

By: Huffman, et al.
(Farrar)

S.B. No. 462

Substitute the following for S.B. No. 462:

By: Farrar

C.S.S.B. No. 462

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

7 CHAPTER 114. TRANSFER ON DEATH DEED

8 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

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

21 (4) "Person" has the meaning assigned by Section
22 311.005, Government Code.

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

1 (6) "Transfer on death deed" means a deed authorized
2 under this chapter and does not refer to any other deed that
3 transfers an interest in real property on the death of an
4 individual.

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

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

9 Sec. 114.003. APPLICABILITY. This chapter applies to a
10 transfer on death deed executed and acknowledged on or after
11 September 1, 2015, by a transferor who dies on or after September 1,
12 2015.

13 Sec. 114.004. NONEXCLUSIVITY. This chapter does not affect
14 any method of transferring real property otherwise permitted under
15 the laws of this state.

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

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

1 U.S.C. Section 7003(b)).

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

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

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

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

13 Sec. 114.054. CAPACITY OF TRANSFEROR; USE OF POWER OF
14 ATTORNEY. (a) The capacity required to make or revoke a transfer
15 on death deed is the same as the capacity required to make a
16 contract.

17 (b) A transfer on death deed may not be created through use
18 of a power of attorney.

19 Sec. 114.055. REQUIREMENTS. To be effective, a transfer on
20 death deed must:

21 (1) except as otherwise provided in Subdivision (2),
22 contain the essential elements and formalities of a recordable
23 deed;

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

27 (3) be recorded before the transferor's death in the

1 deed records in the county clerk's office of the county where the
2 real property is located.

3 Sec. 114.056. NOTICE, DELIVERY, ACCEPTANCE, OR
4 CONSIDERATION NOT REQUIRED. A transfer on death deed is effective
5 without:

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

8 (2) consideration.

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

13 (1) is one of the following:

14 (A) a subsequent transfer on death deed that
15 revokes the preceding transfer on death deed or part of the deed
16 expressly or by inconsistency; or

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

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

22 (3) is recorded before the transferor's death in the
23 deed records in the county clerk's office of the county where the
24 deed being revoked is recorded.

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

27 (c) If a marriage between the transferor and a designated

1 beneficiary is dissolved after a transfer on death deed is
2 recorded, a final judgment of the court dissolving the marriage
3 operates to revoke the transfer on death deed as to that designated
4 beneficiary if notice of the judgment is recorded before the
5 transferor's death in the deed records in the county clerk's office
6 of the county where the deed is recorded, notwithstanding Section
7 111.052.

8 (d) If a transfer on death deed is made by more than one
9 transferor, revocation by a transferor does not affect the deed as
10 to the interest of another transferor who does not make that
11 revocation.

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

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

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

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

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

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

26 (B) homestead rights in the real property, if
27 applicable; and

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

4 (2) affect an interest or right of a transferee of the
5 real property that is the subject of the deed, even if the
6 transferee has actual or constructive notice of the deed;

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

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

13 (5) constitute a transfer triggering a "due on sale"
14 or similar clause;

15 (6) invoke statutory real estate notice or disclosure
16 requirements;

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

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

21 Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER
22 ON DEATH DEED. An otherwise valid transfer on death deed is void as
23 to any interest in real property that is conveyed by the transferor
24 during the transferor's lifetime after the transfer on death deed
25 is executed and recorded if:

26 (1) a valid instrument conveying the interest is
27 recorded in the deed records in the county clerk's office of the

1 same county in which the transfer on death deed is recorded; and

2 (2) the recording of the instrument occurs before the
3 transferor's death.

4 Sec. 114.103. EFFECT OF TRANSFER ON DEATH DEED AT
5 TRANSFEROR'S DEATH. (a) Except as otherwise provided in the
6 transfer on death deed, this section, or any other statute or the
7 common law of this state governing a decedent's estate, on the death
8 of the transferor, the following rules apply to an interest in real
9 property that is the subject of a transfer on death deed and owned
10 by the transferor at death:

11 (1) if the designated beneficiary survives the
12 transferor by 120 hours, the interest in the real property is
13 transferred to the designated beneficiary in accordance with the
14 deed;

15 (2) the interest of a designated beneficiary that
16 fails to survive the transferor by 120 hours lapses,
17 notwithstanding Section [111.052](#);

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

21 (4) notwithstanding Subdivision (2), if the
22 transferor has identified two or more designated beneficiaries to
23 receive concurrent interests in the real property, the share of a
24 designated beneficiary who predeceases the transferor lapses and is
25 subject to and passes in accordance with Subchapter D, Chapter 255,
26 as if the transfer on death deed were a devise made in a will.

