

JAN 25 2010

S.B. NO. **2799**

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 to
12 receive property in a transfer on death deed.

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.

17 "Person" means an individual, corporation, business trust,
18 estate, trust, partnership, limited liability company,



1 association, joint venture, public corporation, government or
2 governmental subdivision, agency, or instrumentality, or any
3 other legal or commercial entity.

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

6 "Transfer on death deed" means a deed authorized under this
7 Act.

8 "Transferor" means an individual who makes a transfer on
9 death deed.

10 § -3 **Applicability.** This Act applies to a transfer on
11 death deed made before, on, or after July 1, 2010 by a
12 transferor dying on or after July 1, 2010.

13 § -4 **Nonexclusivity.** This Act does not affect any
14 method of transferring property otherwise permitted under the
15 laws of this State.

16 § -5 **Transfer on death deed authorized.** An individual
17 may transfer property to one or more beneficiaries effective at
18 the transferor's death by a transfer on death deed.

19 § -6 **Transfer on death deed revocable.** A transfer on
20 death deed is revocable even if the deed or another instrument
21 contains a contrary provision.



1 § -7 **Transfer on death deed nontestamentary.** A transfer
2 on death deed is nontestamentary.

3 § -8 **Capacity of transferor.** The capacity required to
4 make or revoke a transfer on death deed is the same as the
5 capacity required to make a will.

6 § -9 **Requirements.** A transfer on death deed:

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

14 § -10 **Notice, delivery, acceptance, consideration not**
15 **required.** A transfer on death deed is effective without:

- 16 (1) Notice or delivery to or acceptance by the designated
17 beneficiary during the transferor's life; or
- 18 (2) Consideration.

19 § -11 **Revocation by instrument authorized; revocation by**
20 **act not permitted.** (a) Subject to subsection (b), an
21 instrument is effective to revoke a recorded transfer on death
22 deed, or any part thereof, only if the instrument:



1 (1) Is one of the following:

2 (A) A transfer on death deed that revokes the deed or
3 part of the deed expressly or by inconsistency;

4 (B) An instrument of revocation that expressly
5 revokes the deed or part of the deed; or

6 (C) An inter vivos deed that expressly revokes the
7 transfer on death deed or part of the deed; and

8 (2) Is acknowledged by the transferor after the
9 acknowledgement of the deed being revoked and recorded
10 before the transferor's death in the bureau of
11 conveyances.

12 (b) If a transfer on death deed is made by more than one
13 transferor:

14 (1) Revocation by a transferor does not affect the deed as
15 to the interest of another transferor; and

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

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

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



1 § -12 Effect of transfer on death deed during
2 transferor's life. During a transferor's life, a transfer on
3 death deed does not:

4 (1) Affect an interest or right of the transferor or any
5 other owner, including the right to transfer or
6 encumber the property;

7 (2) Affect an interest or right of a transferee, even if
8 the transferee has actual or constructive notice of
9 the deed;

10 (3) Affect an interest or right of a secured or unsecured
11 creditor or future creditor of the transferor, or even
12 if the creditor as actual or constructive notice of
13 the deed;

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

16 (5) Create a legal or equitable interest in favor of the
17 designated beneficiary; or

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

20 § -13 Effect of transfer on death deed at transferor's
21 death. (a) Except as otherwise provided in the transfer death
22 deed, in this section, or sections 560:2-603, 560:2-706, 560:2-



1 707, 560:2-804, 560:2-803, 560:20-702, and section 560:2-202, on
2 the death of the transferor, the following rules apply to the
3 property that is the subject of a transfer on death deed and
4 owned by the transferor at death:

5 (1) Subject to paragraph (2), the interest in the
6 property is transferred to the designated beneficiary
7 in accordance with the deed;

8 (2) The interest of a designated beneficiary is contingent
9 on the designated beneficiary surviving the
10 transferor. The interest of a designated beneficiary
11 that fails to survive the transferor lapses;

12 (3) Subject to paragraph (4), concurrent interest are
13 transferred to the beneficiaries in equal and
14 undivided shares with no right of survivorship; or

15 (4) If the transferor has identified two or more
16 designated beneficiaries to receive concurrent
17 interest in the property, the share of one which
18 lapses or fails for any reason is transferred to the
19 other, or the others in proportion to the interest of
20 each in the remaining property held concurrently.

21 (b) Subject to the recording provisions of chapter 502, a
22 beneficiary takes the property subject to all conveyances,



1 encumbrances, assignments, contracts, mortgages, liens, and
2 other interest to which the property is subject at the
3 transferor's death. For purposes of this subsection and the
4 recording provisions of chapter 502, the recording of the
5 transfer on death deed is deemed to have occurred at the
6 transferor's death.

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

8 (1) Survived by one or more other joint owners, the
9 property that is the subject of a transfer on death
10 deed belongs to the surviving joint owner or owners
11 with right of survivorship; or

12 (2) the last surviving joint owner, the transfer on death
13 deed is effective.

14 (d) A transfer on death deed transfers the property
15 without covenant or warrant of title even if the deed contains a
16 contrary provision.

17 § -14 Disclaimer. A beneficiary may disclaim all or
18 part of the beneficiary's interest as provided by chapter 526,
19 at the Uniform Disclaimer of Property Interests Act.

20 § -15 Liability for creditor claims and statutory
21 allowances. A beneficiary of a transfer on death deed is liable
22 for an allowed claim against the transferor's probate estate and



1 statutory allowances to a surviving spouse and children to the
2 extent provided in section 560:2-102.

3 § -16 Uniformity of application and construction. In
4 applying and construing this uniform act, consideration must be
5 given to the need to promote uniformity of the law with respect
6 to its subject matter among the states that enact it.

7 § -17 Relation to electronic signatures in global and
8 national commerce act. This Act modifies, limits, and
9 supersedes the federal Electronic Signatures in Global and
10 National Commerce Act, 15 U.S.C. 7001, et seq., but does not
11 modify, limit, or supersede section 101(c) of that act, 15
12 U.S.C. 7001(c), or authorize electronic delivery of any of the
13 notices described in section 103(b) of that act, 15 U.S.C.
14 7003 (b)."

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

17 "(f) In the case of an interest created by a beneficiary
18 designation [~~made~~] which is disclaimed before [~~the time~~] the
19 designation becomes irrevocable, [a] the disclaimer must be
20 delivered to the person making the beneficiary designation.



1 (g) In the case of an interest created by a beneficiary
2 designation ~~[made]~~ which is disclaimed after ~~[the time]~~ the
3 designation becomes irrevocable~~[-]~~:

4 (1) [a] The disclaimer of an interest in personal property
5 must be delivered to the person obligated to
6 distribute the interest~~[-]~~; and

7 (2) The disclaimer of an interest in real property must be
8 recorded in the bureau of conveyances."

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

11 "[[]§526-15[]] **Recording of disclaimer.** If an instrument
12 transferring an interest in or power over property subject to a
13 disclaimer is required or permitted by law to be filed,
14 recorded, or registered, the disclaimer may be so filed,
15 recorded, or registered. ~~[Failure]~~ Except as otherwise provided
16 in section 526-12(g), failure to file, record, or register the
17 disclaimer does not affect its validity as between the
18 disclaimant and persons to whom the property interest or power
19 passes by reason of the disclaimer."

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



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

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INTRODUCED BY:

[Handwritten Signature]

[Handwritten Signatures]



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.

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

