

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 969

H.P. 682

House of Representatives, March 9, 2017

An Act Regarding Nonprobate Transfers on Death

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FOLEY of Wells.
Cosponsored by Senator WHITTEMORE of Somerset and
Representatives: GERRISH of Lebanon, GUERIN of Glenburn, PICCHIOTTI of Fairfield,
POULIOT of Augusta, PRESCOTT of Waterboro, SEAVEY of Kennebunkport, VACHON of
Scarborough.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 18-A MRSA §6-201, sub-§(a)**, as enacted by PL 1979, c. 540, §1, is
3 amended to read:

4 (a). Any of the following provisions in an insurance policy, contract of
5 employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust
6 agreement, conveyance or any other written instrument effective as a contract, gift,
7 conveyance, or trust or that evidence ownership of property is deemed to be
8 nontestamentary, and this Code does not invalidate the instrument or any provision:

9 (1). That money or other benefits theretofore due to, controlled or owned by a
10 decedent ~~shall be~~ are to be paid after ~~his~~ the decedent's death to a person designated
11 by the decedent in either the instrument or a separate writing, including a will,
12 executed at the same time as the instrument or subsequently;

13 (2). That any money due or to become due under the instrument ~~shall cease~~ ceases to
14 be payable in event of the death of the promisee or the promisor before payment or
15 demand; or

16 (3). That any property ~~which that~~ is the subject of the instrument ~~shall pass~~ passes on
17 the decedent's death to a person or persons designated by the decedent in either the
18 instrument or a separate writing, including a will, executed at the same time as the
19 instrument or subsequently.

20 **Sec. 2. 18-A MRSA Art. 6, Pts. 4 and 5** are enacted to read:

21 **UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT (2009)**

22 **Prefatory Note**

23 One of the main innovations in the property law of the twentieth century has been the
24 development of asset-specific will substitutes for the transfer of property at death. By
25 these mechanisms, an owner may designate beneficiaries to receive the property at the
26 owner's death without waiting for probate and without the beneficiary designation
27 needing to comply with the witnessing requirements of wills. Examples of specific assets
28 that today routinely pass outside of probate include the proceeds of life insurance policies
29 and pension plans, securities registered in transfer on death (TOD) form, and funds held
30 in pay on death (POD) bank accounts.

31 Today, nonprobate transfers are widely accepted. The trend has largely focused on
32 assets that are personal property, such as the assets described in the preceding paragraph.
33 However, long-standing uniform law speaks more broadly. Section 6-101 of the Uniform
34 Probate Code (UPC) provides: "*A provision for a nonprobate transfer on death in an*
35 *insurance policy, contract of employment, bond, mortgage, promissory note, certificated*
36 *or uncertificated security, account agreement, custodial agreement, deposit agreement,*
37 *compensation plan, pension plan, individual retirement plan, employee benefit plan, trust,*
38 *conveyance, deed of gift, marital property agreement, or other written instrument of a*
39 *similar nature is nontestamentary"* (emphasis supplied).

1 A small but growing number of jurisdictions have implemented the principle of UPC
2 Section 6-101 by enacting statutes providing an asset-specific mechanism for the
3 nonprobate transfer of land. This is done by permitting owners of interests in real
4 property to execute and record a transfer on death (TOD) deed. By this deed, the owner
5 identifies the beneficiary or beneficiaries who will succeed to the property at the owner's
6 death. During the owner's lifetime, the beneficiaries have no interest in the property, and
7 the owner retains full power to transfer or encumber the property or to revoke the TOD
8 deed.

9 Thirteen states have enacted statutes authorizing TOD deeds. In the chronological
10 order of the statutes' enactment, the states are: Missouri (1989), Kansas (1997), Ohio
11 (2000), New Mexico (2001), Arizona (2002), Nevada (2003), Colorado (2004), Arkansas
12 (2005), Wisconsin (2006), Montana (2007), Oklahoma (2008), Minnesota (2008), and
13 Indiana (2009).

14 The time is ripe for a Uniform Act to facilitate this emerging form of nonprobate
15 transfer and to bring uniformity and clarity to its use and operation.

16 **PART 4**

17 **UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

18 **§6-401. Short title**

19 This Part may be known and cited as "the Uniform Real Property Transfer on Death
20 Act."

21 **§6-402. Definitions**

22 As used in this Part, unless the context otherwise indicates, the following terms have
23 the following meanings.

24 **1. Beneficiary.** "Beneficiary" means a person that receives property under a transfer
25 on death deed.

26 **2. Designated beneficiary.** "Designated beneficiary" means a person designated to
27 receive property in a transfer on death deed.

28 **3. Joint owner.** "Joint owner" means an individual who owns property concurrently
29 with one or more other individuals with a right of survivorship. "Joint owner" includes a
30 joint tenant and tenant by the entirety. "Joint owner" does not include a tenant in
31 common or owner of community property without a right of survivorship.

32 **4. Person.** "Person" means an individual, corporation, business trust, estate, trust,
33 partnership, limited liability company, association, joint venture, public corporation,
34 government or governmental subdivision, agency or instrumentality or any other legal or
35 commercial entity.

36 **5. Property.** "Property" means an interest in real property located in this State that
37 is transferable on the death of the owner.

1 (defining "settlor") and the accompanying Comment (excluding an individual "acting as
2 the agent for the person who will be funding the trust"). The power of an agent to make or
3 revoke a transfer on death deed on behalf of a principal is determined by other law, such
4 as the Uniform Power of Attorney Act (2006) (UPC Article 5B), as indicated in the
5 Comments to Sections 9 and 11 (UPC Sections 6-409 and 6-411).

6 **§6-403. Applicability**

7 This Part applies to a transfer on death deed made before, on or after January 1, 2018
8 by a transferor dying on or after January 1, 2018.

9 **Comment**

10 This section provides that the act applies to a transfer on death deed made before, on,
11 or after the effective date of the act by a transferor dying on or after the effective date of
12 the act. This section is consistent with the Uniform Probate Code's provisions governing
13 transfer on death registration of securities. Those provisions "appl[y] to registrations of
14 securities in beneficiary form made before or after [effective date], by decedents dying on
15 or after [effective date]." UPC Section 6-311.

16 **§6-404. Nonexclusivity**

17 This Part does not affect any method of transferring property otherwise permitted
18 under the law of this State.

19 **Comment**

20 This section provides that the act is nonexclusive. The act does not affect any method
21 of transferring property otherwise permitted under state law.

22 One such method is a present transfer with a retained legal life estate. Consider the
23 following examples:

24 *Example 1.* *A* conveys Blackacre to *B* while reserving *A*'s right to remain in
25 possession until *A*'s death. By this conveyance, *A* has made a present transfer of a future
26 interest to *B*. The transfer is irrevocable. The future interest will ripen into possession at
27 *A*'s death, even if *B* fails to survive *A*.

28 *Example 2.* *A* executes, acknowledges, and records a transfer on death deed for
29 Blackacre, naming *B* as the designated beneficiary. During *A*'s lifetime, no interest passes
30 to *B*, and *A* may revoke the deed. If unrevoked, the deed will transfer possession to *B* at
31 *A*'s death only if *B* survives *A*.

32 As illustrated in these examples, the two methods of transfer have different effects
33 and are governed by different rules.

34 **§6-405. Transfer on death deed authorized**

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

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Comment

This section authorizes a transfer on death deed and makes it clear that the transfer is not an inter vivos transfer. The transfer occurs at the transferor's death.

The transferor is an individual, but the singular includes the plural. Multiple individuals can readily act together to transfer property by a transfer on death deed, as in the common case of a husband and wife who own the property as joint tenants or as tenants by the entirety. On the effect of a transfer on death deed made by joint owners, see Section 13(c) and the accompanying Comment.

The transferor may select any form of ownership, concurrent or successive, absolute or conditional, contingent or vested, valid under state law. Among many other things, this permits the transferor to reserve interests for the transferor's estate (e.g., mineral interests); to specify the nature and extent of the beneficiary's interest; and to designate one or more primary beneficiaries and one or more alternate beneficiaries to take in the event the primary beneficiaries fail to survive the transferor. This freedom to specify the form and terms of the transferee's interest comports with the fundamental principle of American law recognized by the Restatement (Third) of Property (Wills and Other Donative Transfers) §10.1 that the donor's intention should be "given effect to the maximum extent allowed by law." As the Restatement explains in Comment c to §10.1, "American law curtails freedom of disposition only to the extent that the donor attempts to make a disposition or achieve a purpose that is prohibited or restricted by an overriding rule of law."

Notwithstanding this freedom of disposition, transferors are encouraged as a practical matter to avoid formulating dispositions that would complicate title. Dispositions containing conditions or class gifts, for example, may require a court proceeding to sort out the beneficiaries' interests. Other estate planning mechanisms, such as trusts, may be more appropriate in such cases.

§6-406. Transfer on death deed revocable

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

Comment

A fundamental feature of a transfer on death deed under this act is that the transferor retains the power to revoke the deed. Section 6 is framed as a mandatory rule, for two reasons. First, the rule prevents an off-record instrument from affecting the revocability of a transfer on death deed. Second, the rule protects the transferor who may wish later to revoke the deed.

If the transferor promises to make the deed irrevocable or not to revoke the deed, the promisee may have a remedy under other law if the promise is broken. The deed remains revocable despite the promise.

1 consistent with Uniform Trust Code Section 601: "The capacity required to create,
2 amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee
3 of a revocable trust, is the same as that required to make a will."

4 A transfer on death deed is not affected if the transferor subsequently loses capacity.
5 On the ability of an agent under a power of attorney to make or revoke a transfer on death
6 deed, see the Comments to Sections 9 and 11.

7 **§6-409. Requirements**

8 A transfer on death deed:

9 **1. Essential elements and formalities.** Except as otherwise provided in subsection
10 2, must contain the essential elements and formalities of a properly recordable inter vivos
11 deed:

12 **2. Death of transferor.** Must state that the transfer to the designated beneficiary is
13 to occur at the transferor's death; and

14 **3. Recorded before transferor's death.** Must be recorded before the transferor's
15 death in the public records in the registry of deeds in the county where the property is
16 located.

