

HOUSE BILL NO. 297

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 1/25/12

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act adopting and relating to the Uniform Real Property Transfer on Death Act."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 13 is amended by adding a new chapter to read:

4 **Chapter 48. Uniform Real Property Transfer on Death Act.**

5 **Sec. 13.48.010. Transfer on death deed authorized.** An individual may
6 transfer property to one or more beneficiaries effective at the transferor's death by a
7 transfer on death deed.

8 **Sec. 13.48.020. Transfer on death deed revocable.** A transfer on death deed
9 is revocable even if the deed or another instrument contains a contrary provision.

10 **Sec. 13.48.030. Transfer on death deed nontestamentary.** A transfer on
11 death deed is nontestamentary.

12 **Sec. 13.48.040. Capacity of transferor.** The capacity required to make or
13 revoke a transfer on death deed is the same as the capacity required to make a will.

14 **Sec. 13.48.050. Requirements.** A transfer on death deed

15 (1) except as otherwise provided in (2) of this section, must contain the

1 essential elements and formalities of a properly recordable inter vivos deed;

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

4 (3) must be recorded before the transferor's death in the public records
5 in the office of the recorder in the recording district where the property is located.

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

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

10 (2) consideration.

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

14 (1) is one of the following:

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

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

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

21 (2) is acknowledged by the transferor after the acknowledgment of the
22 deed being revoked and recorded before the transferor's death in the recording district
23 where the deed is recorded.

24 (b) If a transfer on death deed is made by more than one transferor,

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

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

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

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

property.

Sec. 13.48.080. 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.

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

Except as otherwise provided in the transfer on death deed, in this section, or in AS 13.12.203, 13.12.702, 13.12.706, 13.12.707, 13.12.803, or 13.12.804, 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 (2) of this subsection, the interest in the property is transferred to the designated beneficiary under 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 (4) of this subsection, 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 that 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 AS 40.17, 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 AS 40.17, the recording of the transfer on death deed is considered 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.

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

Sec. 13.48.110. Liability for creditor claims and statutory allowances. (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 (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 18 months after the transferor's death.

Sec. 13.48.120. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The provisions 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:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

PRIMARY BENEFICIARY/BENEFICIARIES

(Please list one or more primary beneficiaries. You may want to obtain legal advice before listing more than one primary beneficiary. There is more than one way to transfer property to several persons.)

I designate the following beneficiary if the beneficiary survives me:

Printed name

Mailing address, if available

ALTERNATE BENEFICIARY/BENEFICIARIES - Optional

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

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

1 Printed name Mailing address, if available

2 TRANSFER ON DEATH

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

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

6 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

7 _____
8 Signature

_____ Date

9 _____
10 Signature

_____ Date

11 ACKNOWLEDGMENT

12 State of _____ Judicial
13 District (or County of _____ or Municipality of
14 _____)

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

17 _____
18 Signature of Person Taking
19 Acknowledgment

20 _____
21 Title or Rank

22 _____
23 Serial Number, if any

24 (back of form)

25 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

26 **What does the Transfer on Death (TOD) deed do?** When you
27 die, this deed transfers the described property, subject to any liens or
28 mortgages (or other encumbrances) on the property at your death.
29 Probate is not required. The TOD deed has no effect until you die. You
30 can revoke it at any time. You are also free to transfer the property to
31 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 recording district 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 in the recording district 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 in the recording district where the property is located. Follow the instructions given by the recorder to make the form part of the official property records. If the property is in more than one recording district, you should record the deed in each recording district.

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 recording district where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each recording district 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.

Sec. 13.48.130. Optional form of revocation. The following form may be used to create an instrument of revocation under this chapter. The provisions 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 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

Date

Signature

Date

ACKNOWLEDGMENT

State of _____ Judicial
District (or County of _____ or Municipality of
_____)

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

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(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 in each recording district 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 recorder in the recording district 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 in the recording district where the property is located. Follow the instructions given by the recorder to make the form part of the official property records. If the property is located in more than one recording district, you should record the form in each of those recording districts.

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.

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

Sec. 13.48.150. Uniformity of application and construction. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

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

Sec. 13.48.190. Definitions. In this chapter,

(1) "beneficiary" means a person who 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 is a tenant by the entirety, who is an owner of community property with a right of survivorship, or who otherwise owns property concurrently with one or more other individuals with a right of

1 survivorship, but does not include an individual who is a tenant in common or other
 2 owner of community property without a right of survivorship or who is a joint tenant,
 3 other than an individual who is a tenant by the entirety;

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

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

10 (6) "transfer on death deed" means a deed authorized under this
 11 chapter;

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

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

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

17 (e) In the case of an interest created by a beneficiary designation **that is**
 18 **disclaimed** [MADE] before [THE TIME] the designation becomes irrevocable, **the**
 19 [A] disclaimer shall be delivered to the person making the beneficiary designation.

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

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

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

26 **(2) real property shall be recorded in the office of the recorder in**
 27 **the recording district where the real property that is the subject of the disclaimer**
 28 **is located.**

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

30 **Sec. 13.70.130. Recording of disclaimer.** If an instrument transferring an
 31 interest in or power over property subject to a disclaimer is required or permitted by

1 law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or
2 registered as required or permitted by law. **Except as otherwise provided in**
3 **AS 13.70.100(f)(2), failure** [FAILURE] to file, record, or register the disclaimer does
4 not affect its validity as between the disclaimant and persons to whom the property
5 interest or power passes by reason of the disclaimer.

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

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