UNIFORM TRANSFER ON DEATH
FOR REAL PROPERTY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting, February 1-2, 2008

WITH PREFATORY AND REPORTER’S NOTES

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.
DRAFTING COMMITTEE ON UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

NATHANIEL STERLING, 4180 Oak Hill Ave., Palo Alto, CA 94306, Chair
TURNEY P. BERRY, 2700 PNC Plaza, Louisville, KY 40202
RHODA B. BILLINGS, 5525 Williams Rd., Lewisville, NC 27023
TOM BOLT, 5600 Royal Dane Mall, St. Thomas, VI 00802-6410
THOMAS L. JONES, University of Alabama School of Law, University Station, P.O. Box 865557, Tuscaloosa, AL 35486-0050
EDWARD F. LOWRY, JR., 4200 N. 82nd St., Suite 2001, Scottsdale, AZ 85251
ROBERT L. MCCURLEY, JR., Alabama Law Institute, P.O. Box 861425, Tuscaloosa, AL 35486
JAMES R. PENDER, 4001 North Rodney Parham Rd., Suite 101, Little Rock, AR 72211
PATRICK A. RANDOLPH, JR., University of Missouri-Kansas City School of Law, 5100 Rockhill Rd., Kansas City, MO 64110
GLEE S. SMITH, P.O. Box 667, Lawrence, KS 66044
MICHAEL P. SULLIVAN, 80 South 8th St., 500 IDS Center, Minneapolis, MN 55402-3796
THOMAS P. GALLANIS, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455, Reporter

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, President
ANNE L. MCGIHON, 837 Sherman St., Denver, CO 80203, Division Chair

AMERICAN BAR ASSOCIATION ADVISOR

DENNIS M. HORN, 2099 Pennsylvania Ave. NW, Washington, DC 20006, ABA Advisor
SUSAN N. GARY, University of Oregon School of Law, 1515 Agate St., Eugene, OR 97403, ABA Section Advisor

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, Executive Director

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois  60602
312/450-6600
www.nccusl.org
# UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reporter’s General Prefatory Note</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Reporter’s General Legislative Note</td>
<td>1</td>
</tr>
<tr>
<td>[ARTICLE] 1</td>
<td>GENERAL PROVISIONS</td>
<td></td>
</tr>
<tr>
<td>SECTION 101</td>
<td>SHORT TITLE</td>
<td>2</td>
</tr>
<tr>
<td>SECTION 102</td>
<td>DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>SECTION 103</td>
<td>APPLICABILITY</td>
<td>3</td>
</tr>
<tr>
<td>SECTION 104</td>
<td>NONEXCLUSIVITY</td>
<td>4</td>
</tr>
<tr>
<td>[ARTICLE] 2</td>
<td>TRANSFER ON DEATH DEEDS</td>
<td></td>
</tr>
<tr>
<td>SECTION 201</td>
<td>TRANSFER ON DEATH DEED AUTHORIZED</td>
<td>5</td>
</tr>
<tr>
<td>SECTION 202</td>
<td>TRANSFER ON DEATH DEED NOT TESTAMENTARY</td>
<td>5</td>
</tr>
<tr>
<td>SECTION 203</td>
<td>CAPACITY OF TRANSFEROR</td>
<td>5</td>
</tr>
<tr>
<td>SECTION 204</td>
<td>REQUIREMENTS</td>
<td>5</td>
</tr>
<tr>
<td>SECTION 205</td>
<td>NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT NOT REQUIRED</td>
<td>6</td>
</tr>
<tr>
<td>SECTION 206</td>
<td>MULTIPLE BENEFICIARIES</td>
<td>7</td>
</tr>
<tr>
<td>SECTION 207</td>
<td>REVOCATION BY SUBSEQUENT INSTRUMENT</td>
<td>8</td>
</tr>
<tr>
<td>SECTION 208</td>
<td>REVOCATION BY ACT NOT PERMITTED</td>
<td>9</td>
</tr>
<tr>
<td>SECTION 209</td>
<td>OWNERSHIP DURING TRANSFEROR’S LIFETIME</td>
<td>10</td>
</tr>
<tr>
<td>SECTION 210</td>
<td>OWNERSHIP AT TRANSFEROR’S DEATH</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 211</td>
<td>DISCLAIMER</td>
<td>12</td>
</tr>
<tr>
<td>SECTION 212</td>
<td>NO COVENANTS OR WARRANTIES</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 213</td>
<td>PROTECTION OF BONA FIDE PURCHASERS OR ENCUMBRANCERS</td>
<td>15</td>
</tr>
<tr>
<td>SECTION 214</td>
<td>PROOF OF DEATH</td>
<td>15</td>
</tr>
<tr>
<td>SECTION 215</td>
<td>PROCEEDING TO CONTEST TRANSFER ON DEATH DEED</td>
<td>16</td>
</tr>
<tr>
<td>[ARTICLE] 3</td>
<td>LIABILITY OF BENEFICIARIES OF TRANSFER ON DEATH DEEDS FOR CREDITOR CLAIMS</td>
<td></td>
</tr>
<tr>
<td>SECTION 301</td>
<td>LIABILITY</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 302</td>
<td>LIMIT ON LIABILITY</td>
<td>19</td>
</tr>
<tr>
<td>[ARTICLE] 4</td>
<td>FORMS</td>
<td></td>
</tr>
<tr>
<td>SECTION 401</td>
<td>FORM OF TRANSFER ON DEATH DEED</td>
<td>21</td>
</tr>
<tr>
<td>SECTION 402</td>
<td>FORM OF REVOCATION</td>
<td>27</td>
</tr>
</tbody>
</table>
[ARTICLE] 5
MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION ............ 30
SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
    NATIONAL COMMERCE ACT. ........................................... 30
SECTION 503. REPEALS. .......................................................... 31
SECTION 504. EFFECTIVE DATE. ............................................... 31
UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT

Reporter’s General Prefatory Note

This draft is for discussion at our committee meeting on February 1-2, 2008. The draft is divided into five articles. Article 1 contains general provisions. Article 2 authorizes transfer on death deeds and addresses many of the formal and substantive issues concerning such deeds. Article 3 focuses on a beneficiary’s liability for creditor claims and statutory allowances. Article 4 contains suggested statutory forms. These forms are drafts, and suggestions for improvement are encouraged. Article 5 contains miscellaneous provisions.

After each section, a Reporter’s Note discusses the drafting of the section. These notes should be read in conjunction with the proposed statutory text.

Reporter’s General Legislative Note

An important trend in the law of succession is the growing harmonization of the rules governing probate and nonprobate transfers. For an example of legislation applying the same rules to both kinds of transfers, see Article 2 of the Uniform Probate Code, especially Parts 2, 7 and 8. States enacting this Act are encouraged to consider extending the probate rules governing ademption of specific devises, antilapse, revocation by divorce, revocation by homicide, survivorship, and the surviving spouse’s elective share to nonprobate transfers. The Uniform Law Commission can assist by providing sample statutory language.
UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Real Property Transfer on Death Act.

Reporter’s Note

At the drafting committee meeting on November 30, 2007, the committee recommended that the name of the project be changed from “Transfer on Death for Real Property” to “Real Property Transfer on Death.”

SECTION 102. DEFINITIONS. In this [act]:

(1) “Beneficiary” means a person identified as a beneficiary in a transfer on death deed.

(2) “Joint owner” means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant[, an owner of community property with a right of survivorship,][ and a tenant by the entirety]. The term does not include a tenant in common[ or an owner of community property without a right of survivorship].

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) “Property” means an estate or interest in real property that is transferable on the death of the owner.
(5) “Survive” means neither to die before an event, including the death of another person, nor to be deemed to have died before an event under [cite state statute][the Uniform Simultaneous Death Act].

(6) “Transfer on death deed” means a deed authorized under this [act].

(7) “Transferor” means an individual who executes a transfer on death deed. The term does not include an agent under a power of attorney.

**Reporter’s Note**

The definition in Paragraph (1) links the term “beneficiary” to the standard NCCUSL definition of “person.” The Comment will explain that the definition includes the trustee of a trust even if the trust is revocable, a rule that accords with the current transfer on death deed statutes that address the issue. For example, Ark. Code §18-12-608(c)(2) provides: “A beneficiary deed may be used to transfer an interest in real property to a trust estate even if the trust is revocable.”

Paragraph (2) provides a definition of owners who hold concurrent interests with a right of survivorship.

Paragraph (3) is a standard NCCUSL definition.

Paragraph (4) provides that the Act applies to all interests in real property that are transferable at the death of the owner.

Paragraph (5) incorporates state law on the required period of survival. The Uniform Simultaneous Death Act, for example, provides for a 120-hour period of survival.

Paragraph (7) limits the use of transfer on death deeds to transferors who are individuals. The term “transferor” does not include a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any legal or commercial entity other than an individual. The term also does not include an agent acting under a power of attorney.

**SECTION 103. APPLICABILITY.** This [act] applies to a transfer on death deed executed before or after [the effective date of this [act]], by a transferor dying on or after [the
effective date of this [act]].

**Reporter’s Note**

This section tracks §405(d) of the Uniform Nonprobate Transfers on Death Act, which provides that the Act “applies to registrations of securities in beneficiary form made before or after the effective date, by decedents dying on or after the effective date.”

**SECTION 104. NONEXCLUSIVITY.** This [act] does not affect any method of transferring property that is permitted under the law of this state other than this [act] and that has the effect of postponing enjoyment of the property until the death of the transferor.

**Reporter’s Note**

This section essentially tracks Ark. Code §18-12-608(g)(1): “This section does not prohibit [the committee preferred “affect”] other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner.”
SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED. A transfer on death deed is effective to transfer at the transferor’s death the property owned by the transferor at death and described in the deed to the beneficiary as provided in this [act].

Reporter’s Note

This section authorizes transfer on death deeds and makes it clear that the transfer is not an inter vivos transfer. The transfer occurs at the transferor’s death.

An earlier draft of this section provided: “Property may be titled in transfer on death form by executing, acknowledging, and recording a transfer on death deed in accordance with this [act].” The committee suggested much of the revised wording at its meeting on November 30, 2007.

SECTION 202. TRANSFER ON DEATH DEED NOT TESTAMENTARY. A transfer on death deed is nontestamentary.

Reporter’s Note

This section is based on §101(a) of the Uniform Nonprobate Transfers on Death Act, which provides: “A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary.”

As the Comment to §101 explains, because the mode of transfer is declared to be nontestamentary, the instrument of transfer does not have to be executed in compliance with the formalities for wills, nor does the instrument need to be probated, nor does the decedent’s personal representative have any power or duty with respect to the asset.

