by a beneficiary to provide notice of the death of a transferor whose property has transferred to the beneficiary by transfer on death deed.

(b) A beneficiary may present a transferor's death certificate to a register of wills for filing with a form adopted under subsection (a) of this section or for filing to otherwise establish a transferor's death.

(c) Notwithstanding the general prohibition of disclosure of a death certificate under § 3110 of Title 16, and consistent with the allowance for disclosure of protected health information when provided by statute under § 1212(a) of

230 Title 16, the Office of Vital Statistics shall provide to a beneficiary a certified copy of a transferor's death certificate.

231 § 219. Uniformity of application and construction.

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

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

235 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce
236 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
237 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section
238 7003(b).

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

241 § 612. Delivery and recording requirements.

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

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

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

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

251 Section 3. Amend § 1905, Title 12 of the Delaware Code by making deletions as shown by strike through and
252 insertions as shown by underline as follows:

253 § 1905. Inventory and appraisal; filing requirements, form, contents and supporting affidavits; notice of action
254 affecting title.

255 (a) Every executor or administrator shall, within 3 months after the granting of letters testamentary or of
256 administration, file in the office of the Register of Wills of the county in which the letters have been granted, an inventory
257 and appraisal and shall also file a copy of said inventory and appraisal in the office of the Register of Wills of any county in
258 which the decedent owned real estate, which shall contain an inventory of all goods and chattels of the decedent, a list of all
259 debts and credits due or belonging to the decedent or to the decedent's estate, and a statement setting forth a general

260 description of every parcel of real estate in this State of which the decedent died ~~seized~~, seized, which does not include real
261 estate transferred by a transfer on death deed under Chapter 2 of Title 25, which description shall include the parcel
262 identification number assigned to said parcel, and the name of each party entitled to any estate or interest in any part of such
263 real or personal estate and the relationship, if any, of each such party to the decedent. Each item of property included in
264 such inventory, list and statement, shall be separately valued at its fair market value as of the date of death of the decedent
265 and such value shall be stated in the inventory and appraisal.

266 Section 4. Amend § 5401, Title 30 of the Delaware Code by making deletions as shown by strike through and
267 insertions as shown by underline as follows:

268 § 5401. Definitions.

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

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

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

274 Section 5. Amend § 5402, Title 30 of the Delaware Code by making deletions as shown by strike through and
275 insertions as shown by underline as follows:

276 § 5402. Rate of tax; when payable; exception.

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

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

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

281 (3) Any other form otherwise required under this chapter or a law related to this chapter enacted by a county
282 or municipality.

283 Section 6. This Act takes effect 90 days after its enactment into law.

SYNOPSIS

This Act is a substitute for House Bill No. 147. Like House Bill No. 147, 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.

Like House Bill No. 147, 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 18 states (including Virginia) and 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 is pending before 3 state legislatures and has been enacted in New Hampshire and Utah this year.

This Act differs from House Bill No. 147 as follows:

(1) By making clear that a transfer of death deed takes precedence over any contrary instruction in a will to transfer the same property.

(2) By making clear in the optional forms included in this Act, which may be used to create a transfer on death deed or revoke a transfer on death deed, that a transferor is a grantor and a beneficiary is a grantee. This change is made to assist the Recorders of Deeds in integrating the forms in their computerized databases.

(3) By authorizing the Registers of Wills to adopt a form to be used by a beneficiary to provide notice of the death of a person whose property has transferred to the beneficiary by transfer on death deed.

(4) By authorizing a beneficiary to file with the Register of Wills the death certificate of a person whose property has transferred to the beneficiary by transfer on death deed.

(5) By making abundantly clear that which is already permitted under the law of this State, that a person may obtain from the Office of Vital Statistics a death certificate to establish their legal right to property and may disclose that death certificate to the Register of Wills to prove the person's legal right to property.

(6) Under Section 3 of this Act, clarifying that an individual who executed a transfer on death deed does not die seized of the property and, therefore, the property is not required to be included on an inventory and appraisal to the Register of Wills.

(7) Making a clarification in § 5402 of Title 30 contained in Section 5 of this Act.

(8) Delaying the effect of this Act until 90 days after its enactment into law.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.