

D R A F T

FOR DISCUSSION ONLY

**REAL PROPERTY  
TRANSFER ON DEATH ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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Draft of March 18, 2008

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By

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ON UNIFORM STATE LAWS

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**REAL PROPERTY TRANSFER ON DEATH ACT**

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# **REAL PROPERTY TRANSFER ON DEATH ACT**

## **Reporter's General Prefatory Note**

This draft is for discussion at the Spring 2008 meeting of the ABA Section on Real Property, Trust and Estate Law in Washington, D.C. The draft is divided into four articles. Article 1 contains general provisions. Article 2 authorizes transfer on death deeds and addresses the formal and substantive issues concerning such deeds. Article 3 contains suggested statutory forms. These forms are drafts, and suggestions for improvement are encouraged. Article 4 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.

1 **REAL PROPERTY TRANSFER ON DEATH ACT**

2  
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

5  
6 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Real Property Transfer  
7 on Death Act.

8  
9 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

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

19 (4) “Property” means an interest in real property that is transferable on the death of the  
20 owner.

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

22 (6) “Transferor” means an individual who executes and acknowledges a recorded transfer  
23 on death deed.

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**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.

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

Paragraph (6) limits the use of a transfer on death deed to a transferor who is an individual. 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 Comment will explain that the term also does not include an agent acting under a power of attorney. The power of an agent to create or revoke a transfer on death deed is determined by other law, as indicated in the Comments to Sections 204 and 206.

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

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**Reporter’s Note**

This section essentially tracks Uniform Probate Code §6-311, 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 otherwise permitted under the law of this state.

**Reporter's Note**

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This section tracks the essence of the first part of 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.”



1 [ARTICLE] 2

2 TRANSFER ON DEATH DEED

3  
4 SECTION 201. TRANSFER ON DEATH DEED AUTHORIZED. An individual

5 may transfer property to one or more beneficiaries effective at the transferor’s death by a transfer  
6 on death deed.

7 Reporter’s Note

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

10  
11 The Comment will explain that the transferor may select any form of ownership,  
12 concurrent or successive, absolute or conditional, contingent or vested, valid under state law.  
13 Among many other things, this permits the transferor to designate one or more primary  
14 beneficiaries and one or more alternate beneficiaries to take in the event the primary beneficiaries  
15 fail to survive the transferor.

16  
17 This freedom to specify the form of the beneficiary’s interest comports with the  
18 fundamental principle articulated in the Restatement (Third) of Property (Wills and Other  
19 Donative Transfers) §10.1 that the donor’s intention should be “given effect to the maximum  
20 extent allowed by law.” As the Restatement explains in Comment c to §10.1, “American law  
21 curtails freedom of disposition only to the extent that the donor attempts to make a disposition or  
22 achieve a purpose that is prohibited or restricted by an overriding rule of law.”

23  
24 SECTION 202. TRANSFER ON DEATH DEED NONTESTAMENTARY. A

25 transfer on death deed is nontestamentary.

26 Reporter’s Note

27  
28 This section is based on Uniform Probate Code §6-101(a), which provides: “A provision  
29 for a nonprobate transfer on death in an insurance policy, contract of employment, bond,  
30 mortgage, promissory note, certificated or uncertificated security, account agreement, custodial  
31 agreement, deposit agreement, compensation plan, pension plan, individual retirement plan,  
32 employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other  
33 written instrument of a similar nature is nontestamentary.”  
34

1 As the Comment to UPC §6-101 explains, because the mode of transfer is declared to be  
2 nontestamentary, the instrument of transfer does not have to be executed in compliance with the  
3 formalities for wills, nor does the instrument need to be probated, nor does the decedent’s  
4 personal representative have any power or duty with respect to the asset.  
5

