

STATE OF NEW YORK

7267

IN SENATE

January 5, 2018

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to transfer on death deeds

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The real property law is amended by adding a new section
2 424 to read as follows:

3 § 424. Transfer on death deed. 1. Definitions. For the purposes of
4 this section the following terms shall have the following meanings:

5 (a) "Beneficiary" means a person that receives property under a trans-
6 fer on death deed.

7 (b) "Designated beneficiary" means a person designated to receive
8 property in a transfer on death deed.

9 (c) "Joint owner" means an individual who owns property concurrently
10 with one or more other individuals with a right of survivorship. The
11 term includes a joint tenant, owner of community property with a right
12 of survivorship and tenant by the entirety. The term does not include a
13 tenant in common or owner of community property without a right of
14 survivorship.

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

19 (e) "Property" means an interest in real property located in this
20 state which is transferable on the death of the owner.

21 (f) "Transfer on death deed" means a deed authorized under this
22 section.

23 (g) "Transferor" means an individual who makes a transfer on death
24 deed.

25 2. Nonexclusivity. This section does not affect any method of trans-
26 ferring property otherwise permitted under the law of this state.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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

4 4. Transfer on death deed revocable. A transfer on death deed is revo-
5 cable even if the deed or another instrument contains a contrary
6 provision.

7 5. Transfer on death deed nontestamentary. A transfer on death deed is
8 nontestamentary.

9 6. Capacity of transferor. The capacity required to make or revoke a
10 transfer on death deed is the same as the capacity required to make a
11 will.

12 7. Requirements. A transfer on death deed:

13 (a) except as otherwise provided in paragraph (b) of this subdivision,
14 shall contain the essential elements and formalities of a properly
15 recordable inter vivos deed;

16 (b) shall state that the transfer to the designated beneficiary is to
17 occur at the transferor's death; and

18 (c) shall be recorded before the transferor's death in the public
19 records in the county clerk's office of the county where the property is
20 located in the same manner as any other type of deed.

21 8. Notice, delivery, acceptance, consideration not required. A trans-
22 fer on death deed shall be effective without:

23 (a) notice or delivery to or acceptance by the designated beneficiary
24 during the transferor's life; or

25 (b) consideration.

26 9. Revocation by instrument authorized; revocation by act not permit-
27 ted. (a) Subject to paragraph (b) of this subdivision, an instrument
28 shall be effective to revoke a recorded transfer on death deed, or any
29 part of it, only if the instrument:

30 (1) is one of the following:

31 (A) a transfer on death deed that revokes the deed or part of the deed
32 expressly or by inconsistency;

33 (B) an instrument of revocation that expressly revokes the deed or
34 part of the deed; or

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

37 (2) is acknowledged by the transferor after the acknowledgment of the
38 deed being revoked and recorded before the transferor's death in the
39 public records in the county clerk's office of the county where the deed
40 is recorded.

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

42 (1) revocation by a transferor shall not affect the deed as to the
43 interest of another transferor; and

44 (2) a deed of joint owners shall only be revoked if it is revoked by
45 all of the living joint owners.

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

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

50 10. Effect of transfer on death deed during transferor's life. During
51 a transferor's life, a transfer on death deed shall not:

52 (a) affect an interest or right of the transferor or any other owner,
53 including the right to transfer or encumber the property;

54 (b) affect an interest or right of a transferee, even if the transfer-
55 ee has actual or constructive notice of the deed;

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

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

6 (e) create a legal or equitable interest in favor of the designated
7 beneficiary; or

8 (f) subject the property to claims or process of a creditor of the
9 designated beneficiary.

10 11. Effect of transfer on death deed at transferor's death. (a)
11 Except as otherwise provided in the transfer on death deed, in this
12 section or in any other section of law which effects nonprobate trans-
13 fers, on the death of the transferor, the following rules apply to prop-
14 erty that is the subject of a transfer on death deed and owned by the
15 transferor at death:

16 (1) Subject to subparagraph two of this paragraph, the interest in the
17 property shall be transferred to the designated beneficiary in accord-
18 ance with the deed.

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

22 (3) Subject to subparagraph four of this paragraph, concurrent inter-
23 ests shall be transferred to the beneficiaries in equal and undivided
24 shares with no right of survivorship.

25 (4) If the transferor has identified two or more designated benefici-
26 aries to receive concurrent interests in the property, the share of one
27 which lapses or fails for any reason shall be transferred to the other,
28 or to the others in proportion to the interest of each in the remaining
29 part of the property held concurrently.

30 (b) Subject to this chapter, a beneficiary takes the property subject
31 to all conveyances, encumbrances, assignments, contracts, mortgages,
32 liens, and other interests to which the property is subject at the
33 transferor's death. For purposes of this paragraph and this chapter, the
34 recording of the transfer on death deed shall be deemed to have occurred
35 at the transferor's death.

