

**Senate File 2117 - Introduced**

SENATE FILE 2117

BY RAGAN

**A BILL FOR**

1 An Act relating to creation of transfer on death deeds and to  
2 disclaimers of an interest in real property, and including  
3 applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 633F.1 Short title.

2 This chapter may be cited as the "*Uniform Real Property*  
3 *Transfer on Death Act*".

4 Sec. 2. NEW SECTION. 633F.2 Definitions.

5 As used in this chapter, unless the context otherwise  
6 requires:

7 1. "*Beneficiary*" means a person that receives property under  
8 a transfer on death deed.

9 2. "*Designated beneficiary*" means a person designated to  
10 receive property in a transfer on death deed.

11 3. "*Joint owner*" means an individual who owns property  
12 concurrently with one or more other individuals with a right of  
13 survivorship. "*Joint owner*" includes a joint tenant and tenant  
14 by the entirety. "*Joint owner*" does not include a tenant in  
15 common.

16 4. "*Person*" means an individual, corporation, business  
17 trust, estate, trust, partnership, limited liability company,  
18 association, joint venture, public corporation, government or  
19 governmental subdivision, agency, or instrumentality, or any  
20 other legal or commercial entity.

21 5. "*Property*" means an interest in real property located in  
22 this state which is transferable on the death of the owner.

23 6. "*Transfer on death deed*" means a deed authorized under  
24 this chapter.

25 7. "*Transferor*" means an individual who makes a transfer on  
26 death deed.

27 Sec. 3. NEW SECTION. 633F.3 Applicability.

28 This chapter applies to a transfer on death deed made before,  
29 on, or after the effective date of this Act by a transferor  
30 dying on or after the effective date of this Act.

31 Sec. 4. NEW SECTION. 633F.4 Nonexclusivity.

32 This chapter does not affect any method of transferring  
33 property otherwise permitted under the law of this state.

34 Sec. 5. NEW SECTION. 633F.5 Transfer on death deed  
35 authorized.

1 An individual may transfer property to one or more  
2 beneficiaries effective at the transferor's death by a transfer  
3 on death deed.

4 Sec. 6. NEW SECTION. 633F.6 **Transfer on death deed**  
5 **revocable.**

6 A transfer on death deed is revocable even if the deed or  
7 another instrument contains a contrary provision.

8 Sec. 7. NEW SECTION. 633F.7 **Transfer on death deed**  
9 **nontestamentary.**

10 A transfer on death deed is nontestamentary.

11 Sec. 8. NEW SECTION. 633F.8 **Capacity of transferor.**

12 The capacity required to make or revoke a transfer on death  
13 deed is the same as the capacity required to make a will.

14 Sec. 9. NEW SECTION. 633F.9 **Requirements.**

15 A transfer on death deed:

16 1. Except as otherwise provided in subsection 2, must  
17 contain the essential elements and formalities of a properly  
18 recordable inter vivos deed.

19 2. Must state that the transfer to the designated  
20 beneficiary is to occur at the transferor's death.

21 3. Must be recorded before the transferor's death in the  
22 public records in the office of the county recorder in the  
23 county where the property is located.

24 Sec. 10. NEW SECTION. 633F.10 **Notice, delivery, acceptance,**  
25 **consideration not required.**

26 A transfer on death deed is effective without any of the  
27 following:

28 1. Notice or delivery to or acceptance by the designated  
29 beneficiary during the transferor's life.

30 2. Consideration.

31 Sec. 11. NEW SECTION. 633F.11 **Revocation by instrument**  
32 **authorized — revocation by act not permitted.**

33 1. Subject to subsection 2, an instrument is effective to  
34 revoke a recorded transfer on death deed, or any part of the  
35 deed, only if all of the following apply:

1     *a.* The instrument is any of the following:

2       (1) A transfer on death deed that revokes the deed or part  
3 of the deed expressly or by inconsistency.

4       (2) An instrument of revocation that expressly revokes the  
5 deed or part of the deed.

6       (3) An inter vivos deed that expressly revokes the transfer  
7 on death deed or part of the deed.

