

Enrolled
Senate Bill 815

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

CHAPTER

AN ACT

Relating to transfer on death deed; creating new provisions; and amending ORS 86.740, 93.030, 93.040, 107.115, 112.465, 112.570 and 125.440.

Be It Enacted by the People of the State of Oregon:

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

SECTION 1. Sec. 1 - Short title. Sections 1 to 18 of this 2011 Act may be cited as the **Uniform Real Property Transfer on Death Act.**

SECTION 2. Sec. 2 - Definitions. As used in sections 1 to 18 of this 2011 Act:

- (1) **“Beneficiary”** means a person that receives property under a transfer on death deed.
- (2) **“Designated beneficiary”** means a person designated to receive property in a transfer on death deed.
- (3) **“Joint owner”** means a joint tenant, a tenant by the entirety and any other co-owner of property that is held in a manner that entitles one or more of the owners to ownership of the whole of the property upon the death of one or more of the other owners.
- (4) **“Person”** means an individual, corporation, business trust, personal representative, trustee, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.
- (5) **“Property”** means an interest in real property located in this state.
- (6) **“Transfer on death deed”** means a deed that conveys property to a designated beneficiary at the transferor’s death.
- (7) **“Transferor”** means an individual who makes a transfer on death deed.

SECTION 3. Sec. 3 - Applicability. Sections 1 to 18 of this 2011 Act apply to a transfer on death deed made before, on or after the effective date of this 2011 Act by a transferor dying on or after the effective date of this 2011 Act.

SECTION 4. Sec. 4 - Nonexclusivity. Sections 1 to 18 of this 2011 Act do not affect any method of transferring property otherwise permitted by the law of this state.

SECTION 5. Sec. 5 - Authority for transfer on death deed. (1) An individual may transfer property to one or more designated beneficiaries effective at the transferor’s death by a transfer on death deed.

- (2) The individual may designate one or more:
 - (a) Primary beneficiaries; and

(b) Alternate beneficiaries who take the property only if none of the primary beneficiaries is qualified or survives the transferor.

SECTION 6. Sec. 6 - Revocability of transfer on death deed. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

SECTION 7. Sec. 7 - Nontestamentary nature of transfer on death deed. A transfer on death deed is nontestamentary.

SECTION 8. Sec. 8 - Capacity of transferor; fraud, duress or undue influence. (1) The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

(2) A transfer on death deed or an instrument revoking a transfer on death deed that is procured by fraud, duress or undue influence is void.

(3) A proceeding must be commenced not later than 18 months after the transferor's death to:

(a) Contest the capacity of the transferor; or

(b) Determine whether a transfer on death deed or an instrument revoking a transfer on death deed is void because it was procured by fraud, duress or undue influence.

SECTION 9. Sec. 9 - Requirements. (1) A transfer on death deed:

(a) Except as provided otherwise in paragraph (b) of this subsection, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(b) Must state that the transfer to the designated beneficiary is to occur at the transferor's death;

(c) Must identify the designated beneficiary by name; and

(d) Must be recorded before the transferor's death in the deed records in the office of the county clerk for the county in which the property is located.

(2) A beneficiary designation that identifies beneficiaries only as members of a class is void.

SECTION 10. Sec. 10 - Notice; delivery; acceptance; consideration. 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.

SECTION 11. Sec. 11 - Revocation by instrument; revocation by act. (1) An instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(a) Is acknowledged by the transferor after the transferor acknowledges the deed to be revoked;

(b) Is recorded before the transferor's death in the deed records of the county in which the property is located; and

(c) Is one of the following:

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

(B) An instrument of revocation that expressly revokes the deed, or part of the deed; or

(C) An inter vivos deed that transfers an interest in property that is the subject of a transfer on death deed to the extent of the interest in property transferred by the inter vivos deed.

(2) If authority is expressly granted by the transfer on death deed, a designated agent of the transferor may revoke the transfer on death deed as provided in this section.

(3) If a transfer on death deed is made by more than one transferor, revocation by one transferor does not affect the transfer of another transferor's interest in property by the transfer on death deed.

(4) After a transfer on death deed is recorded, the deed may not be revoked by a revocatory act on the deed.

