

House Bill 413 (AS PASSED HOUSE AND SENATE)

By: Representatives Jenkins of the 136th, Huddleston of the 72nd, Campbell of the 171st,
Ridley of the 22nd, and Byrd of the 20th

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 amend Chapter 1 of Title 2 of the Official Code of Georgia
10 Annotated, relating to general provisions relative to agriculture, so as to prohibit certain local
11 government entities from regulating certain livestock or owners; to provide for related
12 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

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

SECTION 2.

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

27 “44-17-2.

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

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

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

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

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

- 39 (A) Designate one or more alternate grantee beneficiaries whose property interests are
40 contingent upon a primary grantee beneficiary who either predeceases the record owner
41 or dies during the acceptance period before accepting the property; and
42 (B) Convey a beneficiary interest to an express trust by naming the trustee as a
43 designated grantee beneficiary.
- 44 (6) In a transfer-on-death deed, the record owner shall not be authorized to:
- 45 (A) Create or declare an express trust pursuant to Code Section 53-12-20; or
46 (B) Create a beneficial interest in real property pursuant to Article 8 of Chapter 12 of
47 Title 53.
- 48 (7) A real estate transfer tax declaration form shall not be filed with a transfer-on-death
49 deed filed by the record owner.
- 50 (b) The signature, consent, or agreement of or notice to a grantee beneficiary or
51 beneficiaries of a transfer-on-death deed shall not be required for any purpose during the
52 lifetime of the record owner.
- 53 (c)(1) A transfer-on-death deed shall transfer ownership of the record owner's interest
54 in real estate to each grantee beneficiary upon both of the following being complete after
55 the death of the record owner:
- 56 (A) Execution of the affidavit required by subsection (d) of this Code section; and
57 (B) Recording such affidavit as required by subsection (e) of this Code section.
- 58 (2) An interest in real estate passing pursuant to a transfer-on-death deed may be
59 accepted by each designated grantee beneficiary who is either a sui juris individual, a
60 trustee, or any other legal entity over which such individual has proper authority. If a
61 designated grantee beneficiary is a ward or minor, a legal guardian or legal conservator
62 may accept such interest in real estate pursuant to a transfer-on-death deed on behalf of
63 such ward or minor.

64 (3) A designated grantee beneficiary shall not accept such interest in real estate on behalf
 65 of another designated grantee beneficiary, except as provided for in paragraph (2) of this
 66 subsection.

67 ~~(e)(d)~~ Each designated grantee beneficiary wishing to To accept real estate pursuant to a
 68 transfer-on-death deed, ~~a designated grantee beneficiary~~ shall execute an affidavit
 69 affirming:

70 (1) Verification of the record owner's death;

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

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

74 ~~(3)~~(4) A legal description of the real estate.

75 ~~(d)~~(e) The designated grantee beneficiary shall attach a copy of the record owner's death
 76 certificate to the affidavit provided for in subsection ~~(e)~~ (d) of this Code section. For a
 77 record owner's death occurring on or after July 1, ~~2024~~ 2026, the designated grantee
 78 beneficiary shall record such affidavit, real estate transfer tax declaration form, and related
 79 documents with the office of the clerk of superior court of the county where the real estate
 80 is located ~~within nine months of the record owner's death or the interest in the property~~
 81 ~~shall revert to the deceased record owner's estate, provided, however, that for a record~~
 82 ~~owner's death occurring before July 1, 2024, such recording of the affidavit provided for~~
 83 ~~in subsection (e) of this Code section and related documents by the designated grantee~~
 84 ~~beneficiary or beneficiaries shall not be subject to the nine-month time limitation.~~

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

90 affidavit shall be effective to accept such interests if executed by at least one of the
91 designated grantee beneficiaries accepting such interests.

