

1 HB406
2 173523-1
3 By Representatives Harbison, Henry, Shedd, Hanes and
4 Whorton (I)
5 RFD: Judiciary
6 First Read: 15-MAR-16

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8 SYNOPSIS: This bill would adopt the Uniform Real
9 Property Transfer on Death Act. This bill would
10 establish a mechanism which would enable the owner
11 of real property to pass the real property to a
12 beneficiary at the owner's death without probate by
13 executing and recording a transfer on death
14 deed. This bill would also permit the owner of the
15 real property to retain all ownership rights in the
16 property while living, including the right to sell
17 the property, revoke the deed, or name a different
18 beneficiary. This bill would specify the content of
19 the transfer on death deed and the procedure for
20 executing and filing the deed.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To adopt the Uniform Real Property Transfer on Death
27 Act; to establish a mechanism which would enable the owner of

1 real property to pass the real property to a beneficiary at
2 the owner's death without probate by executing and recording a
3 transfer on death deed; to permit the owner of the real
4 property to retain all ownership rights in the property while
5 living, including the right to sell the property, revoke the
6 deed, or name a different beneficiary; to specify the content
7 of the transfer on death deed and the procedure for executing
8 and filing the deed.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. SHORT TITLE. This act may be cited as the
11 Uniform Real Property Transfer on Death Act.

12 Section 2. DEFINITIONS. In this act, the following
13 terms have the following meanings:

14 (1) BENEFICIARY. A person that receives property
15 under a transfer on death deed.

16 (2) DESIGNATED BENEFICIARY. A person designated to
17 receive property in a transfer on death deed.

18 (3) JOINT OWNER. An individual who owns property
19 concurrently with one or more other individuals with a right
20 of survivorship. The term includes a joint tenant, owner of
21 community property with a right of survivorship, and tenant by
22 the entirety. The term does not include a tenant in common or
23 owner of community property without a right of survivorship.

24 (4) PERSON. An individual, corporation, business
25 trust, estate, trust, partnership, limited liability company,
26 association, joint venture, public corporation, government or

1 governmental subdivision, agency, or instrumentality, or any
2 other legal or commercial entity.

3 (5) PROPERTY. An interest in real property located
4 in this state which is transferable on the death of the owner.

5 (6) TRANSFER ON DEATH DEED. A deed authorized under
6 this act.

7 Section 3. APPLICABILITY. This act applies to a
8 transfer on death deed made before, on, or after January 1,
9 2017, by a transferor dying on or after January 1, 2017.

10 Section 4. NONEXCLUSIVITY. This act does not affect
11 any method of transferring property otherwise permitted under
12 the law of this state.

13 Section 5. TRANSFER ON DEATH DEED AUTHORIZED. An
14 individual may transfer property to one or more beneficiaries
15 effective at the transferor's death by a transfer on death
16 deed.

17 Section 6. TRANSFER ON DEATH DEED REVOCABLE. A
18 transfer on death deed is revocable even if the deed or
19 another instrument contains a contrary provision.

20 Section 7. TRANSFER ON DEATH DEED NONTESTAMENTARY. A
21 transfer on death deed is nontestamentary.

22 Section 8. CAPACITY OF TRANSFEROR. The capacity
23 required to make or revoke a transfer on death deed is the
24 same as the capacity required to make a will.

25 Section 9. REQUIREMENTS. A transfer on death deed
26 must meet all of the following requirements:

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

4 (2) State that the transfer to the designated
5 beneficiary is to occur at the transferor's death.

6 (3) Be recorded before the transferor's death in the
7 public records in the office of the judge of probate in the
8 county where the property is located.

9 Section 10. NOTICE, DELIVERY, ACCEPTANCE,
10 CONSIDERATION NOT REQUIRED. A transfer on death deed is
11 effective without either of the following:

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

14 (2) Consideration.

15 Section 11. REVOCATION BY INSTRUMENT AUTHORIZED;
16 REVOCATION BY ACT NOT PERMITTED.

17 (a) Subject to subsection (b), an instrument is
18 effective to revoke a recorded transfer on death deed, or any
19 part of it, only if the instrument meets both of the following
20 requirements:

21 (1) Is one of the following:

22 (A) A transfer on death deed that revokes the deed
23 or part of the deed expressly or by inconsistency.

24 (B) An instrument of revocation that expressly
25 revokes the deed or part of the deed.

26 (C) An inter vivos deed that expressly revokes the
27 transfer on death deed or part of the deed.

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

5 (b) If a transfer on death deed is made by more than
6 one transferor, both of the following conditions apply:

7 (1) Revocation by a transferor does not affect the
8 deed as to the interest of another transferor.

9 (2) A deed of joint owners is revoked only if it is
10 revoked by all of the living joint owners.

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

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

15 Section 12. EFFECT OF TRANSFER ON DEATH DEED DURING
16 TRANSFEROR'S LIFE. During a transferor's life, a transfer on
17 death deed does not do any of the following:

18 (1) Affect an interest or right of the transferor or
19 any other owner, including the right to transfer or encumber
20 the property.

21 (2) Affect an interest or right of a transferee,
22 even if the transferee has actual or constructive notice of
23 the deed.

24 (3) Affect an interest or right of a secured or
25 unsecured creditor or future creditor of the transferor, even
26 if the creditor has actual or constructive notice of the deed.

1 (4) Affect the transferor's or designated
2 beneficiary's eligibility for any form of public assistance.

3 (5) Create a legal or equitable interest in favor of
4 the designated beneficiary.

