

---

---

# 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 individuals with a right of  
15 survivorship. The term includes a joint tenant and a tenant by  
16 the entirety but 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 in real property located in  
5 this State that is transferable on the death of the owner.

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 at any time by a transferor who dies on  
14 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 shall be effective without



1 notice or delivery to or acceptance by the designated  
2 beneficiary during the transferor's life, and without  
3 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 all or any part of a recorded  
7 or filed transfer on death deed only if the instrument is  
8 acknowledged by the transferor after the acknowledgement of the  
9 transfer on death deed being revoked and is recorded in the  
10 bureau of conveyances or filed in the office of the assistant  
11 registrar of the land court, as applicable, before the  
12 transferor's death and is:

- 13       (1) A subsequently recorded or filed transfer on death  
14 deed that revokes all or a part of the recorded or  
15 filed transfer on death deed either expressly or  
16 because of inconsistency;
- 17       (2) An instrument of revocation that expressly revokes all  
18 or a part of the recorded or filed transfer on death  
19 deed; or
- 20       (3) An inter vivos deed that expressly revokes all or a  
21 part of the transfer on death deed.



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

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

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

7 (c) After a transfer on death deed is recorded or filed,  
8 as applicable, it may not be revoked by a revocatory act on the  
9 deed. For purposes of this subsection, "revocatory act"  
10 includes burning, tearing, canceling, obliterating, or  
11 destroying the transfer on death deed or any part of it.

12 (d) This section shall not limit the effect of 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 shall apply to the  
16 subject property owned by the transferor at death:

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



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

5 (2) The interest of a designated beneficiary is contingent  
6 on the designated beneficiary surviving the transferor  
7 and the interest of a designated beneficiary that  
8 fails to survive the transferor shall lapse;

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

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

19 (b) Pursuant to the filing requirements of chapter 501 or  
20 the recording provisions of 502, as applicable, a beneficiary  
21 shall take the subject property subject to all conveyances,  
22 encumbrances, assignments, contracts, mortgages, liens, and



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

6 (c) If a transferor is a joint owner and is survived by  
7 one or more other joint owners, the subject property shall  
8 belong to the surviving joint owner or owners with the right of  
9 survivorship and the transfer on death deed shall have no  
10 effect. If a transferor is a joint owner and is the last  
11 surviving joint owner, the transfer on death deed shall be  
12 effective.

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

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

19 **§ -15 Liability for creditor claims and statutory**  
20 **allowances.** (a) To the extent the transferor's probate estate  
21 is insufficient to satisfy an allowed claim against the estate  
22 or a statutory allowance to a surviving spouse or child, the





1 estate may enforce the liability against the subject property  
2 transferred at the transferor's death by a transfer on death  
3 deed.

4 (b) If more than one property is transferred by one or  
5 more transfer on death deeds, the liability under subsection (a)  
6 shall be apportioned among the subject properties in proportion  
7 to their respective net values at the time of the transferor's  
8 death.

9 (c) A proceeding to enforce liability under this section  
10 shall be commenced not later than eighteen months after the  
11 transferor's death.

12 **§ -16 Uniformity of application and construction.** In  
13 applying and construing this chapter, consideration shall be  
14 given to the need to promote uniformity of the law with respect  
15 to its subject matter among the states that enact similar  
16 uniform legislation.

17 **§ -17 Relation to Electronic Signatures in Global and**  
18 **National Commerce Act.** This chapter modifies, limits, and  
19 supersedes the federal Electronic Signatures in Global and  
20 National Commerce Act, P.L. 106-229, Title 15 United States Code  
21 Chapter 96, but does not modify, limit, or supersede Title 15  
22 United States Code, Section 7001(c), or authorize electronic



1 delivery of any of the notices described in Title 15 United  
2 States Code, Section 7003(b)."

