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S.B. No. 462

A BILL TO BE ENTITLED

AN ACT

relating to authorizing a revocable deed that transfers real property at the transferor's death.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 2, Estates Code, is amended by adding Chapter 114 to read as follows:

CHAPTER 114. TRANSFER ON DEATH DEED

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 114.001. SHORT TITLE. This chapter may be cited as the Texas Real Property Transfer on Death Act.

Sec. 114.002. DEFINITIONS. (a) In this chapter:

(1) "Beneficiary" means a person who receives real property under a transfer on death deed.

(2) "Designated beneficiary" means a person designated to receive real property in a transfer on death deed.

(3) "Joint owner with right of survivorship" or "joint owner" means an individual who owns real property concurrently with one or more other individuals with a right of survivorship. The term does not include a tenant in common or an owner of community property with or without a right of survivorship.

(4) "Person" has the meaning assigned by Section 311.005, Government Code.

(5) "Real property" means an interest in real property located in this state.

1 (6) "Transfer on death deed" means a deed authorized
2 under this chapter.

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

5 (b) In this chapter, the terms "cancel" and "revoke" are
6 synonymous.

7 Sec. 114.003. APPLICABILITY. This chapter applies to a
8 transfer on death deed made before, on, or after September 1, 2015,
9 by a transferor who dies on or after September 1, 2015.

10 Sec. 114.004. NONEXCLUSIVITY. This chapter does not affect
11 any method of transferring real property otherwise permitted under
12 the laws of this state.

13 Sec. 114.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
14 In applying and construing this chapter, consideration must be
15 given to the need to promote uniformity of the law with respect to
16 the subject matter of this chapter among states that enact a law
17 similar to this chapter.

18 Sec. 114.006. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
19 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
20 supersedes the federal Electronic Signatures in Global and National
21 Commerce Act (15 U.S.C. Section 7001 et seq.), except that this
22 chapter does not modify, limit, or supersede Section 101(c) of that
23 Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of
24 any of the notices described in Section 103(b) of that Act (15
25 U.S.C. Section 7003(b)).

1 SUBCHAPTER B. AUTHORIZATION, EXECUTION, AND REVOCATION OF TRANSFER
2 ON DEATH DEED

3 Sec. 114.051. TRANSFER ON DEATH DEED AUTHORIZED. An
4 individual may transfer the individual's interest in real property
5 to one or more beneficiaries effective at the transferor's death by
6 a transfer on death deed.

7 Sec. 114.052. TRANSFER ON DEATH DEED REVOCABLE. A transfer
8 on death deed is revocable regardless of whether the deed or another
9 instrument contains a contrary provision.

10 Sec. 114.053. TRANSFER ON DEATH DEED NONTESTAMENTARY. A
11 transfer on death deed is a nontestamentary instrument.

12 Sec. 114.054. CAPACITY OF TRANSFEROR. The capacity
13 required to make or revoke a transfer on death deed is the same as
14 the capacity required to make a contract.

15 Sec. 114.055. REQUIREMENTS. To be effective, a transfer on
16 death deed must:

17 (1) except as otherwise provided in Subdivision (2),
18 contain the essential elements and formalities of a recordable
19 deed;

20 (2) state that the transfer of an interest in real
21 property to the designated beneficiary is to occur at the
22 transferor's death; and

23 (3) be recorded before the transferor's death in the
24 deed records in the county clerk's office of the county where the
25 real property is located.

26 Sec. 114.056. NOTICE, DELIVERY, ACCEPTANCE, OR
27 CONSIDERATION NOT REQUIRED. A transfer on death deed is effective

1 without:

2 (1) notice or delivery to or acceptance by the
3 designated beneficiary during the transferor's life; or

4 (2) consideration.

