

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

General Description:

This bill enacts the Uniform Real Property Transfer on Death Act.

Highlighted Provisions:

This bill:

- ▶ creates a new part in the Utah Uniform Probate Code entitled the Uniform Real Property Transfer on Death Act;
- ▶ defines terms;
- ▶ specifically applies only to deeds created by a person who dies on or after May 9, 2017;
- ▶ provides that the act is nonexclusive and does not affect any other method of transferring real property allowed under Utah law;
- ▶ makes clear that the transfer of property only occurs upon the transferor's death;
- ▶ provides that a transfer on death deed is revocable and nontestamentary; and
- ▶ requires that the transferor have the same capacity as that required to make a will at the time the deed is made.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

- 31 **75-6-401**, Utah Code Annotated 1953
- 32 **75-6-402**, Utah Code Annotated 1953
- 33 **75-6-403**, Utah Code Annotated 1953
- 34 **75-6-404**, Utah Code Annotated 1953
- 35 **75-6-405**, Utah Code Annotated 1953
- 36 **75-6-406**, Utah Code Annotated 1953
- 37 **75-6-407**, Utah Code Annotated 1953
- 38 **75-6-408**, Utah Code Annotated 1953
- 39 **75-6-409**, Utah Code Annotated 1953
- 40 **75-6-410**, Utah Code Annotated 1953
- 41 **75-6-411**, Utah Code Annotated 1953
- 42 **75-6-412**, Utah Code Annotated 1953
- 43 **75-6-413**, Utah Code Annotated 1953
- 44 **75-6-414**, Utah Code Annotated 1953
- 45 **75-6-415**, Utah Code Annotated 1953
- 46 **75-6-416**, Utah Code Annotated 1953
- 47 **75-6-417**, Utah Code Annotated 1953
- 48 **75-6-418**, Utah Code Annotated 1953
- 49 **75-6-419**, Utah Code Annotated 1953



51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **75-6-401** is enacted to read:

53 **CHAPTER 6. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

54 **75-6-401. Title.**

55 This chapter is known as the "Uniform Real Property Transfer on Death Act."

56 Section 2. Section **75-6-402** is enacted to read:

57 **75-6-402. Definitions.**

58 As used in this chapter:

59 (1) "Beneficiary" means a person who receives property under a transfer on death deed.

60 (2) "Class gift" means a transfer to a group of persons who are classified by their
61 relationship to one another or the transferor, and who are not individually named in the
62 transferring document.

63 (3) "Designated beneficiary" means a person designated to receive property in a
64 transfer on death deed.

65 (4) "Individual" means a natural person.

66 (5) "Joint owner" means an individual who owns property concurrently with one or
67 more other individuals with a right of survivorship. The term includes a joint tenant, owner of
68 community property with a right of survivorship, and tenant by the entirety. The term does not
69 include a tenant in common or owner of community property without a right of survivorship.

70 (6) "Natural person" means a human being.

71 (7) "Person" means an individual, corporation, business trust, estate, trust, partnership,
72 limited liability company, association, joint venture, public corporation, government or
73 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

74 (8) "Property" means an interest in real property located in this state that is transferable
75 on the death of the owner.

76 (9) "Transfer on death deed" means a deed authorized under this chapter.

77 (10) "Transferor" means an individual, in their individual capacity, who makes a
78 transfer on death deed.

79 Section 3. Section **75-6-403** is enacted to read:

80 **75-6-403. Applicability.**

81 This chapter applies to a transfer on death deed made before, on, or after May 9, 2017,
82 by a transferor dying on or after May 9, 2017.

83 Section 4. Section **75-6-404** is enacted to read:

84 **75-6-404. Nonexclusivity.**

85 This chapter does not affect any method of transferring property otherwise permitted
86 under the law of this state.

87 Section 5. Section **75-6-405** is enacted to read:

88 **75-6-405. Transfer on death deed authorized.**

89 (1) An individual may transfer property to one or more named beneficiaries effective at

90 the transferor's death by a transfer on death deed.

91 (2) A class gift may not be made by a transfer on death deed.

