

AN ACT

Bill 19-753
Act 19-547
effective
November 20,
2012

Codification
District of
Columbia
Official Code
2001 Edition

Uniform Real
Property
Transfer on
Death Act of
2012

To amend Title 19 of the District of Columbia Official Code to enact the Uniform Real Property Transfer on Death Act, to authorize creation of a transfer on death deed, which, when properly executed and recorded with the Recorder of Deeds, passes title directly to named beneficiaries without probate upon the transferor's death, and to make conforming changes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Uniform Real Property Transfer on Death Act of 2012”.

Sec. 2. Chapter 6 of Title 19 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding the following at the end:

“Subchapter IV. Uniform Real Property Transfers on Death:

- “19-604.01. Short title.
- “19-604.02. Definitions.
- “19-604.03. Applicability.
- “19-604.04. Nonexclusivity.
- “19-604.05. Transfer on death deed authorized.
- “19-604.06. Transfer on death deed revocable.
- “19-604.07. Transfer on death deed nontestamentary.
- “19-604.08. Capacity of transferor.
- “19-604.09. Requirements.
- “19-604.10. Notice, delivery, acceptance, consideration not required.
- “19-604.11. Revocation by instrument authorized; revocation by act not permitted.
- “19-604.12. Effect of transfer on death deed during transferor's life.
- “19-604.13. Effect of transfer on death deed at transferor's death.
- “19-604.14. Disclaimer.
- “19-604.15. Liability for creditor claims and statutory allowances.
- “19-604.16. Optional form of transfer on death deed.
- “19-604.17. Optional form of revocation.
- “19-604.18. Uniformity of application and construction.
- “19-604.19. Relation to Electronic Signatures in Global and National Commerce Act.”.

(b) A new Subchapter IV is added to read as follows:

“SUBCHAPTER IV. UNIFORM REAL PROPERTY TRANSFERS ON DEATH.

“§ 19-604.01. Short title.

“This subchapter may be cited as the “Uniform Real Property Transfer on Death Act”.

“§ 19-604.02. Definitions.

“For the purposes of this subchapter, the term:

New
§ 19-604.01

New
§ 19-604.02

“(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” means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term “joint owner” includes a joint tenant and tenancy by the entirety. The term “joint owner” does not include a tenancy in common.

“(4) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

“(5) “Property” means an interest in real property located in the District of Columbia, which is transferable on the death of the owner.

“(6) “Transfer on death deed” means a deed authorized under this subchapter.

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

“§ 19-604.03. Applicability.

New
§ 19-604.03

“This subchapter applies to a transfer on death deed made before, on, or after the effective date of this subchapter by a transferor dying on or after the effective date of this subchapter.

“§ 19-604.04. Nonexclusivity.

New
§ 19-604.04

“This subchapter does not affect any method of transferring property otherwise permitted under the law of the District of Columbia.

“§ 19-604.05. Transfer on death deed authorized.

New
§ 19-604.05

“An individual may transfer property to one or more beneficiaries effective at the transferor’s death by a transfer on death deed.

“§ 19-604.06. Transfer on death deed revocable.

New
§ 19-604.06

“A transfer on death deed is revocable under § 19-604.11 even if the deed or another instrument contains a contrary provision.

“§ 19-604.07. Transfer on death deed nontestamentary.

New
§ 19-604.07

“A transfer on death deed is nontestamentary.

“§ 19-604.08. Capacity of transferor.

New
§ 19-604.08

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

“§ 19-604.09. Requirements.

New
§ 19-604.09

“(a) Except as provided in subsection (b) of this section, a transfer on death deed shall contain the essential elements and formalities of a properly recordable inter vivos deed.

“(b) A transfer on death deed shall state that the transfer to the designated beneficiary is to occur at the transferor’s death.

“(c) A transfer on death deed shall be recorded before the transferor’s death in the Office of Recorder of Deeds.

“§ 19-604.10. Notice, delivery, acceptance, consideration not required.

New
§ 19-604.10

“A transfer on death deed is effective without:

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

“(2) Consideration.

“§ 19-604.11. Revocation by instrument authorized; revocation by act not permitted.

New
§ 19-604.11

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

“(1) Is one of the following:

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

“(B) An instrument of revocation that expressly revokes the deed or part of the deed; or

“(C) An inter vivos deed that expressly revokes the transfer on death deed or part of the 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 Recorder of Deeds.

“(b) If a transfer on death deed is made by more than one 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.

“§ 19-604.12. Effect of transfer on death deed during transferor’s life.

New
§ 19-604.12

“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.

“§ 19-604.13. Effect of transfer on death deed at transferor’s death.

New
§ 19-604.13

“(a) Except as otherwise provided in the transfer on death deed, in this section, or in § 16-910, § 18-308, § 19-320, § 19-502, or in Chapter 1 of Title 19, 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 paragraph (2) of this section, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

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

“(3) Subject to paragraph (4) of this section, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

“(4) If the transferor has identified 2 or more designated beneficiaries to receive concurrent interests in the property, the share of one which 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) 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, 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 survived by one 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.

“(d) If a transferor is a joint owner and is the last surviving joint owner, the transfer-on death-deed is effective.

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

“§ 19-604.14. Disclaimer.

New
§ 19-604.14

“A beneficiary may disclaim all or part of the beneficiary’s interest as provided by Chapter 15 of this title.

“§ 19-604.15. Liability for creditor claims and statutory allowances.

