

The Real Property, Probate and Trust Law Section  
Executive Council Meeting  
The Ritz-Carlton, Amelia Island, Florida  
Saturday, February 8, 2025

**CORRECTED AGENDA MATERIALS**

**(Pages 163-310 of the original Agenda are slightly out of order. Please use these materials instead.)**

X. **General Standing Committees Report** – *Wm. Cary Wright, Chair-Elect*

*Information Items:*

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2. **Ad Hoc Transfer On Death Instrument (“TODI” f/k/a RTODD) Committee** -  
*Christopher W. Smart, Alan S. “Steve” Kotler, Co-Chairs; Rebecca L. A. Wood, Vice Chair*

The purpose of the proposed Florida Real Property Transfer on Death Act (Fla. Stat. § 689.30) is to codify a statutory mechanism and process that will allow parties to transfer real property upon the death of the owner of the real property without having to go through probate.

# WHITE PAPER

## FLORIDA REAL PROPERTY TRANSFER ON DEATH ACT (FRPTODA)

### I. SUMMARY

The Uniform Law Commission enacted the Uniform Property Transfer on Death Act in 1989. The Uniform Law Commission summarized the effect of the proposed law as follows:

The Uniform Real Property Transfer on Death Act (URPTODA) provides a simple process for the non-probate transfer of real estate. The act allows an owner of real property to designate a beneficiary to automatically receive the property upon the owner's death without a probate procedure. The property passes by means of a recorded transfer on death (TOD) deed. During the owner's lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer the or encumber the property or revoke the deed....<sup>1</sup>

According to a survey by Dr. Gary W. Beyer and also the Uniform Law Commission, 31 states have adopted some form of TOD deed. Of those 21 have adopted the URPTODA<sup>2</sup> and the Uniform Act was introduced in 4 more states. The proposed legislation is not the uniform act but rather is based upon the legal theories set forth in the URPTODA, with modifications based upon current Florida law, including probate and real estate practices and procedures. As proposed, the legislation is not intended to change the rights and remedies of the owner's creditors during the owner's lifetime under current Florida law. However, there is some controversy as whether the bill as proposed changes the rights and remedies of the owner's creditors after death. The proposed legislation clarifies the status of title to the real property during the owner's lifetime and defines the rights of beneficiaries and creditors at death.

### II. CURRENT SITUATION

#### A. Common Law Recognition of Transfers with Reserved Rights

The concept of a transfer on death beneficiary designation for real property is rooted in real property law. One form of these transfers is known in Florida as a "lady bird deed" or "enhanced life estate deed." A publication by the Attorneys' Title Insurance Fund, Inc. summarized the history of enhanced life estate deeds:

Division of the fee interest in real property into a life estate and a remainder interest has a long history dating back to English common law. As a tool for estate planning several drawbacks are present. The life tenant may not convey or mortgage the

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<sup>1</sup> <https://www.uniformlaws.org/committees/community-home?CommunityKey=a4be2b9b-5129-448a-a761-a5503b37d884>, last visited July 12, 2024.

<sup>2</sup> [https://www.actec.org/assets/1/6/Transfer\\_on\\_Death\\_Deeds\\_Survey.pdf?hssc=1](https://www.actec.org/assets/1/6/Transfer_on_Death_Deeds_Survey.pdf?hssc=1), as of November 9, 2023.

property without joinder of the remainderman, the property will be subject to creditors of the remainderman and the life tenant is responsible to the remainderman for acts which would devalue the remainder interest. It is possible to address the first concern by including, at the time of creation, the authority to divest the remainder interest. Description of such enhanced life estates as “Lady Bird deeds” stems from published examples utilizing Lady Bird Johnson as a party.<sup>3</sup>

Florida,<sup>4</sup> along with Michigan,<sup>5</sup> Texas,<sup>6</sup> Vermont,<sup>7</sup> and West Virginia, recognize “enhanced life estate deeds” under common law. The owner of real property can reserve a life estate with full control over the property, including the remainder interest. The remainder interest can be conveyed to another person, but remains subject to the right to divest the remainder interest. The Fund Concept has described the resulting remainder interest as a “vested remainder subject to divestment.”<sup>8</sup>

Vested remainders may be divided into three categories. They may be (1) indefeasible vested remainders; (2) vested remainders subject to open, such as a transfer to a class; or (3) vested remainders subject to complete defeasance. See 2 Boyer, *Florida Real Estate Transactions*, Sec. 22.04; and 1 Simes and Smith, *The Law of Future Interests* (2d ed. 2001), Sec. 113. The interest created by a Lady Bird deed would appear to be a vested remainder subject to complete defeasance, also referred to as divestment.

Language in the deed may include powers to:

convey the property to another person, trust, or entity other than the transfer on death beneficiary, with or without consideration, and without joinder of the transfer on death beneficiary;

mortgage or encumber the property without the joinder of the transfer on death

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<sup>3</sup> Ted Connor, Fund Senior Underwriting Counsel, *Enhanced life estate deeds – an Underwriting Update*, p. 149, [The Fund Concept](#), November 2002. Another summary of Lady Bird Deeds can be found in an article by Randy Gilbert, *Giving the Bird. Lady-Bird Deeds*, <https://ftic.net/2021/06/01/giving-the-bird-lady-bird-deeds/>, last visited December 10, 2022.

<sup>4</sup> *Oglesby v. Lee*, 73 So. 840 (Fla. 1917).

<sup>5</sup> *In re Tobias Estates*, unpublished opinion per curiam of the Court of Appeals, issued May 10, 2012 (Docket No. 304852), p. 5, 2012 WL 1648847...“ *Bill & Dena Brown Trust v. Garcia (In re Brown Estate)*, 312 Mich. App. 684, 880 N.W.2d 269 (Mich. App. 2015).

<sup>6</sup> *In re Estate of Maggie Williams Turner*, No. 06-17-00071-CV (Tex. App.–Texarkana 2017).

<sup>7</sup> *Cook v. Coburn*, 97 A. 3d 892, 2014 VT 45 (Vt. 2014). Vermont has codified enhanced life estate deeds with the passage of House Bill 837 in 2020.

<sup>8</sup> Ted Connor, Fund Senior Underwriting Counsel, *Enhanced life estate deeds – an Underwriting Update*, p. 149, [The Fund Concept](#), November 2002. Another summary of Lady Bird Deeds can be found in an article by Randy Gilbert, *Giving the Bird. Lady-Bird Deeds*, <https://ftic.net/2021/06/01/giving-the-bird-lady-bird-deeds/>, last visited December 10, 2022.

beneficiary;

change the transfer on death beneficiary; or

revoke the designation of a transfer on death beneficiary.

Because this method of transferring ownership at death involves an interest in real property, a deed is used to create the interests of the transfer on death beneficiary. The language in the deed is crucial. There is currently no direct statutory guidance on the creation and effect of enhanced life estate deeds despite their prevalent use by Florida landowners.

## **B. Uncertainty Resulting from Enhanced Life Estate Deeds**

### **1. The Owner's Retained Rights**

Because enhanced life estate deeds reserve specific rights based upon the language in the deed, the average Floridian may not understand the limitations created by the language in the deed. These types of deeds are viewed much like transfer on death beneficiary designations for bank accounts<sup>9</sup>, the registration of securities<sup>10</sup>, and life insurance policies, though technically and legally they are not the same. Professor John F. Langbein examined the shift away from statutory-based probate system to regulate the distribution of wealth upon the owner's death to the use of beneficiary designations, which is largely administered without supervision by the courts. Because legal professionals frequently are not involved in the creation of the beneficiary designations, and the courts are not automatically involved in the distribution process after the owner's death, important legal issues are not considered.<sup>11</sup>

### **2. The Transfer on Death Beneficiary's Interest**

Applying the vested-subject-to-divestment approach to the remainder interest, the remainderman has a vested remainder interest so judgment liens against the remainderman might *or might not* attach during the lifetime of the grantor. Since there is no statutory authority, the effect of these deeds may be subject to court interpretation depending on the form used and facts surrounding the conveyance which adds unnecessary ambiguity to the rights of grantor and grantees, as well as their respective creditors, when using these transactions. However, it should be noted there is no Florida case law regarding the use of enhanced life estate deeds other than *Oglesby* (see footnote 4).

### **3. Retained Right to Revoke the Beneficiary Designation**

The owner signing a deed with retained rights may be unclear on his or her right to revoke or divest the remainder interest. With a transfer on death bank account, the owner retains the right to write checks and make withdrawals privately, without the formalities of an instrument that must be recorded in the official land records. The lack of statutory guidance on the rights of the grantor in these transactions and the form of the deed creates confusion in a process that can be one of the

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<sup>9</sup> §655.82, Fla. Stat., last amended by Laws of Florida, Ch. 2001-243.

<sup>10</sup> §711.506, Fla. Stat.

<sup>11</sup> Langbein, John H., *Because Property Became Contract: Understanding the American Nonprobate Revolution* (March 23, 2020). Available at SSRN: <https://ssrn.com/abstract=3561181>.

most important transactions undertaken in an estate planning context.

#### **4. Transfer of Ownership After Death Without Probate**

Property passing outside the deceased owner's probate estate are not subject to Florida probate administration. A decedent's probate estate consists of "the property of a decedent that is the subject of administration."<sup>12</sup> Assets that transfer a decedent's property at death are not subject to administration in a probate proceeding with two limited exceptions:

- §733.707(3) provides: (3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (e), either alone or in conjunction with any other person, is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them as provided in ss. 733.607(2) and 736.05053
- §732.2035 subjects several categories of non-probate transfers to the surviving spouse's elective share.

The proposed statute includes amendments to the elective share statutes to ensure that transfer on death instruments are included in the elective share treated similarly to transfer on death accounts. While other statutory provisions of Florida law do not specifically address the claims of a decedent's creditors as to non-probate transfers, the proposed statute provides that the beneficiary of the real property is personally liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate and revocable trust are insufficient to pay them.

##### **a. Transfer on Death Accounts - § 655.082**

The use of the term "transfer on death" describes an easy-to-understand option for the public to plan for their heirs while avoiding probate. It is patterned after Florida's banking laws. The 2001 Senate Staff Analysis for CS/SB 1260 by the Finance and Taxation Committee dated March 20, 2001, examined the purpose of transfer on death accounts, and recognized that "in-trust-for" accounts, as permitted under §655.081, should be treated as transfer on death accounts. Section 655.081 was repealed in 2001.

Currently, the Florida Statutes contain two provisions which govern the disposition of certain deposits upon the death of the depositor. These statutory provisions include sections dealing separately with deposits in trust and pay-on-death accounts.

Section 655.81, F.S. (deposits in trust), provides that deposits made by any person describing himself or herself as a trustee, without further written notice of the existence and terms of a legally valid trust, may be paid by the institution to the person for whom the deposit was stated to have been made, in the event the person described as the trustee dies. The section further provides that in the case of a credit union, deposits may be held in the name of a member in trust for a beneficiary. That beneficiary, however, unless a member of the credit union in his or her own right,

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<sup>12</sup> §731.201(14), Fla. Stat.

will not incur the duties or privileges of membership.

In addition, s. 655.82, F.S. (pay-on-death accounts), governs the disposition of accounts which are designated “pay-on-death.” That section defines a “pay-on-death designation” as the designation of:

1. A beneficiary in an account payable on request to one party during the party’s lifetime and on the party’s death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

2. A beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

The section further defines a “beneficiary” as a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as a trustee. Since s. 655.82(3)(b), F.S., provides that “...in an account with a pay-on-death designation, ... on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries,” deposits in trust contemplated by s. 655.81, F.S., also fall within the operation of s. 655.82, F.S., dealing with pay-on-death accounts, in that deposits in trust must be paid to surviving beneficiaries upon the death of a named trustee.

According to proponents of the bill and the Department of Banking and Finance, deposits in trust generate documentary and record keeping costs associated with the application of probate laws. In contrast, deposits in pay-on-death accounts pass directly to a beneficiary by operation of law, and like deposits passing to a surviving owner of a joint account with right of survivorship, are *not subject to probate*. Furthermore, both the department and bill proponents maintain that operation of the statutory provision dealing with pay-on-death accounts, which the Legislature passed in 1994, was meant to include deposits in trust.<sup>13</sup>

[Emphasis added]

**b. Former Section 655.81 – In Trust for Accounts (Totten Trusts)**

The 2001 Senate Staff Analysis Report for the legislation that repealed §655.81 does not mention the word “creditor.” The legislation did not include provisions to make transfer on death accounts subject to the normal probate or trust procedures. Ownership of a transfer on death account passes by operation of law to the beneficiary designated on the account. The limited decisions addressing transfer on death accounts being subject to probate are all predicated on a finding that the account depositor revoked the account.

**c. The Florida Uniform Transfer on Death Security Registration Act - §711.509**

The Florida Uniform Transfer on Death Security Registration Act permits the nonprobate

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<sup>13</sup> Finance and Taxation Committee Staff Analysis and Economic Impact Statement, CS/SB 1260, p. 3, March 20, 2021.

transfer of securities upon the owner's death.

711.509 Nontestamentary transfer on death.—

(1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and ss. 711.50-711.512 and is not testamentary.

(2) Sections 711.50-711.512 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

History.—s. 3, ch. 94-216.

**d. Tenancy by the Entireties; Joint Tenancy with Rights of Survivorship - §655.79**

Upon the death of one joint owner, ownership of a bank account or certificate of deposit vests in the surviving owner.

**e. Motor Vehicles - §319.22**

Motor vehicles titled in the names of two or more owners with “or” between the names creates a joint tenancy. Upon the death of one owner, “the interest of the decedent shall pass to the survivor as though title or interest in the vehicle or mobile home was held in joint tenancy.”<sup>14</sup>

**f. The Uniform Real Property Transfer on Death Act in Other States**

Some state legislatures have included provisions in their enacted version of the Uniform Real Property Transfer on Death Act to address creditor claims. Generally, those states subject the real property described in a transfer on death deed to the claims of creditors only when the probate assets are insufficient to satisfy timely-filed claims, administration expenses, and statutory allowances in an active probate proceeding.<sup>15</sup> Some states do not provide for the enforcement of probate administration expenses, probate claims, or statutory allowances against transfer on death property.<sup>16</sup> A few states treat the repayment of Medicaid benefits for the owner as a lien on the property.<sup>17</sup>

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<sup>14</sup> §319.22(2)a., Fla. Stat.

<sup>15</sup> *See, for example:* Section 15, Uniform Real Property Transfer on Death Act, the Uniform Commission on State Laws; § 13.48. 140 , Alaska Statutes; §§5600-5696, California Code; §§ 15-15-401 – 415, Colorado Revised Statutes; Hawaii Rev. Stat. § 527-1; Ind. Code §32-17-12-2; §32-17-14-29; §6-416, Main Revised Statutes; §461.025, Revised Statutes of Missouri; §72-6-414, Montana Code Annotated; §76-3417 Nebraska Statutes; Chapter 45, Article 6, Nevada Revised Statutes; 29A-6-420 through 29A-6-425, South Dakota Code; 64.80.120, Revised Code of Washington; § 19-604.01, Code of the District of Columbia.

<sup>16</sup> §33-405, Arizona Revised Statutes; Mississippi Code §91-27-29; Title 58, Sections 1253 - 1258, Oklahoma Statutes; Article 12, Uniform Real Property Transfer on Death Act, West Virginia Code; §705.10, Wisconsin Statutes; §2-18-103, Wyoming Statutes.

<sup>17</sup> §18-12-608, Arkansas Code; §59-3504, Kansas Statutes; §507.071, Minnesota Statutes.

**g. Cases Applying the Law of Trusts**

The limited decisions addressing transfer on death accounts being subject to probate are all predicated on a finding that the account depositor revoked the account. There appear to be no Florida cases holding that transfer on death accounts are subject to creditor claims. One unreported decision mentioned the insolvency of the decedent's estate as a revocation which, in turn, brought the transfer on death account into the decedent's estate, but the court found other grounds for the ultimate decision.<sup>18</sup>

**i. *Kearney v. Unibay Co. – Totten Trusts are Subject to the Claims of the Depositor's Creditors in a Garnishment Action Against the Depositor***

Some practitioners assert that the decision in *Kearney v. Unibay Co.*<sup>19</sup> is authority to subject transfer on death accounts to the claims of the deceased owner's creditors. *Kearney* is not binding authority for subjecting transfer on death accounts to probate administration.

- In a garnishment proceeding against him, Mr. Kearney claimed that two certificates of deposit were "held in trust for the benefit of Mary L. Wormley." He further claimed that he was not the owner of the certificates of Deposit. He testified that the funds on deposit belonged to Ms. Wormley and that he deposited the funds for her benefit.
- Mr. Kearney claimed that the funds were subject to the Totten trust doctrine established in *Ginsberg v. Goldstein*, 404 So. 2d 1098, 1100 (Fla. 3d DCA 1981).
- The court concluded that because Mr. Kearney retained complete control of the funds, the court concluded:

"Since the depositor has complete control over the deposit during his lifetime, however, he is treated as the owner insofar as his creditors are concerned. His creditors can reach the deposit while he is living, and can reach it as part of his estate on death."

*Kearney v. Unibay Co., Inc.*, 466 So.2d 271, 10 Fla. L. Weekly 392 (Fla. App. 1985)

- The *Kearney* case did not involve creditor claims after the owner's death, or claims against Mr. Kearney's estate. To the extent that the court ruling addressed post-death claims, it is *dicta*, which could be persuasive authority, but not binding authority.

**ii. *Nahar v. Nahar – Are Totten Trust Accounts Estate Assets Subject to Administration Expenses?***

In *Nahar v. Nahar*,<sup>20</sup> the trial court ordered that costs of administration should be paid from

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<sup>18</sup> *Rice v. Schember*, Florida Law Weekly, Volume 15, Number 18, page C17 (Sixth Judicial Circuit, Pinellas County May 4, 1990.)

<sup>19</sup> *Kearney v. Unibay Co.*, 466 So. 2d 271 (Fla. 4<sup>th</sup> DCA 1985).

<sup>20</sup> 576 So. 2d 862 (Fla. 3d DCA 1991). (As of January 6, 2023, Fastcase reports only 1 citation –



assets which the court had not determined to be part of the probate estate, including a Totten trust account. On appeal, the case was remanded for the trial court to determine whether a Totten trust account passing to a beneficiary designated on the account agreement was a probate asset subject to administration. The court cited *Seymour v. Seymour*,<sup>21</sup> discussed below. The court specifically stated that non-probate assets are not subject to probate, including the payment of probate claims.

