ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDENTS' PROPERTY IN GENERAL

CHAPTER 114. TRANSFER ON DEATH DEED

SUBCHAPTER A. GENERAL PROVISIONS

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

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

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

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

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

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

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

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

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 47(1) and Ch. 337 (S.B. 874), Sec. 3(1), eff. September 1, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1,

eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 337 (S.B. 874), Sec. 3(1), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 47(1), eff. September 1, 2019.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

Sec. 114.006. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.), except that this chapter does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1,

eff. September 1, 2015.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

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

(2) consideration.

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

(1) is one of the following:

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

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

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

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

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

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

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

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

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

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

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

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

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

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

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

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

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

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER ON DEATH DEED. An otherwise valid transfer on death deed is void as to a subsequent grantee of an interest in real property that is conveyed by the transferor during the transferor's lifetime after the transfer on death deed is executed and recorded if:

(1) a valid instrument conveying the interest or a memorandum sufficient to give notice of the conveyance of the interest is recorded in the deed records in the county clerk's office of the same county in which the transfer on death deed is recorded; and

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 4, eff. September 1, 2019.

Sec. 114.103. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH.

(a) Except as otherwise provided in the transfer on death deed, this section, or any other statute or the common law of this state governing a decedent's estate, on the death of the transferor, the following rules apply to an interest in real property that is the subject of a transfer on death deed and owned by the transferor at death:

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

(2) the share of any designated beneficiary that fails to survive the transferor by 120 hours lapses, notwithstanding Section 111.052, and is subject to and passes in accordance with Subchapter D, Chapter 255, as if the transfer on death deed were a devise made in a will; and

(3) subject to Subdivision (2), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 971 (S.B. 2150), Sec. 1, eff. September 1, 2017.

Sec. 114.104. TRANSFER ON DEATH DEED PROPERTY SUBJECT TO LIENS AND ENCUMBRANCES AT TRANSFEROR'S DEATH; CREDITORS' CLAIMS. (a) Subject to Section 13.001, Property Code, a beneficiary takes the real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor's death. For purposes of this subsection and Section 13.001, Property Code, the recording of the transfer on death deed is considered to have occurred at the transferor's death.

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

Sec. 114.106. LIABILITY FOR CREDITOR CLAIMS; ALLOWANCES IN LIEU OF EXEMPT PROPERTY AND FAMILY ALLOWANCES. (a) To the extent the transferor's estate is insufficient to satisfy a claim against the estate, expenses of administration, any estate tax owed by the estate, or an allowance in lieu of exempt property or family allowance to a surviving spouse, minor children, or incapacitated adult children, the personal representative may enforce that liability against real property transferred at the transferor's death by a transfer on death deed to the same extent the personal representative could enforce that liability if the real property were part of the probate estate.

Text of subsection effective until April 01, 2025

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

Text of subsection effective on April 01, 2025

(b) Notwithstanding Subsection (a), real property transferred at the transferor's death by a transfer on death deed is not considered property of the probate estate for any purpose, including for purposes of Section 546.0403, Government Code.

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

(d) If more than one real property interest is transferred by one or more transfer on death deeds or if there are other nonprobate assets of the transferor that may be liable for the claims, expenses, and other payments specified in Subsection (a),

the liability for those claims, expenses, and other payments may be apportioned among those real property interests and other assets in proportion to their net values at the transferor's death.

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

(f) In connection with any proceeding brought under this section, a court may award costs and reasonable and necessary attorney's fees in amounts the court considers equitable and just.

Added by Acts 2015, 84th Leg., R.S., Ch. 841 (S.B. 462), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.04, eff. April 1, 2025.