



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1153

Introduced 02/08/11, by Rep. John E. Bradley - Sidney H. Mathias

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Residential Real Property Transfer on Death Instrument Act. Defines terms. Provides the requirements for an owner to transfer residential real estate by a transfer on death instrument. Provides that a transfer on death instrument is a revocable nontestamentary instrument. Requires that an owner who makes or revokes a transfer on death instrument must have the same capacity as the capacity required to make a will. Provides that a transfer on death instrument must include the essential elements and formalities of a deed and be recorded in the recorder's office before the owner's death. Provides that a transfer on death instrument does not require notice, delivery, or consideration. Provides that revocation of a transfer on death instrument may be accomplished by another transfer on death instrument that revokes the instrument expressly or by an inconsistency which is recorded before the owner's death. Describes the effects that a transfer on death instrument does and does not have, during an owner's life. Provides that a beneficiary under a transfer on death instrument has, at the owner's death, the right to disclaim or refuse to accept the transfer. Provides for the manner of acceptance of a transfer by the beneficiary. Provides that a beneficiary of a transfer on death instrument is subject to the claims of creditors and statutory claimants to the same extent as a beneficiary of any nontestamentary transfer. Describes applicable statute of limitations to contest the validity of a transfer on death instrument. Provides that the preparation of a transfer on death instrument or its revocation is the practice of law. Provides a statutory form for a notice of death affidavit and acceptance of a transfer on death instrument.

LRB097 00025 AJO 47182 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Residential Real Property Transfer on Death
6 Instrument Act.

7 Section 5. Definitions. In this Act:

8 "Beneficiary" means a person that receives residential
9 real estate under a transfer on death instrument.

10 "Designated beneficiary" means a person designated to
11 receive residential real estate in a transfer on death
12 instrument.

13 "Joint owner" means an individual who owns residential real
14 estate concurrently with one or more other individuals with a
15 right of survivorship. The term includes a joint tenant or a
16 tenant by the entirety. The term does not include a tenant in
17 common.

18 "Owner" means an individual who makes a transfer on death
19 instrument.

20 "Person" means an individual, corporation, business trust,
21 land trust, estate, inter-vivos revocable or irrevocable
22 trust, testamentary trust, partnership, limited liability
23 company, association, joint venture, public corporation,

1 government or governmental subdivision, agency, or
2 instrumentality, or any other legal or commercial entity.

3 "Residential real estate" means real property improved
4 with not less than one nor more than 4 residential dwelling
5 units, units in residential cooperatives; or, condominium
6 units, including the limited common elements allocated to the
7 exclusive use thereof that form an integral part of the
8 condominium unit; or a single tract of agriculture real estate
9 consisting of 40 acres or less which is improved with a single
10 family residence.

11 "Transfer on death instrument" means an instrument
12 authorized under this Act.

13 Section 10. Applicability. This Act applies to only a
14 transfer of residential real estate as defined in this Act by
15 means of a transfer on death instrument made before, on, or
16 after the effective date of this Act, by an owner dying on or
17 after the effective date of this Act.

18 Section 15. Non-exclusivity. This Act does not affect any
19 method of transferring residential real estate otherwise
20 permitted under the law of this State.

21 Section 20. Transfer on death instrument authorized. An
22 owner may transfer residential real estate by a transfer on
23 death instrument to one or more beneficiaries as owners,

1 concurrently or successively, and upon any contingency,
2 effective at the owner's death.

3 Section 25. Transfer on death instrument revocable. A
4 transfer on death instrument is revocable even if the
5 instrument or another instrument contains a contrary
6 provision.

7 Section 30. Transfer on death instrument nontestamentary.
8 A transfer on death instrument is a nontestamentary instrument
9 and is subject to all other laws governing or affecting
10 nontestamentary instruments.

11 Section 35. Capacity of owner and agent's authority. The
12 capacity required to make or revoke a transfer on death
13 instrument is the same as the capacity required to make a will.
14 Unless expressly authorized by the owner under a power of
15 attorney or similar instrument creating an agency, an agent for
16 an owner does not have the authority to create or revoke a
17 transfer on death instrument.

18 Section 40. Requirements. A transfer on death instrument:

19 (1) must contain the essential elements and
20 formalities of a properly recordable inter vivos deed; and
21 must be executed, witnessed, and acknowledged in
22 compliance with Section 45;

1 (2) must state that the transfer to the designated
2 beneficiary is to occur at the owner's death; and

3 (3) must be recorded before the owner's death in the
4 public records in the office of the recorder of the county
5 or counties in which any part of the residential real
6 estate is located.

7 Section 45. Signing, attestation, and acknowledgement.
8 Every transfer on death instrument shall be signed by the owner
9 or by some person in his or her presence and by his or her
10 direction, and shall be attested in writing by 2 or more
11 credible witnesses, whose signatures along with the owner's
12 signature shall be acknowledged by a notary public. The
13 witnesses shall attest in writing that on the date thereof the
14 owner executed the transfer on death instrument in their
15 presence as his or her own free and voluntary act, and that at
16 the time of the execution the witnesses believed the owner to
17 be of sound mind and memory.

