



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB0047

Introduced 1/29/2021, 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". 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. Makes other changes to provisions regarding: rights of creditors; limitations; and preparation of a transfer on death instrument or its revocation. Makes conforming changes.

LRB102 04212 LNS 14229 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 a trustee or an individual  
4 acting in a fiduciary, representative, or agency capacity who  
5 holds an interest in real property ~~who makes a transfer on~~  
6 ~~death instrument.~~

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

21 "Real property" means an interest in realty located in  
22 this State capable of being transferred on the death of the  
23 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;  
16 revised 7-16-19.)

17 (755 ILCS 27/10)

18 Sec. 10. Applicability. This Act applies ~~to~~ only to the  
19 following:

20 (1) A ~~a~~ transfer of residential real estate ~~as defined~~  
21 ~~in this Act~~ by means of a transfer on death instrument made  
22 before, on, or after January 1, 2012 ~~the effective date of~~  
23 ~~this Act~~, by an owner dying on or after January 1, 2012 ~~the~~  
24 ~~effective date of this Act.~~

25 (2) A transfer of real property by means of a transfer

1       on death instrument made before, on, or after the  
2       effective date of this amendatory Act of the 102nd General  
3       Assembly by an owner dying on or after the effective date  
4       of this amendatory Act of the 102nd General Assembly.

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

6               (755 ILCS 27/15)

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

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

11               (755 ILCS 27/20)

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

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

20               (755 ILCS 27/21 new)

21       Sec. 21. Trust as beneficiary. A transfer of real property  
22       by a transfer on death instrument to a trustee of a trust that  
23       is in existence when the owner executes a transfer on death

1 instrument and that is identified in the transfer on death  
2 instrument, to a trustee of a trust created under the owner's  
3 will, to a trustee of a trust created under the transfer on  
4 death instrument, or to a trustee of a trust under the will of  
5 another individual if that individual has predeceased the  
6 owner, is permitted even if the trust is subject to amendment,  
7 modification, revocation, or termination. Unless the transfer  
8 on death instrument provides otherwise, the real property  
9 transferred shall be governed by the terms and provisions of  
10 the instrument creating the trust, including any amendments or  
11 modifications in writing made at any time before or after the  
12 execution of the owner's transfer on death instrument and  
13 after the death of the owner. The existence or lack thereof of  
14 a trust corpus is immaterial to the validity of the transfer by  
15 the transfer on death instrument. Unless the transfer on death  
16 instrument provides otherwise, a revocation or termination of  
17 the trust before the owner's death causes the transfer to the  
18 trust to pass to the owner's estate.

19 (755 ILCS 27/30)

20 Sec. 30. Transfer on death instrument nontestamentary. A  
21 transfer on death instrument is a nontestamentary instrument  
22 and is subject to all other laws governing or affecting  
23 transfers by nontestamentary instruments. A transfer on death  
24 instrument may not be admitted to probate as the will of the  
25 owner or as a codicil thereto.

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

2 (755 ILCS 27/35)

3 Sec. 35. Capacity of owner and agent's authority. The  
4 capacity required to make or revoke a transfer on death  
5 instrument is the same as the capacity required to make a will.  
6 An agent under a durable power of attorney or other instrument  
7 creating an agency, even if authorized, does not have the  
8 authority to create or revoke a transfer on death instrument  
9 on behalf of the owner. This Section shall not be construed to  
10 prohibit the agent from selling, transferring, or encumbering  
11 the real property ~~residential real estate~~ under the terms of  
12 the agency.

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

14 (755 ILCS 27/40)

15 Sec. 40. Requirements.

16 (a) A transfer on death instrument:

17 (1) must: (i) contain the essential elements and  
18 formalities of a properly recordable inter vivos deed, but  
19 does not need to state consideration or the addresses of  
20 the beneficiaries; and (ii) must be executed, witnessed,  
21 and acknowledged in substantial compliance with Section  
22 45;

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

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

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

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

10           (755 ILCS 27/45)

11           Sec. 45. Signing, attestation, and acknowledgment  
12           ~~acknowledgement~~.

13           (a) Every transfer on death instrument shall be signed by  
14           the owner or by some person in his or her presence and by his  
15           or her direction, and shall be attested in writing by 2 or more  
16           credible witnesses, and the whose signatures of the witnesses  
17           along with the owner's signature shall be acknowledged in  
18           front of ~~by~~ a notary public. The witnesses shall attest in  
19           writing substantially as follows: (i) that on the date thereof  
20           the owner executed the transfer on death instrument in the  
21           ~~their~~ presence of the witnesses; (ii) that the owner's  
22           execution was as his or her own free and voluntary act; ~~it~~ and  
23           (iii) that at the time of the execution, the witnesses  
24           believed the owner to be of sound mind and memory.

25           (b) Except as provided in subsection (c), if the transfer



1 on death instrument is not witnessed by at least 2 credible  
2 witnesses, it is not executed in substantial compliance with  
3 subsection (a) and is void.

