

The House Committee on Judiciary offers the following substitute to HB 899:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 31-10-26 of the Official Code of Georgia Annotated, relating to
2 certified copies of vital records, duplicates, and data, so as to provide for vital record access
3 to certain grantee beneficiaries; to amend Chapter 17 of Title 44 of the Official Code of
4 Georgia Annotated, relating to transfer-on-death deeds, so as to modify certain provisions
5 regarding transfer-on-death deeds; to provide for property of solvent and of insolvent estates;
6 to provide for the acceptance of a real estate transfer; to provide for revocation; to provide
7 for limitations; to provide for curing defects; to amend Chapter 3 of Title 53 of the Official
8 Code of Georgia Annotated, relating to year's support, so as to provide for precedence of
9 transfer-on-death deeds; to provide for related matters; to provide for an effective date; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Code Section 31-10-26 of the Official Code of Georgia Annotated, relating to certified copies
14 of vital records, duplicates and data, is amended by revising subparagraph (a)(1)(A) as
15 follows:

H. B. 899 (SUB)

16 "(A) A certified copy of a vital record in that registrar's or custodian's custody or
 17 abstract thereof to any applicant having a direct and tangible interest in the vital record,
 18 including, but not limited to, any grantee beneficiary designated by a record owner in
 19 a deed titling an interest in real estate in a transfer-on-death form as provided in
 20 subsection (a) of Code Section 44-17-2;"

21 **SECTION 2.**

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

25 "44-17-2.

26 (a)(1) An interest in real estate may be titled in a transfer-on-death form by recording a
 27 deed, signed by the record owner of the interest, designating a grantee beneficiary or
 28 beneficiaries of the interest.

29 (2) The record owner shall have the same legal capacity required to enter into a contract
 30 in order to execute a transfer-on-death deed. Such deed shall transfer ownership of such
 31 interest upon the death of the record owner.

32 (3) An attorney in fact shall not be authorized to execute a transfer-on-death deed on
 33 behalf of a record owner.

34 (4) A transfer-on-death deed need not be supported by consideration.

35 (5) In a transfer-on-death deed, the record owner shall be authorized but not restricted
 36 to:

37 (A) Designate one or more alternate grantee beneficiaries whose property interests are
 38 contingent upon a primary grantee beneficiary who either predeceases the record owner
 39 or dies during the acceptance period before accepting the property; and

40 (B) Convey a beneficiary interest to an express trust by naming the trustee as a
 41 designated grantee beneficiary.

- 42 (6) In a transfer-on-death deed, the record owner shall not be authorized to:
 43 (A) Create or declare an express trust pursuant to Code Section 53-12-20; or
 44 (B) Create a beneficial interest in real property pursuant to Article 8 of Chapter 12 of
 45 Title 53.
- 46 (7) A real estate transfer tax declaration form shall not be filed with a transfer-on-death
 47 deed filed by the record owner.
- 48 (b) The signature, consent, or agreement of or notice to a grantee beneficiary or
 49 beneficiaries of a transfer-on-death deed shall not be required for any purpose during the
 50 lifetime of the record owner.
- 51 (c)(1) A transfer-on-death deed shall transfer ownership of the record owner's interest
 52 in real estate to each grantee beneficiary upon both of the following being complete after
 53 the death of the record owner:
- 54 (A) Execution of the affidavit required by subsection (d) of this Code section; and
 55 (B) Recording such affidavit as required by subsection (e) of this Code section.
- 56 (2) An interest in real estate passing pursuant to a transfer-on-death deed may be
 57 accepted by each designated grantee beneficiary who is either a sui juris individual, a
 58 trustee, or any other legal entity over which such individual has proper authority. If a
 59 designated grantee beneficiary is a ward or minor, a legal guardian or legal conservator
 60 may accept such interest in real estate pursuant to a transfer-on-death deed on behalf of
 61 such ward or minor.
- 62 (3) A designated grantee beneficiary shall not accept such interest in real estate on behalf
 63 of another designated grantee beneficiary, except as provided for in paragraph (2) of this
 64 subsection.
- 65 ~~(c)~~(d) Each designated grantee beneficiary wishing to accept real estate pursuant to a
 66 transfer-on-death deed, a designated grantee beneficiary shall execute an affidavit
 67 affirming:
- 68 (1) Verification of the record owner's death;

69 (2) Whether the record owner and the designated grantee beneficiary were married at the
70 time of the record owner's death; ~~and~~

71 (3) The deed book and page number of the recorded transfer-on-death deed; and

72 ~~(3)(4)~~ (4) A legal description of the real estate.

