

1-1 By: Huffman, Rodriguez S.B. No. 462  
1-2 (In the Senate - Filed February 5, 2015; February 10, 2015,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 March 16, 2015, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; March 16, 2015, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Huffman</u>	X		
1-9	<u>Ellis</u>	X		
1-10	<u>Birdwell</u>	X		
1-11	<u>Creighton</u>	X		
1-12	<u>Estes</u>	X		
1-13	<u>Fraser</u>	X		
1-14	<u>Nelson</u>	X		
1-15	<u>Schwertner</u>	X		
1-16	<u>Zaffirini</u>	X		

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to authorizing a revocable deed that transfers real  
1-20 property at the transferor's death.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subtitle C, Title 2, Estates Code, is amended by  
1-23 adding Chapter 114 to read as follows:

1-24 CHAPTER 114. TRANSFER ON DEATH DEED

1-25 SUBCHAPTER A. GENERAL PROVISIONS

1-26 Sec. 114.001. SHORT TITLE. This chapter may be cited as the  
1-27 Texas Real Property Transfer on Death Act.

1-28 Sec. 114.002. DEFINITIONS. (a) In this chapter:

1-29 (1) "Beneficiary" means a person who receives real  
1-30 property under a transfer on death deed.

1-31 (2) "Designated beneficiary" means a person  
1-32 designated to receive real property in a transfer on death deed.

1-33 (3) "Joint owner with right of survivorship" or "joint  
1-34 owner" means an individual who owns real property concurrently with  
1-35 one or more other individuals with a right of survivorship. The  
1-36 term does not include a tenant in common or an owner of community  
1-37 property with or without a right of survivorship.

1-38 (4) "Person" has the meaning assigned by Section  
1-39 311.005, Government Code.

1-40 (5) "Real property" means an interest in real property  
1-41 located in this state.

1-42 (6) "Transfer on death deed" means a deed authorized  
1-43 under this chapter.

1-44 (7) "Transferor" means an individual who makes a  
1-45 transfer on death deed.

1-46 (b) In this chapter, the terms "cancel" and "revoke" are  
1-47 synonymous.

1-48 Sec. 114.003. APPLICABILITY. This chapter applies to a  
1-49 transfer on death deed made before, on, or after September 1, 2015,  
1-50 by a transferor who dies on or after September 1, 2015.

1-51 Sec. 114.004. NONEXCLUSIVITY. This chapter does not affect  
1-52 any method of transferring real property otherwise permitted under  
1-53 the laws of this state.

1-54 Sec. 114.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
1-55 In applying and construing this chapter, consideration must be  
1-56 given to the need to promote uniformity of the law with respect to  
1-57 the subject matter of this chapter among states that enact a law  
1-58 similar to this chapter.

1-59 Sec. 114.006. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
1-60 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and  
1-61 supersedes the federal Electronic Signatures in Global and National

2-1 Commerce Act (15 U.S.C. Section 7001 et seq.), except that this  
 2-2 chapter does not modify, limit, or supersede Section 101(c) of that  
 2-3 Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of  
 2-4 any of the notices described in Section 103(b) of that Act (15  
 2-5 U.S.C. Section 7003(b)).

2-6 SUBCHAPTER B. AUTHORIZATION, EXECUTION, AND REVOCATION OF TRANSFER  
 2-7 ON DEATH DEED

2-8 Sec. 114.051. TRANSFER ON DEATH DEED AUTHORIZED. An  
 2-9 individual may transfer the individual's interest in real property  
 2-10 to one or more beneficiaries effective at the transferor's death by  
 2-11 a transfer on death deed.

2-12 Sec. 114.052. TRANSFER ON DEATH DEED REVOCABLE. A transfer  
 2-13 on death deed is revocable regardless of whether the deed or another  
 2-14 instrument contains a contrary provision.

2-15 Sec. 114.053. TRANSFER ON DEATH DEED NONTESTAMENTARY. A  
 2-16 transfer on death deed is a nontestamentary instrument.

2-17 Sec. 114.054. CAPACITY OF TRANSFEROR. The capacity  
 2-18 required to make or revoke a transfer on death deed is the same as  
 2-19 the capacity required to make a contract.