4 (c) If a beneficiary, or his or her spouse, attests to the  
5 execution of the transfer on death instrument, the interest  
6 transferred to that beneficiary and all persons claiming under  
7 him or her is void as to that beneficiary unless the transfer  
8 on death instrument is otherwise duly attested by a sufficient  
9 number of witnesses as under subsection (a) exclusive of that  
10 person and the notary, and he or she may be compelled to  
11 testify as if the interest had not been given, but the  
12 beneficiary is entitled to receive so much of the interest or  
13 share given to him or her by the transfer on death instrument  
14 not to exceed the value or share that he or she would have  
15 received had no transfer on death instrument been established.

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

17 (755 ILCS 27/60)

18 Sec. 60. Effect of transfer on death instrument during  
19 owner's life.

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

22 (1) affect the right or interest of the owner, any  
23 other owner, or an agent for the owner to sell,  
24 transfer, or encumber the real property ~~residential~~  
25 ~~real estate;~~

1           (2) affect an interest or right of a transferee,  
2           lienholder, mortgagee, or option holder ~~or grantee~~  
3           even if the transferee, lienholder, mortgagee, or  
4           option holder ~~or grantee~~ has actual or constructive  
5           notice of the instrument;

6           (3) affect an interest or right of a secured or  
7           unsecured creditor or future creditor of the owner,  
8           even if the creditor has actual or constructive notice  
9           of the instrument;

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

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

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

17          (b) If after recording a transfer on death instrument,  
18          the owner makes a contract for the sale or transfer of the real  
19          property ~~residential real estate~~ or some part thereof that is  
20          the subject of the transfer on death instrument and the whole  
21          or any part of the contract remains executory at the owner's  
22          death, the disposition of the real property ~~residential real~~  
23          ~~estate~~ by the contract does not revoke the transfer on death  
24          instrument but the real property ~~residential real estate~~  
25          passes to the designated beneficiary or beneficiary subject to  
26          the contract.

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

2 (755 ILCS 27/65)

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

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

11 (1) Subject to the beneficiary's right to disclaim the  
12 transfer, the interest in the real property ~~residential~~  
13 ~~real estate~~ is transferred to the beneficiary in  
14 accordance with the instrument.

15 (2) If the owner has identified 2 or more designated  
16 beneficiaries to receive concurrent interests in the real  
17 property, the interests are taken in equal and undivided  
18 shares with no right of survivorship. ~~If a designated~~  
19 ~~beneficiary fails to survive the owner or is not in~~  
20 ~~existence on the date of the owner's death, then except as~~  
21 ~~provided in paragraph (3) the residential real estate~~  
22 ~~shall pass to the owner's estate.~~

23 (3) Except as provided in paragraph (5), if the owner  
24 has identified a single designated beneficiary and the  
25 designated beneficiary fails to survive the owner or is

1 not in existence on the date of the owner's death, then the  
2 real property shall pass to the owner's estate. Unless the  
3 owner provides otherwise, if the designated beneficiary is  
4 a descendant of the owner who dies before the owner, the  
5 descendants of the deceased designated beneficiary living  
6 at the time of the owner's death shall take the  
7 residential real estate per stirpes. If the designated  
8 beneficiary is one of a class of designated beneficiaries,  
9 and any member of the class dies before the owner, the  
10 members of the class living when the owner dies shall take  
11 the share or shares which the deceased member would have  
12 taken if he or she were then living, except that if the  
13 deceased member of the class is a descendant of the owner,  
14 the descendants of the deceased member then living shall  
15 take per stirpes the share or shares which the deceased  
16 member would have taken if he or she were then living.

17 (4) Except as provided in paragraph (5), if the owner  
18 has identified 2 or more designated beneficiaries to  
19 receive concurrent interests, and one or more, but less  
20 than all, designated beneficiaries predecease the owner,  
21 then the interests of those that lapse or fail for any  
22 reason are transferred to the other remaining designated  
23 beneficiary or beneficiaries in proportion to the interest  
24 of each in the remaining part of the real property held  
25 concurrently.

26 (5) If the designated beneficiary who dies before the

1 owner is a descendant of the owner, the descendants of the  
2 deceased designated beneficiary living at the time of the  
3 owner's death shall take the deceased designated  
4 beneficiary's share of the real property per stirpes.

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

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

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

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

21 (755 ILCS 27/66 new)

22 Sec. 66. Renunciation by spouse.

23 (a) Unless the right to renounce is waived by the owner's  
24 surviving spouse, a transfer on death instrument may be  
25 renounced by the owner's surviving spouse. If renounced, the

1 surviving spouse is entitled to a one-third interest in the  
2 real property transferred by the transfer on death instrument  
3 if the owner leaves a descendant or a one-half interest in the  
4 real property if the owner leaves no descendant. The surviving  
5 spouse may waive his or her right to renounce by executing a  
6 waiver as part of the transfer on death instrument.  
7 Notwithstanding the foregoing, a surviving spouse does not  
8 have the right to renounce a transfer on death instrument that  
9 transfers the owner's interest in real property to a trustee  
10 of a trust created under the owner's will or otherwise that is  
11 for the sole benefit of the surviving spouse during his or her  
12 lifetime.

