



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3150

Introduced 2/6/2020, by Sen. Jason A. Barickman

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Residential Real Property Transfer on Death Instrument Act. Renames the Act the "Real Property Transfer on Death Instrument Act". Changes the definitions of "owner" and "person". Deletes the definition of "residential real estate". Defines "real property". Changes references to "residential real estate property" to references to "real property". Permits the transfer of real property by a transfer on death instrument to a trustee of a trust under certain circumstances even if the trust is subject to amendment, modification, revocation, or termination. Provides that a transfer on death instrument may not be admitted to probate as the will of the owner or as a codicil thereto. Provides that a transfer on death instrument does not need to state consideration or the addresses of the beneficiaries. Provides that if the transfer on death instrument is not witnessed by at least 2 credible witnesses, it is void. Provides that if a beneficiary attests to the execution of the transfer on death instrument, the interest transferred to that beneficiary is void as to that beneficiary. Changes the rules under which real property that is subject to a transfer on death instrument is transferred. Provides that a transfer on death instrument may be renounced by the owner's surviving spouse regardless of whether the transfer on death instrument transfers an interest in real property for the benefit of the surviving spouse. Provides that a creditor may enforce the liability against the real property transferred at the owner's death by a transfer on death instrument and the beneficiaries. Makes other changes to provisions regarding: rights of creditors; limitations; and preparation of a transfer on death instrument or its revocation. Makes conforming changes.

LRB101 16074 LNS 66823 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 5. The Illinois Residential Real Property Transfer  
5 on Death Instrument Act is amended by changing Sections 1, 5,  
6 10, 15, 20, 30, 35, 40, 45, 60, 65, 75, 85, 90, and 95 and by  
7 adding Sections 21 and 66 as follows:

8 (755 ILCS 27/1)

9 Sec. 1. Short title. This Act may be cited as the ~~Illinois~~  
10 ~~Residential~~ Real Property Transfer on Death Instrument Act.

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

12 (755 ILCS 27/5)

13 Sec. 5. Definitions. In this Act:

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

16 "Designated beneficiary" means a person designated to  
17 receive real property under ~~residential real estate in~~ a  
18 transfer on death instrument.

19 "Joint owner" means an individual who owns real property  
20 ~~residential real estate~~ concurrently with one or more other  
21 individuals with a right of survivorship. The term includes a  
22 joint tenant or a tenant by the entirety. The term does not

1 include a tenant in common.

2 "Owner" means an individual who owns an interest in real  
3 property. "Owner" does not include an individual acting in a  
4 fiduciary, representative, or agency capacity who holds an  
5 interest in real property ~~who makes a transfer on death~~  
6 ~~instrument.~~

7 "Person" means: an individual; a corporation; a business  
8 trust; a trustee of a land trust, inter vivos revocable or  
9 irrevocable trust, testamentary trust created under a will or  
10 under a transfer on death instrument; a partnership; a limited  
11 liability company; an association; a joint venture; a public  
12 corporation; a government or governmental subdivision; an  
13 agency; an instrumentality; a guardian; a custodian designated  
14 or to be designated under any state's uniform transfers to  
15 minors act; or any other legal entity ~~an individual,~~  
16 ~~corporation, business trust, land trust, estate, inter vivos~~  
17 ~~revocable or irrevocable trust, testamentary trust,~~  
18 ~~partnership, limited liability company, association, joint~~  
19 ~~venture, public corporation, government or governmental~~  
20 ~~subdivision, agency, or instrumentality, or any other legal or~~  
21 ~~commercial entity.~~

22 "Real property" means an interest in realty located in this  
23 State capable of being transferred on the death of the owner.