17 **Comment**

18 Paragraph (1) requires a transfer on death deed to contain the same essential elements
19 and formalities, other than a present intention to convey, as are required for a properly
20 recordable inter vivos deed under state law. "Essential elements" is a term with a long
21 usage in the law of deeds of real property. The essential elements of a deed vary from one
22 state to another but commonly include the names of the grantor and grantee, a clause
23 transferring title, a description of the property transferred, and the grantor's signature. In
24 all states, the essential elements of a properly recordable deed include the requirement
25 that the deed be acknowledged by the grantor before a notary public or other individual
26 authorized by law to take acknowledgments. See Thompson on Real Property §92.04(c)
27 (observing that a "certificate of acknowledgment or attestation is universally required to
28 qualify an instrument for recordation"). In the context of transfer on death deeds, the
29 requirement of acknowledgment fulfills at least four functions. First, it cautions a
30 transferor that he or she is performing an act with legal consequences. Such caution is
31 important where, as here, the transferor does not experience the wrench of delivery
32 because the transfer occurs at death. Second, acknowledgment helps to prevent fraud.
33 Third, acknowledgment facilitates the recording of the deed. Fourth, acknowledgment
34 enables the rule in Section 11 that a later acknowledged deed prevails over an earlier
35 acknowledged deed.

36 Paragraph (2) emphasizes an important distinction between an inter vivos transfer and
37 a transfer on death. An inter vivos transfer reflects an intention to transfer, at the time of
38 the conveyance, an interest in property, either a present interest or a future interest. In
39 contrast, a transfer on death reflects an intention that the transfer occur at the transferor's
40 death. Under no circumstances should a transfer on death be given effect inter vivos; to

1 do so would violate the transferor's intention that the transfer occur at the transferor's
2 death.

3 Paragraph (3) requires a transfer on death deed to be recorded before the transferor's
4 death in the county (or other appropriate administrative division of a state, such as a
5 parish) where the land is located. If the property described in the deed is in more than one
6 county, the deed is effective only with respect to the property in the county or counties
7 where the deed is recorded. The requirement of recordation before death helps to prevent
8 fraud by ensuring that all steps necessary to the effective transfer on death deed are
9 completed during the transferor's lifetime. The requirement of recordation before death
10 also enables all parties to rely on the recording system.

11 An individual's agent may execute a transfer on death deed on the individual's behalf
12 to the extent permitted by other law, such as the Uniform Power of Attorney Act (2006).
13 This act does not define, but instead relies on other law to determine, the authority of an
14 agent.

15 **§6-410. Notice, delivery, acceptance, consideration not required**

16 A transfer on death deed is effective without:

17 **1. Notice, delivery or acceptance.** Notice or delivery to or acceptance by the
18 designated beneficiary during the transferor's life; or

19 **2. Consideration.** Consideration.

20 **Comment**

21 This section makes it clear that a transfer on death deed is effective without notice or
22 delivery to or acceptance by the beneficiary during the transferor's lifetime (paragraph
23 (1)) and without consideration (paragraph (2)).

24 Paragraph (1) is consistent with the fundamental distinction under this act between a
25 transfer on death deed and an inter vivos deed. Under the former, but not under the latter,
26 the transfer occurs at the transferor's death. Therefore, there is no requirement of notice,
27 delivery, or acceptance during the transferor's life. This does not mean that the
28 beneficiary is required to accept the property. The beneficiary may disclaim the property,
29 as explained in Section 14 and the accompanying Comment.

30 Paragraph (2) is consistent with the law of donative transfers. A deed need not be
31 supported by consideration.

32 **§6-411. Revocation by instrument authorized; revocation by act not permitted**

33 **1. Revocation by instrument.** Subject to subsection 2, an instrument is effective to
34 revoke a recorded transfer on death deed, or any part of it, only if the instrument:

35 A. Is one of the following:

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

1 acknowledged inter vivos deed containing an express revocation clause. Consider the
2 following examples:

3 *Example 1.* *T* executes, acknowledges, and records a transfer on death deed for
4 Blackacre. Later, *T* executes, acknowledges, and records a second transfer on death deed
5 for Blackacre, containing an express revocation clause revoking "all my prior transfer on
6 death deeds concerning this property." The second deed revokes the first deed. The
7 revocation occurs when the second deed is recorded. (For the result if the second deed
8 had not contained the express revocation clause, see Example 5.)

9 *Example 2.* *T* executes, acknowledges, and records two transfer on death deeds for
10 Blackacre. Both deeds expressly revoke "all my prior transfer on death deeds concerning
11 this property." The dates of acknowledgment determine which deed revoked the other.
12 The first deed is acknowledged November 1; the second deed is acknowledged December
13 15. The second deed is the later acknowledged, so it revokes the first deed. The
14 revocation occurs when the second deed is recorded.

15 *Example 3.* *T* executes and acknowledges a transfer on death deed for Blackacre. *T*
16 later executes and acknowledges a revocation form. Both instruments are recorded.
17 Because the revocation form is acknowledged later than the deed, the form revokes the
18 deed. The revocation occurs when the form is recorded.

19 *Example 4.* *T* executes and acknowledges a transfer on death deed for Blackacre. *T*
20 later executes and acknowledges an inter vivos deed conveying Blackacre and expressly
21 revoking the transfer on death deed. Both instruments are recorded. Because the inter
22 vivos deed contains an express revocation provision and is acknowledged later than the
23 transfer on death deed, the inter vivos deed revokes the transfer on death deed. The
24 revocation occurs when the inter vivos deed is recorded. (For the result if the inter vivos
25 deed had not contained an express revocation clause, see the discussion below on
26 "ademption by extinction.")

27 The same rules apply whether the revocation is total or partial. In the previous
28 examples, suppose instead that the initial transfer on death deed provides for the transfer
29 of two parcels, Blackacre and Whiteacre, and that the subsequent instrument revokes the
30 transfer on death deed as to Blackacre. The subsequent instrument revokes the transfer on
31 death deed in part.

32 If the property described in the original deed is in more than one county, the
33 revocation is effective only with respect to the property in the county or counties where
34 the revoking deed or instrument is recorded.

35 Subsection (a)(1)(A) speaks of revocation "expressly or by inconsistency." This
36 provision references the well-established law of revocation by inconsistency of wills.
37 Consider the following examples:

38 *Example 5.* *T* executes, acknowledges, and records a transfer on death deed for
39 Blackacre naming *X* as the designated beneficiary. Later, *T* executes, acknowledges, and
40 records a transfer on death deed for the same property, Blackacre, containing no express
41 revocation of the earlier deed but naming *Y* as the designated beneficiary. Later, *T* dies.

1 The recording of the deed in favor of *Y* revokes the deed in favor of *X* by inconsistency.
2 At *T*'s death, *Y* is the owner of Blackacre.

3 *Example 6.* *T*, the owner of Blackacre in fee simple absolute, executes,
4 acknowledges, and records a transfer on death deed for Blackacre naming *X* as the
5 designated beneficiary. Later, *T* executes, acknowledges, and records a transfer on death
6 deed containing no express revocation of the earlier deed but naming *Y* as the designated
7 beneficiary of a life estate (or a mineral interest) in Blackacre. Later, *T* dies. The
8 recording of the deed in favor of *Y* partially revokes the deed in favor of *X* by
9 inconsistency. At *T*'s death, *Y* is the owner of a life estate (or a mineral interest) in
10 Blackacre, and *X* is the owner of the remainder.

11 The question is sometimes raised whether a recorded inter vivos deed *without an*
12 *express revocation clause* operates as a revocation of an earlier transfer on death deed.
13 The answer highlights the important distinction between "revocation" and "ademption by
14 extinction." See Atkinson on Wills §134. Revocation means that the instrument is
15 rendered void. Ademption by extinction means that the transfer of the property cannot
16 occur because the property is not owned by the transferor at death. The doctrines are
17 different.

18 In some instances, revocation and ademption have the same practical effect: the
19 designated beneficiary of the property receives nothing. Nothing in this section changes
20 that fact, as indicated in subsection (d). However, there are other instances where the
21 doctrines have differing effects. Consider the following illustration, drawn from the law
22 of wills.

23 *Example 7.* *T* executes a will devising Blackacre to *A*. Later, *T* becomes legally
24 incompetent, and *G* is appointed as *T*'s conservator. *G*, acting within the scope of his
25 authority, sells Blackacre to *B* for \$100,000. Later, *T* dies.

26 The law of wills provides that the devise to *A* is adeemed rather than revoked. This
27 means that *A* is not entitled to Blackacre but is entitled to a pecuniary devise in the
28 amount of \$100,000. See UPC Section 2-606(b); Atkinson on Wills §134; *Wasserman v.*
29 *Cohen*, 606 N.E.2d 901, 903 (Mass. 1993). The result is designed to effectuate *T*'s
30 presumed intention.

31 The Joint Editorial Board for Uniform Trust and Estate Acts has begun a
32 conversation on whether the Uniform Probate Code's provisions on ademption should be
33 extended to nonprobate transfers, thus harmonizing the treatment of wills and will
34 substitutes on this aspect of the law.

35 This act accepts the well-recognized distinction between revocation and ademption in
36 order to leave the door open for such future harmonization, which would effectuate the
37 presumed intention of nonprobate grantors.

38 Subsection (b) supplies rules governing revocation by instrument in the event of a
39 transfer on death deed made by multiple owners. Subsection (b)(1) provides that
40 revocation by a transferor does not affect a transfer on death deed as to the interest of
41 another transferor.

1 Subsection (b)(2) provides that a transfer on death deed of joint owners is revoked
2 only if it is revoked by all of the living joint owners. This rule is consistent with Uniform
3 Probate Code Section 6-306, which provides in pertinent part: "A registration of a
4 security in beneficiary form may be canceled or changed at any time by the sole owner or
5 all then surviving owners without the consent of the beneficiary." Subsection (b)(2)
6 applies only to a deed of joint owners. A joint tenant who severs the joint tenancy,
7 thereby destroying the right of survivorship, is no longer a joint owner.

