

13101546D

SENATE BILL NO. 1093

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact §§ 58.1-811 and 64.2-531 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 6 of Title 64.2 an article numbered 5, consisting of sections numbered 64.2-621 through 64.2-638, relating to the Uniform Real Property Transfer on Death Act.

Patron—Hanger

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-811 and 64.2-531 of the Code of Virginia are amended and that the Code of Virginia is amended by adding in Chapter 6 of Title 64.2 an article numbered 5, consisting of sections numbered 64.2-621 through 64.2-638, as follows:

§ 58.1-811. Exemptions.

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333 or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § 55-58.1, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal

INTRODUCED

SB1093

59 Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect
60 or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise
61 would be unable to afford to buy a home through conventional means.

62 B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

63 1. Given by an incorporated college or other incorporated institution of learning not conducted for
64 profit;

65 2. Given by the trustee or trustees of a church or religious body or given by an incorporated church
66 or religious body, or given by a corporation mentioned in § 57-16.1;

67 3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or
68 operating a hospital or hospitals not for pecuniary profit;

69 4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a
70 debt payable to any other local governmental entity or political subdivision; or

71 5. Securing a loan made by an organization described in subdivision A 14 of ~~subsection A of this~~
72 ~~section.~~

73 C. The tax imposed by § 58.1-802 shall not apply to any:

74 1. Transaction described in subdivisions A 6 through 13 of ~~subsection A of this section;~~

75 2. Instrument or writing given to secure a debt;

76 3. Deed conveying real estate from an incorporated college or other incorporated institution of
77 learning not conducted for profit;

78 4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town,
79 district or other political subdivision thereof;

80 5. Conveyance of real estate to the Commonwealth or any county, city, town, district or other
81 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable
82 pursuant to § 58.1-802; or

83 6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an
84 incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

85 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or
86 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed
87 shall state therein that it is a deed of gift.

88 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the
89 Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

90 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808 and 58.1-814 shall not
91 apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or
92 (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of
93 gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness,
94 natural or open space areas.

95 G. The words "trustee" or "trustees," as used in subdivision A 2 of ~~subsection A~~, subdivision B 2 of
96 ~~subsection B~~, and subdivision C 6 of ~~subsection C~~, include the trustees mentioned in § 57-8 and the
97 ecclesiastical officers mentioned in § 57-16.

98 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual
99 right, if the release is contained within a single deed that performs more than one function, and at least
100 one of the other functions performed by the deed is subject to the recordation tax.

101 I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement,
102 release, or other document recorded in connection with a concession pursuant to the Public-Private
103 Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.

104 J. *No recordation tax shall be required for the recordation of any transfer on death deed or any*
105 *revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death*
106 *Act (§ 64.2-621 et seq.) when no consideration has passed between the parties.*

107 **§ 64.2-531. Nonexoneration; payment of lien if granted by agent.**

108 A. Unless a contrary intent is clearly set out in the will, ~~a specific devise or bequest of real or~~
109 ~~personal property or in a transfer on death deed, (i) real or personal property that is the subject of a~~
110 ~~specific devise or bequest in the will or (ii) real property subject to a transfer on death deed~~ passes,
111 subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the
112 testator, without the right of exoneration. A general directive in the will to pay debts shall not be
113 evidence of a contrary intent that the mortgage, pledge, security interest, or other lien be exonerated
114 prior to passing to the legatee.

115 B. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing at
116 the date of death of the testator against any specifically devised or bequeathed real or personal property,
117 *or any real property subject to a transfer on death deed*, that was granted by an agent acting within the
118 authority of a durable power of attorney for the testator while the testator was incapacitated. For the
119 purposes of this section, (i) no adjudication of the testator's incapacity is necessary, (ii) the acts of an
120 agent within the authority of a durable power of attorney are rebuttably presumed to be for an

incapacitated testator, and (iii) an incapacitated testator is one who is impaired by reason of mental illness, intellectual disability, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause creating a lack of sufficient understanding or capacity to make or communicate responsible decisions. This subsection shall not apply (a) if the mortgage, pledge, security interest, or other lien granted by the agent on the specific property is thereafter ratified by the testator while he is not incapacitated, or (b) if the durable power of attorney was limited to one or more specific purposes and was not general in nature.

C. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of the death of the testator against any specific devise or bequest of any real or personal property, *or any real property subject to a transfer on death deed*, that was granted by a conservator, guardian, or committee of the testator. This subsection shall not apply if, after the mortgage, pledge, security interest, or other lien granted by the conservator, guardian, or committee, there is an adjudication that the testator's disability has ceased and the testator survives that adjudication by at least one year.

Article 5.

Uniform Real Property Transfer on Death Act.

§ 64.2-621. Definitions.

As used in this article:

"Beneficiary" means a person that receives property under a transfer on death deed.