3 SECTION 2. Section 247-3, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§247-3 Exemptions.** The tax imposed by section 247-1  
6 shall not apply to:

- 7 (1) Any document or instrument that is executed prior to  
8 January 1, 1967;
- 9 (2) Any document or instrument that is given to secure a  
10 debt or obligation;
- 11 (3) Any document or instrument that only confirms or  
12 corrects a deed, lease, sublease, assignment,  
13 transfer, or conveyance previously recorded or filed;
- 14 (4) Any document or instrument between husband and wife,  
15 reciprocal beneficiaries, or parent and child, in  
16 which only a nominal consideration is paid;
- 17 (5) Any document or instrument in which there is a  
18 consideration of \$100 or less paid or to be paid;
- 19 (6) Any document or instrument conveying real property  
20 that is executed pursuant to an agreement of sale, and  
21 where applicable, any assignment of the agreement of  
22 sale, or assignments thereof; provided that the taxes



- 1 under this chapter have been fully paid upon the  
2 agreement of sale, and where applicable, upon such  
3 assignment or assignments of agreements of sale;
- 4 (7) Any deed, lease, sublease, assignment of lease,  
5 agreement of sale, assignment of agreement of sale,  
6 instrument or writing in which the United States or  
7 any agency or instrumentality thereof or the State or  
8 any agency, instrumentality, or governmental or  
9 political subdivision thereof are the only parties  
10 thereto;
- 11 (8) Any document or instrument executed pursuant to a tax  
12 sale conducted by the United States or any agency or  
13 instrumentality thereof or the State or any agency,  
14 instrumentality, or governmental or political  
15 subdivision thereof for delinquent taxes or  
16 assessments;
- 17 (9) Any document or instrument conveying real property to  
18 the United States or any agency or instrumentality  
19 thereof or the State or any agency, instrumentality,  
20 or governmental or political subdivision thereof  
21 pursuant to the threat of the exercise or the exercise  
22 of the power of eminent domain;



- 1       (10) Any document or instrument that solely conveys or  
2             grants an easement or easements;
- 3       (11) Any document or instrument whereby owners partition  
4             their property, whether by mutual agreement or  
5             judicial action; provided that the value of each  
6             owner's interest in the property after partition is  
7             equal in value to that owner's interest before  
8             partition;
- 9       (12) Any document or instrument between marital partners or  
10            reciprocal beneficiaries who are parties to a divorce  
11            action or termination of reciprocal beneficiary  
12            relationship that is executed pursuant to an order of  
13            the court in the divorce action or termination of  
14            reciprocal beneficiary relationship;
- 15       (13) Any document or instrument conveying real property  
16            from a testamentary trust to a beneficiary under the  
17            trust;
- 18       (14) Any document or instrument conveying real property  
19            from a grantor to the grantor's revocable living  
20            trust, or from a grantor's revocable living trust to  
21            the grantor as beneficiary of the trust;



- 1 (15) Any document or instrument conveying real property, or  
2 any interest therein, from an entity that is a party  
3 to a merger or consolidation under chapter 414, 414D,  
4 415A, 421, 421C, 425, 425E, or 428 to the surviving or  
5 new entity;
- 6 (16) Any document or instrument conveying real property, or  
7 any interest therein, from a dissolving limited  
8 partnership to its corporate general partner that  
9 owns, directly or indirectly, at least a ninety per  
10 cent interest in the partnership, determined by  
11 applying section 318 (with respect to constructive  
12 ownership of stock) of the federal Internal Revenue  
13 Code of 1986, as amended, to the constructive  
14 ownership of interests in the partnership; ~~and~~
- 15 (17) Any document or instrument conveying real property to  
16 any nonprofit or for-profit organization that has been  
17 certified by the Hawaii housing finance and  
18 development corporation for low-income housing  
19 development[-]; and
- 20 (18) Any transfer on death that fully conforms with the  
21 requirements of section -9(3)."



1 SECTION 3. Section 526-12, Hawaii Revised Statutes, is  
2 amended by amending subsection (g) to read as follows:

3 "(g) In the case of an interest created by a beneficiary  
4 designation made after ~~[the time]~~ the designation becomes  
5 irrevocable~~[, a]~~:

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

9 (2) The disclaimer of an interest in real property shall  
10 be recorded in the bureau of conveyances or filed in  
11 the office of the assistant registrar of the land  
12 court, as applicable."

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

15 "[+]§526-15[+] **Recording of disclaimer.** If an instrument  
16 transferring an interest in or power over property subject to a  
17 disclaimer is required or permitted by law to be filed,  
18 recorded, or registered, the disclaimer may be ~~[se]~~ filed,  
19 recorded, or registered. ~~[Failure]~~ Except as otherwise provided  
20 in section 526-12(g), failure to file~~[-]~~ or record~~[-or~~  
21 register] the disclaimer does not affect its validity as between



1 the disclaimant and persons to whom the property interest or  
2 power passes by reason of the disclaimer."

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2011.



**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. (SB105 HD1)

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