Since non-probate assets may not be used to pay probate expenses, *see In re Barret's Estate*, 137 So. 2d 587 (Fla. 1st DCA 1962), administration costs and the administrator's attorney's fees may not be paid out of assets which the probate court [\*864] has not yet determined are subject to probate.<sup>22</sup>

**iii. *Seymour v. Seymour – Totten Trusts are Not Estate Assets.***

In 1956, the Florida Supreme Court addressed a Totten trust account. The account agreement for a savings account directed the payment of the funds in the account to Felton Seymour, the son of the account owner, Euphemia Seymour. Richard Seymour, as personal representative, sought an order directing the payment of the funds to him as personal representative Euphemia's estate. The Florida Supreme Court held that the Totten trust funds passed by operation of law to the decedent's son, Felton.

**iv. *Vargas v. Vargas – Totten Trust Accounts Can be Revoked***

The court in *Vargas v. Vargas*<sup>23</sup> held that a letter from the depositor to the bank, instructing them to transfer the funds in trust for her granddaughters, together with the act of giving him the account passbooks, were sufficient to revoke the Totten "trust." It should follow that the account can also be revoked by withdrawing the funds.

**v. *Rice v. Schember*<sup>24</sup> – Totten Trust Accounts Can be Revoked in Favor of Estate Creditors**

In *Rice v. Schember*, an unreported trial court decision, the trial court found that the insolvency of the decedent's estate resulted in a revocation upon the depositor's death, citing *Litsey v. Savings & Loan Association of Tampa*.<sup>25</sup>

**vi. *Litsey v. Savings & Loan Association of Tampa – Totten Trust Account Affirmed – No Revocation***

In *Rice v. Schember*, the court cited the *Litsey* decision to support its finding that the depositor revoked a Totten trust account, based in part on the insolvency of the estate. In *Litsey*,

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*Nahar v. Nahar*, which was remanded back to the trial court to determine whether the Totten Trust account had been revoked. If so, the revocation would bring the account balance into the probate estate."

<sup>21</sup> *Seymour v. Seymour*, 85 So. 2d 726 (Fla. 1956). (As of January 6, 2023, Fastcase reports 37 citations, with no negative treatment.)

<sup>22</sup> *Nahar v. Nahar*, *supra*, at 863.

<sup>23</sup> *Vargas v. Vargas*, 659 So. 2d 1164 (Fla. 3<sup>rd</sup> DCA 1995).

<sup>24</sup> *Rice v. Schember*, Florida Law Weekly, Volume 15, Number 18, page C17 (Sixth Judicial Circuit, Pinellas County May 4, 1990.)

<sup>25</sup> 243 So. 2d 239, 242 (Fla. 2d DCA 1971).

the court found that the depositor did not revoke the Totten trust account. Mr. Litsey, as executor, argued that the Totten trust had been revoked:

Litsey also contends that the inadequacy of decedent's estate to satisfy the specific bequests in his will at the time it was made is an act of disaffirmance. He points out that the testimony of Theodore Chive, C.P.A., shows that had decedent predeceased his wife there would have been only \$57,800.00 available before taxes to satisfy the bequests of \$104,500.00; and that, upon Mrs. Bernstein predeceasing the decedent and assuming that the trust accounts transferred the funds outside the probate estate, there would, after taxes, be only \$85,600.00 available for the \$104,500.00 specific bequests.

Despite the lack of funds to satisfy bequest under the decedent's will, the court declined to find a revocation of the Totten trust accounts and allowed the funds to pass to the beneficiaries designated on the account.<sup>26</sup> The court noted the heavy burden faced by someone contesting the beneficiary designation based upon oral statements: "The burden on one who seeks to prove revocation by oral statements alone is an exceedingly heavy one."<sup>27</sup>

**vii. *Serpa v. North Ridge Bank – Revocation of a Totten Trust Account in a Will Requires a Clear Statement of Intent***

In *Serpa v. North Ridge Bank*,<sup>28</sup> the bank paid the funds in a transfer on death account to the estate, and the decedent's daughter who was named as the transfer on death beneficiary filed suit against the bank for the return of the funds. The trial court ruled in favor of the bank. On appeal, the court held that the language in the decedent's will was not sufficient to revoke the beneficiary designation on the decedent's bank account.

The appellate court found that the language in the decedent's will was not a revocation of the beneficiary designation:

Fourth: all the rest, residue and remainder of my estate, real, personal or mixed, whatsoever situated, of which I may be or become entitled including stock ownership, my home, bank accounts, certificates of deposit, time-sharing arrangements, I give to my brother, Eddie Ramos, which he will distribute to his sole discretion to my family I may have in Puerto Rico, and to my daughter Lillian Ramos.<sup>29</sup>

The court referred to a Pennsylvania decision for the factors that result in a revocation of a beneficiary designation:

Reference in a will to an interest in "mortgages, notes and cash on hand in Banks and in my safe deposit box" was found to be insufficient to revoke a Totten trust in

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<sup>26</sup> 243 So. 2d 239, 242 (Fla. 2d DCA 1971).

<sup>27</sup> 243 So. 2d 239, 242 (Fla. 2d DCA 1971), citing 38 A.L.R.2d 1243, 1259.

<sup>28</sup> 547 So. 2d 199 (Fla. 4<sup>th</sup> DCA 1989).

<sup>29</sup> *Serpa v. North Ridge Bank*, 547 So. 2d 199 (Fla. 2d DCA 1989).

In re Estate of Schuck, 419 Pa. 466, 214 A.2d 629, 631 (1965). The court explained: "HN5[ ] A tentative trust may be revoked, among other means, (1) by oral declarations of the depositor, or (2) by facts and circumstances resulting in inadequacy of the estate assets to satisfy the testamentary gifts, funeral and administration expenses, taxes and other charges." 214 A.2d at 631-32 (citations omitted).<sup>30</sup>

Because the facts of the case did not involve an “inadequacy of the estate assets to satisfy testamentary gifts, funeral expenses and administration expenses, taxes and other charges,” the discussion of those factors is *dicta* and not binding Florida authority.

**viii. The Florida Trust Code – Totten Trust Accounts are Not Subject to the Trust Code.**

The Florida Probate Code provides that a decedent’s revocable trust, is “liable for the expenses of the administration and obligations of the decedent’s estate to the extent the decedent’s estate is insufficient to pay them as provided in ss. 733.607(2) and 736.05053.”<sup>31</sup> The Florida Trust Code specifically excludes “trusts created by the form of the account or by the deposit agreement at a financial institution” from the provisions of the Trust Code.<sup>32</sup>

**h. Contract Law**

In *Lauritsen v. Wallace*, the Fifth District distinguished a decedent’s will cancelling and forgiving the debt under a promissory note as distinguished from a promissory note that was canceled upon the death of the lender by its own terms. The court held that a cancellation of the note within the will was a testamentary transfer. The court found that cancellation of a note within a will was distinguishable from the non-testamentary transfers under §655.79, §319.22, §655.82, and §711.509<sup>33</sup>, all of which operate under a contract theory. The terms of the document control the transfer of ownership upon the owner’s death.

Section 655.82, Florida Statutes, was added during the 2001 legislative session.<sup>34</sup> It further distinguished the transfer of ownership upon the account owner’s death from the law of trusts, relying instead on the transfer of ownership at death pursuant to the account agreement.

655.825 Deposits in trust; applicability of s. 655.82 in place of former s. 655.81.—

(1) Because deposits in trust are also accounts with a pay-on-death designation as described in s. 655.82, it is the intent of the Legislature that the provisions of s. 655.82 shall apply to and govern deposits in trust. References to former s. 655.81 in any depository agreement shall be interpreted after the

<sup>30</sup> *Serpa v. North Ridge Bank*, 547 So. 2d 199, 203 (Fla. 2d DCA 1989)

<sup>31</sup> §733.707(3), Fla. Stat.

<sup>32</sup> §736.0102, Fla. Stat.

<sup>33</sup> *Lauritsen v. Wallace*, 687 So. 3d 285, 288 (Fla. 5<sup>th</sup> DCA 2011).

<sup>34</sup> 2001 Laws of Florida, ch. 2001, s. 243.

effective date of this act as references to s. 655.82655.82.

(2) This section shall take effect July 1, 2001, and shall apply to deposits made to a depository account created after December 31, 1994.

History.—s. 3, ch. 2001-243; s. 101, ch. 2019-3.

Section 655.81, which was repealed, referred to accounts where a “deposit is made by any person describing herself or himself as, and making such deposit as, trustee for another and no other or further notice of the existence and terms of a legal and valid trust...” The former statute permitted payment to the person identified as the “person for whom the deposit was thus stated to have been made.”

### **i. Real Property Law**

In *Ostyn v. Olympic*, Steve Olympic transferred property to himself and three other individuals as joint tenants with rights of survivorship as permitted in §689.15, Fla. Stat.<sup>35</sup> Mrs. Olympic brought a quiet title action, claiming that the property was her husband’s homestead, and that she was entitled to a life estate in his ownership share pursuant to Article X, s. 4, of the Florida Constitution. The appellate court recognized that, by operation of law, Steve Olympic’s interests in the property passed to the surviving joint tenant.

There is no dispute that the marital home of the defendant and Steve Olympic was in fact owned by him and the plaintiff as joint tenants [\*\*4] with right of survivorship, an estate which can be created in Florida. § 689.15, Fla. Stat. (1983). Accordingly, on Steve Olympic's death, there was no property interest then owned by him to which a homestead interest could attach for the benefit of the defendant.

*Ostyn v. Olympic* was codified in §732.201(33), Fla. Stat.<sup>36</sup>

### **j. Conclusion – Transfer on Death Accounts are Not Subject to Probate**

Florida law currently does not subject transfer on death accounts to probate. The same is true for property owned as joint tenants with rights of survivorship and tenants by the entireties. They operate as non-testamentary transfers upon the death of the sole owner or one of the joint owners. Although many transfer on death accounts are not specifically exempt from creditor claims after the owner’s death, they are not part of the orderly procedures for handling creditor claims under the Florida Probate Code. There appear to be no Florida cases, or statutes, that conclusively make transfer on death accounts subject to the claims of the deceased owner’s creditors in the absence of a revocation of the beneficiary designation. Despite the current status of Florida law with respect to transfer on death accounts, the proposal for transfer on death of real property does address the claims of the transferor’s creditors, both during lifetime and at death.

## **C. Uniform Title Standards**

Due to lack of statutory authority, Florida’s Uniform Title Standards, promulgated by the Real Property, Probate and Trust Law Section of the Florida Bar, have been updated to reflect

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<sup>35</sup> *Ostyn v. Olympic*, 455 So. 2d 1137 (Fla. 2d DCA 1984).

<sup>36</sup> 2012 Fla. Laws ch. 109, s.1; 2012 Fla. HB 733.

solutions to common issues raised by enhanced life estate deeds.<sup>37</sup> Standard 6.10 and Standard 6.11, for example, provide that judgment liens against the lifetime owner of the real property, if not enforced prior to the death of the grantor, do not survive to attach to the interest of the remainderman. However, these constitute only persuasive authority for the Courts and do not alone provide as much certainty of outcome as statutory authority.

#### **D. Current Use of Enhanced Life Estate Deeds**

There are a variety of reasons that Floridians utilize enhanced life estate deeds as part of their planning.

- The owner retains full ownership rights to the real property during the owner's lifetime.
- Probate administration on the owner's death is not required and the real property is not an asset subject to administration.
- The creation of the remainder interest does not affect the step-up in basis under Internal Revenue Code § 1014 because the owner retains a lifetime interest under IRC s. 2036(a).
- The obligation to pay documentary stamp taxes, to the extent there is consideration, is postponed until the owner's death.<sup>38</sup>
- An enhanced life estate deed does not result in a taxable gift.<sup>39</sup>
- An enhanced life estate deed does not trigger the 5 year lookback rule for transfers by Medicaid applicants.<sup>40</sup>

### **III. EFFECT OF PROPOSED CHANGES**

As with the Uniform Law Commission's URPTODA statute, a primary purpose of the proposed legislation is to avoid the need for probate upon the death of the owner of real property. Other effects include:

- Establishes the requirements for creating a valid Transfer on Death Instrument under the FRPTODA by statute.

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<sup>37</sup> See Vo. XXXXII, No. 1, ActionLine, Fall 2020, pgs.57-59.

<sup>38</sup> Florida Department of Revenue, Letter of Technical Advice No: 00B4-024, May 12, 2000. A personal representative's deed which effectuates a transfer pursuant to a last will and testament is not subject to document stamp taxes, even if the property is encumbered by a mortgage. §12B-4.014(4), Florida Administrative Code.

<sup>39</sup> <https://miamioldercarelawyers.com/blog/lady-bird-deed-part-2/> and [https://www.browardbar.org/wp-content/uploads/staley-memorial/SpeakerLeonardEMondschein/Lady-Bird-Deed-Outline\\_%20Detailed.pdf](https://www.browardbar.org/wp-content/uploads/staley-memorial/SpeakerLeonardEMondschein/Lady-Bird-Deed-Outline_%20Detailed.pdf)

<sup>40</sup> §409.9101, Florida Statutes.

- Confirms the owner's retained rights, including rights to sell and convey, mortgage, lease, possess, change the transfer on death beneficiary, and revoke the transfer on death beneficiary's expectancy.
- Confirms the rights of the owner's creditors during the owner's lifetime.
- Recognizes that the transfer on death beneficiary's creditors have no claims against the property during the owner's lifetime.
- Confirms that the transfer on death beneficiary is personally liable for the expenses of the administration and obligations of the decedent owner's estate to the extent the decedent's estate and revocable trust are insufficient to pay them.
- Provides a process for the owner's estate to assess and pursue that liability.
- Confirms that title vests in the transfer on death beneficiary at the owner's death.
- Defines the transfer on death beneficiary's interest during the lifetime of the owner as an expectancy interest.

#### **IV. SECTION-BY-SECTION ANALYSIS**

The following pages contain a comparison between the proposed Florida legislation and the Uniform Real Property Transfer on Death Act. The comment column explains the variations between the two.

Proposed Florida Legislation	The Uniform Real Property Transfer on Death Act	Comments
689.30 Florida Real Property Transfer on Death Act.		
(1) SHORT TITLE. - This section may be cited as the "Florida Real Property Transfer on Death Act."	SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Real Property Transfer on Death Act.	
(2) DEFINITIONS. - For all purposes of this Act, the singular includes the plural and the plural includes the singular. As used in this Act, the term:	SECTION 2. DEFINITIONS. In this [act]:	
<p>(a) "Beneficiary" means any individual, trustee, or entity named as the beneficiary in a transfer on death instrument.</p> <p>(b) "Expectancy interest" is the interest that a beneficiary takes by a transfer on death instrument.</p>	<p>(1) "Beneficiary" means a person that receives property under a transfer on death deed.</p> <p>(2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.</p>	Subsection (b) was drafted to confirm that the beneficiary's interest is not vested, and therefore beyond the control of the beneficiary and the beneficiary's creditors during the transferor's lifetime.

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		<p>The use of the term "Expectancy Interest" is used to distinguish between an ownership interest that vests immediately and an ownership interest that does not vest until the Transferor's death.</p>
	<p>(3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant[,][ and] [owner of community property with a right of survivorship[,][ and] tenant by the entirety]. The term does not include a tenant in common [or owner of community property without a right of survivorship].</p>	<p>The Florida proposal does not permit joint owners, such as a married couple holding title as tenants by the entirety, or two or more persons owning as joint tenants with rights of survivorship. Ownership as tenants by the entirety and joint tenants with rights of survivorship involve complicated rules for conveying real property that could easily be missed,</p>



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		undermining the purpose of providing a simple alternative estate planning tool that avoids probate.
	(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.	The Florida proposal defines the term "transferor" to be limited to "a natural person who owns a present interest in real property in an individual capacity." The Florida proposal allows the transferor to name an individual, trustee, or entity as the beneficiary.
(c) "Real Property" means any freehold interest in land, a condominium parcel as defined in s. 718.103(12), or a cooperative parcel as defined in s. 719.103(14).	(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.	The Florida proposal limits the definition to a "freehold interest" to exclude other more limited interests that would not be suited for the proposed legislation.

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<p>(d) "Transfer on death instrument" means a written instrument authorized by this Act.</p>	<p>(6) "Transfer on death deed" means a deed authorized under this [act].</p>	<p>The Florida proposal does not use the word "deed" to describe the writing contemplated by the statute as a deed is used to concurrently transfer an interest in real property. The written instrument authorized by the Act is akin to a beneficiary designation, not unlike POD or TOD. Hence, the use of the word "instrument" to avoid any confusion as to what the instrument really is.</p>
<p>(e) "Transferor" means a natural person who owns a present interest in real property in an individual capacity and who executes and</p>	<p>(7) "Transferor" means an individual who makes a transfer on death deed.</p> <p>SECTION 8. CAPACITY OF</p>	<p>This definition avoids the use of this instrument for business entities, trusts, tenants by the entireties,</p>

<b>Proposed Florida Legislation</b>	<b>The Uniform Real Property Transfer on Death Act</b>	<b>Comments</b>
records a transfer on death instrument.	TRANSFEROR. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.	and joint tenants with rights of survivorship. It is intended to treat the transfer on death instrument as a beneficiary designation by the owner.
(3) APPLICABILITY. This Act applies to transfer on death instruments recorded after the effective date of this Act.	SECTION 3. APPLICABILITY. This [act] applies to a transfer on death deed made before, on, or after [the effective date of this [act]] by a transferor dying on or after [the effective date of this [act]].	
(4) NONEXCLUSIVITY. This Act does not affect any other method of transferring real property.	SECTION 4. NONEXCLUSIVITY. This [act] does not affect any method of transferring property otherwise permitted under the law of this state.	The Florida proposal ensures that the law does not affect other types of transfers currently available under Florida common law or statutory law.