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

"Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. "Joint owner" includes a joint tenant with the right of survivorship and tenant by the entirety with the right of survivorship. "Joint owner" does not include a tenant in common.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Property" means an interest in real property located in the Commonwealth that is transferable on the death of the owner.

"Transfer on death deed" means a deed authorized under this article.

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

§ 64.2-622. Applicability.

This article applies to a transfer on death deed made before, on, or after July 1, 2013, by a transferor dying on or after July 1, 2013.

§ 64.2-623. Nonexclusivity.

This article does not affect any method of transferring property otherwise permitted under the law of the Commonwealth.

§ 64.2-624. Transfer on death deed authorized.

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

§ 64.2-625. Transfer on death deed revocable.

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

§ 64.2-626. Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

§ 64.2-627. Capacity of transferor.

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

§ 64.2-628. Requirements.

A transfer on death deed:

1. Except as otherwise provided in subdivision 2, shall contain the essential elements and formalities of a properly recordable inter vivos deed;

2. Shall state that the transfer to the designated beneficiary is to occur at the transferor's death;

3. Shall be recorded before the transferor's death in the land records of the clerk's office of the circuit court in the jurisdiction where the property is located;

4. Shall comply with the requirements for recordation set forth in Chapter 6 of Title 55 and shall be indexed by the Clerk of Court under the name of the transferor as grantor;

5. Unless the transfer is for consideration, shall be exempt from recordation tax as provided by subsection J of § 58.1-811;

6. For property owned by joint owners to be effective, shall be executed by all joint owners; and

7. Shall be considered a deed for purposes of complying with the requirements of § 17.1-223.

§ 64.2-629. Notice, delivery, acceptance, 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.

§ 64.2-630. Revocation by instrument authorized; revocation by act not permitted.

A. Subject to subsection B, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

1. Is one of the following:

a. A transfer on death deed that revokes the transfer on death deed or part of the transfer on death deed expressly;

b. A transfer on death deed that names a designated beneficiary that is inconsistent with the designated beneficiary in a prior transfer on death deed;

c. An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed; or

d. An inter vivos deed that expressly revokes the transfer on death deed or part of the transfer on death deed.

2. Is acknowledged by the transferor after the acknowledgment of the transfer on death deed being revoked and recorded before the transferor's death in the land records of the clerk's office of the circuit court where the deed is recorded.

B. If a transfer on death deed is made by more than one transferor:

1. Revocation by a transferor does not affect the transfer on death deed as to the interest of another transferor; and

2. A transfer on death deed of joint owners is revoked only if it is revoked by all of the living joint owners.

C. After a transfer on death deed is recorded, it can be revoked only by an effective revocatory instrument recorded prior to the death of the transferor and may not be revoked by a revocatory act taken against or on the original or a copy of the recorded transfer on death deed.

D. This section does not limit the effect of an inter vivos transfer of the property.

§ 64.2-631. 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 the right to transfer or encumber the property;

2. Affect an interest or right of a transferee, 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;

5. Create a legal or equitable interest in favor of the designated beneficiary; or

6. Subject the property to claims or process of a creditor of the designated beneficiary.

§ 64.2-632. Effect of transfer on death deed at transferor's death.

A. Except as otherwise provided in the transfer on death deed, in this section, in § 64.2-302, or in Chapter 22 (§ 64.2-2200 et seq.) or 25 (§ 64.2-2500 et seq.), on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

1. Subject to subdivision 2, the interest in the property is transferred to and vests in the designated beneficiary at the death of the transferor in accordance with the deed.

2. The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

3. Subject to subdivision 4, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

4. If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one that lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

5. If, after making a transfer on death deed, the transferor is divorced a vinculo matrimonii or his marriage is annulled, the divorce or annulment revokes any transfer to a former spouse as designated beneficiary unless the transfer on death deed expressly provides otherwise.

B. Subject to Chapter 6 (§ 55-106 et seq.) of Title 55, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Chapter 6 (§ 55-106 et seq.) of Title 55, the transfer and conveyance of the property subject to the transfer on death deed shall be deemed to be effective at the transferor's death.

C. If a transferor is a joint owner and is:

1. Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship but remains subject to the naming of the designated beneficiary in the transfer on death deed; or

2. The last surviving joint owner, the transfer on death deed is effective.

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

§ 64.2-633. Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by Chapter 26 (§ 64.2-2600 et seq.).

§ 64.2-634. Liability for creditor claims and statutory allowances.

A. After the death of the transferor, and subject to the transferor's right to direct the source from which liabilities will be paid, property transferred at the transferor's death by a transfer on death deed is subject to claims of the transferor's creditors, costs of administration of the transferor's estate, the expenses of the transferor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children of the transferor including the family allowance, the right to exempt property, and the homestead allowance to the extent the transferor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

B. If more than one property is transferred by one or more transfer on death deeds, the liability under subsection A is apportioned among the properties in proportion to their net values at the transferor's death.