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

8 **Reporter’s Note**  
9

10 This section is drawn from Uniform Trust Code §601: “The capacity required to create,  
11 amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a  
12 revocable trust, is the same as that required to make a will.” The rule is consistent with the  
13 Restatement (Third) of Property (Wills and Other Donative Transfers) §8.1(b), which applies the  
14 standard of testamentary capacity, and not the higher standard of capacity for inter vivos gifts, to  
15 revocable will substitutes: “If the donative transfer is in the form of a will, a revocable will  
16 substitute, or a revocable gift, the testator or donor must be capable of knowing and  
17 understanding in a general way the nature and extent of his or her property, the natural objects of  
18 his or her bounty, and the disposition that he or she is making of that property, and must also be  
19 capable of relating these elements to one another and forming an orderly desire regarding the  
20 disposition of the property.”  
21

22 **SECTION 204. REQUIREMENTS.** A transfer on death deed must:

- 23 (1) contain the essential elements of an inter vivos deed, except as otherwise  
24 provided in paragraph (2);  
25 (2) state that the transfer is to occur at the transferor’s death;  
26 (3) be acknowledged by the transferor before a notary public or other individual  
27 authorized to take acknowledgments; and  
28 (4) be recorded before the transferor’s death in the [county] where the property is  
29 located.

30 **Reporter’s Note**  
31

1 Paragraph (1): The Act requires the same essential elements of a deed, other than a  
2 present intention to convey, as are required for inter vivos deeds under state law. In most  
3 jurisdictions, these elements are: identification of the parties, description of the property, and the  
4 transferor's signature.  
5

6 Paragraph (2): This requirement emphasizes the fundamental distinction between an inter  
7 vivos deed and a transfer on death deed. An inter vivos deed evidences a present intention to  
8 convey. A transfer on death deed evidences an intention that the transfer occur at the transferor's  
9 death. Under no circumstances should a defective transfer on death deed be given effect as an  
10 inter vivos deed; to do so would violate the transferor's intention that the transfer occur at the  
11 transferor's death.  
12

13 Paragraph (3): The requirement of acknowledgment fulfills at least four functions. First, it  
14 cautions a transferor that he or she is performing an act with legal consequences. Such caution is  
15 important where, as here, the transferor does not experience the wrench of delivery because the  
16 transfer occurs at death. Second, acknowledgment helps to prevent fraud. Third,  
17 acknowledgment facilitates the recording of the deed. Fourth, acknowledgment is important in  
18 order to implement the rule in Section 206(a)(1) that a later acknowledged deed prevails over an  
19 earlier acknowledged deed.  
20

21 Paragraph (4): The rule requiring recordation before the transferor's death is consistent  
22 with the transfer on death deed statutes that address the issue. The Comment will explain that, if  
23 the property described in the deed is in more than one county, the deed is effective only with  
24 respect to the property in the county or counties where the deed is recorded. A NCCUSL drafting  
25 committee is recommending the amendment of Uniform Probate Code §2-502 to validate a  
26 signed and notarized will without the need for attesting witnesses. If the amendment is approved,  
27 an unrecorded transfer on death deed satisfying Paragraphs (1), (2), and (3) could be given effect  
28 as a will.  
29

30 The Act does not define, but instead relies on other law to determine, the authority of an  
31 agent. An individual's agent may execute a transfer on death deed on the individual's behalf to  
32 the extent permitted by other law, such as the Uniform Power of Attorney Act.  
33

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

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

37 or

38 (2) consideration.

1 **Reporter’s Note**

2  
3 These rules are consistent with the transfer on death deed statutes that address the issues.

4  
5  
6 **SECTION 206. REVOCATION.**

7 (a) A transfer on death deed is revoked by the recording, before the transferor’s death, in  
8 the [county] where the property is located, of:

9 (1) a subsequently acknowledged transfer on death deed that revokes the deed  
10 expressly or by inconsistency; or

11 (2) a subsequently acknowledged revocation form that revokes the previously  
12 acknowledged deed either by description of the property or by reference to the recording  
13 information of the deed.

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

16 (c) A transfer on death deed made by joint owners is not revoked unless it is revoked by  
17 all of the surviving joint owners.

18 (d) After a transfer on death deed is recorded, it may not be revoked by a physical act  
19 performed on the deed.

20 (e) A transfer on death deed may not be revoked or modified by will.