73 ~~(d)(e)~~ (e) The designated grantee beneficiary shall attach a copy of the record owner's death
74 certificate to the affidavit provided for in subsection ~~(c)~~ (d) of this Code section. For a
75 record owner's death occurring on or after July 1, 2024, the designated grantee beneficiary
76 shall record such affidavit, real estate transfer tax declaration form, and related documents
77 with the office of the clerk of superior court of the county where the real estate is located
78 within nine months of the record owner's death or the interest in the property shall revert
79 to the deceased record owner's estate; ~~provided, however, that for a record owner's death~~
80 ~~occurring before July 1, 2024, such recording of the affidavit provided for in subsection (c)~~
81 ~~of this Code section and related documents by the designated grantee beneficiary or~~
82 ~~beneficiaries shall not be subject to the nine-month time limitation.~~

83 (f) Notwithstanding the provisions of paragraph (1) of subsection (c) of this Code section
84 to the contrary, a designated grantee beneficiary affidavit recorded pursuant to this Code
85 section before July 1, 2026, in which one or more of the named designated grantee
86 beneficiaries of a transfer-on-death deed explicitly accepts the interests being conveyed by
87 such deed on behalf of all or some of the designated grantee beneficiaries named in the
88 affidavit shall be effective to accept such interests if executed by at least one of the
89 designated grantee beneficiaries accepting such interests.

90 (g)(1) The personal representative of the estate of a deceased record owner shall provide
91 each designated grantee beneficiary with notice of the transfer-on-death deed in
92 accordance with the same requirements and conditions as provided in Code
93 Section 53-5-8.

94 (2)(A) The personal representative of the solvent estate of a deceased record owner
95 shall be authorized to incur expenses for mortgage payments, property taxes, and any

96 repairs that render the property in imminent danger of being destroyed if not completed
97 as solely determined by the personal representative or the city or county code
98 enforcement until the interest in such property is accepted by a designated grantee
99 beneficiary or beneficiaries. The estate shall be entitled to repayment of such expenses
100 incurred during such time and shall have a priority special lien against the property for
101 any amount that is not repaid within one year after such acceptance. Such lien shall be
102 inferior to any liens for property taxes or previously recorded security deeds.

103 (B) If the special lien has not been paid in full at the expiration of the one-year period,
104 the estate shall have 30 days to file a claim of lien in the office of the clerk of superior
105 court of the county where the property is located. The lien shall attach to the property
106 for a period of 365 days from the recording date of the lien in the same manner as
107 provided in Code Section 44-14-367.

108 (C) No later than two business days after the date the claim of lien is filed of record,
109 the estate shall send a true and accurate copy of the claim of lien by registered mail,
110 certified mail, or statutory overnight delivery to the owner of the property.

111 (D) The estate shall have the right to commence a foreclosure of the lien prior to its
112 expiration in the same manner as the enforcement of mechanic's liens pursuant to Code
113 Section 44-14-361.

114 (3) In the event that a property which is part of an insolvent estate is subject to imminent
115 danger of foreclosure, condemnation, or destruction, after receiving notice by a secured
116 lender or government entity, the personal representative of such insolvent estate shall be
117 authorized to record an affidavit of notice in the office of the clerk of superior court of
118 the county where the property is located to which the notice of imminent foreclosure,
119 condemnation, or destruction shall be attached. If no designated grantee beneficiary has
120 completed the requirements of subsections (d) and (e) of this Code section, the estate's
121 personal representative shall have the right to sell the property and pay off all debts, and
122 any remaining proceeds shall revert back to the estate.

123 (h) Each designated grantee beneficiary shall be deemed as having direct and tangible
124 interest in real estate for the purpose of applying for the issuance of a certified copy of the
125 certificate of death of such record owner pursuant to subparagraph (a)(1)(A) of Code
126 Section 31-10-26."

