

Real Property Transfer on Death Act
Work Group Report

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I. Introduction

Many individuals seek to avoid probate, some for reasons of wanting to avoid additional cost and delay and others for reasons of privacy. Some individuals want to transfer their assets after their death without having to have a personal representative and the proceedings of a probate court handle it. More and more, much of a deceased person's estate can be easily transferred outside of the probate process because the law provides for various will substitutes. Those methods generally include pay on death designations, joint tenancy with right of survivorship, remainder interests, tenancy by the entirety title designations, and trusts.

Oregon presently permits pay on death designations for securities (see ORS 59.535-59.585) and bank accounts (see ORS 708A.455-708A.515). These pay on death methods permit people to transfer their securities and cash in a bank account on their death to people they designate without a probate proceeding. However, to date there is not a way to transfer real property with a pay on death designation in Oregon. Such a method is typically referred to as a transfer on death deed or a beneficiary deed.

The substance of this recommended bill is taken from the National Conference of Commissioners on Uniform State Laws which approved and recommended the Uniform Real Property Transfer on Death Act for enactment in all the states at its conference in July 2009. The act provides authority for the use of transfer on death deeds in Oregon, complete with the substantive and procedural requirements for creation and revocation of a transfer on death deed and rules to govern transfer on death deeds.

II. Statement of the problem

Oregon law does not currently provide for a probate-avoidance tool relating to the transfer of real property at death. Oregon lacks an inexpensive, straightforward, and reliable method to transfer real property directly to a beneficiary.

Present joint ownership methods of transferring real property during the life of the transferor, i.e. joint tenancy or tenancy by the entirety, vest the property rights at the time the beneficiary is added to the deed. These methods make the property subject to creditors of the beneficiary as well as lawsuits including divorce, bankruptcy, and torts. In addition, there are likely federal income, gift tax, and capital gains tax consequences. These methods are irrevocable, and thus if the original owner later changes their mind, undoing the transaction is impossible if the other owner does not agree. Another available method is a revocable trust, but the big disadvantage of a trust is the cost. In

addition, assets must be transferred to the trust and managed in the trust in order to avoid probate.

III. History of the Project:

Oregon adopted the National Conference of Commissioners on Uniform State Laws's (NCCUSL) 1989 Uniform Transfer on Death Security Registration Act in 1991. The Uniform Real Property Transfer on Death Act was recommended by NCCUSL in 2009. The Oregon Law Commission approved the formation of a work group to review and make recommendation regarding the Uniform Real Property Transfer on Death Act at its meeting on September 9, 2009. The request came from both the Estate Planning Section of the Bar and Commissioner Lane Shetterly who serves as both an Oregon National Conference of Commissioners on Uniform State Laws Commissioner and Chair of the Oregon Law Commission. A work group was formed with Commissioner Mark Comstock chairing the Work Group. The Work Group began meeting in August 2010 and met six times to complete the recommended bill.

The NCCUSL committee that developed this uniform act included representatives from title companies, the AARP, the American Bar Association's Commission on Law and Aging, the American Bankers' Association, and the American Bar Association. The NCCUSL group drew upon the experience of the states with transfer on death deed laws. The Oregon Law Commission's Work Group similarly included representatives from the title companies; the estate planning, real estate, and elder law sections of the bar; the State of Oregon; and academia. The Work Group included the following persons:

Chair:

Mark Comstock Garrett Hemann Robertson; Oregon Law Commissioner

Voting Members:

Cleve Abbe Lawyers Title of Oregon, LLC
Prof. Susan Gary University of Oregon School of Law; Advisor to the NCCUSL drafting committee from the Real Property, Trust, and Estate Law Section of the American Bar Association
Ryan Gibb Douglas Conroyd & Gibb (Elder Law Section of the OSB)
Claudia Groberg DOJ – Civil Enforcement/Child Advocacy
Susan Miller DOJ – Civil Enforcement
Greg Nelson Chicago Title Insurance Co. (Real Estate Section of the OSB)
Ian Richardson Gleaves Swearingen Potter & Scott LLP (Estate Planning Section of the OSB)

Interested Parties:

Susan Grabe Oregon State Bar
Lane Shetterly Shetterly Irick and Ozias; Oregon Law Commissioner
Matt Shields Oregon State Bar

Staff:

Harrison Conley Legislative Counsel
Jeff Dobbins Oregon Law Commission
Lisa Ehlers Oregon Law Commission
Wendy Johnson Oregon Law Commission

IV. Who would likely use a TOD deed?

“Small estate. An owner whose estate consists primarily of a house may use a TOD deed to avoid the expense of probate.