24 ~~"Residential real estate" means real property improved~~  
25 ~~with not less than one nor more than 4 residential dwelling~~  
26 ~~units; a residential condominium unit, including but not~~

1 ~~limited to the common elements allocated to the exclusive use~~  
2 ~~thereof that form an integral part of the condominium unit and~~  
3 ~~any parking unit or units specified by the declaration to be~~  
4 ~~allocated to a specific residential condominium unit; or a~~  
5 ~~single tract of agriculture real estate consisting of 40 acres~~  
6 ~~or less which is improved with a single family residence. If a~~  
7 ~~declaration of condominium ownership provides for individually~~  
8 ~~owned and transferable parking units, "residential real~~  
9 ~~estate" does not include the parking unit of a specific~~  
10 ~~residential condominium unit unless the parking unit is~~  
11 ~~included in the legal description of the property being~~  
12 ~~transferred by a transfer on death instrument.~~

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

15 (Source: P.A. 97-555, eff. 1-1-12; 98-821, eff. 1-1-15; revised  
16 7-16-19.)

17 (755 ILCS 27/10)

18 Sec. 10. Applicability. This Act applies to only a transfer  
19 of real property ~~residential real estate~~ as defined in this Act  
20 by means of a transfer on death instrument made before, on, or  
21 after the effective date of this Act, by an owner dying on or  
22 after the effective date of this Act.

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

24 (755 ILCS 27/15)

1           Sec. 15. Non-exclusivity. This Act does not affect any  
2 method of transferring real property ~~residential real estate~~  
3 otherwise permitted under the law of this State.

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

5           (755 ILCS 27/20)

6           Sec. 20. Transfer on death instrument authorized. An owner  
7 may transfer real property ~~residential real estate~~ by a  
8 transfer on death instrument to one or more beneficiaries in  
9 any form of ownership valid under State law, concurrent or  
10 successive, absolute or conditional, contingent or vested, as  
11 owners, concurrently or successively, and upon any  
12 contingency, effective at the owner's death.

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

14           (755 ILCS 27/21 new)

15           Sec. 21. Trust as beneficiary. A transfer of real property  
16 by a transfer on death instrument to a trustee of a trust that  
17 is in existence when the owner executes a transfer on death  
18 instrument and that is identified in the transfer on death  
19 instrument, or to a trustee of a trust under the will of  
20 another individual if that individual has predeceased the  
21 owner, is permitted even if the trust is subject to amendment,  
22 modification, revocation, or termination. Unless the transfer  
23 on death instrument provides otherwise, the real property  
24 transferred shall be governed by the terms and provisions of

1 the instrument creating the trust, including any amendments or  
2 modifications in writing made at any time before or after the  
3 execution of the owner's transfer on death instrument and after  
4 the death of the owner. The existence or lack thereof of a  
5 trust corpus is immaterial to the validity of the transfer by  
6 the transfer on death instrument. Unless the transfer on death  
7 instrument provides otherwise, a revocation or termination of  
8 the trust before the owner's death causes the transfer to the  
9 trust to pass to the owner's estate.

10 (755 ILCS 27/30)

11 Sec. 30. Transfer on death instrument nontestamentary. A  
12 transfer on death instrument is a nontestamentary instrument  
13 and is subject to all other laws governing or affecting  
14 transfers by nontestamentary instruments. A transfer on death  
15 instrument may not be admitted to probate as the will of the  
16 owner or as a codicil thereto.

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

18 (755 ILCS 27/35)

19 Sec. 35. Capacity of owner and agent's authority. The  
20 capacity required to make or revoke a transfer on death  
21 instrument is the same as the capacity required to make a will.  
22 An agent under a durable power of attorney or other instrument  
23 creating an agency, even if authorized, does not have the  
24 authority to create or revoke a transfer on death instrument on

1 behalf of the owner. This Section shall not be construed to  
2 prohibit the agent from selling, transferring, or encumbering  
3 the real property ~~residential real estate~~ under the terms of  
4 the agency.

5 (Source: P.A. 97-555, eff. 1-1-12; 98-821, eff. 1-1-15.)

6 (755 ILCS 27/40)

7 Sec. 40. Requirements.

8 (a) A transfer on death instrument:

9 (1) must: (i) contain the essential elements and  
10 formalities of a properly recordable inter vivos deed, but  
11 does not need to state consideration or the addresses of  
12 the beneficiaries; and (ii) must be executed, witnessed,  
13 and acknowledged in substantial compliance with Section  
14 45;

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

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

21 (b) The failure to comply with any of the requirements of  
22 subsection (a) will render the transfer on death instrument  
23 void and ineffective to transfer title to the real property  
24 ~~residential real estate~~ at the owner's death.