SECTION 203. CAPACITY OF TRANSFEROR. The capacity required to make or
revoke a transfer on death deed is the same as that required to make a will.

Reporter’s Note

This section is drawn from §601 of the Uniform Trust Code: “The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.” The rule is consistent with the Restatement (Third) of Property (Wills and Other Donative Transfers) §8.1(b), which applies the standard of testamentary capacity, and not the higher standard of capacity for inter vivos gifts, to revocable will substitutes: “If the donative transfer is in the form of a will, a revocable will substitute, or a revocable gift, the testator or donor must be capable of knowing and understanding in a general way the nature and extent of his or her property, the natural objects of his or her bounty, and the disposition that he or she is making of that property, and must also be capable of relating these elements to one another and forming an orderly desire regarding the disposition of the property.”

An earlier draft provided: “To make or revoke a transfer on death deed, a transferor must have testamentary capacity.” That formulation, however, could wrongly prevent an agent under a power of attorney, or a guardian, from acting on the transferor’s behalf. The Joint Editorial Board for Uniform Trust and Estate Acts is currently working to correct a similar potential problem in Uniform Trust Code §401(a)(1), which provides that “[a] trust is created only if ... the settlor has capacity to create a trust ....”

SECTION 204. REQUIREMENTS.

(a) A transfer on death deed must:

(1) contain the essential elements of a deed, except a present intention to convey, required under the law of this state governing inter vivos deeds;

(2) evidence the transferor’s intention that the transfer occur at the transferor’s death;

(3) be acknowledged by the transferor before a notary public; and

(4) be recorded before the transferor’s death in the [county or counties] where the property is located.

(b) The transferor’s agent under a power of attorney may execute a transfer on death deed
on the transferor’s behalf to the extent permitted by [applicable law][cite state statute][the Uniform Power of Attorney Act].

Reporter’s Note

Subsection (a)(1): The Act requires the same essential elements of a deed, other than a present intention to convey, as are required for inter vivos deeds under state law. In most jurisdictions, these essential elements are: identification of the parties, description of the land, and the transferor’s signature.

Subsection (a)(2): This requirement emphasizes the fundamental distinction between an inter vivos deed and a transfer on death deed. An inter vivos deed evidences a present intention to convey. A transfer on death deed evidences an intention that the transfer occur at the transferor’s death. Under no circumstances should a defective transfer on death deed be given effect as an inter vivos deed; to do so would violate the transferor’s intention that the transfer occur at the transferor’s death.

Subsection (a)(3): The requirement of notarization fulfills at least two functions. First, it cautions the transferor that he is performing an act with legal consequences. Such caution is important where, as here, the transferor does not experience the wrench of delivery because the transfer occurs at death. Second, notarization is important in order to implement the rule in Section (a)(1) that a later acknowledged deed prevails over an earlier acknowledged deed.

Subsection (a)(4): This rule is consistent with the transfer on death deed statutes that address the issue.

Subsection (b) defers to other law to determine an agent’s authority under a power of attorney.

SECTION 205. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. A transfer on death deed is effective without:

(1) notice or delivery to or acceptance by the beneficiary during the transferor’s lifetime;

or

(2) consideration.

Reporter’s Note
These rules are consistent with the transfer on death deed statutes that address the issues.

SECTION 206. MULTIPLE BENEFICIARIES.

Committee Alternative 1

The transferor may designate multiple beneficiaries to hold in any form of concurrent or successive ownership, or both, valid under the law of this state.

Reporter’s Note

This alternative comports with the fundamental principle articulated in the Restatement (Third) of Property (Wills and Other Donative Transfers) §10.1 that the donor’s intention should be “given effect to the maximum extent allowed by law.” As the Restatement explains in Comment c to §10.1, “American law curtails freedom of disposition only to the extent that the donor attempts to make a disposition or achieve a purpose that is prohibited or restricted by an overriding rule of law.”

Committee Alternative 2

(a) The transferor may designate multiple beneficiaries to hold in joint tenancy, in tenancy in common,[ in tenancy by the entirety,][ in community property[ with or without the right of survivorship],] or in any other form of concurrent ownership valid under the law of this state.

(b) The transferor may designate one or more primary beneficiaries and one or more alternate beneficiaries[ to take in the event the primary beneficiaries fail to survive the transferor]. [If the transferor designates an alternate beneficiary, the deed must state the condition under which the interest of the alternate beneficiary vests.]

[(c) The transferor may designate one or more beneficiaries as life tenants and one or more beneficiaries as remaindermen.]

(d)[(c)] A transfer on death deed designating multiple beneficiaries other than as authorized by this section [is void][is valid as a transfer on death deed but must be construed
within the limits of this section].

**Reporter’s Note**

The committee asked to consider this alternative at the February 2008 meeting. The brackets in subsections (b), (c) and (d) present choices for the committee, not for enacting states.

A Comment could explain that the term “life tenant” includes the holder of a life estate *pur autre vie* (accord, Restatement (Third) of Property (Wills and Other Donative Transfers) §24.5 (P.D. No. 12, 2007)).

**SECTION 207. REVOCATION BY SUBSEQUENT INSTRUMENT.**

(a) Except as otherwise provided in subsections (b) and (c), the transferor may revoke a transfer on death deed by:

(1) executing a transfer on death deed acknowledged after the previous deed and recorded before the transferor’s death that revokes the previous deed expressly or by inconsistency;

(2) executing a revocation form acknowledged after the deed and recorded before the transferor’s death that evidences the transferor’s intention to revoke the deed and that contains a sufficient description of the property for the property to be identified; or

(3) conveying by one or more inter vivos deeds during the transferor’s lifetime all the property that is the subject of the transfer on death deed.

