

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

FILED SENATE  
Mar 19, 2019  
S.B. 312  
PRINCIPAL CLERK

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SENATE BILL DRS35118-MQ-17

Short Title: Transfer on Death Deeds. (Public)

Sponsors: Senators Ford and Bishop (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.  
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 31 of the General Statutes is amended by adding a new Article  
5 to read:

6 "Article 11.

7 "Uniform Real Property Transfer on Death Act.

8 **"§ 31-65. Short title.**

9 This Article may be cited as the "Uniform Real Property Transfer on Death Act."

10 **"§ 31-66. Definitions.**

11 As used in this Article, the following definitions apply:

- 12 (1) Beneficiary. – A person that receives property under a transfer on death deed.  
13 (2) Designated beneficiary. – A person designated to receive property in a transfer  
14 on death deed.  
15 (3) Joint owner. – A person who owns property concurrently with one or more  
16 other persons with a right of survivorship. The term includes a joint tenant and  
17 tenant by the entirety. The term does not include a tenant in common.  
18 (4) Person. – An individual, corporation, business trust, estate, trust, partnership,  
19 limited liability company, association, joint venture, public corporation,  
20 government or governmental subdivision, agency, or instrumentality, or any  
21 other legal or commercial entity.  
22 (5) Property. – An interest in real property situated in this State which is  
23 transferable on the death of the owner.  
24 (6) Transfer on death deed. – A deed authorized under this Article.  
25 (7) Transferor. – An individual who makes a transfer on death deed.

26 **"§ 31-67. Reserved for future codification purposes.**

27 **"§ 31-68. Nonexclusivity.**

28 This Article does not affect any method of transferring property otherwise permitted pursuant  
29 to the laws of this State.

30 **"§ 31-69. Transfer on death deed authorized.**

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

33 **"§ 31-70. Transfer on death deed revocable.**

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

36 **"§ 31-71. Transfer on death deed nontestamentary.**



1        A transfer on death deed is nontestamentary.

2        **"§ 31-72. Capacity of transferor.**

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

5        **"§ 31-73. Requirements.**

6        (a)    A valid transfer on death deed shall contain essential elements and formalities of a  
7 properly recordable inter vivos deed.

8        (b)    Notwithstanding subsection (a) of this section, a valid transfer on death deed shall  
9 contain a statement that the transfer to the designated beneficiary is to occur at the transferor's  
10 death. In the event that a statement of intent to create a transfer on death deed is missing from  
11 the instrument, the instrument is void.

12        (c)    A valid transfer on death deed shall be recorded before the transferor's death in the  
13 office of the register of deeds in the county or counties where the property is situated.

14        **"§ 31-74. Notice, delivery, acceptance, consideration not required.**

15        Provided that the requirements of G.S. 31-73 have been met, a transfer on death deed is  
16 effective without evidence of valuable consideration received or notice or delivery to or  
17 acceptance by the designated beneficiary during the transferor's life.

18        **"§ 31-75. Revocation.**

19        (a)    An instrument shall be effective to revoke a recorded transfer on death deed, in whole  
20 or in part, provided that the instrument satisfies all of the following:

21            (1)    The instrument takes the form of any of the following:

22                    a.    A subsequent transfer on death deed, meeting the requirements of  
23 G.S. 31-73, that revokes the prior transfer on death deed, or any  
24 portion thereof, either expressly or by inconsistency.

25                    b.    An instrument of revocation that expressly revokes the prior transfer  
26 on death deed or any portion thereof.

27                    c.    An inter vivos deed that transfers all or a portion of the property in a  
28 manner that is inconsistent with the prior transfer on death deed.

29            (2)    The instrument is acknowledged by the transferor after the acknowledgement  
30 of the transfer on death deed being revoked.

31            (3)    The instrument is recorded in the county or counties where the property is  
32 situated.

33        (b)    If a transfer on death deed is made by more than one transferor, a revocation by one  
34 transferor shall not affect the transfer on death deed as to the interest of another transferor. A  
35 transfer on death deed made by joint owners is revoked only if revoked by all joint owners.

36        (c)    Except as provided in this Article, a revocatory act shall not have an effect on a  
37 recorded transfer on death deed.

38        (d)    Nothing in this section shall be construed to limit the effect of an inter vivos transfer  
39 of the property.