127 **SECTION 3.**

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

130 "(a) A record owner of an interest in real estate who has titled such interest in a
131 transfer-on-death deed form and designated a beneficiary or beneficiaries in the manner
132 provided in this chapter may revoke such designation of the grantee beneficiary or
133 beneficiaries at any time prior to the death of such record owner, by executing,
134 acknowledging, and recording in the office of the clerk of superior court of the county
135 where the real estate is located an instrument revoking such designation. The instrument
136 of revocation shall refer to the initial transfer-on-death deed, shall be signed by the record
137 owner ~~or such record owner's duly authorized attorney-in-fact~~, and such signature shall be
138 attested by an officer as provided in Code Section 44-2-15 and attested by ~~two~~ one other
139 ~~witnesses~~ witness. ~~Such revocation may be included in another deed or other instrument~~
140 ~~of conveyance that is recorded.~~ The signature, consent, or agreement of or notice to the
141 designated grantee beneficiary or beneficiaries to the revocation shall not be required."

142 "(d) In any case where the record owner subsequently sells or conveys an interest in real
143 estate before such record owner's death or conveys an interest in real estate to a trustee of
144 such record owner's express trust, or where the death of a sole designated grantee
145 beneficiary occurs before acceptance, the transfer-on-death deed intended for conveyance
146 to the designated grantee beneficiary is rendered revoked."

147 **SECTION 4.**

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

150 "44-17-5.

151 (a) A grantee beneficiary or the beneficiaries of a transfer-on-death deed shall take the
152 interest in real estate of the record owner ~~at the death of such record owner~~ upon the
153 acceptance of such interest pursuant to Code Section 44-17-2, free and clear of any claims
154 or interest as to a person who became the spouse of the record owner subsequent to the
155 execution of the transfer-on-death deed, subject to all recorded conveyances, assignments,
156 contracts, mortgages, liens, and security pledges made by the record owner or to which the
157 record owner was subject during the lifetime of such record owner, including, but not
158 limited to, any recorded executory contract of sale, option to purchase, lease, license,
159 easement, mortgage, deed of trust or lien, and to any interest conveyed by the record owner
160 that is less than all of the record owner's interest in the property; provided, however, that
161 a nonconsensual lien against the grantee beneficiary or beneficiaries shall not attach to the
162 property until the recording of the affidavit described in subsections (d) and (e) of Code
163 Section 44-17-2. A transfer-on-death deed takes precedence and priority over all unsecured
164 debts of the record owner's estate filed upon the death of the record owner, unless the
165 property is unredeemed.

166 (b) If one or more of the designated grantee beneficiaries dies prior to the death of the
167 record owner, the transfer to those beneficiaries who predecease the record owner shall
168 lapse and shall be deemed revoked, and the lapsed interest shall be split evenly among the
169 remaining designated grantee beneficiaries who are living at the time of the death of the
170 record owner and shall not revert to the estate. Similarly, if one or more of the designated
171 grantee beneficiaries die after the death of the record owner, but before acceptance of the
172 property, the transfer to such beneficiaries who die after the record owner shall lapse and
173 shall be deemed revoked, and the lapsed interest shall be split evenly among the remaining

174 designated grantee beneficiaries who are living at the time of the death of the record owner
 175 and shall not revert to the estate. In the event the grantee beneficiary or beneficiaries are
 176 designated in the deed to be joint tenants with right of survivorship, the death of one or
 177 more of the designated grantee beneficiaries prior to the death of the record owner shall not
 178 invalidate an otherwise validly created joint tenancy estate as to those designated grantee
 179 beneficiaries who are living at the time of the death of the record owner."

180

SECTION 5.

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

183 "53-3-5.

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

191 (b) The petition shall set forth, as applicable, the full name of the surviving spouse, the full
 192 name and ~~birthdate~~ birth date of each surviving minor child, and a schedule of the property,
 193 including household furniture, that the petitioner proposes to have set apart as year's
 194 support. The petition shall describe fully and accurately any real property the petitioner
 195 proposes to have set apart as year's support with a legal description sufficient under the
 196 laws of this state to pass title to the real property.

197 (c) A petition for year's support shall be filed within 24 months of the date of death of the
 198 decedent."

199 **SECTION 6.**

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

202 **SECTION 7.**

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