18 Section 50. Notice, delivery, or consideration not
19 required. A transfer on death instrument is effective without:

20 (1) notice or delivery to the designated beneficiary
21 during the owner's life; or

22 (2) consideration.

23 Section 55. Revocation by recorded instrument authorized;

1 revocation by act or unrecorded instrument, not authorized.

2 (a) An instrument is effective to revoke a recorded
3 transfer on death instrument, or any part of it, only if

4 (1) it is:

5 (A) another transfer on death instrument that
6 revokes the instrument or part of the instrument
7 expressly or by inconsistency; or

8 (B) an instrument of revocation that expressly
9 revokes the instrument or part of the instrument; and

10 (2) it is

11 (A) executed, witnessed, and acknowledged in the
12 same manner as is required by Section 45 on a date that
13 is after the date of the acknowledgment of the
14 instrument being revoked; and

15 (B) recorded before the owner's death in the public
16 records in the office of the recorder of the county or
17 counties where the prior transfer on death instrument
18 is recorded.

19 (b) A transfer on death instrument executed and recorded in
20 accordance with this Act may not be revoked by a revocatory act
21 on the instrument, by an unrecorded instrument, or by a
22 provision in a will.

23 Section 60. Effect of transfer on death instrument during
24 owner's life.

25 (a) During an owner's life, a transfer on death instrument

1 does not:

2 (1) affect the right of the owner, any other owner,
3 or an agent for the owner to sell or encumber the
4 residential real estate;

5 (2) affect an interest or right of a transferee,
6 lienholder, mortgagee, option holder or grantee even
7 if the transferee, lienholder, mortgagee, option
8 holder or grantee has actual or constructive notice of
9 the instrument;

10 (3) affect an interest or right of a secured or
11 unsecured creditor or future creditor of the owner,
12 even if the creditor has actual or constructive notice
13 of the instrument;

14 (4) affect the owner's or designated beneficiary's
15 eligibility for any form of public assistance;

16 (5) create a legal or equitable interest in favor
17 of the designated beneficiary; or

18 (6) subject the residential real estate to claims
19 or process of a creditor of the designated beneficiary.

20 (b) If after recording a transfer on death instrument, the
21 owner makes a contract for the sale or transfer of the
22 residential real estate or some part thereof that is the
23 subject of the transfer on death instrument and the whole or
24 any part of the contract remains executory at the owner's
25 death, the disposition of the residential real estate by the
26 contract does not revoke the transfer on death instrument but

1 the residential real estate passes to the designated
2 beneficiary or beneficiary subject to the contract.

3 Section 65. Effect of transfer on death instrument at
4 owner's death.

5 (a) Except as otherwise provided in the transfer on death
6 instrument, in this Section, or in the Probate Act of 1975 or
7 any other Act applicable to nontestamentary instruments, on the
8 death of the owner, the following rules apply to residential
9 real estate that is the subject of a transfer on death
10 instrument and owned by the owner at death:

11 (1) Subject to the beneficiary's right to disclaim or
12 refuse to accept the transfer, the interest in the
13 residential real estate is transferred to the beneficiary
14 in accordance with the instrument.

15 (2) If a designated beneficiary fails to survive the
16 owner or is not in existence on the date of the owner's
17 death, then except as provided in paragraph (3) the
18 residential real estate shall pass to the owner's estate.

19 (3) Unless the owner provides otherwise, if the
20 designated beneficiary is a descendant of the owner who
21 dies before the owner, the descendants of the deceased
22 designated beneficiary living at the time of the owner's
23 death shall take the residential real estate per stirpes.
24 If the designated beneficiary is one of a class of
25 designated beneficiaries, and any member of the class dies

1 before the owner, the members of the class living when the
2 owner dies shall take the share or shares which the
3 deceased member would have taken if he or she were then
4 living, except that if the deceased member of the class is
5 a descendant of the owner, the descendants of the deceased
6 member then living shall take per stirpes the share or
7 shares which the deceased member would have taken if he or
8 she were then living.

9 (b) Subject to the Probate Act of 1975 and the Conveyances
10 Act, a beneficiary takes the residential real estate subject to
11 all conveyances, encumbrances, assignments, contracts,
12 options, mortgages, liens, and other interests to which the
13 residential real estate is subject at the owner's death.

14 (c) A transfer on death instrument transfers residential
15 real estate without covenant or warranty of title even if the
16 instrument contains a contrary provision.

17 (d) If there is no sufficient evidence of the order of the
18 owner and designated beneficiary's deaths, otherwise than
19 simultaneously, and there is no other provision in the transfer
20 on death instrument, for purposes of this Section, the
21 designated beneficiary shall be deemed to have predeceased the
22 owner.