92 Section 6. Section **75-6-406** is enacted to read:

93 **75-6-406. Transfer on death deed revocable.**

94 A transfer on death deed is revocable even if the deed or another instrument contains a
95 contrary provision.

96 Section 7. Section **75-6-407** is enacted to read:

97 **75-6-407. Transfer on death deed nontestamentary.**

98 A transfer on death deed is nontestamentary.

99 Section 8. Section **75-6-408** is enacted to read:

100 **75-6-408. Capacity of transferor.**

101 The capacity required to make or revoke a transfer on death deed is the same as that
102 required to make a will.

103 Section 9. Section **75-6-409** is enacted to read:

104 **75-6-409. Requirements.**

105 A transfer on death deed shall:

106 (1) contain the essential elements and formalities of a properly recordable inter vivos
107 deed;

108 (2) state that the transfer to the designated beneficiary is to occur at the transferor's
109 death; and

110 (3) be recorded before the transferor's death in the public records in the county
111 recorder's office of the county where the property is located.

112 Section 10. Section **75-6-410** is enacted to read:

113 **75-6-410. Notice, delivery, acceptance, consideration not required.**

114 A transfer on death deed is effective without:

115 (1) notice or delivery to or acceptance by the designated beneficiary during the
116 transferor's life; or

117 (2) consideration.

118 Section 11. Section **75-6-411** is enacted to read:

119 **75-6-411. Revocation by instrument authorized -- Revocation by act not**
120 **permitted.**

121 (1) Subject to Subsection (2), an instrument is effective to revoke a recorded transfer
122 on death deed, or any part of it, only if the instrument:

123 (a) is one of the following:

124 (i) a transfer on death deed that revokes the deed or part of the deed expressly or by
125 inconsistency;

126 (ii) an instrument of revocation that expressly revokes the deed or part of the deed; or

127 (iii) an inter vivos deed that revokes the transfer on death deed or part of the deed
128 expressly or by inconsistency; and

129 (b) is acknowledged by the transferor after the acknowledgment of the deed being
130 revoked and recorded in the public records in the office of the county recorder where the deed
131 is recorded before the transferor's death.

132 (2) If a transfer on death deed is made by more than one transferor:

133 (a) revocation by a transferor does not affect the deed as to the interest of another
134 transferor; and

135 (b) a deed of joint owners is revoked only if it is revoked by all of the living joint
136 owners.

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

139 (4) This section does not limit the effect of an inter vivos transfer of the property.

140 (5) Property subject to a revocation of a transfer on death deed shall adeem and
141 nonademption statutes shall be inapplicable to the deed.

142 Section 12. Section **75-6-412** is enacted to read:

143 **75-6-412. Effect of transfer on death deed during transferor's life.**

144 During a transferor's life, a transfer on death deed does not:

145 (1) affect an interest or right of the transferor or any other owner, including the right to
146 transfer or encumber the property;

147 (2) affect an interest or right of a transferee, even if the transferee has actual or
148 constructive notice of the deed;

149 (3) affect an interest or right of the transferor's secured or unsecured creditors or future
150 creditors, even if they have actual or constructive notice of the deed;

151 (4) affect the transferor's or designated beneficiary's eligibility for any form of public

152 assistance;

- 153 (5) create a legal or equitable interest in favor of the designated beneficiary; or
- 154 (6) subject the property to claims or process of the designated beneficiary's creditors.

155 Section 13. Section **75-6-413** is enacted to read:

156 **75-6-413. Effect of transfer on death deed at transferor's death.**

157 (1) Except as otherwise provided in the transfer on death deed, Sections [75-2-205](#),
158 [75-2-702](#), [75-2-803](#), and [75-2-804](#) on the death of the transferor, the following rules apply to
159 property that is the subject of a transfer on death deed and owned by the transferor at death.

160 (a) Subject to Subsection (1)(b), the interests in the property are transferred to the
161 designated beneficiaries in accordance with the deed.

162 (b) The interest of a designated beneficiary is contingent on the designated beneficiary
163 surviving the transferor. Notwithstanding Section [75-2-706](#), the interest of a designated
164 beneficiary that fails to survive the transferor lapses.

165 (c) Subject to Subsection (1)(d), concurrent interests are transferred to the beneficiaries
166 in equal and undivided shares with no right of survivorship, unless otherwise specified in the
167 transfer on death deed.

168 (d) If the transferor has identified two or more designated beneficiaries to receive
169 concurrent interests in the property, the share of one that lapses or fails for any reason is
170 transferred to the other, or to the others in proportion to the interest of each in the remaining
171 part of the property held concurrently.

172 (2) Subject to Title 57, Chapter 3, Recording of Documents, a beneficiary takes the
173 property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens,
174 and other interests to which the property is subject at the transferor's death. For purposes of
175 this Subsection (2) and Title 57, Chapter 3, Recording of Documents, the recording of the
176 transfer on death deed is considered to have occurred at the transferor's death.

