

AN ACT concerning civil law.

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

Section 5. The Illinois Residential Real Property Transfer on Death Instrument Act is amended by changing Sections 5, 35, 40, 50, 65, 75, and 90 as follows:

(755 ILCS 27/5)

Sec. 5. Definitions. In this Act:

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

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

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

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

"Person" means an individual, corporation, business trust, land trust, estate, inter-vivos revocable or irrevocable trust, testamentary trust, partnership, limited liability

company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Residential real estate" means real property improved with not less than one nor more than 4 residential dwelling units; a residential condominium unit, ~~units in residential cooperatives; or, condominium units,~~ including but not limited to the ~~limited~~ common elements allocated to the exclusive use thereof that form an integral part of the condominium unit and any parking unit or units specified by the declaration to be allocated to a specific residential condominium unit; or a single tract of agriculture real estate consisting of 40 acres or less which is improved with a single family residence. If a declaration of condominium ownership provides for individually owned and transferable parking units, "residential real estate" does not include the parking unit of a specific residential condominium unit unless the parking unit is included in the legal description of the property being transferred by a transfer on death instrument.

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

(Source: P.A. 97-555, eff. 1-1-12.)

(755 ILCS 27/35)

Sec. 35. Capacity of owner and agent's authority. The capacity required to make or revoke a transfer on death

instrument is the same as the capacity required to make a will. An agent ~~Unless expressly authorized by the owner~~ under a durable power of attorney or other ~~similar~~ instrument creating an agency, ~~an agent for an owner~~ does not have the authority to create or revoke a transfer on death instrument on behalf of the owner. This Section shall not be construed to prohibit the agent from selling, transferring, or encumbering the residential real estate under the terms of the agency.

(Source: P.A. 97-555, eff. 1-1-12.)

(755 ILCS 27/40)

Sec. 40. Requirements.

(a) A transfer on death instrument:

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

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

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

(b) The failure to comply with any of the requirements of subsection (a) will render the transfer on death instrument void and ineffective to transfer title to the residential real

estate at the owner's death.

(Source: P.A. 97-555, eff. 1-1-12.)

(755 ILCS 27/50)

Sec. 50. Notice, delivery, acceptance, or consideration not required. A transfer on death instrument is effective without:

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

(2) consideration.

(Source: P.A. 97-555, eff. 1-1-12.)

(755 ILCS 27/65)

Sec. 65. Effect of transfer on death instrument at owner's death.

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

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

(2) If a designated beneficiary fails to survive the

owner or is not in existence on the date of the owner's death, then except as provided in paragraph (3) the residential real estate shall pass to the owner's estate.

(3) Unless the owner provides otherwise, if the designated beneficiary is a descendant of the owner who dies before the owner, the descendants of the deceased designated beneficiary living at the time of the owner's death shall take the residential real estate per stirpes. If the designated beneficiary is one of a class of designated beneficiaries, and any member of the class dies before the owner, the members of the class living when the owner dies shall take the share or shares which the deceased member would have taken if he or she were then living, except that if the deceased member of the class is a descendant of the owner, the descendants of the deceased member then living shall take per stirpes the share or shares which the deceased member would have taken if he or she were then living.

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

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

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

(Source: P.A. 97-555, eff. 1-1-12.)

(755 ILCS 27/75)

Sec. 75. Notice of death affidavit, ~~acceptance and effective date of transfer.~~ Any beneficiary who takes under a transfer on death instrument may file in the office of the recorder in the county or counties where the residential real estate is located a notice of death affidavit to confirm title following the death of the owner. The notice of death affidavit shall contain the name and address, if known, of each beneficiary taking under the transfer on death instrument, the legal description of the property, the street address and parcel identification number of the residential real estate, if known, the date of the transfer on death instrument and its recording document number, the name of the deceased owner, the date and place of death, and the name and address to which all future tax bills should be mailed. The affidavit shall be acknowledged under penalty of perjury before a notary public or person authorized to administer oaths. The filing of the notice of death affidavit is not a condition to the transfer of title.

~~A transfer on death instrument is effective as of the owner's death upon the filing of a notice of death affidavit and acceptance by the beneficiary or beneficiaries in the office of the recorder in the county or counties where the residential real estate is located. The notice of death affidavit and acceptance shall contain the name and address of each beneficiary who shall take under the transfer on death instrument, a legal description of the property, the street address, and parcel identification number of the residential real estate, the name of the deceased owner, and the date of death. The notice of death affidavit and acceptance shall be signed by each beneficiary or by the beneficiary's authorized representative. If a notice of death affidavit and acceptance has not been filed by at least one beneficiary or by a beneficiary's authorized representative in the office of the recorder in the county or counties where the residential real estate is located within 30 days after the owner's death, the personal representative of the owner's estate, if any, may take possession of the residential real estate in accordance with Section 20-1 of the Probate Act of 1975, and shall be entitled to a lien for all reasonable costs and expenses incurred in the management and care thereof provided that a reasonable attempt to notify the beneficiary or beneficiaries has been made. If a notice of death affidavit and acceptance has not been filed by at least one beneficiary or by the beneficiary's authorized representative in the office of the recorder in the county or~~

~~counties where the residential real estate is located within 2 years after the owner's death, the transfer on death instrument shall be void and ineffective and the residential real estate shall pass to the owner's estate as provided in paragraph (2) of subsection (a) of Section 65 to be administered and distributed in accordance with the terms thereof.~~

(Source: P.A. 97-555, eff. 1-1-12.)

(755 ILCS 27/90)

Sec. 90. Limitations. An action to set aside or contest the validity of a transfer on death instrument shall be commenced within the earlier of 2 years after the date of the owner's death or 6 months from the date that letters of office are issued. However, a purchaser or mortgagee for value and without notice before the recordation of a lis pendens for an action to set aside or contest the transfer on death instrument for any reason shall take free and clear of any such action or contest.

(Source: P.A. 97-555, eff. 1-1-12.)

(755 ILCS 27/100 rep.)

Section 10. The Illinois Residential Real Property Transfer on Death Instrument Act is amended by repealing Section 100.

Public Act 098-0821

SB2656 Enrolled

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Statutes amended in order of appearance

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