21 **Reporter’s Note**

22 Subsections (a)(1) and (a)(2) provide that a transfer on death deed deed can be revoked by  
23 executing, acknowledging, and recording a subsequent instrument. The Comment will explain  
24 that if the property described in the deed is in more than one county the revocation is effective  
25 only with respect to the property in the county or counties where the revocation is recorded. The  
26 Comment will also explain, with examples, the principle of revocation by inconsistency, drawing  
27 on the well-established law of revocation by inconsistency of wills.

1 Subsection (b) is based on §5662(b) of the California recommended statute: “A coowner  
2 may revoke the transfer on death deed as to the interest of that coowner. The revocation does not  
3 affect the transfer on death deed as to the interest of another coowner.”  
4

5 Subsection (c) is based on the third sentence of Ariz. Stat. §33-405(F): “If the property is  
6 owned as joint tenants with right of survivorship or community property with right of  
7 survivorship and if the revocation is not executed by all the owners, the revocation is not  
8 effective unless executed by the last surviving owner.”  
9

10 Subsection (d): A Comment will explain that a physical act includes burning, tearing,  
11 canceling, obliterating, or destroying the deed or any part of it.  
12

13 Subsection (e) is consistent with the transfer on death deed statutes that address the issue,  
14 and with Uniform Probate Code §6-213(b) on multiple-party bank accounts.  
15

16 The Act does not define, but instead looks to other law to determine, the authority of an  
17 agent. An individual’s agent may revoke a transfer on death deed on the individual’s behalf to the  
18 extent permitted by other law, such as the Uniform Power of Attorney Act.  
19

20 The Comment will mention ademption by extinction as the practical equivalent of  
21 revocation.  
22  
23

## 24 **SECTION 207. EFFECT OF DEED DURING TRANSFEROR’S LIFETIME.**

25 During the transferor’s lifetime, a transfer on death deed does not:

- 26 (1) affect the rights of the transferor or other owners in the property;  
27 (2) affect the rights of creditors in the property;  
28 (3) affect the transferor’s or a beneficiary’s eligibility for any form of public assistance;  
29 (4) create a legal or equitable right to the property in favor of the beneficiary; or  
30 (5) make the property subject to process of the beneficiary’s creditors.

### 31 **Reporter’s Note**

32 The fundamental feature of a transfer on death deed is that it does not operate until the  
33 transferor’s death. During the transferor’s lifetime, the deed is both revocable and ambulatory,  
34 just as is a will. A transfer on death deed has no more effect during the transferor’s lifetime than  
35 a will. Thus, a transfer on death deed, during the transferor’s lifetime, does not sever a joint

1 tenancy (Paragraph (1)). It does not affect the rights of creditors, whether secured or unsecured  
2 (Paragraph (2)). It does not affect the transferor's or beneficiary's eligibility for any form of  
3 public assistance, including Medicaid (Paragraph (3)). On this point, the committee specifically  
4 disapproves of the contrary approach of Colo. Rev. Stat. §15-15-403. A transfer on death deed  
5 does not create any legal or equitable right in the beneficiary (Paragraph (4)), nor does it make  
6 the property subject to process of the beneficiary's creditors (Paragraph (5)).  
7  
8

9 **SECTION 208. EFFECT OF DEED AT TRANSFEROR'S DEATH.**

10 (a) Except as otherwise provided in this section [and in [cite state statute on antilapse, if  
11 applicable to nonprobate transfers]], on the death of the transferor, the following rules apply to  
12 property that is the subject of a transfer on death deed:

13 (1) The property owned by the transferor at death is transferred to the beneficiaries  
14 who survive the transferor in accordance with the deed.

15 (2) Unless the deed provides otherwise, concurrent beneficiaries receive equal and  
16 undivided interests in the property with no right of survivorship among them [unless two of the  
17 beneficiaries are husband and wife, in which event they receive their interests in the property as  
18 [joint tenants][tenants by the entirety][owners of community property with right of  
19 survivorship]].

20 (3) If no beneficiary survives the transferor, the transfer on death deed is void.

