

1 **UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill enacts the Uniform Real Property Transfer on Death Act.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ creates a new part in the Utah Uniform Probate Code entitled the Uniform Real
- 12 Property Transfer on Death Act;
- 13 ▶ defines terms;
- 14 ▶ specifically applies only to deeds created by a person who dies on or after May 10,
- 15 2016;
- 16 ▶ provides that the act is nonexclusive and does not affect any other method of
- 17 transferring real property allowed under Utah law;
- 18 ▶ makes clear that the transfer of property only occurs upon the transferor's death;
- 19 ▶ provides that a transfer on death deed is revocable and nontestamentary; and
- 20 ▶ requires that the transferor have the same capacity as that required to make a will at
- 21 the time the deed is made.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**



28 ENACTS:

- 29 **75-6-401**, Utah Code Annotated 1953
- 30 **75-6-402**, Utah Code Annotated 1953
- 31 **75-6-403**, Utah Code Annotated 1953
- 32 **75-6-404**, Utah Code Annotated 1953
- 33 **75-6-405**, Utah Code Annotated 1953
- 34 **75-6-406**, Utah Code Annotated 1953
- 35 **75-6-407**, Utah Code Annotated 1953
- 36 **75-6-408**, Utah Code Annotated 1953
- 37 **75-6-409**, Utah Code Annotated 1953
- 38 **75-6-410**, Utah Code Annotated 1953
- 39 **75-6-411**, Utah Code Annotated 1953
- 40 **75-6-412**, Utah Code Annotated 1953
- 41 **75-6-413**, Utah Code Annotated 1953
- 42 **75-6-414**, Utah Code Annotated 1953
- 43 **75-6-415**, Utah Code Annotated 1953
- 44 **75-6-416**, Utah Code Annotated 1953
- 45 **75-6-417**, Utah Code Annotated 1953
- 46 **75-6-418**, Utah Code Annotated 1953
- 47 **75-6-419**, Utah Code Annotated 1953



49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **75-6-401** is enacted to read:

51 **CHAPTER 6. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

52 **75-6-401. Title.**

53 This chapter is known as the "Uniform Real Property Transfer on Death Act."

54 Section 2. Section **75-6-402** is enacted to read:

55 **75-6-402. Definitions.**

56 As used in this chapter:

57 (1) "Beneficiary" means a person who receives property under a transfer on death deed.

58 (2) "Designated beneficiary" means a person designated to receive property in a

59 transfer on death deed.

60 (3) "Joint owner" means an individual who owns property concurrently with one or
61 more other individuals with a right of survivorship. The term includes a joint tenant, owner of
62 community property with a right of survivorship, and tenant by the entirety. The term does not
63 include a tenant in common or owner of community property without a right of survivorship.

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

67 (5) "Property" means an interest in real property located in this state that is transferable
68 on the death of the owner.

69 (6) "Transfer on death deed" means a deed authorized under this chapter.

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

71 Section 3. Section **75-6-403** is enacted to read:

72 **75-6-403. Applicability.**

73 This chapter applies to a transfer on death deed made before, on, or after May 10, 2016,
74 by a transferor dying on or after May 10, 2016.

75 Section 4. Section **75-6-404** is enacted to read:

76 **75-6-404. Nonexclusivity.**

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

79 Section 5. Section **75-6-405** is enacted to read:

80 **75-6-405. Transfer on death deed authorized.**

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

83 Section 6. Section **75-6-406** is enacted to read:

84 **75-6-406. Transfer on death deed revocable.**

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

87 Section 7. Section **75-6-407** is enacted to read:

88 **75-6-407. Transfer on death deed nontestamentary.**

89 A transfer on death deed is nontestamentary.

90 Section 8. Section **75-6-408** is enacted to read:

91 **75-6-408. Capacity of transferor.**

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

94 Section 9. Section **75-6-409** is enacted to read:

95 **75-6-409. Requirements.**

96 A transfer on death deed shall:

97 (1) in addition to the requirement provided in Subsection (2), contain the essential
98 elements and formalities of a properly recordable inter vivos deed;

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

101 (3) be recorded before the transferor's death in the public records in the county
102 recorder's office of the county where the property is located.

103 Section 10. Section **75-6-410** is enacted to read:

104 **75-6-410. Notice, delivery, acceptance, consideration not required.**

105 A transfer on death deed is effective without:

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

108 (2) consideration.

109 Section 11. Section **75-6-411** is enacted to read:

110 **75-6-411. Revocation by instrument authorized -- Revocation by act not**
111 **permitted.**

112 (1) Subject to Subsection (2), an instrument is effective to revoke a recorded transfer
113 on death deed, or any part of it, only if the instrument:

114 (a) is:

115 (i) a transfer on death deed that revokes the deed or part of the deed expressly or by
116 inconsistency;

117 (ii) an instrument of revocation that expressly revokes the deed or part of the deed; or

118 (iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the
119 deed; and

120 (b) is acknowledged by the transferor after the acknowledgment of the deed being

121 revoked and recorded before the transferor's death in the public records in the office of the
122 county recorder of the county where the deed is recorded.