5 Sec. 114.057. REVOCATION BY CERTAIN INSTRUMENTS; EFFECT OF
6 WILL OR MARRIAGE DISSOLUTION. (a) Subject to Subsections (d) and
7 (e), an instrument is effective to revoke a recorded transfer on
8 death deed, or any part of it, if the instrument:

9 (1) is one of the following:

10 (A) a subsequent transfer on death deed that
11 revokes the preceding transfer on death deed or part of the deed
12 expressly or by inconsistency; or

13 (B) except as provided by Subsection (b), an
14 instrument of revocation that expressly revokes the transfer on
15 death deed or part of the deed;

16 (2) is acknowledged by the transferor after the
17 acknowledgment of the deed being revoked; and

18 (3) is recorded before the transferor's death in the
19 deed records in the county clerk's office of the county where the
20 deed being revoked is recorded.

21 (b) A will may not revoke or supersede a transfer on death
22 deed.

23 (c) If a marriage between the transferor and a designated
24 beneficiary is dissolved after a transfer on death deed is
25 recorded, a final judgment of the court dissolving the marriage
26 operates to revoke the transfer on death deed as to that designated
27 beneficiary if notice of the judgment is recorded before the

1 transferor's death in the deed records in the county clerk's office
2 of the county where the deed is recorded, notwithstanding Section
3 111.052.

4 (d) If a transfer on death deed is made by more than one
5 transferor, revocation by a transferor does not affect the deed as
6 to the interest of another transferor who does not make that
7 revocation.

8 (e) A transfer on death deed made by joint owners with right
9 of survivorship is revoked only if it is revoked by all of the
10 living joint owners.

11 (f) This section does not limit the effect of an inter vivos
12 transfer of the real property.

13 SUBCHAPTER C. EFFECT OF TRANSFER ON DEATH DEED; LIABILITY OF
14 TRANSFERRED PROPERTY FOR CREDITORS' CLAIMS

15 Sec. 114.101. EFFECT OF TRANSFER ON DEATH DEED DURING
16 TRANSFEROR'S LIFE. During a transferor's life, a transfer on death
17 deed does not:

18 (1) affect an interest or right of the transferor or
19 any other owner, including:

20 (A) the right to transfer or encumber the real
21 property that is the subject of the deed;

22 (B) homestead rights in the real property, if
23 applicable; and

24 (C) ad valorem tax exemptions, including
25 exemptions for residence homestead, persons 65 years of age or
26 older, persons with disabilities, and veterans;

27 (2) affect an interest or right of a transferee of the

1 real property that is the subject of the deed, even if the
2 transferee has actual or constructive notice of the deed;

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

6 (4) affect the transferor's or designated
7 beneficiary's eligibility for any form of public assistance,
8 subject to applicable federal law;

9 (5) constitute a transfer triggering a "due on sale"
10 or similar clause;

11 (6) invoke statutory real estate notice or disclosure
12 requirements;

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

15 (8) subject the real property to claims or process of a
16 creditor of the designated beneficiary.

17 Sec. 114.102. TRANSFER ON DEATH DEED VOID ON CONVEYANCE OF
18 PROPERTY SUBJECT OF DEED. If a transferor during the transferor's
19 lifetime conveys to any person all of the transferor's interest in
20 real property that is the subject of a transfer on death deed, the
21 transfer on death deed is void as to that interest in real property.

22 Sec. 114.103. EFFECT OF TRANSFER ON DEATH DEED AT
23 TRANSFEROR'S DEATH. (a) Except as otherwise provided in the
24 transfer on death deed, this section, or any other statute or the
25 common law of this state governing a decedent's estate, on the death
26 of the transferor, the following rules apply to an interest in real
27 property that is the subject of a transfer on death deed and owned

1 by the transferor at death:

2 (1) if the designated beneficiary survives the
3 transferor by 120 hours, the interest in the real property is
4 transferred to the designated beneficiary in accordance with the
5 deed;

6 (2) the interest of a designated beneficiary that
7 fails to survive the transferor by 120 hours lapses,
8 notwithstanding Section 111.052;

9 (3) subject to Subdivision (4), concurrent interests
10 are transferred to the beneficiaries in equal and undivided shares
11 with no right of survivorship; and

12 (4) notwithstanding Subdivision (2), if the
13 transferor has identified two or more designated beneficiaries to
14 receive concurrent interests in the real property, the share of a
15 designated beneficiary who predeceases the transferor lapses and is
16 subject to and passes in accordance with Subchapter D, Chapter 255,
17 as if the transfer on death were a devise made in a will.