177 (3) If a transferor is a joint owner and is:

178 (a) survived by one or more other joint owners, the property that is the subject of a
179 transfer on death deed belongs to the surviving joint owner or owners with right of
180 survivorship; or

181 (b) the last surviving joint owner, the transfer on death deed is effective.

182 (4) A transfer on death deed transfers property without covenant or warranty of title

183 even if the deed contains a contrary provision.

184 (5) Following the death of the transferor, an affidavit in substantially the form found in
185 Section 57-1-5.1 shall be recorded in the office of the recorder of the county in which the
186 affected property is located. Each affidavit shall:

187 (a) contain a legal description of the real property that is affected;

188 (b) reference the entry number and the book and page of the previously recorded
189 transfer on death deed; and

190 (c) have attached as an exhibit, a copy of the death certificate or other document issued
191 by a governmental agency as described in Section 75-1-107 certifying the transferor's death.

192 Section 14. Section 75-6-414 is enacted to read:

193 **75-6-414. Disclaimer.**

194 A beneficiary may disclaim all or part of the beneficiary's interest.

195 Section 15. Section 75-6-415 is enacted to read:

196 **75-6-415. Liability for creditor claims and statutory allowances.**

197 (1) To the extent the transferor's probate estate is insufficient to satisfy an allowed
198 claim against the estate or a statutory allowance to a surviving spouse or child, the estate may
199 enforce the liability against property transferred at the transferor's death by a transfer on death
200 deed.

201 (2) If more than one property is transferred by one or more transfer on death deeds, the
202 liability under Subsection (1) is apportioned among the properties in proportion to their net
203 values at the transferor's death.

204 (3) A proceeding to enforce the liability under this section shall be commenced not
205 later than 18 months after the transferor's death.

206 Section 16. Section 75-6-416 is enacted to read:

207 **75-6-416. Form of transfer on death deed.**

208 The following form may be used to create a transfer on death deed. The other sections
209 of this chapter govern the effect of this or any other instrument used to create a transfer on
210 death deed:

211 (front of form)

212 REVOCABLE TRANSFER ON DEATH DEED FORM

213 NOTICE TO OWNER

214 You should carefully read all information on the other side of this form. You May Want
215 to Consult a Lawyer Before Using This Form.

216 This form must be recorded before your death, or it will not be effective. The
217 beneficiary must be a named person.

218 IDENTIFYING INFORMATION

219 Owner or Owners Making This Deed:

220 _____

221 Printed name Mailing address

222 _____

223 Printed name Mailing address

224 Legal description of the property:

225 _____

226 PRIMARY BENEFICIARY

227 I designate the following beneficiary if the beneficiary survives me:

228 _____

229 Printed name Mailing address, if available

230 ALTERNATE BENEFICIARY – Optional

231 If my primary beneficiary does not survive me, I designate the following alternate
232 beneficiary if that beneficiary survives me:

233 _____

234 Printed name Mailing address, if available

235 TRANSFER ON DEATH

236 At my death, I transfer my interest in the described property to the beneficiaries as
237 designated above.

238 Before my death, I have the right to revoke this deed.

239 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

240 _____ [(SEAL)] _____

241 Signature Date

242 _____ [(SEAL)] _____

243 Signature Date

244 ACKNOWLEDGMENT

245 (insert acknowledgment for deed here)

246 (back of form)

247 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

248 Q. What does the Transfer on Death (TOD) deed do?

249 A. When you die, this deed transfers the described property, subject to any liens or
250 mortgages (or other encumbrances) on the property at your death. Probate is not required. The
251 TOD deed has no effect until you die. You can revoke it at any time. You are also free to
252 transfer the property to someone else during your lifetime. If you do not own any interest in the
253 property when you die, this deed will have no effect.

254 Q. How do I make a TOD deed?

255 A. Complete this form. Have it acknowledged before a notary public or other individual
256 authorized by law to take acknowledgments. Record the form in each county where any part of
257 the property is located. The form has no effect unless it is acknowledged and recorded before
258 your death.

259 Q. Is the "legal description" of the property necessary?

260 A. Yes.

261 Q. How do I find the "legal description" of the property?

262 A. This information may be on the deed you received when you became an owner of the
263 property. This information may also be available in the office of the county recorder for the
264 county where the property is located. If you are not absolutely sure, consult a lawyer.

265 Q. Can I change my mind before I record the TOD deed?

266 A. Yes. If you have not yet recorded the deed and want to change your mind, simply
267 tear up or otherwise destroy the deed.