123 (2) If a transfer on death deed is made by more than one transferor:

124 (a) revocation by a transferor does not affect the deed as to the interest of another
125 transferor; and

126 (b) a deed of joint owners is revoked only if it is revoked by all of the living joint
127 owners.

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

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

131 Section 12. Section **75-6-412** is enacted to read:

132 **75-6-412. Effect of transfer on death deed during transferor's life.**

133 During a transferor's life, a transfer on death deed does not:

134 (1) affect an interest or right of the transferor or any other owner, including the right to
135 transfer or encumber the property;

136 (2) affect an interest or right of a transferee, even if the transferee has actual or
137 constructive notice of the deed;

138 (3) affect an interest or right of the transferor's secured or unsecured creditors or future
139 creditors, even if they have actual or constructive notice of the deed;

140 (4) affect the transferor's or designated beneficiary's eligibility for any form of public
141 assistance;

142 (5) create a legal or equitable interest in favor of the designated beneficiary; or

143 (6) subject the property to claims or process of the designated beneficiary's creditors.

144 Section 13. Section **75-6-413** is enacted to read:

145 **75-6-413. Effect of transfer on death deed at transferor's death.**

146 (1) Except as otherwise provided in the transfer on death deed, Sections [75-2-205](#),
147 [75-2-802](#), and [75-2-803](#), on the death of the transferor, the following rules apply to property
148 that is the subject of a transfer on death deed and owned by the transferor at death.

149 (a) Subject to Subsection (1)(b), the interests in the property are transferred to the
150 designated beneficiaries in accordance with the deed.

151 (b) The interest of a designated beneficiary is contingent on the designated beneficiary

152 surviving the transferor. The interest of a designated beneficiary that fails to survive the
153 transferor lapses.

154 (c) Subject to Subsection (1)(d), concurrent interests are transferred to the beneficiaries
155 in equal and undivided shares with no right of survivorship.

156 (d) If the transferor has identified two or more designated beneficiaries to receive
157 concurrent interests in the property, the share of one that lapses or fails for any reason is
158 transferred to the other, or to the others in proportion to the interest of each in the remaining
159 part of the property held concurrently.

160 (2) Subject to Title 57, Chapter 3, Recording of Documents, a beneficiary takes the
161 property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens,
162 and other interests to which the property is subject at the transferor's death. For purposes of
163 this Subsection (2) and Title 57, Chapter 3, Recording of Documents, the recording of the
164 transfer on death deed is considered to have occurred at the transferor's death.

165 (3) If a transferor is a joint owner and is:

166 (a) survived by one or more other joint owners, the property that is the subject of a
167 transfer on death deed belongs to the surviving joint owner or owners with right of
168 survivorship; or

169 (b) the last surviving joint owner, the transfer on death deed is effective.

170 (4) A transfer on death deed transfers property without covenant or warranty of title
171 even if the deed contains a contrary provision.

172 Section 14. Section **75-6-414** is enacted to read:

173 **75-6-414. Disclaimer.**

174 A beneficiary may disclaim all or part of the beneficiary's interest.

175 Section 15. Section **75-6-415** is enacted to read:

176 **75-6-415. Liability for creditor claims and statutory allowances.**

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

181 (2) If more than one property is transferred by one or more transfer on death deeds, the
182 liability under Subsection (1) is apportioned among the properties in proportion to their net

183 values at the transferor's death.

184 (3) A proceeding to enforce the liability under this section shall be commenced not
185 later than 18 months after the transferor's death.

186 Section 16. Section **75-6-416** is enacted to read:

187 **75-6-416. Form of transfer on death deed.**

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

191 (front of form)

192 REVOCABLE TRANSFER ON DEATH DEED FORM

193 NOTICE TO OWNER

194 You should carefully read all information on the other side of this form. You May Want
195 to Consult a Lawyer Before Using This Form.

