



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5235

Introduced 2/3/2010, by Rep. Patricia R. Bellock

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Transfer on Death Deeds Act. Contains provisions that concern: definitions; the effect of a transfer on death deed; rights of creditors; rights of the State and governmental entities; multiple grantee beneficiaries; successor grantee beneficiaries; multiple joint tenant grantors; execution by attorney-in-fact; recording requirements and authorization; deed to trustee or other entity; revocation or modification of transfer on death deed; antilapse; deceased beneficiary; words of survivorship; lapse; multiple transfer on death deeds; nonademption; unpaid proceeds of sale, condemnation, or insurance; sale by conservator or guardian; nonexoneration; disclaimer by beneficiary; effect on other conveyances; notice, consent, and delivery not required; nonrevocation by will; proof of survivorship; after-acquired property; anticipatory alienation prohibited; form of transfer on death deed; and form of instrument of revocation.

LRB096 19101 AJO 34492 b

1 AN ACT concerning deeds.

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

4 Section 1. Short title. This Act may be cited as the  
5 Transfer on Death Deeds Act.

6 Section 5. Definitions. As used in this Act:

7 "Beneficiary" or "grantee beneficiary" means a person or  
8 entity named as a grantee beneficiary in a transfer on death  
9 deed, including a successor grantee beneficiary.

10 "Grantor owner" means an owner named as a grantor in a  
11 transfer on death deed upon whose death the conveyance or  
12 transfer of the described real property is conditioned. Grantor  
13 owner does not include a spouse who joins in a transfer on  
14 death deed solely for the purpose of conveying or releasing  
15 statutory or other marital interests in the real property to be  
16 conveyed or transferred by the transfer on death deed.

17 "Owner" means a person having an ownership or other  
18 interest in all or part of the real property to be conveyed or  
19 transferred by a transfer on death deed. Owner does not include  
20 a spouse who joins in a transfer on death deed solely for the  
21 purpose of conveying or releasing statutory or other marital  
22 interests in the real property to be conveyed or transferred by  
23 the transfer on death deed.

1 "Recorded" means recorded in the office of the recorder, as  
2 appropriate, for the real property described in the instrument  
3 to be recorded.

4 "State agency" means the Department of Health and Human  
5 Services or any successor agency.

6 "Transfer on death deed" means a deed authorized under this  
7 Act.

8 Section 10. Effect of transfer on death deed. A deed that  
9 (i) conveys or assigns an interest in real property, including  
10 a mortgage, judgment, or any other lien on real property, to a  
11 grantee beneficiary and (ii) expressly states that the deed is  
12 only effective on the death of one or more of the grantor  
13 owners transfers the interest to the grantee beneficiary upon  
14 the death of the grantor owner upon whose death the conveyance  
15 or transfer is stated to be effective. A transfer on death deed  
16 must comply with all provisions of Illinois law applicable to  
17 deeds of real property.

18 Section 15. Rights of creditors and rights of State and  
19 governmental entities. The interest transferred to a  
20 beneficiary under a transfer on death deed after the death of a  
21 grantor owner is transferred subject to all effective  
22 conveyances, assignments, contracts, mortgages, deeds of  
23 trust, liens, security pledges, judgments, tax liens, and other  
24 encumbrances made by the grantor owner or to which the property

1 was subject during the grantor owner's lifetime, including, but  
2 not limited to, any claim by a surviving spouse or any claim or  
3 lien by the State or a governmental entity, if other assets of  
4 the deceased owner's estate are insufficient to pay the amount  
5 of that claim. A beneficiary to whom the interest is  
6 transferred after the death of a grantor owner shall be liable  
7 to account to the State or any governmental entity with a claim  
8 or lien, to the extent necessary to discharge the claim  
9 remaining unpaid after application of the assets of the  
10 deceased grantor owner's estate, but that liability shall be  
11 limited to the value of the interest transferred to the  
12 beneficiary.

13 Section 20. Multiple grantee beneficiaries. A transfer on  
14 death deed may designate multiple grantee beneficiaries to take  
15 title as joint tenants, as tenants in common, tenants by the  
16 entirety, or in any other form of ownership or tenancy that is  
17 valid under law.

18 Section 25. Successor grantee beneficiaries. A transfer on  
19 death deed may designate one or more successor grantee  
20 beneficiaries or a class of successor grantee beneficiaries, or  
21 both. If the transfer on death deed designates successor  
22 grantee beneficiaries or a class of successor grantee  
23 beneficiaries, the deed shall state the condition under which  
24 the interest of the successor grantee beneficiaries would vest.