8 Subsection (c) provides that a recorded transfer on death deed may not be revoked by
9 a revocatory act performed on the deed. Such an act includes burning, tearing, canceling,
10 obliterating, or destroying the deed or any part of it.

11 This act does not define, but instead looks to other law to determine, the authority of
12 an agent. An individual's agent may revoke a transfer on death deed on the individual's
13 behalf to the extent permitted by other law, such as the Uniform Power of Attorney Act
14 (2006).

15 **§6-412. Effect of transfer on death deed during transferor's life**

16 During a transferor's life, a transfer on death deed does not:

17 **1. Affect interest or right of transferor or other owner.** Affect an interest or right
18 of the transferor or any other owner, including the right to transfer or encumber the
19 property;

20 **2. Affect interest or right of transferee.** Affect an interest or right of a transferee,
21 even if the transferee has actual or constructive notice of the deed;

22 **3. Affect interest or right of creditor.** Affect an interest or right of a secured or
23 unsecured creditor or future creditor of the transferor, even if the creditor has actual or
24 constructive notice of the deed;

25 **4. Affect eligibility or public assistance.** Affect the transferor's or designated
26 beneficiary's eligibility for any form of public assistance;

27 **5. Create legal or equitable interest.** Create a legal or equitable interest in favor of
28 the designated beneficiary; or

29 **6. Subject the property to claims or process.** Subject the property to claims or
30 process of a creditor of the designated beneficiary.

31 **Comment**

32 A fundamental feature of a transfer on death deed under this act is that it does not
33 operate until the transferor's death. The transfer occurs at the transferor's death, not
34 before.

35 Paragraph (1): A transfer on death deed, during the transferor's lifetime, does not
36 affect the interests or property rights of the transferor or any other owners. Therefore, the
37 deed does not, among many other things: affect the transferor's right to transfer or

1 encumber the property inter vivos; sever a joint tenancy or a joint tenant's right of
2 survivorship; trigger a due-on-sale clause in the transferor's mortgage; trigger the
3 imposition of real estate transfer tax; or affect the transferor's homestead or real estate tax
4 exemptions, if any.

5 Paragraph (2): A transfer on death deed does not affect transferees, whether or not
6 they have notice of the deed. Like a will, the transfer on death deed is ambulatory. It has
7 no effect on inter vivos transfers.

8 Paragraph (3): A transfer on death deed, during the transferor's lifetime, does not
9 affect pre-existing or future creditors, secured or unsecured, whether or not they have an
10 interest in the property or notice of the deed.

11 Paragraph (4): A transfer on death deed, during the transferor's lifetime, does not
12 affect the transferor's or designated beneficiary's eligibility for any form of public
13 assistance, including Medicaid. On this point, the drafting committee specifically
14 disapproves of the contrary approach of Colo. Rev. Stat. §15-15-403.

15 Paragraph (5): During the transferor's lifetime, a transfer on death deed does not
16 create a legal or equitable interest in the designated beneficiary. The beneficiary does not
17 have an interest that can be assigned or encumbered. Note, however, that this rule would
18 not preclude the doctrine of after-acquired title. A warranty deed from a designated
19 beneficiary to a third party would operate to pass the beneficiary's title to the third party
20 after the transferor's death.

21 Paragraph (6): A transfer on death deed, during the transferor's lifetime, does not
22 make the property subject to claims or process of the designated beneficiary's creditors.
23 The deed has no more effect than a will.

24 If a transferor combines an inter vivos transfer of an interest in property (such as a
25 mineral interest) with a transfer on death of the remainder interest, the inter vivos transfer
26 may have present effect even though the transfer on death does not occur until the
27 transferor's death.

28 **§6-413. Effect of transfer on death deed at transferor's death**

29 **1. Upon death of transferor.** Except as otherwise provided in the transfer on death
30 deed, in this section or in section 2-508, 2-605, 2-803 or 2-805 or in Article 2, Part 2, on
31 the death of the transferor, the following rules apply to property that is the subject of a
32 transfer on death deed and owned by the transferor at death.

33 A. Subject to paragraph B, the interest in the property is transferred to the designated
34 beneficiary in accordance with the deed.

35 B. The interest of a designated beneficiary is contingent on the designated
36 beneficiary surviving the transferor. The interest of a designated beneficiary that fails
37 to survive the transferor lapses.

38 C. Subject to paragraph D, concurrent interests are transferred to the beneficiaries in
39 equal and undivided shares with no right of survivorship.

1 The bracketed language at the beginning of subsection (a) enables a state to make the
2 default rules subject to other statutes, such as an antilapse statute or a statute providing
3 for revocation on divorce. Consider the following examples:

4 *Example 2.* *A* executes, acknowledges, and records a transfer on death deed for
5 Blackacre naming *X* as the primary beneficiary and *Y* as the alternate beneficiary if *X* fails
6 to survive *A*. In fact, *X* and *Y* fail to survive *A*, who is survived only by *X*'s child, *Z*.
7 Assume that the state's antilapse statute applies to transfer on death deeds and creates a
8 substitute gift in *Z*. (For such a statute, see Uniform Probate Code Section 2-706.)
9 Blackacre is transferred to *Z* at *A*'s death in accordance with the provisions of the deed as
10 modified by the antilapse statute.

11 *Example 3.* *A* executes, acknowledges, and records a transfer on death deed for
12 Blackacre naming her spouse, *X*, as the primary beneficiary and *Y* as the alternate
13 beneficiary if *X* fails to survive *A*. Later, *A* and *X* divorce. Assume that the state's statute
14 on revocation by divorce applies to transfer on death deeds and revokes the designation in
15 favor of *X*, with the effect that the provisions of the transfer on death deed are given
16 effect as if *X* had disclaimed. (For such a statute, see Uniform Probate Code Section
17 2-804.) Assume further that the effect of the putative disclaimer is that *X* is treated as
18 having failed to survive *A*. (See the Uniform Disclaimer of Property Interests Act
19 (1999/2006) Section 6(a)(3)(B) (UPC Section 2-1106(a)(3)(B).) Blackacre is transferred
20 to *Y* at *A*'s death in accordance with the provisions of the deed as modified by the
21 revocation on divorce and disclaimer statutes.

22 Note that the property must be owned by the transferor at death. Property no longer
23 owned by the transferor at death cannot be transferred by a transfer on death deed, just as
24 it cannot be transferred by a will. This is the principle of ademption by extinction,
25 discussed in the Comment to Section 11.

26 In almost every instance, the transferor will own the property not only at death but
27 also when the transfer on death deed is executed, but the latter is not imperative. Consider
28 the following example. *H* and *W*, a married couple, hold Blackacre as tenants by the
29 entirety. *H* executes, acknowledges, and records a transfer on death deed for Blackacre in
30 favor of *X*. *W* later dies, at which point *H* owns Blackacre in fee simple absolute. Later, *H*
31 dies. Under the law of some states, there may be a question whether the transfer on death
32 deed is effective, given that *H* executed it when Blackacre was owned, not by *H* and *W*,
33 but by the marital entity. The correct answer is that the transfer on death deed is effective
34 at *H*'s death because Blackacre is owned by *H* at *H*'s death. See, e.g., *Mitchell v.*
35 *Wilmington Trust Co.*, 449 A.2d 1055 (Del. Ch. 1982) (mortgage granted by one tenant
36 by the entirety is not void upon execution but remains inchoate during the lives of both
37 spouses and becomes a valid lien if the spouse who executed the mortgage survives the
38 other spouse or if the spouses get divorced).

39 The second default rule established by subsection (a) is that the interest of a
40 designated beneficiary is contingent on surviving the transferor. This default rule treats
41 wills and will substitutes alike. The interest of a designated beneficiary who fails to
42 survive the transferor lapses. On the desirability of extending statutory antilapse
43 protection to will substitutes such as transfer on death deeds, see the Legislative Note.

1 The third default rule established by subsection (a) is that concurrent beneficiaries
2 receive equal and undivided interests with no right of survivorship among them. This
3 default rule is consistent with the general presumption in favor of tenancy in common.
4 See Powell on Real Property §51.02. The rule is also consistent with Uniform Probate
5 Code Section 6-212 governing multiple-party accounts and Section 6-307 governing the
6 transfer on death registration of securities.

7 The fourth and last default rule established by subsection (a) is that, in the event of
8 the lapse or failure of an interest to be held concurrently, the share that lapses or fails
9 passes proportionately to the surviving concurrent beneficiaries. Consider the following
10 example:

11 *Example 4.* A executes, acknowledges, and records a transfer on death deed for
12 Blackacre naming X, Y, and Z as the designated beneficiaries. X and Y survive A, but Z
13 fails to survive A. The transfer on death deed is effective and, in the absence of an
14 antilapse statute, transfers Blackacre to X and Y. This default rule is consistent with the
15 transferor's probable intention in the absence of an antilapse statute and also with
16 Uniform Probate Code Section 2-604(b) on the lapse of a residuary devise. On the
17 desirability of extending statutory antilapse protection to will substitutes such as transfer
18 on death deeds, see the Legislative Note.

19 Subsection (b) concerns the effect of transactions during the transferor's life. The
20 subsection states an intermediate rule between two extremes. One extreme would provide
21 that transactions during the transferor's life affect the beneficiary only if the transactions
22 are recorded before the transferor's death. This would unfairly disadvantage the
23 transferor's creditors and inter vivos transferees. The other extreme would provide that
24 transactions during the transferor's life always supersede the beneficiary's interest, even if
25 the recording act would provide otherwise. Between these two positions is the rule of
26 subsection (b).

27 Subsection (b) provides that the beneficiary's interest is subject to *all* conveyances,
28 encumbrances, assignments, contracts, mortgages, liens, and other interests to which the
29 property is subject at the transferor's death. "Liens" includes liens arising by operation of
30 law, such as state Medicaid liens.