268 Q. How do I "record" the TOD deed?

269 A. Take the completed and acknowledged form to the office of the county recorder of
270 the county where the property is located. Follow the instructions given by the county recorder
271 to make the form part of the official property records. If the property is in more than one
272 county, you should record the deed in each county.

273 Q. Can I later revoke the TOD deed if I change my mind?

274 A. Yes. The TOD deed is revocable. No one, including the beneficiaries, can prevent
275 you from revoking the deed.

276 Q. How do I revoke the TOD deed after it is recorded?

277 A. There are three ways to revoke a recorded TOD deed: (1) Complete and
278 acknowledge a revocation form, and record it in each county where the property is located. (2)
279 Complete and acknowledge a new TOD deed that disposes of the same property, and record it
280 in each county where the property is located. (3) Transfer the property to someone else during
281 your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the
282 TOD deed by will.

283 Q. I am being pressured to complete this form. What should I do?

284 A. Do not complete this form under pressure. Seek help from a trusted family member,
285 a friend, or a lawyer.

286 Q. Do I need to tell the beneficiaries about the TOD deed?

287 A. No, but it is recommended. Secrecy can cause later complications and might make it
288 easier for others to commit fraud.

289 Q. If I sign a TOD deed and designate my two children as beneficiaries, and one of
290 them dies before me, does the interest of my child that dies before me pass to his or her
291 children?

292 A. No. Everything will go to your surviving child unless you record a new transfer on
293 death deed to state otherwise. If you have questions regarding how to word a new transfer on
294 death deed, you are encouraged to consult a lawyer.

295 Q. I have other questions about this form. What should I do?

296 A. This form is designed to fit some but not all situations. If you have other questions,
297 you are encouraged to consult a lawyer.

298 Section 17. Section **75-6-417** is enacted to read:

299 **75-6-417. Optional form of revocation.**

300 The following form may be used to create an instrument of revocation under this
301 chapter. The other sections of this chapter govern the effect of this or any other instrument used
302 to revoke a transfer on death deed.

303 (front of form)

304 FULL REVOCATION OF TRANSFER ON DEATH DEED

305 NOTICE TO OWNER

306 This revocation must be recorded before you die or it will not be effective. This

307 revocation is effective only as to the interests in the property of owners who sign this
308 revocation.

309 IDENTIFYING INFORMATION

310 Owner or Owners of Property Making This Revocation:

311 _____
312 Printed name Mailing address

313 _____
314 Printed name Mailing address

315 Legal description of the property:
316 _____

317 REVOCATION

318 I revoke all my previous transfers of this property by transfer on death deed.

319 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

320 _____ [(SEAL)]

321 Signature Date

322 _____ [(SEAL)]

323 Signature Date

324 ACKNOWLEDGMENT

325 (insert acknowledgment here)

326 (back of form)

327 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

328 Q. How do I use this form to revoke a Transfer on Death (TOD) deed?

329 A. Complete this form. Have it acknowledged before a notary public or other
330 individual authorized to take acknowledgments. Record the form in the public records in the
331 office of the county recorder of each county where the property is located. The form must be
332 acknowledged and recorded before your death or it has no effect.

333 Q. How do I find the "legal description" of the property?

334 A. This information may be on the TOD deed. It may also be available in the office of
335 the county recorder for the county where the property is located. If you are not absolutely sure,
336 consult a lawyer.

337 Q. How do I "record" the form?

338 A. Take the completed and acknowledged form to the office of the county recorder of
339 the county where the property is located. Follow the instructions given by the county recorder
340 to make the form part of the official property records. If the property is located in more than
341 one county, you should record the form in each of those counties.

342 Q. I am being pressured to complete this form. What should I do?

343 A. Do not complete this form under pressure. Seek help from a trusted family member,
344 a friend, or a lawyer.

345 Q. Can this form be used for a partial revocation of a previously filed TOD deed?

346 A. No. This form is to be used for full revocation of a deed. In the case of a partial
347 revocation, a new TOD deed must be filed.

348 Q. I have other questions about this form. What should I do?

349 A. This form is designed to fit some but not all situations. If you have other questions,
350 consult a lawyer.

351 Section 18. Section **75-6-418** is enacted to read:

352 **75-6-418. Uniformity of application and construction.**

353 In applying and construing this uniform act, consideration must be given to the need to
354 promote uniformity of the law with respect to its subject matter among the states that enact it.

355 Section 19. Section **75-6-419** is enacted to read:

356 **75-6-419. Relation to Electronic Signatures in Global and National Commerce**
357 **Act.**

358 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
359 Global and National Commerce Act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit,
360 or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery
361 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).