(b) A transferor may revoke a transfer on death deed as to the interest of that transferor, but the revocation does not affect the transfer on death deed as to the interest of another transferor.

(c) A transfer on death deed executed by joint owners is revoked only if:

(1) the recorded revocation is executed and acknowledged by all of the joint
owners then living; or

(2) the recorded revocation is executed and acknowledged by the last surviving joint owner.

(d) The transferor’s agent under a power of attorney may revoke a transfer on death deed on the transferor’s behalf to the extent permitted by [applicable law][cite state statute][the Uniform Power of Attorney Act].

(e) A transfer on death deed cannot be revoked or modified by will.

Reporters Note

Subsections (a)(1) and (a)(2) provide that a transfer on death deed deed can be revoked by executing, acknowledging, and recording a subsequent instrument. Subsection (a)(3) reflects the reality that a transfer on death deed is effectively revoked if it concerns only property no longer owned by the transferor at death.

Subsection (b) is based on §5662(b) of the California recommended statute: “A coowner may revoke the transfer on death deed as to the interest of that coowner. The revocation does not affect the transfer on death deed as to the interest of another coowner.”

Subsection (c) is based on the third sentence of Ariz. Stat. §33-405(F): “If the property is owned as joint tenants with right of survivorship or community property with right of survivorship and if the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner.”

Subsection (d) defers to other law to determine an agent’s authority under a power of attorney. A Comment will emphasize that the transferor’s incapacity does not necessarily make the transfer on death deed irrevocable; depending on state law and the applicable facts, the deed might be revocable by an agent under a power of attorney or by a court-appointed guardian.

Subsection (e) is consistent with the transfer on death deed statutes that address the issue, and with Uniform Probate Code §6-213(b) on multiple-party bank accounts.

SECTION 208. REVOCATION BY ACT NOT PERMITTED. After a transfer on death deed is recorded, it cannot be revoked by a revocatory act performed on the deed. A
revocatory act includes burning, tearing, canceling, obliterating, or destroying the deed or any part of it.

**Reporter’s Note**

The rule of this section is consistent with, though not explicit in, the existing transfer on death deed statutes, which provide only for revocation by subsequent instrument. The second sentence is drawn from Uniform Probate Code §2-507(a)(2).

**SECTION 209. OWNERSHIP DURING TRANSFEROR’S LIFETIME.** During the transferor’s lifetime, a transfer on death deed does not:

1. affect the rights of the transferor or other owners in the property;
2. affect the rights of creditors in the property;
3. affect the transferor’s eligibility for [Medicaid];
4. create any legal or equitable right to or transferable interest in the property in favor of the beneficiary; or
5. make the property subject to process of the beneficiary’s creditors.

**Reporter’s Note**

The fundamental feature of a transfer on death deed is that it does not operate until the transferor’s death. During the transferor’s lifetime, the deed is both revocable and ambulatory, just as is a will. A transfer on death deed has no more effect during the transferor’s lifetime than a will. Thus, for example, a transfer on death deed, during the transferor’s lifetime, does not sever a joint tenancy (Paragraph (1)) nor should it affect the transferor’s eligibility for governmental medical assistance (Paragraph (3)). On this latter point, the committee specifically disapproves of the contrary approach of Colo. Rev. Stat. §15-15-403.

**SECTION 210. OWNERSHIP AT TRANSFEROR’S DEATH.**

(a) Except as otherwise provided in subsections (b) and (c) [and in [cite state statute on antilapse, if applicable to nonprobate transfers]], on the death of the transferor, the following
rules apply to the property that is the subject of the transfer on death deed and owned by the
transferor at death:

(1) The property belongs to the beneficiaries who survive the transferor in accordance with the provisions of the deed.

(2) Unless the deed provides otherwise, if the deed designates primary and alternate beneficiaries, the property belongs to the persons identified as primary beneficiaries who survive the transferor or, if none, to the persons identified as alternate beneficiaries who survive the transferor.

(3) Unless the deed provides otherwise, beneficiaries receiving concurrent interests receive equal and undivided shares in the property, but there is no right of survivorship between them in the event of the death of a beneficiary after the transferor’s death [unless two of the beneficiaries are husband and wife, in which event they receive their interests in the property as [tenants by the entirety][owners of community property with right of survivorship]].

(4) If no beneficiary survives the transferor, the deed is void.

(b) On the death of a joint owner who executes a transfer on death deed, the property belongs to the surviving joint owner or owners, and the right of survivorship continues between or among the surviving joint owners. A transfer on death deed is effective at the death of the last surviving joint owner if that owner is a transferor on the deed.

(c) A beneficiary who receives the transferor’s interest at the transferor’s death does so subject to all conveyances made during the transferor’s lifetime and to all encumbrances, assignments, contracts, [mortgages], liens, and other interests affecting the property, whether or not recorded and whether created before or after the recording of the transfer on death deed, to
which the property is subject at the transferor’s death.

**Reporter’s Note**

Subsection (a)(3) is modeled on Uniform Probate Code §6-212 governing multiple-party accounts. Legislatures in states without tenancy by the entirety or community property with right of survivorship, or states having these forms of ownership but preferring no right of survivorship, should delete the material in brackets.

