

Roberta DiMezza

From: Jane Sternecky <jsternecky@uniformlaws.org>
Sent: Wednesday, April 24, 2024 4:18 PM
To: House Judiciary Committee
Cc: pguida@duffysweeney.com
Subject: Testimony in Support of HB 8130
Attachments: Rhode Island URPTODA Testimony - April 24, 2024.pdf; URPTODA_Why Your State Should Adopt_2017sep.pdf; URPTODA_Summary_2017sep.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Roberta:

Attached please find written testimony in support of HB 8130, the Uniform Real Property Transfer on Death Act. ULC Commissioner Patrick Guida (copied) received a notification from Bill Tracker on April 18 stating that the bill would be considered in the House Judiciary Committee today and accordingly, is planning to attend today's hearing in person. However, we do not see the bill on the current agenda for the Committee.

Please let me know if you can provide any additional details regarding the bills status; if it will be considered today, please include the attached in the record.

Kind Regards,

Jane

Jane Sternecky (she/her) | Uniform Law Commission
Legislative Counsel
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602
(312) 450-6622 | jsternecky@uniformlaws.org



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Statement of Patrick A. Guida, Rhode Island Commissioner for the Uniform Law Commission, to the Rhode Island House Judiciary Committee in support of HB 8130, the Uniform Real Property Transfer on Death Act, April 24, 2024.

Chair Craven, Vice Chair McEntee, Vice Chair Knight, and Members of the Committee:

Thank you for the opportunity to testify in favor of HB 8130 to enact the Uniform Real Property Transfer on Death Act.

Over the past thirty years, there has been a significant increase in the use of various mechanisms to transfer personal property at death without requiring probate. Some common examples of personal property that can be transferred at death to a named beneficiary include proceeds from life insurance policies and pension plans, securities registered in in transfer on death form, and funds held in payable on death bank accounts. Rhode Island residents routinely take advantage of this modern legal trend to pass financial assets to a named beneficiary outside of probate, but there is currently no such mechanism for real estate. To address this gap in the law, HB 8130 would allow Rhode Islanders to transfer real estate to a named beneficiary at the time of the owner's death and outside of the probate process.

In 1989, Missouri became the first state to allow non-probate transfers of real property. By 2002, five states allowed such transfers at death, and the Uniform Law Commission (ULC) began to study the issue. The Uniform Real Property Transfer on Death Act (URPTODA) was completed by the ULC and recommended to the states in 2009. Today, 30 states, the District of Columbia, and the United States Virgin Islands permit transfer on death (TOD) deeds, and more states are expected to follow suit.

URPTODA is not a substitute for estate planning, and with very large or complex estates, it may not be the best solution. However, for many smaller estates in which a home is the largest asset to be transferred at death, a TOD deed is a simple, effective tool that can be easily used by estate planning attorneys and other advisors. Let me use an example to illustrate how a TOD deed works.

Katharine owns a house in Rhode Island worth \$150,000, and she has only one child, David, to whom she would like to leave the house with as little bother and expense as possible. She has very few other assets to deal with, and no creditors. Under present law, Katharine has these options:

1. Leave the house to David in a Last Will and Testament. This will require a full probate proceeding to transfer the title.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

2. Leave the house to David by means of a living trust. This would avoid probate, but requires drafting a trust, and transferring the title of the house to the trust. This is a flexible and effective solution, but it is a relatively complex and expensive method of transferring the property.

3. Deed the house now to David and herself as joint owners with survivorship rights. David will inherit title at Katharine's death, but there are other potential problems. For example, if Katharine needs to sell the house to pay for an assisted living facility, David now must agree to the terms of the sale. The house is also exposed to David's creditors, one of whom could try to obtain payment by forcing a partition sale.

If you enact this legislation, Katharine has a fourth, and much better option. She can execute a TOD deed naming David as the beneficiary. The deed must be recorded in public land records before Katharine's death to be valid. While she is alive, Katharine retains 100% ownership of her house, with full power to sell or mortgage the property, to name a new beneficiary, or to cancel the TOD deed. If Katharine dies and the deed is still in effect, the property is automatically transferred to her beneficiary David without a probate hearing.