25 (Source: P.A. 97-555, eff. 1-1-12; 98-821, eff. 1-1-15.)

1 (755 ILCS 27/45)

2 Sec. 45. Signing, attestation, and acknowledgment  
3 acknowledgement.

4 (a) Every transfer on death instrument shall be signed by  
5 the owner or by some person in his or her presence and by his or  
6 her direction, and shall be attested in writing by 2 or more  
7 credible witnesses, and the ~~whose~~ signatures of the witnesses  
8 along with the owner's signature shall be acknowledged in front  
9 of ~~by~~ a notary public. The witnesses shall attest in writing  
10 substantially as follows: (i) that on the date thereof the  
11 owner executed the transfer on death instrument in the ~~their~~  
12 presence of the witnesses; (ii) that the owner's execution was  
13 ~~as~~ his or her own free and voluntary act;; and (iii) that at  
14 the time of the execution, the witnesses believed the owner to  
15 be of sound mind and memory.

16 (b) Except as provided in subsection (c), if the transfer  
17 on death instrument is not witnessed by at least 2 credible  
18 witnesses, it is not executed in substantial compliance with  
19 subsection (a) and is void.

20 (c) If a beneficiary, or his or her spouse, attests to the  
21 execution of the transfer on death instrument, the interest  
22 transferred to that beneficiary and all persons claiming under  
23 him or her is void as to that beneficiary unless the transfer  
24 on death instrument is otherwise duly attested by a sufficient  
25 number of witnesses as under subsection (a) exclusive of that



1 person and the notary, and he or she may be compelled to  
2 testify as if the interest had not been given, but the  
3 beneficiary is entitled to receive so much of the interest or  
4 share given to him or her by the transfer on death instrument  
5 not to exceed the value or share that he or she would have  
6 received had no transfer on death instrument been established.

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

8 (755 ILCS 27/60)

9 Sec. 60. Effect of transfer on death instrument during  
10 owner's life.

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

13 (1) affect the right or interest of the owner, any  
14 other owner, or an agent for the owner to sell,  
15 transfer, or encumber the real property ~~residential~~  
16 ~~real estate;~~

17 (2) affect an interest or right of a transferee,  
18 lienholder, mortgagee, or option holder ~~or grantee~~  
19 even if the transferee, lienholder, mortgagee, or  
20 option holder ~~or grantee~~ has actual or constructive  
21 notice of the instrument;

22 (3) affect an interest or right of a secured or  
23 unsecured creditor or future creditor of the owner,  
24 even if the creditor has actual or constructive notice  
25 of the instrument;

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

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

5 (6) subject the real property ~~residential real~~  
6 ~~estate~~ to claims or process of a creditor of the  
7 designated beneficiary.

8 (b) If after recording a transfer on death instrument, the  
9 owner makes a contract for the sale or transfer of the real  
10 property ~~residential real estate~~ or some part thereof that is  
11 the subject of the transfer on death instrument and the whole  
12 or any part of the contract remains executory at the owner's  
13 death, the disposition of the real property ~~residential real~~  
14 ~~estate~~ by the contract does not revoke the transfer on death  
15 instrument but the real property ~~residential real estate~~ passes  
16 to the designated beneficiary or beneficiary subject to the  
17 contract.

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

19 (755 ILCS 27/65)

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

22 (a) Except as otherwise provided in the transfer on death  
23 instrument, in this Act ~~Section~~, ~~or~~ in the Probate Act of 1975,  
24 or in any other Act applicable to nontestamentary instruments,  
25 on the death of the owner, the following rules apply to the

1 real property residential real estate that is the subject of a  
2 transfer on death instrument and owned by the owner at death:

3 (1) Subject to the beneficiary's right to disclaim the  
4 transfer, the interest in the real property residential  
5 ~~real estate~~ is transferred to the beneficiary in accordance  
6 with the instrument.

