

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1138
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 30.1-32.1 of the North Dakota Century Code, relating to the Uniform Real Property Transfer at Death Act; and to amend and reenact sections 30.1-10.1-09 and 30.1-10.1-11 of the North Dakota Century Code, relating to the delivery and recording to a disclaimer of property interest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-10.1-09 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-09. (2-1112) Delivery.

1. In subsections 2 through 11, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.
2. 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, a disclaimer must be delivered to the personal representative of the decedent's estate, or if a personal representative is not then serving, it must be filed with the court having jurisdiction to appoint the personal representative.
3. In the case of an interest in a testamentary trust, a disclaimer must be delivered to the trustee then serving, or if a trustee is not then serving, to the personal representative of the decedent's estate, or if a personal representative is not then serving, it must be filed with a court having jurisdiction to enforce the trust.
4. In the case of an interest in an inter vivos trust, a disclaimer must be delivered to the trustee then serving, or if a trustee is not then serving, it must be filed with a court having jurisdiction to enforce the trust, or 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.
5. In the case of an interest created by a beneficiary designation ~~made~~which is disclaimed before the ~~time~~the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.
6. In the case of an interest created by a beneficiary designation ~~made~~which is disclaimed after the ~~time~~the designation becomes irrevocable, a disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest and the disclaimer of an interest in real property must be recorded in the office of the county recorder of the county where the real property that is the subject of the disclaimer is located.
7. 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.
8. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment, the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power, or if a fiduciary is not then serving, it must be filed with the court having authority to appoint the fiduciary.

9. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, to the holder, personal representative of the holder's estate, or to the fiduciary under the instrument that created the power, or if a fiduciary is not then serving, it must be filed with the court having authority to appoint the fiduciary.
10. 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 2, 3, or 4, as if the power disclaimed were an interest in property.
11. 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.

SECTION 2. AMENDMENT. Section 30.1-10.1-11 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-11. (2-1115) Recording of disclaimer.

If an instrument transferring an interest in or power over property 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. Failure Except as required in subsection 6 of section 30.1-10.1-09, 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.

SECTION 3. Chapter 30.1-32.1 of the North Dakota Century Code is created and enacted as follows:

30.1-32.1-01. Definitions.

In this chapter:

1. "Beneficiary" means a person that receives property under a transfer on death deed.
2. "Designated beneficiary" means a person designated to receive property in a transfer on death deed.
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 tenant by the entirety. The term does not include a tenant in common.
4. "Property" means an interest in real property located in this state which is transferable on the death of the owner.
5. "Transfer on death deed" means a deed authorized under this chapter.
6. "Transferor" means an individual who makes a transfer on death deed.

30.1-32.1-02. 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.

30.1-32.1-03. Transfer on death deed revocable.

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

30.1-32.1-04. Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

30.1-32.1-05. 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.

30.1-32.1-06. Requirements.

1. A transfer on death deed except as otherwise provided in subsection 2 must contain the essential elements and formalities of a properly recordable inter vivos deed.
2. A transfer on death deed must state that the transfer to the designated beneficiary is to occur at the transferor's death.
3. A transfer on death deed must be recorded before the transferor's death in the public records in the office of the county recorder of the county where the property is located.

30.1-32.1-07. Notice, delivery, acceptance, and consideration not required.

A transfer on death deed is effective without notice or delivery to or acceptance by the designated beneficiary during the transferor's life or without consideration.

30.1-32.1-08. Revocation by instrument authorized - Revocation by act not permitted.

1. Subject to subsection 2, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:
 - a. Is one of the following:
 - (1) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;
 - (2) An instrument of revocation that expressly revokes the deed or part of the deed; or
 - (3) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
 - b. 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 office of the county recorder of the county where the deed is recorded.
2. If a transfer on death deed is made by more than one transferor, revocation by a transferor does not affect the deed as to the interest of another transferor and a deed of joint owners is revoked only if it is revoked by all of the living joint owners.
3. After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.
4. This section does not limit the effect of an inter vivos transfer of the property.

30.1-32.1-09. Effect of transfer on death deed during transferor's life.

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

1. Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;
2. Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

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;
4. Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
5. Create a legal or equitable interest in favor of the designated beneficiary; or
6. Subject the property to claims or process of a creditor of the designated beneficiary.

30.1-32.1-10. Effect of transfer on death deed at transferor's death.

1. Except as otherwise provided in the transfer on death deed, in this section, or in state law on antilapse, revocation by divorce or 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:
 - a. Subject to subdivision b, the interest in the property is transferred to the designated beneficiary in accordance with the deed.
 - b. 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.
 - c. Subject to subdivision d, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.
 - d. 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 concurrently.
2. Subject to chapter 47-19, 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 chapter 47-19, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.
3. If a transferor is a joint owner and is:
 - a. Survived by one 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
 - b. The last surviving joint owner, the transfer on death deed is effective.
4. A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

30.1-32.1-11. Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by chapter 30.1-10.1.

30.1-32.1-12. Liability for creditor claims and statutory allowances.

1. 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.

2. If more than one property is transferred by one or more transfer on death deeds, the liability under subsection 1 is apportioned among the properties in proportion to their net values at the transferor's death.
3. A proceeding to enforce the liability under this section must be commenced not later than eighteen months after the transferor's death.

30.1-32.1-13. Relation to Electronic Signatures in Global and National Commerce Act.

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

30.1-32.1-14. Application.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1138.

House Vote: Yeas 90 Nays 0 Absent 4

Senate Vote: Yeas 46 Nays 1 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State