31 The only exception to this rule arises when the state recording act so provides. The
32 state recording act will so provide only when two conditions are met: (1) the inter vivos
33 conveyance or encumbrance is unrecorded throughout the transferor's life (the legal
34 fiction in this subsection protects persons who transact with the transferor and record any
35 time before the transferor's death); and (2) the beneficiary is protected by the recording
36 act. These two conditions will be met only in rare instances. Most beneficiaries of transfer
37 on death deeds are gratuitous, whereas state recording acts typically protect only
38 purchasers for value. See Powell on Real Property §82.02.

39 Subsection (c) provides that the survivorship right of a joint owner takes precedence
40 over the transfer on death deed. This rule is consistent with the law of joint tenancy and
41 wills: the right of survivorship takes precedence over a provision in a joint tenant's will.

1 Subsection (d) states the mandatory rule that a transfer on death deed transfers the
2 property without covenant or warranty of title. The rule is mandatory for two reasons:
3 first, to prevent mishaps by uninformed grantors; and second, to recognize that a transfer
4 on death deed is a will substitute. The rule of this section is consistent with the
5 longstanding law of wills. As stated by Sir Edward Coke, "an express warranty cannot be
6 created by will." Coke on Littleton 386a.

7 **§6-414. Disclaimer**

8 A beneficiary may disclaim all or part of the beneficiary's interest as provided by
9 section 2-801.

10 **Comment**

11 A beneficiary of a transfer on death deed may disclaim the property interest the deed
12 attempts to transfer. While this section relies on other law, such as the Uniform
13 Disclaimer of Property Interests Act (1999/2006), to govern the disclaimer, two general
14 principles should be noted.

15 First, there is no need under the law of disclaimers to execute a disclaimer in
16 advance. During the transferor's life, a designated beneficiary has no interest in the
17 property. See Section 12. Nothing passes to the designated beneficiary while the
18 transferor is alive, hence there is no need to execute a disclaimer during that time.

19 Second, an effective disclaimer executed after the testator's death "relates back" to the
20 moment of the attempted transfer, here the death of the transferor. Because the disclaimer
21 "relates back," the beneficiary is regarded as never having had an interest in the
22 disclaimed property. The Uniform Disclaimer of Property Interests Act (1999/2006)
23 (UPC Article 2, Part 11) reaches this result, without using the language of relation back,
24 in UDPIA Section 6(b)(1): "The disclaimer takes effect as of the time the instrument
25 creating the interest becomes irrevocable" As the Comment to UDPIA Section 6
26 explains, "This Act continues the effect of the relation back doctrine, not by using the
27 specific words, but by directly stating what the relation back doctrine has been interpreted
28 to mean."

29 **§6-415. Liability for creditor claims and statutory allowances**

30 A beneficiary of a transfer on death deed is liable for an allowed claim against the
31 transferor's probate estate and statutory allowances to a surviving spouse and children to
32 the extent provided in section 6-107.

33 **Comment**

34 Alternative A defers to other law, such as Uniform Probate Code Section 6-102, to
35 establish the liability of a beneficiary of a transfer on death deed for creditor claims and
36 statutory allowances.

37 Uniform Probate Code (UPC) Section 6-102 was added in 1998 to establish the
38 principle that recipients of nonprobate transfers can be required to contribute to pay
39 allowed claims and statutory allowances to the extent the probate estate is insufficient.

1 The fundamental rule of liability is contained in UPC Section 6-102(b): "Except as
2 otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability
3 to any probate estate of the decedent for allowed claims against the decedent's probate
4 estate and statutory allowances to the decedent's spouse and children to the extent the
5 estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate
6 transferee may not exceed the value of nonprobate transfers received or controlled by that
7 transferee." The other provisions of UPC Section 6-102 implement this liability rule.

8 For states not favoring the comprehensive approach of UPC Section 6-102(b) or the
9 equivalent, Alternative B provides an in rem liability rule applying to transfer on death
10 deeds. The property transferred under a transfer on death deed is liable to the transferor's
11 probate estate for properly allowed claims and statutory allowances to the extent the
12 estate is insufficient.

13 One of the functions of probate is creditor protection. UPC Section 6-102, referenced
14 in Alternative A, attempts to provide comprehensive creditor protection within the realm
15 of nonprobate transfers. In addition, this act in Alternative B provides more creditor
16 protection than is typically available under current law. For many transferors, the transfer
17 on death deed will be used in lieu of joint tenancy with right of survivorship. Under the
18 usual law of joint tenancy, the unsecured creditors of a deceased joint tenant have no
19 recourse against the property or against the other joint tenant. Instead, the property passes
20 automatically to the survivor, free of the decedent's debts. See Comment 5 to UPC
21 Section 6-102. If the debts cannot be paid from the probate estate, the creditor is out of
22 luck. Under Alternative B, in contrast, the property transferred under a transfer on death
23 deed is liable to the probate estate for properly allowed claims and statutory allowances to
24 the extent the estate is insufficient.

25 **§6-416. Optional form of transfer on death deed**

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

29 (front of form)

30 **REVOCABLE TRANSFER ON DEATH DEED**

31 **NOTICE TO OWNER**

32 You should carefully read all information on the other side of this form. YOU MAY
33 WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

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

35 **IDENTIFYING INFORMATION**

36 **Owner or Owners Making This Deed:**

37

1
2

Printed name.....Mailing address

3
4

Printed name.....Mailing address

5 Legal description of the property:

6
7

PRIMARY BENEFICIARY

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

9
10

.....
11

Printed name.....Mailing address, if available

12 ALTERNATE BENEFICIARY - Optional

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

15
16

.....
17

Printed name.....Mailing address, if available

18 TRANSFER ON DEATH

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

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

22 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

23
24

(SEAL, if any).....

25 Signature.....Date.....
26

.....
27

(SEAL, if any).....

28 Signature.....Date.....

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

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

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

16 How do I find the "legal description" of the property? This information may be on the
17 deed you received when you became an owner of the property. This information may
18 also be available in the registry of deeds for the county where the property is located. If
19 you are not absolutely sure, consult a lawyer.

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

23 How do I "record" the TOD deed? Take the completed and acknowledged form to the
24 registry of deeds of the county where the property is located. Follow the instructions
25 given by the register of deeds to make the form part of the official property records. If
26 the property is in more than one county, you should record the deed in each county.

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

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

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

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

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

7 **Comment**

8 The form in this section is optional. The section is based on Section 4 of the Uniform
9 Health-Care Decisions Act (1993).

10 The transfer on death deed is likely to be used by consumers for whom the
11 preparation of a tailored inter vivos revocable trust is too costly. The form in this section
12 is designed to be understandable and consumer friendly.

13 For examples of statutory forms containing answers to questions likely to be asked by
14 consumers, see the Illinois statutory forms for powers of attorney. 755 Ill. Comp. Stat.
15 45/3-3 (power of attorney for property); 755 Ill. Comp. Stat. 45/4-10 (power of attorney
16 for health care).

17 **§6-417. Optional form of revocation**

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

21 (front of form)

22 **REVOCATION OF TRANSFER ON DEATH DEED**

23 **NOTICE TO OWNER**

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

27 **IDENTIFYING INFORMATION**

28 Owner or Owners of Property Making This Revocation:

29
30

31 Printed name.....Mailing address

32

33 Printed name.....Mailing address

1
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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, if any).....

Signature.....Date.....

.....

(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT

(insert acknowledgment)

(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 registry of deeds of each county where the property is located. 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 registry of deeds for the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the registry of deeds of the county where the property is located. Follow the instructions given by the register of deeds to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

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.

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

3 **Comment**

4 The form in this section is optional. The section is based on Section 4 of the Uniform
5 Health-Care Decisions Act (1993).

6 The aim of the form in this section is to be understandable and consumer friendly.

7 **§6-418. Uniformity of application and construction**

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

11 **§6-419. Relation to Electronic Signatures in Global and National Commerce Act**

12 This Part modifies, limits and supersedes the federal Electronic Signatures in Global
13 and National Commerce Act, 15 United States Code, Section 7001, et seq., but does not
14 modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section
15 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b)
16 of that Act, 15 United States Code, Section 7003(b).

17 **§6-420. Effective date**

18 This Part takes effect January 1, 2018.

19 **PART 5**

20 **TANGIBLE PERSONAL PROPERTY**

21 **§6-501. Definitions**

22 As used in this Part, unless the context otherwise indicates, the following terms have
23 the following meanings.

24 **1. Beneficiary.** "Beneficiary" means a person or persons designated or entitled to
25 receive property pursuant to a nonprobate transfer on surviving one or more persons.

26 **2. Beneficiary designation.** "Beneficiary designation" means a provision in writing
27 that is not a will that designates the beneficiary of a nonprobate transfer, including the
28 transferee in an instrument that makes the transfer effective on the death of the owner,
29 and that complies with the conditions of any governing instrument, the rules of any
30 transferring entity and applicable law.

31 **3. Death of the owner.** "Death of the owner" in the case of joint owners means
32 death of the last surviving owner.

33 **4. In proper form.** "In proper form" means a phrase that applies to a beneficiary
34 designation or a revocation or change of a beneficiary designation or a request to make.

1 revoke or change a beneficiary designation and that complies with the terms of the
2 governing instrument, the rules of the transferring entity and applicable law, including
3 any requirements with respect to supplemental documents.

4 **5. Joint owners.** "Joint owners" means persons who hold property as joint tenants
5 with right of survivorship and spouses who hold property as tenants by the entirety.

6 **6. Nonprobate transfer.** "Nonprobate transfer" means a transfer of property taking
7 effect upon the death of the owner, pursuant to a beneficiary designation. A nonprobate
8 transfer under this Part does not include survivorship rights in property held as joint
9 tenants or tenants by the entirety, a transfer to a remainderman on termination of a life
10 tenancy, a transfer under a trust established by an individual, either inter vivos or
11 testamentary, a transfer pursuant to the exercise or nonexercise of a power of appointment
12 or a transfer made on the death of a person who did not have the right to designate that
13 person's estate as the beneficiary of the transfer.

