

SENATE BILL 660

By Massey

AN ACT to amend Tennessee Code Annotated, Title 30; Title 31; Title 32; Title 35; Title 55; Title 66 and Section 67-4-409, relative to the automatic transfer of property upon death.

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

SECTION 1. Tennessee Code Annotated, Title 31, is amended by adding the following as a new chapter 8:

31-8-101. This chapter is known and may be cited as the "Tennessee Uniform Real Property Transfer on Death Act."

31-8-102. As used in this chapter:

(1) "Beneficiary" means a person that receives property under a transfer on death deed;

(2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed;

(3) "Joint owner":

(A) Means an individual who owns property concurrently with one (1) or more individuals with a right of survivorship;

(B) Includes a joint tenant and tenant by the entirety; and

(C) Does not include a tenant in common or joint tenant with no right of survivorship;

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

(5) "Property" means an interest in real property located in this state that is transferable upon the death of the owner;

(6) "Transfer on death deed" means a deed authorized under this chapter; and

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

31-8-103. This chapter does not affect any method of transferring property otherwise permitted in this state.

31-8-104. An individual may transfer property to one (1) or more beneficiaries effective upon the transferor's death by a transfer on death deed.

31-8-105. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

31-8-106. A transfer on death deed is nontestamentary.

31-8-107. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

31-8-108. A transfer on death deed:

(1) Except as otherwise provided in subdivision (2), must contain the essential elements and formalities of a properly recordable inter vivos deed;

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

(3) Must be recorded before the transferor's death in the public records in the office of the register of deeds of the county where the property is located.

31-8-109. A transfer on death deed is effective without:

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

(2) Consideration.

31-8-110.

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

(1) Is one (1) of the following:

(A) A transfer on death deed that expressly revokes the recorded transfer on death deed or part of the recorded transfer on death deed;

(B) A transfer on death deed that names a designated beneficiary that is inconsistent with the designated beneficiary in a recorded transfer on death deed;

(C) An instrument of revocation that expressly revokes the recorded transfer on death deed or part of the recorded transfer on death deed; or

(D) An inter vivos deed that expressly revokes the recorded transfer on death deed or part of the recorded transfer on death deed;
and

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

(b) If a transfer on death deed is made by more than one (1) transferor, then:

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

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

(c) After a transfer on death deed is recorded, it can be revoked only by an effective revocatory instrument recorded prior to the death of the transferor and may not

be revoked by a revocatory act taken against or on the original or a copy of the recorded transfer on death deed.

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

31-8-111. 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 unless required by federal law;

(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.

31-8-112.

(a) Except as otherwise provided in the transfer on death deed, this section, § 32-3-104, § 31-1-102, § 31-1-106, or chapter 3 or 4 of this title, upon 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 subdivision (a)(2), the interest in the property is transferred to and vests in the designated beneficiary upon the death of the transferor in accordance with the deed;

(2) The interest of a designated beneficiary is contingent upon the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses;

(3) Subject to subdivision (a)(4), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and

(4) If the transferor has identified two (2) or more designated beneficiaries to receive concurrent interests in the property, the share of one (1) 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 §§ 66-5-106 and 66-26-101 and title 66, chapter 24, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, claims of the bureau of TennCare or successor entity for medical assistance, and other interests to which the property is subject at the transferor's death. For purposes of this title and title 66, the transfer and conveyance of the property subject to the transfer on death deed shall be deemed to be effective upon the transferor's death.

(c) If a transferor is a joint owner and is:

(1) Survived by one (1) 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 but remains subject to the naming of the designated beneficiary in the transfer on death deed; 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.

31-8-113. A beneficiary may disclaim all or part of the beneficiary's interest as provided by chapter 7 of this title.

31-8-114.

(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 or any creditor may enforce the liability against property transferred upon the transferor's death by a transfer on death deed. If a beneficiary conveys property subject to a transfer on death deed before the initiation of an action to enforce a liability under this section, then the estate or any creditor may enforce the liability against the beneficiary up to the value of the property conveyed and obtain a judgment against the beneficiary.

(b) If more than one (1) property is transferred by one (1) or more transfer on death deeds, then liability under subsection (a) may be enforced against any property transferred by a transfer on death deed. If a beneficiary conveys property before the initiation of an action to enforce a liability under this section, then the estate or any creditor may enforce the liability:

(1) Against the beneficiary as provided in subsection (a);

(2) Against the remaining properties that the beneficiary has not conveyed; or

(3) Against both the beneficiary and the remaining properties that the beneficiary has not conveyed.

