

**As Introduced**

**131st General Assembly  
Regular Session  
2015-2016**

**S. B. No. 232**

**Senator Bacon**

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**A BILL**

To amend sections 5302.23 and 5302.24 of the 1  
Revised Code to amend the law related to 2  
transfer on death designation deeds and 3  
affidavits. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 5302.23 and 5302.24 of the 5  
Revised Code be amended to read as follows: 6

**Sec. 5302.23.** (A) Any affidavit containing language that 7  
shows a clear intent to designate a transfer on death 8  
beneficiary shall be liberally construed to do so. 9

(B) Real property or an interest in real property that is 10  
the subject of a transfer on death designation affidavit as 11  
provided in section 5302.22 of the Revised Code or as described 12  
in division (A) of this section has all of the following 13  
characteristics and ramifications: 14

(1) An interest of a deceased owner shall be transferred 15  
to the transfer on death beneficiaries who are identified in the 16  
affidavit by name and who survive the deceased owner or that are 17  
in existence on the date of the deceased owner's death. If there 18  
is a designation of more than one transfer on death beneficiary, 19

the beneficiaries shall take title to the interest in equal 20  
shares as tenants in common, unless the deceased owner has 21  
specifically designated other than equal shares or has 22  
designated that the beneficiaries take title as survivorship 23  
tenants, subject to division (B) (3) of this section. If a 24  
transfer on death beneficiary does not survive the deceased 25  
owner or is not in existence on the date of the deceased owner's 26  
death, and the deceased owner has designated one or more persons 27  
as contingent transfer on death beneficiaries as provided in 28  
division (B) (2) of this section, the designated contingent 29  
transfer on death beneficiaries shall take the same interest 30  
that would have passed to the transfer on death beneficiary had 31  
that transfer on death beneficiary survived the deceased owner 32  
or been in existence on the date of the deceased owner's death. 33  
If none of the designated transfer on death beneficiaries 34  
survives the deceased owner or is in existence on the date of 35  
the deceased owner's death and no contingent transfer on death 36  
beneficiaries have been designated, have survived the deceased 37  
owner, or are in existence on the date of death of the deceased 38  
owner, the interest of the deceased owner shall be distributed 39  
as part of the probate estate of the deceased owner of the 40  
interest. If there are two or more transfer on death 41  
beneficiaries and the deceased owner has designated that title 42  
to the interest in the real property be taken by those 43  
beneficiaries as survivorship tenants, no designated contingent 44  
transfer on death beneficiaries shall take title to the interest 45  
unless none of the transfer on death beneficiaries survives the 46  
deceased owner on the date of death of the deceased owner. 47

(2) A transfer on death designation affidavit may contain 48  
a designation of one or more persons as contingent transfer on 49  
death beneficiaries, who shall take the interest of the deceased 50

owner that would otherwise have passed to the transfer on death 51  
beneficiary if that named transfer on death beneficiary does not 52  
survive the deceased owner or is not in existence on the date of 53  
death of the deceased owner. Persons designated as contingent 54  
transfer on death beneficiaries shall be identified in the 55  
affidavit by name. 56

(3) Any transfer on death beneficiary or contingent 57  
transfer on death beneficiary may be a natural or legal person, 58  
including, but not limited to, a bank as trustee of a trust, 59  
except that if two or more transfer on death beneficiaries are 60  
designated as survivorship tenants, all of those beneficiaries 61  
shall be natural persons and if two or more contingent transfer 62  
on death beneficiaries are designated as survivorship tenants, 63  
all of those contingent beneficiaries shall be natural persons. 64  
A natural person who is designated a transfer on death 65  
beneficiary or contingent transfer on death beneficiary solely 66  
in that natural person's capacity as a trustee of a trust is not 67  
considered a natural person for purposes of designating the 68  
transfer on death beneficiaries or contingent transfer on death 69  
beneficiaries as survivorship tenants under division (B) (3) of 70  
this section. 71

(4) The designation of a transfer on death beneficiary has 72  
no effect on the present ownership of real property, and a 73  
person designated as a transfer on death beneficiary has no 74  
interest in the real property until the death of the owner of 75  
the interest. 76

(5) The designation in a transfer on death designation 77  
affidavit of any transfer on death beneficiary may be revoked or 78  
changed at any time, without the consent of that transfer on 79  
death beneficiary, by the owner of the interest, by the 80

surviving survivorship tenants of the interest, or by the 81  
remaining tenant by the entirety of the interest, by executing 82  
and recording, prior to the death of the owner of the interest, 83  
of the surviving survivorship tenants of the interest, or of the 84  
remaining tenant by the entirety of the interest, as the case 85  
may be, a new transfer on death designation affidavit pursuant 86  
to section 5302.22 of the Revised Code stating the revocation or 87  
change in that designation. The new transfer on death 88  
designation affidavit shall automatically supersede and revoke 89  
all prior recorded transfer on death designation affidavits with 90  
respect to the real property or the interest in real property 91  
identified in the new affidavit, provided that the prior 92  
recorded affidavit was executed before the later recorded 93  
affidavit. 94

(6) A fee simple title or any fractional interest in a fee 95  
simple title may be subjected to a transfer on death beneficiary 96  
designation. 97