18 (b) If a transferor is a joint owner with right of
19 survivorship who is survived by one or more other joint owners, the
20 real property that is the subject of the transfer on death deed
21 belongs to the surviving joint owner or owners. If a transferor is
22 a joint owner with right of survivorship who is the last surviving
23 joint owner, the transfer on death deed is effective.

24 (c) If a transfer on death deed is made by two or more
25 transferors who are joint owners with right of survivorship, the
26 last surviving joint owner may revoke the transfer on death deed
27 subject to Section 114.057.

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

4 Sec. 114.104. TRANSFER ON DEATH DEED PROPERTY SUBJECT TO
5 LIENS AND ENCUMBRANCES AT TRANSFEROR'S DEATH; CREDITORS' CLAIMS.

6 (a) Subject to Section 13.001, Property Code, a beneficiary takes
7 the real property subject to all conveyances, encumbrances,
8 assignments, contracts, mortgages, liens, and other interests to
9 which the real property is subject at the transferor's death. For
10 purposes of this subsection and Section 13.001, Property Code, the
11 recording of the transfer on death deed is considered to have
12 occurred at the transferor's death.

13 (b) If a personal representative has been appointed for the
14 transferor's estate, an administration of the estate has been
15 opened, and the real property transferring under a transfer on
16 death deed is subject to a lien or security interest, including a
17 deed of trust or mortgage, the personal representative shall give
18 notice to the creditor of the transferor as the personal
19 representative would any other secured creditor under Section
20 308.053. The creditor shall then make an election under Section
21 355.151 in the period prescribed by Section 355.152 to have the
22 claim treated as a matured secured claim or a preferred debt and
23 lien claim, and the claim is subject to the claims procedures
24 prescribed by this section.

25 (c) If the secured creditor elects to have the claim treated
26 as a preferred debt and lien claim, Sections 355.154 and 355.155
27 apply as if the transfer on death were a devise made in a will, and

1 the creditor may not pursue any other claims or remedies for any
2 deficiency against the transferor's estate.

3 (d) If the secured creditor elects to have the claim treated
4 as a matured secured claim, Section 355.153 applies as if the
5 transfer on death were a devise made in a will, and the claim is
6 subject to the procedural provisions of this title governing
7 creditor claims.

8 Sec. 114.105. DISCLAIMER. A designated beneficiary may
9 disclaim all or part of the designated beneficiary's interest as
10 provided by Chapter 122.

11 Sec. 114.106. LIABILITY FOR CREDITOR CLAIMS AND FAMILY
12 ALLOWANCES. (a) To the extent the transferor's estate is
13 insufficient to satisfy a claim against the estate, expenses of
14 administration, any estate tax owed by the estate, or a family
15 allowance to a surviving spouse, minor children, or incapacitated
16 adult children, the personal representative may enforce that
17 liability against real property transferred at the transferor's
18 death by a transfer on death deed to the same extent the personal
19 representative could enforce that liability if the real property
20 were part of the probate estate.

21 (b) If a personal representative does not commence a
22 proceeding to enforce a liability under Subsection (a) on or before
23 the 90th day after the date the representative receives a demand for
24 payment, a proceeding to enforce the liability may be brought by a
25 creditor, a distributee of the estate, a surviving spouse of the
26 decedent, a guardian or other appropriate person on behalf of a
27 minor child or adult incapacitated child of the decedent, or any

1 taxing authority.