1           Section 30. Multiple joint tenant grantors. If an interest  
2           in real property is owned as joint tenants, a transfer on death  
3           deed executed by all of the owners that conveys an interest in  
4           real property to one or more grantee beneficiaries transfers  
5           the interest to the grantee beneficiary or beneficiaries  
6           effective only after the death of the last surviving grantor  
7           owner. If the last surviving joint tenant owner did not execute  
8           the transfer on death deed, the deed is ineffective to transfer  
9           any interest, and the deed is void. A joint tenancy is not  
10          severed or affected by the subsequent execution of a transfer  
11          on death deed, and the right of a surviving joint tenant who  
12          did not execute the transfer on death deed shall prevail over a  
13          grantee beneficiary named in a transfer on death deed unless  
14          the deed specifically states that it severs the joint tenancy  
15          ownership.

16          Section 35. Execution by attorney-in-fact. A transfer on  
17          death deed may be executed by a duly appointed attorney-in-fact  
18          pursuant to a power of attorney that grants the  
19          attorney-in-fact the authority to execute deeds.

20          Section 40. Recording requirements and authorization. A  
21          transfer on death deed is valid if the deed is recorded in a  
22          county in which at least a part of the real property described  
23          in the deed is located and is recorded before the death of the

1 grantor owner upon whose death the conveyance or transfer is  
2 effective. A transfer on death deed is not effective until the  
3 deed is recorded in the county in which the real property is  
4 located. A transfer on death deed that otherwise satisfies all  
5 statutory requirements for recording may be recorded and shall  
6 be accepted for recording in the county in which the property  
7 described in the deed is located.

8 Section 45. Deed to trustee or other entity. A transfer on  
9 death deed may transfer an interest in real property to the  
10 trustee of an inter vivos trust, even if the trust is  
11 revocable, to the trustee of a testamentary trust, or to any  
12 other entity legally qualified to hold title to real property  
13 under law.

14 Section 50. Revocation or modification of transfer on death  
15 deed.

16 (a) A transfer on death deed may be revoked at any time by  
17 the grantor owner or, if there is more than one grantor owner,  
18 by a grantor owner. To be effective, the revocation must be  
19 recorded in the county in which at least a part of the real  
20 property is located before the death of the grantor owner or  
21 owners who execute the revocation. The revocation is not  
22 effective until the revocation is recorded in the county in  
23 which the real property is located. Subject to Section 30, if  
24 the real property is owned by joint tenants and if the

1 revocation is not executed by all of the grantor owners, the  
2 revocation is not effective unless executed by the last  
3 surviving grantor owner.

4 (b) If a grantor owner conveys to a third party, after the  
5 recording of the transfer on death deed, by means other than a  
6 transfer on death deed, all or a part of the grantor owner's  
7 interest in the property described in the transfer on death  
8 deed, no transfer of the conveyed interest shall occur on the  
9 grantor owner's death, and the transfer on death deed shall be  
10 ineffective as to the conveyed or transferred interests, but  
11 the transfer on death deed remains effective with respect to  
12 the conveyance or transfer on death of any other interests  
13 described in the transfer on death deed owned by the grantor  
14 owner at the time of the grantor owner's death.

15 (c) A transfer on death deed, except as may otherwise be  
16 specifically provided for in the transfer on death deed, is  
17 subject to the same provisions as to revocation, revival, and  
18 nonrevocation.

19 Section 55. Antilapse; deceased beneficiary; words of  
20 survivorship.

21 (a) If a grantee beneficiary who is a grandparent or lineal  
22 descendant of a grandparent of the grantor owner fails to  
23 survive the grantor owner, the issue of the deceased grantee  
24 beneficiary who survive the grantor owner take in place of the  
25 deceased grantee beneficiary. If they are all of the same

1 degree of kinship to the deceased grantee beneficiary, they  
2 take equally. If they are of unequal degree, those of more  
3 remote degree take by right of representation.

4 (b) For the purposes of this Section, words of survivorship  
5 such as, in a conveyance to an individual, "if he or she  
6 survives me," or, in a class gift, to "my surviving children,"  
7 are a sufficient indication of intent to condition the  
8 conveyance or transfer upon the beneficiary surviving the  
9 grantor owner.

10 Section 60. Lapse. If all beneficiaries and all successor  
11 beneficiaries, if any, designated in a transfer on death deed  
12 and all successor beneficiaries who would take under the  
13 antilapse provisions of Section 55 fail to survive the grantor  
14 owner or the last survivor of the grantor owners if there are  
15 multiple grantor owners, or if the beneficiary is a trust which  
16 has been revoked prior to the grantor owner's death, or if the  
17 beneficiary is an entity no longer in existence at the grantor  
18 owner's death, then no transfer shall occur, and the transfer  
19 on death deed is void.

20 Section 65. Multiple transfer on death deeds. If a grantor  
21 owner executes and records more than one transfer on death deed  
22 conveying the same interest in real property or a greater  
23 interest in the real property, the transfer on death deed that  
24 has the latest acknowledgment date and that is recorded before



1 the death of the grantor owner upon whose death the conveyance  
2 or transfer is conditioned is the effective transfer on death  
3 deed, and all other transfer on death deeds, if any, executed  
4 by the grantor owner or the grantor owners are ineffective to  
5 transfer any interest and are void.