13 (b) In order to renounce the transfer on death instrument,  
14 the owner's surviving spouse must file, in the recorder of  
15 deeds office where the transfer on death instrument is  
16 recorded, a written instrument signed by the surviving spouse  
17 setting forth a description of the real property and declaring  
18 the renunciation. The instrument shall be filed within 7  
19 months after the date of the owner's death, or within such  
20 additional time as a court having jurisdiction of the real  
21 property may grant pursuant to Section 2-8 of the Probate Act  
22 of 1975. The filing of the instrument renouncing the transfer  
23 on death instrument is a complete bar to any claim of the  
24 surviving spouse under the transfer on death instrument.

25 (c) If a transfer on death instrument is renounced under  
26 this Section, any future interest that is to take effect in

1 possession or enjoyment at or after the termination of an  
2 estate or other interest given by the transfer on death  
3 instrument to the surviving spouse takes effect as though the  
4 surviving spouse had predeceased the owner, unless the  
5 transfer on death instrument expressly provides that in the  
6 case of renunciation the future interest shall not be  
7 accelerated.

8 (d) If the surviving spouse of the owner renounces the  
9 transfer on death instrument and the interests transferred to  
10 other persons are thereby diminished or increased, upon  
11 petition by a beneficiary, the court shall abate from or add to  
12 any interest transferred in such a manner as to apportion the  
13 loss or advantage among the beneficiaries in proportion to  
14 their respective interests.

15 (755 ILCS 27/75)

16 Sec. 75. Notice of death affidavit. Any beneficiary who  
17 takes under a transfer on death instrument may file in the  
18 office of the recorder in the county or counties where the real  
19 property ~~residential real estate~~ is located a notice of death  
20 affidavit to confirm title following the death of the owner.  
21 The notice of death affidavit shall contain the name and  
22 address, if known, of each beneficiary taking under the  
23 transfer on death instrument, the legal description of the  
24 property, the street address and parcel identification number  
25 of the real property ~~residential real estate~~, if known, the

1 date of the transfer on death instrument and its recording  
2 document number, the name of the deceased owner, the date and  
3 place of death, and the name and address to which all future  
4 tax bills should be mailed. The affidavit shall be  
5 acknowledged under penalty of perjury before a notary public  
6 or person authorized to administer oaths. The filing of the  
7 notice of death affidavit is not a condition to the transfer of  
8 title.

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

10 (755 ILCS 27/85)

11 Sec. 85. Rights of ~~creditors and statutory~~ claimants. A  
12 beneficiary of a transfer on death instrument is subject to  
13 creditor, administrative, funeral and burial, and statutory  
14 claims to the same extent and in the same manner as a  
15 beneficiary of a trust that was revocable at the time of the  
16 settlor's death as provided in Section 505 of the Illinois  
17 Trust Code, except that if more than one real property is  
18 transferred by a transfer on death instrument, the liability  
19 will be apportioned among the real properties in proportion to  
20 the net values of the real properties at the time of the  
21 owner's death. ~~A beneficiary of a transfer on death instrument~~  
22 ~~is subject to the claims of creditors and statutory claimants~~  
23 ~~to the same extent as a beneficiary of any nontestamentary~~  
24 ~~transfer.~~

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



1 (755 ILCS 27/90)

2 Sec. 90. Limitations and bona fide transfers.

3 (a) An action to set aside or contest the validity of a  
4 transfer on death instrument shall be commenced within the  
5 earlier of 2 years after the date of the owner's death or 6  
6 months from the date letters of office are issued pursuant to  
7 the Probate Act of 1975.

8 (b) A bona fide purchaser or mortgagee for value shall  
9 take the real property free and clear of any action, claim,  
10 liability, or contest if the transfer to the bona fide  
11 purchaser or mortgagee for value occurs prior to the recording  
12 of a lis pendens under Section 2-1901 of the Code of Civil  
13 Procedure or prior to the filing of the a notice of  
14 renunciation pursuant to Section 66 of this Act.

15 ~~An action to set aside or contest the validity of a transfer on~~  
16 ~~death instrument shall be commenced within the earlier of 2~~  
17 ~~years after the date of the owner's death or 6 months from the~~  
18 ~~date that letters of office are issued. However, a purchaser~~  
19 ~~or mortgagee for value and without notice before the~~  
20 ~~recordation of a lis pendens 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 or contest.~~

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

24 (755 ILCS 27/95)

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

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

1 INDEX

2 Statutes amended in order of appearance

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4 755 ILCS 27/5

5 755 ILCS 27/10

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7 755 ILCS 27/20

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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

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