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

SECTION 12. Sec. 12 - 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 designated beneficiary, even if the designated beneficiary has actual or constructive notice of the deed;

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

(4) Affect the eligibility of the transferor or a designated beneficiary 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 secured, unsecured or future creditor of the designated beneficiary.

SECTION 13. Sec. 13 - Effect of transfer on death deed at transferor's death. (1) Except as provided otherwise in the transfer on death deed and subject to ORS 107.115, 112.455 to 112.555 or 112.570 to 112.590 and sections 19, 20 and 21 of this 2011 Act, when a transferor dies, the following rules apply to property that is subject to a transfer on death deed and owned by the transferor at death:

(a) A designated beneficiary's interest in the property:

(A) Is transferred to the designated beneficiary in accordance with the deed if the designated beneficiary survives the transferor; or

(B) Lapses if the designated beneficiary does not survive the transferor.

(b) If the transferor has identified multiple designated beneficiaries to receive concurrent interests in the property:

(A) Concurrent interests are transferred to the designated beneficiaries in equal and undivided shares with no right of survivorship; and

(B) The share of a designated beneficiary that lapses or fails for any reason is transferred to the remaining designated beneficiaries in proportion to the interest of each designated beneficiary in the remaining part of the property held concurrently.

(2) 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, including a claim or lien by a state authorized to seek public assistance reimbursement if assets of the transferor's probate estate are insufficient to pay the amount of the claim or lien.

(3) If a transferor is a joint owner and is:

(a) Survived by one or more joint owners, the property subject to a transfer on death deed belongs to the surviving joint owners with a right of survivorship.

(b) The last surviving joint owner, the transfer on death deed is effective.

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

SECTION 14. Sec. 14 - Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by ORS 105.623 to 105.649.

SECTION 15. Sec. 15 - Liability for creditor claims and statutory allowances. (1) A transferor's estate may enforce a liability against property transferred at the death of the transferor by a transfer on death deed to the extent that the probate estate of the transferor is insufficient to satisfy:

(a) A claim allowed or established by summary determination or separate action under ORS 114.505 to 114.560 or under ORS chapter 115 against the probate estate; or

(b) A statutory allowance to a surviving spouse or child under ORS 114.015.

(2) If the same transferor transfers multiple properties by one or more transfer on death deeds, the liability under this section is apportioned among the transferred properties in proportion to the net value of each transferred property at the transferor's death.

(3) A proceeding must be commenced not later than 18 months after the transferor's death to enforce the liability under this section.

SECTION 16. Sec. 16 - Form of transfer on death deed. Sections 1 to 18 of this 2011 Act govern the effect of an instrument used to create a transfer on death deed. The following form may be used to create a transfer on death deed:

TRANSFER ON DEATH DEED
(Sections 1 to 18 of this 2011 Act)

NOTICE TO OWNER

You should carefully read all information on this form. You may want to consult a lawyer before using this form.

This form must be recorded before your death or it will not be effective.

TAX STATEMENT

Until a change is requested, the county clerk shall send tax statements to the following address: _____

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name: _____

Mailing address: _____

Printed name: _____

Mailing address: _____

Legal description of the property: _____

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me:

Printed name: _____

Mailing address, if available: _____

ALTERNATE BENEFICIARY
(Optional)

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me:

Printed name: _____

Mailing address, if available: _____

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

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

**SPECIAL TERMS
(Optional)**

RETURN OF DEED

After recording, the county clerk shall return the deed to: _____

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

Signature: _____

Date: _____

Signature: _____

Date: _____

State of _____

County of _____

This instrument was acknowledged before me on _____ (date)
by _____ (name(s) of person(s))

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

My commission expires: _____

SECTION 17. Sec. 17 - Form of instrument revoking transfer on death deed. Sections 1 to 18 of this 2011 Act govern the effect of an instrument used to revoke a transfer on death deed. The following form may be used to create an instrument revoking a transfer on death deed:

INSTRUMENT REVOKING TRANSFER ON DEATH DEED

NOTICE TO OWNER

This instrument revoking a transfer on death deed must be recorded before you die or it will not be effective. This instrument is effective only as to the interests in the property of the owner who signs this instrument.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Instrument of Revocation:

Printed name: _____

Mailing address: _____
Printed name: _____
Mailing address: _____

Legal description of the property: _____

REVOCATION

I hereby revoke all my previous transfers of this property by transfer on death deed.