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<p>(5) AUTHORITY FOR TRANSFER ON DEATH INSTRUMENT.</p> <p>(a) A natural person may transfer real property to one or more beneficiaries, to be effective only at the transferor's death, by recording a transfer on death instrument.</p> <p>(b) A transfer on death instrument must be in a form substantially similar to that set forth in s. 689.30(13).</p>	<p>SECTION 5. TRANSFER ON DEATH DEED AUTHORIZED. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.</p>	<p>The Florida proposal provides the transfer on death instrument must be in a form substantially similar to that as set forth in the statute.</p>
<p>(6) EXECUTION AND RECORDATION.</p> <p>(a) A transfer on death instrument must be executed by the transferor with the formalities required by s.</p>	<p>SECTION 9. REQUIREMENTS. A transfer on death deed:</p> <p>(1) except as otherwise provided in paragraph (2), must contain the essential elements and formalities of a</p>	<p>Because the transfer is based upon real estate concepts, and not a separate trust instrument or will, the instrument must be recorded in the official land records and meet the requirements for</p>

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<p>689.01 and acknowledged as required by s. 695.03.</p> <p>(b) A transfer on death instrument must be recorded in accordance with s. 28.222(2) prior to the death of the transferor or it is of no force and effect.</p>	<p>properly recordable inter vivos deed;</p> <p>(2) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and</p> <p>(3) must be recorded before the transferor's death in the public records in [the office of the county recorder of deeds] of the [county] where the property is located.</p>	<p>a recorded instrument.</p> <p>The transfer on death instrument serves as a beneficiary designation, but it is limited to a specific asset, much like a beneficiary designation on a financial account, which is based upon contract principles. The standard required to enter into a valid contract is higher than the standard required for a valid will.</p>
<p>(7) NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. Lack of notice to, delivery to, acceptance by, or consideration from the beneficiary will not cause a</p>	<p>SECTION 10. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. A transfer on death deed is effective without:</p>	<p>Because recording an instrument in the land records satisfies the delivery requirement for a deed, and this is not a deed, the proposal confirms that</p>

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transfer on death instrument recorded during the transferor's life to be ineffective.	(1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or  (2) consideration.	the beneficiary named in the instrument does not have to accept delivery of the instrument.
<p>(8) LIMITATIONS.</p> <p>(a) A co-owner of real property may execute a transfer on death instrument only if the co-owner owns the real property as a tenant in common and only as to that owner's ownership interest. A transfer on death instrument by one tenant in common does not affect the interest of any other co-owner.</p> <p>(b) A community property interest may not be transferred by a transfer on</p>	<p>SECTION 2. DEFINITIONS</p> <p>(3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant[,][ and] [owner of community property with a right of survivorship[,][ and tenant by the entirety]. The term does not include a tenant in common [or owner of community property without a right of survivorship].</p>	<p>The Florida proposal identifies specific types of interests that can be subject to a transfer on death instrument. It confirms that ownership is not transferred until the transferor's death and addresses the use of a transfer on death instrument by transferors who hold an interest as a tenant in common with another.</p> <p>The Florida proposal does not include a married couple holding title as tenants by</p>

<b>Proposed Florida Legislation</b>	<b>The Uniform Real Property Transfer on Death Act</b>	<b>Comments</b>
<p>death instrument.</p> <p>(c) A joint owner of real property owned in joint tenancy with rights of survivorship or tenancy by the entirety may not transfer real property by a transfer on death instrument.</p> <p>(d) A guardian or conservator may not execute a transfer on death instrument on behalf of a ward unless authorized by court order.</p> <p>(e) An agent under a power of attorney may not execute a transfer on death instrument on behalf of a principal unless the power of attorney expressly grants the power to create or change beneficiary</p>		<p>the entirety or two or more persons owning as joint tenants with rights of survivorship. Ownership as tenants by the entirety and joint tenants with rights of survivorship involve complicated rules for conveying real property that could easily be missed, undermining the purpose of providing a simple alternative estate planning tool that avoids probate.</p> <p>The requirements under the Florida Power of Attorney Act require specific authorization in the power of attorney for this type of instrument since it is similar to a beneficiary form</p>

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<p>designations in accordance with s. 709.2202.</p> <p>(f) The recordation of a transfer on death instrument is not a current change in ownership for any purpose, including, but not limited to, transfer taxes under s. 201.02, any due-on-sale clause, any notice or disclosure requirements, or property owners or community association approval requirements.</p> <p>(g) A transfer on death instrument is ineffective to transfer title to real property if, upon the death of the transferor, the real property described in that instrument was the protected</p>		<p>for financial assets.</p> <p>A change of ownership, in some instances, makes the transfer subject to documentary stamp taxes, a due on sale clause in a mortgage, owners' association approval, and other consequences when ownership changes. This subsection confirms that none of those consequences apply when a transfer on death instrument is recorded.</p> <p>It is important to confirm that no change of ownership occurs until the transferor's death for the purposes listed.</p> <p>Subsection (g) subsection</p>



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<p>homestead, as described in s. 731.201(33), of the transferor unless the transferor was not survived by a spouse or by a minor child or, if survived by a spouse but not a minor child:</p> <ol style="list-style-type: none"> <li>1. The instrument transferred the transferor's entire interest in that real property to the surviving spouse of the transferor; or</li> <li>2. The surviving spouse previously waived all rights in the transferor's protected homestead pursuant to s. 732.702, or other applicable Florida law, or has joined in the instrument and waived his or her rights pursuant to</li> </ol>		<p>recognizes the application of <i>Johns v. Bowden</i>, 68 Fla. 32 (1932). The Florida Supreme Court recognized that the constitutional restrictions on the devise of a Florida resident's homestead could not be avoided by "indirection" through the practical equivalent of a will. This is not addressed in the uniform act.</p> <p>Spousal joinder in the transfer on death instrument is not required by the non-owner spouse if that spouse has waived their homestead rights pursuant to a nuptial agreement. Spousal joinder is required by the non-owner</p>

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732.7025.		spouse where waiving homestead rights pursuant to 732.7025. That is different than the joinder requirement for a deed transferring homestead.
<p>(9) REVOCATION.</p> <p>(a) A transfer on death instrument can only be revoked as provided in this section.</p> <p>(b) A transferor may revoke a transfer on death instrument as to some or all of the real property described in the transfer on death instrument by recording a deed conveying the real property to the transferor, to the transferor and beneficiaries, or to any</p>	<p>SECTION 6. TRANSFER ON DEATH DEED REVOCABLE. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.</p> <p>SECTION 11. REVOCATION BY INSTRUMENT AUTHORIZED; REVOCATION BY ACT NOT PERMITTED.</p> <p>(a) Subject to subsection (b), an instrument is effective to revoke a</p>	<p>Revocation is a critical concept. A transfer on death instrument is not intended to be subject to trust laws and concepts.</p> <p>The Florida legislature repealed section §655.81 in 2001. The legislative history indicates that accounts titled in an individual's name as trustee, as described in §655.81, were really transfer-on-death accounts and should be subject to §655.81. As noted above, the</p>

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<p>third party.</p>	<p>recorded transfer on death deed, or any part of it, only if the instrument:</p> <p style="padding-left: 40px;">(1) is one of the following:</p> <p style="padding-left: 80px;">(A) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;</p> <p style="padding-left: 80px;">(B) an instrument of revocation that expressly revokes the deed or part of the deed; or</p> <p style="padding-left: 80px;">(C) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and</p> <p style="padding-left: 40px;">(2) is acknowledged by the</p>	<p>cases subjecting transfer-on-death accounts to probate administration were based upon a theory of revocation by act or oral revocation of a trust. Because real estate is involved, and not a trust, revocation must be limited to a document recorded in the official land records.</p>
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	<p>transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in [the office of the county recorder of deeds] of the [county] where the deed is recorded.</p> <p>(b) If a transfer on death deed is made by more than one transferor:</p> <p>(1) revocation by a transferor does not affect the deed as to the interest of another transferor; and</p> <p>(2) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.</p> <p>(c) After a transfer on</p>	
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	<p>death deed is recorded, it may not be revoked by a revocatory act on the deed.</p> <p>(d) This section does not limit the effect of an inter vivos transfer of the property.</p>	
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<p>(c) If a transfer on death instrument is made by more than one transferor as to real property owned as tenants in common, revocation by a transferor does not affect the transfer on death instrument as to the interests of another transferor.</p>		
<p>(d) The designation of the transferor's spouse as a beneficiary in a transfer on death instrument is automatically revoked upon the dissolution of the transferor's marriage to the spouse, unless otherwise specified in the transfer on death instrument. If the transferor and the former</p>	<p>Section 13 of the Uniform Real Property Transfer on Death Act references state laws for revocation of beneficiary designations upon divorce.</p>	<p>Subsection (d) applies Florida's policy to remove former spouses as beneficiaries from a decedent's revocable trust, will, and beneficiary designations.</p>

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<p>spouse remarry, the expectancy interest in favor of the former spouse in a prior transfer on death instrument is not revived.</p> <p>(e) The provisions of s. 732.802 and s. 732.8031 apply to any beneficiary.</p>		<p>Sections 732.802 and 732.8031 implement Florida's public policy. The proposed Florida statute would implement the same policy by preventing a person from benefiting from the murder, abuse, or exploitation of the person making a transfer on death instrument.</p>
<p>(10) DISCLAIMER. A beneficiary may disclaim all or a part of any interest</p>	<p>SECTION 14. DISCLAIMER. A beneficiary may disclaim all or part of the beneficiary's interest as provided by [cite state statute or the Uniform</p>	<p>The proposed Florida Statutes utilizes the well-developed framework for</p>

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<p>in the real property described in a transfer on death instrument in accordance with s.739.101, et seq..</p>	<p>Disclaimer of Property Interests Act (1999/2006) (UPC Article II, Part 11)].</p> <p><i>Uniform Disclaimer of Property Interests Act (1999/2006):</i></p> <p>SECTION 12. DELIVERY OR FILING.</p> <p>(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:</p> <ul style="list-style-type: none"> <li>(1) an annuity or insurance policy;</li> <li>(2) an account with a designation for payment on death;</li> <li>(3) a security registered in beneficiary form;</li> <li>(4) a pension, profit-sharing, retirement, or other employment-related benefit</li> </ul>	<p>disclaimers in Chapter 739, Florida Statutes.</p> <p>Section 739.102(7) defines "future interest" as "an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation." The expectancy interest under the proposed statute would qualify as a future interest and could be disclaimed in the same manner as other interests in real property. Applying the statutory definition, an expectancy interest could be disclaimed during the transferor's lifetime.</p>



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	<p>plan; or</p> <p style="padding-left: 40px;">(5) any other nonprobate transfer at death.</p> <p style="padding-left: 40px;">(b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.</p> <p style="padding-left: 40px;">(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:</p> <p style="padding-left: 80px;">(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or</p> <p style="padding-left: 80px;">(2) if no personal representative is then serving, it must be</p>	
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	<p>filed with a court having jurisdiction to appoint the personal representative.</p> <p style="padding-left: 40px;">(d) In the case of an interest in a testamentary trust:</p> <p style="padding-left: 80px;">(1) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or</p> <p style="padding-left: 80px;">(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.</p> <p style="padding-left: 40px;">(e) In the case of an interest in an inter vivos trust :</p> <p style="padding-left: 80px;">(1) a disclaimer must be delivered to the trustee then serving;</p>	
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	<p>(2) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or</p> <p>(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.</p> <p>(f) In the case of an interest created by a beneficiary designation <u>which is disclaimed</u> <del>made</del> before <del>the</del> <del>time</del> the designation becomes irrevocable, <del>a</del> <u>the</u> disclaimer must be delivered to the person making the beneficiary designation.</p> <p>(g) In the case of an interest created by a beneficiary designation <u>which is disclaimed</u> <del>made</del> after <del>the</del> <del>time</del> the designation becomes</p>	
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	<p>irrevocable<del>7</del>:</p> <p style="padding-left: 40px;">(1) <u>a the disclaimer of an interest in personal property</u> must be delivered to the person obligated to distribute the interest<del>7</del>; and</p> <p style="padding-left: 40px;">(2) <u>the disclaimer of an interest in real property must be recorded in [the office of the county recorder of deeds] of the [county] where the real property that is the subject of the disclaimer is located.</u></p> <p style="padding-left: 40px;">(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.</p> <p style="padding-left: 40px;">(i) In the case of a disclaimer by an object or taker in default of exercise of a power of</p>	
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	<p>appointment at any time after the power was created:</p> <p style="padding-left: 40px;">(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or</p> <p style="padding-left: 40px;">(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.</p> <p style="padding-left: 40px;">(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:</p> <p style="padding-left: 40px;">(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power ; or</p> <p style="padding-left: 40px;">(2) if no</p>	
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	<p>fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.</p> <p>(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.</p> <p>(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.</p> <p><i>Uniform Disclaimer of Property Interests Act (1999/2006):</i></p> <p>SECTION 15. RECORDING OF DISCLAIMER. If an instrument transferring an interest in or power over property</p>	
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	<p>subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. <u>Except as otherwise provided in Section 12(g)(2),</u> <del>F</del>failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.</p>	
<p>(11) EFFECT OF A TRANSFER ON DEATH INSTRUMENT DURING THE TRANSFEROR'S LIFE AND AT DEATH.</p> <p>(a) Without limitation, during the transferor's life, a transfer on death instrument does not have any</p>	<p>SECTION 12. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE. During a transferor's life, a transfer on death deed does not:</p> <p>(1) affect an interest or right of the transferor or any other owner, including the right to transfer or</p>	<p>The Florida proposal is based upon real estate principles and is designed to eliminate any question about ownership during the transferor's lifetime. Because the beneficiary's name appears on an instrument recorded in the official land records, some</p>

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<p>effect and does not:</p> <ol style="list-style-type: none"> <li>1. Affect any interest or right of the transferor or any other owner, including the right to transfer or encumber the real property.</li> <li>2. Create any interest or right of a beneficiary in the real property, even if the beneficiary has actual or constructive notice of the transfer on death instrument.</li> <li>3. Affect any interest or right of a creditor, whether secured, unsecured, current or future, even if the creditor has actual or constructive notice of the transfer on death instrument.</li> <li>4. Affect the transferor's or</li> </ol>	<p>encumber the property;</p> <ol style="list-style-type: none"> <li>(2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;</li> <li>(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;</li> <li>(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;</li> <li>(5) create a legal or equitable interest in favor</li> </ol>	<p>members of the public might assume that the named beneficiary has a vested interest, with ownership rights during the transferor's lifetime. Because the beneficiary designation can be revoked or divested, the beneficiary does not have an ownership interest during the owner's lifetime. The ownership interest that transfers to the beneficiary upon the transferor's death should not be subject to the claims of the beneficiary's creditors until the transferor's death. Only then does ownership transfer to the beneficiary.</p>



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<p>beneficiary's eligibility for any form of public assistance.</p> <p>5. Create a legal or equitable interest in the beneficiary.</p> <p>6. Subject the real property to claims or process of a creditor of a beneficiary.</p> <p>(b) At the death of the transferor:</p> <p>1. Title to the transferor's interest in the real property described in a transfer on death instrument vests in the beneficiary or beneficiaries who survive the transferor, by operation of law, subject to subsection 12(c).</p> <p>2. The interest of a</p>	<p>of the designated beneficiary; or</p> <p>(6) subject the property to claims or process of a creditor of the designated beneficiary.</p> <p>SECTION 7. TRANSFER ON DEATH DEED NONTESTAMENTARY. A transfer on death deed is nontestamentary.</p> <p>SECTION 13. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH.</p> <p>(a) Except as otherwise provided in the transfer on death deed[,] [ or] in this section[,] [ or in [cite state statutes on antilapse, revocation by divorce or</p>	<p>The purpose of a transfer on death instrument is to transfer ownership at death without a requirement for probate. Just as Florida law does not require the probate of a life insurance policy with beneficiary designations, a bank account with beneficiary designations, or securities registered to allow transfer</p>

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<p>beneficiary in the real property described in a transfer on death instrument is contingent on the beneficiary surviving the transferor.</p> <p>3. If the primary beneficiary fails to survive the transferor and an alternative beneficiary is named in the transfer on death instrument, the transferor's interest in the real property described in a transfer on death instrument vests in the alternative beneficiary.</p> <p>4. If beneficiaries are designated by terms indicating a class and any individual in the class fails to survive the transferor,</p>	<p>homicide, survival and simultaneous death, and elective share, if applicable to nonprobate transfers]], 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:</p> <p style="padding-left: 40px;">(1) Subject to paragraph (2), the interest in the property is transferred to the designated beneficiary in accordance with the deed.</p> <p style="padding-left: 40px;">(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a</p>	<p>on the owner's death, a transfer on death instrument does not require probate.</p> <p>Subsection (b) of the Florida proposal addresses situations that are covered under Section 13 of the Uniform Act.</p> <p>Subsection (b) is similar to Florida's antilapse statute, s. 732.603.</p> <p>Some, but not all of the state-law provisions discussed in subsection (a) of the uniform law are addressed under subsection (11) of the proposed Florida state.</p>

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<p>then transferor's interest in the real property vests in the surviving beneficiaries in the class in equal shares.</p> <p>5. If no beneficiary survives the transferor, the real property shall pass as provided by the Florida Probate Code.</p> <p>(c) If more than one beneficiary is designated and the type of tenancy is not specified, multiple beneficiaries shall take in accordance with s. 689.15.</p>	<p>designated beneficiary that fails to survive the transferor lapses.</p> <p>(3) Subject to paragraph (4), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.</p> <p>(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held</p>	
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	<p>concurrently.</p> <p>(b) Subject to [cite state recording act], a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and [cite state recording act], the recording of the transfer on death deed is deemed to have occurred at the transferor's death.</p> <p>(c) If a transferor is a joint owner and is:</p> <p>(1) survived by one</p>	
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	<p>or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or</p> <p style="padding-left: 40px;">(2) the last surviving joint owner, the transfer on death deed is effective.</p> <p style="padding-left: 40px;">(d) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.</p>	
(12) RIGHTS OF CREDITORS.	SECTION 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY	Because ownership does not transfer until after the

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<p>(a) During the transferor's life, creditors of the transferor have whatever rights with respect to the real property as the creditors would have if the transferor had not executed a transfer on death instrument.</p> <p>(b) During the transferor's lifetime, the interest of a beneficiary is an unvested expectancy interest, and the beneficiary's creditors or spouse have no rights to the real property.</p> <p>(c) Upon the death of the transferor, the beneficiary is personally liable for the expenses of the administration and obligations of the</p>	<p>ALLOWANCES.</p> <p>Alternative A</p> <p>A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [cite state statute or Section 6-102 of the Uniform Probate Code].</p> <p>Alternative B</p> <p>(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</p>	<p>transferor's death, the property remains subject to the claims of the transferor's creditors during the transferor's lifetime.</p> <p>Likewise, because the beneficiary has no interest in real property until the transferor's death and the interest of the beneficiary is an unvested expectancy interest, the property is not subject to the beneficiary's creditors or the beneficiary's spouse during the transferor's lifetime.</p> <p>Florida law currently does not provide for the enforcement of claims by the transferor's creditors when a transfer occurs by operation</p>

