

SENATE BILL 2581

By Hensley

AN ACT to amend Tennessee Code Annotated, Title 30;
Title 31; Title 32 and Title 66, relative to transfer
on death deeds.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 31, is amended by adding Sections 2 through 17 as a new chapter 7.

SECTION 2. This chapter shall be known and may be cited as the "Uniform Real Property Transfer on Death Act."

SECTION 3. As used in this chapter:

(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 (1) or more other individuals with a right of survivorship and includes a joint tenant, owner of community property with a right of survivorship, and tenant by the entirety. "Joint owner" does not include a tenant in common or owner of community property without a right of survivorship;

(4) "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;

(5) "Property" means an interest in real property that is located in this state and transferable on the death of the owner;

(6) "Transfer on death deed" means a deed authorized under this chapter; and

(7) "Transferor" means an individual who makes a transfer on death deed.

SECTION 4. This chapter does not affect any method of transferring property otherwise permitted under the law of this state.

SECTION 5. An individual may transfer property to one (1) or more beneficiaries effective at the transferor's death by a transfer on death deed.

SECTION 6. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

SECTION 7. A transfer on death deed is nontestamentary.

SECTION 8. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

SECTION 9. A transfer on death deed:

(1) Except as otherwise provided in subdivision (2), shall contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Shall state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) Shall be recorded before the transferor's death in the public records in the office of the register of deeds of the county where the property is located.

SECTION 10. A transfer on death deed is effective without:

(1) Notice to, delivery to, or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

SECTION 11.

(a) Subject to subsection (b), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one (1) of the following:

(A) A subsequent transfer on death deed that revokes the earlier transfer on death deed or part of the earlier transfer on death deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed; or

(C) An inter vivos deed that expressly revokes the transfer on death deed or part of the transfer on death 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 register of deeds of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one (1) 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 12. 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 13.

(a) Except as otherwise provided in the transfer on death deed, this section, § 31-1-105, § 31-1-106, or chapter 3 of this title, 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 subdivision (a)(2), 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 of a designated beneficiary that fails to survive the transferor lapses;

(3) Subject to subdivision (a)(4), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and

(4) If the transferor has identified two (2) or more designated beneficiaries to receive concurrent interests in the property, the share of one (1) that 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) Subject to title 66, chapter 26, 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 (b) and title 66, chapter 26, 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:

(1) Survived by one (1) 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; or

(2) The last surviving joint owner, the transfer on death deed is effective.

(d) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

SECTION 14. A beneficiary may disclaim all or part of the beneficiary's interest as provided by § 31-1-103.

SECTION 15.

(a) To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed.

(b) If more than one (1) property is transferred by one (1) or more transfer on death deeds, the liability under subsection (a) is apportioned among the properties in proportion to their net values at the transferor's death.

(c) A proceeding to enforce the liability under this section shall be commenced not later than eighteen (18) months after the transferor's death.

SECTION 16. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 17. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

SECTION 18. Tennessee Code Annotated, Section 66-24-101(a), is amended by adding the following language as a new subdivision:

() Any disclaimer of an interest in real property;

SECTION 19. Tennessee Code Annotated, Section 31-1-103, is amended by deleting the language "Except as provided in subdivision (b)(2)(B)" in subdivision (b)(2)(A) and substituting instead the language "Except as provided in subdivisions (b)(2)(B) and (C)".

SECTION 20. Tennessee Code Annotated, Section 31-1-103(b)(2), is amended by adding the following as a new subdivision:

(C) In the case of a person disclaiming an interest in real property created by a transfer on death deed pursuant to chapter 7 of this title after the transfer on death deed has become irrevocable, the disclaimer is filed in the office of the register of deeds in the county where the real property that is the subject of the disclaimer is located not later than the date that is nine (9) months after the later of:

(i) The date on which the transfer creating the interest or power in the person is made; or

(ii) The day on which the person attains twenty-one (21) years of age.

SECTION 21. This act shall take effect July 1, 2018, the public welfare requiring it, and applies to a transfer on death deed made before, on, or after that date by a transferor dying on or after July 1, 2018.