

JAN 21 2011

A BILL FOR AN ACT

RELATING TO UNIFORM REAL PROPERTY TRANSFER ON DEATH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

6 § -1 **Short title.** This Act may be cited as the Uniform
7 Real Property Transfer on Death Act.

8 § -2 **Definitions.** As used in this chapter:

9 "Beneficiary" means a person that receives property under a
10 transfer on death deed.

11 "Designated beneficiary" means a person designated in a
12 transfer on death deed to receive property.

13 "Joint owner" means an individual who owns property
14 concurrently with one or more other individuals with a right of
15 survivorship. The term includes a joint tenant and a tenant by
16 the entirety. The term does not include a tenant in common.

17 "Person" means an individual, corporation, business trust,
18 estate, trust, partnership, limited liability company,



1 association, joint venture, public corporation, government or
2 governmental subdivision, agency, or instrumentality, or any
3 other legal or commercial entity.

4 "Property" means an interest that is transferable on the
5 death of the owner in real property located in this State.

6 "Subject property" means real property or an interest in
7 real property that is subject to a transfer on death deed.

8 "Transfer on death deed" means a deed authorized under this
9 chapter.

10 "Transferor" means an individual who executes a transfer on
11 death deed.

12 § -3 **Applicability.** This chapter applies to a transfer
13 on death deed executed before, on, or after July 1, 2011, by a
14 transferor who dies on or after July 1, 2011.

15 § -4 **Nonexclusivity.** This chapter does not affect any
16 method of transferring property otherwise permitted under the
17 laws of this State.

18 § -5 **Transfer on death deed authorized.** An individual
19 may transfer property, effective at the transferor's death, to
20 one or more beneficiaries by a transfer on death deed; provided
21 that, with respect to property of which any portion is
22 registered in the land court, transfer is subject to the



1 requirement in section -13(a)(1) regarding submittal of a
2 petition to the land court.

3 § -6 **Transfer on death deed revocable.** A transfer on
4 death deed is revocable even if the deed or another instrument
5 contains a contrary provision.

6 § -7 **Transfer on death deed nontestamentary.** A transfer
7 on death deed is nontestamentary.

8 § -8 **Capacity of transferor.** The capacity required to
9 execute or revoke a transfer on death deed is the same as the
10 capacity required to execute a will.

11 § -9 **Requirements.** A transfer on death deed:

12 (1) Except as otherwise provided in paragraph (2), shall
13 contain the essential elements and formalities of a
14 properly recordable inter vivos deed;

15 (2) Shall state that the transfer to the beneficiary is to
16 occur at the transferor's death; and

17 (3) Shall be recorded with the bureau of conveyances or
18 filed in the office of the assistant registrar of the
19 land court, as applicable, before the transferor's
20 death.

21 § -10 **Notice, delivery, acceptance, consideration not**
22 **required.** A transfer on death deed is effective without:



1 (1) Notice or delivery to or acceptance by the designated
2 beneficiary during the transferor's life; or

3 (2) Consideration.

4 § -11 **Revocation by instrument authorized; revocation by**
5 **act not permitted.** (a) Subject to subsection (b), an
6 instrument is effective to revoke a recorded or filed transfer
7 on death deed, or any part thereof, only if the instrument:

8 (1) Is:

9 (A) A subsequently recorded or filed transfer on
10 death deed that revokes the recorded or filed
11 transfer on death deed or a part of the deed
12 either expressly or because of inconsistency;

13 (B) An instrument of revocation that expressly
14 revokes all or a part of the recorded or filed
15 transfer on death deed; or

16 (C) An inter vivos deed that expressly revokes all or
17 a part of the transfer on death deed; and

18 (2) Is acknowledged by the transferor after the
19 acknowledgement of the transfer on death deed being
20 revoked and is recorded in the bureau of conveyances
21 or filed in the office of the assistant registrar of



1 the land court, as applicable, before the transferor's
2 death.

3 (b) If a transfer on death deed is executed by more than
4 one transferor:

5 (1) Revocation by one transferor does not affect the deed
6 as to the interest of another transferor; and

7 (2) A deed executed by joint owners is revoked only if it
8 is revoked by all living joint owners.

9 (c) After a transfer on death deed is recorded or filed,
10 as applicable, it may not be revoked by a revocatory act on the
11 deed.

12 (d) This section does not limit the effect on an inter
13 vivos transfer of the subject property.

14 § -12 **Effect of transfer on death deed during**
15 **transferor's life.** During a transferor's life, a transfer on
16 death deed shall not:

17 (1) Affect an interest or right in the subject property of
18 the transferor or any other owner, including the right
19 to transfer or encumber the subject property;

20 (2) Affect an interest or right in the subject property of
21 a transferee, regardless of whether the transferee has
22 actual or constructive notice of the deed;



- 1 (3) Affect an interest or right in the subject property of
- 2 a secured or unsecured creditor or future creditor of
- 3 the transferor regardless of whether the creditor has
- 4 actual or constructive notice of the deed;
- 5 (4) Affect the transferor's or designated beneficiary's
- 6 eligibility for any form of public assistance;
- 7 (5) Create a legal or equitable interest in the subject
- 8 property in favor of the designated beneficiary; or
- 9 (6) Subject the subject property to claims or process of a
- 10 creditor of the designated beneficiary.