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

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

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

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

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

116 (3) In the event that a property which is part of an insolvent estate is subject to imminent
 117 danger of foreclosure, condemnation, or destruction, after receiving notice by a secured
 118 lender or government entity, the personal representative of such insolvent estate shall be
 119 authorized to record an affidavit of notice in the office of the clerk of superior court of
 120 the county where the property is located to which the notice of imminent foreclosure,
 121 condemnation, or destruction shall be attached. If no designated grantee beneficiary has
 122 completed the requirements of subsections (d) and (e) of this Code section, the estate's
 123 personal representative shall have the right to sell the property and pay off all debts, and
 124 any remaining proceeds shall revert back to the estate.
 125 (h) Each designated grantee beneficiary shall be deemed as having direct and tangible
 126 interest in real estate for the purpose of applying for the issuance of a certified copy of the
 127 certificate of death of such record owner pursuant to subparagraph (a)(1)(A) of Code
 128 Section 31-10-26."

129 **SECTION 3.**

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

132 "(a) A record owner of an interest in real estate who has titled such interest in a
 133 transfer-on-death deed form and designated a beneficiary or beneficiaries in the manner
 134 provided in this chapter may revoke such designation of the grantee beneficiary or
 135 beneficiaries at any time prior to the death of such record owner, by executing,
 136 acknowledging, and recording in the office of the clerk of superior court of the county
 137 where the real estate is located an instrument revoking such designation. The instrument
 138 of revocation shall refer to the initial transfer-on-death deed, shall be signed by the record
 139 owner ~~or such record owner's duly authorized attorney-in-fact~~, and such signature shall be
 140 attested by an officer as provided in Code Section 44-2-15 and attested by ~~two~~ one other
 141 ~~witnesses~~ witness. ~~Such revocation may be included in another deed or other instrument~~

142 ~~of conveyance that is recorded.~~ The signature, consent, or agreement of or notice to the
143 designated grantee beneficiary or beneficiaries to the revocation shall not be required."
144 "(d) In any case where the record owner subsequently sells or conveys an interest in real
145 estate before such record owner's death or conveys an interest in real estate to a trustee of
146 such record owner's express trust, or where the death of a sole designated grantee
147 beneficiary occurs before acceptance, the transfer-on-death deed intended for conveyance
148 to the designated grantee beneficiary is rendered revoked."

149 **SECTION 4.**

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

152 "44-17-5.

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

168 (b) If one or more of the designated grantee beneficiaries dies prior to the death of the
 169 record owner, the transfer to those beneficiaries who predecease the record owner shall
 170 lapse and shall be deemed revoked, and the lapsed interest shall be split evenly among the
 171 remaining designated grantee beneficiaries who are living at the time of the death of the
 172 record owner and shall not revert to the estate. Similarly, if one or more of the designated
 173 grantee beneficiaries die after the death of the record owner, but before acceptance of the
 174 property, the transfer to such beneficiaries who die after the record owner shall lapse and
 175 shall be deemed revoked, and the lapsed interest shall be split evenly among the remaining
 176 designated grantee beneficiaries who are living at the time of the death of the record owner
 177 and shall not revert to the estate. In the event the grantee beneficiary or beneficiaries are
 178 designated in the deed to be joint tenants with right of survivorship, the death of one or
 179 more of the designated grantee beneficiaries prior to the death of the record owner shall not
 180 invalidate an otherwise validly created joint tenancy estate as to those designated grantee
 181 beneficiaries who are living at the time of the death of the record owner."

182 **SECTION 5.**

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

185 "53-3-5.

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

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

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

201 **SECTION 6.**

202 Chapter 1 of Title 2 of the Official Code of Georgia Annotated, relating to general provisions
203 relative to agriculture, is amended by revising subsection (a) of Code Section 2-1-6, relating
204 to preemption of local ordinances relating to production of agricultural or farm products, as
205 follows:

206 "(a) No county, municipality, consolidated government, or other political subdivision of
207 this state shall adopt or enforce any ordinance, rule, regulation, or resolution regulating
208 crop management or animal husbandry practices involved in the production of agricultural
209 or farm products on any private property or any livestock or owner located on any private
210 property or public road as such terms are defined in Chapter 3 of Title 4."

211 **SECTION 7.**

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

214 **SECTION 8.**

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