Subsection (b) is consistent with the majority rule, namely that the survivorship right trumps the transfer on death deed.

Subsection (c) is modeled on Colo. Rev. Stat. §15-15-407(2): “A grantee-beneficiary of a beneficiary deed takes title to the owner’s interest in the real property conveyed by the beneficiary deed at the death of the owner subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests, affecting title to the property, whether created before or after the recording of the beneficiary deed, or to which the owner was subject during the owner’s lifetime including, but not limited to, any executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust, or other lien. The grantee-beneficiary also takes subject to any interest in the property of which the grantee-beneficiary has either actual or constructive notice.” The committee rejected the requirement of California recommended §5652(c) that the limitation must be “of record,” because the beneficiary should merely step into the transferor’s shoes; the beneficiary should not be in a better position (i.e. free of limitations not of record) than the transferor.

The committee suggested that, in the Comment, we should refer approvingly to *In re Estate of Roloff*, 143 P.3d 406 (Kan. Ct. App. 2006) (holding that crops should be transferred with the land under a transfer on death deed because this result would be reached on the same facts with any other deed).

The Comment should also address the following fact-pattern. H and W are married and own property as tenants by the entirety. H executes, acknowledges and records a transfer on death deed in favor of X. W later dies, at which point H owns the property in fee simple absolute. Under the law of some states, there may be a question whether the transfer on death deed is valid, given that H executed it when the property was owned, not by H and W, but by the marital entity. The correct answer is yes. The transfer on death deed is effective at H’s death because the property is owned by H at H’s death (recall the first sentence of subsection (a): “...and owned by the transferor at death”). This is a straightforward application of the doctrine of after-acquired property.

**SECTION 211. DISCLAIMER.**
(a) Subject to subsection (b), a beneficiary may disclaim all or any part of the beneficiary’s interest by any method valid under the law of this state.

(b) A disclaimer by a beneficiary of property subject to a transfer on death deed is not effective until the disclaimer is recorded in the [county or counties] where the property that is the subject of the disclaimer is located.

**Reporter’s Note**

Subsection (a) is modeled on the only state statute to address the issue of disclaimer, Colo. Rev. Stat. §15-15-414: “A grantee-beneficiary may refuse to accept all or any part of the real property interest described in a beneficiary deed. A grantee-beneficiary may disclaim all or any part of the real property interest described in a beneficiary deed by any method provided by law. If a grantee-beneficiary refuses to accept or disclaims any real property interest, the grantee-beneficiary shall have no liability by reason of being designated as a grantee-beneficiary under this part 4.”

The committee asked for more information about the delivery of a disclaimer. The Uniform Disclaimer of Property Interests Act (UDPIA) provides the following in §12:

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

With a transfer on death deed, there is no required third party intermediary. UDPIA does not address our fact-pattern, except to say (erroneously) in the Comment: “A disclaimer is required to be filed in court only when there is no one person or entity to whom delivery can be made.” This is incorrect. UDPIA requires filing in court only when there is no person to receive a disclaimer concerning an interest created by will, intestate succession, or trust. UDPIA §§12(c)(2), (d)(2), (e)(2). UDPIA is silent on the delivery of a disclaimer concerning an interest arising by beneficiary designation where, as here, there is no “person obligated to distribute the interest.”

Rather than establish a rule on delivery, the draft establishes a rule of recordation in subsection (b). The purpose of delivery is to force the disclaimant to communicate the disclaimer, hence putting at least one person on notice of it. A rule of recordation accomplishes this, and more, by putting the world on notice.
The Comment will mention the state-law doctrine of “relation back”: an effective disclaimer typically relates back to the time of the initial transfer, here the transferor’s death.

SECTION 212. NO COVENANTS OR WARRANTIES. Notwithstanding a contrary provision in the deed, a transfer on death deed transfers the property without covenant or warranty of title.

Reporter’s Note

This provision tracks §5652(d) of the California recommended statute: “Notwithstanding a contrary provision in the deed, a revocable transfer on death deed transfers the property without covenant or warranty of title.” This rule is mandatory, not a default as in Colo. Rev. Stat. §15-15-404(2) [“Unless the owner designates otherwise ...”], in order to prevent mishaps from uninformed grantors.

SECTION 213. PROTECTION OF BONA FIDE PURCHASERS OR ENCUMBRANCERS. A bona fide purchaser or encumbrancer transacting with the beneficiary after the transferor’s death has the same rights and protections as if the transaction had been made with the grantee of an inter vivos deed.

Reporter’s Note

The committee observed that it is hard to articulate a substantive rule on bona fide purchasers or encumbrancers (BFPs), because some jurisdictions are notice jurisdictions (protecting BFPs regardless of when the BFP files), some are race-notice jurisdictions (protecting only BFPs who file first), and a few are race jurisdictions (protecting anyone who files first). Instead, the committee decided to articulate the rule that a BFP from the beneficiary of a transfer on death deed is in the same position as a BFP in the standard inter vivos transaction.

SECTION 214. PROOF OF DEATH. Proof of the death of a transferor or beneficiary of a transfer on death deed must be established in the same manner as proof of the death of a joint tenant[ under [cite state statute]].
Reporter’s Note

The committee was initially uncertain whether a Uniform Act should spell out a procedure for the proof of death. The Uniform Nonprobate Transfers on Death Act, for example, refers in §§223 and §307 to “proof of death” without elaboration.