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<p>transferor's estate to the extent the transferor's probate estate and any trust described in s. 733.707(3) are insufficient to pay them as provided in s. 733.607(2), but only to the extent of the value of the real property received by the beneficiary under the transfer on death instrument, subject to the following:</p> <p>1. For purposes of the constitutional exemption from creditor claims for protected homestead, a transfer on death instrument shall be treated as a devise which may qualify as protected homestead as defined under s. 731.201(33). A determination</p>	<p>spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed.</p> <p>(b) If more than one property is transferred by one or more transfer on death deeds, the liability under subsection (a) is apportioned among the properties in proportion to their net values at the transferor's death.</p> <p>(c) A proceeding to enforce the liability under this section must be commenced not later than [18 months] after the transferor's death.</p>	<p>of law on the owner's death. Although there is indirect references in case law involving Totten Trust accounts, there is no case law or statutory law subjecting an account or property that transfers upon the owner's death by operation of law with respect to transfer on death bank accounts, real property or financial accounts owned with rights of survivorship, financial accounts or securities with designated beneficiaries, and life insurance policies passing to beneficiaries.</p> <p>Florida law has not adopted other uniform acts that</p>

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<p>of the protected status of the property transferred may be obtained in a proceeding under the Florida Probate Code or ch. 86, Florida Statutes</p> <p>2. In calculating the beneficiary's share of liability, the abatement rules provided in the Florida Probate Code shall be applied, and the property received by the beneficiary pursuant to the transfer on death instrument shall be treated as if it were property specifically devised by the decedent's will.</p> <p>3. The value of the property received by the beneficiary pursuant to the transfer on</p>		<p>subject transfer on death assets to probate and/or the claims of the transferor's creditors. The Real Property, Probate and Trust Law Section of the Florida Bar established a committee to investigate and draft legislation to subject transfer on death property to the claims of the transferor's creditors, but the proposal was not adopted by the Executive Council in 2013 when a thorough, comprehensive proposal was submitted to a vote. A proposal to subject transfer on death instruments to probate on the owner's death might be consistent with the</p>



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<p>death instrument shall be the fair market value of the property at the time of the transferor's death, less the amount of any liens and encumbrances on the property at the time of the transferor's death.</p> <p>4. The personal representative shall certify in writing the amount that must be paid to the estate by serving the beneficiary with a written statement of liability in the manner provided for formal notice as provided under the Florida Probate Rules.</p> <p>5. The beneficiary is personally liable to the estate for the amount</p>		<p>national uniform act and a majority of states that have adopted the uniform act, but it would be a departure from current Florida law.</p> <p>The Florida proposal seeks to balance the interests of the transferor's creditors and the desire to pass title and not make vesting of title at the transferor's death indeterminable. The proposal protects secured creditors who have perfected their interests during the transferor's lifetime by having beneficiaries take title subject to those interests. The proposal protects the unsecured creditors of the transferor's</p>

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<p>specified in the statement of liability. Any amount that the beneficiary has paid toward the expenses of the administration and obligations of the transferor's estate shall be credited against the amount that the beneficiary owes the estate under this section.</p> <p>6. If the beneficiary under a transfer on death instrument is the trustee of the transferor's revocable trust, as described in s. 733.707(3), and the trustee has distributed the property in accordance with the terms of the trust, then the beneficiaries of the trust who received the distribution</p>		<p>estate by making the beneficiaries personally liable to the transferor's estate for the for the expenses of the administration and obligations of the estate to the extent the estate and the transferor's revocable trust are insufficient to pay such items.</p> <p>There are two ways to protect unsecured creditors: impose transferee liability on the beneficiary, and not allow the unsecured creditor to lien the property, or impose the liability to the unsecured creditor on the property.</p> <p>The latter would make title</p>

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<p>shall be treated as the beneficiaries who are subject to liability under this section.</p> <p>7. On or before the expiration of 90 days from the service of the written statement of liability, the beneficiary may file a written objection to the amount of the reimbursement or liability. If an objection is filed, either the personal representative or the beneficiary may petition the court for an order determining the amount of the reimbursement or liability in a proceeding governed by the Florida Probate Code and the Florida</p>		<p>indeterminable and the property subject to creditors until the transferor had been dead for two years. The former allows title to vest not subject to the transferor's creditors so that title can continue to pass from the beneficiary at anytime and also protects the unsecured creditors who file a legitimate claim against the transferor's estate in a probate proceeding.</p> <p>It is clear that an unsecured creditor can only enforce a claim against the transferor's estate in probate.</p> <p>An unsecured creditor may not assert a lien against the</p>

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<p>Probate Rules. If no objection is filed within the time permitted, the written statement of liability shall be binding and enforceable against the beneficiary.</p> <p>8. Nothing in this subsection shall entitle an unsecured creditor of the deceased transferor to claim or assert a lien against the property transferred by a transfer on death instrument. Bona fide purchasers and lenders for value who purchase from, or lend to, a beneficiary under a transfer on death instrument take title free and clear of all unsecured claims against the deceased transferor's estate, whether</p>		<p>property and bona fide purchasers from the beneficiary take title free and clear of unsecured creditors of the transferor. The personal representative must certify in writing to the beneficiary the expected contribution from the beneficiary. The beneficiary's liability is limited to the value of the property the beneficiary received. The beneficiary may object to the liability the personal representative is seeking to impose and petition the court for a determination.</p> <p>Homestead transferred by TODI is protected to the same</p>
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<p>probate proceedings have been initiated or not.</p> <p>9. An unsecured creditor of the deceased transferor may only enforce its claim against the decedent's estate in a proceeding governed by the Florida Probate Code and the Florida Probate Rules.</p> <p>(d) This section shall not be construed to prevent the enforcement of:</p> <p>1. Mortgages, security interests, or liens perfected during the transferor's life and encumbering the specific real property described in the transfer on death instrument.</p> <p>2. Judgement liens against</p>		<p>extent it would be otherwise and can be the subject of a petition to determine homestead status.</p>

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<p>non-homestead real property for which execution or other process had issued against the real property during the transferor's lifetime.</p>		
<p>(13) FORM OF TRANSFER ON DEATH INSTRUMENT PRESCRIBED. A transfer on death instrument must be in a form substantially similar to the following:</p> <p>TRANSFER ON DEATH INSTRUMENT</p> <p>(Florida Statute Sec. 689.30)</p> <p>THIS INSTRUMENT MUST BE EXECUTED WITH THE FORMALITIES REQUIRED BY S. 689.01, ACKNOWLEDGED AS REQUIRED BY</p>	<p>[SECTION 16. OPTIONAL FORM OF TRANSFER ON DEATH DEED.</p> <p>The following form may be used to create a transfer on death deed. The other sections of this [act] govern the effect of this or any other instrument used to create a transfer on death deed:</p> <p>.....</p>	<p>As with the uniform act, the Florida proposal contains a form for a transfer on death instrument.</p>

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<p>S. 695.03, AND RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED PRIOR TO THE DEATH OF THE TRANSFEROR.</p> <p>This transfer on death instrumented, executed this ___ day of _____, _____, by _____ ("Transferor"), transfers the following described real property located in _____ County, Florida:</p> <p>[insert property address, property appraiser's parcel identification number, and legal description of the Property or attach Exhibit A if more space is needed]</p>		
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<p>upon the death of the Transferor, without payment of consideration and without warranties, to _____ ("Beneficiary") in accordance with Sec. 689.30, F.S.</p>		
	<p>[SECTION 17. OPTIONAL FORM OF REVOCATION. The following form may be used to create an instrument of revocation under this [act]. The other sections of this [act] govern the effect of this or any other instrument used to revoke a transfer on death deed.</p>	<p>The proposal for Florida does not provide a form for revocation, but does describe the requirements, which include a document meeting the requirements for a deed to be recorded in the official records.</p>
	<p>SECTION 18. UNIFORMITY OF</p>	



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	<p>APPLICATION AND CONSTRUCTION.</p> <p>In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.</p>	
	<p>SECTION 19. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section</p>	<p>Florida's overall recognition of the Electronic Signatures Act, and its own statutory provisions would apply to transfer on death instruments.</p>

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	7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).	
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## **V. STATUTES REQUIRING REVISION TO ACCOMMODATE NEW S. 689.30**

Several statutes must be revised to accommodate the existence of new S. 689.30. They are enumerated below. The proposed language in bill format of statutes requiring revision begins on line 271 and ends on line 334 of the proposed bill.

### **A. Statutes Requiring Revision**

1. Creation of new 733.607(3)
2. Creation of new 733.707(4)
3. Creation of new 744.441(23)
4. Revision to 732.2035(5)
5. Creation of new 732.7035(10)
6. Renumbering of current 732.7035(10) to (11)
7. Revision to 732.7025(1)

## **VI. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

By reducing confusion and ambiguity in the current methods of transfer-on-death of real property, the proposal will reduce the potential of litigation and the need for judicial intervention in the process. By reducing the number of estates that require probate, the proposal would benefit the state of Florida by reducing the workload on the state's judiciary and clerks' offices.

## **VII. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The committee believes that there is no adverse direct economic impact on the private sector. Americans have been seeking and utilizing non-probate transfers for decades. The creation of the transfer on death instrument for real property will reduce the cost of transferring real property in such transactions and provide an affordable, lower-cost planning option for Florida real property owners. The proposal provides a method for Floridians to transfer real property in a simplified manner outside of probate not unlike beneficiary designations utilized to transfer bank accounts, securities, and life insurance proceeds, to name a few other asset classes. Unsecured creditors of the transferor's estate, through the probate process, have a means to make the beneficiary liable for the transferor's obligations. Imposing transferee liability on the beneficiary rather than imposing liability on the property balances the rights of the creditors with the need to have alienable title prior to the two year running of the statute of repose under s. 733.710, Florida Statutes.

By not subjecting the transferred property itself to probate and the claims of the transferor's creditors (and imposing only transferee liability), some may argue that this defeats the claims of legitimate creditors. Those who advance credit to Floridians have options to protect their interests by requiring collateral or other security, and by declining to advance credit to those who are not credit-worthy. Secured creditors who have perfected their interests in the property are protected and the beneficiary takes the property subject to those perfected secured interests.

## **VIII. CONSTITUTIONAL ISSUES**

This proposal is consistent with the provisions of Article I, section 2, and Article X, section 4, of the Florida Constitution.

## **IX. OTHER INTERESTED PARTIES**

The Elder Law Section of the Florida Bar

The Business Law Section of the Florida Bar

The Health Law Section of the Florida Bar

The Family Law Section of the Florida Bar

Rev. 20240901 v1 (Coral Gables)

**A bill to be entitled**

An Act providing for a transfer on death instrument; providing definitions; providing that a transferor may record a written instrument during transferor's lifetime that will transfer title to the real property to the beneficiary upon transferor's death; providing that the transferor will retain fee simple title with the right to revoke the beneficiary's expectancy interest; addressing creditors' rights; providing construction; prescribing the form of transfer on death instrument; providing an effective date.

Be it Enacted by the Legislature of the State of Florida:

Section 1. Section 689.30, Florida Statutes, is created to read:

689.30 Florida Real Property Transfer on Death Act.

(1) SHORT TITLE. This section may be cited as the "Florida Real Property Transfer on Death Act."

(2) DEFINITIONS. For all purposes of this Act, the singular includes the plural and the plural includes the singular.

As used in this Act, the term:

(a) "Beneficiary" means any individual, trustee, or entity named as the beneficiary in a transfer on death instrument.

(b) "Expectancy interest" is the interest that a beneficiary takes by a transfer on death instrument.

(c) "Real property" means any freehold interest in land, a condominium parcel as defined in s. 718.103(12), or a cooperative parcel as defined in s. 719.103(14).

(d) "Transfer on death instrument" means a written instrument authorized by this Act.

30 (e) "Transferor" means a natural person who owns a present  
31 interest in real property in an individual capacity and who  
32 executes and records a transfer on death instrument.

33 (3) APPLICABILITY. This Act applies to transfer on death  
34 instruments recorded after the effective date of this Act.

35 (4) NONEXCLUSIVITY. This Act does not affect any other  
36 method of transferring real property.

37 (5) AUTHORITY FOR TRANSFER ON DEATH INSTRUMENT.

38 (a) A natural person may transfer real property to one or  
39 more beneficiaries, to be effective only at the  
40 transferor's death, by recording a transfer on death  
41 instrument.

42 (b) A transfer on death instrument must be in a form  
43 substantially similar to that set forth in s. 689.30(13).

44 (6) EXECUTION AND RECORDATION.

45 (a) A transfer on death instrument must be executed by the  
46 transferor with the formalities required by s. 689.01 and  
47 acknowledged as required by s. 695.03.

48 (b) A transfer on death instrument must be recorded in  
49 accordance with s. 28.222(2) prior to the death of the  
50 transferor or it is of no force and effect.

51 (7) NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT  
52 REQUIRED. Lack of notice to, delivery to, acceptance by, or  
53 consideration from the beneficiary will not cause a  
54 transfer on death instrument recorded during the  
55 transferor's life to be ineffective.

56 (8) LIMITATIONS.

57 (a) A co-owner of real property may execute a transfer on  
58 death instrument only if the co-owner owns the real  
59 property as a tenant in common and only as to that owner's  
60 ownership interest. A transfer on death instrument by one

61 tenant in common does not affect the interest of any other  
62 co-owner.

63 (b) A community property interest may not be transferred by  
64 a transfer on death instrument.

65 (c) A joint owner of real property owned in joint tenancy  
66 with rights of survivorship or tenancy by the entireties  
67 may not transfer real property by a transfer on death  
68 instrument.

69 (d) A guardian or conservator may not execute a transfer on  
70 death instrument on behalf of a ward unless authorized by court  
71 order.

72 (e) An agent under a power of attorney may not execute a  
73 transfer on death instrument on behalf of a principal unless the  
74 power of attorney expressly grants the power to create or change  
75 beneficiary designations in accordance with s. 709.2202.

76 (f) The recordation of a transfer on death instrument is not a  
77 current change in ownership for any purpose, including, but not  
78 limited to, transfer taxes under s. 201.02, any due-on-sale  
79 clause, any notice or disclosure requirements, or property  
80 owners or community association approval requirements.

81 (g) A transfer on death instrument is ineffective to transfer  
82 title to real property if, upon the death of the transferor, the  
83 real property described in that instrument was the protected  
84 homestead, as described in s. 731.201(33), of the transferor  
85 unless the transferor was not survived by a spouse or by a minor  
86 child or, if survived by a spouse but not a minor child:

87 1. The instrument transferred the transferor's entire interest  
88 in that real property to the surviving spouse of the transferor;

89 or

90 2. The surviving spouse previously waived all rights in the  
91 transferor's protected homestead pursuant to s. 732.702, or

92 other applicable Florida law, or has joined in the instrument  
93 and waived his or her rights pursuant to 732.7025.

94 (9) REVOCATION.

95 (a) A transfer on death instrument can only be revoked as  
96 provided in this section.

97 (b) A transferor may revoke a transfer on death instrument  
98 as to some or all of the real property described in the  
99 transfer on death instrument by recording a deed conveying  
100 the real property to the transferor, to the transferor and  
101 beneficiaries, or to any third party.

102 (c) If a transfer on death instrument is made by more than  
103 one transferor as to real property owned as tenants in  
104 common, revocation by a transferor does not affect the  
105 transfer on death instrument as to the interests of another  
106 transferor.

107 (d) The designation of the transferor's spouse as a  
108 beneficiary in a transfer on death instrument is  
109 automatically revoked upon the dissolution of the  
110 transferor's marriage to the spouse, unless otherwise  
111 specified in the transfer on death instrument. If the  
112 transferor and the former spouse remarry, the expectancy  
113 interest in favor of the former spouse in a prior transfer  
114 on death instrument is not revived.

115 (e) The provisions of s. 732.802 and s. 732.8031 apply to  
116 any beneficiary.

117 (10) DISCLAIMER. A beneficiary may disclaim all or a part  
118 of any interest in the real property described in a  
119 transfer on death instrument in accordance with s.739.101,  
120 et seq..

121 (11) EFFECT OF A TRANSFER ON DEATH INSTRUMENT DURING THE  
122 TRANSFEROR'S LIFE AND AT DEATH.



123 (a) Without limitation, during the transferor's life, a  
124 transfer on death instrument does not have any effect and  
125 does not:

126 1. Affect any interest or right of the transferor or any  
127 other owner, including the right to transfer or encumber  
128 the real property.

129 2. Create any interest or right of a beneficiary in the  
130 real property, even if the beneficiary has actual or  
131 constructive notice of the transfer on death instrument.

132 3. Affect any interest or right of a creditor, whether  
133 secured, unsecured, current or future, even if the creditor  
134 has actual or constructive notice of the transfer on death  
135 instrument.

136 4. Affect the transferor's or beneficiary's eligibility for  
137 any form of public assistance.

138 5. Create a legal or equitable interest in the beneficiary.

139 6. Subject the real property to claims or process of a  
140 creditor of a beneficiary.

141 (b) At the death of the transferor:

142 1. Title to the transferor's interest in the real property  
143 described in a transfer on death instrument vests in the  
144 beneficiary or beneficiaries who survive the transferor, by  
145 operation of law, subject to subsection 12(c).

146 2. The interest of a beneficiary in the real property  
147 described in a transfer on death instrument is contingent  
148 on the beneficiary surviving the transferor.

149 3. If the primary beneficiary fails to survive the  
150 transferor and an alternative beneficiary is named in the  
151 transfer on death instrument, the transferor's interest in  
152 the real property described in a transfer on death  
153 instrument vests in the alternative beneficiary.

154 4. If beneficiaries are designated by terms indicating a  
155 class and any individual in the class fails to survive the  
156 transferor, then transferor's interest in the real property  
157 vests in the surviving beneficiaries in the class in equal  
158 shares.

159 5. If no beneficiary survives the transferor, the real  
160 property shall pass as provided by the Florida Probate  
161 Code.

162 (c) If more than one beneficiary is designated and the type  
163 of tenancy is not specified, multiple beneficiaries shall  
164 take in accordance with s. 689.15.

165 (12) RIGHTS OF CREDITORS.

166 (a) During the transferor's life, creditors of the  
167 transferor have whatever rights with respect to the real  
168 property as the creditors would have if the transferor had  
169 not executed a transfer on death instrument.

170 (b) During the transferor's lifetime, the interest of a  
171 beneficiary is an unvested expectancy interest, and the  
172 beneficiary's creditors or spouse have no rights to the  
173 real property.

174 (c) Upon the death of the transferor, the beneficiary is  
175 personally liable for the expenses of the administration  
176 and obligations of the transferor's estate to the extent  
177 the transferor's probate estate and any trust described in  
178 s. 733.707(3) are insufficient to pay them as provided in  
179 s. 733.607(2), but only to the extent of the value of the  
180 real property received by the beneficiary under the  
181 transfer on death instrument, subject to the following:

182 1. For purposes of the constitutional exemption from  
183 creditor claims for protected homestead, a transfer on  
184 death instrument shall be treated as a devise which may  
185 qualify as protected homestead as defined under s.