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

25 (c) A beneficiary receives a transferor's interest at the transferor's death subject to all:

26 (1) conveyances made during the transferor's lifetime; and

1 (2) encumbrances, assignments, contracts, mortgages, liens, and other interests  
2 affecting the property, whether or not recorded and whether created before or after the recording  
3 of the transfer on death deed, to which the property is subject at the the transferor’s death.

4 **Reporter’s Note**

5 Subsection (a)(2) is modeled on Uniform Probate Code §6-212 governing multiple-party  
6 accounts. There will be a Legislative Note explaining that states without tenancy by the entirety  
7 or community property with right of survivorship should delete these references in brackets.  
8 States preferring no right of survivorship between beneficiaries who are husband and wife should  
9 delete the entire bracketed material.

10  
11 Subsection (b) is consistent with the majority rule, namely that the survivorship right  
12 trumps the transfer on death deed.

13  
14 Subsection (c) is modeled on Colo. Rev. Stat. §15-15-407(2): “A grantee-beneficiary of a  
15 beneficiary deed takes title to the owner’s interest in the real property conveyed by the  
16 beneficiary deed at the death of the owner subject to all conveyances, encumbrances,  
17 assignments, contracts, mortgages, liens, and other interests, affecting title to the property,  
18 whether created before or after the recording of the beneficiary deed, or to which the owner was  
19 subject during the owner’s lifetime including, but not limited to, any executory contract of sale,  
20 option to purchase, lease, license, easement, mortgage, deed of trust, or other lien. The grantee-  
21 beneficiary also takes title subject to any interest in the property of which the grantee-beneficiary  
22 has either actual or constructive notice.” The committee rejected the requirement of California  
23 recommended §5652(c) that the limitation must be “of record,” because the beneficiary should  
24 merely step into the transferor’s shoes; the beneficiary should not be in a better position (i.e. free  
25 of limitations not of record) than the transferor.

26  
27 The Comment will refer approvingly to *In re Estate of Roloff*, 143 P.3d 406 (Kan. Ct.  
28 App. 2006) (holding that crops should be transferred with the land under a transfer on death deed  
29 because this result would be reached on the same facts with any other deed).

30  
31 The Comment will also address the following fact-pattern. H and W are married and own  
32 property as tenants by the entirety. H executes, acknowledges and records a transfer on death  
33 deed in favor of X. W later dies, at which point H owns the property in fee simple absolute.  
34 Under the law of some states, there may be a question whether the transfer on death deed is valid,  
35 given that H executed it when the property was owned, not by H and W, but by the marital entity.  
36 The correct answer is yes. The transfer on death deed is effective at H’s death because the  
37 property is owned by H at H’s death (recall the first sentence of subsection (a): “...and owned by  
38 the transferor at death”).  
39

1           **SECTION 209. DISCLAIMER.**

2                           **Alternative 1**

3           A beneficiary under a transfer on death deed may disclaim all or part of the beneficiary’s  
4 interest as provided by [cite state statute or the Uniform Disclaimer of Property Interests Act].

5                           **Alternative 2**

6           Subject to the law of this state limiting the right to disclaim property, a beneficiary under  
7 a transfer on death deed may disclaim all or part of the beneficiary’s interest by recording a  
8 disclaimer in the [county] where the property that is the subject of the disclaimer is located.

9                           **Reporter’s Note**

10  
11           Alternative 1 is for a state with a disclaimer statute, such as the Uniform Disclaimer of  
12 Property Interests Act, providing a mechanism for disclaiming interests created in a transfer on  
13 death deed. The statute need not have contemplated the transfer on death deed specifically, but  
14 the statutory scheme applies to, or can be readily amended to apply to, such deeds. Alternative 2  
15 is for a state without such a disclaimer statute.

16  
17           The Comment will mention the state-law doctrine of “relation back”: an effective  
18 disclaimer typically relates back to the time of the initial transfer (here, the transferor’s death).  
19

20           **SECTION 210. NO COVENANTS OR WARRANTIES.** A transfer on death deed

21 transfers property without covenant or warranty of title even if there is a contrary provision in the  
22 deed.

