

AN ACT concerning civil law.

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

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

(755 ILCS 27/1)

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

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

(755 ILCS 27/5)

Sec. 5. Definitions. In this Act:

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

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

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

include a tenant in common.

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

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

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

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

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

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

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

(755 ILCS 27/10)

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

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

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

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

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

(755 ILCS 27/15)

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

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

(755 ILCS 27/20)

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

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

(755 ILCS 27/21 new)

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

instrument and that is identified in the transfer on death instrument, to a trustee of a trust created under the owner's will, to a trustee of a trust created under the transfer on death instrument, or to a trustee of a trust under the will of another individual if that individual has predeceased the owner, is permitted even if the trust is subject to amendment, modification, revocation, or termination. Unless the transfer on death instrument provides otherwise, the real property transferred shall be governed by the terms and provisions of the instrument creating the trust, including any amendments or modifications in writing made at any time before or after the execution of the owner's transfer on death instrument and after the death of the owner. The existence or lack thereof of a trust corpus is immaterial to the validity of the transfer by the transfer on death instrument. Unless the transfer on death instrument provides otherwise, a revocation or termination of the trust before the owner's death causes the transfer to the trust to pass to the owner's estate.

(755 ILCS 27/30)

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

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

(755 ILCS 27/35)

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

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

(755 ILCS 27/40)

Sec. 40. Requirements.

(a) A transfer on death instrument:

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

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

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

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

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

(755 ILCS 27/45)

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

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

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

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

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

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

(755 ILCS 27/60)

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

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

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

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

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

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

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

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

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

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

(755 ILCS 27/65)

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

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

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

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

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

~~not in existence on the date of the owner's death, then the real property shall pass to the owner's estate. Unless the owner provides otherwise, if the designated beneficiary is a descendant of the owner who dies before the owner, the descendants of the deceased designated beneficiary living at the time of the owner's death shall take the residential real estate per stirpes. If the designated beneficiary is one of a class of designated beneficiaries, and any member of the class dies before the owner, the members of the class living when the owner dies shall take the share or shares which the deceased member would have taken if he or she were then living, except that if the deceased member of the class is a descendant of the owner, the descendants of the deceased member then living shall take per stirpes the share or shares which the deceased member would have taken if he or she were then living.~~

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

(5) If the designated beneficiary who dies before the

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

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

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

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

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

(755 ILCS 27/66 new)

Sec. 66. Renunciation by spouse.

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

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

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

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

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

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

(755 ILCS 27/75)

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

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

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

(755 ILCS 27/85)

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

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

(755 ILCS 27/90)

Sec. 90. Limitations and bona fide transfers.

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

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

~~An action to set aside or contest the validity of a transfer on death instrument shall be commenced within the earlier of 2 years after the date of the owner's death or 6 months from the date that letters of office are issued. However, 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.~~

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

(755 ILCS 27/95)

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

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

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