Unmarried partner. A couple that has not married or registered as domestic partners may want to use a TOD deed as part of an overall estate plan. The deed does not convey current rights and therefore avoids gift tax problems. (And gift tax will be a concern even if the couple is registered because the federal gift tax does not provide a deduction for persons who are registered but not legally married.) If the couple ends their relationship, the owner can revoke the TOD deed.

Parent and child. Sometimes a parent puts a child on a deed to avoid probate and ensure that the child inherits the property. If the deed creates a joint tenancy with a right of survivorship, the parent has made a lifetime gift, the parent cannot later revoke the gift, and creditors of the child can reach the asset. A TOD deed avoids those difficulties.

Revocable trust. An owner may have created a revocable trust for other property but may not want to transfer title to real property into the name of the trustee. The owner may be planning to sell the property soon and may find a sale easier if the property remains in the owner’s name. A TOD deed transferring the property to the trustee of the revocable trust provides a back-up plan in case the owner does not sell the property before death.”¹

¹ Quoted from Susan N. Gary’s CLE materials for ABA Section Real Property Trust and Estate Law presented in Spring 2008 Symposia, “Uniform Law Commission develops transfer-on-death deeds.” TOD deed is an abbreviation for transfer on death deed.

V. Why enact now?

Thirteen states have already enacted statutes authorizing TOD deeds. Those states include Missouri, Kansas, Ohio, New Mexico, Arizona, Nevada, Colorado, Arkansas, Wisconsin, Montana, Oklahoma, Minnesota, and Indiana.² Five more states (four new states and one state that already has a real property TOD statute) have started working on enacting the uniform act. Those states include Hawaii, Nebraska, Oklahoma, South Dakota, and Utah.³ It is time to bring uniformity across the states to facilitate consistent options of transferring property outside of probate.

VI. Section by Section Analysis and Explanation of Bill:

Section 1: This section simply provides a way to refer to this new law. It also makes it easy for people to electronically search the Oregon Revised Statutes to find the uniform act.

Section 2: This section provides the definitions for the act. Section 2(1) defines “beneficiary” as a person that receives property under a transfer on death deed. The definition of “beneficiary” is linked to the definition of “person,” which is also in Section 2. The definition for “person” is different from the uniform act in that the bill uses “personal representative” and “trustee” rather than “estate” and “trust,” in order to focus properly on the individual. The definition of “joint owner” is also modified from the

² Missouri (1989) – MO. ANN. STAT. §461.025, Kansas (1997) – KAN. STAT. ANN. §59-3501, Ohio (2000) – OHIO REV. CODE ANN. §5302.22, New Mexico (2001) – N.M. STAT. ANN. §45-6-401, Arizona (2002) – ARIZ. REV. STAT. ANN. §33-405, Nevada (2003) – NEV. REV. STAT. ANN. §111.109(1), Colorado (2004) – COLO. REV. STAT. §15-15-401(1), Arkansas (2005) – ARK. CODE ANN. §18-12-608, Wisconsin (2006) – WIS. STAT. ANN. §705.15, Montana (2007) – MON. CODE ANN. §72-6-121, Oklahoma (2008) – OKLA. STAT. ANN. Tit. 58 §1251, Minnesota (2008) – MINN. STAT. ANN. §507.071, Indiana (2009) – IND. CODE §32-17-14.

³ Hawaii SB 105 (2011); Nebraska: LB 536 (2011); OK: SB 521 (2011); South Dakota: HB 1229 (2010); and Utah: HB 224 (2010).

uniform act so as to recognize Oregon's forms of property law ownership. The definition is modeled after ORS 112.570(1) which is Oregon's definition for co-owners with right of survivorship.

Section 3: This is the applicability section of the bill. It simply provides that the act applies to a transfer on death deed made before, on, or after the effective date of the 2011 Act.

Section 4: This non-exclusivity section provides that other methods of transferring property are not to be affected by this act.