40        **"§ 31-76. Effect of transfer on death deed during transferor's life.**

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

42            (1)    Affect any interest or right of the transferor or any other owner, including the  
43 right to transfer or encumber the property.

44            (2)    Affect any interest or right of a transferee, even if the transferee has actual or  
45 constructive notice of the deed.

46            (3)    Affect any interest or right of a secured, unsecured, or future creditor of the  
47 transferor, even if the creditor has actual or constructive notice of the deed.

48            (4)    Affect the transferor's or designated beneficiary's eligibility for any form of  
49 public assistance.

50            (5)    Create a legal or equitable interest in favor of the designated beneficiary.

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

**"§ 31-77. Effect of transfer on death deed at transferor's death.**

(a) Except as otherwise provided in the transfer on death deed, in this section, or in Article 24 of Chapter 28A, Article 1A of Chapter 30, and Chapter 31A of the General Statutes, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) The interest in the property is transferred to the designated beneficiary in accordance with the transfer on death deed. In the event that the designated beneficiary does not survive the transferor, the designated beneficiary's interest in the property shall lapse.

(2) Concurrent interests are transferred to the designated beneficiaries in equal and undivided shares with no right of survivorship in accordance with the transfer on death deed. In the event that the share of one designated beneficiary lapses or fails for any reason, that share shall be transferred to the other designated beneficiaries in proportion to the interest of each designated beneficiary in the remaining part of the concurrently held property.

(b) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For the purpose of establishing lien priority, the recording of the transfer on death deed shall be deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner, the transfer on death deed shall become effective upon the death of the last surviving joint owner.

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

**"§ 31-78. Renunciation.**

A beneficiary may disclaim all or part of the beneficiary's interest as provided pursuant to Chapter 31B of the General Statutes.

**"§ 31-79. Liability for creditor claims and statutory allowances.**

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

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

**"§ 31-80. Optional form of transfer on death deed.**

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

"THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR(S). OTHERWISE IT WILL NOT BE EFFECTIVE.

REVOCABLE TRANSFER ON DEATH DEED

THIS REVOCABLE TRANSER ON DEATH DEED, dated this \_\_\_\_\_ day of \_\_\_\_\_, is made by [TRANSFEROR(S)] (the Grantor(s)), whose address is \_\_\_\_\_.

This Revocable Transfer on Death Deed is made pursuant to the Uniform Real Property Transfer on Death Act, N.C.G.S. § 31-65, et seq. In accordance with the provisions of the Uniform Real Property Transfer on Death Act, at my death, I transfer and convey my interest in the below described property to my designated beneficiaries as follows:

PRIMARY BENEFICIARY(IES):

I designate \_\_\_\_\_ as the designated beneficiary(ies) of the property if \_\_\_\_\_ survives me.

ALTERNATE BENEFICIARY(IES):

If my primary designated beneficiary does not survive me, I designate \_\_\_\_\_ as my alternate designated beneficiary(ies) if my alternate designated beneficiary(ies) survive me.

PROPERTY:

The legal description of the real property that shall be transferred at my death pursuant to this Revocable Transfer on Death Deed is as follows:

[INSERT LEGAL DESCRIPTION]

RIGHT TO REVOKE AND METHOD TO REVOKE DEED:

Before my death, I have the right to revoke this deed. If other transferors are a party to this deed, my revocation will have no effect upon the property interests they intend to transfer to the designated beneficiary(ies).

Under the Uniform Real Property Transfer on Death Act, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument is one of the following:

- 1. A transfer on death deed that expressly revokes the prior transfer on death deed in part or in full.
- 2. A transfer on death deed that names a designated beneficiary that is inconsistent with the designated beneficiary in the prior transfer on death deed.
- 3. An instrument of revocation that expressly revokes the transfer on death deed in part or in full.
- 4. To the extent that it conveys property in a manner inconsistent with a prior transfer on death deed, a properly executed and recorded inter vivos deed.

An instrument revoking a recorded transfer on death deed, or any part of it, must be acknowledged by the transferor after the acknowledgement of the prior transfer on death deed being revoked and must be recorded in the office of the register of deeds in the county or counties where the property is situated.

After recording, a transfer on death deed may only be revoked by recording an effective revocatory instrument using one of the methods listed above. A revocatory act that does not meet those requirements taken against a transfer on death deed shall have no effect upon its validity.

The execution and recordation of this transfer on death deed does not limit the effect of an inter vivos transfer of the property.