8     *b.* The instrument is acknowledged by the transferor after  
9 the acknowledgment of the deed being revoked and is recorded  
10 before the transferor's death in the public records in the  
11 office of the county recorder of the county where the deed is  
12 recorded.

13     2. If a transfer on death deed is made by more than one  
14 transferor, all of the following apply:

15       *a.* Revocation by a transferor does not affect the deed as to  
16 the interest of another transferor.

17       *b.* A deed of joint owners is revoked only if the deed is  
18 revoked by all of the living joint owners.

19     3. After a transfer on death deed is recorded, the deed  
20 cannot be revoked by a revocatory act on the deed.

21     4. This section does not limit the effect of an inter vivos  
22 transfer of the property.

23     Sec. 12. NEW SECTION. 633F.12 **Effect of transfer on death**  
24 **deed during transferor's life.**

25     During a transferor's life, a transfer on death deed does not  
26 do any of the following:

27       1. Affect an interest or right of the transferor or any  
28 other owner, including the right to transfer or encumber the  
29 property.

30       2. Affect an interest or right of a transferee, even if the  
31 transferee has actual or constructive notice of the deed.

32       3. Affect an interest or right of a secured or unsecured  
33 creditor or future creditor of the transferor, even if the  
34 creditor has actual or constructive notice of the deed.

35       4. Affect the transferor's or designated beneficiary's

1 eligibility for any form of public assistance.

2 5. Create a legal or equitable interest in favor of the  
3 designated beneficiary.

4 6. Subject the property to claims or process of a creditor  
5 of the designated beneficiary.

6 Sec. 13. NEW SECTION. 633F.13 **Effect of transfer on death**  
7 **deed at transferor's death.**

8 1. Except as otherwise provided in the transfer on death  
9 deed, in this section, or in section 633.238, 633.523, or  
10 633.535, upon the death of the transferor, the following rules  
11 apply to property that is the subject of a transfer on death  
12 deed and owned by the transferor at death:

13 a. Subject to paragraph "b", the interest in the property is  
14 transferred to the designated beneficiary in accordance with  
15 the deed.

16 b. The interest of a designated beneficiary is contingent  
17 on the designated beneficiary surviving the transferor. The  
18 interest of a designated beneficiary that fails to survive the  
19 transferor lapses.

20 c. Subject to paragraph "d", concurrent interests are  
21 transferred to the beneficiaries in equal and undivided shares  
22 with no right of survivorship.

23 d. If the transferor has identified two or more designated  
24 beneficiaries to receive concurrent interests in the property,  
25 the share of one which lapses or fails for any reason is  
26 transferred to the other, or to the others in proportion to the  
27 interest of each in the remaining part of the property held  
28 concurrently.

29 2. Subject to section 558.41, a beneficiary takes the  
30 property subject to all conveyances, encumbrances, assignments,  
31 contracts, mortgages, liens, and other interests to which the  
32 property is subject at the transferor's death. For purposes  
33 of this subsection and section 558.41, the recording of the  
34 transfer on death deed is deemed to have occurred at the  
35 transferor's death.

1 3. a. If a transferor is a joint owner and is survived  
2 by one or more other joint owners, the property that is the  
3 subject of a transfer on death deed belongs to the surviving  
4 joint owner or owners with right of survivorship.

5 b. If a transferor is the last surviving joint owner, the  
6 transfer on death deed is effective.

7 4. A transfer on death deed transfers property without  
8 covenant or warranty of title even if the deed contains a  
9 contrary provision.

10 Sec. 14. NEW SECTION. 633F.14 Disclaimer.

11 A beneficiary may disclaim all or part of the beneficiary's  
12 interest as provided by chapter 633E.

13 Sec. 15. NEW SECTION. 633F.15 Liability for creditor claims  
14 and statutory allowances.

15 1. To the extent the transferor's probate estate is  
16 insufficient to satisfy an allowed claim against the estate  
17 or a statutory allowance to a surviving spouse or child, the  
18 estate may enforce the liability against property transferred  
19 at the transferor's death by a transfer on death deed.

20 2. If more than one property is transferred by one or more  
21 transfer on death deeds, the liability under subsection 1 is  
22 apportioned among the properties in proportion to the net  
23 values of the properties at the transferor's death.