14 **7. Owner.** "Owner" means a person or persons having a right, exercisable alone or
15 with others, regardless of the terminology used to refer to the owner in any written
16 beneficiary designation, to designate the beneficiary of a nonprobate transfer. "Owner"
17 also means joint owners.

18 **8. Person.** "Person" means a living individual, an entity capable of owning property
19 and a fiduciary.

20 **9. Proof of death.** "Proof of death" means a death certificate or a record or report
21 that is prima facie proof or evidence of death under section 1-107.

22 **10. Property.** "Property" means any present or future interest in personal property,
23 tangible or intangible, legal or equitable. "Property" also means a right to direct or receive
24 payment of a debt, money or other benefits due under a contract, account agreement,
25 deposit agreement, employment contract, compensation plan, pension plan, individual
26 retirement plan, employee benefit plan, trust or law, a right to receive performance
27 remaining due under a contract, a right to receive payment under a promissory note or a
28 debt maintained in a written account record, a right under an instrument evidencing
29 ownership of property issued by a governmental agency and a right under a document of
30 title within the meaning of Title 11, section 1-1201, subsection (16). "Property" does not
31 include accounts covered by Part 1 or rights under a certificated or uncertificated security
32 that is covered by Part 3.

33 **11. Registration in beneficiary form.** "Registration in beneficiary form" means the
34 titling of an account record, certificate or other written instrument evidencing ownership
35 of property in the name of the owner followed by a transfer on death direction and the
36 designation of a beneficiary.

37 **12. Transfer on death direction.** "Transfer on death direction" means the phrase
38 "transfer on death to" or the phrase "pay on death to" or the abbreviation "TOD" or
39 "POD" after the name of the owners and before the designation of the beneficiary.

1 **13. Transferring entity.** "Transferring entity" means a person who owes a debt or
2 is obligated to pay money or benefits, render contract performance, deliver or convey
3 property or change the record of ownership of property on the books, records and
4 accounts of an enterprise or on a certificate or document of title that evidences property
5 rights. "Transferring entity" also means any governmental agency, business entity or
6 transfer agent that issues certificates of ownership or title to property and a person acting
7 as a custodial agent for an owner's property.

8 **§6-502. Nonprobate transfers not subject to requirements of a will; effect with or**
9 **without consideration**

10 Nonprobate transfers are effective with or without consideration and are not
11 considered testamentary or subject to Article 2, Part 5.

12 **§6-503. Transferring entity acting as agent for owner subject to nontransfer law,**
13 **duties**

14 For the purpose of discharging its duties under this Article, the authority of a
15 transferring entity acting as agent for an owner of property subject to a nonprobate
16 transfer does not cease at the death of the owner. The transferring entity shall transfer the
17 property to the designated beneficiary in accordance with the governing instrument, the
18 rules of the transferring entity and this Part.

19 **§6-504. Nonprobate transfers subject to agreement of transferring entity**

20 **1. Subject to agreement of owner and transferring entity.** When any of the
21 following is required, provision for a nonprobate transfer is a matter of agreement
22 between the owner and the transferring entity, under such rules, terms and conditions as
23 the owner and transferring entity may agree:

24 A. Submission to the transferring entity of a beneficiary designation under a
25 governing instrument;

26 B. Registration by a transferring entity of a transfer on death direction on any
27 certificate or record evidencing ownership of property;

28 C. The consent of a contract obligor for a transfer of performance due under the
29 contract;

30 D. The consent of a financial institution for a transfer of an obligation of the
31 financial institution; or

32 E. The consent of a transferring entity for a transfer of an interest in the transferring
33 entity.

34 **2. No obligation to accept.** When subsection 1 is applicable, this Part does not
35 impose an obligation on a transferring entity to accept an owner's request to make
36 provision for a nonprobate transfer of property.

37 **3. Effective date of acceptance.** When a beneficiary designation, revocation or
38 change is subject to acceptance by a transferring entity, the transferring entity's

1 acceptance of the beneficiary designation, revocation or change relates back to and is
2 effective as of the time when the request was received by the transferring entity.

3 **§6-505. Transferring entity, obligation resulting from acceptance and registration**

4 When a transferring entity accepts a beneficiary designation or beneficiary
5 assignment, or registers property in beneficiary form, the acceptance or registration
6 constitutes the agreement of the owner and transferring entity that, unless the beneficiary
7 designation is revoked or changed prior to the owner's death, on proof of the death of the
8 owner and compliance with the transferring entity's requirements for showing proof of
9 entitlement, the property will be transferred to and placed in the name and control of the
10 beneficiary in accordance with the beneficiary designation or transfer on death direction,
11 the agreement of the parties and this Part.

12 **§6-506. Beneficiary designation under written instrument or law, effect**

13 A beneficiary designation, under a written instrument or law, that authorizes a
14 transfer of property pursuant to a written designation of beneficiary transfers the right to
15 receive the property to the designated beneficiary who survives, effective on the death of
16 the owner, if the beneficiary designation is executed and delivered in proper form to the
17 transferring entity prior to the death of the owner.

18 **§6-507. Assignments effective on death of owner; delivery**

19 **1. Assignment of right to receive performance due.** A written assignment of a
20 contract right that assigns the right to receive any performance remaining due under the
21 contract to an assignee designated by the owner that expressly states that the assignment
22 is not to take effect until the death of the owner transfers the right to receive performance
23 due under the contract to the designated assignee beneficiary, effective on the death of the
24 owner, if the assignment is executed and delivered in proper form to the contract obligor
25 prior to the death of the owner or is executed in proper form and acknowledged before a
26 notary public or other person authorized to administer oaths. A beneficiary assignment
27 need not be supported by consideration or be delivered to the assignee beneficiary.

28 **2. Other methods of assignment not precluded.** This section does not preclude
29 other methods of assignment that are permitted by law and that have the effect of
30 postponing enjoyment of a contract right until the death of the owner.

31 **§6-508. Procedure to transfer tangible personal property to take effect on death of**
32 **owner**

33 **1. Transfer of interest in tangible personal property.** A deed of gift, bill of sale
34 or other writing intended to transfer an interest in tangible personal property that
35 expressly states that the transfer is not to take effect until the death of the owner transfers
36 ownership to the designated transferee beneficiary, effective on the death of the owner, if
37 the instrument is in other respects sufficient to transfer the type of property involved and
38 is executed by the owner and acknowledged before a notary public or other person
39 authorized to administer oaths. A beneficiary transfer instrument need not be supported
40 by consideration or be delivered to any transferee beneficiary.

1 **2. Other methods of transfer not precluded.** This section does not preclude other
2 methods of transferring ownership of tangible personal property that are permitted by law
3 and that have the effect of postponing enjoyment of property until the death of the owner.

4 **§6-509. Transferor may directly transfer property to a transferee to hold as owner**
5 **in beneficiary form**

6 **1. Direct transfer to transferee to hold in beneficiary form.** A transferor of
7 property, with or without consideration, may directly transfer the property to a transferee
8 to hold as owner in beneficiary form.

9 **2. Transferee is owner, has all rights.** A transferee of property under subsection 1
10 is the owner of the property for all purposes and has all the rights to the property
11 otherwise provided by law to owners, including the right to revoke or change the
12 beneficiary designation.

13 **3. Direct transfer effective.** A direct transfer of property to a transferee to hold as
14 owner in beneficiary form is effective when the writing perfecting the transfer becomes
15 effective to make the transferee the owner.

16 **§6-510. Registration of property, including accounts in beneficiary form**

17 **1. Direction to transfer in the name.** Property may be held or registered in
18 beneficiary form by including in the name in which the property is held or registered a
19 direction to transfer the property on the death of the owner to a beneficiary designated by
20 the owner.

21 **2. Words or abbreviation.** Property is registered in beneficiary form by showing
22 on the account record or instrument evidencing ownership of the property the name of the
23 owner and the estate by which 2 or more joint owners hold the property followed in
24 substance by the words "transfer on death to (name of beneficiary)." In lieu of
25 the words "transfer on death to" the words "pay on death to" or the abbreviation "TOD"
26 or "POD" may be used.

27 **3. Direction by transferring entity.** A transfer on death direction may be placed on
28 an account record or instrument evidencing ownership of property only by the
29 transferring entity or a person authorized by the transferring entity.

30 **4. Registered or request prior to owner's death.** A transfer on death direction
31 transfers the owner's interest in the property to the designated beneficiary, effective on the
32 owner's death, if the property is registered in beneficiary form prior to the death of the
33 owner or if the request to make the transfer on death direction is delivered in proper form
34 to the transferring entity prior to the owner's death.

35 **5. Conclusive evidence; retention of original writing.** An account record or
36 instrument evidencing ownership of property that contains a transfer on death direction
37 written as part of the name in which the property is held or registered is conclusive
38 evidence, in the absence of fraud, duress, undue influence or evidence of clerical mistake
39 by the transferring entity, that the direction was regularly made by the owner and
40 accepted by the transferring entity and was not revoked or changed prior to the death

1 giving rise to the transfer. The transferring entity has no obligation to retain the original
2 writing, if any, by which the owner caused the property to be registered in beneficiary
3 form more than 6 months after the transferring entity has mailed or delivered to the
4 owner, at the address shown on the registration, an account statement, certificate or
5 instrument that shows the manner in which the property is held or registered in
6 beneficiary form.

7 **§6-511. Effect of beneficiary designation on ownership of property during lifetime**
8 **and at death**

9 **1. No rights prior to death of owner.** Prior to the death of the owner, a beneficiary
10 has no rights in the property by reason of the beneficiary designation, and the signature or
11 agreement of the beneficiary is not required for any transaction respecting the property.

12 **2. Ownership upon death of joint owner.** On the death of one of 2 or more joint
13 owners, property with respect to which a beneficiary designation has been made belongs
14 to the surviving joint owner or owners, and the right of survivorship continues as between
15 2 or more surviving joint owners.

16 **3. Operation of law.** On the death of the owner, property passes by operation of law
17 to the beneficiary.