URPTODA was developed with the assistance of the estate planning, real property, title insurance, banking, and senior legal communities. The act has strong support nationally from the American Bar Association's Real Property Trust and Estate Section, the ABA Commission on Law and Aging, the American College of Real Estate Lawyers, and AARP. In the states that have enacted URPTODA, the questions we hear most often are "what took you so long" and "why didn't we have this available earlier?" Those are good questions.

In summary, HB 8130 provides a simple and effective method to transfer real property at death – the TOD deed. This bill would not prevent estate planners from using any of the other methods now available when appropriate, but it would provide a new, affordable, and highly flexible tool, and thus potentially save Rhode Island residents hundreds of thousands of dollars, if not millions, in legal fees and probate expenses.

We urge you to advance this bill to enact the Uniform Real Property Transfer of Death Act, and we thank you for your consideration.

Key Provisions of HB 8130

The Uniform Real Property Transfer on Death Act

Non-probate transfer: The TOD deed is not subject to the statute of wills and instead passes title to real property directly to the named beneficiary without probate.

A familiar recording procedure: The TOD deed must contain all the essential elements and formalities of a properly recordable deed, including a legally sufficient description of the property to be transferred. The TOD deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located.

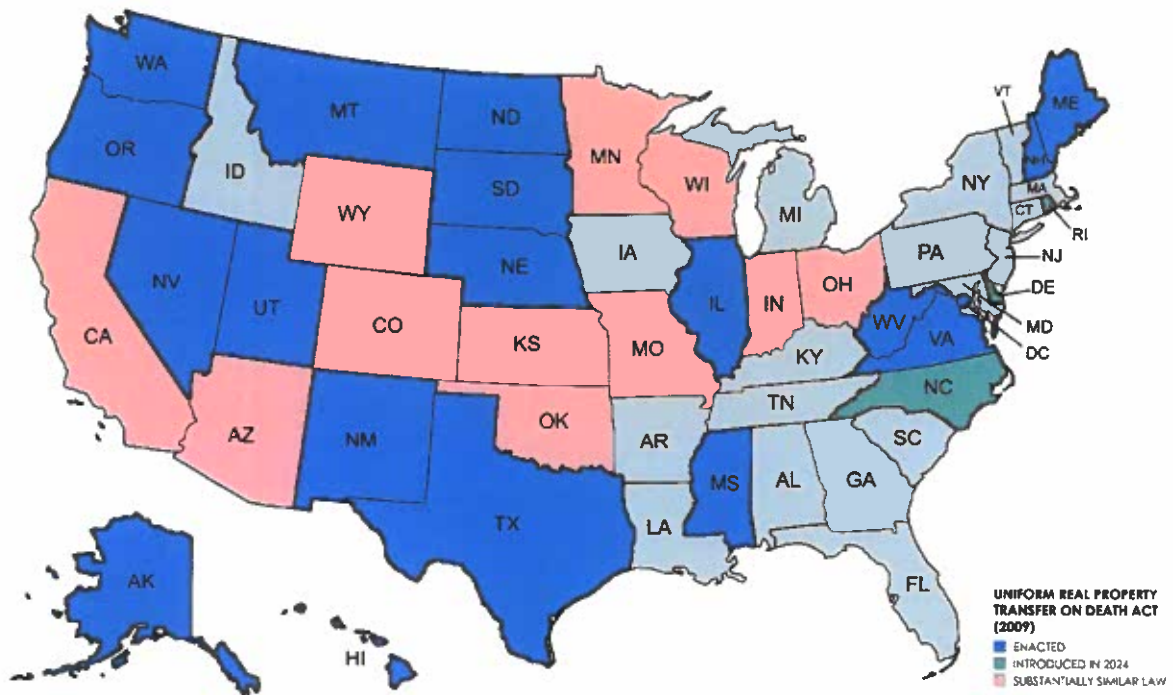
Almost anyone can have a TOD deed: The capacity required to execute a TOD deed is the same as the capacity to make a will.

The transferor can change his or her mind: A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a new instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary. If the transferor sells the property while alive, the TOD deed is ineffective.

No effect on property rights until the transferor dies: Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The transferor retains full power to sell or mortgage the property or to revoke the deed. The beneficiary has no legal or equitable interest that could be subject to creditor's claims. The deed does not affect either the transferor's or the beneficiary's eligibility for public assistance and it does not trigger mortgage acceleration clauses or property tax reassessments.

Creditors of the transferor are protected: If the transferor's probate estate is insufficient to satisfy all claims, the estate may enforce the liability against the beneficiary of any property transferred using a TOD deed.