2 (c) If more than one real property interest is transferred
3 by one or more transfer on death deeds or if there are other
4 nonprobate assets of the transferor that may be liable for the
5 claims, expenses, and other payments specified in Subsection (a),
6 the liability for those claims, expenses, and other payments may be
7 apportioned among those real property interests and other assets in
8 proportion to their net values at the transferor's death.

9 (d) A proceeding to enforce liability under this section
10 must be commenced not later than the second anniversary of the
11 transferor's death, except for any rights arising under Section
12 114.104(d).

13 (e) In connection with any proceeding brought under this
14 section, a court may award costs and reasonable and necessary
15 attorney's fees in amounts the court considers equitable and just.

16 SUBCHAPTER D. FORMS FOR TRANSFER ON DEATH DEED

17 Sec. 114.151. OPTIONAL FORM FOR TRANSFER ON DEATH DEED. The
18 following form may be used to create a transfer on death deed.

19 REVOCABLE TRANSFER ON DEATH DEED

20 NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU
21 MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS
22 INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS:
23 YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

24 IMPORTANT NOTICE TO OWNER: You should carefully read all the
25 information included in the instructions to this form. You may want
26 to consult a lawyer before using this form.

27 MUST RECORD DEED: Before your death, this deed must be recorded

1 with the county clerk where the property is located, or it will not
2 be effective.

3 1. Owner (Transferor) Making this Deed:

4 _____
5 Printed name _____ Mailing address

6 2. Legal Description of the Property:

7 _____

8 3. Address of the Property (if any) (include county):

9 _____

10 4. Primary Beneficiary (Transferee) or Beneficiaries
11 (Transferees)

12 I designate the following beneficiary or beneficiaries, if
13 the beneficiary survives me:

14 _____
15 Printed name _____ Mailing address

16 5. Alternate Beneficiary or Beneficiaries (Optional)

17 If no primary beneficiary survives me, I designate the
18 following alternate beneficiary or beneficiaries:

19 _____
20 Printed name _____ Mailing address

21 6. Transfer on Death

22 At my death, I convey to the primary beneficiary or
23 beneficiaries my interest in the property, to have and hold
24 forever. If at my death I am not survived by any primary
25 beneficiary, I grant and convey to the alternate beneficiary or
26 beneficiaries, if designated, my interest in the property, to have
27 and hold forever. If the primary and alternate beneficiaries do not

1 survive me, this transfer on death deed shall be deemed canceled by
2 me.

3 7. Signature of Owner Making this Deed:

4 _____

5 Signature

_____ Date

6 BELOW LINE FOR NOTARY ONLY

7 _____

8 Acknowledgement

9 STATE OF _____

10 COUNTY OF _____

11 This instrument was acknowledged before me on the _____ day of
12 _____, 20____,

13 by _____.

14 _____

15 Notary Public, State of _____

16 After recording, return to:

17 (insert name and mailing address)

18 _____

19 _____

20 INSTRUCTIONS FOR TRANSFER ON DEATH DEED

21 DO NOT RECORD THESE INSTRUCTIONS

22 Instructions for Completing the Form

23 1. Owner (Transferor) Making this Deed: Enter your first, middle
24 (if any), and last name here, along with your mailing address.

25 2. Legal Description of the Property: Enter the formal legal
26 description of the property. This information is different from
27 the mailing and physical address for the property and is necessary

1 to complete the form. To find this information, look on the deed
2 you received when you became an owner of the property. This
3 information may also be available in the office of the county clerk
4 for the county where the property is located. Do NOT use your tax
5 bill to find this information. If you are not absolutely sure,
6 consult a lawyer.

7 3. Address of the Property: Enter the physical address of the
8 property.

9 4. Primary Beneficiary or Beneficiaries: Enter the first and last
10 name of each person you want to get the property when you die. If
11 you are married and want your spouse to get the property when you
12 die, enter your spouse's first and last name (even if you and your
13 spouse own the property together).

14 5. Alternate Beneficiary or Beneficiaries: Enter the first and
15 last name of each person you want to get the property if no primary
16 beneficiary survives you.

17 6. Transfer on Death: No action needed.

