

NY CLS Real P § 424

Current through 2025 released Chapters 1-49, 61-100

**New York Consolidated Laws Service > Real Property Law (Arts. 1 — 20) > Article 12
Registering Title to Real Property (§§ 370 — 436)**

§ 424. Transfer on death deed.

1. Definitions. For the purposes of this section the following terms shall have the following meanings:

(a) "Beneficiary" means a person who receives property in a transfer on death deed.

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

(c) "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, 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.

(d) "Person" includes a natural person, an association, board, any corporation, whether municipal, stock or non-stock, court, governmental agency, authority or subdivision, partnership or other firm and the state.

(e) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(f) "Transfer on death deed" means a deed authorized under this section.

(g) "Transferor" means an individual who makes a transfer on death deed.

2. Nonexclusivity. This section does not affect any method of transferring property otherwise permitted under the law of this state.

3. 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.

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

5. Transfer on death deed nontestamentary. A transfer on death deed is nontestamentary.

6. Capacity of transferor. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

7. Requirements. A transfer on death deed:

(a) except as otherwise provided in this subdivision, shall contain the essential elements and formalities of a properly recordable inter vivos deed;

(b) shall state that the transfer to the designated beneficiary is to occur at the transferor's death;

(c) shall be signed by two witnesses who were present at the same time and who witnessed the signing of the transfer on death deed;

(d) shall be acknowledged before a notary public; and

(e) shall be recorded before the transferor's death in the public records in the county clerk's office of the county where the property is located in the same manner as any other type of deed.

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8. Notice, delivery, acceptance, consideration not required. A **transfer on death** deed shall be effective without:

- (a) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or
- (b) consideration.

9. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to paragraph (b) of this subdivision, an instrument shall be effective to revoke a recorded **transfer on death** deed, or any part of it, only if the instrument:

(1) is one of the following:

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

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

(C) an inter vivos deed that expressly revokes the **transfer on death** deed or part of the deed; and

(2) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the county clerk's office of the county where the deed is recorded.

(b) If a **transfer on death** deed is made by more than one transferor:

(1) revocation by a transferor shall not affect the deed as to the interest of another transferor; and

(2) a deed of joint owners shall only be revoked if it is revoked by all of the living joint owners.

(c) After a **transfer on death** deed is recorded, it shall not be revoked by a revocatory act on the deed.

(d) This section shall not limit the effect of an inter vivos transfer of the property.

10. Effect of **transfer on death** deed during transferor's life. During a transferor's life, a **transfer on death** deed shall not:

(a) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(b) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(c) 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;

(d) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(e) create a legal or equitable interest in favor of the designated beneficiary; or

(f) subject the property to claims or process of a creditor of the designated beneficiary.

11. Effect of **transfer on death** deed at transferor's death.

(a) Except as otherwise provided in the **transfer on death** deed, in this section or in any other section of law which effects 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:

(1) Subject to subparagraph two of this paragraph, the interest in the property shall be transferred to the designated beneficiary in accordance with the deed.

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

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(3) Subject to subparagraph four of this paragraph, concurrent interests shall be transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(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 shall be transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) Subject to this chapter, 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 paragraph and this chapter, the recording of the **transfer on death** deed shall be deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner and is survived by one or more other joint owners, the property that is the subject of a **transfer on death** deed shall belong to the surviving joint owner or owners with right of survivorship.

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

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

12. Applicability of invalidating and revocatory principles.

(a) Nothing in this section shall limit the application of principles of fraud, undue influence, duress, mistake, or other invalidating cause to a transfer of property.

(b) Divorce, annulment or declaration of nullity, or dissolution of marriage, shall have the same effect on a **transfer on death** deed as outlined in section 5-1.4 of the estates, powers and trusts law.

13. Renunciation. A beneficiary may renounce all or part of the beneficiary's interest in the same manner as if the interest was transferred in a will.

14. Liability for creditor claims and statutory allowances.

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

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

(c) A proceeding to enforce the liability under this section must be commenced no later than eighteen months after the transferor's death.

15. Form of **transfer on death** deed. The following form may be used to create a **transfer on death** deed. The other subdivisions of this section shall govern the effect of this, or any other instrument used to create a **transfer on death** deed:

(front of form)

REVOCABLE **TRANSFER ON DEATH** DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You may want to consult a lawyer before using this form.

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

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed Name Mailing address

Printed Name Mailing address

Legal description of the property:

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

Printed Name Mailing address, if available

ALTERNATE BENEFICIARY - Optional

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

Printed Name Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above. Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

Signature Date

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Signature Date

SIGNATURE OF WITNESSES

Signature Date

Signature Date

NOTARY ACKNOWLEDGMENT

(Insert notary acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do?

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

How do I make a TOD deed?

Complete this form. Have it acknowledged before a notary public. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary?

Yes.

How do I find the "legal description" of the property?

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This information may be on the deed you received when you became an owner of the property. This information may also be available in the county clerk's office of the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed?

Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed?

Take the completed and acknowledged form to the county clerk's office of the county where the property is located. Follow the instructions given by the county clerk to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind?

Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded?

There are three ways to revoke a recorded TOD deed:

(1) Complete and acknowledge a revocation form and record it in each county where the property is located.

(2) Complete and acknowledge a new TOD deed that disposes of the same property and record it in each county where the property is located.

(3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do?

Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed?

No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do?

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SIGNATURE OF WITNESSES

Signature

Date

Signature

Date

NOTARY ACKNOWLEDGMENT

(insert notary acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a **Transfer on Death** (TOD) deed?

Complete this form. Have it acknowledged before a notary public. Record the form in the public records in the county clerk's office of the county where the property is located. The form must be acknowledged and recorded before your death, or it has no effect.

How do I find the "legal description" of the property?

This information may be on the TOD deed. It may also be available in the county clerk's office of the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form?

Take the completed and acknowledged form to the county clerk's office of the county where the property is located. Follow the instructions given by the county clerk to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do?

Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do?

This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

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History

L 2024, ch 56, § 12 (Part O), effective July 19, 2024.

Annotations

Notes

Editor's Notes

Laws 2024, ch 56, § 1 (Part O), eff July 19, 2024, provides:

Section 1. Short title. This act shall be known and may be cited as the "heirs property protection and deed theft prevention act of 2024".

Laws 2024, ch 56, § 13 (Part O), eff July 19, 2024, provides:

§ 13. This act shall take effect on the ninetieth day after it shall have become a law, provided that section **424** of the real property law, as added by section twelve of this act, shall apply to any **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.

Research References & Practice Aids

Hierarchy Notes:

NY CLS Real P, Art. 12

New York Consolidated Laws Service
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