

House Bill 899

By: Representatives Jenkins of the 136<sup>th</sup>, Bonner of the 73<sup>rd</sup>, Leverett of the 123<sup>rd</sup>, and Camp of the 135<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 17 of Title 44 of the Official Code of Georgia Annotated, relating to  
2 transfer-on-death deeds, so as to modify certain provisions regarding transfer-on-death deeds;  
3 to provide for a definition; to provide for the acceptance of a real estate transfer; to provide  
4 for revocation; to provide for limitations; to provide for curing defects; to amend Chapter  
5 3 of Title 53 of the Official Code of Georgia Annotated, relating to year's support, so as to  
6 provide for precedence of transfer-on-death deeds; to provide for related matters; to provide  
7 for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 17 of Title 44 of the Official Code of Georgia Annotated, relating to  
11 transfer-on-death deeds, is amended by revising Code Section 44-17-2, relating to  
12 requirements, as follows:

13 "44-17-2.

14 (a)(1) As used in this Code section, the term 'interested person' means any individual  
15 designated by a grantor as a beneficiary will be considered as having direct and tangible

16 interest in real estate for the purpose of requesting a copy of a certificate of death from  
17 the Office of Vital Records.

18 (2) An interest in real estate may be titled in a transfer-on-death form by recording a  
19 deed, signed by the record owner of the interest, designating a grantee beneficiary or  
20 beneficiaries of the interest. Such deed shall transfer ownership of such interest ~~upon to~~  
21 each interested person once such interested person has accepted his or her individual  
22 interest by filing the requisite affidavit as provided for in subsection (d) of this Code  
23 section within nine months after the death of the record owner. A transfer-on-death deed  
24 need not be supported by consideration, subject to the following conditions:

25 (A) A Form PT-61 shall not be filed with a transfer-on-death deed filed by the grantor;

26 (B) The grantor has the right to add alternate interested persons within the deed in case  
27 a designated beneficiary either predeceases the grantor or dies during the acceptance  
28 period before accepting the property;

29 (C) The grantor may convey a beneficiary interest to a living trust by naming the  
30 trustee as a designated grantee beneficiary;

31 (D) The grantor shall not create a new trust by using a transfer-on-death deed;

32 (E) The grantor must have the same legal capacity required to enter into a contract in  
33 order to execute a transfer-on-death deed; and

34 (F) The only time an attorney in fact can execute a transfer-on-death deed on behalf of  
35 a grantor is when there has been a grant of specific authority contained within the  
36 power of attorney to create or change a beneficiary designation.

37 (b) The signature, consent, or agreement of or notice to a grantee beneficiary or  
38 beneficiaries of a transfer-on-death deed shall not be required for any purpose during the  
39 lifetime of the record owner.

40 (c) A designated grantee beneficiary may accept real estate pursuant to a transfer-on-death  
41 deed only on behalf of himself, herself, or a legal entity over which he or she has proper  
42 authority. A beneficiary shall not accept such real estate on behalf of another designated

43 beneficiary. However, if the designated beneficiary is a ward or minor, a legal guardian  
44 or legal conservator may accept real estate pursuant to a transfer-on-death deed on behalf  
45 of such ward or minor.

46 ~~(c)(d)~~ Each designated grantee beneficiary wishing to To accept real estate pursuant to a  
47 transfer-on-death deed, ~~a designated grantee beneficiary~~ shall execute an affidavit  
48 affirming:

- 49 (1) Verification of the record owner's death;
- 50 (2) Whether the record owner and the designated grantee beneficiary were married at the  
51 time of the record owner's death; and
- 52 (3) A legal description of the real estate.

53 ~~(d)(e)~~ The designated grantee beneficiary shall attach a copy of the record owner's death  
54 certificate to the affidavit provided for in subsection (c)(d) of this Code section. For a  
55 record owner's death occurring on or after July 1, 2024, the designated grantee beneficiary  
56 shall record such affidavit with a Form PT-61 and related documents with the office of the  
57 clerk of superior court of the county where the real estate is located within nine months of  
58 the record owner's death or the interest in the property shall revert to the deceased record  
59 owner's estate; provided, however, that for a record owner's death occurring before July 1,  
60 2024, such recording of the affidavit provided for in subsection (c) of this Code section and  
61 related documents by the designated grantee beneficiary or beneficiaries shall not be  
62 subject to the nine-month time limitation.

63 (f) A beneficiary affidavit recorded pursuant to this Code section before July 1, 2025, in  
64 which one or more of the named beneficiaries of a transfer-on-death deed explicitly accepts  
65 the interests being conveyed by the deed on behalf of all or some of the beneficiaries  
66 named in the affidavit shall be effective to accept such interests if executed by at least one  
67 of the named beneficiaries accepting such interests.

68 (g)(1) Until a property interest is accepted by a designated beneficiary, the personal  
69 representative of a solvent estate is responsible for mortgage payments, property taxes,

70 and any repairs that render the property in imminent danger of being destroyed until the  
 71 property interest is accepted. The estate is entitled to repayment of expenses incurred  
 72 during such time until the property interest is accepted and shall have a priority lien  
 73 against the property for any amount that is not repaid within one year after such  
 74 acceptance.

75 (2) If a property is subject to imminent danger of foreclosure, condemnation, or  
 76 destruction, the personal representative of an insolvent estate shall notify such designated  
 77 beneficiary that he or she has four months to accept the interest in the property. Should  
 78 such designated beneficiary fail to accept within that time period, the estate's personal  
 79 representative shall have the right to sell the property and pay off all debts, and the  
 80 remaining proceeds shall revert back to the estate.

