



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2656

Introduced 1/21/2014, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Residential Real Property Transfer on Death Instrument Act. Changes the definition of "residential real estate" by replacing the phrase "units in residential cooperatives; or, condominium units" with "a residential condominium unit" and by providing that residential condominium units include any parking unit or other amenity used with and owned by the owner of the condominium unit. Provides that an agent 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, but the restriction 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 an instrument under the Act is effective if it is executed, witnessed, and acknowledged in substantial compliance (rather than "in compliance") with certain provisions of the Act. Provides that a transfer on death instrument is effective without acceptance. Replaces the provisions of a Section concerning the notice of death affidavit. Provides that a 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. Adds provisions concerning the required contents of the notice of death affidavit. Provides that the affidavit shall be acknowledged under penalty of perjury before a notary public or person authorized to administer oaths. Provides that the filing of a notice of death affidavit is not a condition to the transfer of title. Provides that 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. Repeals the Section concerning the statutory form for the notice of death affidavit and acceptance.

LRB098 14731 HEP 50789 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, 50, 65, 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 "Designated beneficiary" means a person designated to
12 receive residential real estate in a transfer on death
13 instrument.

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

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

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

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

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

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

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

17 (755 ILCS 27/35)

18 Sec. 35. Capacity of owner and agent's authority. The
19 capacity required to make or revoke a transfer on death
20 instrument is the same as the capacity required to make a will.
21 An agent ~~Unless expressly authorized by the owner~~ under a
22 durable power of attorney or other similar instrument creating
23 an agency, ~~an agent for an owner~~ does not have the authority to
24 create or revoke a transfer on death instrument on behalf of
25 the owner. This Section shall not be construed to prohibit the

1 agent from selling, transferring, or encumbering the
2 residential real estate under the terms of the agency.

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

4 (755 ILCS 27/40)

5 Sec. 40. Requirements.

6 (a) A transfer on death instrument:

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

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

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

17 (b) The failure to comply with any of the requirements of
18 subsection (a) will render the transfer on death instrument
19 void and ineffective to transfer title to the residential real
20 estate at the owner's death.

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

22 (755 ILCS 27/50)

23 Sec. 50. Notice, delivery, acceptance, or consideration
24 not required. A transfer on death instrument is effective

1 without:

- 2 (1) notice or delivery to or acceptance by the
3 designated beneficiary during the owner's life; or
4 (2) consideration.

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

6 (755 ILCS 27/65)

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

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

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

19 (2) If a designated beneficiary fails to survive the
20 owner or is not in existence on the date of the owner's
21 death, then except as provided in paragraph (3) the
22 residential real estate shall pass to the owner's estate.

23 (3) Unless the owner provides otherwise, if the
24 designated beneficiary is a descendant of the owner who
25 dies before the owner, the descendants of the deceased

1 designated beneficiary living at the time of the owner's
2 death shall take the residential real estate per stirpes.
3 If the designated beneficiary is one of a class of
4 designated beneficiaries, and any member of the class dies
5 before the owner, the members of the class living when the
6 owner dies shall take the share or shares which the
7 deceased member would have taken if he or she were then
8 living, except that if the deceased member of the class is
9 a descendant of the owner, the descendants of the deceased
10 member then living shall take per stirpes the share or
11 shares which the deceased member would have taken if he or
12 she were then living.

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

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

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

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

2 (755 ILCS 27/75)

3 Sec. 75. Notice of death affidavit, ~~acceptance and~~
4 ~~effective date of transfer.~~ Any beneficiary who takes under a
5 transfer on death instrument may file in the office of the
6 recorder in the county or counties where the residential real
7 estate is located a notice of death affidavit to confirm title
8 following the death of the owner. The notice of death affidavit
9 shall contain the name and address, if known, of each
10 beneficiary taking under the transfer on death instrument, the
11 legal description of the property, the street address and
12 parcel identification number of the residential real estate, if
13 known, the date of the transfer on death instrument and its
14 recording document number, the name of the deceased owner, the
15 date and place of death, and the name and address to which all
16 future tax bills should be mailed. The affidavit shall be
17 acknowledged under penalty of perjury before a notary public or
18 person authorized to administer oaths. The filing of the notice
19 of death affidavit is not a condition to the transfer of title.
20 ~~A transfer on death instrument is effective as of the owner's~~
21 ~~death upon the filing of a notice of death affidavit and~~
22 ~~acceptance by the beneficiary or beneficiaries in the office of~~
23 ~~the recorder in the county or counties where the residential~~
24 ~~real estate is located. The notice of death affidavit and~~
25 ~~acceptance shall contain the name and address of each~~

1 ~~beneficiary who shall take under the transfer on death~~
2 ~~instrument, a legal description of the property, the street~~
3 ~~address, and parcel identification number of the residential~~
4 ~~real estate, the name of the deceased owner, and the date of~~
5 ~~death. The notice of death affidavit and acceptance shall be~~
6 ~~signed by each beneficiary or by the beneficiary's authorized~~
7 ~~representative. If a notice of death affidavit and acceptance~~
8 ~~has not been filed by at least one beneficiary or by a~~
9 ~~beneficiary's authorized representative in the office of the~~
10 ~~recorder in the county or counties where the residential real~~
11 ~~estate is located within 30 days after the owner's death, the~~
12 ~~personal representative of the owner's estate, if any, may take~~
13 ~~possession of the residential real estate in accordance with~~
14 ~~Section 20-1 of the Probate Act of 1975, and shall be entitled~~
15 ~~to a lien for all reasonable costs and expenses incurred in the~~
16 ~~management and care thereof provided that a reasonable attempt~~
17 ~~to notify the beneficiary or beneficiaries has been made. If a~~
18 ~~notice of death affidavit and acceptance has not been filed by~~
19 ~~at least one beneficiary or by the beneficiary's authorized~~
20 ~~representative in the office of the recorder in the county or~~
21 ~~counties where the residential real estate is located within 2~~
22 ~~years after the owner's death, the transfer on death instrument~~
23 ~~shall be void and ineffective and the residential real estate~~
24 ~~shall pass to the owner's estate as provided in paragraph (2)~~
25 ~~of subsection (a) of Section 65 to be administered and~~
26 ~~distributed in accordance with the terms thereof.~~

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

2 (755 ILCS 27/90)

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

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

12 (755 ILCS 27/100 rep.)

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

1 INDEX

2 Statutes amended in order of appearance

3 755 ILCS 27/5

4 755 ILCS 27/35

5 755 ILCS 27/40

6 755 ILCS 27/50

7 755 ILCS 27/65

8 755 ILCS 27/75

9 755 ILCS 27/90

10 755 ILCS 27/100 rep.