196 This form must be recorded before your death, or it will not be effective.

197 IDENTIFYING INFORMATION

198 Owner or Owners Making This Deed:

199 _____
200 Printed name

Mailing address

201 _____
202 Printed name

Mailing address

203 Legal description of the property:

204 _____
205 PRIMARY BENEFICIARY

206 I designate the following beneficiary if the beneficiary survives me.

207 _____
208 Printed name

Mailing address, if available

209 ALTERNATE BENEFICIARY – Optional

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

212 _____
213 Printed name

Mailing address, if available

214 TRANSFER ON DEATH

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

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

218 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

219 _____ [(SEAL)] _____

220 Signature _____ Date

221 _____ [(SEAL)] _____

222 Signature _____ Date

223 ACKNOWLEDGMENT

224 (insert acknowledgment for deed here)

225 (back of form)

226 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

227 Q. What does the Transfer on Death (TOD) deed do?

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

233 Q. How do I make a TOD deed?

234 A. Complete this form. Have it acknowledged before a notary public or other individual
235 authorized by law to take acknowledgments. Record the form in each county where any part of
236 the property is located. The form has no effect unless it is acknowledged and recorded before
237 your death.

238 Q. Is the "legal description" of the property necessary?

239 A. Yes.

240 Q. How do I find the "legal description" of the property?

241 A. This information may be on the deed you received when you became an owner of the
242 property. This information may also be available in the office of the county recorder for the
243 county where the property is located. If you are not absolutely sure, consult a lawyer.

244 Q. Can I change my mind before I record the TOD deed?

245 A. Yes. If you have not yet recorded the deed and want to change your mind, simply
246 tear up the deed.

247 Q. How do I "record" the TOD deed?

248 A. Take the completed and acknowledged form to the office of the county recorder of
249 the county where the property is located. Follow the instructions given by the county recorder
250 to make the form part of the official property records. If the property is in more than one
251 county, you should record the deed in each county.

252 Q. Can I later revoke the TOD deed if I change my mind?

253 A. Yes. The TOD deed is revocable. No one, including the beneficiaries, can prevent
254 you from revoking the deed.

255 Q. How do I revoke the TOD deed after it is recorded?

256 A. There are three ways to revoke a recorded TOD deed: (1) Complete and
257 acknowledge a revocation form, and record it in each county where the property is located. (2)
258 Complete and acknowledge a new TOD deed that disposes of the same property, and record it
259 in each county where the property is located. (3) Transfer the property to someone else during
260 your lifetime by a deed that expressly revokes the TOD deed. You may not revoke the TOD
261 deed by will.

262 Q. I am being pressured to complete this form. What should I do?

263 A. Do not complete this form under pressure. Seek help from a trusted family member,
264 a friend, or a lawyer.

265 Q. Do I need to tell the beneficiaries about the TOD deed?

266 A. No, but it is recommended. Secrecy can cause later complications and might make it
267 easier for others to commit fraud.

268 Q. I have other questions about this form. What should I do?

269 A. This form is designed to fit some but not all situations. If you have other questions,
270 you are encouraged to consult a lawyer.

271 Section 17. Section **75-6-417** is enacted to read:

272 **75-6-417. Optional form of revocation.**

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

276 (front of form)

277 REVOCATION OF TRANSFER ON DEATH DEED

278 NOTICE TO OWNER

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

282 IDENTIFYING INFORMATION

283 Owner or Owners of Property Making This Revocation:

284 _____

285 Printed name Mailing address

286 _____

287 Printed name Mailing address

288 Legal description of the property:

289 _____

290 REVOCATION

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

292 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

293 _____ [(SEAL)] _____

294 Signature Date

295 _____ [(SEAL)] _____

296 Signature Date

297 ACKNOWLEDGMENT

298 (insert acknowledgment here)

299 (back of form)

300 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

301 Q. How do I use this form to revoke a Transfer on Death (TOD) deed?

302 A. Complete this form. Have it acknowledged before a notary public or other
303 individual authorized to take acknowledgments. Record the form in the public records in the
304 office of the county recorder of each county where the property is located. The form must be
305 acknowledged and recorded before your death or it has no effect.

306 Q. How do I find the "legal description" of the property?

307 A. This information may be on the TOD deed. It may also be available in the office of
308 the county recorder for the county where the property is located. If you are not absolutely sure,
309 consult a lawyer.

310 Q. How do I "record" the form?

311 A. Take the completed and acknowledged form to the office of the county recorder of
312 the county where the property is located. Follow the instructions given by the county recorder
313 to make the form part of the official property records. If the property is located in more than
314 one county, you should record the form in each of those counties.

315 Q. I am being pressured to complete this form. What should I do?

316 A. Do not complete this form under pressure. Seek help from a trusted family member,
317 a friend, or a lawyer.

318 Q. I have other questions about this form. What should I do?

319 A. This form is designed to fit some but not all situations. If you have other questions,
320 consult a lawyer.

321 Section 18. Section **75-6-418** is enacted to read:

322 **75-6-418. Uniformity of application and construction.**

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

325 Section 19. Section **75-6-419** is enacted to read:

326 **75-6-419. Relation to Electronic Signatures in Global and National Commerce**

327 **Act.**

328 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
329 Global and National Commerce Act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit,
330 or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery
331 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).