36 (c) If a transferor is a joint owner and is survived by one or more
37 other joint owners, the property that is the subject of a transfer on
38 death deed shall belong to the surviving joint owner or owners with
39 right of survivorship.

40 (d) If a transferor is a joint owner and is the last surviving joint
41 owner, the transfer on death deed shall be effective.

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

44 12. Disclaimer. A beneficiary may disclaim all or part of the benefi-
45 ciary's interest in the same manner as if the interest was transferred
46 in a will.

47 13. Liability for creditor claims and statutory allowances. (a) To
48 the extent the transferor's probate estate is insufficient to satisfy an
49 allowed claim against the estate or a statutory allowance to a surviving
50 spouse or child, the estate may enforce the liability against property
51 transferred at the transferor's death by a transfer on death deed.

52 (b) If more than one property is transferred by one or more transfer
53 on death deeds, the liability under paragraph (a) of this subdivision is
54 apportioned among the properties in proportion to their net values at
55 the transferor's death.

1 (c) A proceeding to enforce the liability under this section must be
2 commenced no later than eighteen months after the transferor's death.

3 14. Form of transfer on death deed. The following form may be used to
4 create a transfer on death deed. The other subdivisions of this section
5 shall govern the effect of this or any other instrument used to create a
6 transfer on death deed:

7 (front of form)

8 REVOCABLE TRANSFER ON DEATH DEED

9 NOTICE TO OWNER

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

12 This form must be recorded before your death, or it will not be
13 effective.

14 IDENTIFYING INFORMATION

15 Owner or Owners Making This Deed:

16 _____
17 Printed name

Mailing address

18 _____
19 Printed name

Mailing address

20 Legal description of the property:
21 _____

22 PRIMARY BENEFICIARY

23 I designate the following beneficiary if the beneficiary survives
24 me.

25 _____
26 Printed name

Mailing address, if available

27 ALTERNATE BENEFICIARY - Optional

28 If my primary beneficiary does not survive me, I designate the follow-
29 ing alternate beneficiary if that beneficiary survives me.

30 _____
31 Printed name

Mailing address, if available

32 TRANSFER ON DEATH

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

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

36 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

37 _____
38 Signature

Date

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Signature

Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the county clerk's office of the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the county clerk's office of the county where the property is located. Follow the instructions given by the county clerk to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each county where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

1 I have other questions about this form. What should I do? This form is
2 designed to fit some but not all situations. If you have other ques-
3 tions, you are encouraged to consult a lawyer.

4 15. Form of revocation. The following form may be used to create an
5 instrument of revocation under this section. The other subdivisions of
6 this section shall govern the effect of this or any other instrument
7 used to revoke a transfer on death deed.

8 (front of form)

9 REVOCATION OF TRANSFER ON DEATH DEED

10 NOTICE TO OWNER

11 This revocation must be recorded before you die or it will not be
12 effective. This revocation is effective only as to the interests in the
13 property of owners who sign this revocation.

14 IDENTIFYING INFORMATION

15 Owner or Owners of Property Making This Revocation:

16 _____
17 Printed name

Mailing address

18 _____
19 Printed name

Mailing address

20 Legal description of the property:
21 _____

22 REVOCATION

23 I revoke all my previous transfers of this property by transfer on
24 death deed.

25 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

26 _____
27 Signature

Date

28 _____
29 Signature

Date

30 ACKNOWLEDGMENT

31 (insert acknowledgment here)

32 (back of form)

33 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

34 How do I use this form to revoke a Transfer on Death (TOD) deed?
35 Complete this form. Have it acknowledged before a notary public or other
36 individual authorized to take acknowledgments. Record the form in the
37 public records in the county clerk's office of the county where the
38 property is located. The form must be acknowledged and recorded before
39 your death or it has no effect.

1 How do I find the "legal description" of the property? This informa-
2 tion may be on the TOD deed. It may also be available in the county
3 clerk's office of the county where the property is located. If you are
4 not absolutely sure, consult a lawyer.

5 How do I "record" the form? Take the completed and acknowledged form
6 to the county clerk's office of the county where the property is
7 located. Follow the instructions given by the county clerk to make the
8 form part of the official property records. If the property is located
9 in more than one county, you should record the form in each of those
10 counties.

11 I am being pressured to complete this form. What should I do? Do not
12 complete this form under pressure. Seek help from a trusted family
13 member, friend, or lawyer.

14 I have other questions about this form. What should I do? This form is
15 designed to fit some but not all situations. If you have other ques-
16 tions, consult a lawyer.

17 § 2. This act shall take effect immediately and shall apply to any
18 transfer on death deed made before, on, or after the effective date of
19 this act by a transferor dying on or after the effective date of this
20 act.