No obligation for the beneficiary: A designated beneficiary may disclaim all or part of the transferred interest in the same manner as any other inherited property.



As of March 2024

United States
Virgin Islands



WHY YOUR STATE SHOULD ADOPT THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

The Uniform Real Property Transfer-on-Death Act (URPTODA) enables an owner of real property to pass the property simply and directly to a beneficiary on the owner's death without probate. The property passes by operation of law according to the terms of a recorded transfer-on-death (TOD) deed.

- ***URPTODA is an alternative to expensive estate planning for simple estates.*** People with a high net worth or a complex estate often use trusts and gifting strategies to transfer wealth outside of probate, but those strategies are prohibitively expensive for smaller estates. Many lower income families can avoid probate for their personal property using simpler means, such as adding an heir's name to a bank account as a "payable on death" (POD) beneficiary. However, in many states there is no such method available for real estate. URPTODA fills the gap by providing a way for families, with the aid of an advisor, to easily transfer title to real property outside of probate.
- ***URPTODA allows owners to retain control of their property.*** Some families attempt to pass real property to a family member by adding the recipient's name to the title as a joint tenant with rights of survivorship. The property will pass to the recipient at the death of the joint owner, but there are also significant consequences during the original owner's life. Joint titling exposes the property to the joint tenant's creditors, and gives the joint tenant the power to approve or disapprove a sale. With a TOD deed, the owner retains all rights in the property, including the right to change his or her mind and revoke the deed or sell the property. The TOD beneficiary has no interest until the owner's death.
- ***URPTODA has been proven effective in other states.*** TOD deeds for real estate is a relatively new concept; Missouri became the first state to allow TOD deeds in 1989. Today, more than half of the states allow transfers by means of a TOD deed. Despite some initial resistance in those states to the new procedure, over time the TOD titling process has been well received by recording officers, real estate attorneys, and the title insurance industry. TOD deeds are no longer novel and the citizens of the remaining states should also benefit from the opportunity to transfer real property outside of probate simply and effectively.

For further information about URPTODA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.



THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

- A Summary -

Asset-specific mechanisms for the non-probate transfer of property to a beneficiary at death are now common. The proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in payable on death (POD) bank accounts, are examples of personal property that can be automatically transferred to a named beneficiary. Millions of Americans have benefitted from this trend in modern law to recognize and support the use of non-probate transfers. However, until recently there was no similarly straightforward, inexpensive, and reliable means of passing real estate directly to a beneficiary at death outside of the probate process. This was a significant gap in the law; for many people in low- and middle-income families a home is the single most valuable asset in their estate.

The Uniform Real Property Transfer on Death Act (URPTODA) was first approved by the Uniform Law Commission in 2009. URPTODA enables an owner to pass real property to a beneficiary at the owner's death simply, directly, and without probate by executing and recording a TOD deed. Just as importantly, URPTODA permits the owner to retain all ownership rights in the property while living, including the right to sell the property, to revoke the deed, or to name a different beneficiary.

Key elements of URPTODA include:

- The TOD deed is not subject to the statute of wills and passes title directly to the named beneficiary without probate.
- The TOD deed must contain all of the essential elements and formalities of any other properly recordable deed.
- The TOD deed must be signed by the transferor and properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located.
- The capacity required to create a TOD deed is the same as the capacity to make a will.
- A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a revocatory instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary. If the transferor sells the property while living, the TOD deed is ineffective.
- Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The TOD deed creates no legal or equitable interest in the designated beneficiary; it does not affect the

transferor or beneficiary's eligibility for public assistance; it does not subject the property to the designated beneficiary's creditors.

- At the time of the transferor's death, title to the property is transferred automatically to the beneficiary, subject to any conveyances, encumbrances, assignments, liens, or other interests in the property. In other words, the beneficiary receives only the interest that the transferor owned at the time of death, and the holders of any security interests in the property are protected.
- The beneficiary listed on a TOD deed is liable for claims against the transferor's estate only when the estate is insolvent. This includes claims for Medicaid reimbursement.
- The beneficiary may disclaim all or part of the transferred interest in the same manner as state law permits for any other testamentary devise.
- URPTODA includes optional TOD deed and revocation forms that each state legislature may choose whether to enact.

For further information about URPTODA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.