18 7. Signature of Owner: Do not sign your name or enter the date
19 until you are before a notary.

20 8. Acknowledgement: This deed must be signed before a notary. The
21 notary will fill out this section of the deed.

22 Sec. 114.152. OPTIONAL FORM OF REVOCATION. The following
23 form may be used to create an instrument of revocation under this
24 chapter.

25 CANCELLATION OF TRANSFER ON DEATH DEED

26 IMPORTANT NOTICE TO OWNER: You should carefully read all the
27 information included in the instructions to this form. You may want

1 to consult a lawyer before using this form.

2 MUST RECORD FORM: Before your death, this cancellation form must be
3 recorded with the county clerk where the property is located, or it
4 will not be effective. This cancellation is effective only as to
5 the interests in the property of owners who sign this cancellation
6 form.

7 1. Owner (Transferor) Making this Cancellation:

8 _____
9 Printed name Mailing address

10 2. Legal Description of the Property:

11 _____

12 3. Address of the Property (if any) (include county):

13 _____

14 4. Cancellation

15 I cancel all my previous transfers of this property by
16 transfer on death deed.

17 5. Signature of Owner (Transferor) Making this Cancellation:

18 _____
19 Signature Date

20 BELOW LINE FOR NOTARY ONLY

21 _____

22 Acknowledgement

23 STATE OF _____

24 COUNTY OF _____

25 This instrument was acknowledged before me on the ___ day of
26 _____, 20____,

27 by _____.

1 _____

2 Notary Public, State of _____

3 After recording, return to:

4 (insert name and mailing address)

5 _____

6 _____

7 INSTRUCTIONS FOR CANCELING A TRANSFER ON DEATH (TOD) DEED

8 DO NOT RECORD THESE INSTRUCTIONS

9 Instructions for Completing the Form

10 1. Owner (Transferor) Making this Cancellation: Enter your first,
11 middle (if any), and last name here, along with your mailing
12 address.

13 2. Legal Description of the Property: Enter the formal legal
14 description of the property. This information is different from
15 the mailing and physical address for the property and is necessary
16 to complete the form. To find this information, look on the deed
17 you received when you became an owner of the property. This
18 information may also be available in the office of the county clerk
19 for the county where the property is located. Do NOT use your tax
20 bill to find this information. If you are not absolutely sure,
21 consult a lawyer.

22 3. Address of the Property: Enter the physical address of the
23 property.

24 4. Cancellation: No action needed.

25 5. Signature of Owner: Do not sign your name or enter the date
26 until you are before a notary.

27 6. Acknowledgement: This cancellation form must be signed before

1 a notary. The notary will fill out this section of the form.

2 SECTION 2. Section 22.027(b), Estates Code, is amended to
3 read as follows:

4 (b) Except as otherwise provided by this code, the ~~[The]~~
5 definition of "person" assigned by Section 311.005, Government
6 Code, does not apply to any provision in this code.

7 SECTION 3. Section 122.001(1), Estates Code, is amended to
8 read as follows:

9 (1) "Beneficiary" includes a person who would have
10 been entitled, if the person had not made a disclaimer, to receive
11 property as a result of the death of another person:

12 (A) by inheritance;

13 (B) under a will;

14 (C) by an agreement between spouses for community
15 property with a right of survivorship;

16 (D) by a joint tenancy with a right of
17 survivorship;

18 (E) by a survivorship agreement, account, or
19 interest in which the interest of the decedent passes to a surviving
20 beneficiary;

21 (F) by an insurance, annuity, endowment,
22 employment, deferred compensation, or other contract or
23 arrangement; ~~[or]~~

24 (G) under a pension, profit sharing, thrift,
25 stock bonus, life insurance, survivor income, incentive, or other
26 plan or program providing retirement, welfare, or fringe benefits
27 with respect to an employee or a self-employed individual; or

1 (H) by a transfer on death deed.

2 SECTION 4. This Act takes effect September 1, 2015.