7 (2) If the owner has identified 2 or more designated  
8 beneficiaries to receive concurrent interests in the real  
9 property, the interests are taken in equal and undivided  
10 shares with no right of survivorship. ~~If a designated~~  
11 ~~beneficiary fails to survive the owner or is not in~~  
12 ~~existence on the date of the owner's death, then except as~~  
13 ~~provided in paragraph (3) the residential real estate shall~~  
14 ~~pass to the owner's estate.~~

15 (3) Except as provided in paragraph (5), if the owner  
16 has identified a single designated beneficiary and the  
17 designated beneficiary fails to survive the owner or is not  
18 in existence on the date of the owner's death, then the  
19 real property shall pass to the owner's estate. ~~Unless the~~  
20 ~~owner provides otherwise, if the designated beneficiary is~~  
21 ~~a descendant of the owner who dies before the owner, the~~  
22 ~~descendants of the deceased designated beneficiary living~~  
23 ~~at the time of the owner's death shall take the residential~~  
24 ~~real estate per stirpes. If the designated beneficiary is~~  
25 ~~one of a class of designated beneficiaries, and any member~~  
26 ~~of the class dies before the owner, the members of the~~

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

8 (4) Except as provided in paragraph (5), if the owner  
9 has identified 2 or more designated beneficiaries to  
10 receive concurrent interests, and one or more designated  
11 beneficiaries predecease the owner, then the interest of  
12 the one that lapses or fails for any reason is transferred  
13 to the other remaining designated beneficiary or  
14 beneficiaries in proportion to the interest of each in the  
15 remaining part of the real property held concurrently.

16 (5) If the designated beneficiary who dies before the  
17 owner is a descendant of the owner, the descendants of the  
18 deceased designated beneficiary living at the time of the  
19 owner's death shall take the deceased designated  
20 beneficiary's share of the real property per stirpes.

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

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

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

10 (Source: P.A. 97-555, eff. 1-1-12; 98-821, eff. 1-1-15.)

11 (755 ILCS 27/66 new)

12 Sec. 66. Renunciation by spouse.

13 (a) Unless the right to renounce is waived by the owner's  
14 surviving spouse, a transfer on death instrument may be  
15 renounced by the owner's surviving spouse regardless of whether  
16 the transfer on death instrument transfers an interest in real  
17 property for the benefit of the surviving spouse. If renounced,  
18 the surviving spouse is entitled to a one-third interest in the  
19 real property transferred by the transfer on death instrument  
20 if the owner leaves a descendant or a one-half interest in the  
21 real property if the owner leaves no descendant. The surviving  
22 spouse may waive his or her right to renounce by executing a  
23 waiver as part of the transfer on death instrument.

24 (b) In order to renounce the transfer on death instrument,  
25 the owner's surviving spouse must file, in the recorder of

1 deeds office where the transfer on death instrument is  
2 recorded, a written instrument signed by the surviving spouse  
3 setting forth a description of the real property and declaring  
4 the renunciation. The instrument shall be filed within 6 months  
5 after the date of the owner's death. The filing of the  
6 instrument renouncing the transfer on death instrument is a  
7 complete bar to any claim of the surviving spouse under the  
8 transfer on death instrument.

9 (c) If a transfer on death instrument is renounced under  
10 this Section, any future interest that is to take effect in  
11 possession or enjoyment at or after the termination of an  
12 estate or other interest given by the transfer on death  
13 instrument to the surviving spouse takes effect as though the  
14 surviving spouse had predeceased the owner, unless the transfer  
15 on death instrument expressly provides that in the case of  
16 renunciation the future interest shall not be accelerated.

17 (d) If the surviving spouse of the owner renounces the  
18 transfer on death instrument and the interests transferred to  
19 other persons are thereby diminished or increased, upon  
20 petition by a beneficiary, the court shall abate from or add to  
21 any interest transferred in such a manner as to apportion the  
22 loss or advantage among the beneficiaries in proportion to  
23 their respective interests.