27 (b) If a transferor is a joint owner with right of

1 survivorship who is survived by one or more other joint owners, the
2 real property that is the subject of the transfer on death deed
3 belongs to the surviving joint owner or owners. If a transferor is
4 a joint owner with right of survivorship who is the last surviving
5 joint owner, the transfer on death deed is effective.

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

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

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

15 (a) Subject to Section 13.001, Property Code, a beneficiary takes
16 the real property subject to all conveyances, encumbrances,
17 assignments, contracts, mortgages, liens, and other interests to
18 which the real property is subject at the transferor's death. For
19 purposes of this subsection and Section 13.001, Property Code, the
20 recording of the transfer on death deed is considered to have
21 occurred at the transferor's death.

22 (b) If a personal representative has been appointed for the
23 transferor's estate, an administration of the estate has been
24 opened, and the real property transferring under a transfer on
25 death deed is subject to a lien or security interest, including a
26 deed of trust or mortgage, the personal representative shall give
27 notice to the creditor of the transferor as the personal

1 representative would any other secured creditor under Section
2 308.053. The creditor shall then make an election under Section
3 355.151 in the period prescribed by Section 355.152 to have the
4 claim treated as a matured secured claim or a preferred debt and
5 lien claim, and the claim is subject to the claims procedures
6 prescribed by this section.

7 (c) If the secured creditor elects to have the claim treated
8 as a preferred debt and lien claim, Sections 355.154 and 355.155
9 apply as if the transfer on death deed were a devise made in a will,
10 and the creditor may not pursue any other claims or remedies for any
11 deficiency against the transferor's estate.

12 (d) If the secured creditor elects to have the claim treated
13 as a matured secured claim, Section 355.153 applies as if the
14 transfer on death deed were a devise made in a will, and the claim is
15 subject to the procedural provisions of this title governing
16 creditor claims.

17 Sec. 114.105. DISCLAIMER. A designated beneficiary may
18 disclaim all or part of the designated beneficiary's interest as
19 provided by Chapter 122.

20 Sec. 114.106. LIABILITY FOR CREDITOR CLAIMS; ALLOWANCES IN
21 LIEU OF EXEMPT PROPERTY AND FAMILY ALLOWANCES. (a) To the extent
22 the transferor's estate is insufficient to satisfy a claim against
23 the estate, expenses of administration, any estate tax owed by the
24 estate, or an allowance in lieu of exempt property or family
25 allowance to a surviving spouse, minor children, or incapacitated
26 adult children, the personal representative may enforce that
27 liability against real property transferred at the transferor's

1 death by a transfer on death deed to the same extent the personal
2 representative could enforce that liability if the real property
3 were part of the probate estate.

4 (b) Notwithstanding Subsection (a), real property
5 transferred at the transferor's death by a transfer on death deed is
6 not considered property of the probate estate for any purpose,
7 including for purposes of Section 531.077, Government Code.

8 (c) If a personal representative does not commence a
9 proceeding to enforce a liability under Subsection (a) on or before
10 the 90th day after the date the representative receives a demand for
11 payment, a proceeding to enforce the liability may be brought by a
12 creditor, a distributee of the estate, a surviving spouse of the
13 decedent, a guardian or other appropriate person on behalf of a
14 minor child or adult incapacitated child of the decedent, or any
15 taxing authority.

16 (d) If more than one real property interest is transferred
17 by one or more transfer on death deeds or if there are other
18 nonprobate assets of the transferor that may be liable for the
19 claims, expenses, and other payments specified in Subsection (a),
20 the liability for those claims, expenses, and other payments may be
21 apportioned among those real property interests and other assets in
22 proportion to their net values at the transferor's death.

23 (e) A proceeding to enforce liability under this section
24 must be commenced not later than the second anniversary of the
25 transferor's death, except for any rights arising under Section
26 114.104(d).

27 (f) In connection with any proceeding brought under this

1 section, a court may award costs and reasonable and necessary
2 attorney's fees in amounts the court considers equitable and just.