C. A proceeding to enforce the liability under this section shall be commenced not later than one year after the transferor's death.

§ 64.2-635. Optional form of transfer on death deed.

The following form may be used to create a transfer on death deed. The other sections of this article govern the effect of this or any other instrument used to create a transfer on death deed:

THIS DEED MUST BE RECORDED BEFORE THE DEATH OF THE OWNER(S), OR IT
WILL NOT BE EFFECTIVE.

THIS DEED IS EXEMPT FROM RECORDATION TAXES UNDER SECTION 58.1-811(J)
OF THE CODE OF VIRGINIA OF 1950, AS AMENDED.

REVOCABLE TRANSFER ON DEATH DEED

THIS REVOCABLE TRANSFER ON DEATH DEED, dated as of the _____
day of _____, is made by TRANSFEROR or
TRANSFERORS (the Grantor(s)), whose address is _____.

This Revocable Transfer on Death Deed is made pursuant to the provisions of the Uniform Real Property Transfer on Death Act, Virginia Code § 64.2-621 et seq. In accordance with the provisions of the Uniform Real Property Transfer on Death Act, at my death, I transfer and convey my interest in the below described property to my designated beneficiaries as follows:

PRIMARY BENEFICIARY

I designate _____ as the
designated beneficiary of the property if _____
survives me.

ALTERNATE BENEFICIARY - Optional

If my primary designated beneficiary does not survive me,
I designate _____ as my alternate
designated beneficiary if my alternate designated beneficiary
survives me.

PROPERTY:

The legal description of the real property that shall be transferred at my death pursuant to this Revocable Transfer on Death Deed is as follows:

INSERT LEGAL DESCRIPTION

RIGHT TO REVOKE AND METHOD TO REVOKE DEED:

Before my death, I have the right to revoke this deed.

Under the Uniform Real Property Transfer on Death Act, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

1. Is one of the following:

a. A transfer on death deed that revokes the transfer on death deed or part of the transfer on death deed expressly;

b. A transfer on death deed that names a designated beneficiary that is inconsistent with the designated beneficiary in a prior transfer on death deed;

c. An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed; or

d. An inter vivos deed that expressly revokes the transfer on death deed or part of the transfer on death deed.

2. Is acknowledged by the transferor after the acknowledgment of the transfer on death deed being revoked and recorded before the transferor's death in the land records of the clerk's office of the circuit court where the deed is recorded.

After this transfer on death deed is recorded, it can be revoked only by an effective revocatory instrument recorded prior to the death of the transferor and may not be revoked by a revocatory act taken against or on the original or a copy of the recorded transfer on death deed.

The execution and recordation of this transfer on death deed does not limit the effect of an inter vivos transfer of the property.

At my death, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at my death.

Witness the following signature and seals:

TRANSFEROR (SEAL)

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me in the
City/County of _____, Virginia this
_____ day of _____, by
TRANSFEROR.

Notary Public

My commission expires: _____

Registration number: _____

§ 64.2-636. Optional form of revocation.

The following form may be used to create an instrument of revocation under this article.
THIS REVOCATION MUST BE RECORDED BEFORE YOU DIE OR IT WILL NOT BE
EFFECTIVE. THIS REVOCATION IS EFFECTIVE ONLY AS TO THE INTERESTS
IN THE PROPERTY OF OWNERS WHO SIGN THIS REVOCATION.

THIS DEED IS EXEMPT FROM RECORDATION TAXES UNDER SECTION 58.1-811(J)
OF THE CODE OF VIRGINIA OF 1950, AS AMENDED.

REVOCATION OF TRANSFER ON DEATH DEED

THIS REVOCATION OF TRANSFER ON DEATH DEED, dated as of the _____
day of _____, is made by TRANSFEROR OR
TRANSFERORS (the Grantor(s)), whose address is _____.

This Revocation of Transfer on Death Deed is made pursuant to the
provisions of the Uniform Real Property Transfer on Death Act,
Virginia Code, § 64.2-621 et seq.

In accordance with the provisions of the Uniform Real Property
Transfer on Death Act, I revoke all my previous transfers of the
below described property by transfer on death deed:

INSERT LEGAL DESCRIPTION

Witness the following signature and seals:

_____ (SEAL)

TRANSFEROR

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me in the
City/County of _____, Virginia this
_____ day of _____, by
TRANSFEROR.

Notary Public

My commission expires: _____

415 Registration number: _____

416 **§ 64.2-637. Uniformity of application and construction.**

417 *In applying and construing this uniform act, consideration shall be given to the need to promote*
418 *uniformity of the law with respect to its subject matter among the states that enact it.*

419 **§ 64.2-638. Relation to federal Electronic Signatures in Global and National Commerce Act.**

420 *This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National*
421 *Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act,*
422 *15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that*
423 *act, 15 U.S.C. § 7003(b).*