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## SENATE BILL NO. 1042

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend the Code of Virginia by adding in Title 64.1 a chapter numbered 11, consisting of sections numbered 64.1-207 through 64.1-213, relating to the Transfer on Death Real Property Act.

Patron—Hanger

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 64.1 a chapter numbered 11, consisting of sections numbered 64.1-207 through 64.1-213 as follows:**

**CHAPTER 11.**

**TRANSFER ON DEATH REAL PROPERTY ACT.**

**§ 64.1-207. Definitions.**

*In this chapter, unless the context otherwise requires:*

*"Designated beneficiary" means a person designated to receive property in a transfer on death deed.*

*"Joint owner" means an individual who owns real property concurrently with one or more individuals with a right of survivorship. This term includes a joint tenant and a tenant by the entirety.*

*"Owner" means the individual who owns real property, or an interest in real property, that is the subject of a transfer on death deed.*

*"Transfer on death deed" means a deed authorized by this chapter that transfers an interest in real property that becomes effective upon the death of the owner.*

**§ 64.1-208. Transfer on death deed authorized.**

*A. An owner may transfer real property to one or more beneficiaries, with such transfer being effective at the death of the owner, by executing a transfer on death deed.*

*B. A valid transfer on death deed is nontestamentary.*

**§ 64.1-209. Requirements of transfer on death deed.**

*A. In order to be effective, a transfer on death deed shall:*

*1. Except as provided in this subsection, be in the form of an inter vivos deed that may be admitted to record;*

*2. Identify the designated beneficiary and provide that the transfer of the real property to the designated beneficiary is to occur at the owner's death;*

*3. Be acknowledged by the owner before a notary public or other person authorized to take acknowledgements; and*

*4. Be recorded prior to the owner's death in the office of the clerk for the circuit court of the county or city where the real property is located.*

*B. A transfer on death deed is effective without (i) notice or delivery to or acceptance by the designated beneficiary during the owner's lifetime, or (ii) consideration.*

*C. A transfer on death deed may designate a successor-designated beneficiary. If the transfer on death deed designates a successor-designated beneficiary, the deed shall state the conditions upon which the interest of the successor-designated beneficiary vests.*

*D. A transfer on death deed transfers real property without covenant or warranty of title even if the deed contains a contrary provision.*

**§ 64.1-210. Effect of transfer on death deed.**

*A. The execution of a transfer on death deed does not affect:*

*1. The present ownership of the real property and the designated beneficiary has no legal or equitable interest in the real property until the death of the owner.*

*2. The interests of any other owners of the real property.*

*3. The interests of any creditors of the real property. The real property remains subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime.*

*B. If the real property is owned by joint owners, a transfer on death deed executed by all of the living joint owners is effective on the death of the last surviving owner. If a transfer on death deed is executed by fewer than all of the living joint owners, the transfer on death deed is valid if the last surviving owner is one of the individuals who executed the beneficiary deed. If the last surviving joint owner did not execute the transfer on death deed, the transfer shall lapse and the deed is void.*

*C. Unless the deed provides otherwise, if the transfer on death deed names more than one person as*

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59 *the designated beneficiary, all designated beneficiaries receive equal and undivided interests in the real*  
60 *property with no right of survivorship among them.*

61 *D. If no designated beneficiary or successor designated beneficiary survives the owner, the real*  
62 *property subject to the transfer on death deed shall be included in the owner's estate.*

63 *§ 64.1-211. Revocation of transfer on death deed.*

64 *A. A transfer on death deed may be revoked at any time by the owner or joint owners who executed*  
65 *the transfer on death deed. A transfer on death deed that is executed, acknowledged, and recorded in*  
66 *accordance with this chapter may only be revoked as follows:*

67 *1. The execution, acknowledgment, and recording by the owner of a subsequent transfer on death*  
68 *deed concerning the same real property in the office of the clerk for the circuit court of the county or*  
69 *city where the real property is located.*

70 *2. The execution, acknowledgement, and recording by the owner of a written notice of revocation of*  
71 *the transfer on death deed in the office of the clerk for the circuit court of the county or city where the*  
72 *real property is located.*

73 *B. If the transfer on death deed was executed by joint owners, revocation of the transfer on death*  
74 *deed pursuant to subsection A is not effective if it is not executed by all of the joint owners, unless the*  
75 *revocation was executed by the last surviving owner.*

76 *§ 64.1-212. Disclaimer.*

77 *A designated beneficiary may disclaim all or part of the beneficiary's interest as provided by Chapter*  
78 *8.1 (§ 64.1-196.1 et seq.) of Title 64.1.*

79 *§ 64.1-213. Applicability.*

80 *This chapter applies to all transfer on death deeds executed on or after July 1, 2009, and to all*  
81 *transfer on death deeds executed prior to July 1, 2009, where the owner's death occurred on or after*  
82 *July 1, 2009.*

83 *This chapter does not affect any other methods of conveying property that are otherwise permitted by*  
84 *the law of the Commonwealth.*