The committee decided to incorporate the state’s existing procedures for proving the death of a joint tenant, essentially tracking Colo. Rev. Stat. §15-15-413: “Proof of the death of the owner or a grantee beneficiary shall be established in the same manner as for proving the death of a joint tenant.”

SECTION 215. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED.

(a) After the transferor’s death, the transferor’s personal representative or an interested person may contest the validity of a transfer on death deed on the basis of fraud, undue influence, duress, mistake, or other invalidating cause.

(b) The contestant[][):

[(1)] must begin the contest proceeding within the earlier of [three years] after the transferor’s death or [one year] after the beneficiary establishes the transferor’s death[][; and]

[(2) may, on beginning the contest proceeding, record a notice of lis pendens in the [county or counties] where the transfer on death deed is recorded.]

(c) A contest proceeding does not affect rights in the property acquired in good faith by a bona fide purchaser or encumbrancer for value before the beginning of the proceeding.

Reporter’s Note

The grounds of contest in subsection (a) are drawn from §5696 of the California recommended statute: “Nothing in this chapter limits the application of principles of fraud, undue influence, duress, mistake, or other invalidating cause to a transfer of property by a revocable transfer on death deed.”

Subsection (b) is drawn from §§5690(c) and 5692(b) of the California recommended statute. Section 5690(c) provides: “On commencement of a contest proceeding, the contestant
may record a lis pendens in the county in which the revocable transfer on death deed is
recorded.” Section 5692(b) provides: “A contest proceeding shall be commenced within the
earlier of the following times: (1) Three years after the transferor’s death. (2) One year after the
beneficiary establishes the fact of the transferor’s death....” A Legislative Note will explain that
states not using, or not wishing to refer to, the notice of lis pendens should not enact Subsection
(b)(2).

Subsection (c) is drawn from, but departs substantially from, §5694(b) of the California
recommended statute, which provides: “If the proceeding was not commenced and a lis pendens
was not recorded within 90 days after the transferor’s death, the court shall grant appropriate
relief but the court order shall not affect the rights in the property of a purchaser or encumbrancer
for value and in good faith acquired before commencement of the proceeding and recordation of
a lis pendens.”

The Comment will emphasize that the venue should be determined by state law, and that
the limitations period for commencement of the contest should be the same as for other
nonprobate transfer contests (if state law already provides a limitations period for such contests)
or (if not) for will contests.
SECTION 301. LIABILITY.

(a) After the transferor’s death, the property that is the subject of an otherwise effective transfer on death deed is subject to claims of the transferor’s creditors, costs of administration of the transferor’s estate, the expenses of the transferor’s funeral and disposal of remains, and [statutory allowances] to a surviving spouse and children to the extent the transferor’s probate estate is inadequate to satisfy those claims, costs, expenses, and [allowances].

(b) A proceeding under this section must be commenced within [one year] after the decedent’s death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within [60 days] after final allowance of the claim.

Reporter’s Note

Provisions concerning creditors’ rights and statutory allowances should be incorporated, to the extent possible, into the jurisdiction’s existing procedures. The aim of this Section is simply to establish the principle of liability and to state the limitations period.

Subsection (a) is based on Uniform Trust Code §505(a)(3): “After the death of a settlor, and subject to the settlor’s right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor’s death is subject to claims of the settlor’s creditors, costs of administration of the settlor’s estate, the expenses of the settlor’s funeral and disposal of remains, and [statutory allowances] to a surviving spouse and children to the extent the settlor’s probate estate is inadequate to satisfy those claims, costs, expenses, and [allowances].”

Subsection (b) is the same as §102(h) of the Uniform Nonprobate Transfers at Death Act,
with the time-periods in brackets. The first period (one year) is drawn from Uniform Probate Code §3-804(a)(1); the second (60 days) is drawn from UPC §3-804(a)(2) (referencing UPC §3-801(b)).

SECTION 302. LIMIT ON LIABILITY.

(a) Subject to subsection (b), the liability under Section 301 of a beneficiary of a transfer on death deed is discharged by the restitution to the transferor’s estate of the property the beneficiary received under the deed, together with:

(1) the net income the beneficiary received from the property;

(2) if the beneficiary encumbered the property after the transferor’s death, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate; and

(3) if the beneficiary permitted any waste of the property after the transferor’s death, the amount necessary to compensate for the waste.

(b) The property and amount to be restored under subsection (a) are reduced by any property transferred or amount paid by the beneficiary to satisfy a liability of the transferor.

Reporter’s Note

This section is designed to permit a beneficiary to satisfy Section 301 by returning the property to the transferor’s estate. If the beneficiary no longer has the property, this section does not apply. The section is drawn from §5676(a)(1) and (c) of the California recommended statute:

“§ 5676. Return of property to estate for benefit of creditors
(a) Subject to subdivisions (b), (c), and (d), if proceedings for the administration of the transferor’s estate are commenced, each beneficiary is liable for:

(1) The restitution to the transferor’s estate of the property the beneficiary received pursuant to the revocable transfer on death deed if the beneficiary still has the property, together with (A) the net income the beneficiary received from the property and (B) if the beneficiary encumbered the property after the transferor’s death, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.
(2) The restitution to the transferor’s estate of the fair market value of the property if the beneficiary no longer has the property, together with (A) the net income the beneficiary received from the property prior to disposing of it and (B) interest from the date of disposition at the rate payable on a money judgment on the fair market value of the property. For the purposes of this paragraph, the “fair market value of the property” is the fair market value, determined as of the time of the disposition of the property, of the property the beneficiary received pursuant to the revocable transfer on death deed, less the amount of any liens and encumbrances on the property at the time of the transferor’s death.

