Uniform Real Property Transfer on Death Act

Asset-specific mechanisms for the non-probate transfer of property to a beneficiary at death are now common. The proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in payable on death (POD) bank accounts, are examples of personal property that can be automatically transferred to a named beneficiary. Millions of Americans have benefitted from this trend in modern law to recognize and support the use of non-probate transfers. However, until recently there was no similarly straightforward, inexpensive, and reliable means of passing real estate directly to a beneficiary at death outside of the probate process. This was a significant gap in the law; for many people in low- and middle-income families a home is the single most valuable asset in their estate.

The Uniform Real Property Transfer on Death Act (URPTODA) was first approved by the Uniform Law Commission in 2009. URPTODA enables an owner to pass real property to a beneficiary at the owner’s death simply, directly, and without probate by executing and recording a TOD deed. Just as importantly, URPTODA permits the owner to retain all ownership rights in the property while living, including the right to sell the property, revoke the deed, or name a different beneficiary.

Key elements of URPTODA include:
- The TOD deed is not subject to the statute of wills and passes title directly to the named beneficiary without probate.
- The TOD deed must contain all of the essential elements and formalities of any other properly recordable deed.
- The TOD deed must be signed by the transferor and properly recorded during the transferor’s lifetime in the office of the recorder of deeds where the property is located.
- The capacity required to create a TOD deed is the same as the capacity to make a will.
- A TOD deed does not operate until the transferor’s death and remains revocable until then. The transferor may revoke the deed by recording a revocatory instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary. If the transferor sells the property while living, the TOD deed is ineffective.
- Until the transferor’s death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The TOD deed creates no legal or equitable interest in the designated beneficiary; it does not affect the designated beneficiary’s eligibility for public assistance; it does not subject the property to the designated beneficiary’s creditors.
- At the time of the transferor’s death, title to the property is transferred automatically to the beneficiary, subject to any conveyances, encumbrances, assignments, liens, or other interests in the property. In other words, the beneficiary receives only the interest that the transferor owned at the time of death, and the holders of any security interests in the property are protected.
- The beneficiary is liable for claims against the transferor’s estate only when the estate is insolvent.
- The beneficiary may disclaim all or part of the transferred interest in the same manner as state law permits for any other testamentary devise.
- URPTODA includes optional TOD deed and revocation forms that each state legislature may choose whether to enact.

2017 Suggested State Legislation
Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]
For the purposes of this subchapter, the term:

1. “Beneficiary” means a person that receives property under a transfer on death deed.
2. “Designated beneficiary” means a person designated to receive property in a transfer on death deed.
3. “Joint owner” means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term “joint owner” includes a joint tenant and tenancy by the entirety. The term “joint owner” does not include a tenancy in common.
4. “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.
5. “Property” means an interest in real property located in the District of Columbia, which is transferable on the death of the owner.
6. “Transfer on death deed” means a deed authorized under this subchapter.
7. “Transferor” means an individual who makes a transfer on death deed.

Section 2. [Applicability.]
This subchapter applies to a transfer on death deed made before, on, or after the effective date of this subchapter by a transferor dying on or after the effective date of this subchapter.

Section 3. [Nonexclusivity.]
This subchapter does not affect any method of transferring property otherwise permitted under the law of the [District of Columbia].

Section 4. [Transfer on death deed authorized.]
An individual may transfer property to one or more beneficiaries effective at the transferor’s death by a transfer on death deed.

Section 5. [Transfer on death deed revocable.]
A transfer on death deed is revocable under section 10 even if the deed or another instrument contains a contrary provision.

Section 6. [Transfer on death deed nontestamentary.]
A transfer on death deed is nontestamentary.
Section 7. [Capacity of transferor.]
The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

Section 8. [Requirements.]
(a) Except as provided in subsection (b) of this section, a transfer on death deed shall contain the essential elements and formalities of a properly recordable inter vivos deed.
(b) A transfer on death deed shall state that the transfer to the designated beneficiary is to occur at the transferor’s death.
(c) A transfer on death deed shall be recorded before the transferor’s death in the Office of Recorder of Deeds.

Section 9. [Notice, delivery, acceptance, consideration not required.]
A transfer on death deed is effective without:
(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor’s life; or
(2) Consideration.

