SPONSOR: Rep. Harris & Sen. Lockman
Reps. K. Johnson, Lambert, Osienski, Ross Levin, Heffernan, Snyder-Hall, Romer, Wilson-Anton, Gorman; Sens. Sokola, Seigfried, Buckson, Huxtable

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 147
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 12, TITLE 18, 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:

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

Chapter 2. Uniform Real Property Transfer on Death Act.

§ 201. Short title.

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

§ 202. Definitions.

For purposes of this chapter:

(1) "Beneficiary" means an individual that receives property under a transfer on death deed. "Grantee" has a corresponding meaning.

(2) "Designated beneficiary" means an individual designated to receive property in a transfer on death deed.

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

b. "Joint owner" includes a joint tenant and tenant by the entirety.

c. "Joint owner" does not include a tenant in common.

(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.

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

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

§ 203. Applicability.

This chapter 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].

§ 204. Nonexclusivity.

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

§ 205. 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.

§ 206. Transfer on death deed revocable.

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

§ 207. Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

§ 208. 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.

§ 209. Requirements.

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

(1) Except as otherwise provided in paragraphs (2) and (3) of this section, contain the essential elements and formalities of a properly recordable inter vivos deed, including notarization of all signatures required under this section.

(2) Be witnessed by 2 individuals, at least 1 of whom must not be a beneficiary.

(3) State that the transfer to the designated beneficiary is to occur at the transferor’s death.

(4) Be recorded before the transferor’s death in the public records in the office of the recorder of deeds of the county where the property is located.

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

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

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

(2) Consideration.

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

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

(1) Is one of the following:

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

b. An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed.

c. An inter vivos deed that expressly revokes the transfer on death deed or part of the transfer on death deed.

(2) Is acknowledged by the transferor after the acknowledgment of the transfer on death deed being revoked and recorded before the transferor's death in the public records in the office of the recorder of deeds of the county where the transfer on death deed is recorded.

(3) Is witnessed by 2 individuals.

(b) If a transfer on death deed is made by more than one transferor, all of the following applies:

(1) Revocation by 1 transferor does not affect the transfer on death deed as to the interest of another transferor.

(2) A transfer on death deed of joint owners is revoked only if the transfer on death deed is revoked by all of the living joint owners.

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

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

§ 212. Effect of transfer on death deed during transferor's life.

During a transferor's life, a transfer on death deed does not do any of the following:

(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 transfer on death 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 transfer on death 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.

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

§ 213. 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, 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 (a)(2) of this section, the interest in the property is transferred to the designated beneficiary in accordance with the transfer on death 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 (a)(4) of this section, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(4) If the transferor has identified 2 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 Chapter 1 of this title, 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 Chapter 1 of this title, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(c)(1) If a transferor is a joint owner and is 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.

(2) If a transferor is a joint owner and is 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 transfer on death deed contains a contrary provision.

§ 214. Disclaimer.

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

§ 215. Liability for creditor claims and statutory allowances.

(a) To the extent that 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) of this section 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 8 months after the transferor's death.

§ 216. 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 chapter 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 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

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

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 by recording a completed revocation form or other instrument of revocation in the public records in the office of the Recorder of Deeds.

I acknowledge that the instruction to transfer of property to the beneficiary/grantee in this deed controls over any contrary instruction in my will that is prepared before or after this deed.

I acknowledge that if my 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 my death by this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

_____ _____

Printed Name & Signature Date

_____ _____

Printed Name & Signature Date

SIGNATURES OF WITNESSES TO THIS DEED

We do now hereby swear and affirm that we are signing our names to this instrument with the belief and knowledge that the owner or owners, was or were, at the time of signing of sound mind and memory, and free from any undue influence or coercion by any parties, including us as witnesses.

_____ _____

Printed Name & Signature Mailing Address Date

_____ _____

Printed Name & Signature Mailing Address 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) Complete and acknowledge a new TOD deed that disposes of the same property to someone else, 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.

§ 217. Optional form of revocation.

The following form may be used to create an instrument of revocation under this chapter. The other sections of this chapter 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 as Grantor or Grantors:

_____ _____

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

_____ _____

Printed Name & Signature Date

_____ _____

Printed Name & Signature Date

SIGNATURES OF WITNESSES TO THIS DEED

We do now hereby swear and affirm that we are signing our names to this instrument with the belief and knowledge that the owner or owners, was or were, at the time of signing of sound mind and memory, and free from any undue influence or coercion by any parties, including us as witnesses.

_____ _____ _____

Printed Name & Signature Mailing Address Date

Printed Name & Signature Mailing Address 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.

Do I need to tell the beneficiaries about the revocation of 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, 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; executor or administrator inventorying of and access to property transferred by transfer on death deed; failure to file not invalidating.

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

(d) If a probate estate is opened with a Register of Wills for the transferor, property transferred to a beneficiary by transfer on death deed must be inventoried in accordance with § 1905 of Title 12. If a probate estate is not opened for the transferor, an inventory form does not need to be filed with a Register of Wills.

