



## Ohio Revised Code

### Section 5302.23 Designating transfer on death beneficiary.

Effective: December 28, 2009

Legislation: Senate Bill 124 - 128th General Assembly

---

(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, the beneficiaries shall take title to the interest in equal shares as tenants in common, unless the deceased owner has specifically designated other than equal shares or has designated that the beneficiaries take title as survivorship tenants, subject to division (B)(3) of this section. If a transfer on death beneficiary does not survive the deceased owner or is not in existence on the date of the deceased owner's death, and the deceased owner has designated one or more persons as contingent transfer on death beneficiaries as provided in division (B)(2) of this section, the designated contingent transfer on death beneficiaries shall take the same interest that would have passed to the transfer on death beneficiary had that transfer on death beneficiary survived the deceased owner or been in existence on the date of the deceased owner's death. If none of the designated transfer on death beneficiaries survives the deceased owner or is in existence on the date of the deceased owner's death and no contingent transfer on death beneficiaries have been designated, have survived the deceased owner, or are in existence on the date of death of the deceased owner, the interest of the deceased owner shall be distributed as part of the probate estate of the deceased owner of the interest. If there are two or more transfer on death beneficiaries and the deceased owner has designated that title to the interest in the real property be taken by those beneficiaries as survivorship tenants, no designated contingent transfer on death beneficiaries shall take title to the interest unless none of the transfer on death beneficiaries survives the deceased owner on the date of death of the deceased owner.



(2) A transfer on death designation affidavit may contain a designation of one or more persons as contingent transfer on death beneficiaries, who shall take the interest of the deceased owner that would otherwise have passed to the transfer on death beneficiary if that named transfer on death beneficiary does not survive the deceased owner or is not in existence on the date of death of the deceased owner. Persons designated as contingent transfer on death beneficiaries shall be identified in the affidavit by name.

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

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

(5) The designation in a transfer on death designation affidavit of any transfer on death beneficiary may be revoked or changed at any time, without the consent of that transfer on death beneficiary, by the owner of the interest, by the surviving survivorship tenants of the interest, or by the remaining tenant by the entireties of the interest, by executing and recording, prior to the death of the owner of the interest, of the surviving survivorship tenants of the interest, or of the remaining tenant by the entireties of the interest, as the case may be, a new transfer on death designation affidavit pursuant to section 5302.22 of the Revised Code stating the revocation or change in that designation. The new transfer on death designation affidavit shall automatically supersede and revoke all prior recorded transfer on death designation affidavits with respect to the real property or the interest in real property identified in the new affidavit, provided that the prior recorded affidavit was executed before the later recorded affidavit.



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

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

(b) If the owners hold title to the interest in a survivorship tenancy, the death of all except the last survivorship tenant automatically terminates and nullifies any transfer on death beneficiary designations made solely by the deceased survivorship tenant or tenants without joinder by the last surviving survivorship tenant. The termination or nullification of any transfer on death beneficiary designations under division (B)(7)(b) of this section is effective as of the date of death of a deceased survivorship tenant. No affirmative act of revocation is required of the last surviving survivorship tenant for the termination or nullification of the transfer on death beneficiary designations to occur as described in division (B)(7)(b) of this section. If the last surviving survivorship tenant dies with no transfer on death beneficiary designation, the entire interest of that last surviving survivorship tenant shall be distributed as part of the tenant's probate estate.

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

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



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

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

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

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