24 3. A proceeding to enforce the liability under this section  
25 must be commenced not later than eighteen months after the  
26 transferor's death.

27 Sec. 16. NEW SECTION. 633F.16 Optional form of transfer  
28 on death deed.

29 The following form may be used to create a transfer on death  
30 deed. The other sections of this chapter govern the effect of  
31 this or any other instrument used to create a transfer on death  
32 deed:

33

(front of form)

34

REVOCABLE TRANSFER ON DEATH DEED

35 NOTICE TO OWNER

1 You should carefully read all information on the other side  
2 of this form. You May Want to Consult a Lawyer Before Using  
3 This Form.

4 This form must be recorded before your death, or it will not  
5 be effective.

6 IDENTIFYING INFORMATION

7 Owner or Owners Making This Deed:

8 \_\_\_\_\_  
9 Printed name Mailing address

10 \_\_\_\_\_  
11 Printed name Mailing address

12 Legal description of the property:  
13 \_\_\_\_\_

14 PRIMARY BENEFICIARY

15 I designate the following beneficiary if the beneficiary  
16 survives me.

17 \_\_\_\_\_  
18 Printed name Mailing address, if available

19 ALTERNATE BENEFICIARY - Optional

20 If my primary beneficiary does not survive me, I designate  
21 the following alternate beneficiary if that beneficiary  
22 survives me.

23 \_\_\_\_\_  
24 Printed name Mailing address, if available

25 TRANSFER ON DEATH

26 At my death, I transfer my interest in the described property  
27 to the beneficiaries as designated above.

28 Before my death, I have the right to revoke this deed.

29 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

30 Seal, if any  
31 Signature Date

32 \_\_\_\_\_  
33 Seal, if any

34 Signature Date  
35 \_\_\_\_\_

1 ACKNOWLEDGMENT

2 (insert acknowledgment for deed here)

3 (back of form)

4 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

5 What does the Transfer on Death (TOD) deed do?

6 When you die, this deed transfers the described property,  
7 subject to any liens or mortgages (or other encumbrances) on  
8 the property at your death. Probate is not required. The TOD  
9 deed has no effect until you die. You can revoke it at any  
10 time. You are also free to transfer the property to someone  
11 else during your lifetime. If you do not own any interest in  
12 the property when you die, this deed will have no effect.

13 How do I make a TOD deed?

14 Complete this form. Have it acknowledged before a  
15 notary public or other individual authorized by law to take  
16 acknowledgments. Record the form in each county where any part  
17 of the property is located. The form has no effect unless it is  
18 acknowledged and recorded before your death.

19 Is the legal description of the property necessary?

20 Yes.

21 How do I find the legal description of the property?

22 This information may be on the deed you received when you  
23 became an owner of the property. This information may also be  
24 available in the office of the county recorder for the county  
25 where the property is located. If you are not absolutely sure,  
26 consult a lawyer.

27 Can I change my mind before I record the TOD deed?

28 Yes. If you have not yet recorded the deed and want to  
29 change your mind, simply tear up or otherwise destroy the deed.

30 How do I record the TOD deed?

31 Take the completed and acknowledged form to the office  
32 of the county recorder of the county where the property is  
33 located. Follow the instructions given by the county recorder  
34 to make the form part of the official property records. If the  
35 property is in more than one county, you should record the deed



1 in each county.

2 Can I later revoke the TOD deed if I change my mind?

3 Yes. You can revoke the TOD deed. No one, including the  
4 beneficiaries, can prevent you from revoking the deed.

5 How do I revoke the TOD deed after it is recorded?

6 There are three ways to revoke a recorded TOD deed: [1]  
7 Complete and acknowledge a revocation form, and record it in  
8 each county where the property is located. [2] Complete and  
9 acknowledge a new TOD deed that disposes of the same property,  
10 and record it in each county where the property is located.  
11 [3] Transfer the property to someone else during your lifetime  
12 by a recorded deed that expressly revokes the TOD deed. You  
13 may not revoke the TOD deed by will.

