

HOUSE BILL 236

By Windle

AN ACT to amend Tennessee Code Annotated, Title 31;
Title 32 and Title 66, relative to transfer on death
deeds.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 31, is amended by adding the following language as a new chapter:

31-7-101. This chapter shall be known and may be cited as the “Uniform Real Property Transfer on Death Act.”

31-7-102. As used in this chapter:

(1) “Beneficiary” means a person that receives property under a transfer on death deed;

(2) “Designated beneficiary” means a person designated to receive property in a transfer on death deed;

(3) “Joint owner”:

(A) Means an individual who owns property concurrently with one (1) or more other individuals with a right of survivorship;

(B) Includes a joint tenant and tenant by the entirety; and

(C) Does not include a tenant in common;

(4) “Person” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(5) “Property” means an interest in real property located in this state that is

transferable on the death of the owner;

(6) "Transfer on death deed" means a deed authorized under this chapter; and

(7) "Transferor" means an individual who makes a transfer on death deed.

31-7-103. This chapter does not affect any method of transferring property otherwise permitted under the law of this state.

31-7-104. An individual may transfer property to one (1) or more beneficiaries effective at the transferor's death by a transfer on death deed.

31-7-105. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

31-7-106. A transfer on death deed is not testamentary.

31-7-107. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

31-7-108. A transfer on death deed:

(1) Except as otherwise provided in subdivision (2), shall contain the essential elements and formalities of a properly recordable inter vivos deed;

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

(3) Shall be recorded before the transferor's death in the public records in the office of the register of deeds of the county where the property is located.

31-7-109. A transfer on death deed is effective without:

(1) Notice to, delivery to, or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

31-7-110.

(a) Subject to subsection (b), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one (1) of the following:

(A) A subsequent transfer on death deed that revokes the transfer

on death deed or part of the transfer on death deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed; or

(C) An inter vivos deed that expressly revokes the transfer on death deed or part of the transfer on death deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the register of deeds of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one (1) transferor:

(1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

31-7-111. During a transferor's life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor'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 property to claims or process of a creditor of the designated beneficiary.

31-7-112.

(a) Except as otherwise provided in the transfer on death deed, this section, § 31-1-105, § 31-1-106, or chapter 3 of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to subdivision (a)(2), the interest in the property is transferred to the designated beneficiary in accordance with the transfer on death deed;

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses;

(3) Subject to subdivision (a)(4), concurrent interests are transferred to the designated beneficiaries in equal and undivided shares with no right of survivorship; and

(4) If the transferor has identified two (2) or more designated beneficiaries to receive concurrent interests in the property, the share of one that lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) Subject to title 66, chapter 26, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other

interests to which the property is subject at the transferor's death. For purposes of this subsection (b) and title 66, chapter 26, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner and is:

(1) Survived by one (1) or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) The last surviving joint owner, the transfer on death deed is effective.

(d) A transfer on death deed transfers property without covenant or warranty of title even if the transfer on death deed contains a contrary provision.

31-7-113. A beneficiary may disclaim all or part of the beneficiary's interest as provided by § 31-1-103.

31-7-114.

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

(b) If more than one (1) property is transferred by one (1) or more transfer on death deeds, the liability under subsection (a) is apportioned among the properties in proportion to their net values at the transferor's death.

(c) A proceeding to enforce the liability under this section shall be commenced not later than eighteen (18) months after the transferor's death.

31-7-115. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

31-7-116. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.), but does not modify, limit, or supersede 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

SECTION 2. Tennessee Code Annotated, Section 66-24-101(a), is amended by adding the following language as a new subdivision:

(28) Any disclaimer of an interest in real property.

SECTION 3. Tennessee Code Annotated, Section 31-1-103, is amended by deleting subdivision (b)(2)(A) and substituting instead the following:

(A) Except as provided in subdivisions (b)(2)(B) and (C), the writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates, and, if the subject of the disclaimer is realty, is filed in the county register's office and, if the disclaimer involves an interest in a decedent's estate, with the court in which the decedent's estate proceedings are or would be pending not later than the date that is nine (9) months after the later of:

- (i) The date on which the transfer creating the interest or power in the person is made; or
- (ii) The day on which the person attains twenty-one (21) years of age.

SECTION 4. Tennessee Code Annotated, Section 31-1-103(b)(2), is further amended by adding the following as a new subdivision:

(C) In the case of a person disclaiming an interest in real property created by a transfer on death deed pursuant to chapter 7 of this title after the transfer on death deed has become irrevocable, the disclaimer is filed in the office of the register of deeds in the county where the real property that is the subject of the disclaimer is located not later than the date that is nine (9) months after the later of:

(i) The date on which the transfer creating the interest or power in the person is made; or

(ii) The day on which the person attains twenty-one (21) years of age.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to transfer on death deeds made before, on, or after the effective date of this act by a transferor dying on or after the effective date of this act.