

As Reported by the Senate Government Oversight and Reform Committee

131st General Assembly

Regular Session

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S. B. No. 232

Senator Bacon

Cosponsors: Senators Coley, Burke, Brown

A BILL

To amend sections 5302.23 and 5302.24 of the Revised Code to amend the law related to transfer on death designation deeds and affidavits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5302.23 and 5302.24 of the Revised Code be amended to read as follows:

Sec. 5302.23. (A) Any affidavit containing language that shows a clear intent to designate a transfer on death beneficiary shall be liberally construed to do so.

(B) Real property or an interest in real property that is the subject of a transfer on death designation affidavit as provided in section 5302.22 of the Revised Code or as described in division (A) of this section has all of the following characteristics and ramifications:

(1) An interest of a deceased owner shall be transferred to the transfer on death beneficiaries who are identified in the affidavit by name and who survive the deceased owner or that are in existence on the date of the deceased owner's death. If there

is a designation of more than one transfer on death beneficiary, 19
the beneficiaries shall take title to the interest in equal 20
shares as tenants in common, unless the deceased owner has 21
specifically designated other than equal shares or has 22
designated that the beneficiaries take title as survivorship 23
tenants, subject to division (B) (3) of this section. If a 24
transfer on death beneficiary does not survive the deceased 25
owner or is not in existence on the date of the deceased owner's 26
death, and the deceased owner has designated one or more persons 27
as contingent transfer on death beneficiaries as provided in 28
division (B) (2) of this section, the designated contingent 29
transfer on death beneficiaries shall take the same interest 30
that would have passed to the transfer on death beneficiary had 31
that transfer on death beneficiary survived the deceased owner 32
or been in existence on the date of the deceased owner's death. 33
If none of the designated transfer on death beneficiaries 34
survives the deceased owner or is in existence on the date of 35
the deceased owner's death and no contingent transfer on death 36
beneficiaries have been designated, have survived the deceased 37
owner, or are in existence on the date of death of the deceased 38
owner, the interest of the deceased owner shall be distributed 39
as part of the probate estate of the deceased owner of the 40
interest. If there are two or more transfer on death 41
beneficiaries and the deceased owner has designated that title 42
to the interest in the real property be taken by those 43
beneficiaries as survivorship tenants, no designated contingent 44
transfer on death beneficiaries shall take title to the interest 45
unless none of the transfer on death beneficiaries survives the 46
deceased owner on the date of death of the deceased owner. 47

(2) A transfer on death designation affidavit may contain 48
a designation of one or more persons as contingent transfer on 49

death beneficiaries, who shall take the interest of the deceased 50
owner that would otherwise have passed to the transfer on death 51
beneficiary if that named transfer on death beneficiary does not 52
survive the deceased owner or is not in existence on the date of 53
death of the deceased owner. Persons designated as contingent 54
transfer on death beneficiaries shall be identified in the 55
affidavit by name. 56

(3) Any transfer on death beneficiary or contingent 57
transfer on death beneficiary may be a natural or legal person, 58
including, but not limited to, a bank as trustee of a trust, 59
except that if two or more transfer on death beneficiaries are 60
designated as survivorship tenants, all of those beneficiaries 61
shall be natural persons and if two or more contingent transfer 62
on death beneficiaries are designated as survivorship tenants, 63
all of those contingent beneficiaries shall be natural persons. 64
A natural person who is designated a transfer on death 65
beneficiary or contingent transfer on death beneficiary solely 66
in that natural person's capacity as a trustee of a trust is not 67
considered a natural person for purposes of designating the 68
transfer on death beneficiaries or contingent transfer on death 69
beneficiaries as survivorship tenants under division (B) (3) of 70
this section. 71

(4) The designation of a transfer on death beneficiary has 72
no effect on the present ownership of real property, and a 73
person designated as a transfer on death beneficiary has no 74
interest in the real property until the death of the owner of 75
the interest. 76

(5) The designation in a transfer on death designation 77
affidavit of any transfer on death beneficiary may be revoked or 78
changed at any time, without the consent of that transfer on 79

death beneficiary, by the owner of the interest, by the 80
surviving survivorship tenants of the interest, or by the 81
remaining tenant by the entireties of the interest, by executing 82
and recording, prior to the death of the owner of the interest, 83
of the surviving survivorship tenants of the interest, or of the 84
remaining tenant by the entireties of the interest, as the case 85
may be, a new transfer on death designation affidavit pursuant 86
to section 5302.22 of the Revised Code stating the revocation or 87
change in that designation. The new transfer on death 88
designation affidavit shall automatically supersede and revoke 89
all prior recorded transfer on death designation affidavits with 90
respect to the real property or the interest in real property 91
identified in the new affidavit, provided that the prior 92
recorded affidavit was executed before the later recorded 93
affidavit. 94

(6) A fee simple title or any fractional interest in a fee 95
simple title may be subjected to a transfer on death beneficiary 96
designation. 97