Section 5: This section provides the authorizing authority for a transfer on death deed. While it is a short section of the bill, it really is the key section of the bill because the section authorizes a transfer on deed and makes it clear that the transfer is NOT an inter vivos transfer, but rather the property transfer does not occur until the transferor dies. Any form of property ownership that is valid under Oregon law may be transferred. The provision makes clear that the transferor may designate one or more primary beneficiaries and one or more alternate beneficiaries to take in the event the primary beneficiaries do not survive the transferor. This section has additional verbiage compared to the uniform act to detail a bit more how the primary and alternate beneficiary designations work.

Section 6: This section provides that a transfer on death deed is revocable at any time while the transferor is living. A transferor can revoke the deed even if the deed or some other instrument says it is irrevocable.

Section 7: This section provides that a transfer on death deed is nontestamentary. Because it is nontestamentary, the instrument of transfer is NOT a will, does not have to follow will formality rules and need not go through probate.

Section 8: This section provides that the capacity standard required both for making and revoking a transfer on death deed is the same as the capacity required under Oregon law for making a will. The policy choice was whether to use a deed standard or a will standard for capacity. The deed standard is a higher standard. The work group opted to use the will standard as recommended by the uniform act because a transfer on death deed is a will substitute; Oregon similarly uses a will standard for revocable trusts. A transfer on death deed will not be affected if the transferor loses capacity after the transfer on death deed is made; rather, the requirement for capacity of the transferor is at the time of making the transfer on death deed. In short, using a will standard for capacity is consistent with existing Oregon law.

In addition to providing the capacity standard, this section of the bill has non-uniform provisions to specify how and when to contest the transferor's capacity to have made the transfer on death deed. Marion County Judge Claudia Burton expressed concern about undue influence and elder abuse with transfer on death deeds. The group agreed to specify in this section that a transfer on death deed or a revocation of one can be challenged and set aside for lack of capacity, fraud, duress, or undue influence. While a transfer on death deed generally should avoid a probate proceeding, if capacity, fraud, duress, or undue influence issues arise, a separate proceeding may be commenced. To ensure finality and ensure a timely transfer of property, the bill requires that a proceeding to contest capacity or determine whether there was fraud, duress, or undue influence, must be commenced within 18 months after the transferor's death. This 18-month time limit is consistent with Section 15 of the bill. Much of the language for this non-uniform provision was borrowed and adapted from Missouri's state law. A transfer on death deed or revocation of a transfer on death deed is void if it was procured by fraud, duress, or undue influence or was made when the transferor lacked the required capacity.

Section 9: This section provides for the content requirements of a transfer on death deed. A transfer on death deed must contain the essential formalities required for a properly recordable inter vivos deed under state law. See e.g., ORS Chapter 93 for Oregon's deed requirements. Section 16 of the bill provides a model form for creating a transfer on death deed; the work group modified the uniform act's form for the creation of a transfer on death deed to include the essential elements of a deed under Oregon state law. The bill exempts transfer on death deeds from two mandatory statements required of other instruments transferring real property in Oregon. See Sections 23 (consideration statement) and 24 (land use statement).

The big difference between an inter vivos deed and a transfer on death deed is obviously that the latter does not require a present intent to convey. Instead, this section provides that the transfer on death deed must state that the transfer to a designated beneficiary is to occur at the transferor's death. See Section 9(1)(b).

This section contains two non-uniform provisions. Section 9(1)(c) requires the designation of a beneficiary "by name." Section 9(2) provides that if a transferor fails to designate by name and instead uses a class for a designation, the class designation is void. The deed, however, is not per se void if a class designation is made because any other named designated beneficiaries would take the property under the deed. Some members of the work group believed that the definition of "person" would not include a class designation anyway, but the bill addresses the issue directly and provides that a beneficiary cannot be a class, e.g., "the living children of my sister." The group reasoned that the transfer or receipt, which occurs outside of probate, should be to an ascertained

individual. If a class designation were permitted, a probate proceeding might be necessary to determine the members of the class so that a title company would be able to issue insurance.

The transfer on death deed needs to be recorded where the property is located. If the property is located in more than one county, the transfer on death deed will have to be recorded in each county in which the property is located. See Section 9(1)(d). This is also consistent with Oregon's recording requirements. The deed must be recorded before the transferor's death. This allows reliance on the recording system and also helps to prevent fraud.

Section 10: This section is straight from the uniform act and makes it clear that a transfer on death deed is effective without notice or delivery to or acceptance by the designated beneficiary during the transferor's lifetime and is made without consideration. This is consistent because the transfer does not occur until the transferor's death. Note that the beneficiary may disclaim the property. See Section 14.