18 **4. Two or more surviving beneficiaries.** If 2 or more beneficiaries survive, there is
19 no right of survivorship among the beneficiaries in the event of the death of a beneficiary
20 thereafter unless the beneficiary designation expressly provides for survivorship among
21 them, and, unless so expressly provided, surviving beneficiaries hold their separate
22 interests in the property as tenants in common. The share of any subsequently deceased
23 beneficiary belongs to that beneficiary's estate.

24 **5. No beneficiary.** If no beneficiary survives the owner, the property belongs to the
25 estate of the owner.

26 **§6-512. Revocation or change of beneficiary designation**

27 **1. Revocation or change during lifetime of owner; joint owners.** A beneficiary
28 designation may be revoked or changed in whole or in part during the lifetime of the
29 owner. A revocation or change of a beneficiary designation involving property of joint
30 owners may be made only with the agreement of all owners then living.

31 **2. Subsequent designation.** A subsequent beneficiary designation revokes a prior
32 beneficiary designation unless the subsequent beneficiary designation expressly provides
33 otherwise.

34 **3. Revocation or change in compliance.** A revocation or change in a beneficiary
35 designation must comply with the terms of the governing instrument, the rules of the
36 transferring entity and the applicable law.

37 **4. Revocation or change by will.** A beneficiary designation may not be revoked or
38 changed by the provisions of a will unless the beneficiary designation expressly grants
39 the owner the right to revoke or change a beneficiary designation by will.

1 **5. Transfer during owner's lifetime.** A transfer during the owner's lifetime of the
2 owner's interest in property, with or without consideration, terminates the beneficiary
3 designation with respect to the property transferred.

4 **6. Effective date.** The effective date of a revocation or change in a beneficiary
5 designation must be determined in the same manner as the effective date of a beneficiary
6 designation.

7 **§6-513. Limitation on agent to make, revoke or change beneficiary; authorized**
8 **withdrawals may extinguish beneficiary's right to transfer**

9 **1. Designate, revoke or change.** An attorney in fact, custodian, conservator or other
10 agent may not make, revoke or change a beneficiary designation unless the document
11 establishing the agent's right to act, or a court order, expressly authorizes such action and
12 such action complies with the terms of the governing instrument, the rules of the
13 transferring entity and applicable law.

14 **2. Present transfer.** This section does not prohibit the authorized withdrawal, sale,
15 pledge or other present transfer of the property by an attorney in fact, custodian,
16 conservator or other agent notwithstanding the fact that the effect of the transaction may
17 be to extinguish a beneficiary's right to receive a transfer of the property at the death of
18 the owner.

19 **§6-514. Property designated for a beneficiary if lost, destroyed, damaged or**
20 **involuntarily converted during owner's lifetime**

21 In the event property subject to a beneficiary designation is lost, destroyed, damaged
22 or involuntarily converted during the owner's lifetime, the beneficiary succeeds to any
23 right with respect to the loss, destruction, damage or involuntary conversion that the
24 owner would have had if the owner had survived but has no interest in any payment or
25 substitute property received by the owner during the owner's lifetime.

26 **§6-515. Effect of collateral conveyances or liens on property subject to nonprobate**
27 **transfer**

28 **1. Owner's interest.** A beneficiary of a nonprobate transfer takes the owner's
29 interest in the property at the owner's death subject to all conveyances, assignments,
30 contracts, setoffs, licenses, easements, liens and security interests made by the owner or
31 to which the owner was subject during the owner's lifetime.

32 **2. Requests for payments.** A beneficiary of a nonprobate transfer of an account
33 with a bank, savings and loan association, credit union, broker or mutual fund takes the
34 owner's interest in the property at death subject to all requests for payment of money
35 issued by the owner prior to the owner's death, whether paid by the transferring entity
36 before or after death or unpaid. The beneficiary is liable to the payee of an unsatisfied
37 request for payment, to the extent that it represents an obligation that was enforceable
38 against the owner during the owner's lifetime. To the extent that a claim properly paid by
39 the personal representative of the owner's estate includes the amount of an unsatisfied
40 request for payment to the claimant, the personal representative is subrogated to the rights

1 of the claimant as payee. Each beneficiary's liability with respect to an unsatisfied
2 request for payment is limited to the same proportionate share of the request for payment
3 as the beneficiary's proportionate share of the account under the beneficiary designation.
4 Beneficiaries have the right of contribution among themselves with respect to requests for
5 payment that are satisfied after the owner's death, to the extent the requests for payment
6 would have been enforceable by the payees. In no event may a beneficiary's liability to
7 payees, the owner's estate and other beneficiaries under this section and section 6-530
8 with respect to all requests for payment exceed the value of the account received by the
9 beneficiary. If a request for payment that would not have been enforceable under this
10 section is satisfied from a beneficiary's share of the account, the beneficiary is not liable
11 to any other payee or the owner's estate under this section or section 6-530 for the amount
12 so paid, and the beneficiary has no right of contribution against other beneficiaries with
13 respect to that amount.

14 **§6-516. Survival required**

15 **1. Survival by 120 hours.** An individual who is a beneficiary of a nonprobate
16 transfer is not entitled to a transfer unless the individual survives the owner by 120 hours.

17 **2. Different period of survival.** If an owner provides and the transferring entity
18 accepts, or if a governing instrument or applicable law provides, a period of survival
19 different than 120 hours, the period designated determines the survival requirement of
20 beneficiaries under this section. An owner and transferring entity may agree that certain
21 circumstances raise a different presumption of survival or nonsurvival.

22 **3. Joint owners.** This section does not apply to survivorship rights of joint owners.

23 **§6-517. Beneficiary designation designating trustee under trust that is amendable or** 24 **revocable; trust that is revoked, terminated or does not exist at death of** 25 **owner**

26 **1. Amendable or revocable trust.** A beneficiary designation designating a trustee
27 under a trust established or to be established by the owner or some other person,
28 including a funded or unfunded trust, is not invalid because the trust is amendable or
29 revocable or both or because the trust was amended after the designation.

30 **2. Revoked or terminated trust.** Unless a beneficiary designation provides
31 otherwise, a trust that was revoked or terminated before the death of the owner is deemed
32 not to have survived the owner.

33 **3. Deemed not to have survived owner.** Unless a beneficiary designation provides
34 otherwise, a legal entity or trust that does not exist or come into existence at the time of
35 the owner's death is deemed not to have survived the owner.

36 **§6-518. Disclaimer**

37 **If a beneficiary of a nonprobate transfer disclaims in whole or in part the nonprobate**
38 **transfer in the manner provided by law, then, with respect to the disclaimed transfer, the**
39 **disclaimant is treated as having predeceased the owner unless the beneficiary designation**
40 **provides otherwise; but the possibility that a beneficiary or descendant may disclaim a**

1 transfer does not require any transferring entity to withhold making the transfer in the
2 normal course of business.

3 **§6-519. Marriage dissolution or annulment; revocation of transfer to former spouse**
4 **or relative of spouse; remarriage to spouse, nullification of annulment**

5 **1. Revocation of beneficiary designation by dissolution or annulment of**
6 **marriage.** If, after an owner makes a beneficiary designation, the owner's marriage is
7 dissolved or annulled, any provision of the beneficiary designation in favor of the owner's
8 former spouse or a relative of the owner's former spouse is revoked on the date the
9 marriage is dissolved or annulled, whether or not the beneficiary designation refers to
10 marital status. The beneficiary designation must be given effect as if the former spouse
11 or relative of the former spouse had disclaimed the revoked provision.

12 **2. Irrevocable beneficiary designation.** Subsection 1 does not apply to a provision
13 of a beneficiary designation that has been made irrevocable, or revocable only with the
14 spouse's consent, that is made after the marriage was dissolved or that expressly states
15 that marriage dissolution does not affect the designation of a spouse or relative of a
16 spouse as beneficiary.

17 **3. Revival by remarriage or nullification.** Any provision of a beneficiary
18 designation revoked solely by this section is revived by the owner's remarriage to the
19 former spouse or by a nullification of the marriage dissolution or annulment.

20 **4. Relative of the owner's former spouse.** As used in this section, "a relative of the
21 owner's former spouse" means an individual who is related to the owner's former spouse
22 by blood, adoption or affinity and who, after the divorce or annulment, is not related to
23 the owner by blood, adoption or affinity.

24 **§6-520. Disqualification for fraud, duress and undue influence and causing owner's**
25 **death**

26 **1. Fraud, duress or undue influence.** A beneficiary designation or a revocation of
27 a beneficiary designation that is procured by fraud, duress or undue influence is void.

28 **2. Causing death of owner.** A beneficiary who willfully and unlawfully causes or
29 participates with another in causing the death of the owner or of the insured individual
30 under a life insurance policy or certificate is disqualified from receiving any benefit of a
31 nonprobate transfer from the owner or any proceeds payable as a result of the death of an
32 individual insured under a life insurance policy or certificate. The beneficiary
33 designation must be given effect as if the disqualified beneficiary had disclaimed it. The
34 fact that a beneficiary willfully and unlawfully caused or participated with another in
35 causing the death of the owner may be established by a criminal conviction or guilty plea,
36 after all appeal periods have run and those appeal proceedings have concluded, or
37 determined in a proceeding pursuant to subsection 3 using a preponderance of the
38 evidence standard.

39 **3. Determination by trier of fact.** On petition of any interested person or the
40 transferring entity, the trier of fact shall determine whether a beneficiary designation or a

1 revocation of a beneficiary designation is void by reason of subsection 1 or whether
2 subsection 2 applies to prevent any person from receiving any benefit of the nonprobate
3 transfer. The trier of fact may mitigate the effect of subsection 1 or 2 on any person as
4 the trier of fact determines justice requires. Any party may demand a jury trial.

5 **§6-521. Omitted spouse or child; after-born child or after-adopted child**

6 **1. Unintentional disinheritance.** A law intended to protect a spouse or child from
7 unintentional disinheritance by the will of a testator does not apply to a nonprobate
8 transfer.

