

HOUSE BILL NO. 1325

Introduced by

Representatives Delmore, Dahl, DeKrey, S. Meyer

Senators Lyson, Nelson

1 A BILL for an Act to create and enact a new section to chapter to 30.1-31 of the North Dakota
2 Century Code, relating to beneficiary deeds.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 30.1-31 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Beneficiary deed - Form - Definitions.**

7 1. As used in this section:

8 a. "Beneficiary deed" means a deed authorized by this section.

9 b. "Grantee beneficiary" or "grantee" means the person to whom an owner
10 grants an interest in the real property that is the subject of the beneficiary
11 deed.

12 c. "Owner" means an individual who executes a beneficiary deed as provided in
13 this section.

14 2. A deed that conveys an interest in real property, including any debt secured by a
15 lien on real property, to a grantee beneficiary designated by the owner and which
16 expressly states that the deed is effective on the death of the owner transfers the
17 deceased owner's interest to the grantee beneficiary designated by name in the
18 beneficiary deed effective on the death of the owner, subject to all conveyances,
19 assignments, contracts, mortgages, deeds of trust, liens, security pledges, and
20 other encumbrances made by the owner or to which the owner was subject during
21 the owner's lifetime.

22 3. A beneficiary deed may designate multiple grantees who take title as joint tenants
23 with right of survivorship, tenants in common, or any other tenancy that is valid
24 under the laws of this state.

- 1 4. A beneficiary deed may designate a successor grantee beneficiary. If the
2 beneficiary deed designates a successor grantee beneficiary, the deed must state
3 the condition on which the interest of the successor grantee beneficiary would vest.
- 4 5. If real property is owned by individuals as joint tenants with right of survivorship, a
5 deed that conveys an interest in the real property to a grantee beneficiary
6 designated by all of the surviving owners and expressly states that the deed is
7 effective on the death of the last surviving owner transfers the interest to the
8 designated grantee beneficiary effective on the death of the last surviving owner. If
9 a beneficiary deed is executed by fewer than all of the owners of real property
10 owned as joint tenants with right of survivorship, the beneficiary deed is valid if the
11 last surviving owner is one of the individuals who executes the beneficiary deed. If
12 the last surviving owner did not execute the beneficiary deed, the transfer lapses
13 and the deed is void. An estate in joint tenancy with right of survivorship is not
14 affected by the execution of a beneficiary deed that is executed by fewer than all of
15 the owners of the real property, and the rights of a surviving joint tenant with right
16 of survivorship prevail over a grantee beneficiary named in a beneficiary deed.
- 17 6. A beneficiary deed is valid only if the deed is executed and recorded, as provided
18 by law, in the office of the county recorder of the county in which the property is
19 located, before the death of the owner or the last surviving owner. A beneficiary
20 deed may be used to transfer an interest in real property to the trustee of a trust
21 even if the trust is revocable.
- 22 7. A beneficiary deed may be revoked at any time by the owner or, if there is more
23 than one owner, by any of the owners who executed the beneficiary deed. To be
24 effective the revocation must be executed and recorded, as provided by law, in the
25 office of the county recorder of the county in which the real property is located,
26 before the death of the owner who executes the revocation. If the real property is
27 owned as joint tenants with right of survivorship and if the revocation is not
28 executed by all the owners, the revocation is not effective unless executed by the
29 last surviving owner.
- 30 8. If an individual who is a recipient of Medicaid conveys an interest in real property
31 by means of a beneficiary deed, the department of human services may assert a

claim against the property that is the subject of a beneficiary deed to the extent of medical assistance granted by the department.

9. If an owner executes and records more than one beneficiary deed concerning the same real property, the last beneficiary deed that is recorded before the owner's death is the effective beneficiary deed.

10. This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

11. The signature, consent, or agreement of, or notice to, a grantee beneficiary of a beneficiary deed is not required for any purpose during the lifetime of the owner.

12. A beneficiary deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

13. For the purposes of this section, the death of an owner of real property must be proved by affidavit or certificate of death.

14. A beneficiary deed is sufficient if it complies with other applicable laws and if it is in substantially the following form:

Beneficiary Deed

I (we) _____ (owner) hereby convey to _____ (grantee beneficiary)
effective on my (our) death of the following described real property:

(Legal Description)

If a grantee beneficiary predeceases the owner, the conveyance to the grantee beneficiary must either (choose one):

☐ Become void.

☐ Become part of the estate of the grantee beneficiary.

(Dated)

(Signature of grantor(s))

(acknowledgment)

1 15. An instrument revoking a beneficiary deed is sufficient if it complies with other
2 applicable laws and is in substantially the following form:

3 Revocation of Beneficiary Deed

4 The undersigned hereby revokes the beneficiary deed recorded on _____ (date),
5 instrument number _____, records of _____ County, North Dakota, concerning the
6 following described real property:

7 (Legal description)

8 Dated: _____

9 _____

10 Signature

11 16. The rights of creditors and others are the same as for a pay on death account
12 under section 30.1-31-12.