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

7 Section 13. EFFECT OF TRANSFER ON DEATH DEED AT
8 TRANSFEROR'S DEATH.

9 (a) Except as otherwise provided in the transfer on
10 death deed or in Chapter 7 of Title 43 of the Code of Alabama
11 1975, the Uniform Simultaneous Death Act, Section 43-8-137 of
12 the Code of Alabama 1975, relating to revocation of interest
13 in property by divorce or annulment, or Section 43-8-224 of
14 the Code of Alabama 1975, establishing an anti lapse
15 provision, on the death of the transferor, all of the
16 following rules apply to property that is the subject of a
17 transfer on death deed and owned by the transferor at death:

18 (1) Subject to subdivision (2), the interest in the
19 property is transferred to the designated beneficiary in
20 accordance with the deed.

21 (2) The interest of a designated beneficiary is
22 contingent on the designated beneficiary surviving the
23 transferor. The interest of a designated beneficiary who fails
24 to survive the transferor lapses.

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

1 (4) If the transferor has identified two or more
2 designated beneficiaries to receive concurrent interests in
3 the property, the share of one which lapses or fails for any
4 reason is transferred to the other, or to the others in
5 proportion to the interest of each in the remaining part of
6 the property held concurrently.

7 (b) Subject to Chapter 4 of Title 35 of the Code of
8 Alabama 1975, a beneficiary takes the property subject to all
9 conveyances, encumbrances, assignments, contracts, mortgages,
10 liens, and other interests to which the property is subject at
11 the transferor's death. For purposes of this subsection and
12 Chapter 4 of Title 35 of the Code of Alabama 1975, the
13 recording of the transfer on death deed is deemed to have
14 occurred at the transferor's death.

15 (c) If a transferor is a joint owner who is:

16 (1) Survived by one or more other joint owners, the
17 property that is the subject of a transfer on death deed
18 belongs to the surviving joint owner or owners with right of
19 survivorship.

20 (2) The last surviving joint owner, the transfer on
21 death deed is effective.

22 (d) A transfer on death deed transfers property
23 without covenant or warranty of title even if the deed
24 contains a contrary provision.

25 Section 14. DISCLAIMER. A beneficiary may disclaim
26 all or part of the beneficiary's interest as provided by

1 Article 11 of Chapter 8 of Title 43 of the Code of Alabama
2 1975.

3 Section 15. LIABILITY FOR CREDITOR CLAIMS AND
4 STATUTORY ALLOWANCES.

5 (a) To the extent the transferor's probate estate is
6 insufficient to satisfy an allowed claim against the estate or
7 a statutory allowance to a surviving spouse or child, the
8 estate may enforce the liability against property transferred
9 at the transferor's death by a transfer on death deed.

10 (b) If more than one property is transferred by one
11 or more transfer on death deeds, the liability under
12 subsection (a) is apportioned among the properties in
13 proportion to their net values at the transferor's death.

14 (c) A proceeding to enforce the liability under this
15 section must be commenced not later than 18 months after the
16 transferor's death.

17 Section 16. FORM OF TRANSFER ON DEATH DEED. The fol-
18 lowing form may be used to create a transfer on death deed.
19 The other sections of this act govern the effect of this or
20 any other instrument used to create a transfer on death deed:

21 (front of form)

22 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

Printed name

_____ Mailing address

Printed name

_____ Mailing address

Legal description of the property:

PRIMARY BENEFICIARY

I designate the
following benefi-
ciary if the bene-
ficiary survives
me.

1

2

3

Mailing address, if

4

Printed name

available

5

ALTERNATE BENEFICIARY - Optional

6

If my primary beneficiary does not survive me, I

7

designate the following alternate beneficiary if that

8

beneficiary survives me.

9

Mailing address, if

10

Printed name

available

11

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.

1 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

2 _____ ([[Seal]]) _____

3 Signature Date

4 _____ ([[Seal]]) _____

5 _____ ([[Seal]]) _____

6 Signature Date

7 ACKNOWLEDGMENT

8 (insert acknowledgment for deed here)

9 Section 17. FORM OF REVOCATION. The following form
10 may be used to create an instrument of revocation under this
11 act. The other sections of this act govern the effect of this
12 or any other instrument used to revoke a transfer on death
13 deed

14 (front of form)

15 REVOCATION OF TRANSFER ON DEATH
DEED

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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

Printed name

Mailing address

Printed name

Mailing address

Legal description of
the property:

REVOCAATION

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

SIGNATURE OF OWNER OR OWNERS MAKING
THIS REVOCATION

1 _____ ([Seal]) _____

2 Signature Date

3
4 _____ ([Seal]) _____

5 Signature Date

6 ACKNOWLEDGMENT

7 (insert acknowledgment here)

8 Section 18. UNIFORMITY OF APPLICATION AND
9 CONSTRUCTION. In applying and construing this uniform act,
10 consideration must be given to the need to promote uniformity
11 of the law with respect to its subject matter among the states
12 that enact it.

13 Section 19. RELATION TO ELECTRONIC SIGNATURES IN
14 GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits,
15 and supersedes the federal Electronic Signatures in Global and
16 National Commerce Act, 15 U.S.C. Section 7001, et seq., but
17 does not modify, limit, or supersede Section 101(c) of that
18 act, 15 U.S.C. Section 7001(c), or authorize electronic

1 delivery of any of the notices described in Section 103(b) of
2 that act, 15 U.S.C. Section 7003(b).

3 Section 20. EFFECTIVE DATE. This act shall become
4 effective January 1, 2017.