(7) (a) A transfer on death beneficiary takes only the 98  
interest that the deceased owner or owners of the interest held 99  
on the date of death, subject to all encumbrances, reservations, 100  
and exceptions. 101

(b) If the owners hold title to the interest in a 102  
survivorship tenancy, the death of all except the last 103  
survivorship tenant automatically terminates and nullifies any 104  
transfer on death beneficiary designations made solely by the 105  
deceased survivorship tenant or tenants without joinder by the 106  
last surviving survivorship tenant. The termination or 107  
nullification of any transfer on death beneficiary designations 108  
under division (B) (7) (b) of this section is effective as of the 109  
date of death of a deceased survivorship tenant. No affirmative 110

act of revocation is required of the last surviving survivorship 111  
tenant for the termination or nullification of the transfer on 112  
death beneficiary designations to occur as described in division 113  
(B) (7) (b) of this section. If the last surviving survivorship 114  
tenant dies with no transfer on death beneficiary designation, 115  
the entire interest of that last surviving survivorship tenant 116  
shall be distributed as part of the tenant's probate estate. 117

(c) If the owners hold title to the interest in a tenancy 118  
by the entireties, the death of the first tenant by the 119  
entireties automatically terminates and nullifies any transfer 120  
on death beneficiary designations made solely by that deceased 121  
first tenant without joinder by the remaining tenant by the 122  
entireties. The termination or nullification of any transfer on 123  
death beneficiary designations under division (B) (7) (c) of this 124  
section is effective as of the date of death of the first tenant 125  
by the entireties. No affirmative act of revocation is required 126  
of the remaining tenant by the entireties for the termination or 127  
nullification of the transfer on death beneficiary designations 128  
to occur as described in division (B) (7) (c) of this section. If 129  
the remaining tenant by the entireties dies with no transfer on 130  
death beneficiary designation, the entire interest of that 131  
remaining tenant shall be distributed as part of the tenant's 132  
probate estate. 133

(8) No rights of any lienholder, including, but not 134  
limited to, any mortgagee, judgment creditor, or mechanic's lien 135  
holder, shall be affected by the designation of a transfer on 136  
death beneficiary pursuant to this section and section 5302.22 137  
of the Revised Code. If any lienholder takes action to enforce 138  
the lien, by foreclosure or otherwise through a court 139  
proceeding, it is not necessary to join any transfer on death 140  
beneficiary as a party defendant in the action unless the 141

transfer on death beneficiary has another interest in the real 142  
property. 143

(9) Any transfer on death of real property or of an 144  
interest in real property that results from a transfer on death 145  
designation affidavit designating a transfer on death 146  
beneficiary is not testamentary. That transfer on death shall 147  
supersede any attempted testate or intestate transfer of that 148  
real property or interest in real property. 149

(10) The execution and recording of a transfer on death 150  
designation affidavit shall be effective to terminate the 151  
designation of a transfer on death beneficiary in a transfer on 152  
death deed involving the same real property or interest in real 153  
property and recorded prior to the effective date of this 154  
section. 155

(11) The execution and recording of a transfer on death 156  
designation affidavit shall be effective to bar the vesting of 157  
any rights of dower in a subsequent spouse of the owner of the 158  
real property who executed that affidavit unless the affidavit 159  
is revoked or changed. 160

(12) If, after the execution and recording of a transfer 161  
on death designation affidavit under which the owner of the real 162  
property's spouse is designated the transfer on death 163  
beneficiary, the owner of the real property and such owner's 164  
spouse are divorced, obtain a dissolution of the marriage, or 165  
have the marriage annulled, then the designation of the owner's 166  
spouse as a transfer on death beneficiary on such instrument 167  
shall be terminated and the spouse shall be deemed to have 168  
predeceased the owner of the real property. 169

(C) If, after the execution and recording of a transfer on 170

death deed under which the owner of the real property's spouse 171  
is designated the transfer on death beneficiary, the owner of 172  
the real property and such owner's spouse are divorced, obtain a 173  
dissolution of the marriage, or have the marriage annulled, then 174  
the designation of the owner's spouse as a transfer on death 175  
beneficiary on such instrument shall be terminated and the 176  
spouse shall be deemed to have predeceased the owner of the real 177  
property. 178

**Sec. 5302.24.** ~~Sections~~ Except as otherwise provided in 179  
divisions (B) (12) and (C) of section 5302.23 of the Revised 180  
Code, sections 5302.22, 5302.222, and 5302.23 of the Revised 181  
Code do not affect any deed that was executed and recorded prior 182  
~~to the effective date of this section December 28, 2009,~~ or any 183  
transfer on death beneficiary designation made, pursuant to 184  
section 5302.22 of the Revised Code as it existed prior to ~~the~~ 185  
~~effective that date of this section.~~ If that deed or designation 186  
is valid on the day prior to ~~the effective that date of this~~ 187  
~~section,~~ the deed or designation continues to be valid on and 188  
after ~~the effective that date of this section.~~ A grantee of that 189  
deed need not execute a transfer on death designation affidavit 190  
that designates the same transfer on death beneficiary or 191  
beneficiaries as in the deed unless the grantee chooses to do 192  
so. 193

**Section 2.** That existing sections 5302.23 and 5302.24 of 194  
the Revised Code are hereby repealed. 195