
A BILL FOR AN ACT

RELATING TO UNIFORM REAL PROPERTY TRANSFER ON DEATH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

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

6 § -1 **Short title.** This Act may be cited as the Uniform
7 Real Property Transfer on Death Act.

8 § -2 **Definitions.** As used in this chapter:

9 "Beneficiary" means a person that receives property under a
10 transfer on death deed.

11 "Designated beneficiary" means a person designated in a
12 transfer on death deed to receive property.

13 "Joint owner" means an individual who owns property
14 concurrently with one or more other individuals with a right of
15 survivorship. The term includes a joint tenant and tenant by
16 the entirety. The term does not include a tenant in common.

1 "Person" means an individual, corporation, business trust,
2 estate, trust, partnership, limited liability company,
3 association, joint venture, public corporation, government or
4 governmental subdivision, agency, or instrumentality, or any
5 other legal or commercial entity.

6 "Property" means an interest that is transferable on the
7 death of the owner in real property located in this State.

8 "Subject property" means real property or an interest in
9 real property that is subject to a transfer on death deed.

10 "Transfer on death deed" means a deed authorized under this
11 chapter.

12 "Transferor" means an individual who executes a transfer on
13 death deed.

14 § -3 **Applicability.** This chapter applies to a transfer
15 on death deed executed before, on, or after July 1, 2010 by a
16 transferor who dies on or after July 1, 2010.

17 § -4 **Nonexclusivity.** This chapter does not affect any
18 method of transferring property otherwise permitted under the
19 laws of this State.

20 § -5 **Transfer on death deed authorized.** An individual
21 may transfer property, effective at the transferor's death, to
22 one or more beneficiaries by a transfer on death deed.

1 § **-6 Transfer on death deed revocable.** A transfer on
2 death deed is revocable even if the deed or another instrument
3 contains a contrary provision.

4 § **-7 Transfer on death deed nontestamentary.** A transfer
5 on death deed is nontestamentary.

6 § **-8 Capacity of transferor.** The capacity required to
7 execute or revoke a transfer on death deed is the same as the
8 capacity required to execute a will.

9 § **-9 Requirements.** A transfer on death deed:

- 10 (1) Except as otherwise provided in paragraph (2), shall
11 contain the essential elements and formalities of a
12 properly recordable inter vivos deed;
- 13 (2) Shall state that the transfer to the beneficiary is to
14 occur at the transferor's death; and
- 15 (3) Shall be recorded with the bureau of conveyances
16 before the transferor's death.

17 § **-10 Notice, delivery, acceptance, consideration not**
18 **required.** A transfer on death deed is effective without:

- 19 (1) Notice or delivery to or acceptance by the designated
20 beneficiary during the transferor's life; or
- 21 (2) Consideration.

1 § -11 **Revocation by instrument authorized; revocation by**
2 **act not permitted.** (a) Subject to subsection (b), an
3 instrument is effective to revoke a recorded transfer on death
4 deed, or any part thereof, only if the instrument:

5 (1) Is:

6 (A) A subsequently recorded transfer on death deed
7 that revokes the recorded transfer on death deed
8 or a part of the deed either expressly or because
9 of inconsistency;

10 (B) An instrument of revocation that expressly
11 revokes all or a part of the recorded transfer on
12 death deed; or

13 (C) An inter vivos deed that expressly revokes all or
14 a part of the transfer on death deed; and

15 (2) Is acknowledged by the transferor after the
16 acknowledgement of the transfer on death deed being
17 revoked and is recorded in the bureau of conveyances
18 before the transferor's death.

19 (b) If a transfer on death deed is executed by more than
20 one transferor:

21 (1) Revocation by one transferor does not affect the deed
22 as to the interest of another transferor; and

1 (2) A deed executed by joint owners is revoked only if it
2 is revoked by all living joint owners.

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

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

7 § -12 **Effect of transfer on death deed during**

8 **transferor's life.** During a transferor's life, a transfer on
9 death deed shall not:

10 (1) Affect an interest or right in the subject property of
11 the transferor or any other owner, including the right
12 to transfer or encumber the subject property;

13 (2) Affect an interest or right in the subject property of
14 a transferee, regardless of whether the transferee has
15 actual or constructive notice of the deed;

16 (3) Affect an interest or right in the subject property of
17 a secured or unsecured creditor or future creditor of
18 the transferor regardless of whether the creditor has
19 actual or constructive notice of the deed;

20 (4) Affect the transferor's or designated beneficiary's
21 eligibility for any form of public assistance;

- 1 (5) Create a legal or equitable interest in the subject
2 property in favor of the designated beneficiary; or
3 (6) Subject the subject property to claims or process of a
4 creditor of the designated beneficiary.