New
§ 19-604.15

“A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor’s probate estate and statutory allowances to a surviving spouse and children to the extent provided in § 19-601.02.

“19-604.16. Optional form of transfer on death deed.

New
§ 19-604.16

“The following form may be used to create a transfer on death deed. The other sections of this subchapter govern the effect of this or any other instrument used to create a transfer on death deed:

“(front of form)

“REVOCABLE TRANSFER ON DEATH DEED

“NOTICE TO OWNER

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

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

“IDENTIFYING INFORMATION

“Owner or Owners Making This Deed:

“

“Printed name _____ Mailing address _____

“

“Printed name _____ Mailing address _____

“Legal description of the property:

“

“PRIMARY BENEFICIARY

“I designate the following beneficiary if the beneficiary survives me.

“

“Printed name _____ Mailing address, if available _____

“ALTERNATE BENEFICIARY – Optional

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

“

“Printed name _____ Mailing address, if available _____

“TRANSFER ON DEATH

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

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

“SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

“

_____, [(SEAL)] _____

“Signature _____ Date _____

“

_____, [(SEAL)] _____

“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. 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 Office of the Recorder of Deeds. 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 Office of the Recorder of Deeds. Follow the instructions given by the Recorder of Deeds to make the form part of the official property records.

“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 the Office of the Recorder of Deeds; (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in the Office of the Recorder of Deeds; or (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.

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

“§ 19-604.17. Optional form of revocation.

New
§ 19-604.17

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

“(front of form)

“REVOCATION OF TRANSFER ON DEATH DEED

“NOTICE TO OWNER

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

“IDENTIFYING INFORMATION

“Owner or Owners of Property Making This Revocation:

“

“Printed name _____ Mailing address _____

“

“Printed name _____ Mailing address _____

“Legal description of the property:

“

“REVOCATION

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

“SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

“ _____ [(SEAL)] _____

“Signature _____ Date _____

“ _____ [(SEAL)] _____

“Signature _____ Date _____

“ACKNOWLEDGMENT

“(insert acknowledgment here)

“(back of form)

“COMMON QUESTIONS ABOUT THE USE OF THIS FORM

“How do I use this form to revoke a Transfer on Death (“TOD”) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the Office of the Recorder of Deeds. The form must be acknowledged and recorded before your death or it has no effect.

“How do I find the “legal description” of the property? This information may be on the TOD deed. It may also be available in the Office of the Recorder of Deeds. If you are not absolutely sure, consult a lawyer.

“How do I “record” the form? Take the completed and acknowledged form to the Office of the Recorder of Deeds. Follow the instructions given by the Recorder of Deeds to make the form part of the official property records.

“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.

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

“§19-604.18. Uniformity of application and construction.

New
§ 19-604.18

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

“§ 19-604.19. Relation to Electronic Signatures in Global and National Commerce Act.

New
§ 19-604.19

“This subchapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 *et seq.*) (“Electronic Signatures Act”), but does not modify, limit, or supersede section 101(c) of the Electronic Signatures Act, or authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures Act.”.

Sec. 3. Conforming amendments.

(a) Section 19-1512 of the District of Columbia Official Code is amended as follows:

Amend
§ 19-1512

(1) Subsection (f) is amended as follows:

(A) Strike the phrase “made before the time” and insert the phrase “which is disclaimed before” in its place.

(B) Strike the phrase “a disclaimer” and insert the phrase “the disclaimer” in its place.

(2) Subsection (g) is amended to read as follows:

“(g) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

“(1) The disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

“(2) The disclaimer of an interest in real property must be recorded with the Recorder of Deeds.”.

(b) Section 19-1515 of the District of Columbia Official Code is amended by striking the word “Failure” and inserting the phrase “Except as provided in section 19-1512(g)(2), failure” in its place.

**Amend
§ 19-1515**

(c) Subchapter I of Chapter 6 of Title 19 of the District of Columbia Official Code is amended as follows:

(1) The table of contents is amended by adding the section designation “19-601.02. Liability of nonprobate transferees for creditor claims and statutory allowances.”.

(2) A new section 19-601.02 is added to read as follows:

**Amend
§ 19-601.02**

“§ 19-601.02. Liability of nonprobate transferees for creditor claims and statutory allowances.

“(a) For the purposes of this section, the term “nonprobate transfer” means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in the District to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor’s probate estate.

“(b) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent’s probate for estate and statutory allowances to the decedent’s spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

“(c) Nonprobate transferees are liable for the insufficiency described in subsection (b) of this section in the following order of priority:

“(1) A transferee designated in the decedent’s will or any other governing instrument, as provided in the instrument;

“(2) The trustee of a trust serving as the principal nonprobate instrument in the decedent’s estate plan as shown by its designation as devisee of the decedent’s residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled; and

“(3) Other nonprobate transferees, in proportion to the values received.

“(d) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

“(e) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

“(f) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in the District, whether or not the transferee is located in the District.

“(g) A proceeding under this section may not be commenced unless the personal representative of the decedent’s estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after the demand, a person making the demand may commence the proceeding in the name of the decedent’s estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

“(h) A proceeding under this section must be commenced within one year after the decedent’s death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

“(i) Unless a written notice asserting that a decedent’s probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent’s personal representative, the following rules apply:

“(1) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

“(2) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust’s beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee’s liability attributable to assets received by the beneficiary.”.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.