

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ creates a new part in the 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 11, 2010;
- ▶ 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.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 **75-6-401**, Utah Code Annotated 1953
- 31 **75-6-402**, Utah Code Annotated 1953
- 32 **75-6-403**, Utah Code Annotated 1953
- 33 **75-6-404**, Utah Code Annotated 1953
- 34 **75-6-405**, Utah Code Annotated 1953
- 35 **75-6-406**, Utah Code Annotated 1953
- 36 **75-6-407**, Utah Code Annotated 1953
- 37 **75-6-408**, Utah Code Annotated 1953
- 38 **75-6-409**, Utah Code Annotated 1953
- 39 **75-6-410**, Utah Code Annotated 1953
- 40 **75-6-411**, Utah Code Annotated 1953
- 41 **75-6-412**, Utah Code Annotated 1953
- 42 **75-6-413**, Utah Code Annotated 1953
- 43 **75-6-414**, Utah Code Annotated 1953
- 44 **75-6-415**, Utah Code Annotated 1953
- 45 **75-6-416**, Utah Code Annotated 1953
- 46 **75-6-417**, Utah Code Annotated 1953
- 47 **75-6-418**, Utah Code Annotated 1953
- 48 **75-6-419**, Utah Code Annotated 1953



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

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

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

53 **75-6-401. Title.**

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

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

56 **75-6-402. Definitions.**

57 As used in this chapter:

- 58 (1) "Beneficiary" means a person that receives property under a transfer on death deed.

59 (2) "Designated beneficiary" means a person designated to receive property in a
60 transfer on death deed.

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

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

68 (5) "Property" means an interest in real property located in this state which is
69 transferable on the death of the owner.

70 (6) "Transfer on death deed" means a deed authorized under this chapter.

71 (7) "Transferor" means an individual who makes a transfer on death deed.

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

73 **75-6-403. Applicability.**

74 This chapter applies to a transfer on death deed made before, on, or after May 11, 2010
75 by a transferor dying on or after May 11, 2010.

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

77 **75-6-404. Nonexclusivity.**

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

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

81 **75-6-405. Transfer on death deed authorized.**

82 An individual may transfer property to one or more beneficiaries effective at the
83 transferor's death by a transfer on death deed.

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

85 **75-6-406. Transfer on death deed revocable.**

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

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

89 **75-6-407. Transfer on death deed nontestamentary.**

90 A transfer on death deed is nontestamentary.

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

92 **75-6-408. Capacity of transferor.**

93 The capacity required to make or revoke a transfer on death deed is the same as the
94 capacity required to make a will.

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

96 **75-6-409. Requirements.**

97 A transfer on death deed shall:

98 (1) in addition to the requirement provided in Subsection (2), contain the essential
99 elements and formalities of a properly recordable inter vivos deed;

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

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

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

105 **75-6-410. Notice, delivery, acceptance, consideration not required.**

106 A transfer on death deed is effective without:

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

109 (2) consideration.

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

111 **75-6-411. Revocation by instrument authorized -- Revocation by act not**
112 **permitted.**

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

115 (a) is:

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

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

119 (iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the
120 deed; and

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

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

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

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

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

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

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

133 **75-6-412. Effect of transfer on death deed during transferor's life.**

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

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

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

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

141 (4) affect the transferor's or designated beneficiary's eligibility for any form of public
142 assistance;

143 (5) create a legal or equitable interest in favor of the designated beneficiary; or

144 (6) subject the property to claims or process of the designated beneficiary's creditors.

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

146 **75-6-413. Effect of transfer on death deed at transferor's death.**

147 (1) Except as otherwise provided in the transfer on death deed, Sections 75-2-205,
148 75-2-802, and 75-2-803, on the death of the transferor, the following rules apply to property
149 that is the subject of a transfer on death deed and owned by the transferor at death.

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

152 (b) The interest of a designated beneficiary is contingent on the designated beneficiary
153 surviving the transferor. The interest of a designated beneficiary that fails to survive the
154 transferor lapses.

155 (c) Subject to Subsection (1)(d), concurrent interests are transferred to the beneficiaries
156 in equal and undivided shares with no right of survivorship.

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

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

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

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

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

171 (4) A transfer on death deed transfers property without covenant or warranty of title
172 even if the deed contains a contrary provision.

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

174 **75-6-414. Disclaimer.**

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

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

177 **75-6-415. Liability for creditor claims and statutory allowances.**

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

182 (2) If more than one property is transferred by one or more transfer on death deeds, the

183 liability under Subsection (1) is apportioned among the properties in proportion to their net
184 values at the transferor's death.

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

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

188 **75-6-416. Form of transfer on death deed.**

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

192 (front of form)

193 REVOCABLE TRANSFER ON DEATH DEED FORM

194 NOTICE TO OWNER

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

197 This form must be recorded before your death, or it will not be effective.

198 IDENTIFYING INFORMATION

199 Owner or Owners Making This Deed:

200 _____

201 Printed name Mailing address

202 _____

203 Printed name Mailing address

204 Legal description of the property:

205 _____

206 PRIMARY BENEFICIARY

207 I designate the following beneficiary if the beneficiary survives me.

208 _____

209 Printed name Mailing address, if available

210 ALTERNATE BENEFICIARY – Optional

211 If my primary beneficiary does not survive me, I designate the following alternate
212 beneficiary if that beneficiary survives me.

213 _____

214 Printed name Mailing address, if available

215 TRANSFER ON DEATH

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

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

219 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

220 _____ [(SEAL)] _____

221 Signature Date

222 _____ [(SEAL)] _____

223 Signature Date

224 ACKNOWLEDGMENT

225 (insert acknowledgment for deed here)

226 (back of form)

227 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

234 Q. How do I make a TOD deed?

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

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

240 A. Yes.

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

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

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

246 A. Yes. If you have not yet recorded the deed and want to change your mind, simply
247 tear up the deed.

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

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

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

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

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

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

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

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

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

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

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

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

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

273 **75-6-417. Optional form of revocation.**

274 The following form may be used to create an instrument of revocation under this
275 chapter. The other sections of this chapter govern the effect of this or any other instrument used

276 to revoke a transfer on death deed.

277 (front of form)

278 REVOCATION OF TRANSFER ON DEATH DEED

279 NOTICE TO OWNER

280 This revocation must be recorded before you die or it will not be effective. This
281 revocation is effective only as to the interests in the property of owners who sign this
282 revocation.

283 IDENTIFYING INFORMATION

284 Owner or Owners of Property Making This Revocation:

285 _____

286 Printed name Mailing address

287 _____

288 Printed name Mailing address

289 Legal description of the property:

290 _____

291 REVOCATION

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

293 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

294 _____ [(SEAL)] _____

295 Signature Date

296 _____ [(SEAL)] _____

297 Signature Date

298 ACKNOWLEDGMENT

299 (insert acknowledgment here)

300 (back of form)

301 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

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

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

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

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

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

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

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

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

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

323 **75-6-418. Uniformity of application and construction.**

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

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

327 **75-6-419. Relation to electronic signatures in global and National Commerce Act.**

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

Legislative Review Note
as of 11-6-09 7:57 AM

Office of Legislative Research and General Counsel

H.B. 224 - Uniform Real Property Transfer on Death Act

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
