



GOV. MSG. NO. 1277

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 27, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

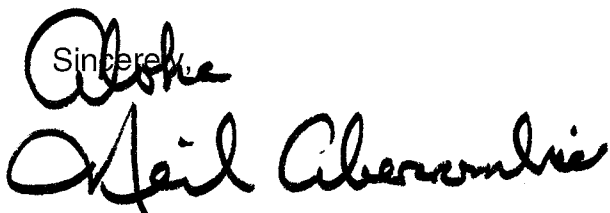
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 27, 2011, the following bill was signed into law:

SB105 SD2 HD1 CD1

RELATING TO UNIFORM REAL PROPERTY
TRANSFER ON DEATH.
Act 173 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

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 document or instrument that conforms to the
21 transfer on death deed as authorized under chapter
22 _____."



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 [~~r~~-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 [~~r~~]; 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 [~~sø~~] filed,
19 recorded, or registered. [~~Failure~~] Except as otherwise provided
20 in section 526-12(g), failure to file [~~r~~] or record [~~r~~-er
21 register] the disclaimer does not affect its validity as between

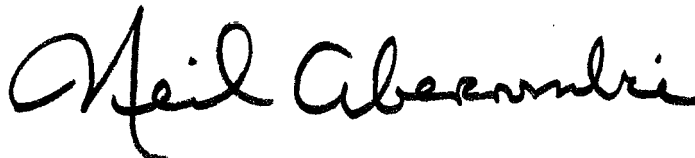


1 the disclaimant and persons to whom the property interest or
2 power passes by reason of the disclaimer."

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.

APPROVED this 27 day of JUN, 2011



GOVERNOR OF THE STATE OF HAWAII