

Senate File 393 - Introduced

SENATE FILE 393

BY SCHNEIDER

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 county.

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.
15 If you have other questions, you are encouraged to consult a
16 lawyer.

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

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

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

25 This chapter modifies, limits, and supersedes the federal
26 Electronic Signatures in Global and National Commerce Act, 15
27 U.S.C. §7001, et seq., but does not modify, limit, or supersede
28 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize
29 electronic delivery of any of the notices described in section
30 103(b) of that Act, 15 U.S.C. §7003(b).

31 Sec. 20. Section 331.602, Code 2017, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 33. Record a transfer on death deed created
34 pursuant to section 633F.5 or an instrument of revocation
35 authorized by section 633F.11 and presented to the recorder's

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

8 Sec. 21. Section 633E.12, subsections 6 and 7, Code 2017,
9 are amended to read as follows:

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

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

22 EXPLANATION

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

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

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

35 A transfer on death deed is revocable, even if the deed

1 states that the deed is irrevocable. A transferor may revoke
2 a transfer on death deed by acknowledging and recording an
3 inconsistent transfer on death deed, or an instrument of
4 revocation or inter vivos deed that expressly revokes the deed.

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

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

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

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

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

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

1 effective if the transferor is the last surviving joint tenant
2 or tenant by the entirety.

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

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

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

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

19 The bill makes conforming changes.