

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.

19 (a) A transfer on death instrument:

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

1 compliance with Section 45;

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

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

8 (b) The failure to comply with any of the requirements of
9 subsection (a) will render the transfer on death instrument
10 void and ineffective to transfer title to the residential real
11 estate at the owner's death.

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

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

- 1 (1) notice or delivery to the designated beneficiary
2 during the owner's life; or
3 (2) consideration.

4 Section 55. Revocation by recorded instrument authorized;
5 revocation by act or unrecorded instrument, not authorized.

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

8 (1) it is:

9 (A) another transfer on death instrument that
10 revokes the instrument or part of the instrument
11 expressly or by inconsistency; or

12 (B) an instrument of revocation that expressly
13 revokes the instrument or part of the instrument; and

14 (2) it is

15 (A) executed, witnessed, and acknowledged in the
16 same manner as is required by Section 45 on a date that
17 is after the date of the acknowledgment of the
18 instrument being revoked; and

19 (B) recorded before the owner's death in the public
20 records in the office of the recorder of the county or
21 counties where the prior transfer on death instrument
22 is recorded.

23 (b) A transfer on death instrument executed and recorded in
24 accordance with this Act may not be revoked by a revocatory act
25 on the instrument, by an unrecorded instrument, or by a

1 provision in a will.

2 Section 60. Effect of transfer on death instrument during
3 owner's life.

4 (a) During an owner's life, a transfer on death instrument
5 does not:

6 (1) affect the right of the owner, any other owner,
7 or an agent for the owner to sell or encumber the
8 residential real estate;

9 (2) affect an interest or right of a transferee,
10 lienholder, mortgagee, option holder or grantee even
11 if the transferee, lienholder, mortgagee, option
12 holder or grantee has actual or constructive notice of
13 the instrument;

14 (3) affect an interest or right of a secured or
15 unsecured creditor or future creditor of the owner,
16 even if the creditor has actual or constructive notice
17 of the instrument;

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

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

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

24 (b) If after recording a transfer on death instrument, the
25 owner makes a contract for the sale or transfer of the

1 residential real estate or some part thereof that is the
2 subject of the transfer on death instrument and the whole or
3 any part of the contract remains executory at the owner's
4 death, the disposition of the residential real estate by the
5 contract does not revoke the transfer on death instrument but
6 the residential real estate passes to the designated
7 beneficiary or beneficiary subject to the contract.

8 Section 65. Effect of transfer on death instrument at
9 owner's death.

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

16 (1) Subject to the beneficiary's right to disclaim or
17 refuse to accept the transfer, the interest in the
18 residential real estate is transferred to the beneficiary
19 in accordance with the instrument.

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

24 (3) Unless the owner provides otherwise, if the
25 designated beneficiary is a descendant of the owner who

1 dies before the owner, the descendants of the deceased
2 designated beneficiary living at the time of the owner's
3 death shall take the residential real estate per stirpes.
4 If the designated beneficiary is one of a class of
5 designated beneficiaries, and any member of the class dies
6 before the owner, the members of the class living when the
7 owner dies shall take the share or shares which the
8 deceased member would have taken if he or she were then
9 living, except that if the deceased member of the class is
10 a descendant of the owner, the descendants of the deceased
11 member then living shall take per stirpes the share or
12 shares which the deceased member would have taken if he or
13 she were then living.

14 (b) Subject to the Probate Act of 1975 and the Conveyances
15 Act, a beneficiary takes the residential real estate subject to
16 all conveyances, encumbrances, assignments, contracts,
17 options, mortgages, liens, and other interests to which the
18 residential real estate is subject at the owner's death.

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

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

1 owner.

2 Section 70. Joint owners.

3 (a) One or more joint owners may execute a transfer on
4 death instrument.

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

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

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

19 Section 75. Notice of death affidavit, acceptance and
20 effective date of transfer. A transfer on death instrument is
21 effective as of the owner's death upon the filing of a notice
22 of death affidavit and acceptance by the beneficiary or
23 beneficiaries in the office of the recorder in the county or
24 counties where the residential real estate is located. The

1 notice of death affidavit and acceptance shall contain the name
2 and address of each beneficiary who shall take under the
3 transfer on death instrument, a legal description of the
4 property, the street address, and parcel identification number
5 of the residential real estate, the name of the deceased owner,
6 and the date of death. The notice of death affidavit and
7 acceptance shall be signed by each beneficiary or by the
8 beneficiary's authorized representative. If a notice of death
9 affidavit and acceptance has not been filed by at least one
10 beneficiary or by a beneficiary's authorized representative in
11 the office of the recorder in the county or counties where the
12 residential real estate is located within 30 days after the
13 owner's death, the personal representative of the owner's
14 estate, if any, may take possession of the residential real
15 estate in accordance with Section 20-1 of the Probate Act of
16 1975, and shall be entitled to a lien for all reasonable costs
17 and expenses incurred in the management and care thereof
18 provided that a reasonable attempt to notify the beneficiary or
19 beneficiaries has been made. If a notice of death affidavit and
20 acceptance has not been filed by at least one beneficiary or by
21 the beneficiary's authorized representative in the office of
22 the recorder in the county or counties where the residential
23 real estate is located within 2 years after the owner's death,
24 the transfer on death instrument shall be void and ineffective
25 and the residential real estate shall pass to the owner's
26 estate as provided in paragraph (2) of subsection (a) of

1 Section 65 to be administered and distributed in accordance
2 with the terms thereof.

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

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

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

15 Section 95. Preparation of a transfer on death instrument
16 or its revocation. A transfer on death instrument or its
17 revocation shall be prepared only by an Illinois licensed
18 attorney. Nothing in this Section, however, shall prohibit an
19 owner from preparing his or her own transfer on death
20 instrument or revocation.

21 Section 100. Form of notice of death affidavit and

1 acceptance. The following form shall be used to give notice of
2 the owner's death and to accept the transfer by the
3 beneficiary:

4 (front of form)

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

9 NOTICE OF DEATH AFFIDAVIT AND ACCEPTANCE OF
10 TRANSFER ON DEATH INSTRUMENT

11 PREPARED BY AND RETURN TO:

12 SEND SUBSEQUENT TAX BILL TO:

13 The undersigned beneficiary or beneficiaries, being duly sworn
14 on oath, state as follows:

15 That [name of owner] died on , 20..... , a resident
16 of [name of county] , [name of state] , owning residential real
17 estate legally described below:

18 [legal description or attach exhibit]

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

1 That the Transfer on Death Instrument is dated and
2 recorded as Document No. in the Office of the
3 Recorder for County, Illinois.

4 That the undersigned whose names and addresses appear below are
5 all beneficiaries entitled to receive under the Transfer on
6 Death Instrument:

7	Name	Address	Share
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8 In witness whereof, the undersigned beneficiaries hereby
9 accept the transfer of residential real estate under the
10 transfer on death instrument this day of
11, 20.....

12 (Seal) (Seal)
13	[Print Name]	[Print Name]

14 STATE OF ILLINOIS
15 COUNTY OF

16 I, the undersigned, a Notary Public in and for the State
17 aforesaid, DO HEREBY CERTIFY THAT [NAME OF BENEFICIARY OR
18 BENEFICIARIES] personally known to me to be the same person or
19 persons whose name or names are subscribed to the foregoing
20 instrument, appeared before me this day in person and swore on

1 oath to the above foregoing affidavit. Signed and sworn to
2 before me this day of, A.D. 20....

3 My commission expires on

4 (SEAL)

5

6 Notary Public