23 Section 70. Joint owners.

24 (a) One or more joint owners may execute a transfer on
25 death instrument.

1 (b) If all of the joint owners execute a transfer on death
2 instrument, then an instrument of joint owners is revoked only
3 if it is revoked by all of the then living joint owners. A
4 transfer on death instrument is revocable by the last surviving
5 joint owner notwithstanding any contract or agreement between
6 the joint owners to the contrary.

7 (c) If less than all of the joint owners execute a transfer
8 on death instrument, the transfer on death instrument will be
9 governed by the designation of the joint owner who is the last
10 to die of all the joint owners. If the last to die joint owner
11 did not execute a transfer on death instrument, the designation
12 of any prior deceased joint owner is ineffective.

13 (d) A transfer on death instrument shall not sever a joint
14 tenancy or tenancy by the entirety.

15 Section 75. Notice of death affidavit, acceptance and
16 effective date of transfer. A transfer on death instrument is
17 effective as of the owner's death upon the filing of a notice
18 of death affidavit and acceptance by the beneficiary or
19 beneficiaries in the office of the recorder in the county or
20 counties where the residential real estate is located. The
21 notice of death affidavit and acceptance shall contain the name
22 and address of each beneficiary who shall take under the
23 transfer on death instrument, a legal description of the
24 property, the street address, and parcel identification number
25 of the residential real estate, the name of the deceased owner,

1 and the date of death. The notice of death affidavit and
2 acceptance shall be signed by each beneficiary or by the
3 beneficiary's authorized representative.

4 Section 80. Disclaimer. A beneficiary may disclaim all or
5 part of the beneficiary's interest as provided by Disclaimers
6 Under Nontestamentary Instrument Act.

7 Section 85. Rights of creditors and statutory claimants. A
8 beneficiary of a transfer on death instrument is subject to the
9 claims of creditors and statutory claimants to the same extent
10 as a beneficiary of any nontestamentary transfer.

11 Section 90. Limitations. An action to set aside or contest
12 the validity of a transfer on death instrument shall be
13 commenced within the earlier of 2 years after the date of the
14 owner's death or 6 months from the date that letters of office
15 are issued.

16 Section 95. Preparation of a transfer on death instrument
17 or its revocation is the practice of law. The drafting and
18 preparation of a transfer on death instrument or its
19 revocation, and the supervision of its execution or revocation
20 is the practice of law. Any non-lawyer who drafts, prepares or
21 supervises the execution or revocation of a transfer on death
22 instrument for another is guilty of an unlawful practice within

1 the meaning of the Consumer Fraud and Deceptive Business
 2 Practices Act. Nothing in this Section shall prohibit an owner
 3 from drafting or supervising the execution or revocation of his
 4 or her own transfer on death instrument.

5 Section 100. Form of notice of death affidavit and
 6 acceptance. The following form shall be used to give notice of
 7 the owner's death and to accept the transfer by the
 8 beneficiary:

9 (front of form)

10 NOTICE: This Notice of Death Affidavit and Acceptance form or
 11 equivalent form must be recorded by the beneficiary after the
 12 death of the owner to make the transfer on death instrument
 13 effective. You should consult a lawyer before using this form.

14 NOTICE OF DEATH AFFIDAVIT AND ACCEPTANCE OF
 15 TRANSFER ON DEATH INSTRUMENT

16 PREPARED BY AND RETURN TO:

17 SEND SUBSEQUENT TAX BILL TO:

18 The undersigned beneficiary or beneficiaries, being duly sworn
 19 on oath, state as follows:

20 That [name of owner] died on , 20..... , a resident
 21 of [name of county] , [name of state] , owning residential real

1 estate legally described below:

2 [legal description or attach exhibit]

3 That the street address of the residential real estate is
4 [address] and the property identification number is [PIN] .

5 That the Transfer on Death Instrument is dated and
6 recorded as Document No. in the Office of the
7 Recorder for County, Illinois.

8 That the undersigned whose names and addresses appear below are
9 all beneficiaries entitled to receive under the Transfer on
10 Death Instrument:

11	Name	Address	Share
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12 In witness whereof, the undersigned beneficiaries hereby
13 accept the transfer of residential real estate under the
14 transfer on death instrument this day of
15, 20.....

16 (Seal) (Seal)
17	[Print Name]	[Print Name]

18 STATE OF ILLINOIS

19 COUNTY OF

1 I, the undersigned, a Notary Public in and for the State
 2 aforesaid, DO HEREBY CERTIFY THAT [NAME OF BENEFICIARY OR
 3 BENEFICIARIES]] personally known to me to be the same person or
 4 persons whose name or names are subscribed to the foregoing
 5 instrument, appeared before me this day in person and swore on
 6 oath to the above foregoing affidavit. Signed and sworn to
 7 before me this day of, A.D. 20....

8 My commission expires on

9 (SEAL)

10

11 Notary Public