14 I am being pressured to complete this form. What should I  
15 do?

16 Do not complete this form under pressure. Seek help from a  
17 trusted family member, friend, or lawyer.

18 Do I need to tell the beneficiaries about the TOD deed?

19 No, but it is recommended. Secrecy can cause later  
20 complications and might make it easier for others to commit  
21 fraud.

22 I have other questions about this form. What should I do?

23 This form is designed to fit some but not all situations.  
24 If you have other questions, you are encouraged to consult a  
25 lawyer.

26 Sec. 17. NEW SECTION. 633F.17 **Optional form of revocation.**

27 The following form may be used to create an instrument of  
28 revocation under this chapter. The other sections of this  
29 chapter govern the effect of this or any other instrument used  
30 to revoke a transfer on death deed.

31 (front of form)

32 **REVOCATION OF TRANSFER ON DEATH DEED**

33 **NOTICE TO OWNER**

34 This revocation must be recorded before you die or it will  
35 not be effective. This revocation is effective only as to the

1 interests in the property of owners who sign this revocation.

2 IDENTIFYING INFORMATION

3 Owner or Owners of Property Making This Revocation:

4 \_\_\_\_\_

5 Printed name Mailing address

6 \_\_\_\_\_

7 Printed name Mailing address

8 Legal description of the property:

9 \_\_\_\_\_

10 REVOCATION

11 I revoke all my previous transfers of this property by  
12 transfer on death deed.

13 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

14 Seal, if any

15 Signature Date

16 \_\_\_\_\_

17 Seal, if any

18 Signature Date

19 \_\_\_\_\_

20 ACKNOWLEDGMENT

21 (insert acknowledgment here)

22 (back of form)

23 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

24 How do I use this form to revoke a Transfer on Death (TOD)  
25 deed?

26 Complete this form. Have it acknowledged before a notary  
27 public or other individual authorized to take acknowledgments.

28 Record the form in the public records in the office of the  
29 county recorder of each county where the property is located.

30 The form must be acknowledged and recorded before your death or  
31 it has no effect.

32 How do I find the legal description of the property?

33 This information may be on the TOD deed. It may also be  
34 available in the office of the county recorder for the county

35 where the property is located. If you are not absolutely sure,

1 consult a lawyer.

2 How do I record the form?

3 Take the completed and acknowledged form to the office  
4 of the county recorder of the county where the property is  
5 located. Follow the instructions given by the county recorder  
6 to make the form part of the official property records. If the  
7 property is located in more than one county, you should record  
8 the form in each of those counties.

9 I am being pressured to complete this form. What should I  
10 do?

11 Do not complete this form under pressure. Seek help from a  
12 trusted family member, friend, or lawyer.

13 I have other questions about this form. What should I do?

14 This form is designed to fit some but not all situations. If  
15 you have other questions, consult a lawyer.

16 Sec. 18. NEW SECTION. 633F.18 **Uniformity of application**  
17 **and construction.**

18 In applying and construing this uniform Act, consideration  
19 shall be given to the need to promote uniformity of the law  
20 with respect to the subject matter of this chapter among the  
21 states that enact it.

22 Sec. 19. NEW SECTION. 633F.19 **Relation to Electronic**  
23 **Signatures in Global and National Commerce Act.**

24 This chapter modifies, limits, and supersedes the federal  
25 Electronic Signatures in Global and National Commerce Act, 15  
26 U.S.C. §7001, et seq., but does not modify, limit, or supersede  
27 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize  
28 electronic delivery of any of the notices described in section  
29 103(b) of that Act, 15 U.S.C. §7003(b).

30 Sec. 20. Section 331.602, Code 2016, is amended by adding  
31 the following new subsection:

32 NEW SUBSECTION. 33. Record a transfer on death deed created  
33 pursuant to section 633F.5 or an instrument of revocation  
34 authorized by section 633F.11 and presented to the recorder's  
35 office for recording in the same manner as other deeds are

1 recorded. The recorder shall collect a fee under section  
2 331.604 for the recording of the transfer on death deed or  
3 instrument of revocation and shall index the transfer on death  
4 deed or instrument of revocation in the name of the owner of  
5 record of the real property or interest in the real property  
6 who executed the transfer on death deed.