Section 10. [Revocation by instrument authorized; revocation by act not permitted.]
(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:
(1) Is one of the following:
   (A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;
   (B) An instrument of revocation that expressly revokes the deed or part of the deed; or
   (C) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
   (2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor’s death in the public records in the Office of the Recorder of Deeds.
(b) If a transfer on death deed is made by more than one transferor:
   (1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and
   (2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners.
(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.
(d) This section does not limit the effect of an inter vivos transfer of the property.

Section 11. [Effect of transfer on death deed during transferor’s life.]
During a transferor’s life, a transfer on death deed does not:
(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;
(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;
(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;
(4) Affect the transferor’s or designated beneficiary’s eligibility for any form of public assistance;
(5) Create a legal or equitable interest in favor of the designated beneficiary; or
(6) Subject the property to claims or process of a creditor of the designated beneficiary.

Section 12. [Effect of transfer on death deed at transferor’s death.]
(a) Except as otherwise provided in the transfer on death deed, in this section, or in [Insert citations - antilapse, revocation by divorce or homicide, survival and simultaneous death, and elective share, if applicable to nonprobate transfers], on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:
(1) Subject to paragraph (2) of this section, the interest in the property is transferred to the designated beneficiary in accordance with the deed.
(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest lapses if a designated beneficiary fails to survive the transferor.
(3) Subject to paragraph (4) of this section, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.
(4) If the transferor has identified 2 or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.
(b) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor’s death. For purposes of this subsection, the recording of the transfer on death deed is deemed to have occurred at the transferor’s death.
(c) If a transferor is a joint owner and is survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship.
(d) If a transferor is a joint owner and is the last surviving joint owner, the transfer on death deed is effective.
(e) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

Section 13. [Disclaimer.]
A beneficiary may disclaim all or part of the beneficiary’s interest as provided by Chapter 15 of this title.

Section 14. [Liability for creditor claims and statutory allowances.]
A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor’s probate estate and statutory allowances to a surviving spouse and children to the extent provided in [Insert citation.]
Section 15. [Optional form of transfer on death deed.]
The following form may be used to create a transfer on death deed. The other sections of this
subchapter govern the effect of this or any other instrument used to create a transfer on death deed:

REVOCABLE 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 or Owners Making This Deed:

Printed name Mailing address
Printed name Mailing address

Legal description of the property:

PRIMARY BENEFICIARY
I designate the following beneficiary if the beneficiary survives me.

Printed name Mailing address, if available

ALTERNATE BENEFICIARY – Optional
If my primary beneficiary does not survive me, I designate the following alternate beneficiary if
that beneficiary survives me.

Printed name Mailing address, if available

TRANSFER ON DEATH
At my death, I transfer my interest in the described property to the beneficiaries as designated above.

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

Signature [(SEAL)] Date
Signature [(SEAL)] Date

ACKNOWLEDGMENT
(insert acknowledgment for deed here)
COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each [county] where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the “legal description” of the property necessary? Yes.

How do I find the “legal description” of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in [the office of the county recorder of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I “record” the TOD deed? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is in more than one [county], you should record the deed in each [county].

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

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each [county] where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each [county] where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

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

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

The Council of State Governments
Section 16. [Optional form of revocation.]
The following form may be used to create an instrument of revocation under this subchapter. The other sections of this subchapter govern the effect of this or any other instrument used to revoke a transfer on death deed.

(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 in the property of owners who sign this revocation.

IDENTIFYING INFORMATION
Owner or Owners of Property Making This Revocation:

Printed name
Mailing address

Printed name
Mailing address

Legal description of the property:

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature [(SEAL)] Date

Signature [(SEAL)] Date

ACKNOWLEDGMENT
(insert acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in [the office of the county recorder of deeds] of each [county] where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the “legal description” of the property? This information may be on the TOD deed. It may also be available in [the office of the county recorder of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.
How do I “record” the form? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is located in more than one [county], you should record the form in each of those counties.

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

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

Section 17. **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.

Section 18. **Relation to Electronic Signatures in Global and National Commerce Act.**
This subchapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.) (“Electronic Signatures Act”), but does not modify, limit, or supersede section 101(c) of the Electronic Signatures Act, or authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures Act.

Section 19. **Conforming Amendments.**