11 § -13 **Effect of transfer on death deed at transferor's**

12 **death.** (a) Except as otherwise provided in the transfer on
13 death deed, this section, or sections 560:2-202, 560:2-603,
14 560:2-702, 560:2-706, 560:2-707, 560:2-803, and 560:2-804, on
15 the death of the transferor, the following rules apply to the
16 property that is the subject of a transfer on death deed and is
17 owned by the transferor at death:

- 18 (1) Subject to paragraph (2), the interest in the subject
- 19 property is transferred to the designated beneficiary
- 20 in accordance with the deed; provided that, for
- 21 property of which any portion is registered in the
- 22 land court pursuant to chapter 501, a petition to note



1 the death of the transferor and requesting that a new
2 certificate of title be issued in the name of the
3 designated beneficiary must be filed and processed
4 with the land court before the interest in the subject
5 property is transferred;

6 (2) The interest of a designated beneficiary is contingent
7 on the designated beneficiary surviving the
8 transferor. The interest of a designated beneficiary
9 that fails to survive the transferor lapses;

10 (3) Subject to paragraph (4), concurrent interests are
11 transferred to the beneficiaries in equal and
12 undivided shares with no right of survivorship; and

13 (4) If the transferor has identified two or more
14 designated beneficiaries to receive concurrent
15 interests in the subject property, any share that
16 lapses or fails for any reason is transferred to the
17 other beneficiaries in proportion to the interest of
18 each in the remaining concurrently-held subject
19 property.

20 (b) Pursuant to the filing requirements of chapter 501 or
21 the recording provisions of 502, as applicable, a beneficiary
22 takes the subject property subject to all conveyances,



1 encumbrances, assignments, contracts, mortgages, liens, and
2 other interests to which the property is subject at the
3 transferor's death. For purposes of this subsection and the
4 filing provisions of chapter 501 or the recording provisions of
5 chapter 502, the filing or recording of the transfer on death
6 deed is deemed to have occurred at the transferor's death.

7 (c) If a transferor is a joint owner and is survived by
8 one or more other joint owners, the subject property belongs to
9 the surviving joint owner or owners with the right of
10 survivorship. If a transferor is a joint owner and is the last
11 surviving joint owner, the transfer on death deed is effective.

12 (d) A transfer on death deed transfers the subject
13 property without covenant or warranty of title even if the
14 transfer on death deed contains a contrary provision.

15 § -14 **Disclaimer.** A beneficiary may disclaim all or
16 part of the beneficiary's interest as provided by chapter 526,
17 the Uniform Disclaimer of Property Interests Act.

18 § -15 **Liability for creditor claims and statutory**
19 **allowances.** A beneficiary of a transfer on death deed is liable
20 for an allowed claim against the transferor's probate estate and
21 statutory allowances to a surviving spouse and descendants to
22 the extent provided in section 560:6-102.



1 § -16 **Uniformity of application and construction.** In
2 applying and construing this chapter, consideration shall be
3 given to the need to promote uniformity of the law with respect
4 to its subject matter among the states that enact similar
5 uniform legislation.

6 § -17 **Relation to Electronic Signatures in Global and**
7 **National Commerce Act.** This chapter modifies, limits, and
8 supersedes the federal Electronic Signatures in Global and
9 National Commerce Act, P.L. 106-229, codified at title 15 U.S.C.
10 chapter 96, but does not modify, limit, or supersede title 15
11 U.S.C. section 7001(c), or authorize electronic delivery of any
12 of the notices described in title 15 U.S.C. section 7003(b)."

13 SECTION 2. Section 526-12, Hawaii Revised Statutes, is
14 amended by amending subsection (g) to read as follows:

15 "(g) In the case of an interest created by a beneficiary
16 designation made after [~~the time~~] the designation becomes
17 irrevocable[~~, -a~~]:

18 (1) The disclaimer of an interest in personal property
19 [~~must~~] shall be delivered to the person obligated to
20 distribute the interest[~~-~~]; and

21 (2) The disclaimer of an interest in real property shall
22 be recorded in the bureau of conveyances or filed in



1 the office of the assistant registrar of the land
2 court, as applicable."

3 SECTION 3. Section 526-15, Hawaii Revised Statutes, is
4 amended to read as follows:

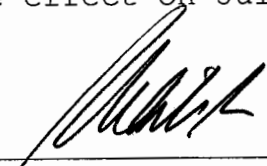
5 "~~§~~**526-15**~~§~~ **Recording of disclaimer.** If an instrument
6 transferring an interest in or power over property subject to a
7 disclaimer is required or permitted by law to be filed,
8 recorded, or registered, the disclaimer may be so filed,
9 recorded, or registered. ~~[Failure]~~ Except as otherwise provided
10 in section 526-12(g), failure to file~~§~~ or record~~§~~ or
11 register] the disclaimer does not affect its validity as between
12 the disclaimant and persons to whom the property interest or
13 power passes by reason of the disclaimer."

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2011.

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Report Title:

Real Property; Probate

Description:

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