(7) (a) A transfer on death beneficiary takes only the 98
interest that the deceased owner or owners of the interest held 99
on the date of death, subject to all encumbrances, reservations, 100
and exceptions. 101

(b) If the owners hold title to the interest in a 102
survivorship tenancy, the death of all except the last 103
survivorship tenant automatically terminates and nullifies any 104
transfer on death beneficiary designations made solely by the 105
deceased survivorship tenant or tenants without joinder by the 106
last surviving survivorship tenant. The termination or 107
nullification of any transfer on death beneficiary designations 108
under division (B) (7) (b) of this section is effective as of the 109

date of death of a deceased survivorship tenant. No affirmative 110
act of revocation is required of the last surviving survivorship 111
tenant for the termination or nullification of the transfer on 112
death beneficiary designations to occur as described in division 113
(B) (7) (b) of this section. If the last surviving survivorship 114
tenant dies with no transfer on death beneficiary designation, 115
the entire interest of that last surviving survivorship tenant 116
shall be distributed as part of the tenant's probate estate. 117

(c) If the owners hold title to the interest in a tenancy 118
by the entireties, the death of the first tenant by the 119
entireties automatically terminates and nullifies any transfer 120
on death beneficiary designations made solely by that deceased 121
first tenant without joinder by the remaining tenant by the 122
entireties. The termination or nullification of any transfer on 123
death beneficiary designations under division (B) (7) (c) of this 124
section is effective as of the date of death of the first tenant 125
by the entireties. No affirmative act of revocation is required 126
of the remaining tenant by the entireties for the termination or 127
nullification of the transfer on death beneficiary designations 128
to occur as described in division (B) (7) (c) of this section. If 129
the remaining tenant by the entireties dies with no transfer on 130
death beneficiary designation, the entire interest of that 131
remaining tenant shall be distributed as part of the tenant's 132
probate estate. 133

(8) No rights of any lienholder, including, but not 134
limited to, any mortgagee, judgment creditor, or mechanic's lien 135
holder, shall be affected by the designation of a transfer on 136
death beneficiary pursuant to this section and section 5302.22 137
of the Revised Code. If any lienholder takes action to enforce 138
the lien, by foreclosure or otherwise through a court 139
proceeding, it is not necessary to join any transfer on death 140

beneficiary as a party defendant in the action unless the 141
transfer on death beneficiary has another interest in the real 142
property. 143

(9) Any transfer on death of real property or of an 144
interest in real property that results from a transfer on death 145
designation affidavit designating a transfer on death 146
beneficiary is not testamentary. That transfer on death shall 147
supersede any attempted testate or intestate transfer of that 148
real property or interest in real property. 149

(10) The execution and recording of a transfer on death 150
designation affidavit shall be effective to terminate the 151
designation of a transfer on death beneficiary in a transfer on 152
death deed involving the same real property or interest in real 153
property and recorded prior to the effective date of this 154
section. 155

(11) The execution and recording of a transfer on death 156
designation affidavit shall be effective to bar the vesting of 157
any rights of dower in a subsequent spouse of the owner of the 158
real property who executed that affidavit unless the affidavit 159
is revoked or changed. 160

(12) If, after the execution and recording of a transfer 161
on death designation affidavit under which the owner of the real 162
property's spouse is designated the transfer on death 163
beneficiary, the owner of the real property and such owner's 164
spouse are divorced, obtain a dissolution of the marriage, or 165
have the marriage annulled, then the designation of the owner's 166
spouse as a transfer on death beneficiary on such instrument 167
shall be terminated and the spouse shall be deemed to have 168
predeceased the owner of the real property. 169

(C) If, after the execution and recording of a transfer on death deed under which the owner of the real property's spouse is designated the transfer on death beneficiary, the owner of the real property and such owner's spouse are divorced, obtain a dissolution of the marriage, or have the marriage annulled, then the designation of the owner's spouse as a transfer on death beneficiary on such instrument shall be terminated and the spouse shall be deemed to have predeceased the owner of the real property. 170
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Sec. 5302.24. ~~Sections Except as otherwise provided in divisions (B) (12) and (C) of section 5302.23 of the Revised Code, sections 5302.22, 5302.222, and 5302.23 of the Revised Code do not affect any deed that was executed and recorded prior to the effective date of this section December 28, 2009, or any transfer on death beneficiary designation made, pursuant to section 5302.22 of the Revised Code as it existed prior to the effective that date of this section.~~ If that deed or designation is valid on the day prior to ~~the effective that date of this section,~~ the deed or designation continues to be valid on and after ~~the effective that date of this section.~~ A grantee of that deed need not execute a transfer on death designation affidavit that designates the same transfer on death beneficiary or beneficiaries as in the deed unless the grantee chooses to do so. 179
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Section 2. That existing sections 5302.23 and 5302.24 of the Revised Code are hereby repealed. 194
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