23                           **Reporter’s Note**

24           This provision is based on §5652(d) of the California recommended statute:  
25 “Notwithstanding a contrary provision in the deed, a revocable transfer on death deed transfers  
26 the property without covenant or warranty of title.” This rule is mandatory, not a default as in  
27 Colo. Rev. Stat. §15-15-404(2) [“Unless the owner designates otherwise ...”], in order to prevent  
28 mishaps from uninformed grantors.  
29  
30



1                   **SECTION 211. PROTECTION OF BONA FIDE PURCHASERS OR**

2 **ENCUMBRANCERS.** A bona fide purchaser or encumbrancer to whom a beneficiary transfers  
3 an interest in the property received under a transfer on death deed has the same rights and  
4 protections as if the transfer had been made by a grantee of an inter vivos deed.

5                   **Reporter’s Note**

6                   The committee observed that it is hard to articulate a substantive rule on bona fide  
7 purchasers or encumbrancers (BFPs), because some jurisdictions are notice jurisdictions  
8 (protecting BFPs regardless of when the BFP files), some are race-notice jurisdictions (protecting  
9 only BFPs who file first), and a few are race jurisdictions (protecting anyone who files first).  
10 Instead, the committee decided to articulate the rule that a BFP from the beneficiary of a transfer  
11 on death deed is in the same position as a BFP in the standard inter vivos transaction.  
12  
13

14                   **SECTION 212. PROOF OF DEATH.** Proof of the death of a transferor or a

15 beneficiary of a transfer on death deed must be established in the same manner as proof of the  
16 death of a joint tenant [under [cite state statute]].

17                   **Reporter’s Note**

18                   The committee was initially uncertain whether a Uniform Act should spell out a  
19 procedure for the proof of death. The Uniform Probate Code, for example, refers in §6-223 and  
20 §6-307 to “proof of death” without elaboration.  
21

22                   The committee decided to incorporate the state’s existing procedures for proving the  
23 death of a joint tenant, essentially tracking Colo. Rev. Stat. §15-15-413: “Proof of the death of  
24 the owner or a grantee beneficiary shall be established in the same manner as for proving the  
25 death of a joint tenant.”  
26  
27

28                   **SECTION 213. PROCEEDING TO CONTEST TRANSFER ON DEATH DEED.**

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

1 (b) A contest proceeding under this section must be brought in the [ ] court in the  
2 [county] where [the administration of the transferor’s estate would be proper][the property that is  
3 the subject of the transfer on death deed is located].

4 (c) A contest proceeding under this section must be commenced within the earlier of:

5 (1) [three years] after the transferor’s death; or

6 (2) [one year] after the beneficiary establishes the transferor’s death.

7 [(d) Upon initiation of a contest proceeding, the contestant may record a notice of lis  
8 pendens in the [county] where the transfer on death deed is recorded.]

9 **Reporter’s Note**

10  
11 The grounds of contest in subsection (a) are drawn from §5696 of the California  
12 recommended statute: “Nothing in this chapter limits the application of principles of fraud, undue  
13 influence, duress, mistake, or other invalidating cause to a transfer of property by a revocable  
14 transfer on death deed.”

15  
16 Subsection (b) will be accompanied by a Legislative Note explaining that the blank in  
17 brackets should be filled in, as appropriate, by each enacting state.

18  
19 Subsection (c) is drawn from §§5690(c) and 5692(b) of the California recommended  
20 statute. Section 5690(c) provides: “On commencement of a contest proceeding, the contestant  
21 may record a lis pendens in the county in which the revocable transfer on death deed is  
22 recorded.” Section 5692(b) provides: “A contest proceeding shall be commenced within the  
23 earlier of the following times: (1) Three years after the transferor’s death. (2) One year after the  
24 beneficiary establishes the fact of the transferor’s death....”

25  
26 Subsection (d): A Legislative Note will explain that subsection (d) is in brackets so that it  
27 can be deleted by states not using, or not wishing to refer to, the notice of lis pendens.

28  
29 The Comment will emphasize that the limitations period for commencement of the  
30 contest should be the same as for other nonprobate transfer contests (if state law already provides  
31 a limitations period for such contests) or (if not) for will contests.

