

DATE: February 22, 2011  
TESTIMONY TO: SENATE COMMITTEE - WAYS AND MEANS

L A T E

HEARING DATE: February 24, 2011 - 9:00 AM  
HEARING PLACE: Conference Room 211, State Capitol

SUBMITTED BY: G.A. Rock - Hilo, Hawaii (808) 961-3515

MEASURE: **SB 105**

**RELATING TO UNIFORM REAL PROPERTY TRANSFER ON DEATH**

*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.*

**WHY THIS BILL SHOULD BE PASSED**

There are obvious and strong reasons for the passage of this bill in the 2011 Session:

- Simplification of the transfer of Real Property to intended heirs and beneficiaries
- Substantial benefits for all the citizens of Hawaii in saving time and costs
- Long-term cost savings to the State Judiciary by reducing need for Probate Court

**DISCUSSION**

According to legal publisher NOLO, laws that permit Transfer-on-Death Deeds for real estate have already been successfully enacted in thirteen states (Arkansas, Arizona, Colorado, Indiana, Kansas, Minnesota, Missouri, Montana, Nevada, New Mexico, Ohio, Oklahoma and Wisconsin).

Website Reference: <http://www.nolo.com/legal-encyclopedia/article-29544.html>

This bill will benefit all of the people of Hawaii. Currently, any Real Property in Hawaii owned by an individual must go through the "Probate Court" proceedings upon the death of the final living owner, regardless of whether or not a "legal will" exists naming beneficiary(s) for the property. Only property co-owned with surviving individual(s) or held in a Living Trust can successfully avoid costly probate proceedings.

Those who have experienced probate proceedings in Hawaii can tell you that this can be a very lengthy process (often over a year) and can be expensive (easily 5% of the value of the property). The decedent's estate/family/survivors must face these barriers before title to real property can be legally passed to intended beneficiaries or can even be sold. As a result, tens of thousands of individuals and families have sought alternatives such as listing other family members as co-owners on their real property deeds. A more complex alternative has been to transfer their properties into a Living Trust. While these strategies can legally avoid probate, they have shortcomings and involve extra costs, especially for Living Trusts. Further, adding co-owners to a deed and creating Living Trusts introduce additional complexities that must be considered and addressed by realtors, title companies, mortgage companies, banks, realtors, county property tax offices, estate executors, and other entities involved with real estate transfers, ownership issues, and taxing in Hawaii. There can also be estate tax consequences.

SB 105 simplifies the transfer of Real Property to intended beneficiary(s) immediately and without the delays and costs of "Probate Court" or even the need for a "legal will", simply by listing name(s) of the desired beneficiary(s) on the deed. Importantly, SB 105 also provides flexibility in allowing

owners of real property in Hawaii to subsequently remove or revise this beneficiary designation at any time prior to their death.

Interestingly, Hawaii law currently allows the immediate "transfer upon death" for two other major financial asset categories, without the need for a legal will or Probate Court. These other two important asset categories are:

- Bank Accounts via PoD – Payable on Death designation
- Registered Securities via ToD - Transfer on Death registration.

Real Property is the only other major asset where this flexibility and simplicity is missing and SB 105 will finally fix this discrepancy.

In addition to cost savings to surviving families/beneficiaries of the decedents through the avoidance of Probate Court, the government of the State of Hawaii will also enjoy long term cost savings because of the reduction in the need for its Probate Court services. This then will free up court resources which can then be reassigned to other areas of need.

In last year's 2010 Legislative Session, similar measures (SB 2799 & HB 2367) were introduced. Both passed initial readings with unanimous votes and all testimony received was favorable. SB 2799 crossed over to the House where it passed First Reading but was unexpectedly deferred in the House Judiciary Committee. Fortunately this bill adopting the *Uniform Real Property Transfer on Death Act* for Real Property within the state of Hawaii was reintroduced this year. Hopefully, it will pass in this session and be signed into law.

## **CONCLUSION**

All the people of Hawaii and the State Government's Judiciary will benefit from this bill. This is extremely important in these unprecedented, fiscally constrained times!

Please pass this bill.

Thank you.

Sincerely,  
G.A. Rock  
Hilo, HI 96720  
(808) 961-3515