6 Section 70. Nonademption; unpaid proceeds of sale,  
7 condemnation, or insurance; sale by conservator or guardian. If  
8 at the time of the death of the grantor owner upon whose death  
9 the conveyance or transfer is stated to be effective, the  
10 grantor owner did not own a part or all of the real property  
11 described in the transfer on death deed, no conveyance or  
12 transfer to the beneficiary of the non-owned part of the real  
13 property shall occur upon the death of the grantor owner, and  
14 the transfer on death deed is void as to the non-owned part of  
15 the real property, but the beneficiary shall have the same  
16 rights to unpaid proceeds of sale, condemnation, or insurance,  
17 and, if sold by a conservator or guardian of the grantor owner  
18 during the grantor owner's lifetime, the same rights to a  
19 general pecuniary devise as that of a specific devisee.

20 Section 75. Nonexoneration. Except as otherwise provided  
21 in Section 15, a conveyance or transfer under a transfer on  
22 death deed passes the described property subject to any  
23 mortgage or security interest existing at the date of death of  
24 the grantor owner, without right of exoneration, regardless of

1 any statutory obligations to pay the grantor owner's debts upon  
2 death and regardless of a general directive in the grantor  
3 owner's will to pay debts.

4 Section 80. Disclaimer by beneficiary. A grantee  
5 beneficiary's interest under a transfer on death deed may be  
6 disclaimed as provided by law.

7 Section 85. Effect on other conveyances. This Section does  
8 not prohibit other methods of conveying property that are  
9 permitted by law and that have the effect of postponing  
10 ownership or enjoyment of an interest in real property until  
11 the death of the owner. This Section does not invalidate any  
12 deed that is not a transfer on death deed and that is otherwise  
13 effective to convey title to the interests and estates  
14 described in the deed that is not recorded until after the  
15 death of the owner.

16 Section 90. Notice, consent, and delivery not required. The  
17 signature, consent, or agreement of, or notice to, a grantee  
18 beneficiary under a transfer on death deed, or delivery of the  
19 transfer on death deed to the grantee beneficiary, is not  
20 required for any purpose during the lifetime of the grantor  
21 owner.

22 Section 95. Nonrevocation by will. A transfer on death deed

1 that is executed, acknowledged, and recorded in accordance with  
2 this Act is not revoked by the provisions of a will.

3 Section 100. After-acquired property. Except as provided  
4 in this Section, a transfer on death deed is not effective to  
5 transfer any interest in real property acquired by a grantor  
6 owner subsequent to the date of signing of a transfer on death  
7 deed. A grantor owner may provide by specific language in a  
8 transfer on death deed that the transfer on death deed will  
9 apply to any interest in the described property acquired by the  
10 grantor owner after the signing or recording of the deed.

11 Section 105. Anticipatory alienation prohibited. The  
12 interest of a grantee beneficiary under a transfer on death  
13 deed which has not yet become effective is not subject to  
14 alienation; assignment; encumbrance; appointment or  
15 anticipation by the beneficiary; garnishment; attachment;  
16 execution or bankruptcy proceedings; claims for support or  
17 maintenance; payment of other obligations by any person against  
18 the beneficiary; or any other transfer, voluntary or  
19 involuntary, by or from any beneficiary.

20 Section 110. Form of transfer on death deed. A transfer on  
21 death deed may be substantially in the following form:

22 Transfer on Death Deed

1 I (we) .....(grantor owner or owners and  
 2 spouses, if any, with marital status designated), grantor(s),  
 3 hereby convey(s) and quitclaim(s) to .....  
 4 (grantee beneficiary, whether one or more) effective (check  
 5 only one of the following)

6 ..... on the death of the grantor owner, if only one grantor is  
 7 named above, or on the death of the last of the grantor owners  
 8 to die, if more than one grantor owner is named above, or  
 9 ..... on the death of (name of grantor owner)

10 ..... (must be one of the grantor owners named  
 11 above), the following described real property:

12 (Legal description)

13 If checked, the following optional statement applies:

14 ..... When effective, this instrument conveys any and all  
 15 interests in the described real property acquired by the  
 16 grantor owner(s) before, on, or after the date of this  
 17 instrument.

18 (Signature of grantor(s))

19 (acknowledgment)

1           Section 115. Form of instrument of revocation. An  
 2 instrument of revocation may be substantially in the following  
 3 form:

4           Revocation of Transfer on Death Deed

5           The undersigned hereby revokes the transfer on death deed  
 6 recorded on ....., ....., as Document No. .... (or  
 7 in Book ..... of....., Page .....) in the office of  
 8 the Recorder of ..... County, Illinois, affecting real  
 9 property legally described as follows:

10           (legal description)

11           Dated:

12           Signature

13           (acknowledgment)