

**ACT 173**

S.B. NO. 105

A Bill for an Act Relating to Uniform Real Property Transfer on Death.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

§ -1 **Short title.** This Act may be cited as the Uniform Real Property Transfer on Death Act.

§ -2 **Definitions.** As used in this chapter:

“Beneficiary” means a person that receives property under a transfer on death deed.

“Designated beneficiary” means a person designated in a transfer on death deed to receive property.

“Joint owner” means an individual who owns property concurrently with one or more individuals with a right of survivorship. The term includes a joint tenant and a tenant by the entirety but does not include a tenant in common.

“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.

“Property” means an interest in real property located in this State that is transferable on the death of the owner.

“Subject property” means real property or an interest in real property that is subject to a transfer on death deed.

“Transfer on death deed” means a deed authorized under this chapter.

“Transferor” means an individual who executes a transfer on death deed.

**§ -3 Applicability.** This chapter applies to a transfer on death deed executed at any time by a transferor who dies on or after July 1, 2011.

**§ -4 Nonexclusivity.** This chapter does not affect any method of transferring property otherwise permitted under the laws of this State.

**§ -5 Transfer on death deed authorized.** An individual may transfer property, effective at the transferor’s death, to one or more beneficiaries by a transfer on death deed; provided that, with respect to property of which any portion is registered in the land court, transfer is subject to the requirement in section -13(a)(1) regarding submittal of a petition to the land court.

**§ -6 Transfer on death deed revocable.** A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

**§ -7 Transfer on death deed nontestamentary.** A transfer on death deed is nontestamentary.

**§ -8 Capacity of transferor.** The capacity required to execute or revoke a transfer on death deed is the same as the capacity required to execute a will.

**§ -9 Requirements.** A transfer on death deed:

- (1) Except as otherwise provided in paragraph (2), shall contain the essential elements and formalities of a properly recordable inter vivos deed;
- (2) Shall state that the transfer to the beneficiary is to occur at the transferor’s death; and
- (3) Shall be recorded with the bureau of conveyances or filed in the office of the assistant registrar of the land court, as applicable, before the transferor’s death.

**§ -10 Notice, delivery, acceptance, consideration not required.** A transfer on death deed shall be effective without notice or delivery to or acceptance by the designated beneficiary during the transferor’s life, and without consideration.

**§ -11 Revocation by instrument authorized; revocation by act not permitted.** (a) Subject to subsection (b), an instrument is effective to revoke all or any part of a recorded or filed transfer on death deed only if the instrument is acknowledged by the transferor after the acknowledgement of the transfer on death deed being revoked and is recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court, as applicable, before the transferor’s death and is:

- (1) A subsequently recorded or filed transfer on death deed that revokes all or a part of the recorded or filed transfer on death deed either expressly or because of inconsistency;
  - (2) An instrument of revocation that expressly revokes all or a part of the recorded or filed transfer on death deed; or
  - (3) An inter vivos deed that expressly revokes all or a part of the transfer on death deed.
- (b) If a transfer on death deed is executed by more than one transferor:
- (1) Revocation by one transferor does not affect the deed as to the interest of another transferor; and
  - (2) A deed executed by joint owners is revoked only if it is revoked by all living joint owners.
  - (c) After a transfer on death deed is recorded or filed, as applicable, it may not be revoked by a revocatory act on the deed. For purposes of this subsection, "revocatory act" includes burning, tearing, canceling, obliterating, or destroying the transfer on death deed or any part of it.
  - (d) This section shall not limit the effect of an inter vivos transfer of the subject property.

**§ -12 Effect of transfer on death deed during transferor's life.** During a transferor's life, a transfer on death deed shall not:

- (1) Affect an interest or right in the subject property of the transferor or any other owner, including the right to transfer or encumber the subject property;
- (2) Affect an interest or right in the subject property of a transferee, regardless of whether the transferee has actual or constructive notice of the deed;
- (3) Affect an interest or right in the subject property of a secured or unsecured creditor or future creditor of the transferor regardless of whether 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 the subject property in favor of the designated beneficiary; or
- (6) Subject the subject property to claims or process of a creditor of the designated beneficiary.

**§ -13 Effect of transfer on death deed at transferor's death.** (a) Except as otherwise provided in the transfer on death deed, this section, or sections 560:2-202, 560:2-603, 560:2-702, 560:2-706, 560:2-707, 560:2-803, and 560:2-804, on the death of the transferor, the following shall apply to the subject property owned by the transferor at death:

- (1) Subject to paragraph (2), the interest in the subject property shall be transferred to the designated beneficiary in accordance with the deed; provided that, for property of which any portion is registered in the land court pursuant to chapter 501, a petition noting the death of the transferor and requesting that a new certificate of title be issued in the name of the designated beneficiary shall be filed and processed with the land court before the interest in the subject property is transferred;
- (2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor and the interest of a designated beneficiary that fails to survive the transferor shall lapse;

- (3) Subject to paragraph (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 or more designated beneficiaries to receive concurrent interests in the subject property, any share that lapses or fails for any reason shall be transferred to the other beneficiaries in proportion to the interest of each in the remaining concurrently-held subject property.

(b) Pursuant to the filing requirements of chapter 501 or the recording provisions of 502, as applicable, a beneficiary shall take the subject property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the subject property is subject at the transferor's death. For purposes of this subsection and the filing provisions of chapter 501 or the recording provisions of chapter 502, the filing or 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 subject property shall belong to the surviving joint owner or owners with the right of survivorship and the transfer on death deed shall have no effect. If a transferor is a joint owner and is the last surviving joint owner, the transfer on death deed shall be effective.

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

**§ -14 Disclaimer.** A beneficiary may disclaim all or part of the beneficiary's interest as provided by chapter 526, the Uniform Disclaimer of Property Interests Act.

**§ -15 Liability for creditor claims and statutory allowances.** (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 the subject property transferred at the transferor's death by a transfer on death deed.

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

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

**§ -16 Uniformity of application and construction.** 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 similar uniform legislation.

**§ -17 Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, P.L. 106-229, Title 15 United States Code Chapter 96, but does not modify, limit, or supersede Title 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in Title 15 United States Code, Section 7003(b)."

SECTION 2. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

to: **"§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity;

- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership; ~~and~~
- (17) Any document or instrument conveying real property to any non-profit or for-profit organization that has been certified by the Hawaii housing finance and development corporation for low-income housing development~~[-]; and~~
- (18) Any document or instrument that conforms to the transfer on death deed as authorized under chapter . . .”

SECTION 3. Section 526-12, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) In the case of an interest created by a beneficiary designation made after ~~[the time]~~ the designation becomes irrevocable~~[-a]~~:

- (1) The disclaimer ~~[must]~~ of an interest in personal property shall be delivered to the person obligated to distribute the interest~~[-]; and~~
- (2) The disclaimer of an interest in real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court, as applicable.”

SECTION 4. Section 526-15, Hawaii Revised Statutes, is amended to read as follows:

**“[§526-15] Recording of disclaimer.** If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be ~~[so]~~ filed, recorded, or registered. ~~[Failure]~~ Except as otherwise provided in section 526-12(g), failure to file~~[-]~~ or record~~[-or register]~~ the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 27, 2011.)