(b) Subject to subdivision (c), if proceedings for the administration of the transferor’s estate are commenced and a beneficiary made a significant improvement to the property received by the beneficiary pursuant to the revocable transfer on death deed, the beneficiary is liable for whichever of the following the transferor’s estate elects:

(1) The restitution of the property, as improved, to the estate of the transferor upon the condition that the estate reimburse the beneficiary for (A) the amount by which the improvement increases the fair market value of the property restored, determined as of the time of restitution, and (B) the amount paid by the beneficiary for principal and interest on any liens or encumbrances that were on the property at the time of the transferor’s death.

(2) The restoration to the transferor’s estate of the fair market value of the property, determined as of the time of the transferor’s death, less the amount of any liens and encumbrances on the property at that time, together with interest on the net amount at the rate payable on a money judgment running from the time of the transferor’s death.

(c) The property and amount required to be restored to the estate under this section shall be reduced by any property or amount paid by the beneficiary to satisfy a liability under Section 5672 [concerning the transferor’s unsecured debts].

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the transferor. Whether or not the personal representative brings an action under this section, the personal representative may enforce the liability only to the extent necessary to protect the interests of creditors of the transferor.

(e) An action to enforce the liability under this section is forever barred three years after the transferor’s death. The three-year period specified in this subdivision is not tolled for any reason.”
[ARTICLE] 4

FORMS

Reporter’s Prefatory Note

These forms are drafts, designed to provide the basis for discussion. Suggestions for improving the forms are encouraged.

Legislative Note: An enacting jurisdiction should review its statutory requirements for deeds and for acknowledgments and amend, where necessary for conformity with those requirements, the statutory forms provided in Sections 401 and 402.

SECTION 401. FORM OF TRANSFER ON DEATH DEED. A document substantially in one of the following forms satisfies the requirements for a transfer on death deed under this [act]:

(1)

[front of form]

TRANSFER ON DEATH DEED

Notice to Owner: You should carefully read all information on the other side of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

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

Identifying Information

Owner(s) Making This Deed:

__________________________________________  __________________________

(name)  (mailing address)

__________________________________________  __________________________

(name)  (mailing address)
Legal Description of the Property:

Beneficiary or Beneficiaries

I revoke all my prior transfer on death deeds affecting the property, and name the
following beneficiary(ies) to receive the property (in equal shares, unless I say otherwise):

Beneficiary(ies) – include mailing addresses if available

Transfer on Death

I transfer my interest in the described property to the beneficiary(ies) on my death.

Before my death, I may choose to revoke this deed.

Signature(s) of Owner(s) Making This Deed:

(SEAL)  
(signature)  (date)

(SEAL)  
(signature)  (date)

Acknowledgment

(acknowledgment)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, the beneficiaries will
become owners of the property described in the TOD deed, subject to any debts or liens or
[mortgages] (or other encumbrances) you have put on the property during your lifetime. Probate
is not required. The TOD deed has no effect until you die. It can be revoked at any time.

*How do I make a TOD deed?* Complete this form. Have it notarized. Record the form in
the [county or counties] where the property is located. The form must be recorded before your
dead, or it has no effect.

*How do I find the “legal description” of the property?* This information should be on the
deed you received when you became an owner of the property. This information is also available
from the [County Recorder].

*How do I “record” the TOD deed?* Take the completed and notarized form to the
[County Recorder] for the [county or counties] where the property is located. Follow the
instructions given by the [County Recorder] to make the form part of the official property
records.

*Can I revoke the TOD deed if I change my mind?* Yes. You can revoke the TOD deed at
any time. No one, including the beneficiaries, can prevent you from revoking the deed.

*How do I revoke the TOD deed?* There are three ways to revoke a recorded TOD deed:
(1) Complete, notarize, and record a revocation form. (2) Complete, notarize, and record a new
TOD deed that disposes of the same property. (3) Transfer the property away during your
lifetime.

*I am being pressured to complete this form. What should I do?* Do not complete this form
under pressure. Seek help from a family member, a friend, or a lawyer.

*Do I need to tell the beneficiaries about the TOD deed?* No, but it is recommended.
Secrecy can cause later complications and might make it easier for others to commit fraud.

What if I name more than one beneficiary? Feel free to name one or more beneficiaries.

Unless you specify otherwise, the beneficiaries will become co-owners in equal shares.

What is the effect of a TOD deed on property that I own in Joint Tenancy[ or Tenancy by the Entirety][ or Community Property With Right of Survivorship]? If you are the first to die, the deed has no effect at that time. The property transfers to your co-tenant[ or surviving spouse], not according to the deed. If you are the last to die, the deed takes effect and controls the ownership of your property when you die.

(2)

TRANSFER ON DEATH DEED

WITH PRIMARY AND ALTERNATE BENEFICIARIES

Notice to Owner: You should carefully read all information on the other side of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

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

Identifying Information

Owner(s) Making This Deed:

_____________________________ _______________________________

(name) (mailing address)

_____________________________ _______________________________

(name) (mailing address)

Legal Description of the Property:
Beneficiary or Beneficiaries

I revoke all my prior transfer on death deeds affecting the property, and name the following beneficiary(ies) to receive the property (in equal shares, unless I say otherwise):

Primary Beneficiary(ies) – include mailing addresses if available

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

If no primary beneficiary survives me, I name the following alternate beneficiary(ies) to receive the property (in equal shares, unless I say otherwise):

Alternate Beneficiary(ies) – include mailing addresses if available

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

Transfer on Death

I transfer my interest in the described property to the beneficiary(ies) on my death.