9 **2. Designation by class.** A beneficiary designation designating the children of the
10 owner or any other person as a class and not by name must include all children of the
11 person, whether born or adopted before or after the beneficiary designation is made.

12 **3. After-born or after-adopted child.** If a beneficiary designation names an
13 individual who is a child of the owner, and if the owner has a child born or adopted after
14 the owner makes the beneficiary designation, the after-born or after-adopted child is
15 entitled to receive a fractional share of any property otherwise transferable to any child of
16 the owner who is named in the beneficiary designation, computed as follows: the
17 numerator of the fraction must be one, and the denominator must be the total number of
18 the owner's children, whether born or adopted before or after the beneficiary designation
19 was made and whether named or not in the beneficiary designation. The property
20 otherwise transferable to the owner's children named in the beneficiary designation must
21 be reduced in the proportion that their shares bear to each other. If there is no share
22 designated for any child of the owner, an after-born or after-adopted child receives no
23 share of the property subject to the nonprobate transfer.

24 **4. Rule of transferring entity concerning after-born child rule.** A beneficiary
25 designation, a governing instrument or the rules of any transferring entity may provide
26 that the after-born child rule does not apply, in which case after-born and after-adopted
27 children of the owner receive no share of property designated for named children of the
28 owner.

29 **5. Exception.** A transferring entity has no obligation to apply subsection 3 in
30 making distribution with respect to property registered in beneficiary form. This
31 exception for the transferring entity does not affect the ownership interest of the after-
32 born or after-adopted child.

33 **§6-522. Nonprobate transfer rules**

34 **1. Article governs.** The rights and obligations of an owner, beneficiary and
35 transferring entity in a nonprobate transfer are governed by this Article.

36 **2. Transferring entity rules when agreement.** When provision for a nonprobate
37 transfer is a matter of agreement between the owner and the transferring entity pursuant
38 to section 6-504, a transferring entity may adopt rules for the making, revocation,
39 acceptance and execution of beneficiary designations and a transferring entity may adopt
40 the rules in subsection 3 in whole or in part by incorporation by reference.

1 **3. Default rules.** The following rules in this subsection apply to all beneficiary
2 designations, except as otherwise provided by any governing instrument, the rules of any
3 transferring entity, applicable law or the beneficiary designation.

4 A. A beneficiary designation or a request for registration of property in beneficiary
5 form must be made in writing, signed by the owner and dated.

6 B. A beneficiary designation may designate one or more primary beneficiaries and
7 one or more contingent beneficiaries.

8 C. On property registered in beneficiary form, primary beneficiaries are the persons
9 shown immediately following the transfer on death direction. Words indicating that
10 the persons shown are primary beneficiaries are not required. If contingent
11 beneficiaries are designated, their names in the registration must be preceded by the
12 words "contingent beneficiaries," or an abbreviation thereof, or words of similar
13 meaning.

14 D. Unless a different percentage or fractional share is stated for each beneficiary,
15 surviving multiple primary beneficiaries or multiple contingent beneficiaries share
16 equally. When a percentage or fractional share is designated for multiple
17 beneficiaries, either primary or contingent, surviving beneficiaries share in the
18 proportion that their designated shares bear to each other.

19 E. Provision for a transfer of unequal shares to multiple beneficiaries for property
20 registered in beneficiary form may be expressed in the registration by a number
21 preceding the name of each beneficiary that represents a percentage share of the
22 property to be transferred to that beneficiary. The number representing a percentage
23 share need not be followed by the word "percent" or a percent sign.

24 F. A nonprobate transfer of property also transfers any interest, rent, royalties,
25 earnings, dividends or credits earned or declared on the property but not paid or
26 credited before the owner's death.

27 G. If a distribution by a transferring entity pursuant to a nonprobate transfer results
28 in fractional shares in property that is not divisible, the transferring entity may
29 distribute the fractional shares in the name of all beneficiaries as tenants in common
30 or as the beneficiaries may direct or the transferring entity may sell the property that
31 is not divisible and distribute the proceeds to the beneficiaries in the proportions to
32 which they are entitled.

33 H. On the death of the owner, the property, less a setoff for all amounts and charges
34 owed by the owner to the transferring entity, belongs to the surviving beneficiaries
35 and their lineal descendants when required as substitutes as follows:

36 (1) If a multiple primary beneficiary does not survive and has no surviving lineal
37 descendant substitutes, the nonsurviving primary beneficiary's share belongs to
38 the surviving primary beneficiaries in the proportion that their shares bear to each
39 other;

40 (2) If no primary beneficiary or lineal descendant substitute survives, the
41 property belongs to the surviving contingent beneficiaries in equal shares or in
42 the percentage or fractional share stated;

1 (3) If a multiple contingent beneficiary does not survive and has no lineal
2 descendant substitutes, the nonsurviving contingent beneficiary's share belongs to
3 the surviving contingent beneficiaries in the proportion that their shares bear to
4 each other; and

5 (4) If no beneficiary survives the owner, the property belongs to the owner's
6 estate.

7 I. If a trustee designated as a beneficiary does not survive the owner, resigns or is
8 unable or unwilling to execute the trust as trustee and, if within one year of the
9 owner's death no successor trustee has been appointed or has undertaken to act, or if a
10 trustee is designated as beneficiary and no trust instrument or probated will creating
11 an express trust has been presented to the transferring entity, the transferring entity
12 may in its discretion make the distribution as it would be made if the trust did not
13 survive the owner.

14 J. If a beneficiary cannot be located at the time the transfer is made to located
15 beneficiaries, the transferring entity shall hold the missing beneficiary's share. If the
16 missing beneficiary's share is not claimed by the beneficiary or the beneficiary's
17 personal representative or successors within one year of the owner's death, the
18 transferring entity shall transfer the share as if the beneficiary did not survive the
19 owner. The transferring entity has no obligation to attempt to locate a missing
20 beneficiary, to pay interest on the share held for a missing beneficiary or to invest the
21 missing beneficiary's share in any different property. Cash, interest, rent, royalties,
22 earnings or dividends payable to the missing beneficiary may be held by the
23 transferring entity at interest or reinvested by the transferring entity in the account or
24 in a dividend reinvestment account associated with property held for the missing
25 beneficiary.

26 K. If a transferring entity is required to make a nonprobate transfer to a minor or an
27 adult with a disability, the transfer may be made pursuant to Article 5, Parts 1 to 3;
28 Title 33, chapter 32; or a similar law of another state.

29 L. A written request for execution of a nonprobate transfer may be made by a
30 beneficiary, a beneficiary's legal representative or attorney in fact or the owner's
31 personal representative. The request must be under oath or affirmation, be subscribed
32 before a notary public or other person authorized to administer oaths and include the
33 following:

34 (1) The full name, address and tax identification number of each beneficiary;

35 (2) The percentage or fractional share to be distributed to each beneficiary;

36 (3) The manner in which percentage or fractional shares in nondivisible property
37 or the proceeds therefrom are to be distributed;

38 (4) A statement that there are no known disputes as to the persons entitled to a
39 distribution under the nonprobate transfer or the amounts to be distributed to each
40 person and no known claims that would affect the distribution requested; and

41 (5) Such other information as the transferring entity may require.

1 M. A written request pursuant to paragraph L must be accompanied by the
2 following:

3 (1) Any certificate or instrument evidencing ownership of the contract, account
4 or property;

5 (2) Proof of death of the owner and any nonsurviving beneficiary;

6 (3) An inheritance tax waiver from states that require it;

7 (4) When the request is made by a legal representative, a certified copy of the
8 court order appointing the legal representative; and

9 (5) Such other proof of entitlement as the transferring entity may require.

10 **§6-523. Transferring entity, protection**

11 **1. Owner gives protections to transferring entity.** The owner in making provision
12 for a nonprobate transfer under this Part gives to the transferring entity the protections
13 provided in this section for executing the owner's beneficiary designation.

14 **2. With or without written request.** The transferring entity may execute a
15 nonprobate transfer with or without a written request.

16 **3. Reliance on certificate or report.** The transferring entity may rely and act on:

17 A. A certified or authenticated copy of a death certificate issued by an official or
18 agency of the place where the death occurred showing the fact, place, date, time of
19 death and identity of the decedent; or

20 B. A certified or authenticated copy of any report or record of a governmental
21 agency, domestic or foreign, that a person is missing, detained, dead or alive and the
22 dates, circumstances and places disclosed by the record or report.

23 **4. Reliance on written request.** The transferring entity may rely and act on, and has
24 no duty to verify, information in a written request made by a person specified in section
25 6-522, subsection 3, paragraph L, under oath or affirmation and subscribed before a
26 notary public or other person authorized to administer oaths for execution of the
27 beneficiary designation.

28 **5. No duty.** The transferring entity has no duty:

29 A. To give notice to any person of the date, manner and persons to whom transfer
30 will be made under the beneficiary designation, except as provided in subsection 6;

31 B. To attempt to locate any beneficiary or lineal descendant substitute or determine
32 whether a nonsurviving beneficiary or descendant had lineal descendants who
33 survived the owner;

34 C. To locate a trustee or custodian, obtain appointment of a successor trustee or
35 custodian or discover the existence of a trust instrument or will that creates an
36 express trust; or

37 D. To determine any fact or law that would cause the beneficiary designation to be
38 revoked in whole or in part as to any person because of change in marital status or

1 other reason or that would qualify or disqualify any person to receive a share under
2 the nonprobate transfer or that would vary the distribution provided in the beneficiary
3 designation.

4 **6. Duty based on written notice.** This subsection governs the duty of a transferring
5 entity based on written notice received by the transferring entity.

6 A. The transferring entity has no duty to withhold making a transfer based on
7 knowledge of any fact or claim adverse to the transfer to be made unless, prior to the
8 transfer, the transferring entity has received written notice at a place and time and in a
9 manner that affords a reasonable opportunity to act on it before the transfer is made
10 that:

11 (1) Asserts a claim of beneficial interest in the transfer adverse to the transfer to
12 be made;

13 (2) Gives the name of the claimant and an address for communications directed
14 to the claimant;

15 (3) Identifies the deceased owner and the property to which the claim applies;
16 and

17 (4) States the amount and nature of the claim as it affects the transfer.