(e) By and through letters testamentary or of administration, the person designated as an executor or administrator shall have authority to access and safeguard personal property of the transferor held by the transferor at the time of death on real property titled in the transferor's own name transferred at the transferor's death by transfer on death deed.

(f) A valid transfer on death deed transfers the real property immediately on the transferor's death. Failure to file a notice form, death certificate, or inventory form under this section does not invalidate an otherwise valid transfer on death deed.

§ 219. Jurisdiction.

The Chancery Court has jurisdiction over challenges to the validity or revocation of a transfer on death deed.

§ 220. 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.

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

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

§ 612. Delivery and recording requirements.

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

(f) In the case of an interest created by a beneficiary ~~designation made after the time~~ designation, which is

disclaimed after the designation becomes irrevocable, the following applies:

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

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

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

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

(a) Every executor or administrator shall, within 3 months after the granting of letters testamentary or of administration, file in the office of the Register of Wills of the county in which the letters have been granted, an inventory 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 which the decedent owned real estate, which shall contain an inventory of all goods and chattels of the decedent, a list of all debts and credits due or belonging to the decedent or to the decedent's estate, and a statement setting forth a general description of every parcel of real estate in this State of which the decedent died ~~seized,~~ seized or which transferred by a transfer on death deed under Chapter 2 of Title 25, which description shall include the parcel identification number assigned to said parcel, and the name of each party entitled to any estate or interest in any part of such real or personal estate and the relationship, if any, of each such party to the decedent. Each item of property included in such inventory, list and statement, shall be separately valued at its fair market value as of the date of death of the decedent and such value shall be stated in the inventory and appraisal.

Section 4. Amend § 2508, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2508. Report of real estate transfers to Board of Assessment.

Each Register of Wills shall furnish to the Board of Assessment of each county a description of each parcel of real estate devised or descending by virtue of will or by operation of ~~law~~ law, or transferred by a transfer on death deed under Chapter 2 of Title 25, insofar as the records of the Register's ~~office~~ office, including records received under § 218 of Title 25, will enable. The Register shall also furnish the date of the transfer, the name of the deceased and the name and the address of the transferee. The Register shall furnish such information promptly after the filing in the Register's office of an inventory and appraisement.

Section 5. Amend Subchapter I, Chapter 27, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2720A. Property insurance for beneficiary of transfer on death deed.

(a) As used in this section:

(1) "Beneficiary" means as defined under § 202 of Title 25.

(2) "Insurable interest" means an insured's interest in real property, concerning which the insured is entitled to the benefits of insurance coverage under a policy.

(3) "Insured" means a person that is entitled to the benefits of a policy.

(4) "Property" means as defined under § 202 of Title 25.

(5) "Transfer on death deed" means as defined under § 202 of Title 25.

(6) "Transferor" means as defined under § 202 of Title 25.

(b) Notwithstanding § 2720 of this title and subject to subsection (c) of this section, a beneficiary of a transfer on death deed is an insured to the extent of the transferor's insurable interest in property that the beneficiary has acquired or received by a transfer on death deed.

(c) Except as provided in subsections (d) and (e) of this section, for 60 days immediately following the death of the transferor, a beneficiary of a transfer on death deed is an insured under a policy insuring the property of the transferor. At the time of the transferor's death, and for 60 days after the transferor's death, the beneficiary succeeds to the rights and obligations of the transferor under the policy to the extent of the transferor's insurable interest in property that the beneficiary has acquired or received by a transfer on death deed.

(d)(1) Subject to paragraph (d)(2) of this section, if a policy has an expiration date that is less than 60 days after the death of the transferor, insurance coverage continues for 30 days or until the expiration date of the policy, whichever is later.

(2) If the later date under paragraph (d)(1) of this section extends beyond the expiration date of the policy, insurance coverage continues only if the beneficiary has paid the premium applicable to the coverage extending beyond the expiration date.

(e) If a beneficiary obtains a policy insuring the property that the beneficiary acquired or received by a transfer on death deed, the beneficiary is not an insured under subsection (c) of this section.

(f) This section applies to a loss or damage incurred on or after [the effective date of this Act].

(g) This section applies regardless of whether policy was created before, on, or after [the effective date of this Act], unless the application of this section to the policy would do any of the following:

(1) For a policy issued before [the effective date of this Act], give a right to a beneficiary that the beneficiary was not reasonably intended to have, other than the beneficiary's right to insurance coverage until the time limitation under subsection (c) or (d) of this section.

(2) For a policy issued at any time, relieve a beneficiary from a duty or liability imposed on the transferor by the terms of the policy.

Section 6. Amend § 5401, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5401. Definitions.

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

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

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

Section 7. Amend § 5402, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

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

(2) A real estate tax return declaration of estimated income tax form, regardless of whether derived from § 1126, § 1606, or § 1909 of this title.

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

Section 8. This Act takes effect 90 days after its enactment into law.