7 Sec. 21. Section 633E.12, subsections 6 and 7, Code 2016,  
8 are amended to read as follows:

9 6. In the case of ~~a disclaimer~~ of an interest created by  
10 a beneficiary designation ~~made~~ which is disclaimed before the  
11 ~~time~~ the designation becomes irrevocable, the disclaimer must  
12 be delivered to the person making the beneficiary designation.

13 7. In the case of ~~a disclaimer~~ of an interest created by  
14 a beneficiary designation ~~made~~ which is disclaimed after the  
15 ~~time~~ the designation becomes irrevocable, the disclaimer of an  
16 interest in personal property must be delivered to the person  
17 obligated to distribute the interest and the disclaimer of an  
18 interest in real property must be recorded in the office of the  
19 county recorder of the county where the real property that is  
20 the subject of the disclaimer is located.

21

#### EXPLANATION

22 The inclusion of this explanation does not constitute agreement with  
23 the explanation's substance by the members of the general assembly.

24 This bill provides that an individual may execute a transfer  
25 on death deed which transfers real property outside of probate  
26 to one or more beneficiaries effective at the transferor's  
27 death.

28 To be valid, a transfer on death deed must contain the  
29 essential elements and formalities of a properly recordable  
30 inter vivos deed, state that the transfer to the designated  
31 beneficiary is to occur at the transferor's death, and be  
32 recorded before the transferor's death in the office of the  
33 county recorder.

34 A transfer on death deed is revocable, even if the deed  
35 states that the deed is irrevocable. A transferor may revoke

1 a transfer on death deed by acknowledging and recording an  
2 inconsistent transfer on death deed, or an instrument of  
3 revocation or inter vivos deed that expressly revokes the deed.

4 A transfer on death deed is nontestamentary, and the  
5 capacity required to make or revoke a transfer on death deed is  
6 the same capacity required to make a will.

7 A transfer on death deed is effective even if the beneficiary  
8 does not receive notice or delivery of the deed during the  
9 transferor's lifetime, and even if the transferor does not  
10 receive consideration for the deed.

11 During the transferor's lifetime, a transfer on death deed  
12 does not affect the transferor's interest in the property,  
13 including the right to transfer or encumber the property, nor  
14 does the transfer on death deed create a legal or equitable  
15 interest in favor of the designated beneficiary or subject the  
16 property to claims of a creditor of the designated beneficiary.  
17 If the transferor transfers the property that is the subject  
18 of a transfer of death deed before the transferor's death, the  
19 transfer on death deed is of no effect at the death of the  
20 transferor.

21 At the death of the transferor, subject to Code sections  
22 633.238 (elective share of surviving spouse), 633.523 through  
23 633.538 (uniform simultaneous death act), and 633.535 through  
24 633.537 (felonious death), the property is transferred to the  
25 designated beneficiary if the designated beneficiary is alive.  
26 If the designated beneficiary predeceases the transferor, the  
27 interest of the designated beneficiary lapses.

28 Subject to Code section 558.41 (recording), a beneficiary  
29 who takes property under a transfer on death deed takes the  
30 property subject to all conveyances, encumbrances, assignments,  
31 contracts, mortgages, liens, and other interests to which the  
32 property is subject at the transferor's death.

33 If the transferor owns the property as a joint tenant or as  
34 a tenant by the entirety, the transfer on death deed is only  
35 effective if the transferor is the last surviving joint tenant

1 or tenant by the entirety.

2 A beneficiary may disclaim all or part of the beneficiary's  
3 interest as provided by Code chapter 633E (uniform disclaimer  
4 of property interest Act).

5 To the extent that the transferor's probate estate is  
6 insufficient to satisfy an allowed claim against the estate  
7 or a statutory allowance to a surviving spouse or child, the  
8 estate may enforce the liability against property transferred  
9 at the transferor's death by a transfer on death deed.

10 The bill provides an optional form of a transfer on death  
11 deed and an optional form for the revocation of a transfer on  
12 death deed.

13 The bill does not affect any deed executed and recorded prior  
14 to the effective date of the bill and applies to a transfer on  
15 death deed made before, on, or after the effective date of the  
16 bill by a transferor dying on or after the effective date of  
17 the bill.

18 The bill makes conforming changes.