5 § -13 **Effect of transfer on death deed at transferor's**
6 **death.** (a) Except as otherwise provided in the transfer on
7 death deed, this section, or sections 560:2-202, 560:2-603,
8 560:2-702, 560:2-706, 560:2-707, 560:2-803, and 560:2-804, on
9 the death of the transferor, the following rules apply to the
10 property that is the subject of a transfer on death deed and is
11 owned by the transferor at death:

- 12 (1) Subject to paragraph (2), the interest in the subject
13 property is transferred to the designated beneficiary
14 in accordance with the deed;
15 (2) The interest of a designated beneficiary is contingent
16 on the designated beneficiary surviving the
17 transferor; the interest of a designated beneficiary
18 that fails to survive the transferor lapses;
19 (3) Subject to paragraph (4), concurrent interest are
20 transferred to the beneficiaries in equal and
21 undivided shares with no right of survivorship; and

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

8 (b) Pursuant to the recording provisions of chapter 502, a
9 beneficiary takes the subject property subject to all
10 conveyances, encumbrances, assignments, contracts, mortgages,
11 liens, and other interest to which the property is subject at
12 the transferor's death. For purposes of this subsection and the
13 recording provisions of chapter 502, the recording of the
14 transfer on death deed is deemed to have occurred at the
15 transferor's death.

16 (c) If a transferor is a joint owner and is survived by
17 one or more other joint owners, the subject property belongs to
18 the surviving joint owner or owners with right of survivorship.
19 If a transferor is a joint owner and is the last surviving joint
20 owner, the transfer on death deed is effective.

1 (d) A transfer on death deed transfers the subject
2 property without covenant or warrant of title even if the
3 transfer on death deed contains a contrary provision.

4 § -14 **Disclaimer.** A beneficiary may disclaim all or
5 part of the beneficiary's interest as provided by chapter 526,
6 at the uniform disclaimer of property interests act.

7 § -15 **Liability for creditor claims and statutory**
8 **allowances.** A beneficiary of a transfer on death deed is liable
9 for an allowed claim against the transferor's probate estate and
10 statutory allowances to a surviving spouse and descendants to
11 the extent provided in section 560:2-102.

12 § -16 **Uniformity of application and construction.** In
13 applying and construing this chapter, consideration shall be
14 given to the need to promote uniformity of the law with respect
15 to its subject matter among the states that enact similar
16 uniform legislation.

17 § -17 **Relation to Electronic Signatures in Global and**
18 **National Commerce Act.** This chapter modifies, limits, and
19 supersedes the federal Electronic Signatures in Global and
20 National Commerce Act, 15 U.S.C. 7001, et seq., but does not
21 modify, limit, or supersede section 101(c) of that Act, 15
22 U.S.C. 7001(c), or authorize electronic delivery of any of the

1 notices described in section 103(b) of that Act, 15 U.S.C.
2 7003(b)."

3 SECTION 2. Section 526-12, Hawaii Revised Statutes, is
4 amended by amending subsection (f) and (g) to read as follows:

5 "(f) In the case of an interest created by a beneficiary
6 designation [~~made~~] that is disclaimed before [~~the time~~] the
7 designation becomes irrevocable, [~~a~~] the disclaimer [~~must~~] shall
8 be delivered to the person making the beneficiary designation.

9 (g) In the case of an interest created by a beneficiary
10 designation [~~made~~] that is disclaimed after [~~the time~~] the
11 designation becomes irrevocable[~~,-a~~]:

12 (1) The disclaimer of an interest in personal property
13 [~~must~~] shall be delivered to the person obligated to
14 distribute the interest[~~-~~]; and

15 (2) The disclaimer of an interest in real property shall
16 be recorded in the bureau of conveyances."

17 SECTION 3. Section 526-15, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~§~~526-15] **Recording of disclaimer.** If an instrument
20 transferring an interest in or power over property subject to a
21 disclaimer is required or permitted by law to be filed,
22 recorded, or registered, the disclaimer may be so filed,

1 recorded, or registered. [~~Failure~~] Except as otherwise provided
2 in section 526-12(g), failure to file, record, or register the
3 disclaimer does not affect its validity as between the
4 disclaimant and persons to whom the property interest or power
5 passes by reason of the disclaimer."

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect on July 1, 2010.

9

Report Title:

Real Property; Probate

Description:

Adopts Uniform Real Property Transfer on Death Act. Allows owner of real property to designate beneficiaries to receive real property upon death of owner without requirements of probate or formalities of wills. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.