Section 11: This section addresses revocation of a transfer on death deed by instrument and by act. Section 11(1) provides the exclusive means for revoking by a subsequent instrument. To be effective, the revoking instrument must both be acknowledged after the deed to be revoked was acknowledged by the transferor and the revoking instrument must be recorded properly before the transferor's death. Note that it is the later acknowledged deed that controls and not the later recorded deed. In addition, the revoking instrument must be: 1) another transfer on death deed that expressly or by inconsistency revokes the deed or part of the deed; 2) a revoking instrument that expressly revokes the deed or part of the deed; or 3) an inter vivos deed that transfers the property or a part of the property that is the subject of the transfer on death deed. Revocation by any instrument not listed is not effective; for example, a transfer on death deed cannot be revoked by will. Revocation by will is not allowed because a transfer on death deed is a will substitute used for the transfer of real property, and it is essential for real property title to be certain. Certainty would be impossible if a will or other instrument could revoke a recorded transfer on death deed. This policy is at odds with the Restatement Third of Property which encourages revocability of will substitutes by will. However, the policy is consistent with Oregon's policy regarding will substitutes and specifically the pay on death bank account will substitute provisions of the state. See ORS 708A.470(5). The comments to the uniform act provide several examples to help better understand how these revocation rules work that the work group reviewed. It is important to note that a subsequent instrument may revoke the transfer on death deed only in part. The bill does not permit revival of a transfer on death deed by reacquisition of property that was once the subject of the transfer on death deed but was transferred.

Section 11(2) is a non-uniform provision. The transferor must acknowledge a revoking instrument, but sometimes a transferor may be incapacitated when there is a need to revoke a transfer on death deed. This non-uniform subsection provides authority to a designated agent of a transferor to revoke a transfer on death deed as provided by the section. Note that an agent is not given authority in the bill to create a transfer on death deed for a transferor but does have authority to revoke for the transferor, but only if the transferor provided express authority for the agent to revoke in the transfer on death deed. The uniform act generally looks to state law to determine the authority of agents, but Oregon's power of attorney laws are not clear. Case law is clear with respect to conservators, but it is not with respect to power of attorney. Thus, the group took this modest step and expressly authorized the power to revoke, but with limits to safeguard misuse.

The work group omitted Section 11(b)(2)⁴ of the uniform act because revocation by one transferor does not affect the interest of other transferors, and thus the subsection was viewed as superfluous. This is consistent with Oregon's counterpart to joint tenancy in real property. In Oregon, concurrent survivorship interests may not be extinguished by the unilateral act of one "joint" tenant; that is, any person's survivorship interest requires that person's act to release it.

Section 11(3) provides the rule for revocation by instrument when there is a transfer on death deed made by more than one owner. Revocation by one transferor does not affect the transfer on death deed as to the interest of another transferor.

Section 11(4) provides that a transfer on death deed may NOT be revoked by a revocatory act on the deed. Tearing up, burning, canceling, or otherwise destroying a transfer on death deed is not effective to revoke a transfer on death deed.

Section 12: A transfer on death deed does not operate until the transferor's death. A transfer to named beneficiaries simply does not occur until the transferor's death. To make this policy principle crystal clear, this section lists the various things that a transfer on death deed does NOT affect. The section substantively follows the uniform act. This section provides that a transfer on death deed does not affect the interest or property rights of the transferor or any other owners during the lifetime of the transferor. A transfer on death deed does not affect transferees. A transfer on death deed has no effect

⁴ That provision provides: "If a transfer on death deed is made by more than one transferor: (2) a deed of joint owners is revoked only if it is revoked by all of the living joint owners."

on inter vivos transfers. A transfer on death deed, during the transferor's lifetime, does not affect creditors. A transfer on death deed, during the transferor's lifetime, does not affect the transferor's or the designated beneficiary's eligibility for public assistance. During the transferor's lifetime, a transfer on death deed does not create a legal or equitable interest in favor of the designated beneficiaries. The beneficiary has no interest that can be assigned or encumbered. And lastly, this section provides that during the transferor's lifetime, a transfer on death deed does not make the property subject to claims or process of the designated beneficiary's creditors.