Before my death, I may choose to revoke this deed.

Signature(s) of Owner(s) Making This Deed:

_________________________________________________________________(SEAL) _________________

(signature)      (date)

_________________________________________________________________(SEAL) _________________

(signature)      (date)
COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, the beneficiaries will become owners of the property described in the TOD deed, subject to any debts or liens or mortgages (or other encumbrances) you have put on the property during your lifetime. Probate is not required. The TOD deed has no effect until you die. It can be revoked at any time.

How do I make a TOD deed? Complete this form. Have it notarized. Record the form in the county or counties where the property is located. The form must be recorded before your death, or it has no effect.

How do I find the “legal description” of the property? This information should be on the deed you received when you became an owner of the property. This information is also available from the County Recorder.

How do I “record” the TOD deed? Take the completed and notarized form to the County Recorder for the county or counties where the property is located. Follow the instructions given by the County Recorder to make the form part of the official property records.

Can I revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed at any time. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed? There are three ways to revoke a recorded TOD deed:

1. Complete, notarize, and record a revocation form. (2) Complete, notarize, and record a new
TOD deed that disposes of the same property. (3) Transfer the property away during your lifetime.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a family member, a friend, or a lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended.

Secrecy can cause later complications and might make it easier for others to commit fraud.

What if I name more than one beneficiary? Feel free to name one or more primary beneficiaries and one or more alternate beneficiaries. Unless you specify otherwise, the primary beneficiaries (or if none survives you, the alternate beneficiaries) will become co-owners in equal shares.

What is the effect of a TOD deed on property that I own in Joint Tenancy[ or Tenancy by the Entirety][ or Community Property With Right of Survivorship]? If you are the first to die, the deed has no effect at that time. The property transfers to your co-tenant[ or surviving spouse], not according to the deed. If you are the last to die, the deed takes effect and controls the ownership of your property when you die.

Reporter’s Note

These forms are based on the California proposed form, with modifications.

SECTION 402. FORM OF REVOCATION.

(a) A document substantially in the following form satisfies the requirements for a form of revocation under this [act].

[front of form]
REVOCATION OF TRANSFER ON DEATH DEED

Notice to Owner: This revocation must be recorded before you die, or it will not be effective. This revocation is effective only as to the interests of owners who sign this revocation.

Identifying Information

Owner(s) of Property Making This Revocation

__________________________________________  ______________________________

(name)  (mailing address)

__________________________________________  ______________________________

(name)  (mailing address)

Legal Description of the Property:

________________________________________________________

Revocation

I revoke all my prior transfer on death deeds affecting this property.

Signature(s) of Owner(s) Making This Revocation

____________________________________________________(SEAL)  _________________

(signature)  (date)

____________________________________________________(SEAL)  _________________

(signature)  (date)

Acknowledgment

(acknowledgment)

[back of form]

COMMON QUESTIONS ABOUT THE USE OF THIS FORM
How do I use this form to revoke a TOD deed? Complete this form. Have it notarized.

Record the form in the [county or counties] where the property is located. The form must be recorded before your death, or it has no effect.

How do I find the “legal description” of the property? This information should be on the TOD deed, or on the deed you received when you became an owner of the property. The information is also available from the [County Recorder].

How do I “record” the form? Take the completed and notarized form to the [County Recorder] for the [county or counties] where the property is located. Follow the instructions given by the [County Recorder] to make the form part of the official property records.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a family member, a friend, or a lawyer.

(b) The property description in a form of revocation is sufficient if the property can be identified.

Reporter’s Note

The form in Subsection (a) is based on the forms in Section 401.

Subsection (b) is consistent with Section 207(a)(2).
ARTICLE 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Reporter’s Note

This provision is standard in all uniform acts.

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et. seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Reporter’s Note

The NCCUSL Drafting Rules state: “If an act contains a provision requiring a notice or other record or a signature, whether electronic or written, [this] section should be included” (emphasis supplied).

Commissioner Patricia Fry has encouraged our committee to include this section, in order to ensure that we can achieve our aim of harmonizing the execution of transfer on death deeds with the execution of inter vivos deeds (see our Section 204(1)). The federal Electronic Signatures in Global and National Commerce Act (“E-Sign”), 15 U.S.C. §§ 7001 et seq., applies to instruments transferring interests in land. 15 U.S.C. §7006(13)(B) defines “transaction” to include “the sale, lease, exchange, or other disposition of any interest in real property....” E-Sign also permits states to supersede it. If a state has done so with respect to inter vivos deeds, our Section 602 would be required in order to permit the state to do so with respect to transfer on
death deeds. If a state has not superseded, hence follows, E-Sign with respect to inter vivos
deeds, our Section 402 poses no problem, because our Section 204(1) incorporates the applicable
formalities.

A Legislative Note will explain that jurisdictions with the Uniform Electronic
Transactions Act do not need this Section.

SECTION 503. REPEALS. The following acts and parts of acts are hereby repealed:

(1) ........................................
(2) .......................................
(3) .......................................

SECTION 504. EFFECTIVE DATE. This [act] takes effect .......................