RETURN OF INSTRUMENT

After recording, the county clerk shall return the instrument to:

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

Signature: _____
Date: _____

Signature: _____
Date: _____

State of _____
County of _____

This instrument was acknowledged before me on _____ (date)
by _____ (name(s) of person(s))

(Signature of notarial officer)
(Seal, if any)

Title (and Rank)
My commission expires: _____

SECTION 18. Relation to Electronic Signatures in Global and National Commerce Act. Sections 1 to 18 of this 2011 Act modify, limit and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of a notice described in 15 U.S.C. 7003(b).

MISCELLANEOUS PROVISIONS

SECTION 19. Unless a transfer on death deed provided for under sections 1 to 18 of this 2011 Act evidences a different intent of the transferor, the divorce or annulment of the marriage of the transferor after the recording of the transfer on death deed revokes all provisions in the transfer on death deed in favor of the former spouse of the transferor and the effect of the transfer on death deed is the same as though the former spouse did not survive the transferor.

SECTION 20. (1) Property that would pass by transfer on death deed under sections 1 to 18 of this 2011 Act from a deceased transferor to a parent of the deceased transferor shall

pass and be vested as if the parent had predeceased the transferor if the transferor was an adult when the transferor died and:

(a) The parent of the transferor willfully deserted the transferor for the 10-year period immediately preceding the date on which the transferor became an adult; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the 10-year period immediately preceding the date on which the transferor became an adult.

(2) Property that would pass by transfer on death deed under sections 1 to 18 of this 2011 Act from the deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent had predeceased the transferor if the transferor was a minor when the transferor died and:

(a) The parent of the transferor willfully deserted the transferor for the life of the transferor or for the 10-year period immediately preceding the date on which the transferor died; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the life of the transferor or for the 10-year period immediately preceding the date on which the transferor died.

(3) For the purposes of subsections (1) and (2) of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the deceased transferor or neglected without just and sufficient cause to provide proper care and maintenance for the transferor.

(4) For the purposes of subsections (1) and (2) of this section, in determining whether the parent willfully deserted the deceased transferor or neglected without just and sufficient cause to provide proper care and maintenance for the deceased transferor, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the transferor and the parent whose transfer would be forfeited under this section.

(5) The transfer of property, as defined in section 2 of this 2011 Act, to a parent of a deceased transferor may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under section 21 of this 2011 Act. A petition filed under ORS 113.035 may not request the forfeiture of a transfer by a transfer on death deed of a parent of a deceased transferor under this section.

SECTION 21. (1) A petition may be filed in probate proceedings to assert that the interest in property, as defined in section 2 of this 2011 Act, transferred by a transfer on death deed to a parent of a deceased transferor is subject to forfeiture under ORS 112.047. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's share.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) Four months after the first publication of notice to interested persons if the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by clear and convincing evidence.

SECTION 22. ORS 86.740 is amended to read:

86.740. (1) Subsequent to recording notice of default as provided in ORS 86.735 and at least 120 days before the day the trustee conducts the sale, notice of the sale shall be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return receipt requested, to the last-known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed.

(b) Any successor in interest to the grantor whose interest appears of record, or of whose interest the trustee or the beneficiary has actual notice.

(c) Any person, including the Department of Revenue or any other state agency, having a lien or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary has actual notice of the lien or interest.

(d) Any person requesting notice as provided in ORS 86.785.

(2) A notice served by mail under subsection (1) of this section is effective when the notice is mailed.

(3)(a) The disability, insanity or death of any person to whom notice of sale must be given under this section does not delay or impair in any way the trustee's right under a trust deed to foreclose under the deed. If the disability, insanity or death occurs prior to the recording of notice of default, the notice shall be given instead to the guardian, the conservator of the estate of the person or the administrator or personal representative of the person, as the case may be, in the manner and by the time set forth in this section.