The work group discussed what affect a transfer on death deed should have on a title report. The uniform act is silent on the issue. The group concluded that because a transfer on death deed has no effect on the property while the transferor is alive, a transfer on death deed should not be listed as encumbrance nor have an affect on lenders. However, for practical purposes, title companies will likely want to note the transfer on death deed on the title report. Listing a transfer on death deed on the B2 schedule seems the most reasonable course of action with perhaps an endorsement as well. However, the group decided not to regulate title reports from this bill, concluding it is a title insurance issue which is essentially a matter of contract.

Section 13: This section provides that the provisions of the deed control the disposition of property unless one of the listed default rules apply. Subsection (1) of this section carries forward to transfer on death deed transfers several public policy default rule exceptions used with probate transfers and some other nonprobate transfers to help better reflect the decedent's intent.

Section 13(1)(a)(B) provides that a designated beneficiary's interest in the property subject to a transfer on death deed lapses if the designated beneficiary does not survive the transferor. This is also the default for wills and will substitutes. This principle is important to understanding the four exceptions that are explained below.

First, the section makes ORS 107.115 applicable to transfer on death deeds. That statute taken together with Section 19 of the bill provide that provisions of a transfer on death deed in favor of a former spouse can be revoked when there is an annulment or dissolution of marriage after the recording of a the transfer on death deed. The effect on the transfer on death deed is the same as though the former spouse did not survive the transferor. (See conforming amendment to Section 25 of bill and Section 19.)

Second, the section makes the slayer and abuser provisions of ORS 112.455 to 112.555 applicable to transfer on death deeds so that an abuser (convicted of a felony by reason of conduct that constitutes physical or financial abuse of the transferor) or a slayer (person

who with felonious intent, takes or procures the taking of the life of the transferor) of a transferor that was designated as a beneficiary will not be transferred the property at the transferor's death. Instead, ORS 114.465 will apply and the transfer on death deed will be treated as if the slayer or abuser had predeceased the transferor. (See conforming amendment in Section 26 of the bill.)

Third, the section makes the uniform simultaneous death act, found at ORS 112.570 to 112.590, applicable to transfer on death deeds so that a beneficiary must survive the transferor by at least 120 hours in order to be deemed to have survived the transferor and thus receive property provided for by the transfer on death deed. (See conforming amendment in Section 27 of the bill.)

The last exception to an effective transfer to a designated beneficiary is provided by the application of Sections 20 and 21 in Section 13(1). Sections 20 and 21 are modeled after ORS 112.047 and 112.049 which provide for the forfeiture of a parent's share to a decedent child's intestate estate when the parent willfully deserted or neglected without just cause the decedent child for the required length of time. Sections 20 and 21 are new sections of law that provide essentially that the transfer of property under a transfer on death deed may be forfeited when the parent of a deceased transferor willfully deserted or neglected without cause the decedent child. Section 20 focuses on the substantive requirements of this exception and Section 21 focuses on the procedural requirements.

Subsection (1) does not include a reference to Oregon's elective share statute as suggested by the uniform act because Oregon's elective share statute already includes transfer on death deeds in its elective share computations. See ORS 114.665. The subsection also does not include the optional antilapse provision suggested by the uniform act because an antilapse provision would bring an added layer of complexity and not providing for an antilapse provision is consistent with the work group's decision to not permit class gifts. An antilapse provision would have allowed the descendants of a named beneficiary to receive property under a transfer on death deed if the named beneficiary were related to the transferor and predeceased the transferor. Similarly, the group decided not to apply an ademption provision to transfer on death deeds. See ORS 112.385. Ademption is used when specific property made in a bequest no longer exists, and instead a money substitute is generally made. Ademption has not been applied to other nonprobate transfers, so this recommendation is consistent with existing Oregon law.

After the first subsection, the remaining subsections of Section 13 are modeled on the uniform act but were edited to improve readability and conform to Legislative Counsel's form and style. In addition, Section 13(2) does add a non-uniform provision in order to

clearly subject the property of the transfer on death deed to claims or liens by the state, including public assistance reimbursement. The uniform language made the property subject to “conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests.” This list of creditors, while seemingly broad, is insufficient to pick up DHS claims for medical reimbursement. The magic language needed in Oregon is to provide that the property is subject to “claims” by a state because Medicaid recovery is a claim, not a lien in Oregon. The group looked to Minnesota’s statutes for ideas regarding this issue and relied on Oregon DHS representatives on the work group. The group considered, but ultimately rejected requiring transfer on death deed beneficiaries to apply for a certificate of clearance from public assistance claims from DHS. Minnesota has such a requirement. See Minnesota Stat. 507.071 and 525.313. The group reasoned that Oregon law already permits the state to record a request for notice of transfer or encumbrance of specific real property under ORS 93.268 and ORS 411.694.