186 731.201(33). A determination of the protected status of  
187 the property transferred may be obtained in a proceeding  
188 under the Florida Probate Code or ch. 86, Florida Statutes.

189 2. In calculating the beneficiary's share of liability, the  
190 abatement rules provided in the Florida Probate Code shall  
191 be applied, and the property received by the beneficiary  
192 pursuant to the transfer on death instrument shall be  
193 treated as if it were property specifically devised by the  
194 decedent's will.

195 3. The value of the property received by the beneficiary  
196 pursuant to the transfer on death instrument shall be the  
197 fair market value of the property at the time of the  
198 transferor's death, less the amount of any liens and  
199 encumbrances on the property at the time of the  
200 transferor's death.

201 4. The personal representative shall certify in writing the  
202 amount that must be paid to the estate by serving the  
203 beneficiary with a written statement of liability in the  
204 manner provided for formal notice as provided under the  
205 Florida Probate Rules.

206 5. The beneficiary is personally liable to the estate for  
207 the amount specified in the statement of liability. Any  
208 amount that the beneficiary has paid toward the expenses of  
209 the administration and obligations of the transferor's  
210 estate shall be credited against the amount that the  
211 beneficiary owes the estate under this section.

212 6. If the beneficiary under a transfer on death instrument  
213 is the trustee of the transferor's revocable trust, as  
214 described in s. 733.707(3), and the trustee has distributed  
215 the property in accordance with the terms of the trust,  
216 then the beneficiaries of the trust who received the

217 distribution shall be treated as the beneficiaries who are  
218 subject to liability under this section.

219 7. On or before the expiration of 90 days from the service  
220 of the written statement of liability, the beneficiary may  
221 file a written objection to the amount of the reimbursement  
222 or liability. If an objection is filed, either the  
223 personal representative or the beneficiary may petition the  
224 court for an order determining the amount of the  
225 reimbursement or liability in a proceeding governed by the  
226 Florida Probate Code and the Florida Probate Rules. If no  
227 objection is filed within the time permitted, the written  
228 statement of liability shall be binding and enforceable  
229 against the beneficiary.

230 8. Nothing in this subsection shall entitle an unsecured  
231 creditor of the deceased transferor to claim or assert a  
232 lien against the property transferred by a transfer on  
233 death instrument. Bona fide purchasers and lenders for  
234 value who purchase from, or lend to, a beneficiary under a  
235 transfer on death instrument take title free and clear of  
236 all unsecured claims against the deceased transferor's  
237 estate, whether probate proceedings have been initiated or  
238 not.

239 9. An unsecured creditor of the deceased transferor may  
240 only enforce its claim against the decedent's estate in a  
241 proceeding governed by the Florida Probate Code and the  
242 Florida Probate Rules.

243 (d) This section shall not be construed to prevent the  
244 enforcement of:

245 1. Mortgages, security interests, or liens perfected during  
246 the transferor's life and encumbering the specific real  
247 property described in the transfer on death instrument.

248 2. Judgment liens against non-homestead real property for  
249 which execution or other process had issued against the  
250 real property during the transferor's lifetime.

251 (13) FORM OF TRANSFER ON DEATH INSTRUMENT PRESCRIBED. A  
252 transfer on death instrument must be in a form  
253 substantially similar to the following:

254 **TRANSFER ON DEATH INSTRUMENT**

255 (Florida Statute Sec. 689.30)

256 **THIS INSTRUMENT MUST BE EXECUTED WITH THE FORMALITIES REQUIRED**  
257 **BY S. 689.01, ACKNOWLEDGED AS REQUIRED BY S. 695.03, AND**  
258 **RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY IN WHICH THE**  
259 **REAL PROPERTY IS LOCATED PRIOR TO THE DEATH OF THE TRANSFEROR.**

260 This transfer on death instrument, executed this \_\_\_ day of  
261 \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ ("Transferor"), transfers the  
262 following described real property located in  
263 \_\_\_\_\_ County, Florida:

264 [insert property address, property appraiser's parcel  
265 identification number, and legal description of the  
266 Property or attach Exhibit A if more space is needed]  
267 upon the death of the Transferor, without payment of  
268 consideration and without warranties, to \_\_\_\_\_  
269 ("Beneficiary") in accordance with Sec. 689.30, F.S.

270  
271 733.607 Possession of estate.

272 (3) If, after application of subsection 2, the assets of  
273 the decedent's estate and any trusts described in  
274 733.707(3) are insufficient to pay the expenses of the  
275 administration and obligations of the decedent's estate,  
276 the personal representative is entitled to payment from any  
277 beneficiary of real property under a transfer on death  
278 instrument in the amount the personal representative  
279 certifies in writing in a written statement of liability to

280 be required to satisfy the insufficiency, as provided s.  
281 689.30(12)(c). The provisions of s. 733.805 shall apply in  
282 determining the amount of any payment required by this  
283 section.

284  
285 733.707 Order of payment of expenses and obligations.  
286 (4) The beneficiary of real property transferred at the  
287 decedent's death by a transfer on death instrument is  
288 liable for the expenses of the administration and  
289 obligations of the decedent's estate to the extent the  
290 decedent's estate and any trust described in subsection (3)  
291 are insufficient to pay them as provided in ss. 733.607(3)  
292 and s. 689.30(12)(c).

293  
294 744.441 Powers of guardian upon court approval.  
295 After obtaining approval of the court pursuant to a  
296 petition for authorization to act, a plenary guardian of  
297 the property, or a limited guardian of the property within  
298 the powers granted by the order appointing the guardian or  
299 an approved annual or amended guardianship report, may do  
300 all of the following:

301 (23) Execute a transfer on death instrument as set forth in  
302 chapter 689.

303  
304 732.2035 Property entering into elective estate.  
305 Except as provided in s. 732.2045, the elective estate  
306 consists of the sum of the values as determined under s.  
307 732.2055 of the following property interests:  
308 (5) That portion of property, other than property described  
309 in subsections (2), and (3) and (10), transferred by the  
310 decedent to the extent that at the time of the decedent's  
311 death the transfer was revocable by the decedent alone or

312 in conjunction with any other person. This subsection does  
313 not apply to a transfer that is revocable by the decedent  
314 only with the consent of all persons having a beneficial  
315 interest in the property.

316 (10) Interests transferred pursuant to a revocable transfer of  
317 an interest in real property, including a transfer described in  
318 the Florida Real Property Transfer on Death Act.

319 (~~10~~11) Property transferred in satisfaction of the elective  
320 share.

321

322 732.7025 Waiver of homestead rights through deed or  
323 transfer on death instrument.

324 (1) A spouse waives his or her rights as a surviving spouse  
325 with respect to the devise restrictions under s. 4(c), Art.  
326 X of the State Constitution if the following or  
327 substantially similar language is included in a deed or a  
328 transfer on death instrument described in the Florida Real  
329 Property Transfer on Death Act:

330 "By executing or joining this [deed / transfer on death  
331 instrument], I intend to waive homestead rights that would  
332 otherwise prevent my spouse from devising the homestead  
333 property described in this [deed / transfer on death  
334 instrument] to someone other than me."

335

336 Section 2. This act shall take effect January 1, 2027.

337

338 Rev. 20240901 Coral Gables 2024

Line #	Proposed Florida Legislation as Drafted	Alternative Proposal (Comments set forth in footnotes)	Committee Vote/Action	Note
2-9	An Act providing for a revocable transfer on death deed; providing definitions; providing that a transferor may record a deed during transferor's lifetime that will convey real property to the beneficiary upon transferor's death; providing that the transferor will retain fee simple title with the right to revoke the beneficiary's expectancy interest; addressing creditors' rights; providing construction; prescribing the form of revocable transfer on death deed; providing an effective date.		An Act providing for a transfer on death instrument; providing definitions; providing that a transferor may record a written instrument during transferor's lifetime that will convey real property to the beneficiary upon transferor's death; providing that the transferor will retain fee simple title with the right to revoke the beneficiary's expectancy interest; addressing creditors' rights; providing construction; prescribing the form of transfer on death instrument; providing an effective date.	1



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10-12	<p>Be it Enacted by the Legislature of the State of Florida:</p> <p>Section 1. Section 689.30, Florida Statutes, is created to read:</p>			
14	689.30 Florida Revocable Transfer on Death Deed Act		689.30 The Florida Real Property Transfer on Death Act	2, 3
15	(1) SHORT TITLE. - This section may be cited as the "Florida Revocable Transfer on Death Deed Act."		(1) SHORT TITLE. - This section may be cited as the "Florida Real Property Transfer on Death Act."	4
17-19	(2) DEFINITIONS. - For all purposes of this Act, the singular includes the plural and the plural includes the singular. As	(2) DEFINITIONS. <del>For all purposes of this Act, the singular includes the plural and the plural includes the</del>	(2) DEFINITIONS. As used in this Act, the term:	5

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	used in this Act, the term:	<del>singular.</del> As used in this Act, the term:		
20- 21	(a) "Beneficiary" means any individual, trustee, or entity named as the beneficiary in a revocable transfer on death deed.	(No comment)	(a) "Beneficiary" means any individual, trustee, or entity named as the beneficiary in a transfer on death instrument.	6, 7
22- 23	(b) "Expectancy Interest" is the interest that a beneficiary takes by a revocable transfer on death deed.	(b) "Expectancy <u>Interest</u> <del>is</del> <u>interest</u> " <del>is</del> <u>means</u> the interest that a beneficiary takes by a revocable transfer on death deed.	(b) "Expectancy interest" means the interest that a beneficiary takes by a transfer on death instrument.	8, 9
24- 26	(c) "Real Property" means any freehold interest in land, a condominium parcel as defined in s. 718.103(12), or a cooperative parcel as	(c) "Real <del>Property</del> <u>property</u> " means any freehold interest in land, a condominium parcel as defined in s. 718.103(12), or a	(c) "Real property" means any freehold interest in land, a condominium parcel as defined in s. 718.103(12), or a cooperative parcel as	10

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	defined in s. 719.103(14).	cooperative parcel as defined in s. 719.103(14).	defined in s. 719.103(14).	
27- 28	(d) "Revocable Transfer on Death Deed" means a deed authorized by this Act.	(d) "Revocable <del>Transfer</del> <u>transfer</u> on <del>Death</del> <u>death</u> <del>Deed</del> <u>deed</u> " means a deed authorized by this Act.	(d) "Transfer on death instrument" means an instrument authorized by this Act.	11, 12
29- 31	(e) "Transferor" means a natural person who owns real property in an individual capacity and who makes a revocable transfer on death deed.	(e) "Transferor" means a natural person who owns real property in an individual capacity and who <del>makes</del> <u>executes and records</u> a revocable transfer on death deed.	(e) "Transferor" means a natural person who owns a present interest in real property in an individual capacity and who executes and records a transfer on death instrument.	13, 14, 15, 16, 17, 18
32- 33	(3) APPLICABILITY. This Act applies to revocable transfer on death deeds recorded after the effective date of this		(3) APPLICABILITY. This Act applies to transfer on death instruments recorded after the effective date of this Act.	19

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	Act.			
35- 36	(4) NONEXCLUSIVITY. This Act does not affect any other method of transferring real property.			
37	(5) REVOCABLE TRANSFER ON DEATH DEED AUTHORIZED.	(5) <u>AUTHORITY FOR</u> REVOCABLE TRANSFER ON DEATH DEED <del>AUTHORIZED</del> .	(5) AUTHORITY FOR TRANSFER ON DEATH INSTRUMENT.	20, 21, 22
38- 40	(a) An individual may transfer real property to one or more beneficiaries effective at the transferor's death by recording a revocable transfer on death deed.	(a) <del>An individual</del> <u>A natural person</u> may transfer real property to one or more beneficiaries, <u>to only</u> effective at the transferor's death, <u>by</u> recording a revocable	(a) A natural person may transfer real property to one or more beneficiaries, to be effective only at the transferor's death, by recording a transfer on death instrument.	23, 24, 25

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		transfer on death deed.		
41-42	(b) A revocable transfer on death deed must be in a form substantially similar to that set forth in s. 689.30(13).	(b) A revocable transfer on death deed <del>must</del> <u>may</u> be in a form substantially similar to that set forth in s. 689.30(13).	(b) A transfer on death instrument must be in a form substantially similar to that set forth in s. 689.30(13).	26, 27, 28
43	(6) EXECUTION AND RECORDATION.			
44-46	(a) A revocable transfer on death deed must be executed with the formalities required by s. 689.01 and acknowledged as required by s. 695.03.	(a) A revocable transfer on death deed must be executed <u>by the transferor</u> with the formalities required by s. 689.01 and acknowledged as required by s. 695.03.	(a) A transfer on death instrument must be executed by the transferor with the formalities required by s. 689.01 and acknowledged as required by s. 695.03.	29, 30

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47-49	(b) A revocable transfer on death deed must be recorded according to law prior to the death of the transferor or it is of no force and effect.	(b) A revocable transfer on death deed must be recorded <del>according to law</del> prior to the death of the transferor or it is of no force and effect.	(b) A transfer on death instrument must be recorded in accordance with s. 28.222(2) prior to the death of the transferor or it is of no force and effect.	31, 32, 33, 34
50-54	(7) NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. A revocable transfer on death deed recorded during the transferor's life is effective without notice to, delivery to,	(7) NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. <del>A revocable transfer on death deed recorded during the transferor's life is effective without notice</del>	(7) NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED. Lack of notice to, delivery to, acceptance by, or consideration from the beneficiary will not cause a transfer on death	35, 36, 37

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	acceptance by, or consideration from the beneficiary.	<del>to, delivery to, acceptance by, or consideration from the beneficiary</del> <u>Lack of notice to, delivery to, acceptance by, or consideration from the beneficiary will not cause a revocable transfer on death deed recorded during the transferor's life to be ineffective.</u>	instrument recorded during the transferor's life to be ineffective.	
55	(8) LIMITATIONS.			
56-61	(a) A co-owner of real property may execute a revocable transfer on death deed only if the co-owner owns the real property as a tenant in	(a) A co-owner of real property may execute a revocable transfer on death deed only if the co-owner owns the real property as a tenant in	(a) A co-owner of real property may execute a transfer on death instrument only if the co-owner owns the real property as a tenant in	38, 39, 40, 41

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	<p>common and only as to that individual's share. A revocable transfer on death deed by one tenant in common does not affect the interests of any other co-owner.</p>	<p>common and only as to that <del>individual's share</del> <u>co-owner's ownership interest</u>. A revocable transfer on death deed by one tenant in common does not affect the interests of any other co-owner.</p>	<p>common and only as to that owner's ownership interest. A transfer on death instrument by one tenant in common does not affect the interest of any other co-owner.</p>	
New		<p>(b) A <u>community property interest may not be transferred by a revocable transfer on death deed.</u></p>	<p>(b) A community property interest may not be transferred by a transfer on death instrument.</p>	<p>42, 43</p>
New		<p>(c) A <u>joint owner of real property owned in joint tenancy with rights of survivorship or tenancy by the entirety may not transfer real property by a revocable transfer on</u></p>	<p>(c) A joint owner of real property owned in joint tenancy with rights of survivorship or tenancy by the entirety may not transfer real property by a transfer on death</p>	<p>44, 45, 46</p>



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		<u>death deed.</u>	instrument.	
62-64	(b) A guardian or conservator may not execute a revocable transfer on death deed on behalf of a ward unless authorized by court order.	<del>(b)</del> (d) A guardian or conservator may not execute a revocable transfer on death deed on behalf of a ward unless authorized by court order.	(d) A guardian or conservator may not execute a transfer on death instrument on behalf of a ward unless authorized by court order.	47, 48
66-69	(c) An agent under a power of attorney may not execute a revocable transfer on death deed on behalf of a principal unless the power of attorney expressly grants the power to create or change beneficiary designations in accordance with s. 709.2202.	<del>(c)</del> (e) An agent under a power of attorney may not execute a revocable transfer on death deed on behalf of a principal unless the power of attorney expressly grants the power to create or change beneficiary designations in <u>a revocable transfer on death deed in</u>	(e) An agent under a power of attorney may not execute a transfer on death instrument on behalf of a principal unless the power of attorney expressly grants the power to create or change beneficiary designations in accordance with s. 709.2202.	49, 50

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		accordance with s. 709.2202.		
70-74	(d) The recordation of a revocable transfer on death deed is not a change in ownership for any purpose, including, but not limited to, transfer taxes under s. 02, any due-on-sale clause, any notice or disclosure requirements, or property owners or community association approval requirements.	<del>(d)</del> (f) The recordation of a revocable transfer on death deed is not a <u>current</u> change in ownership for any purpose, including, but not limited to, transfer taxes under s. 201.02, any due-on-sale clause, any notice or disclosure requirements, or property owners or community association approval requirements.	(f) The recordation of a transfer on death instrument is not a current change in ownership for any purpose, including, but not limited to, transfer taxes under s. 201.02, any due-on-sale clause, any notice or disclosure requirements, or property owners or community association approval requirements.	51, 52, 53
75-90	(e) If the transferor has executed a revocable transfer on death deed describing real property	<u>(g) A revocable transfer on death instrument is ineffective to transfer title to real property</u>	(g) A revocable transfer on death instrument is ineffective to transfer	54, 55, 56, 57

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	<p>that is the transferor's homestead at the time of the transferor's death, then consistent with the protections in Article X, s. 4 of the Florida Constitution:</p> <p>(i) if the transferor is survived by a minor child, the revocable transfer on death deed is void.</p> <p>(ii) if the transferor is not survived by a minor child, but is survived by a spouse, the revocable transfer on death deed is valid if:</p> <p>(A) the revocable transfer on death deed</p>	<p><u>if, upon the death of the transferor, the real property described in that instrument was the protected homestead, as described in s. 731.201(33), of the transferor unless the transferor was not survived by a spouse or by a minor child or, if survived by a spouse but not a minor child:</u></p> <p><u>(i) the instrument transferred the transferor's entire interest in that real property to the surviving spouse of the transferor, or</u></p>	<p>title to real property if, upon the death of the transferor, the real property described in that instrument was the protected homestead, as described in s. 731.201(33), of the transferor unless the transferor was not survived by a spouse or by a minor child or, if survived by a spouse but not a minor child:</p> <p>(i) the instrument transferred the transferor's entire interest in that real property to the surviving spouse of the transferor,</p>	
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	<p>gives the surviving spouse the equivalent of a fee simple interest in the entire interest held by the transferor at the time of the transferor's death; or</p> <p>(B) the surviving spouse waived his or her rights to the transferor's homestead residence at death pursuant to s. 732.702 or 732.7025 or other applicable Florida law.</p>	<p><u>(ii) the surviving spouse previously waived all rights in the transferor's protected homestead pursuant to s. 732.702, or other applicable Florida law, or has joined in the instrument and waived his or her rights pursuant to 732.7025.</u></p>	<p>or</p> <p>(ii) the surviving spouse previously waived all rights in the transferor's protected homestead pursuant to s. 732.702, or other applicable Florida law, or has joined in the instrument and waived his or her rights pursuant to 732.7025.</p>	
91	(9) REVOCATION.			
92-93	(a) A revocable transfer on death deed can only be revoked as provided in		(a) a transfer on death instrument can only be revoked as provided in	58