2-20 Sec. 114.055. REQUIREMENTS. To be effective, a transfer on  
 2-21 death deed must:

2-22 (1) except as otherwise provided in Subdivision (2),  
 2-23 contain the essential elements and formalities of a recordable  
 2-24 deed;

2-25 (2) state that the transfer of an interest in real  
 2-26 property to the designated beneficiary is to occur at the  
 2-27 transferor's death; and

2-28 (3) be recorded before the transferor's death in the  
 2-29 deed records in the county clerk's office of the county where the  
 2-30 real property is located.

2-31 Sec. 114.056. NOTICE, DELIVERY, ACCEPTANCE, OR  
 2-32 CONSIDERATION NOT REQUIRED. A transfer on death deed is effective  
 2-33 without:

2-34 (1) notice or delivery to or acceptance by the  
 2-35 designated beneficiary during the transferor's life; or

2-36 (2) consideration.

2-37 Sec. 114.057. REVOCATION BY CERTAIN INSTRUMENTS; EFFECT OF  
 2-38 WILL OR MARRIAGE DISSOLUTION. (a) Subject to Subsections (d) and  
 2-39 (e), an instrument is effective to revoke a recorded transfer on  
 2-40 death deed, or any part of it, if the instrument:

2-41 (1) is one of the following:

2-42 (A) a subsequent transfer on death deed that  
 2-43 revokes the preceding transfer on death deed or part of the deed  
 2-44 expressly or by inconsistency; or

2-45 (B) except as provided by Subsection (b), an  
 2-46 instrument of revocation that expressly revokes the transfer on  
 2-47 death deed or part of the deed;

2-48 (2) is acknowledged by the transferor after the  
 2-49 acknowledgment of the deed being revoked; and

2-50 (3) is recorded before the transferor's death in the  
 2-51 deed records in the county clerk's office of the county where the  
 2-52 deed being revoked is recorded.

2-53 (b) A will may not revoke or supersede a transfer on death  
 2-54 deed.

2-55 (c) If a marriage between the transferor and a designated  
 2-56 beneficiary is dissolved after a transfer on death deed is  
 2-57 recorded, a final judgment of the court dissolving the marriage  
 2-58 operates to revoke the transfer on death deed as to that designated  
 2-59 beneficiary if notice of the judgment is recorded before the  
 2-60 transferor's death in the deed records in the county clerk's office  
 2-61 of the county where the deed is recorded, notwithstanding Section  
 2-62 111.052.

2-63 (d) If a transfer on death deed is made by more than one  
 2-64 transferor, revocation by a transferor does not affect the deed as  
 2-65 to the interest of another transferor who does not make that  
 2-66 revocation.

2-67 (e) A transfer on death deed made by joint owners with right  
 2-68 of survivorship is revoked only if it is revoked by all of the  
 2-69 living joint owners.

3-1 (f) This section does not limit the effect of an inter vivos  
 3-2 transfer of the real property.

3-3 SUBCHAPTER C. EFFECT OF TRANSFER ON DEATH DEED; LIABILITY OF  
 3-4 TRANSFERRED PROPERTY FOR CREDITORS' CLAIMS

3-5 Sec. 114.101. EFFECT OF TRANSFER ON DEATH DEED DURING  
 3-6 TRANSFEROR'S LIFE. During a transferor's life, a transfer on death  
 3-7 deed does not:

3-8 (1) affect an interest or right of the transferor or  
 3-9 any other owner, including:

3-10 (A) the right to transfer or encumber the real  
 3-11 property that is the subject of the deed;

3-12 (B) homestead rights in the real property, if  
 3-13 applicable; and

3-14 (C) ad valorem tax exemptions, including  
 3-15 exemptions for residence homestead, persons 65 years of age or  
 3-16 older, persons with disabilities, and veterans;

3-17 (2) affect an interest or right of a transferee of the  
 3-18 real property that is the subject of the deed, even if the  
 3-19 transferee has actual or constructive notice of the deed;

