



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0169

Introduced 1/18/2013, by Rep. John E. Bradley

SYNOPSIS AS INTRODUCED:

755 ILCS 27/5
755 ILCS 27/35
755 ILCS 27/40
755 ILCS 27/75
755 ILCS 27/90

Amends the Illinois Residential Real Property Transfer on Death Instrument Act. Defines "beneficiary's authorized representative" as an agent under a power of attorney, a standby guardian, a short-term or temporary guardian, an executor, an administrator, or an administrator to collect. Changes the definition of "residential real estate" to include, among other types of real estate, a residential condominium unit (instead of units in residential cooperatives or condominium units) including but not limited to the common elements allocated to that condominium unit and any parking unit or other amenity owned by the owner of the unit. Provides that an agency under a durable power of attorney or other instrument creating an agency does not have the authority to create or revoke a transfer on death instrument on behalf of the owner, provided that this provision shall not be construed to prohibit the agent from selling, transferring, or encumbering the residential real estate under the terms of the agency. Provides that if, following the death of an owner who executed a transfer on death instrument, a beneficiary or the beneficiary's authorized representative fails to file a notice of death affidavit and acceptance or a disclaimer within 6 months after the owner's death, any other beneficiary or the owner's estate may serve a written demand to file, pursuant to the Act, upon the beneficiary. Provides that if the beneficiary does not file an acceptance or a disclaimer within 30 days after receipt of the demand, the beneficiary will be deemed to have predeceased the owner with no descendants surviving. Provides that if a purchaser or mortgagee for value takes title to the property before the filing of any action to set aside the transfer on death instrument, the purchaser or mortgagee takes title to the property free and clear of any such action.

LRB098 00020 AJO 32950 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 5, 35,
6 40, 75, and 90 as follows:

7 (755 ILCS 27/5)

8 Sec. 5. Definitions. In this Act:

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

11 "Beneficiary's authorized representative" means an agent
12 under a power of attorney, a guardian, a standby guardian, a
13 short-term or temporary guardian, an executor, an
14 administrator, or an administrator to collect.

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

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

23 "Owner" means an individual who makes a transfer on death

1 instrument.

2 "Person" means an individual, corporation, business trust,
3 land trust, estate, inter-vivos revocable or irrevocable
4 trust, testamentary trust, partnership, limited liability
5 company, association, joint venture, public corporation,
6 government or governmental subdivision, agency, or
7 instrumentality, or any other legal or commercial entity.

8 "Residential real estate" means real property improved
9 with not less than one nor more than 4 residential dwelling
10 units; a residential condominium unit, units in residential
11 cooperatives; or, condominium units, including but not limited
12 to the limited common elements allocated to the exclusive use
13 thereof that form an integral part of the condominium unit and
14 any parking unit or other amenity used with and owned by the
15 owner of the residential condominium unit; or a single tract of
16 agriculture real estate consisting of 40 acres or less which is
17 improved with a single family residence.

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

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

21 (755 ILCS 27/35)

22 Sec. 35. Capacity of owner and agent's authority. The
23 capacity required to make or revoke a transfer on death
24 instrument is the same as the capacity required to make a will.
25 An agent ~~Unless expressly authorized by the owner~~ under a

1 durable power of attorney or other ~~similar~~ instrument creating
2 an agency, ~~an agent for an owner~~ does not have the authority to
3 create or revoke a transfer on death instrument on behalf of
4 the owner. This Section shall not be construed to prohibit the
5 agent from selling, transferring, or encumbering the
6 residential real estate under the terms of the agency.

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

8 (755 ILCS 27/40)

9 Sec. 40. Requirements.

10 (a) A transfer on death instrument:

11 (1) must contain the essential elements and
12 formalities of a properly recordable inter vivos deed; and
13 must be executed, witnessed, and acknowledged in
14 substantial compliance with Section 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 residential real
20 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 residential real
24 estate at the owner's death.