18 B. If a notice as provided in paragraph A is received by the transferring entity, the
19 transferring entity may discharge any duty to the claimant by delivering a notice or
20 sending a notice by certified mail to the claimant at the address given in the notice of
21 claim advising that a transfer adverse to the claimant's asserted claim may be made in
22 30 days from the date of delivery or mailing unless the transfer is restrained by a
23 court order. If the transferring entity so delivers or mails such a notice, it shall
24 withhold making the transfer for 30 days after the date of delivery or mailing and
25 may then make the transfer unless restrained by a court order.

26 C. No notice or information other than that described in paragraph A shown to have
27 been available to the transferring entity, its transfer agent and their employees affects
28 the right to the protections provided in this Part.

29 **7. Property transferred to fiduciary.** The transferring entity has no responsibility
30 for the application or use of property transferred to a fiduciary that the fiduciary as such is
31 entitled to receive.

32 **8. Require parties to adjudicate or furnish bond.** Notwithstanding the protections
33 provided the transferring entity in this Part, in the event the transferring entity is uncertain
34 as to the beneficiary entitled to receive a transfer or the beneficiary's proper share, or in
35 the event of a dispute as to the proper transfer, the transferring entity may require the
36 parties to adjudicate their respective rights or to furnish an indemnity bond protecting the
37 transferring entity.

38 **9. Discharge from all claims.** A transfer by the transferring entity in accordance
39 with this Part and pursuant to the beneficiary designation in good faith and in reliance on
40 information the transferring entity reasonably believes to be accurate discharges the
41 transferring entity from all claims for the amounts paid and the property transferred.

1 **10. Protections in addition.** The protections provided a transferring entity in this
2 Part are in addition to protections provided by other law.

3 **§6-524. Rights of owners and beneficiaries; improper distribution, liability of**
4 **distributee; purchasers from distributee**

5 **1. Protections not applicable to beneficiaries.** Any protection provided to a
6 transferring entity or to a purchaser or lender for value under this Part has no bearing on
7 the rights of beneficiaries or others in disputes among themselves concerning the
8 ownership of the property.

9 **2. Improper distribution or payment of money.** Unless the payment or transfer
10 can no longer be questioned because of adjudication, estoppel or limitations, a transferee
11 of money or property pursuant to a nonprobate transfer that was improperly distributed or
12 paid is liable to return to the transferring entity or deliver to the rightful transferees the
13 money or property improperly received and the income earned thereon by the transferee.
14 If the transferee does not have the property, then the transferee is liable to return the value
15 of the property as of the date of disposition and the income and gain received by the
16 transferee from the property and its proceeds. If the transferee has encumbered the
17 property, the transferee shall satisfy any debt incurred that imposes an encumbrance on
18 the property, sufficient to release any security interest, lien or other encumbrance on the
19 property.

20 **3. Good faith purchase or acquisition of security interest after death of owner.**
21 A purchaser for value of property or a lender who acquires a security interest in the
22 property from a beneficiary of a nonprobate transfer after the death of the owner, in good
23 faith and in the absence of actual knowledge that the transfer was improper or that the
24 information in an affidavit, if any, provided pursuant to section 6-522, subsection 3,
25 paragraph L is not true, takes the property free of any claims of or liability to the owner's
26 estate, creditors of the owner's estate, persons claiming rights as beneficiaries under the
27 nonprobate transfer or heirs of the owner's estate; a purchaser or lender for value has no
28 duty to verify sworn information relating to the nonprobate transfer. The protection
29 provided by this subsection applies to information that relates to the ownership interest of
30 the beneficiary in the property and the beneficiary's right to sell, encumber and transfer
31 good title to a purchaser or lender and does not relieve a purchaser or lender from the
32 notice imparted by instruments of record respecting the property.

33 **4. No liability for good faith transfer.** A nonprobate transfer that is improper
34 because of the application of sections 6-518 to 6-521 imposes no liability on the
35 transferring entity if the transfer was made honestly in good faith, regardless of any
36 negligence in determining the proper transferees. The remedy of the rightful transferees
37 is limited to an action against the improper transferees.

38 **§6-525. Rights of creditors**

39 A deceased owner's creditors, surviving spouse and unmarried minor children have
40 the rights set forth in section 6-530 with respect to the value of property passing by
41 nonprobate transfer.

1 **§6-526. Scope and application of Part**

2 **1. Part applicable.** Subject to the provisions of section 6-528, this Part applies to a
3 nonprobate transfer on death if at the time the owner designated the beneficiary:

4 A. The owner was a resident of this State;

5 B. The obligation to pay or deliver arose in this State or the property was situated in
6 this State; or

7 C. The transferring entity was a resident of this State or had a place of business in
8 this State or the obligation to make the transfer was accepted in this State.

9 **2. Direction and obligation subject to Part.** The direction for a nonprobate
10 transfer on the death of the owner and the obligation to execute the nonprobate transfer
11 remain subject to the provisions of this Part despite a subsequent change in the
12 beneficiary, in the rules of the transferring entity under which the transfer is to be
13 executed, in the residence of the owner, in the residence or place of business of the
14 transferring entity or in the location of the property.

15 **3. Certificates, accounts or deposits in financial institutions.** Sections 6-501 to
16 6-517 and 6-521 to 6-523 do not apply to certificates, accounts or deposits in financial
17 institutions unless the provisions of this Part are incorporated into the certificate, account
18 or deposit agreement in whole or in part by express reference.

19 **4. Directions given to personal custodian.** This Part applies to transfer on death
20 directions given to a personal custodian under Article 5, Parts 1 to 3.

21 **5. Certificates of ownership or title issued by the Secretary of State.** Sections
22 6-501 to 6-517 and 6-521 to 6-523 do not apply to certificates of ownership or title issued
23 by the Secretary of State.

24 **6. Payments pursuant to product sold by life insurance company.** Sections 6-501
25 to 6-517, 6-519 and 6-521 to 6-529 do not apply to property, money or benefits paid or
26 transferred at death pursuant to a life or accidental death insurance policy, annuity,
27 contract, plan or other product sold or issued by a life insurance company unless the
28 provisions of this Part are incorporated into the policy or beneficiary designation in whole
29 or in part by express reference.

30 **7. Express provision that law does not apply.** Sections 6-501 to 6-517 and 6-521
31 to 6-523 do not apply to any nonprobate transfer when the governing instrument or law
32 expressly provides that the nonprobate transfers law of this State does not apply.

33 **8. Employee benefit plan.** Section 6-519 does not apply to any employee benefit
34 plan governed by 29 United States Code, Section 1001 et seq.

35 **§6-527. Jurisdiction**

36 The probate court may hear and determine questions and issue appropriate orders
37 concerning the determination of the beneficiary who is entitled to receive a nonprobate

1 transfer, the proper share of each beneficiary and any action to obtain the return of any
2 money or property, or its value and earnings, improperly distributed to any person.

3 **§6-528. Beneficiary designation valid under law of another state; effect of transfer**
4 **determined by local law selected in document or designation**

5 **1. Transfer on death security registration.** A beneficiary designation that purports
6 to have been made and that is valid under the Uniform Probate Code, Uniform Transfer
7 on Death Security Registration Act or similar law of another state is governed by the law
8 of that state, and the nonprobate transfer may be executed and enforced in this State.

9 **2. Local law.** The meaning and legal effect of a nonprobate transfer must be
10 determined by the local law of the particular state selected in a governing instrument or
11 beneficiary designation.

12 **3. Apply to be uniform among states.** The provisions of this Part must be applied
13 and construed to effectuate their general purpose to make uniform the law with respect to
14 the subject of this Part among states enacting a similar law.

15 **§6-529. Nonprobate transfer laws to be effective; prior transfers to be valid**

16 **1. Made on or after January 1, 2018.** This Part applies to beneficiary designations
17 for nonprobate transfers of property subject to this Part made on and after January 1,
18 2018. This Part applies to all nonprobate transfers occurring on and after January 1, 2018.

19 **2. Made before January 1, 2018.** Any provision for a nonprobate transfer of
20 money, benefits or property at death as permitted in this Part purported to have been
21 made before January 1, 2018 is validated notwithstanding that there was no specific
22 statutory authority for making the nonprobate transfer in that manner at the time
23 provision for the nonprobate transfer was made.

24 **§6-530. Nontestamentary transfer on death; property received to cover statutory**
25 **allowances and claims**

26 A nonprobate transfer of a decedent's property under this Part is not effective against
27 an estate of a deceased owner to transfer to a survivor sums needed to pay debts, taxes
28 and expenses of administration, including statutory allowances to the surviving spouse,
29 minor children and dependent children, if other assets of the estate are insufficient. A
30 surviving sole owner or beneficiary who receives a security after the death of a deceased
31 owner is liable to account to the personal representative of the decedent's estate for
32 amounts the decedent owned beneficially immediately before the decedent's death to the
33 extent necessary to discharge the claims and charges remaining unpaid after application
34 of the decedent's estate. A proceeding to assert this liability may not be commenced later
35 than 2 years following the death of the decedent. Sums recovered by the personal
36 representative must be administered as part of the decedent's estate.

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SUMMARY

This bill enacts as Article 6, Part 4 of the Maine Probate Code the Uniform Real Property Transfer on Death Act, adopted by the Uniform Law Commission in 2009. The Prefatory Note and the Comments explain the Act and its provisions in detail.

This bill amends the Maine Probate Code to provide for the nonprobate transfer of personal property not already covered by Article 6 of the Maine Probate Code by enacting a new Part 5. The bill allows the owner of personal property, whether tangible or intangible, to provide for the transfer of that property to take place at the death of the owner without the property being included in the estate of the deceased owner. Current law already provides for "payable on death" accounts and the registration of securities to be transferred on the death of the owner. This bill covers all other personal property but does not apply to the transfer of real property, which is covered by the new Part 4. Part 5 is modeled on Missouri law.