

Senate File 408 - Introduced

SENATE FILE 408

BY SWEENEY

(COMPANION TO HF 125 BY NORDMAN)

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:

unofficial

1 Section 1. NEW SECTION. **633G.1 Short title.**

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

4 Sec. 2. NEW SECTION. **633G.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. **633G.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 dying
30 on or after the effective date of this Act.

31 Sec. 4. NEW SECTION. **633G.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. **633G.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. **633G.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. **633G.7 Transfer on death deed**
9 **nontestamentary.**

10 A transfer on death deed is nontestamentary.

11 Sec. 8. NEW SECTION. **633G.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. **633G.9 Requirements.**

15 A transfer on death deed:

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

19 2. Must state that the transfer to the designated beneficiary
20 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 county
23 where the property is located.

24 Sec. 10. NEW SECTION. **633G.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. **633G.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 of
3 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 the
9 acknowledgment of the deed being revoked and is recorded before
10 the transferor's death in the public records in the office of the
11 county recorder of the county where the deed is recorded.

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

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

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

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

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

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

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

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

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

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

33 4. Affect the transferor's or designated beneficiary's
34 eligibility for any form of public assistance.

35 5. Create a legal or equitable interest in favor of the

1 designated beneficiary.

2 6. Subject the property to claims or process of a creditor of
3 the designated beneficiary.

4 Sec. 13. NEW SECTION. **633G.13 Effect of transfer on death**
5 **deed at transferor's death.**

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

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

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

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

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

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

34 3. a. If a transferor is a joint owner and is survived by
35 one or more other joint owners, the property that is the subject

1 of a transfer on death deed belongs to the surviving joint owner
2 or owners with right of survivorship.

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

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

8 Sec. 14. NEW SECTION. **633G.14 Disclaimer.**

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

11 Sec. 15. NEW SECTION. **633G.15 Liability for creditor claims
12 and statutory allowances.**

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

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

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

25 Sec. 16. NEW SECTION. **633G.16 Optional form of transfer on
26 death deed.**

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

31 (front of form)
32 REVOCABLE TRANSFER ON DEATH DEED
33 NOTICE TO OWNER
34 — You should carefully read all information on the other side of
35 this form. You may want to consult a lawyer before using this

1 form.

2 ___ This form must be recorded before your death, or it will not
3 be effective.

4 IDENTIFYING INFORMATION

5 ___ Owner or owners making this deed

6 _____

7 Printed name Mailing address

8 _____

9 Printed name Mailing address

10 ___ Legal description of the property

11 _____

12 PRIMARY BENEFICIARY

13 ___ I designate the following beneficiary if the beneficiary
14 survives me.

15 _____

16 Printed name Mailing address, if available

17 ALTERNATE BENEFICIARY - Optional

18 ___ If my primary beneficiary does not survive me, I designate the
19 following alternate beneficiary if that beneficiary survives me.

20 _____

21 Printed name Mailing address, if available

22 TRANSFER ON DEATH

23 ___ At my death, I transfer my interest in the described property
24 to the beneficiaries as designated above.

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

26 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

27 Seal, if any

28 Signature Date

29 _____

30 Seal, if any

31 Signature Date

32 _____

33 ACKNOWLEDGMENT

34 (insert acknowledgment for deed here)

35 (back of form)

1 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

10 How do I make a TOD deed?

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

16 Is the legal description of the property necessary?

17 Yes.

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

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

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

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

27 How do I record the TOD deed?

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

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

35 Yes. You can revoke the TOD deed. No one, including the

1 beneficiaries, can prevent you from revoking the deed.
 2 ___ How do I revoke the TOD deed after it is recorded?
 3 ___ There are three ways to revoke a recorded TOD deed: [1]
 4 Complete and acknowledge a revocation form, and record it in
 5 each county where the property is located. [2] Complete and
 6 acknowledge a new TOD deed that disposes of the same property,
 7 and record it in each county where the property is located. [3]
 8 Transfer the property to someone else during your lifetime by a
 9 recorded deed that expressly revokes the TOD deed. You may not
 10 revoke the TOD deed by will.
 11 ___ I am being pressured to complete this form. What should I do?
 12 ___ Do not complete this form under pressure. Seek help from a
 13 trusted family member, friend, or lawyer.
 14 ___ Do I need to tell the beneficiaries about the TOD deed?
 15 ___ No, but it is recommended. Secrecy can cause later
 16 complications and might make it easier for others to commit
 17 fraud.
 18 ___ I have other questions about this form. What should I do?
 19 ___ This form is designed to fit some but not all situations. If
 20 you have other questions, you are encouraged to consult a lawyer.

21 Sec. 17. NEW SECTION. **633G.17 Optional form of**
 22 **revocation.**

23 The following form may be used to create an instrument of
 24 revocation under this chapter. The other sections of this
 25 chapter govern the effect of this or any other instrument used to
 26 revoke a transfer on death deed. (front
 27 of form) **REVOCATION OF TRANSFER ON DEATH DEED**

28 **NOTICE TO OWNER** This revocation must be recorded before you die
 29 or it will not be effective. This revocation is effective only
 30 as to the interests in the property of owners who sign this
 31 revocation. **IDENTIFYING INFORMATION** Owner or owners of property
 32 making this revocation _____

33 _____ Printed
 34 name Mailing address
 35 _____

1 _____ Printed
2 nameMailing address Legal description
3 of the property

4 _____
5 REVOCATION I revoke all my previous transfers of this property
6 by transfer on death deed. SIGNATURE OF OWNER OR OWNERS MAKING

7 THIS REVOCATION Seal, if any
8 Signature Date

9 _____
10 _____ Seal, if
11 any Signature
12 Date

13 _____
14 ACKNOWLEDGMENT (insert acknowledgment here)
15 (back of form) COMMON

16 QUESTIONS ABOUT THE USE OF THIS FORM

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

19 Complete this form. Have it acknowledged before a notary
20 public or other individual authorized to take acknowledgments.
21 Record the form in the public records in the office of the county
22 recorder of each county where the property is located. The form
23 must be acknowledged and recorded before your death or it has no
24 effect.