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	this section.		this section.	
94-98	(b) A transferor may revoke a revocable transfer on death deed as to some or all of the real property described in the revocable transfer on death deed by recording a deed conveying the real property to the transferor, to the transferor and beneficiaries, or to any third party.	(b) A transferor may revoke a revocable transfer on death deed <del>as to some or all of the real property described in the revocable transfer on death deed</del> by recording a deed conveying the real property to the transferor, to the transferor and beneficiaries, or to any third party.	(b) A transferor may revoke a transfer on death instrument as to some or all of the real property described in the transfer on death instrument by recording a deed conveying the real property to the transferor, to the transferor and beneficiaries, or to any third party.	59, 60, 61, 62
New		<u>(c) If a revocable transfer on death deed is made by more than one transferor as to real</u>	(c) If a transfer on death instrument is made by more than one transferor as to real property owned as tenants in common,	63, 64, 65

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		<u>property owned as</u> <u>tenants in common,</u> <u>revocation by a</u> <u>transferor does not</u> <u>affect the deed as to the</u> <u>interests of another</u> <u>transferor.</u>	revocation by a transferor does not affect the transfer on death instrument as to the interests of another transferor.	
99-106	(c) The designation of the transferor's spouse as a beneficiary in a revocable transfer on death deed is automatically revoked upon the dissolution of the transferor's marriage to the spouse, unless otherwise specified in the revocable transfer on	<del>(c)</del> (d) The designation of the transferor's spouse as a beneficiary in a revocable transfer on death deed is automatically revoked upon the dissolution of the transferor's marriage to <del>the</del> <u>that</u> spouse, unless otherwise specified in the	(d) The designation of the transferor's spouse as a beneficiary in a transfer on death instrument is automatically revoked upon the dissolution of the transferor's marriage to that spouse, unless otherwise specified in the transfer on death	66, 67, 68

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107-110	<p>death deed. If the transferor and the former spouse remarry, the expectancy interest in favor of the former spouse in a prior revocable transfer on death deed is not revived.</p> <p>(d) A beneficiary of a revocable transfer-on-death deed is entitled to the benefits pursuant to s. 732.606.</p>	<p>revocable transfer on death deed. If the transferor and the former spouse remarry, the expectancy interest in favor of the former spouse in a prior revocable transfer on death deed is not revived.</p> <p><del>(d) A beneficiary of a revocable transfer-on-death deed is entitled to the benefits pursuant to s. 732.606.</del></p>	<p>instrument. If the transferor and the former spouse remarry, the expectancy interest in favor of the former spouse in a prior transfer on death instrument is not revived.</p> <p>Alt 9(d) strikethrough approved</p> <p>(e) The provisions of s. 732.802 and s. 732.8031 apply to any beneficiary.</p>	69
109	<p>(e) The provisions of s. 732.802 and s. 732.8031</p>			

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	apply to any beneficiary.			
112	(10) DISCLAIMER.  A beneficiary may disclaim all or a part of any interest in the real property described in a revocable transfer on death deed in accordance with s.739.101, et seq.		(10) DISCLAIMER.  A beneficiary may disclaim all or a part of any interest in the real property described in a transfer on death instrument in accordance with s.739.101, et seq.	70, 71, 72, 73, 74
115	(11) EFFECT OF A REVOCABLE TRANSFER ON DEATH DEED DURING THE TRANSFEROR'S LIFE AND AT DEATH.		(11) EFFECT OF A TRANSFER ON DEATH INSTRUMENT DURING THE TRANSFEROR'S LIFE AND AT DEATH.	75
117	(a) During the transferor's life, a revocable transfer on death deed does not:	(a) <u>Without limitation,</u> <del>During</del> <u>during</u> the transferor's life, a revocable transfer on death deed does not <u>have</u>	(a) Without limitation, during the transferor's life, a transfer on death instrument does not have	76, 77, 78, 79, 80, 81, 82, 83, 84



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	<p>(i) affect any interest or right of the transferor or any other owner, including the right to transfer or encumber the real property;</p> <p>(ii) create or affect an interest or right of a beneficiary in the real property, even if the beneficiary has actual or constructive notice of the revocable transfer on death deed;</p> <p>(iii) affect an interest or right of a secured or unsecured creditor or future creditor of the</p>	<p><u>any effect and does not:</u></p> <p>(i) affect any interest or right of the transferor or any other owner, including the right to transfer or encumber the real property;</p> <p>(ii) create <del>or affect an</del> <u>any</u> interest or right of a beneficiary in the real property, even if the beneficiary has <del>actual or constructive</del> notice of the revocable transfer on death deed;</p> <p>(iii) affect <del>an</del> <u>any</u> interest or right of a <del>secured or unsecured</del> creditor, <u>whether</u></p>	<p><u>any effect and does not:</u></p> <p>(i) affect any interest or right of the transferor or any other owner, including the right to transfer or encumber the real property;</p> <p>(ii) create any interest or right of a beneficiary in the real property, even if the beneficiary has actual or constructive notice of the transfer on death instrument;</p> <p>(iii) affect any interest or right of a creditor, whether secured, unsecured, current or</p>	
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	<p>transferor, even if the creditor has actual or constructive notice of the revocable transfer on death deed;</p> <p>(iv) affect the transferor's or beneficiary's eligibility for any form of public assistance, or create a legal or equitable interest in favor of the beneficiary for purposes of determining eligibility for public assistance; or</p>	<p><u>secured, unsecured, current or future,</u> <del>or future creditor of the transferor,</del> even if the creditor has actual or constructive notice of the revocable transfer on death deed;</p> <p>(iv) affect the transferor's or beneficiary's eligibility for any form of public assistance<sup>7, 1</sup>, or create a legal or equitable interest in favor of the beneficiary <del>for purposes of determining eligibility for public assistance;</del></p>	<p>future, even if the creditor has actual or constructive notice of the transfer on death instrument;</p> <p>(iv) affect the transferor's or beneficiary's eligibility for any form of public assistance;</p> <p>(v) create a legal or equitable interest in the beneficiary; or</p> <p>(vi) subject the real property to claims or process of a creditor of a beneficiary.</p>	
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	(v) subject the real property to claims or process of a creditor of a beneficiary.	<del>or</del> (v) <u>create a legal or equitable interest in the beneficiary; or</u> (vi) subject the real property to claims or process of a creditor of a beneficiary.		
136	(b) At the death of the transferor, the real property described in a revocable transfer on death deed vests in the beneficiary by operation of law, and, once vested in the beneficiary, is not subject to administration in the estate of the transferor.	<del>(b) At the death of the transferor, the real property described in a revocable transfer on death deed vests in the beneficiary by operation of law, and, once vested in the beneficiary, is not subject to administration in the estate of the</del>	(b) At the death of the transferor:	85, 86, 87, 88, 89

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		<p><del>transferor.</del></p> <p><u>(i) title to the transferor's interest in the real property described in a revocable transfer on death deed vests in the beneficiary or beneficiaries who survive the transferor, by operation of law, subject to subsection 12(c);</u></p> <p><u>(ii) the interest of a beneficiary in the real property described in a revocable transfer on death deed is contingent on the beneficiary surviving the</u></p>	<p>(i) title to the transferor's interest in the real property described in a transfer on death instrument vests in the beneficiary or beneficiaries who survive the transferor, by operation of law, subject to subsection 12(c);</p> <p>(ii) the interest of a beneficiary in the real property described in a transfer on death instrument is contingent on the beneficiary surviving the transferor.</p> <p>(iii) if the primary beneficiary fails to survive the transferor</p>	
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		<p><u>transferor.</u></p> <p><u>(iii) if the primary beneficiary fails to survive the transferor and an alternative beneficiary is named in the revocable transfer on death deed, the transferor's interest in the real property described in a revocable transfer on death deed vests in the alternative beneficiary.</u></p> <p><u>(iv) if beneficiaries are designated by terms indicating a class and</u></p>	<p>and an alternative beneficiary is named in the transfer on death instrument, the transferor's interest in the real property described in a transfer on death instrument vests in the alternative beneficiary.</p> <p><u>(iv) if beneficiaries are designated by terms indicating a class and any individual in the class fails to survive the transferor, then transferor's interest in the real property vests in the surviving beneficiaries in the class in equal shares.</u></p>	
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		<p><u>any individual in the class fails to survive the transferor, then transferor's interest in the real property vests in the surviving beneficiaries in the class in equal shares.</u></p> <p><u>(v) if no beneficiary survives the transferor, the real property shall pass as provided by the Florida Probate Code.</u></p>	<p>(v) if no beneficiary survives the transferor, the real property shall pass as provided by the Florida Probate Code.</p>	
141	(c) A transferor may designate any individual, entity, or trustee of any trust as a beneficiary, or as an alternate	<del>(c) A transferor may designate any individual, entity, or trustee of any trust as a beneficiary, or as an</del>	Alt 11(c) strikethrough approved.	90

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	<p>beneficiary. Unless otherwise specified in the revocable transfer on death deed, upon the death of the transferor:</p> <p>(i) if the primary beneficiary fails to survive the transferor and no alternate beneficiary is named, the primary beneficiary's interest in the real property shall pass by representation per stirpes to the descendants of the primary beneficiary;</p> <p>(ii) if the primary beneficiary fails to survive the transferor</p>	<p><del>alternate beneficiary. Unless otherwise specified in the revocable transfer on death deed, upon the death of the transferor:</del></p> <p><del>(i) if the primary beneficiary fails to survive the transferor and no alternate beneficiary is named, the primary beneficiary's interest in the real property shall pass by representation per stirpes to the descendants of the primary beneficiary;</del></p>		
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	<p>and an alternate beneficiary is named who also fails to survive the transferor, the alternate beneficiary's interest in the real property shall pass by representation per stirpes to the descendants of the alternate beneficiary, or to the descendants of the primary beneficiary if the alternate beneficiary has no descendants;</p> <p>(iii) if the primary and alternate beneficiaries fail to survive the transferor leaving no descendants, the real property shall pass as provided in the Florida</p>	<p><del>(ii) if the primary beneficiary fails to survive the transferor and an alternate beneficiary is named who also fails to survive the transferor, the alternate beneficiary's interest in the real property shall pass by representation per stirpes to the descendants of the alternate beneficiary, or to the descendants of the primary beneficiary if the alternate beneficiary has no descendants;</del></p> <p><del>(iii) if the primary and alternate beneficiaries</del></p>		
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	<p>Probate Code; or</p> <p>(iv) if beneficiaries are designated by terms indicating a class, then the descendants of any beneficiary who fails to survive the transferor shall take that beneficiary's interest in the real property by representation per stirpes.</p>	<p><del>fail to survive the transferor leaving no descendants, the real property shall pass as provided in the Florida Probate Code; or</del></p> <p><del>(iv) if beneficiaries are designated by terms indicating a class, then the descendants of any beneficiary who fails to survive the transferor shall take that beneficiary's interest in the real property by representation per stirpes.</del></p>		
167	<p>(d) If more than one beneficiary is designated and the type of tenancy</p>		<p>(c) If more than one beneficiary is designated and the type of tenancy</p>	



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	<p>beneficiary is a mere expectancy interest, and the beneficiary's creditors have no rights to the real property.</p> <p>(c) This section shall not be construed to prevent the enforcement of</p> <p>(i) mortgages, security interests, or liens perfected during the transferor's life and encumbering the specific real property described in the revocable transfer on death deed, or</p> <p>(ii) judgement liens</p>	<p>(b) During the transferor's lifetime, the interest of a beneficiary is <del>a mere</del> <u>an unvested</u> expectancy interest, and the beneficiary's creditors <u>or spouse</u><sup>91</sup> have no rights to the real property.</p> <p><u>(c) Upon the death of the transferor, the beneficiary is personally liable for the expenses of the administration and obligations of the transferor's estate to the extent the transferor's probate</u></p>	<p>interest, and the beneficiary's creditors or spouse have no rights to the real property.</p> <p>(c) Upon the death of the transferor, the beneficiary is personally liable for the expenses of the administration and obligations of the transferor's estate to the extent the transferor's probate estate and any trust described in s. 733.707(3) are insufficient to pay them as provided in s. 733.607(2), but only to the extent of the value of the real property</p>	
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179	<p>against non-homestead real property for which execution or other process had issued against the real property during the transferor's lifetime.</p>	<p><u>estate and any trust described in s. 733.707(3) are insufficient to pay them as provided in s. 733.607(2), but only to the extent of the value of the real property received by the beneficiary under the revocable transfer on death deed, subject to the following:</u></p> <p><u>(i) For purposes of the constitutional exemption from creditor claims for protected homestead, a revocable transfer on death deed shall be treated as a</u></p>	<p>received by the beneficiary under the transfer on death instrument, subject to the following:</p> <p>(i) For purposes of the constitutional exemption from creditor claims for protected homestead, a transfer on death instrument shall be treated as a devise which may qualify as protected homestead as defined under s. 731.201(33). A determination of the protected status of the property transferred may be obtained in a proceeding under the Florida Probate Code or</p>	
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		<p><u>devise which may qualify as protected homestead as defined under s. 731.201(33).</u>  <u>A determination of the protected status of the property transferred may be obtained in a proceeding under the Florida Probate Code or ch. 86, Florida Statutes.</u></p> <p><u>(ii) In calculating the beneficiary's share of liability, the abatement rules provided in the Florida Probate Code shall be applied, and the property received by</u></p>	<p>ch. 86, Florida Statutes.</p> <p>(ii) In calculating the beneficiary's share of liability, the abatement rules provided in the Florida Probate Code shall be applied, and the property received by the beneficiary pursuant to the transfer on death instrument shall be treated as if it were property specifically devised by the decedent's will.</p> <p>(iii) The value of the property received by the beneficiary pursuant to the transfer on death instrument shall be the</p>	
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		<p><u>the beneficiary pursuant to the revocable transfer on death deed shall be treated as if it were property specifically devised by the decedent's will.</u></p> <p><u>(iii) The value of the property received by the beneficiary pursuant to the revocable transfer on death deed shall be the fair market value of the property at the time of the transferor's death, less the amount of any liens and encumbrances</u></p>	<p>fair market value of the property at the time of the transferor's death, less the amount of any liens and encumbrances on the property at the time of the transferor's death.</p> <p>(iv) The personal representative shall certify in writing the amount that must be paid to the estate by serving the beneficiary with a written statement of liability in the manner provided for formal notice as provided under the Florida Probate Rules.</p>	
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		<p><u>on the property at the time of the transferor's death.</u></p> <p><u>(iv) The personal representative shall certify in writing the amount that must be paid to the estate by serving the beneficiary with a written statement of liability in the manner provided for formal notice as provided under the Florida Probate Rules.</u></p> <p><u>(v) The beneficiary is personally liable to the estate for the amount specified in the statement of liability.</u></p>	<p>(v) The beneficiary is personally liable to the estate for the amount specified in the statement of liability. Any amount that the beneficiary has paid toward the expenses of the administration and obligations of the transferor's estate shall be credited against the amount that the beneficiary owes the estate under this section.</p> <p>(vi) If the beneficiary under a transfer on death instrument is the trustee of the transferor's</p>	
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		<p><u>Any amount that the beneficiary has paid toward the expenses of the administration and obligations of the transferor's estate shall be credited against the amount that the beneficiary owes the estate under this section.</u></p> <p><u>(vi) If the beneficiary under a revocable transfer on death deed is the trustee of the transferor's revocable trust, as described in s. 733.707(3), and the trustee has distributed</u></p>	<p>revocable trust, as described in s. 733.707(3), and the trustee has distributed the property in accordance with the terms of the trust, then the beneficiaries of the trust who received the distribution shall be treated as the beneficiaries who are subject to liability under this section.</p> <p>(vii) On or before the expiration of 90 days from the service of the written statement of liability, the beneficiary may file a written objection to the</p>	
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		<p><u>the property in accordance with the terms of the trust, then the beneficiaries of the trust who received the distribution shall be treated as the beneficiaries who are subject to liability under this section.</u></p> <p><u>(vii) On or before the expiration of 90 days from the service of the written statement of liability, the beneficiary may file a written objection to the amount of the reimbursement or</u></p>	<p>amount of the reimbursement or liability. If an objection is filed, either the personal representative or the beneficiary may petition the court for an order determining the amount of the reimbursement or liability in a proceeding governed by the Florida Probate Code and the Florida Probate Rules. If no objection is filed within the time permitted, the written statement of liability shall be binding and enforceable against the beneficiary.</p>	
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		<p><u>liability. If an objection is filed, either the personal representative or the beneficiary may petition the court for an order determining the amount of the reimbursement or liability in a proceeding governed by the Florida Probate Code and the Florida Probate Rules. If no objection is filed within the time permitted, the written statement of liability shall be binding and enforceable against the beneficiary.</u></p>	<p>(viii) Nothing in this subsection shall entitle an unsecured creditor of the deceased transferor to claim or assert a lien against the property transferred by a transfer on death instrument. Bona fide purchasers and lenders for value who purchase from, or lend to, a beneficiary under a transfer on death instrument take title free and clear of all unsecured claims against the deceased transferor's estate, whether probate proceedings have been initiated or not.</p>	
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		<p><u>(viii) Nothing in this subsection shall entitle an unsecured creditor of the deceased transferor to claim or assert a lien against the property transferred by a revocable transfer on death deed. Bona purchasers and lenders for value who purchase from, or lend to, a beneficiary under a revocable transfer on death deed take title free and clear of all unsecured claims against the deceased transferor's estate,</u></p>	<p>(ix) An unsecured creditor of the deceased transferor may only enforce its claim against the decedent's estate in a proceeding governed by the Florida Probate Code and the Florida Probate Rules.</p> <p>(d) This section shall not be construed to prevent the enforcement of:</p> <p>(i) mortgages, security interests, or liens perfected during the transferor's life and encumbering the specific real property described in the transfer on death</p>	
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		<p><u>whether probate proceedings have been initiated or not.</u></p> <p><u>(ix) An unsecured creditor of the deceased transferor may only enforce its claim against the decedent's estate in a proceeding governed by the Florida Probate Code and the Florida Probate Rules.</u></p> <p><u>(d)</u> This section shall not be construed to prevent the enforcement of:</p> <p>(i) mortgages, security interests, or liens perfected during the</p>	<p>instrument; or</p> <p>(ii) judgment liens against non-homestead real property for which execution or other process had issued against the real property during the transferor's lifetime.</p>	
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		<p>transferor's life and encumbering the specific real property described in the revocable transfer on death deed, or</p> <p>(ii) judgment liens against non-homestead real property for which execution or other process had issued against the real property during the transferor's lifetime.</p>		
1.	(13) FORM OF REVOCABLE TRANSFER ON DEATH DEED PRESCRIBED. A revocable transfer on death deed	(13) FORM OF REVOCABLE TRANSFER ON DEATH DEED PRESCRIBED. A revocable transfer on death deed	(13) FORM OF TRANSFER ON DEATH INSTRUMENT PRESCRIBED. A transfer on death instrument must be	93