3-20 (3) affect an interest or right of a secured or  
 3-21 unsecured creditor or future creditor of the transferor, even if  
 3-22 the creditor has actual or constructive notice of the deed;

3-23 (4) affect the transferor's or designated  
 3-24 beneficiary's eligibility for any form of public assistance,  
 3-25 subject to applicable federal law;

3-26 (5) constitute a transfer triggering a "due on sale"  
 3-27 or similar clause;

3-28 (6) invoke statutory real estate notice or disclosure  
 3-29 requirements;

3-30 (7) create a legal or equitable interest in favor of  
 3-31 the designated beneficiary; or

3-32 (8) subject the real property to claims or process of a  
 3-33 creditor of the designated beneficiary.

3-34 Sec. 114.102. TRANSFER ON DEATH DEED VOID ON CONVEYANCE OF  
 3-35 PROPERTY SUBJECT OF DEED. If a transferor during the transferor's  
 3-36 lifetime conveys to any person all of the transferor's interest in  
 3-37 real property that is the subject of a transfer on death deed, the  
 3-38 transfer on death deed is void as to that interest in real property.

3-39 Sec. 114.103. EFFECT OF TRANSFER ON DEATH DEED AT  
 3-40 TRANSFEROR'S DEATH. (a) Except as otherwise provided in the  
 3-41 transfer on death deed, this section, or any other statute or the  
 3-42 common law of this state governing a decedent's estate, on the death  
 3-43 of the transferor, the following rules apply to an interest in real  
 3-44 property that is the subject of a transfer on death deed and owned  
 3-45 by the transferor at death:

3-46 (1) if the designated beneficiary survives the  
 3-47 transferor by 120 hours, the interest in the real property is  
 3-48 transferred to the designated beneficiary in accordance with the  
 3-49 deed;

3-50 (2) the interest of a designated beneficiary that  
 3-51 fails to survive the transferor by 120 hours lapses,  
 3-52 notwithstanding Section 111.052;

3-53 (3) subject to Subdivision (4), concurrent interests  
 3-54 are transferred to the beneficiaries in equal and undivided shares  
 3-55 with no right of survivorship; and

3-56 (4) notwithstanding Subdivision (2), if the  
 3-57 transferor has identified two or more designated beneficiaries to  
 3-58 receive concurrent interests in the real property, the share of a  
 3-59 designated beneficiary who predeceases the transferor lapses and is  
 3-60 subject to and passes in accordance with Subchapter D, Chapter 255,  
 3-61 as if the transfer on death were a devise made in a will.

3-62 (b) If a transferor is a joint owner with right of  
 3-63 survivorship who is survived by one or more other joint owners, the  
 3-64 real property that is the subject of the transfer on death deed  
 3-65 belongs to the surviving joint owner or owners. If a transferor is  
 3-66 a joint owner with right of survivorship who is the last surviving  
 3-67 joint owner, the transfer on death deed is effective.

3-68 (c) If a transfer on death deed is made by two or more  
 3-69 transferors who are joint owners with right of survivorship, the

4-1 last surviving joint owner may revoke the transfer on death deed  
 4-2 subject to Section 114.057.

4-3 (d) A transfer on death deed transfers real property without  
 4-4 covenant or warranty of title even if the deed contains a contrary  
 4-5 provision.

4-6 Sec. 114.104. TRANSFER ON DEATH DEED PROPERTY SUBJECT TO  
 4-7 LIENS AND ENCUMBRANCES AT TRANSFEROR'S DEATH; CREDITORS' CLAIMS.

4-8 (a) Subject to Section 13.001, Property Code, a beneficiary takes  
 4-9 the real property subject to all conveyances, encumbrances,  
 4-10 assignments, contracts, mortgages, liens, and other interests to  
 4-11 which the real property is subject at the transferor's death. For  
 4-12 purposes of this subsection and Section 13.001, Property Code, the  
 4-13 recording of the transfer on death deed is considered to have  
 4-14 occurred at the transferor's death.