(b) If the disability, insanity or death of any person to whom notice of sale must be given under this section occurs on or after the recording of notice of default, the trustee shall, if and when the trustee has knowledge of the disability, insanity or death, promptly give the guardian, conservator of the estate or the administrator or personal representative, as the case may be, the notice provided in ORS 86.745. This notice shall be given by first class and certified mail with return receipt requested, to the last-known address of the guardian, conservator or administrator or personal representative.

(c) In the event there is no administrator or personal representative of the estate of the person to whom notice of sale must be given under this section, the notice may be given instead to the heirs at law or devisees of the deceased person in the manner and by the time set forth in this section.

(4) If the owner of real property subject to foreclosure dies and the real property is also subject to a transfer on death deed, as provided by sections 1 to 18 of this 2011 Act, notice of sale must be given under this section to the beneficiary designated under the transfer on death deed.

SECTION 23. ORS 93.030 is amended to read:

93.030. (1) As used in this section, "consideration" includes the amount of cash and the amount of any lien, mortgage, contract, indebtedness or other encumbrance existing against the property to which the property remains subject or which the purchaser agrees to pay or assume.

(2) All instruments conveying or contracting to convey fee title to any real estate, and all memoranda of such instruments, shall state on the face of *[such]* **the** instruments the true and actual consideration paid for *[such]* **the** transfer, stated in terms of dollars. However, if the actual consideration consists of or includes other property or other value given or promised, neither the monetary value nor a description of *[such]* **the** other property or value need be stated so long as it is noted on the face of the instrument that other property or value was either part or the whole consideration.

(3) The statement of consideration as required by subsection (2) of this section shall be made by a grantor or a grantee. Failure to make such statement does not invalidate the conveyance.

(4) If the statement of consideration is in the body of the instrument preceding the signatures, execution of the instrument shall constitute a certification of the truth of the statement. If there is a separate statement of consideration on the face of the instrument, it shall be signed separately from the instrument, and such execution shall constitute a certification of the truth of the statement by the person signing. *[No]* **A** particular form is **not** required for the statement so long as the requirements of this section are reasonably met.

(5) *[No]* **An** instrument conveying or contracting to convey fee title to any real estate *[nor any memorandum of such an instrument shall]* **or a memorandum of the instrument may not** be accepted for recording by any county clerk or recording officer in this state unless the statement of consideration required by this section is included on the face of the instrument.

[(6) This section applies to instruments executed on or after January 1, 1968.]

(6) A transfer of death deed and an instrument revoking a transfer of death deed are not instruments subject to this section.

SECTION 24. ORS 93.040 is amended to read:

93.040. (1) The following statement shall be included in the body of an instrument transferring or contracting to transfer fee title to real property except for owner's sale agreements or earnest money receipts, or both, as provided in subsection (2) of this section: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009."

(2) In all owner's sale agreements and earnest money receipts, there shall be included in the body of the instrument the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009."

(3) In all owners' sale agreements and earnest money receipts subject to ORS 358.505, there shall be included in the body of the instrument or by addendum the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505."

(4) An action may not be maintained against the county recording officer for recording an instrument that does not contain the statement required in subsection (1) or (2) of this section.

(5) An action may not be maintained against any person for failure to include in the instrument the statement required in subsection (1) or (2) of this section, or for recording an instrument that does not contain the statement required in subsection (1) or (2) of this section, unless the person acquiring or agreeing to acquire fee title to the real property would not have executed or accepted the instrument but for the absence in the instrument of the statement required by subsection (1) or (2) of this section. An action may not be maintained by the person acquiring or agreeing to acquire

fee title to the real property against any person other than the person transferring or contracting to transfer fee title to the real property.

(6) A transfer of death deed and an instrument revoking a transfer of death deed are not instruments subject to this section.

SECTION 25. ORS 107.115 is amended to read:

107.115. (1) A judgment of annulment or dissolution of a marriage restores the parties to the status of unmarried persons, unless a party is married to another person. The judgment gives the court jurisdiction to award, to be effective immediately, the relief provided by ORS 107.105. The judgment shall revoke:

(a) A will pursuant to *[the provisions of]* ORS 112.315.

(b) A transfer on death deed pursuant to section 19 of this 2011 Act.

(2) The marriage relationship is terminated when the court signs the judgment of dissolution of marriage.