81 (h) In any case where the requirements for acceptance of a property interest have not been  
 82 met, all defects can be cured within nine months so long as the affidavit and the death  
 83 certificate are filed in accordance with subsection (e) of this Code section."

84 **SECTION 2.**

85 Said chapter is further amended by revising subsection (a) and by adding a new subsection  
 86 to Code Section 44-17-4, relating to revocation or amendment, as follows:

87 "(a) A record owner of an interest in real estate who has titled such interest in a  
 88 transfer-on-death deed form and designated a beneficiary or beneficiaries in the manner  
 89 provided in this chapter may revoke such designation of the grantee beneficiary or  
 90 beneficiaries at any time prior to the death of such record owner, by executing,  
 91 acknowledging, and recording in the office of the clerk of superior court of the county  
 92 where the real estate is located an instrument revoking such designation. The instrument  
 93 of revocation shall refer to the initial transfer-on-death deed, shall be signed by the record  
 94 owner ~~or such record owner's duly authorized attorney-in-fact~~, and such signature shall be  
 95 attested by an officer as provided in Code Section 44-2-15 and attested by ~~two~~ one other

96 ~~witnesses witness. Such revocation may be included in another deed or other instrument~~  
97 ~~of conveyance that is recorded.~~ The signature, consent, or agreement of or notice to the  
98 designated grantee beneficiary or beneficiaries to the revocation shall not be required."  
99 "(d) In any case where the grantor subsequently sells or conveys an interest in real estate  
100 before such grantor's death or conveys an interest in real estate to such grantor's living trust,  
101 or where the death of a sole designated beneficiary occurs before acceptance, the  
102 transfer-on-death deed intended for conveyance to the designated grantee beneficiary is  
103 rendered revoked."

### 104 SECTION 3.

105 Said chapter is further amended by revising Code Section 44-17-5, relating to grantee  
106 beneficiary rights and prior death of designated grantee beneficiary, as follows:

107 "44-17-5.

108 (a) A grantee beneficiary or the beneficiaries of a transfer-on-death deed shall take the  
109 interest in real estate of the record owner at upon the acceptance of the interest within nine  
110 months of the death of such record owner, free and clear of any claims or interest as to a  
111 person who became the spouse of the record owner subsequent to the execution of the  
112 transfer-on-death deed, subject to all recorded conveyances, assignments, contracts,  
113 mortgages, liens, and security pledges made by the record owner or to which the record  
114 owner was subject during the lifetime of such record owner, including, but not limited to,  
115 any recorded executory contract of sale, option to purchase, lease, license, easement,  
116 mortgage, deed of trust or lien, and to any interest conveyed by the record owner that is less  
117 than all of the record owner's interest in the property; provided, however, that a  
118 nonconsensual lien against the grantee beneficiary or beneficiaries shall not attach to the  
119 property until the recording of the affidavit described in subsections (d) and (e) of Code  
120 Section 44-17-2. A transfer-on-death deed takes precedence and priority over any petition  
121 for year's support filed upon the death of the grantor.

122 (b) If one or more of the designated grantee beneficiaries dies prior to the death of the  
 123 record owner, the transfer to those beneficiaries who predecease the record owner shall  
 124 lapse and shall be deemed revoked, and the lapsed interest shall be split evenly among the  
 125 remaining designated grantee beneficiaries who are living at the time of the death of the  
 126 record owner and shall not revert back to the estate. In the event the grantee beneficiary  
 127 or beneficiaries are designated in the deed to be joint tenants with right of survivorship, the  
 128 death of one or more of the designated grantee beneficiaries prior to the death of the record  
 129 owner shall not invalidate an otherwise validly created joint tenancy estate as to those  
 130 designated grantee beneficiaries who are living at the time of the death of the record  
 131 owner."

#### 132 SECTION 4.

133 Chapter 3 of Title 53 of the Official Code of Georgia Annotated, relating to year's support,  
 134 is amended by revising Code Section 53-3-5, relating to filing of petition, as follows:

135 "53-3-5.

136 (a) Except as provided by subsection (a) of Code Section 44-17-5, upon ~~Upon~~ the death  
 137 of any individual leaving an estate solvent or insolvent, the surviving spouse or a guardian  
 138 or other person acting ~~in~~ on behalf of the surviving spouse or ~~in~~ on behalf of a minor child  
 139 may file a petition for year's support in the probate court having jurisdiction over the  
 140 decedent's estate. If the petition is brought by a guardian acting on behalf of a minor child,  
 141 no additional guardian ad litem shall be appointed for such minor child unless ordered by  
 142 the court.

143 (b) The petition shall set forth, as applicable, the full name of the surviving spouse, the full  
 144 name and ~~birth date~~ birth date of each surviving minor child, and a schedule of the property,  
 145 including household furniture, that the petitioner proposes to have set apart as year's  
 146 support. The petition shall describe fully and accurately any real property the petitioner

147 proposes to have set apart as year's support with a legal description sufficient under the  
148 laws of this state to pass title to the real property.  
149 (c) A petition for year's support shall be filed within 24 months of the date of death of the  
150 decedent."

151 **SECTION 5.**

152 This Act shall become effective upon its approval by the Governor or upon its becoming law  
153 without such approval.

154 **SECTION 6.**

155 All laws and parts of laws in conflict with this Act are repealed.