4-15 (b) If a personal representative has been appointed for the  
 4-16 transferor's estate, an administration of the estate has been  
 4-17 opened, and the real property transferring under a transfer on  
 4-18 death deed is subject to a lien or security interest, including a  
 4-19 deed of trust or mortgage, the personal representative shall give  
 4-20 notice to the creditor of the transferor as the personal  
 4-21 representative would any other secured creditor under Section  
 4-22 308.053. The creditor shall then make an election under Section  
 4-23 355.151 in the period prescribed by Section 355.152 to have the  
 4-24 claim treated as a matured secured claim or a preferred debt and  
 4-25 lien claim, and the claim is subject to the claims procedures  
 4-26 prescribed by this section.

4-27 (c) If the secured creditor elects to have the claim treated  
 4-28 as a preferred debt and lien claim, Sections 355.154 and 355.155  
 4-29 apply as if the transfer on death were a devise made in a will, and  
 4-30 the creditor may not pursue any other claims or remedies for any  
 4-31 deficiency against the transferor's estate.

4-32 (d) If the secured creditor elects to have the claim treated  
 4-33 as a matured secured claim, Section 355.153 applies as if the  
 4-34 transfer on death were a devise made in a will, and the claim is  
 4-35 subject to the procedural provisions of this title governing  
 4-36 creditor claims.

4-37 Sec. 114.105. DISCLAIMER. A designated beneficiary may  
 4-38 disclaim all or part of the designated beneficiary's interest as  
 4-39 provided by Chapter 122.

4-40 Sec. 114.106. LIABILITY FOR CREDITOR CLAIMS AND FAMILY  
 4-41 ALLOWANCES. (a) To the extent the transferor's estate is  
 4-42 insufficient to satisfy a claim against the estate, expenses of  
 4-43 administration, any estate tax owed by the estate, or a family  
 4-44 allowance to a surviving spouse, minor children, or incapacitated  
 4-45 adult children, the personal representative may enforce that  
 4-46 liability against real property transferred at the transferor's  
 4-47 death by a transfer on death deed to the same extent the personal  
 4-48 representative could enforce that liability if the real property  
 4-49 were part of the probate estate.

4-50 (b) If a personal representative does not commence a  
 4-51 proceeding to enforce a liability under Subsection (a) on or before  
 4-52 the 90th day after the date the representative receives a demand for  
 4-53 payment, a proceeding to enforce the liability may be brought by a  
 4-54 creditor, a distributee of the estate, a surviving spouse of the  
 4-55 decedent, a guardian or other appropriate person on behalf of a  
 4-56 minor child or adult incapacitated child of the decedent, or any  
 4-57 taxing authority.

4-58 (c) If more than one real property interest is transferred  
 4-59 by one or more transfer on death deeds or if there are other  
 4-60 nonprobate assets of the transferor that may be liable for the  
 4-61 claims, expenses, and other payments specified in Subsection (a),  
 4-62 the liability for those claims, expenses, and other payments may be  
 4-63 apportioned among those real property interests and other assets in  
 4-64 proportion to their net values at the transferor's death.

4-65 (d) A proceeding to enforce liability under this section  
 4-66 must be commenced not later than the second anniversary of the  
 4-67 transferor's death, except for any rights arising under Section  
 4-68 114.104(d).

4-69 (e) In connection with any proceeding brought under this



5-1 section, a court may award costs and reasonable and necessary  
5-2 attorney's fees in amounts the court considers equitable and just.

5-3 SUBCHAPTER D. FORMS FOR TRANSFER ON DEATH DEED

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

5-6 REVOCABLE TRANSFER ON DEATH DEED

5-7 NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU  
5-8 MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS  
5-9 INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS:  
5-10 YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

5-11 IMPORTANT NOTICE TO OWNER: You should carefully read all the  
5-12 information included in the instructions to this form. You may want  
5-13 to consult a lawyer before using this form.

5-14 MUST RECORD DEED: Before your death, this deed must be recorded  
5-15 with the county clerk where the property is located, or it will not  
5-16 be effective.