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

26 This information may be on the TOD deed. It may also be
27 available in the office of the county recorder for the county
28 where the property is located. If you are not absolutely sure,
29 consult a lawyer.

30 How do I record the form?

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

1 each county.

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

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

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

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

8 Sec. 18. NEW SECTION. **633G.18 Uniformity of application and**
9 **construction.**

10 In applying and construing this uniform Act, consideration
11 shall be given to the need to promote uniformity of the law with
12 respect to the subject matter of this chapter among the states
13 that enact it.

14 Sec. 19. NEW SECTION. **633G.19 Relation to Electronic**
15 **Signatures in Global and National Commerce Act.**

16 This chapter modifies, limits, and supersedes the federal
17 Electronic Signatures in Global and National Commerce Act, 15
18 U.S.C. §7001, et seq., but does not modify, limit, or supersede
19 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize
20 electronic delivery of any of the notices described in section
21 103(b) of that Act, 15 U.S.C. §7003(b).

22 Sec. 20. Section 331.602, Code 2025, is amended by adding the
23 following new subsection:

24 NEW SUBSECTION. 33. Record a transfer on death deed created
25 pursuant to section 633G.5 or an instrument of revocation
26 authorized by section 633G.11 and presented to the recorder's
27 office for recording in the same manner as other deeds are
28 recorded. The recorder shall collect a fee under section 331.604
29 for the recording of the transfer on death deed or instrument
30 of revocation and shall index the transfer on death deed or
31 instrument of revocation in the name of the owner of record of
32 the real property or interest in the real property who executed
33 the transfer on death deed.

34 Sec. 21. Section 633E.12, subsections 6 and 7, Code 2025, are
35 amended to read as follows:

1 6. In the case of a ~~disclaimer~~ of an interest created by
2 a beneficiary designation made which is disclaimed before the
3 ~~time~~ the designation becomes irrevocable, the disclaimer must be
4 delivered to the person making the beneficiary designation.

5 7. In the case of a ~~disclaimer~~ of an interest created by
6 a beneficiary designation made which is disclaimed after the
7 ~~time~~ the designation becomes irrevocable, the disclaimer of an
8 interest in personal property must be delivered to the person
9 obligated to distribute the interest and the disclaimer of an
10 interest in real property must be recorded in the office of the
11 county recorder of the county where the real property that is the
12 subject of the disclaimer is located.

13 EXPLANATION

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

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

19 To be valid, a transfer on death deed must contain the
20 essential elements and formalities of a properly recordable inter
21 vivos deed, state that the transfer to the designated beneficiary
22 is to occur at the transferor's death, and be recorded before the
23 transferor's death in the office of the county recorder.

24 A transfer on death deed is revocable, even if the deed states
25 that the deed is irrevocable. A transferor may revoke a transfer
26 on death deed by acknowledging and recording an inconsistent
27 transfer on death deed, or an instrument of revocation or inter
28 vivos deed that expressly revokes the deed.

29 A transfer on death deed is nontestamentary, and the capacity
30 required to make or revoke a transfer on death deed is the same
31 capacity required to make a will.

32 A transfer on death deed is effective even if the beneficiary
33 does not receive notice or delivery of the deed during the
34 transferor's lifetime, and even if the transferor does not
35 receive consideration for the deed.

1 During the transferor's lifetime, a transfer on death deed
2 does not affect the transferor's interest in the property,
3 including the right to transfer or encumber the property, nor
4 does the transfer on death deed create a legal or equitable
5 interest in favor of the designated beneficiary or subject the
6 property to claims of a creditor of the designated beneficiary.
7 If the transferor transfers the property that is the subject
8 of a transfer of death deed before the transferor's death, the
9 transfer on death deed is of no effect at the death of the
10 transferor.

11 At the death of the transferor, subject to Code sections
12 633.238 (elective share of surviving spouse), 633.523 through
13 633.538 (uniform simultaneous death Act), and 633.535 through
14 633.537 (felonious death), the property is transferred to the
15 designated beneficiary if the designated beneficiary is alive.
16 If the designated beneficiary predeceases the transferor, the
17 interest of the designated beneficiary lapses.

18 Subject to Code section 558.41 (recording), a beneficiary who
19 takes property under a transfer on death deed takes the property
20 subject to all conveyances, encumbrances, assignments, contracts,
21 mortgages, liens, and other interests to which the property is
22 subject at the transferor's death.

23 If the transferor owns the property as a joint tenant or as
24 a tenant by the entirety, the transfer on death deed is only
25 effective if the transferor is the last surviving joint tenant
26 or tenant by the entirety.

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

30 To the extent that the transferor's probate estate is
31 insufficient to satisfy an allowed claim against the estate or
32 a statutory allowance to a surviving spouse or child, the estate
33 may enforce the liability against property transferred at the
34 transferor's death by a transfer on death deed.

35 The bill provides an optional form of a transfer on death deed

1 and an optional form for the revocation of a transfer on death
2 deed.

3 The bill does not affect any deed executed and recorded prior
4 to the effective date of the bill and applies to a transfer on
5 death deed made before, on, or after the effective date of the
6 bill by a transferor dying on or after the effective date of the
7 bill.

8 The bill makes conforming changes.

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