32  
33 The Comment will also cross-reference the rule governing bona fide purchasers or  
34 encumbrancers in Section 211 and the provision on proof of death in Section 212.

1           **SECTION 214. LIABILITY OF A BENEFICIARY FOR CREDITOR CLAIMS**

2       **AND STATUTORY ALLOWANCES.** A beneficiary of a transfer on death deed is liable for  
3       allowed claims against the transferor’s probate estate and statutory allowances to the extent  
4       provided in [cite state statute or Section 6-102 of the Uniform Probate Code].

5   **Reporter’s Note**

6           This section defers to other law, such as Uniform Probate Code §6-102, to establish the  
7       liability of a beneficiary of a transfer on death deed for creditor claims and statutory allowances.  
8       For these purposes, a state should treat a beneficiary of a transfer on death deed the same as a  
9       beneficiary of any other nonprobate transfer outside of trust, for example a beneficiary of a “pay  
10      on death” bank account. The state’s approach to such beneficiaries should be consistent.

1 [ARTICLE] 3

2 FORMS

3  
4 **Reporter’s Prefatory Note**

5  
6 These forms are drafts, designed to provide a basis for discussion. Suggestions for  
7 improving the forms are encouraged.

8  
9 *Legislative Note: An enacting jurisdiction should review its statutory requirements for deeds  
10 and for acknowledgments and amend the statutory forms provided in Sections 301 and 302  
11 where necessary for conformity with those requirements.*

12  
13  
14 **SECTION 301. FORM OF TRANSFER ON DEATH DEED.** A document

15 substantially in the following form satisfies the requirements for a transfer on death deed under

16 this [act]:

17 [front of form]

18 TRANSFER ON DEATH DEED

19  
20 **Notice to Owner**

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

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

24 **Identifying Information**

25 Owner(s) Making This Deed:

26 \_\_\_\_\_

27 (name)

(mailing address)

28 \_\_\_\_\_

1 (name) (mailing address)  
2 \_\_\_\_\_

3 (name) (mailing address)

4 **Legal Description of the Property:**  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9 **Beneficiary or Beneficiaries**

10 I revoke all my previous transfer on death deeds affecting the described property, and  
11 designate the following beneficiary(ies) who survive me to receive the property (in equal and  
12 undivided shares with no right of survivorship between them, unless I say otherwise in this  
13 deed):

14 **Primary Beneficiary(ies)** – *include mailing addresses if available*  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_

18 **Alternate Beneficiary(ies) – Optional**

19 If no above beneficiary survives me, I designate the following alternate beneficiary(ies)  
20 who survive me to receive the property (in equal and undivided shares with no right of  
21 survivorship between them, unless I say otherwise in this deed):

22 Alternate Beneficiary(ies) – *include mailing addresses if available*

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

4 **Transfer on Death**

5 I transfer my interest in the described property to the beneficiary(ies) on my death.  
6 Before my death, I have the right to revoke this deed.

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

8 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_  
9 (signature) (date)  
10 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_  
11 (signature) (date)

12 **Acknowledgment**

13 [insert acknowledgment here]

14 [back of form]

15 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

16 *What does the Transfer on Death (TOD) deed do?* When you die, the beneficiaries will  
17 become owners of the property described in the TOD deed, subject to any debts or liens or  
18 mortgages (or other encumbrances) you have put on the property during your lifetime. Probate is  
19 not required. The TOD deed has no effect until you die. You can revoke it at any time. If you  
20 transfer the property to someone else during your lifetime, the beneficiary under this deed will  
21 not receive it.

22 *How do I make a TOD deed?* Complete this form. Have it notarized. Record the form in

1 each [county] where any part of the property is located. The form must be notarized and recorded  
2 before your death or it has no effect.

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

7 *How do I “record” the TOD deed?* Take the completed and notarized form to the [county  
8 recorder] for the [county] where the property is located. Follow the instructions given by the  
9 [county recorder] to make the form part of the official property records. If the property is in more  
10 than one [county], you must record the deed in each [county].

