

**UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

2017 GENERAL SESSION

STATE OF UTAH

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**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 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:**

None

**Utah Code Sections Affected:**

ENACTS:

- 75-6-401**, Utah Code Annotated 1953
- 75-6-402**, Utah Code Annotated 1953
- 75-6-403**, Utah Code Annotated 1953
- 75-6-404**, Utah Code Annotated 1953
- 75-6-405**, Utah Code Annotated 1953
- 75-6-406**, Utah Code Annotated 1953

33            **75-6-407**, Utah Code Annotated 1953  
34            **75-6-408**, Utah Code Annotated 1953  
35            **75-6-409**, Utah Code Annotated 1953  
36            **75-6-410**, Utah Code Annotated 1953  
37            **75-6-411**, Utah Code Annotated 1953  
38            **75-6-412**, Utah Code Annotated 1953  
39            **75-6-413**, Utah Code Annotated 1953  
40            **75-6-414**, Utah Code Annotated 1953  
41            **75-6-415**, Utah Code Annotated 1953  
42            **75-6-416**, Utah Code Annotated 1953  
43            **75-6-417**, Utah Code Annotated 1953  
44            **75-6-418**, Utah Code Annotated 1953  
45            **75-6-419**, Utah Code Annotated 1953

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

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

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

50            **75-6-401. Title.**

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

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

53            **75-6-402. Definitions.**

54            As used in this chapter:

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

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

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

62            (4) "Person" means an individual, corporation, business trust, estate, trust, partnership,  
63 limited liability company, association, joint venture, public corporation, government or

64 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

65 (5) "Property" means an interest in real property located in this state that is transferable  
66 on the death of the owner.

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

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

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

70 **75-6-403. Applicability.**

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

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

74 **75-6-404. Nonexclusivity.**

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

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

78 **75-6-405. Transfer on death deed authorized.**

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

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

82 **75-6-406. Transfer on death deed revocable.**

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

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

86 **75-6-407. Transfer on death deed nontestamentary.**

87 A transfer on death deed is nontestamentary.

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

89 **75-6-408. Capacity of transferor.**

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

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

93 **75-6-409. Requirements.**

94 A transfer on death deed shall:

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

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

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

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

102 **75-6-410. Notice, delivery, acceptance, consideration not required.**

103 A transfer on death deed is effective without:

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

106 (2) consideration.

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

108 **75-6-411. Revocation by instrument authorized -- Revocation by act not**  
109 **permitted.**

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

112 (a) is:

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

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

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

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

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

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

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

125 owners.

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

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

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

130 **75-6-412. Effect of transfer on death deed during transferor's life.**

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

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

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

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

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

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

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

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

143 **75-6-413. Effect of transfer on death deed at transferor's death.**

144 (1) Except as otherwise provided in the transfer on death deed, Sections 75-2-205,  
145 75-2-802, and 75-2-803, on the death of the transferor, the following rules apply to property  
146 that is the subject of a transfer on death deed and owned by the transferor at death.

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

149 (b) The interest of a designated beneficiary is contingent on the designated beneficiary  
150 surviving the transferor. The interest of a designated beneficiary that fails to survive the  
151 transferor lapses.

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

154 (d) If the transferor has identified two or more designated beneficiaries to receive  
155 concurrent interests in the property, the share of one that lapses or fails for any reason is

156 transferred to the other, or to the others in proportion to the interest of each in the remaining  
157 part of the property held concurrently.

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

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

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

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

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

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

171 **75-6-414. Disclaimer.**

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

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

174 **75-6-415. Liability for creditor claims and statutory allowances.**

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

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

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

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

185 **75-6-416. Form of transfer on death deed.**

186 The following form may be used to create a transfer on death deed. The other sections

187 of this chapter govern the effect of this or any other instrument used to create a transfer on  
188 death deed:

189 (front of form)

190 REVOCABLE TRANSFER ON DEATH DEED FORM

191 NOTICE TO OWNER

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

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

195 IDENTIFYING INFORMATION

196 Owner or Owners Making This Deed:

197 \_\_\_\_\_

198 Printed name Mailing address

199 \_\_\_\_\_

200 Printed name Mailing address

201 Legal description of the property:

202 \_\_\_\_\_

203 PRIMARY BENEFICIARY

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

205 \_\_\_\_\_

206 Printed name Mailing address, if available

207 ALTERNATE BENEFICIARY – Optional

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

210 \_\_\_\_\_

211 Printed name Mailing address, if available

212 TRANSFER ON DEATH

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

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

216 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

217 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_



249 county, you should record the deed in each county.

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

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

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

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

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

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

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

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

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

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

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

270 **75-6-417. Optional form of revocation.**

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

274 (front of form)

275 REVOCATION OF TRANSFER ON DEATH DEED

276 NOTICE TO OWNER

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

280 IDENTIFYING INFORMATION

281 Owner or Owners of Property Making This Revocation:

282 \_\_\_\_\_

283 Printed name Mailing address

284 \_\_\_\_\_

285 Printed name Mailing address

286 Legal description of the property:

287 \_\_\_\_\_

288 REVOCATION

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

290 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

291 \_\_\_\_\_ [(SEAL)]

292 Signature Date

293 \_\_\_\_\_ [(SEAL)]

294 Signature Date

295 ACKNOWLEDGMENT

296 (insert acknowledgment here)

297 (back of form)

298 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

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

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

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

309 A. Take the completed and acknowledged form to the office of the county recorder of  
310 the county where the property is located. Follow the instructions given by the county recorder

311 to make the form part of the official property records. If the property is located in more than  
312 one county, you should record the form in each of those counties.

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

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

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

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

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

320 **75-6-418. Uniformity of application and construction.**

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

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

324 **75-6-419. Relation to Electronic Signatures in Global and National Commerce**

325 **Act.**

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