At my death, the beneficiary(ies) take the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at my death.

Dated \_\_\_\_\_.

(Seal)

Signature

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, personally appeared before me, the said named \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires \_\_\_\_\_.

(Signature of Notary Public)

Notary Public (Official Seal)"

**"§ 31-81. Optional form of revocation.**

The following form may be used to create an instrument of revocation under this Article:

"THIS REVOCATION MUST BE RECORDED BEFORE THE DEATH OF THE GRANTOR(S) OR IT WILL NOT BE EFFECTIVE. THIS REVOCATION IS ONLY EFFECTIVE AS TO THE INTERESTS IN THE PROPERTY OF THE GRANTORS WHO SIGN THIS REVOCATION. A DEED OF JOINT OWNERS IS ONLY REVOKED IF REVOKED BY ALL JOINT OWNERS.

REVOCATION OF TRANSFER ON DEATH DEED

THIS REVOCATION OF TRANSFER ON DEATH DEED, dated this \_\_\_\_\_ day of \_\_\_\_\_, is made by [TRANSFEROR(S)] (the Grantor(s)), whose address is \_\_\_\_\_.

This Revocation of Transfer on Death Deed is made pursuant to the provisions of the Uniform Real Property Transfer on Death Act, N.C.G.S. § 31-65, et seq.

In accordance with the provisions of the Uniform Real Property Transfer on Death Act, I revoke all my previous transfers of the below described property by transfer on death deed:

[INSERT LEGAL DESCRIPTION]

Dated \_\_\_\_\_.

(Seal)

Signature

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, personally appeared before me, the said named \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires \_\_\_\_\_.

(Signature of Notary Public)

Notary Public (Official Seal)"

**"§ 31-82. Relation to Electronic Signatures in Global and National Commerce Act.**

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

**SECTION 2.1.** G.S. 31A-1(b) reads as rewritten:

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

- (1) All rights of intestate succession in the estate of the other spouse;
- (2) All right to claim or succeed to a homestead in the real property of the other spouse;
- (3) All right to petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;
- (4) All right to any year's allowance in the personal property of the other spouse;
- (5) All right to administer the estate of the other spouse; and
- (6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage.
- (7) Any right to property as a transferor or designated beneficiary of a valid transfer on death deed executed pursuant to Article 11 of Chapter 31 of the General Statutes."

**SECTION 2.2.** G.S. 31A-4 reads as rewritten:

**"§ 31A-4. Slayer barred from testate or intestate succession and other rights.**

The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

- (1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession or by common law or statutory right as surviving spouse of the decedent.
- (2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate succession and the slayer has living issue who would have been entitled to an interest in the property if the slayer had predeceased the decedent, the property shall be distributed to such issue, per stirpes. If the slayer does not have such issue, then the property shall be distributed as though the slayer had predeceased the decedent.
- (3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, the devolution of such property shall be governed by G.S. 31-42(a) notwithstanding the fact the slayer has not actually died before the decedent.
- (4) Where the decedent has executed a valid transfer on death deed pursuant to Article 11 of Chapter 31 of the General Statutes and has named the slayer as a designated beneficiary, the property shall pass to an alternate beneficiary or shall lapse, as governed by the executed deed."

**SECTION 2.3.** G.S. 31B-1(a) reads as rewritten:

**"§ 31B-1. Right to renounce succession.**

(a) A person who succeeds to a property interest as:

- ...
- (11) Designated beneficiary under a valid transfer on death deed executed pursuant to Article 11 of Chapter 31 of the General Statutes;

may renounce at anytime, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The

1 renunciation shall be deemed to include the entire interest of the person whose property or interest  
2 is being renounced unless otherwise specifically limited. A person may renounce any interest in  
3 or power over property, including a power of appointment, even if its creator imposed a  
4 spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to  
5 renounce. Notwithstanding the foregoing, there shall be no right of partial renunciation if the  
6 instrument creating the interest expressly so provides."

7 **SECTION 3.** This act is effective when it becomes law and applies to a transfer on  
8 death deed made before, on, or after the effective date of this act by a transferor dying on or after  
9 the effective date of this act. The Revisor of Statutes shall cause to be printed, as annotations to  
10 the published General Statutes, all relevant portions of the Official Comments to the Uniform  
11 Real Property Transfer on Death Act (2009) and all explanatory comments of the drafters of this  
12 act as the Revisor may deem appropriate.