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	<p>must be in a form substantially similar to the following:</p> <p>REVOCABLE TRANSFER ON DEATH DEED</p> <p>(Florida Statute Sec. 689.30)</p> <p>THIS DEED MUST BE EXECUTED WITH THE FORMALITIES REQUIRED BY S. 689.01, ACKNOWLEDGED AS REQUIRED BY S. 695.03, AND RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED PRIOR TO THE DEATH OF THE TRANSFEROR.</p> <p>This Revocable Transfer on Death Deed, executed</p>	<p><del>must</del> <u>may</u> be in a form substantially similar to the following:</p> <p>....</p>	<p>in a form substantially similar to the following:</p> <p>TRANSFER ON DEATH INSTRUMENT</p> <p>(Florida Statute Sec. 689.30)</p> <p>THIS INSTRUMENT MUST BE EXECUTED WITH THE FORMALITIES REQUIRED BY S. 689.01, ACKNOWLEDGED AS REQUIRED BY S. 695.03, AND RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED PRIOR TO THE DEATH OF THE TRANSFEROR.</p> <p>This Transfer on Death Instrument, executed this ___ day of _____,</p>	
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	<p>this __ day of _____, _____, by _____ ("Transferor"), transfers the following described real property located in _____ County, Florida:</p> <p>[insert property address, property appraiser's parcel identification number, and legal description of the Property or attach Exhibit A if more space is needed]</p> <p>upon the death of the Transferor, without payment of consideration and without warranties, to _____</p>		<p>_____, by _____ ("Transferor"), transfers the following described real property located in _____ County, Florida:</p> <p>[insert property address, property appraiser's parcel identification number, and legal description of the Property or attach Exhibit A if more space is needed]</p> <p>upon the death of the Transferor, without payment of consideration and without warranties, to _____ ("Beneficiary") in</p>	
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	("Beneficiary") in accordance with Sec. 689.30, F.S.		accordance with Sec. 689.30, F.S.	
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New		<p>733.607 Possession of estate.—</p> <p>(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered</p>	<p>733.607 Possession of estate.—</p> <p>(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or</p>	
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		<p>to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal</p>	<p>tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by</p>	
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		<p>representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title to it.</p> <p>(2) If, after providing for statutory entitlements and all devises other than residuary devises, the assets of the decedent's estate are insufficient to pay the expenses of the administration and obligations of the decedent's estate, the personal representative is</p>	<p>the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title</p>	
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		<p>entitled to payment from the trustee of a trust described in s. 733.707(3), in the amount the personal representative certifies in writing to be required to satisfy the insufficiency, subject to the exclusions and preferences under s. 736.05053. The provisions of s. 733.805 shall apply in determining the amount of any payment required by this section.</p> <p><u>(3) If, after application of subsection 2, the assets of the decedent's estate and any trusts described in</u></p>	<p>to it.</p> <p>(2) If, after providing for statutory entitlements and all devises other than residuary devises, the assets of the decedent's estate are insufficient to pay the expenses of the administration and obligations of the decedent's estate, the personal representative is entitled to payment from the trustee of a trust described in s. 733.707(3), in the amount the personal</p>	
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		<p><u>733.707(3) are insufficient to pay the expenses of the administration and obligations of the decedent's estate, the personal representative is entitled to payment from any beneficiary of real property under a revocable transfer on death deed in the amount the personal representative certifies in writing in a written statement of liability to be required to satisfy the insufficiency, as provided s. 689.30(12)(c). The provisions of s. 733.805 shall apply in determining the amount of any payment</u></p>	<p>representative certifies in writing to be required to satisfy the insufficiency, subject to the exclusions and preferences under s. 736.05053. The provisions of s. 733.805 shall apply in determining the amount of any payment required by this section.</p> <p>(3) If, after application of subsection 2, the assets of the decedent's estate and any trusts described</p>	
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		<p><u>required by this section.</u></p>	<p>in 733.707(3) are insufficient to pay the expenses of the administration and obligations of the decedent's estate, the personal representative is entitled to payment from any beneficiary of real property under a transfer on death instrument in the amount the personal representative certifies in writing in a written statement of liability to be required to satisfy</p>	
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			<p>the insufficiency, as provided s. 689.30(12)(c). The provisions of s. 733.805 shall apply in determining the amount of any payment required by this section.</p>	
		<p>733.707 Order of payment of expenses and obligations.—</p> <p>(1) The personal representative shall pay the expenses of the administration and obligations of the decedent's estate in the following order:</p> <p>(a) Class 1.—Costs, expenses of</p>	<p>733.707 Order of payment of expenses and obligations.—</p> <p>(1) The personal representative shall pay the expenses of the administration and obligations of the decedent's estate in the following order:</p>	

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		<p>administration, and compensation of personal representatives and their attorneys fees and attorney's fees awarded under s. 733.106(3).</p> <p>(b) Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.</p> <p>(c) Class 3.—Debts and taxes with preference under federal law, claims pursuant to ss. 409.9101 and 414.28, and claims in favor of the state for</p>	<p>(a) Class 1.—Costs, expenses of administration, and compensation of personal representatives and their attorneys fees and attorney's fees awarded under s. 733.106(3).</p> <p>(b) Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the</p>	
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		<p>unpaid court costs, fees, or fines.</p> <p>(d) Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent.</p> <p>(e) Class 5.—Family allowance.</p> <p>(f) Class 6.—Arrearage from court-ordered child support.</p> <p>(g) Class 7.—Debts acquired after death by the continuation of the decedent’s business, in accordance with s. 733.612(22), but only to</p>	<p>aggregate of \$6,000.</p> <p>(c) Class 3.—Debts and taxes with preference under federal law, claims pursuant to ss. 409.9101 and 414.28, and claims in favor of the state for unpaid court costs, fees, or fines.</p> <p>(d) Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of</p>	
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		<p>the extent of the assets of that business.</p> <p>(h) Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in paragraphs (b) and (d).</p> <p>(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.</p> <p>(3) Any portion of a</p>	<p>persons attending the decedent.</p> <p>(e) Class 5.—Family allowance.</p> <p>(f) Class 6.—Arrearage from court-ordered child support.</p> <p>(g) Class 7.—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.</p> <p>(h) Class 8.—All other claims,</p>	
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		<p>trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (e), either alone or in conjunction with any other person, is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them as provided in ss. 733.607(2) and 736.05053.</p> <p>(a) For purposes of this subsection, any trusts established as part of, and all payments from,</p>	<p>including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in paragraphs (b) and (d).</p> <p>(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.</p>	
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		<p>either an employee annuity described in s. 403 of the Internal Revenue Code of 1986, as amended, an Individual Retirement Account, as described in s. 408 of the Internal Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other plan established by a corporation which is qualified under s. 401 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.</p> <p>(b) For purposes of this subsection, any trust described in s. 664 of the</p>	<p>(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (e), either alone or in conjunction with any other person, is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them as provided in ss. 733.607(2) and</p>	
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Line #	Proposed Florida Legislation as Drafted	Alternative Proposal (Comments set forth in footnotes)	Committee Vote/Action	Note
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		<p>Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.</p> <p>(c) This subsection shall not impair any rights an individual has under a qualified domestic relations order as that term is defined in s. 414(p) of the Internal Revenue Code of 1986, as amended.</p> <p>(d) For purposes of this subsection, property held or received by a trust to the extent that the property would not have been subject to claims against the decedent's</p>	<p>736.05053.</p> <p>(a) For purposes of this subsection, any trusts established as part of, and all payments from, either an employee annuity described in s. 403 of the Internal Revenue Code of 1986, as amended, an Individual Retirement Account, as described in s. 408 of the Internal Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other plan established by a corporation which is</p>	
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		<p>estate if it had been paid directly to a trust created under the decedent's will or other than to the decedent's estate, or assets received from any trust other than a trust described in this subsection, shall not be deemed assets of the trust available to the decedent's estate.</p> <p>(e) For purposes of this subsection, a "right of revocation" is a power retained by the decedent, held in any capacity, to:</p> <ol style="list-style-type: none"> <li>1. Amend or revoke the trust and revest the principal of the trust in the decedent; or</li> </ol>	<p>qualified under s. 401 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.</p> <p>(b) For purposes of this subsection, any trust described in s. 664 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.</p> <p>(c) This subsection shall not impair any</p>	
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Line #	Proposed Florida Legislation as Drafted	Alternative Proposal (Comments set forth in footnotes)	Committee Vote/Action	Note
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		<p>2. Withdraw or appoint the principal of the trust to or for the decedent's benefit.</p> <p><u>(4) The beneficiary of real property transferred at the decedent's death by a revocable transfer on death deed is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate and any trust described in subsection (3) is insufficient to pay them as provided in ss. 733.607(3) and s. 689.30(12)(c).</u></p>	<p>rights an individual has under a qualified domestic relations order as that term is defined in s. 414(p) of the Internal Revenue Code of 1986, as amended.</p> <p>(d) For purposes of this subsection, property held or received by a trust to the extent that the property would not have been subject to claims against the decedent's estate if it had been paid directly to a trust created under the decedent's will or</p>	
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			<p>other than to the decedent's estate, or assets received from any trust other than a trust described in this subsection, shall not be deemed assets of the trust available to the decedent's estate.</p> <p>(e) For purposes of this subsection, a "right of revocation" is a power retained by the decedent, held in any capacity, to:</p> <ol style="list-style-type: none"> <li>1. Amend or revoke the trust and revest the principal of the trust in the</li> </ol>	
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Line #	Proposed Florida Legislation as Drafted	Alternative Proposal (Comments set forth in footnotes)	Committee Vote/Action	Note
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			<p>decedent; or</p> <p>2. Withdraw or appoint the principal of the trust to or for the decedent's benefit.</p> <p>(4) The beneficiary of real property transferred at the decedent's death by a transfer on death instrument is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate and any trust described in subsection (3) is</p>	
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			insufficient to pay them as provided in ss. 733.607(3) and s. 689.30(12)(c).	
New	744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may do all of the following:		744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or	

Line #	Proposed Florida Legislation as Drafted	Alternative Proposal (Comments set forth in footnotes)	Committee Vote/Action	Note
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	<p>...</p> <p><u>(23) Execute a transfer on death deed as set forth in chapter 689.</u></p>		<p>amended guardianship report, may do all of the following:</p> <p>...</p> <p>(23) Execute a transfer on death instrument as set forth in chapter 689.</p>	
	<p>732.2035 Property entering into elective estate.—Except as provided in s. <u>732.2045</u>, the elective estate consists of the sum of the values as determined under s. <u>732.2055</u> of the following property interests:</p>		<p>732.2035 Property entering into elective estate.— Except as provided in s. 732.2045, the elective estate consists of the sum of the values as determined under s. 732.2055 of the</p>	

Line #	Proposed Florida Legislation as Drafted	Alternative Proposal (Comments set forth in footnotes)	Committee Vote/Action	Note
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	<p><u>(5) That portion of property, other than property described in subsections (2), <del>and</del> (3) and (10), transferred by the decedent to the extent that at the time of the decedent's death the transfer was revocable by the decedent alone or in conjunction with any other person. This subsection does not apply to a transfer that is revocable by the decedent only with the consent of all persons having a beneficial interest in the property.</u></p>		<p>following property interests:</p> <p>(5) That portion of property, other than property described in subsections (2), <del>and</del> (3) <u>and</u> (10), transferred by the decedent to the extent that at the time of the decedent's death the transfer was revocable by the decedent alone or in conjunction with any other person. This subsection does not apply to a transfer that is revocable by the decedent only</p>	
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Line #	Proposed Florida Legislation as Drafted	Alternative Proposal (Comments set forth in footnotes)	Committee Vote/Action	Note
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			with the consent of all persons having a beneficial interest in the property.	
New	<p>(10) <u>Interests transferred pursuant to a revocable transfer of an interest in real property, including a transfer described in the Florida Revocable Transfer on Death Deed Act.</u></p> <p>(<del>10</del>11) Property transferred in satisfaction of the elective share.</p>		<p>(10) <u>Interests transferred pursuant to a revocable transfer of an interest in real property, including a transfer described in the Florida Real Property Transfer on Death Act.</u></p> <p>(<del>10</del>11) Property transferred in satisfaction of the elective share.</p>	

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	<p>732.7025 Waiver of homestead rights through deed.—</p> <p>(1) A spouse waives his or her rights as a surviving spouse with respect to the devise restrictions under s. 4(c), Art. X of the State Constitution if the following or substantially similar language is included in a deed <u>or a transfer on death instrument described in the Florida Real Property Transfer on Death Act:</u></p> <p>“By executing or joining this [<u>deed / transfer on death instrument</u>], I</p>		<p>732.7025 Waiver of homestead rights through deed <u>or transfer on death instrument.</u>—</p> <p>(1) A spouse waives his or her rights as a surviving spouse with respect to the devise restrictions under s. 4(c), Art. X of the State Constitution if the following or substantially similar language is included in a deed <u>or a transfer on death instrument described in the Florida Real Property Transfer on</u></p>	
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	<p>intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this <u>[deed / transfer on death instrument]</u> to someone other than me.”</p>		<p><u>Death Act:</u>  “By executing or joining this <u>[deed / transfer on death instrument]</u>, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this <u>[deed / transfer on death instrument]</u> to someone other than me.”</p>	
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<sup>1</sup> **January 22, 2024 minutes:**

Change the name of the act to Real Property Transfer on Death Act – **unanimously approved; ACTION ITEM**

Many, including some members of this committee object to referring to this vehicle as a “deed” since it transfers nothing.

Other jurisdictions do use the term “Instrument” instead of “Deed.”

Only one other jurisdiction uses the term “Revocable”

At least one other jurisdiction calls this a “Transfer on Death of Real Property.”

Motion to call this “Real Property Transfer On Death Act” and throughout it replace the term “deed” with the term “instrument”

Motion – Jeff Goethe

Second – Rebecca Wood

Vote – with one “nay” the motion was passed by the vast majority of members in attendance.

**THIS TRIGGERS A NEED TO REVIEW THE PROPOSAL IN ITS ENTIRETY AND MAKE NECESSARY CHANGES INCLUDING THE NAME OF THE FORM.**

<sup>2</sup> **January 156, 2024 Jeff Goethe Comment:** The page numbers refer to the Committee’s draft from May 2023. The number in the “Notes” column refers to these footnotes.

<sup>3</sup> **January 22, 2024 minutes:** See Note 1 above.

<sup>4</sup> **January 22, 2024 minutes:** “Florida Revocable Transfer on Death Deed Act” changed to “Florida Real Property Transfer on Death Act.” See Note 1 above.

<sup>5</sup> **January 16, 2024 minutes:** “Lines 17-19 (2) delete singular=plural & vice versa – unanimously approved.”

<sup>6</sup> **January 16, 2024 minutes:** “Lines 20-21 there was some discussion about the potential objection to use of the word “Beneficiary” but no change was proposed at this time.”

<sup>7</sup> **January 22, 2024 minutes:** “Deed” changed to instrument. See Note 1 above.

<sup>8</sup> **January 16, 2024 minutes:** “Lines 22-23 style change consistent with statutory drafting style – unanimously approved.”

<sup>9</sup> **January 22, 2024 minutes:** “Deed” changed to “instrument.” See Note 1 above.

<sup>10</sup> **January 16, 2024 minutes:** “Lines 24-26 style change consistent with statutory drafting style – unanimously approved.”

<sup>11</sup> **January 16, 2024 minutes:** “Lines 27-28 style change consistent with statutory drafting style – unanimously approved.”

<sup>12</sup> **January 22, 2024 minutes:** “Revocable transfer on death deed” changed to “real property transfer on death instrument.” See Note 1 above.

<sup>13</sup> **Comment:** “Would it be more appropriate to use the term "Grantor" since nothing is being

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currently transferred by the document. Also perhaps consider using Transferee instead of beneficiary if you are going to use Transferor.”

<sup>14</sup> **January 16, 2024 minutes:**

“Lines 29-31

- there was some discussion about the need to use the term “Grantor” rather than “Transferor,” but no decision was made on that issue.
- The proposal was simply to change “makes” to “executes and records” – unanimously approved

A decision was also made to add “a present interest in” to modify what the natural person in this definition owns in real property – unanimously approved.”

<sup>15</sup> **January 22, 2024 minutes:** “Revocable transfer on death deed” changed to “real property transfer on death instrument.” See Note 1 above.

<sup>16</sup> **January 22, 2024 minutes:** “2(e). Do not use another word instead of “transferor” – **unanimously approved.** Consideration was given as to possibly changing “transferor” throughout; “owner” was another word contemplated. Anecdotally, a majority of other jurisdictions use the term “transferor.” Unanimous decision to stick with the term “transferor.”

<sup>17</sup> **January 22, 2024 minutes:** “Revocable transfer on death deed” changed to “transfer on death instrument.” See Note 1 above.

<sup>18</sup> **January 22, 2024 minutes:**

Add another limitation (new 8(c)) – two considerations **final decision tabled; ACTION ITEM**

1. Belt and suspenders proposal to specify that TBE and JTWROS interests cannot be the subject of an RTODD

The discussion centered on the fact that TBE and JTWROS may be too limiting; the intent is for the RTODD to be unavailable to any interest that is the subject of any possible survivorship provision.

Vote called: Rely on the existing provisions limiting the RTODD to present interest held individually or as tenant in common – unanimously approved.

Moved – Rebecca

Second – Silvia

This triggers an action item to ensure that numbering is correctly readjusted (unless 8(c) is used for another purpose)

2. Some discussion reopened about using 8(c) to specify that DAAT does not apply to an RTODD The doctrine of after acquired title shall not apply to a real property transfer on death designation. More discussion ensued about potentially reversing the vote taken. Final decision is to table a vote, STEVE KOTLER WANTS TO



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CONTEMPLATE AND CONSIDER ADOPTING A NEW 8(C) WITH LANGUAGE ESSENTIALLY SIMILAR BUT MORE CONCISE THAN:

An RTODD shall not be valid if executed when the Transferor does not own a present interest in real property or owns a present interest in real property subject to any other survivorship provision, and the doctrine of after acquired title shall not apply to make valid an RTODD that was ineffective at the time of execution.