24 (755 ILCS 27/75)

25 Sec. 75. Notice of death affidavit. Any beneficiary who

1 takes under a transfer on death instrument may file in the  
2 office of the recorder in the county or counties where the real  
3 property ~~residential real estate~~ is located a notice of death  
4 affidavit to confirm title following the death of the owner.  
5 The notice of death affidavit shall contain the name and  
6 address, if known, of each beneficiary taking under the  
7 transfer on death instrument, the legal description of the  
8 property, the street address and parcel identification number  
9 of the real property ~~residential real estate~~, if known, the  
10 date of the transfer on death instrument and its recording  
11 document number, the name of the deceased owner, the date and  
12 place of death, and the name and address to which all future  
13 tax bills should be mailed. The affidavit shall be acknowledged  
14 under penalty of perjury before a notary public or person  
15 authorized to administer oaths. The filing of the notice of  
16 death affidavit is not a condition to the transfer of title.  
17 (Source: P.A. 97-555, eff. 1-1-12; 98-821, eff. 1-1-15.)

18 (755 ILCS 27/85)

19 Sec. 85. Rights of creditors ~~and statutory claimants~~.

20 (a) To the extent the owner's probate estate is  
21 insufficient to satisfy an allowed claim against the estate, a  
22 creditor may enforce the liability against the real property  
23 transferred at the owner's death by a transfer on death  
24 instrument and the beneficiaries thereof under Sections 10  
25 through 14 of the Frauds Act.

1       (b) If more than one real property is transferred by one or  
2 more transfer on death instruments, the liability under  
3 subsection (a) shall be apportioned among the real properties  
4 in proportion to their net values at the owner's death.

5 ~~A beneficiary of a transfer on death instrument is subject to~~  
6 ~~the claims of creditors and statutory claimants to the same~~  
7 ~~extent as a beneficiary of any nontestamentary transfer.~~

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

9 (755 ILCS 27/90)

10       Sec. 90. Limitations. An action to set aside, ~~or~~ contest  
11 the validity of a transfer on death instrument, or assert a  
12 claim or liability against the real property transferred  
13 thereunder shall be commenced within, and not after, the time  
14 limited by Section 13-220 of the Code of Civil Procedure ~~the~~  
15 ~~earlier of 2 years after the date of the owner's death or 6~~  
16 ~~months from the date that letters of office are issued.~~  
17 However, a purchaser or mortgagee for value and without notice  
18 before the recording ~~recordation~~ of a notice of lis pendens  
19 under Section 2-1901 of the Code of Civil Procedure or before  
20 the recording of a renunciation ~~for an action to set aside or~~  
21 ~~contest the transfer on death instrument for any reason~~ shall  
22 take free and clear of any such action, liability, claim, or  
23 contest.

24 (Source: P.A. 97-555, eff. 1-1-12; 98-821, eff. 1-1-15.)



1 (755 ILCS 27/95)

2 Sec. 95. Preparation of a transfer on death instrument or  
3 its revocation. A transfer on death instrument or its  
4 revocation shall be prepared only by a ~~an Illinois~~ licensed  
5 attorney. Nothing in this Section, however, shall prohibit an  
6 owner from preparing his or her own transfer on death  
7 instrument or revocation, or shall render the transfer on death  
8 instrument void for failing to be prepared by a licensed  
9 attorney.

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

1 INDEX

2 Statutes amended in order of appearance

3 755 ILCS 27/1

4 755 ILCS 27/5

5 755 ILCS 27/10

6 755 ILCS 27/15

7 755 ILCS 27/20

8 755 ILCS 27/21 new

9 755 ILCS 27/30

10 755 ILCS 27/35

11 755 ILCS 27/40

12 755 ILCS 27/45

13 755 ILCS 27/60

14 755 ILCS 27/65

15 755 ILCS 27/66 new

16 755 ILCS 27/75

17 755 ILCS 27/85

18 755 ILCS 27/90

19 755 ILCS 27/95