(3)(a) The Court of Appeals or Supreme Court shall continue to have jurisdiction of an appeal pending at the time of the death of either party. The appeal may be continued by the personal representative of the deceased party. The attorney of record on the appeal, for the deceased party, may be allowed a reasonable attorney fee, to be paid from the decedent's estate. However, costs on appeal may not be awarded to either party.

(b) The Court of Appeals or Supreme Court shall have the power to determine finally all matters presented on such appeal. Before making final disposition, the Court of Appeals or Supreme Court may refer the proceeding back to the trial court for such additional findings of fact as are required.

SECTION 26. ORS 112.465 is amended to read:

112.465. (1) Property that would have passed by reason of the death of a decedent to a person who was a slayer or an abuser of the decedent, whether by intestate succession, by will, **by transfer on death deed** or by trust, passes and vests as if the slayer or abuser had predeceased the decedent.

(2) Property that would have passed by reason of the death of an heir or devisee of a decedent to a person who was the slayer or abuser of the decedent, whether by intestate succession, by will, **by transfer on death deed** or by trust, passes and vests as if the slayer or abuser had predeceased the decedent unless the heir or devisee specifically provides otherwise in a will or other instrument executed after the death of the decedent.

SECTION 27. ORS 112.570 is amended to read:

112.570. As used in ORS 112.570 to 112.590:

(1) "Co-owners with right of survivorship" means joint tenants, tenants by the entirety and any other co-owners of property or accounts that are held in a manner that entitles one or more of the owners to ownership of the whole of the property or account upon the death of one or more of the other owners.

(2) "Governing instrument" means:

(a) A deed;

(b) A will;

(c) A transfer on death deed under sections 1 to 18 of this 2011 Act;

[(c)] **(d)** A trust;

[(d)] **(e)** An insurance or annuity policy account with a payable-on-death designation;

[(e)] **(f)** A pension, profit-sharing, retirement or similar benefit plan;

[(f)] **(g)** An instrument creating or exercising a power of appointment or a power of attorney;

or

[(g)] **(h)** Any other dispositive, appointive or nominative instrument of a type similar to those instruments specified in this subsection.

(3) "Payor" means a trustee, insurer, employer, governmental agency, political subdivision or any other person authorized or obligated by law or by a governing instrument to make payments.

SECTION 28. ORS 125.440 is amended to read:

125.440. A conservator may perform the following acts only with prior court approval:

(1) Convey or release contingent or expectant interests of the protected person in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(2) Create revocable or irrevocable trusts of property of the estate. A trust created by the conservator may extend beyond the period of disability of the protected person or beyond the life of the protected person. A trust created by the conservator must be consistent with the will of the protected person or any other written or oral expression of testamentary intent made by the protected person before the person became incapacitated. The court may not approve a trust that has the effect of terminating the conservatorship unless:

(a) The trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the eligibility of the protected person for needs-based government benefits;

(b) The value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed \$50,000;

(c) The purpose of establishing the conservatorship was to create the trust; or

(d) The conservator shows other good cause to the court.

(3) Exercise rights of the protected person to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(4) Disclaim any interest the protected person may have by testate or intestate succession, [or] by inter vivos transfer **or by transfer on death deed.**

(5) Authorize, direct or ratify any annuity contract or contract for life care.

(6) Revoke a transfer on death deed.

SECTION 29. The Oregon Law Commission shall make a copy of the commentary approved by the commission for the provisions of sections 1 to 21 of this 2011 Act and the amendments to ORS 86.740, 93.030, 93.040, 107.115, 112.465, 112.570 and 125.440 by sections 22 to 28 of this 2011 Act available on a website maintained by the commission.

SECTION 30. The unit and section captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

SECTION 31. Sections 19 to 21 of this 2011 Act and the amendments to ORS 86.740, 93.030, 93.040, 107.115, 112.465, 112.570 and 125.440 by sections 22 to 28 of this 2011 Act apply to a transfer on death deed made before, on or after the effective date of this 2011 Act by a transferor dying on or after the effective date of this 2011 Act.

Passed by Senate April 26, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 23, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

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Approved:

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John Kitzhaber, Governor

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Kate Brown, Secretary of State