(c) A proceeding to enforce the liability under this section must be commenced not later than twelve (12) months after the transferor's death.

31-8-115. The following form may be used to create a transfer on death deed; provided, however, 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

This deed will transfer ownership of the property described below when you die. You should carefully read all of the information on this form. You should consult a lawyer before using this form.

This form must be recorded with the register of deeds before your death, or it will not be effective. Any change to this deed must also be recorded to be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name

Mailing address

Marital status

Printed name

Mailing address

Marital status

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

Signature

Date

Signature

Date

State of Tennessee

County of _____

Personally appeared before me, _____, a notary public in and for the state and county aforesaid, _____, the within named person(s), with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and

who acknowledged that such person was the one who executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal at office, on this _____ day of _____, 20__

Notary Public

My Commission Expires:

(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.

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 register 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 register of deeds of the county where the property is located. Follow the instructions given by the register of deeds to make the form part of the official property records. If the property is in more than one county, you need to 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; or (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.

31-8-116. The following form may be used to create an instrument of revocation under this chapter; provided, however, 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 with the register of deeds before your death, or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

Printed name

Mailing address

Marital status

Printed name

Mailing address

Marital status

Legal description of the property:

REVOCATION

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature

Date

Signature

Date

State of Tennessee
County of _____

Personally appeared before me, _____, a notary public in and for the state and county aforesaid, _____, the within named person(s), with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that such person was the one who executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal at office, on this _____ day of _____, 20__.

Notary Public

My Commission Expires:

(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 register of deeds of each county where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the office of the register 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 register of deeds of the county where the property is located. Follow the instructions given by the register of deeds to make the form part of the official property records. If the property is located in more than one county, you need to 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.

31-8-117. 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.

31-8-118. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede § 101(c) of that act, or authorize electronic delivery of any of the notices described in § 103(b) of that act.

SECTION 2. Tennessee Code Annotated, Section 31-7-112(a), is amended by adding the following as a new, appropriately designated subdivision:

() A transfer on death deed;

SECTION 3. Tennessee Code Annotated, Section 66-24-101(a)(12), is amended by adding the language ", including transfer on death deeds" immediately after the word "description".

SECTION 4. Tennessee Code Annotated, Section 55-3-118, is amended by adding the following as a new subsection:

(e)

(1) An owner may provide for the transfer of title to a motor vehicle upon the owner's death by including in the certificate of title a designation of a beneficiary to whom the motor vehicle must be transferred upon the death of the owner, subject to the rights of all lienholders. A trust may be a designated beneficiary. If a motor vehicle is jointly owned by two (2) or more persons, then ownership of the motor vehicle shall not vest in the designated beneficiary until the death of the last owner, subject to the rights of all lienholders.

(2) When a motor vehicle is jointly owned by two (2) or more persons, the signatures of all owners must be required to designate a beneficiary. Only one (1) party's signature is required to designate a beneficiary if the title is registered in the name of one (1) spouse or where the conjunction between the names on the title is "or."

(3) A transfer on death certificate of title must include after the name of the owner, or owners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary.

(4) A beneficiary designation may be changed at any time without the consent of a beneficiary with the filing of an application for a subsequent transfer on death certificate of title and payment of the fee provided in § 55-6-101(a)(4). Upon issuance of any subsequent certificate of title pursuant to this subsection (e), the previous certificate that was issued is void.

SECTION 5. Tennessee Code Annotated, Section 55-6-101(a)(4), is amended by deleting the language "destroyed certificate," and substituting instead the language "destroyed certificate or a subsequent transfer on death certificate of title pursuant to § 55-3-118(e),".

SECTION 6. Tennessee Code Annotated, Section 67-4-409(a)(3), is amended by adding the following as a new, appropriately designated subdivision:

Are transfers by a transfer on death deed pursuant to title 31, chapter 8;

SECTION 7. For purposes of preparing forms or promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2021, the public welfare requiring it, and shall apply to transfer on death deeds or certificates of title with a designated beneficiary made before, on, or after July 1, 2021, by a transferor or motor vehicle owner dying on or after July 1, 2021.