11 *Can I revoke the TOD deed if I change my mind?* Yes. The TOD deed is revocable. No  
12 one, including the beneficiaries, can prevent you from revoking the deed.

13 *How do I revoke the TOD deed?* There are two ways to revoke a recorded TOD deed: (1)  
14 Complete and notarize a revocation form, and record it in each [county] where the property is  
15 located. (2) Complete and notarize a new TOD deed that disposes of the same property, and  
16 record it in each [county] where the property is located. In addition, you can transfer the property  
17 to someone else during your lifetime.

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

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

22 *What if I name more than one beneficiary?* You may name more than one beneficiary.

1 Unless you say otherwise in the deed, the primary beneficiaries who survive you (or if none  
2 survives you, the alternate beneficiaries) will become co-owners in equal shares.

3 **Reporter’s Note**

4 These forms are based on the California proposed form, with modifications.  
5

6  
7 **SECTION 302. FORM OF REVOCATION.**

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

10 [front of form]

11 **REVOCATION OF TRANSFER ON DEATH DEED**

12 **Notice to Owner**

13 This revocation must be recorded before you die or it will not be effective. This  
14 revocation is effective only as to the interests in the property of owners who sign this revocation.

15 **Identifying Information**

16 Owner(s) of Property Making This Revocation

17 \_\_\_\_\_

18 (name)

(mailing address)

19 \_\_\_\_\_

20 (name)

(mailing address)

21 \_\_\_\_\_

22 (name)

(mailing address)

23 **Legal Description of the Property:**



1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

4 **Revocation**

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

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

7 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

8 (signature)

(date)

9 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

10 (signature)

(date)

11 **Acknowledgment**

12 [insert acknowledgment here]

13 [back of form]

14 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

15 *How do I use this form to revoke a Transfer on Death (TOD) deed?* Complete this form.

16 Have it notarized. Record the form in each [county] where the property is located. The form must  
17 be notarized and recorded before your death or it has no effect.

18 *How do I find the “legal description” of the property?* This information may be on the  
19 TOD deed. It may also be available in the office of the [county recorder] for the [county] where  
20 the property is located. If you are not absolutely sure, consult a lawyer.

21 *How do I “record” the form?* Take the completed and notarized form to the [county  
22 recorder] for the [county] where the property is located. Follow the instructions given by the

1 [county recorder] to make the form part of the official property records. If the property is located  
2 in more than one [county], you must record the deed in each of those [counties].

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

5 **Reporter's Note**

6 The form is based on the form in Section 301.  
7

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

3  
4  
5 SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

6 applying and construing this uniform act, consideration must be given to the need to promote  
7 uniformity of the law with respect to its subject matter among the states that enact it.

8 Reporter’s Note

9 This provision is standard in all uniform acts.  
10  
11

12 SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
13 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal  
14 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et. seq.,  
15 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
16 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
17 U.S.C. Section 7003(b).

18 Reporter’s Note

19 The NCCUSL Drafting Rules state: “If an act contains a provision requiring a notice or  
20 other record *or a signature, whether electronic or written*, [this] section should be included”  
21 (emphasis supplied).  
22

23 A Legislative Note will explain that jurisdictions with the Uniform Electronic  
24 Transactions Act do not need this section.  
25  
26

27 SECTION 403. REPEALS. The following acts and parts of acts are hereby repealed:

28 (1) .....

1 (2) .....

2 (3) .....

3 **Reporter’s Note**

4 There will be a Legislative Note, either here or at the beginning of the Act, drawing  
5 states’ attention to the growing harmonization of the rules governing probate and nonprobate  
6 transfers. The Legislative Note will encourage states enacting this Act to consider extending  
7 probate rules to transfer on death deeds and other nonprobate transfers, with respect to the  
8 following: (1) ademption of specific devises; (2) antilapse; (3) revocation by divorce; (4)  
9 revocation by homicide (also known as the “slayer rule”); (5) survivorship; and (6) the surviving  
10 spouse’s elective share.

11  
12 **SECTION 404. EFFECTIVE DATE.** This [act] takes effect .....  
13