
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 a tenant by
16 the entirety but 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 "Subject property" means real property or an interest in
7 real property that is subject to a transfer on death deed.

8 "Transfer on death deed" means a deed authorized under this
9 chapter.

10 "Transferor" means an individual who executes a transfer on
11 death deed.

12 § -3 **Applicability.** This chapter applies to a transfer
13 on death deed executed at any time by a transferor who dies on
14 or after July 1, 2011.

15 § -4 **Nonexclusivity.** This chapter does not affect any
16 method of transferring property otherwise permitted under the
17 laws of this State.

18 § -5 **Transfer on death deed authorized.** An individual
19 may transfer property, effective at the transferor's death, to
20 one or more beneficiaries by a transfer on death deed; provided
21 that, with respect to property of which any portion is
22 registered in the land court, transfer is subject to the



1 requirement in section -13(a)(1) regarding submittal of a
2 petition to the land court.

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

6 § -7 **Transfer on death deed nontestamentary.** A transfer
7 on death deed is nontestamentary.

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

11 § -9 **Requirements.** A transfer on death deed:

12 (1) Except as otherwise provided in paragraph (2), shall
13 contain the essential elements and formalities of a
14 properly recordable inter vivos deed;

15 (2) Shall state that the transfer to the beneficiary is to
16 occur at the transferor's death; and

17 (3) Shall be recorded with the bureau of conveyances or
18 filed in the office of the assistant registrar of the
19 land court, as applicable, before the transferor's
20 death.

21 § -10 **Notice, delivery, acceptance, consideration not**
22 **required.** A transfer on death deed shall be effective without



1 notice or delivery to or acceptance by the designated
2 beneficiary during the transferor's life and without
3 consideration.

4 § -11 **Revocation by instrument authorized; revocation by**
5 **act not permitted.** (a) Subject to subsection (b), an
6 instrument is effective to revoke all or any part of a recorded
7 or filed transfer on death deed only if the instrument is
8 acknowledged by the transferor after the acknowledgement of the
9 transfer on death deed being revoked and is recorded in the
10 bureau of conveyances or filed in the office of the assistant
11 registrar of the land court, as applicable, before the
12 transferor's death and is:

- 13 (1) A subsequently recorded or filed transfer on death
14 deed that revokes all or a part of the recorded or
15 filed transfer on death deed either expressly or
16 because of inconsistency;
- 17 (2) An instrument of revocation that expressly revokes all
18 or a part of the recorded or filed transfer on death
19 deed; or
- 20 (3) An inter vivos deed that expressly revokes all or a
21 part of the transfer on death deed.



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

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

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

7 (c) After a transfer on death deed is recorded or filed,
8 as applicable, it may not be revoked by a revocatory act on the
9 deed.

10 (d) This section shall not limit the effect of an inter
11 vivos transfer of the subject property.

12 § -12 **Effect of transfer on death deed during**
13 **transferor's life.** During a transferor's life, a transfer on
14 death deed shall not:

15 (1) Affect an interest or right in the subject property of
16 the transferor or any other owner, including the right
17 to transfer or encumber the subject property;

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

21 (3) Affect an interest or right in the subject property of
22 a secured or unsecured creditor or future creditor of



- 1 the transferor regardless of whether the creditor has
2 actual or constructive notice of the deed;
- 3 (4) Affect the transferor's or designated beneficiary's
4 eligibility for any form of public assistance;
- 5 (5) Create a legal or equitable interest in the subject
6 property in favor of the designated beneficiary; or
- 7 (6) Subject the subject property to claims or process of a
8 creditor of the designated beneficiary.

9 § -13 **Effect of transfer on death deed at transferor's**
10 **death.** (a) Except as otherwise provided in the transfer on
11 death deed, this section, or sections 560:2-202, 560:2-603,
12 560:2-702, 560:2-706, 560:2-707, 560:2-803, and 560:2-804, on
13 the death of the transferor, the following shall apply to
14 property that is the subject of a transfer on death deed and is
15 owned by the transferor at death:

- 16 (1) Subject to paragraph (2), the interest in the subject
17 property shall be transferred to the designated
18 beneficiary in accordance with the deed; provided
19 that, for property of which any portion is registered
20 in the land court pursuant to chapter 501, a petition
21 noting the death of the transferor and requesting that
22 a new certificate of title be issued in the name of



1 the designated beneficiary shall be filed and
2 processed with the land court before the interest in
3 the subject property is transferred;

4 (2) The interest of a designated beneficiary is contingent
5 on the designated beneficiary surviving the transferor
6 and the interest of a designated beneficiary that
7 fails to survive the transferor shall lapse;

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

11 (4) If the transferor has identified two or more
12 designated beneficiaries to receive concurrent
13 interests in the subject property, any share that
14 lapses or fails for any reason shall be transferred to
15 the other beneficiaries in proportion to the interest
16 of each in the remaining concurrently-held subject
17 property.

18 (b) Pursuant to the filing requirements of chapter 501 or
19 the recording provisions of 502, as applicable, a beneficiary
20 shall take the subject property subject to all conveyances,
21 encumbrances, assignments, contracts, mortgages, liens, and
22 other interests to which the property is subject at the



1 transferor's death. For purposes of this subsection and the
2 filing provisions of chapter 501 or the recording provisions of
3 chapter 502, the filing or recording of the transfer on death
4 deed is deemed to have occurred at the transferor's death.

5 (c) If a transferor is a joint owner and is survived by
6 one or more other joint owners, the subject property shall
7 belong to the surviving joint owner or owners with the right of
8 survivorship. If a transferor is a joint owner and is the last
9 surviving joint owner, the transfer on death deed shall be
10 effective.

11 (d) A transfer on death deed transfers the subject
12 property without covenant or warranty of title even if the
13 transfer on death deed contains a contrary provision.

14 § -14 **Disclaimer.** A beneficiary may disclaim all or
15 part of the beneficiary's interest as provided by chapter 526,
16 the Uniform Disclaimer of Property Interests Act.

17 § -15 **Liability for creditor claims and statutory**
18 **allowances.** (a) To the extent the transferor's probate estate
19 is insufficient to satisfy an allowed claim against the estate
20 or a statutory allowance to a surviving spouse or child, the
21 estate may enforce the liability against property transferred at
22 the transferor's death by a transfer on death deed.



1 (b) If more than one property is transferred by one or
2 more transfer on death deeds, the liability under subsection (a)
3 is apportioned among the properties in proportion to their
4 respective net values at the time of the transferor's death.

5 (c) A proceeding to enforce liability under this section
6 shall be commenced not later than eighteen months after the
7 transferor's death.

8 § -16 Uniformity of application and construction. In
9 applying and construing this chapter, consideration shall be
10 given to the need to promote uniformity of the law with respect
11 to its subject matter among the states that enact similar
12 uniform legislation.

13 § -17 Relation to Electronic Signatures in Global and
14 National Commerce Act. This chapter modifies, limits, and
15 supersedes the federal Electronic Signatures in Global and
16 National Commerce Act, P.L. 106-229, Title 15 United States Code
17 Chapter 96, but does not modify, limit, or supersede Title 15
18 United States Code Section 7001(c), or authorize electronic
19 delivery of any of the notices described in Title 15 U.S.C.
20 Section 7003(b)."

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



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

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

7 (2) The disclaimer of an interest in real property shall
8 be recorded in the bureau of conveyances or filed in
9 the office of the assistant registrar of the land
10 court, as applicable."

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

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



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2011.

4



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. Effective July 1, 2011. (SD1)

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