5-17 1. Owner (Transferor) Making this Deed:

5-18 Printed name Mailing address

5-19 2. Legal Description of the Property:

5-20 3. Address of the Property (if any) (include county):

5-21 4. Primary Beneficiary (Transferee) or Beneficiaries  
5-22 (Transferees)

5-23 I designate the following beneficiary or beneficiaries, if  
5-24 the beneficiary survives me:

5-25 Printed name Mailing address

5-26 5. Alternate Beneficiary or Beneficiaries (Optional)

5-27 If no primary beneficiary survives me, I designate the  
5-28 following alternate beneficiary or beneficiaries:

5-29 Printed name Mailing address

5-30 6. Transfer on Death

5-31 At my death, I convey to the primary beneficiary or  
5-32 beneficiaries my interest in the property, to have and hold  
5-33 forever. If at my death I am not survived by any primary  
5-34 beneficiary, I grant and convey to the alternate beneficiary or  
5-35 beneficiaries, if designated, my interest in the property, to have  
5-36 and hold forever. If the primary and alternate beneficiaries do not  
5-37 survive me, this transfer on death deed shall be deemed canceled by  
5-38 me.

5-39 7. Signature of Owner Making this Deed:

5-40 Signature Date

5-41 BELOW LINE FOR NOTARY ONLY

5-42 Acknowledgement

5-43 STATE OF

5-44 COUNTY OF

5-45 This instrument was acknowledged before me on the

5-46 \_\_\_\_\_ day of

5-47 \_\_\_\_\_, 20\_\_\_\_,

5-48 by \_\_\_\_\_.

5-49 Notary Public, State of \_\_\_\_\_

5-50 After recording, return to:

5-51 (insert name and mailing address)

5-52 INSTRUCTIONS FOR TRANSFER ON DEATH DEED

5-53 DO NOT RECORD THESE INSTRUCTIONS

5-54 Instructions for Completing the Form

5-55 1. Owner (Transferor) Making this Deed: Enter your first, middle  
5-56 (if any), and last name here, along with your mailing address.

5-57 2. Legal Description of the Property: Enter the formal legal  
5-58 description of the property. This information is different from  
5-59 the mailing and physical address for the property and is necessary  
5-60 to complete the form. To find this information, look on the deed



7-1 you received when you became an owner of the property. This  
7-2 information may also be available in the office of the county clerk  
7-3 for the county where the property is located. Do NOT use your tax  
7-4 bill to find this information. If you are not absolutely sure,  
7-5 consult a lawyer.

7-6 3. Address of the Property: Enter the physical address of the  
7-7 property.

7-8 4. Cancellation: No action needed.

7-9 5. Signature of Owner: Do not sign your name or enter the date  
7-10 until you are before a notary.

7-11 6. Acknowledgement: This cancellation form must be signed before  
7-12 a notary. The notary will fill out this section of the form.

7-13 SECTION 2. Section 22.027(b), Estates Code, is amended to  
7-14 read as follows:

7-15 (b) Except as otherwise provided by this code, the [The]  
7-16 definition of "person" assigned by Section 311.005, Government  
7-17 Code, does not apply to any provision in this code.

7-18 SECTION 3. Section 122.001(1), Estates Code, is amended to  
7-19 read as follows:

7-20 (1) "Beneficiary" includes a person who would have  
7-21 been entitled, if the person had not made a disclaimer, to receive  
7-22 property as a result of the death of another person:

7-23 (A) by inheritance;

7-24 (B) under a will;

7-25 (C) by an agreement between spouses for community  
7-26 property with a right of survivorship;

7-27 (D) by a joint tenancy with a right of  
7-28 survivorship;

7-29 (E) by a survivorship agreement, account, or  
7-30 interest in which the interest of the decedent passes to a surviving  
7-31 beneficiary;

7-32 (F) by an insurance, annuity, endowment,  
7-33 employment, deferred compensation, or other contract or  
7-34 arrangement; [~~or~~]

7-35 (G) under a pension, profit sharing, thrift,  
7-36 stock bonus, life insurance, survivor income, incentive, or other  
7-37 plan or program providing retirement, welfare, or fringe benefits  
7-38 with respect to an employee or a self-employed individual; or

7-39 (H) by a transfer on death deed.

7-40 SECTION 4. This Act takes effect September 1, 2015.

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