Section 13(1)(a) provides the default rule that the provisions of the deed control the disposition of the property, unless otherwise provided by the exceptions listed or state law. In addition, the section provides the rule that the interest of a designated beneficiary is contingent on surviving the transferor. The interest of a designated beneficiary who fails to survive the transferor lapses. This treatment is consistent with wills and other will substitutes.

Section 13(1)(b) provides the default rule that concurrent beneficiaries receive equal and undivided interests with no right of survivorship among them. And, in the event of a lapse or failure of an interest that is held concurrently, the share that lapses or fails passes proportionately to the surviving concurrent beneficiaries.

Section 13(2) provides the rule that the beneficiary’s interest is subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests to which the property is subject at the transferor’s death, including a claim or lien by a state.

Section 13(3) provides that the survivorship of a joint owner takes precedence over the transfer on death deed.

Section 13(4) provides the rule that a transfer on death deed transfers the property without covenant or warranty of title, recognizing that a transfer on death deed is a will substitute.

Section 14: A beneficiary of a transfer on death deed may disclaim the property interest the deed attempts to transfer. This provision provides that the rules of the Uniform

Disclaimer of Property Interests Act as adopted by Oregon at ORS 105.623 to 105.649 will govern a disclaimer.

Section 15: This section provides creditor protections. The rule in (1) provides that the property transferred under a transfer on death deed is liable to the transferor's probate estate for allowed claims and allowances to the extent that the probate estate is insufficient to pay the claims. This is an *in rem* rule as it is the property that is liable. The uniform act provided two alternative options for addressing creditor claims. Because Oregon has not adopted the Uniform Probate Code, Alternative A was not an appropriate approach. Instead, the bill follows the Alternative B approach with some tweaking in Section 15(1)(a) and (1)(b) to reflect Oregon's two probate options, i.e. small estate actions under ORS 114.505 to 114.560 and traditional probate under ORS chapter 115. In addition, the bill specifically references Oregon's statutory allowance to surviving spouse or child provision, ORS 114.015. Subsection (2) of this section provides that liability is apportioned in proportion to the net value of each property when the transferor transfers multiple properties by one or more transfer on death deeds. Lastly, subsection (3) provides that the time in which to establish liability on the property transferred under a transfer on death deed is limited in that a proceeding must be commenced within 18 months after the transferor's death. This provision was debated at length. The 18 month wait time will often make it difficult for the transferee to do anything with the property during the 18 months. This provision will make the transfer on death deed unattractive to some transferors, but the group concluded that shortening the time frame would be too burdensome to creditors, including the state.

Section 16: This section of the bill provides a model statutory form for a transfer on death deed. Use of the statutory form is not required but the form is provided to assist the public and practitioners by providing an understandable model form that meets the requirements of the bill. The Oregon model form differs slightly from the uniform act in a few regards. First, the top of the deed form includes a statutory reference to assist clerks; the temporary reference is "Sections 1 to 18 of this 2011 Act" but when the bill is codified after the legislative session an ORS provision will be substituted. The form has a "Tax Statement" section to follow the deed requirements of ORS 93.260. The form has a "Special Terms" section. This section can be used for a power of attorney provision or other special terms. Lastly, the form has a non-uniform "Return of Deed" section to comply with ORS 205.234(d).

The bill's form omits the "Common Questions About the Use of this Form" with their respective answers as provided in the uniform act. This would substantially increase the length of the deed and looks like legal advice attached to a deed. The group decided it would be more appropriate for the Oregon State Bar and practitioners to prepare

educational materials about transfer on death deeds as needed rather than require educational material on the deed itself.

Section 17: This section of the bill provides a model form for an instrument revoking a transfer on death deed. Use of the statutory form is not required but the form is provided to assist the public and practitioners by providing an understandable model form that meets the requirements of the bill. The Oregon model form differs slightly from the uniform act in a few regards. The title of the form is “Instrument Revoking Transfer on Death Deed” to track Section 11 closely. In addition, the form has a non-uniform “Return of Deed” section to assist clerks. The bill’s form omits the “Common Questions About the Use of this Form” with their respective answers as provided in the uniform act for the same reasons as described in Section 16 of these comments.