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

1 (755 ILCS 27/75)

2 Sec. 75. Notice of death affidavit, acceptance and
3 effective date of transfer. A transfer on death instrument is
4 effective as of the owner's death upon the filing of a notice
5 of death affidavit and acceptance ~~by the beneficiary or~~
6 ~~beneficiaries~~ in the office of the recorder in the county or
7 counties where the residential real estate is located. The
8 notice of death affidavit and acceptance shall contain the
9 names ~~name~~ and addresses ~~address~~ of the ~~each~~ beneficiary or
10 beneficiaries who shall take under the transfer on death
11 instrument, a legal description of the property, the street
12 address, and parcel identification number of the residential
13 real estate, the name of the deceased owner, and the date of
14 death. Unless each beneficiary or beneficiary's authorized
15 representative files a separate notice of death affidavit and
16 acceptance, the ~~The~~ notice of death affidavit and acceptance
17 shall be signed by each beneficiary or by the beneficiary's
18 authorized representative. If a notice of death affidavit and
19 acceptance has not been filed by at least one beneficiary or by
20 a beneficiary's authorized representative in the office of the
21 recorder in the county or counties where the residential real
22 estate is located within 30 days after the owner's death, the
23 personal representative of the owner's estate, if any, may take
24 possession of the residential real estate in accordance with
25 Section 20-1 of the Probate Act of 1975, and shall be entitled

1 to a lien for all reasonable costs and expenses incurred in the
2 management and care thereof provided that a reasonable attempt
3 to notify the beneficiary or beneficiaries has been made.
4 Unless the transfer on death instrument provides for a
5 different disposition for a non-acceptance, if ~~if~~ a beneficiary
6 or beneficiary's authorized representative fails to file a
7 notice of death affidavit and acceptance ~~has not been filed by~~
8 ~~at least one beneficiary or by the beneficiary's authorized~~
9 ~~representative~~ in the office of the recorder in the county or
10 counties where the residential real estate is located within 2
11 years after the owner's death, the transfer on death instrument
12 shall be void and ineffective as to that beneficiary's
13 interest, and the interest ~~and the residential real estate~~
14 shall pass to the owner's estate as provided in paragraph (2)
15 of subsection (a) of Section 65 to be administered and
16 distributed in accordance with the terms thereof. If a
17 beneficiary or a beneficiary's authorized representative has
18 not filed a notice of death affidavit and acceptance or
19 disclaimer in accordance with the Disclaimer Under
20 Nontestamentary Instrument Act within 6 months after the date
21 of the owner's death, any co-beneficiary, contingent
22 beneficiary, legatee, heir, or personal representative of the
23 owner's estate may serve upon the beneficiary or the
24 beneficiary's authorized representative who has not filed a
25 notice of death affidavit and acceptance a written demand that
26 requires the beneficiary or the beneficiary's authorized

1 representative to file a notice of death affidavit and
2 acceptance or disclaimer within 30 days after the date of the
3 service of the written demand. The demand shall include a copy
4 of the transfer on death instrument. If the beneficiary or an
5 authorized representative of the beneficiary fails to file a
6 notice of death affidavit and acceptance or disclaimer within
7 30 days after the date of service of the demand, the
8 beneficiary shall be deemed to have predeceased the owner with
9 no descendants surviving. Service of the written demand may be
10 made by personal service or by registered or certified mail,
11 return receipt requested, in which case the date of service
12 shall be the date of receipt.

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

14 (755 ILCS 27/90)

15 Sec. 90. Limitations. An action to set aside or contest the
16 validity of a transfer on death instrument shall be commenced
17 within the earlier of 2 years after the date of the owner's
18 death or 6 months from the date that letters of office are
19 issued. But a purchaser or mortgagee for value and without
20 notice before the commencement of any action or contest to set
21 aside the transfer on death instrument for any reason takes
22 free and clear of any such action or contest.

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