3 SUBCHAPTER D. FORMS FOR TRANSFER ON DEATH DEED

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

6 REVOCABLE TRANSFER ON DEATH DEED

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

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

14 MUST RECORD DEED: Before your death, this deed must be recorded with
15 the county clerk where the property is located, or it will not be
16 effective.

17 MARRIED PERSONS: If you are married and want your spouse to own the
18 property on your death, you must name your spouse as the primary
19 beneficiary. If your spouse does not survive you, the property will
20 transfer to any listed alternate beneficiary or beneficiaries on
21 your death.

22 1. Owner (Transferor) Making this Deed:

23 _____
24 Printed name _____ Mailing address

25 2. Legal Description of the Property:

26 _____

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

1 _____
2 4. Primary Beneficiary (Transferee) or Beneficiaries
3 (Transferees)

4 I designate the following beneficiary or beneficiaries, if
5 the beneficiary survives me:

6 _____
7 Printed name Mailing address

8 5. Alternate Beneficiary or Beneficiaries (Optional)

9 If no primary beneficiary survives me, I designate the
10 following alternate beneficiary or beneficiaries:

11 _____
12 Printed name Mailing address

13 6. Transfer on Death

14 At my death, I grant and convey to the primary beneficiary or
15 beneficiaries my interest in the property, to have and hold
16 forever. If at my death I am not survived by any primary
17 beneficiary, I grant and convey to the alternate beneficiary or
18 beneficiaries, if designated, my interest in the property, to have
19 and hold forever. If the primary and alternate beneficiaries do not
20 survive me, this transfer on death deed shall be deemed canceled by
21 me.

22 7. Printed Name and Signature of Owner Making this Deed:

23 _____
24 Printed Name Date

25 _____
26 Signature

27 BELOW LINE FOR NOTARY ONLY

1 _____

2 Acknowledgment

3 STATE OF _____

4 COUNTY OF _____

5 This instrument was acknowledged before me on the _____ day of

6 _____, 20____,

7 by _____.

8 _____

9 Notary Public, State of _____

10 After recording, return to:

11 (insert name and mailing address)

12 _____

13 _____

14 INSTRUCTIONS FOR TRANSFER ON DEATH DEED

15 DO NOT RECORD THESE INSTRUCTIONS

16 Instructions for Completing the Form

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

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

1 3. Address of the Property: Enter the physical address of the
2 property.

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

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

11 6. Transfer on Death: No action needed.

12 7. Printed Name and Signature of Owner: Do not sign your name or
13 enter the date until you are before a notary. Include your printed
14 name.

15 8. Acknowledgment: This deed must be signed before a notary. The
16 notary will fill out this section of the deed.

17 Sec. 114.152. OPTIONAL FORM OF REVOCATION. The following
18 form may be used to create an instrument of revocation under this
19 chapter.

20 CANCELLATION OF TRANSFER ON DEATH DEED

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

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

1 form.

2 1. Owner (Transferor) Making this Cancellation:

3 _____
4 Printed name Mailing address

5 2. Legal Description of the Property:

6 _____

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

8 _____

9 4. Cancellation

10 I cancel all my previous transfers of this property by
11 transfer on death deed.

12 5. Printed Name and Signature of Owner (Transferor) Making this
13 Cancellation:

14 _____
15 Printed Name Date

16 _____
17 Signature

18 BELOW LINE FOR NOTARY ONLY

19 _____

20 Acknowledgment

21 STATE OF _____

22 COUNTY OF _____

23 This instrument was acknowledged before me on the ___ day of
24 _____, 20____,

25 by _____.

26 _____
27 Notary Public, State of _____

1 After recording, return to:

2 (insert name and mailing address)

3 _____
4 _____

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

6 DO NOT RECORD THESE INSTRUCTIONS

7 Instructions for Completing the Form

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

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

20 3. Address of the Property: Enter the physical address of the
21 property.

22 4. Cancellation: No action needed.

23 5. Printed Name and Signature of Owner: Do not sign your name or
24 enter the date until you are before a notary. Include your printed
25 name.

26 6. Acknowledgment: This cancellation form must be signed before a
27 notary. The notary will fill out this section of the form.

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

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

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

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

11 (A) by inheritance;

12 (B) under a will;

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

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

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

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

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

27 (H) by a transfer on death deed.

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