Section 18: This section is the standard reference to the federal Electronic Signatures in Global and National Commerce Act (ESIGN) to avoid the federal law from preempting Oregon law with respect to electronic documents.

Section 19: This is a new section of law that is modeled after ORS 112.315, which provides that generally the divorce or annulment of the marriage of a testator revokes provisions in the will that are in favor of the former spouse of the testator. Section 19 creates a provision that provides that the divorce or annulment of the marriage of a transferor of a transfer on death deed also generally revokes provisions in the deed that favor the former spouse. See Section 13 comments as well.

Sections 20 and 21: These sections are new sections of law that are modeled after ORS 112.047 and 112.049 which provide for the forfeiture of a parent’s share to a decedent child’s intestate estate when the parent willfully deserted or neglected without just cause the decedent child for the required length of time. These new sections of law provide essentially that the transfer of property under a transfer on death deed may be forfeited when the parent of a deceased transferor willfully deserted or neglected without cause the decedent child. See Section 13 comments as well.

Section 22: This section amends the foreclosure notice statute, ORS 86.740, so as to require notice of sale to beneficiaries designated under a transfer on death deed when the transferor dies and the property subject to the transfer on death deed is subject to foreclosure.

Section 23: This section amends ORS 93.030, the statute that requires a statement of consideration in the body of instruments conveying or contracting to convey fee title to any real estate. The group wanted to exempt this requirement from transfer on death

deeds because consideration is not required. See Section 10. Legislative Counsel also made some style and updating changes to the consideration statement statute. Note that no consideration statement is in the model form in Section 16.

Section 24: This section amends ORS 93.040, the statute that requires a land use statement in the body of instruments conveying or contracting to convey fee title to any real estate. The group wanted to exempt this requirement from transfer on death deeds.

Section 25: This section amends ORS 107.115 to make a conforming amendment related to Section 19 of the bill.

Section 26: This section makes amendments to the slayer and abuser statute, ORS 112.465, so as to make the statute apply to transfer on death deeds. An abuser (convicted of a felony by reason of conduct that constitutes physical or financial abuse of the transferor) or a slayer (person who with felonious intent, takes or procures the taking of the life of the transferor) of a transferor that was designated as a beneficiary will not be transferred the property at the transferor's death. Instead, this section applies and the beneficiary will be treated as if they predeceased the transferor.

Section 27: This section makes a conforming amendment to the Uniform Simultaneous Death Act. See Section 13 comments as well.

Section 28: This section amends the conservator authority statute, ORS 125.440, to both permit conservators to disclaim any property interest the protected person may take by a transfer on death deed and to revoke a transfer on death deed that the protected person made. Both of these actions require prior court approval. A conservator is not given authority to create a transfer on death deed under the bill.

Section 29: The commentary, i.e. this report, has been written under the auspices of, and has been approved by, the Oregon Law Commission. The commentary also is provided to the legislature as written testimony.

Section 30: This section is a standard Legislative Counsel drafting provision that provides that the captions used in the bill are used for convenience and do not become part of the statutory law. The group strived to keep the uniform section numbers the same, follow the order of the uniform act, and even keep most of the section captions to assist practitioners and the courts when interpreting the bill. The uniform act and its official commentary from 2009 provide excellent details regarding the intent of the act that should serve as legislative history for this bill as the work group used it throughout

the Oregon Law Commission's process, making only a few departures from the uniform act.

Section 31: This section is the bill's effective date provision. The group did not recommend an emergency clause and thus the bill will take effect in 2012 should the bill pass.

VII. Conclusion:

This bill should be adopted because it provides one more tool for Oregonians to use to transfer real property at death—a transfer on death deed. This nonprobate tool is being used successfully by 13 states already and comes with the support of the Oregon Law Commission's Real Property Transfer on Death Work Group which was composed of private practitioners (estate planning, elder law, and real property), state lawyers, academics, and title insurance representatives. In short, the bill provides a clear new tool complete with the appropriate rules and safeguards to make the transfer on death deed work in Oregon.

VIII. Appendix

Uniform Real Property Transfer on Death Act, drafted by National Conference of Commissioners on Uniform State Laws, with Prefatory Note and Comments (approved and recommended for enactment July 2009).