Address the Doctrine of After Acquired Title (DAAT) – **see proposed new limitation 8(c) – final decision tabled.**

This discussion led to some back and forth about the proposed new limitation 8(c), and the minutes accordingly need to be read in the totality.

Discussion about DAAT...many provisions operate to make DAAT inapplicable, but still where the question was raised there may be a need to say this. The DAAT shall not apply to establish a present interest ownership interest in a Transferor who made. An RTODD.

Is there anyone who does not think we need to specifically address Tae's hypo about a married person doing an RTODD while married and holding title as TBE? No response; we all agree it needs to be addressed.

An RTODD shall not be valid if executed when the Transferor does not own a present interest in real property or owns a present interest in real property subject to any other survivorship provision, and the doctrine of after acquired title shall not apply to make valid an RTODD that was ineffective at the time of execution.

There was discussion about making sure the form specifies the limitations on the use of the RTODD. There was a draft that included many instructions and that was rejected previously. That discussion was tabled.

<sup>19</sup> **January 22, 2024 minutes:** “Revocable transfer on death deed” changed to “transfer on death instrument.” See Note 1 above.

<sup>20</sup> **January 16, 2024 minutes:** “In reviewing the notes from the meeting, it appears that we skipped the proposal to change (5) Revocable Transfer on Death Deed Authorized” so that it reads “Authority for Revocable Transfer on Death Deed –”

<sup>21</sup> **January 22, 2024 minutes:** “Revocable transfer on death deed” changed to “real property transfer on death instrument.” See Note 1 above.

<sup>22</sup> **January 22, 2024 minutes:** “Reconsider the title to (5). The proposed change passed unanimously.” See Note 1 above.

<sup>23</sup> **January 16, 2024 minutes:** “Lines 38-40 – the proposal was to change “an individual” to “a natural person” and to add “only” to the “effective” phrase. After some discussion, the final decision was to accept a modified version of what was proposed. The following language was unanimously approved: (a) ~~An individual~~ A natural person may transfer real property to one or

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more beneficiaries, to be effective only at the transferor's death, by recording a revocable transfer on death deed.”

<sup>24</sup> **January 22, 2024 minutes:** Change “revocable transfer on death deed” to “real property transfer on death instrument.” See Note 1 above.

<sup>25</sup> **January 22, 2024 minutes:** Change “revocable transfer on death deed” to “real property transfer on death instrument.” See Note 1 above.

<sup>26</sup> **Comment:** “Laird has suggested using "may." We have debated this but the majority of the group feels that may open too many doors and is dangerous for title purposes. Too much wiggle room is not always good.”

<sup>27</sup> **January 16, 2024 minutes:** “Lines 41-42 – change must to may – unanimously **rejected.**”

<sup>28</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” See Note 1 above.

<sup>29</sup> **January 16, 2024 minutes:** “Lines 44-46 add “by the transferor” – unanimously approved.”

<sup>30</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” See Note 1 above.

<sup>31</sup> **Comment:** “Should there be some reference to a statute defining what "recorded" means?”

<sup>32</sup> **Jeff Goethe Comment:** “Chapter 689 uses the term “recorded” 93 times without a definition. The terms “Official records” is defined in §28.001, Fla. Stat., as “each instrument that the clerk of the circuit court is required or authorized to record in one general series called “Official Records” as provided for in s. 28.222.”

<sup>33</sup> **January 16, 2024 minutes:** “Lines 47-49 the proposal was to delete “according to law” – that proposal was rejected, but a unanimous decision was made to change that phrase to “in accordance with s. 28.222, F.S.””

<sup>34</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.”

<sup>35</sup> **Comment:** “There may be other reasons an RTOD is not effective - such as undue influence, fraud, etc. The prior language seemed to prevent those challenges.”

<sup>36</sup> **January 16, 2024 minutes:** “Lines 50-54 change from “the RTOD is effective if not xyz” to “lack of xyz does not cause the RTOD to be ineffective.” – unanimously approved.”

<sup>37</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.”

<sup>38</sup> **Comment:** “Per Laird, why can't JTWS or TbyE owner execute RTOD that is effective only after death of last joint owner?”

<sup>39</sup> **January 16, 2024 minutes:** “Lines 56-61 change “individual's share” to “co-owner's ownership interest” – unanimously approved.”

<sup>40</sup> **JSG Comment:** The committee previously considered joint ownership and voted against allowing joint tenants with rights of survivorship and tenants by the entireties due to the complex issues relating to severance of survivorship rights and required joinder by tenants by the entireties.

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<sup>41</sup> **January 22, 2024 minutes:** “Revocable transfer on death deed” changed to “transfer on death instrument.” See Note 1 above.

<sup>42</sup> **Comment:** “An interest in community property is too confusing to try and deal with in this statute.”

<sup>43</sup> **January 16, 2024 minutes:** “Add new subsection (b) re: community property under (8) Limitations) – unanimously approved.”

<sup>44</sup> **Comment:** “Per Laird, why can't JTWS or TbyE owner execute RTOD that is effective only after death of last joint owner?”

<sup>45</sup> **January 16, 2024 minutes:** “Add new subsection (c) re: JTWROS/TBE - unanimously rejected as to the exact proposal, but unanimously accepted as to the need to add a belts and suspenders provision that the fact if an interest is owned by one with rights of survivorship in another, that interest cannot be transferred by the one via an RTODD.”

<sup>46</sup> **January 22, 2024 minutes:**

Add another limitation (new 8(c)) – two considerations **final decision tabled; ACTION ITEM**

3. Belt and suspenders proposal to specify that TBE and JTWROS interests cannot be the subject of an RTODD

The discussion centered on the fact that TBE and JTWROS may be too limiting; the intent is for the RTODD to be unavailable to any interest that is the subject of any possible survivorship provision.

Vote called: Rely on the existing provisions limiting the RTODD to present interest held individually or as tenant in common – unanimously approved.

Moved – Rebecca

Second – Silvia

This triggers an action item to ensure that numbering is correctly readjusted (unless 8(c) is used for another purpose)

4. Some discussion reopened about using 8(c) to specify that DAAT does not apply to an RTODD The doctrine of after acquired title shall not apply to a real property transfer on death designation. More discussion ensued about potentially reversing the vote taken. Final decision is to table a vote, STEVE KOTLER WANTS TO CONTEMPLATE AND CONSIDER ADOPTING A NEW 8(C) WITH LANGUAGE ESSENTIALLY SIMILAR BUT MORE CONCISE THAN:

An RTODD shall not be valid if executed when the Transferor does not own a present interest in real property or owns a present interest in real property subject to any other survivorship provision, and the doctrine of after acquired title shall not apply to make valid an RTODD that was ineffective at the time of execution.

Address the Doctrine of After Acquired Title (DAAT) – **see proposed new limitation 8(c) – final decision tabled.**

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This discussion led to some back and forth about the proposed new limitation 8(c), and the minutes accordingly need to be read in the totality.

Discussion about DAAT...many provisions operate to make DAAT inapplicable, but still where the question was raised there may be a need to say this. The DAAT shall not apply to establish a present interest ownership interest in a Transferor who made. An RTODD.

Is there anyone who does not think we need to specifically address Tae's hypo about a married person doing an RTODD while married and holding title as TBE? No response; we all agree it needs to be addressed.

An RTODD shall not be valid if executed when the Transferor does not own a present interest in real property or owns a present interest in real property subject to any other survivorship provision, and the doctrine of after acquired title shall not apply to make valid an RTODD that was ineffective at the time of execution.

There was discussion about making sure the form specifies the limitations on the use of the RTODD. There was a draft that included many instructions and that was rejected previously. That discussion was tabled.

<sup>47</sup> **January 16, 2024 minutes:** "Lines 62-24 – simply changing the number consistent with adding other sections – the proposal was unanimously approved. Also note, this provision triggers the need for our committee to propose a suggestion to the guardianship committee to consider adding a new subsection (23) to s. 744.441, F.S." [JSG Comment – See proposed amendment at the end of this summary]

<sup>48</sup> **January 22, 2024 minutes:** Changed "revocable transfer on death deed" to "transfer on death instrument." See Note 1 above.

<sup>49</sup> **January 16, 2024 minutes:** "Lines 66-69 – change numbering (unanimously approved), and add "a revocable transfer on death deed in" – the added language was unanimously **rejected** because in this proposal a POA including power to change beneficiaries as allowed by s. 709.2202, F.S. is meant to apply to allowing an RTODD deed. The final decision here was tabled."

<sup>50</sup> **January 22, 2024 minutes:** Changed "revocable transfer on death deed" to "transfer on death instrument." See Note 1 above.

<sup>51</sup> **Comment:** "Who pays ad valorem tax? Owner until death and then RTOD owner - but how will RTOD owner know if no delivery of deed required to make RTOD valid?"

<sup>52</sup> **January 16, 2024 minutes:** "Lines 70-74 change numbering (unanimously approved), add the word "concurrent" – unanimous decision to add the word "current.""

<sup>53</sup> **January 22, 2024 minutes:** Changed "revocable transfer on death deed" to "transfer on death instrument." See Note 1 above.

<sup>54</sup> **Comment:** "This section needs some work."

<sup>55</sup> **January 16, 2024 minutes:** "Lines 75-90 change numbering (unanimously approved), the committee unanimously agreed to changing "gives" to "vests in" and **rejected** the bulk of the balance of the proposal, while some modified language was agreed to, a unanimous decision to

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table further discussion of “g” until we get a new proposal which Rohan Kelley has volunteered to write.”

<sup>56</sup> **Comment:** The initial proposal from outside the committee suggested the following revision to address the validity of a homestead devise under a transfer on death deed:

~~(e)~~(g) If the transferor has executed a revocable transfer on death deed describing real property that is the transferor’s homestead at the time of the transferor’s death, then consistent with the protections in Article X, s. 4(c) of the Florida Constitution:

(i) if the transferor is survived by a minor child, the revocable transfer on death deed is void.

(ii) if the transferor is not survived by a minor child, but is survived by a spouse, the revocable transfer on death deed is ~~valid if~~ void unless:

(A) the revocable transfer on death deed ~~gives-vests in~~ the surviving spouse the equivalent of a fee simple interest in the entire interest held by the title or other whole estate or interest in the real property which the transferor had the power to dispose of at the time of the transferor’s death; or

(B) the surviving spouse waived his or her rights to the transferor’s homestead ~~residence~~ real property at death pursuant to s. 732.702, or 732.7025, or other applicable Florida law.

(iii) If the transferor is not survived by a spouse or minor child, the homestead real property may be transferred by a revocable transfer on death deed.

<sup>57</sup> The revised alternative proposal was submitted by Rohan Kelley and Tae Bronner during the January 29, 2024 meeting. Tae’s comments included:

This ties in the definition of protected homestead in the probate code:

“Protected homestead” means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner’s surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead.

The proposed language makes it clear that a RTOD is ineffective to convey title to protected homestead property unless certain conditions are met - the decedent is not survived by a spouse or minor child, or if survived by a spouse, the spouse receives the property in Fee Simple (100% quantity and quality) or the spouse has previously waived his or her rights.

January 22, 2024 at 2:30 PM

This raises concerns because it puts the title company in the position of determining the validity of the spousal waiver. Normally you would have a petition to determine homestead filed and the court would determine if there was a valid waiver before issuing the order determining homestead .

January 22, 2024 at 2:31 PM

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<sup>58</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” See Note 1 above.

<sup>59</sup> **Comment:** “Per Laird, can a transferor actually do a deed transferring the property to him or herself? So I, Laird, transfer this property to Laird? Why not just have them record a revocation of the RTOD? Otherwise, won't it create an ad valorem tax issue?”

<sup>60</sup> **January 16, 2024 minutes:** “Lines 94-98 delete “as to some or all of the real property described in the (RTODD)” – unanimously rejected.”

<sup>61</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” See Note 1 above.

<sup>62</sup> **Jeff Goethe Comment:** The statutes governing homestead exemption and the Save Our Homes cap are based upon a “change of ownership.” Since the creation of a transfer on death deed does not change ownership, the revocation of the deed would not result in a change of ownership. The cap would not be affected.

<sup>63</sup> **Comment:** “I recognize you can't have a RTOD with JTWS, but you could do a RTOD with two owners who own the property as Ten in Com. If one of those owners then decides to revoke their designation, then don't we need to clarify that it doesn't revoke the designation as to the other owner?”

<sup>64</sup> **January 16, 2024 minutes:** “Add a new (c) to clarify that in multiple TIC do an RTODD and then one of them revokes, that does not impact the interests of the other TIC – while not unanimous, the proposal was **rejected** by the vast majority.”

<sup>65</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” See Note 1 above.

<sup>66</sup> **Comment:** “Per Laird, Do you need to reference this in 732.702?”

<sup>67</sup> **January 22, 2024 minutes:** “proposed 9(c). – **unanimously approved** - change “the spouse” to “that spouse.”

<sup>68</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” See Note 1.

<sup>69</sup> **January 22, 2024 minutes:** “Proposed deletion of 9(d) – **decision tabled.**”

whether or not this needs to be in the statute depends on whether this is intended to be treated as a specific devise or a probate avoidance. If this is meant to be like a POD this would not apply. If we are not exposing this to claims of creditors this would not be needed. If a person has a guardianship, the moment of death does not trigger a transfer of title for someone to be free to sell. If the property is sold by the guardian there is a compensating devise in the will. Ademption can trigger multiple adjustments in the name of equity. The decision here is whether or not the beneficiary is liable for debts of the transferor's estate. If treating this as a POD account ademption should not apply. If this beneficiary is to be treated as a specific devise this would need to apply. Decision on the point tabled. We could bring ademption in and not make the interest subject to the claims of creditors and expenses of the estate but that would be elevating the property. See Tae's

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comment.”

Change “revocable transfer on death deed” to “transfer on death instrument.” See Note 1.

<sup>70</sup> **Comment:** “Have you talked to the Estate Tax Committee to see if this qualifies as a estate tax qualified disclaimer. Do we know this works as worded. Important concept that must be discussed!!!!”

<sup>71</sup> **Jeff Goethe comment:** Yes it has been reviewed at several meetings of the Estate and Trust Planning Committee and no one expressed a concern about the disclaimer of an interest under a revocable transfer on death deed as being different than an interest in real property. See excerpts from Chapter 739 at the end of this summary.

<sup>72</sup> **Comment:** “Per Laird, does this need to be added to 739 - perhaps a new section 739.208?”

<sup>73</sup> **January 22, 2024 minutes:** “Proposal to leave (10) Disclaimer unchanged – **unanimously approved.** There was some discussion about the question of when the 90 day period to disclaim would trigger and some question about input from the Estate and Trust Planning Committee, but that’s all be worked out and it is now a non-issue.”

<sup>74</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” See Note 1.

<sup>75</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.”

<sup>76</sup> **Comment:** “Per Laird. This list is scary. Should consider an overall statement with an "included but not limited to" approach - made a suggestion for potential language, but need to examine further.”

<sup>77</sup> **Comment:** “Why are you limiting this to just for purposes of public assistance - I thought the entire premise was that the deed was completely revocable and did not create any legal or equitable interest in favor of the beneficiary until DEATH.”

<sup>78</sup> **January 29, 2024 minutes:** Committee unanimously approved proposed change to (11)(a).

<sup>79</sup> **January 29, 2024 minutes:** “(11)(a)(ii) – proposal amended - change it to say “create any interest or right of a beneficiary in real property even if the beneficiary has actual or constructive notice of the transfer of death instrument.” - unanimously approved.”

<sup>80</sup> **January 29, 2024 minutes:** “(11)(a)(iii) - proposal as presented is approved except we need to apply the universal change of “revocable transfer on death deed” to “transfer on death instrument.” - unanimously approved.”

<sup>81</sup> **January 29, 2024 minutes:** “(11)(a)(iv) – amended proposal – “affect the transferor’s or beneficiary’s eligibility for any form of public assistance.” - unanimously approved.”

<sup>82</sup> **January 29, 2024 minutes:** “(11)(a)(v) – proposal as presented - unanimously approved.”

<sup>83</sup> **January 29, 2024 minutes:** “(11)(a)(vi) – proposal as presented - unanimously approved.”

<sup>84</sup> **January 29, 2024 minutes:** “(11) (b)There was a significant amount of discussion about class gifts and what should happen if beneficiaries named in the deed do not survive the transferor, but ultimately no decisions were made about the proposed revisions to (b) and adding (11)(b)(i), (ii), (iii), (iv), and (v).”

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<sup>85</sup> **Comment:** “This approach would create an ENTIRELY new concept of successive beneficiaries. IF you choose to go forward with this approach, this should be reworked to include and incorporate current definition and concepts of intestate succession rather than creating new definition.”

<sup>86</sup> **Comment:** “And how would a title company know who the actual beneficiary is - this would require an action to determine beneficiaries by a probate court.”

<sup>87</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” *See* Note 1. The committee has not voted on the changes proposed by the comments.

<sup>88</sup> **Comment.** Note this may need some additional language regarding entities designated as a beneficiary which is no longer in existence. But for this purpose trying to highlight issues and propose some alternative language identifying issues.

<sup>89</sup> **January 29, 2024 minutes:** There was a significant amount of discussion about class gifts and what should happen if beneficiaries named in the deed do not survive the transferor, but ultimately no decisions were made about the proposed revisions to (b) and adding (11)(b)(i), (ii), (iii), (iv), and (v).

<sup>90</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” *See* Note 1. The committee has not voted on the changes proposed by the comments.

<sup>91</sup> **Comment:** “Per Lauren Detzel: If a beneficiary divorces, she is afraid that the designation as a beneficiary under an RTOD might give rise to some sort of contingent interest in the beneficiary that the beneficiary's spouse might want counted somehow in the beneficiary's assets. She feels that adding the words "or spouse" should avoid that.”

<sup>92</sup> **January 16, 2024 note by Jeff Goethe.** The Committee has not voted on the proposal with respect to creditor rights. Jeff Goethe prepared a proposal which was modified by Tae Kelley Bronner with input from other RPPTL Section members. The revised text in the left-hand column only reflects the change from “revocable transfer on death deed” to “transfer on death instrument.”

<sup>93</sup> **January 22, 2024 minutes:** Changed “revocable transfer on death deed” to “transfer on death instrument.” *See* Note 1. The committee has not voted on the changes proposed by the comments.