

# Missouri Revised Statutes

## Chapter 461

### NonProbate Transfers Law

#### **Transfers on death, certain provisions deemed nontestamentary, exceptions.**

461.001. Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, stock certificate, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust agreement, declaration of trust, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust or to evidence ownership of property is deemed to be nontestamentary, and exempt from the requirements of section 473.087 and section 474.320:

(1) That money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after the decedent's death to a person or persons designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand;

(3) That any property which is the subject of the instrument shall pass on decedent's death to a person or persons designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(4) Except to the extent specifically excluded thereunder, sections 461.003 to 461.081 apply to transfers under this section.

(L. 1995 S.B. 116)

#### **Law, how cited.**

461.003. Sections 461.003 to 461.081 may be cited as the "Nonprobate Transfers Law of Missouri".

(L. 1989 H.B. 145 § 17)

#### **Definitions.**

461.005. In sections 461.003 to 461.081, unless the context otherwise requires, the following terms mean:

(1) "Beneficiary", a person or persons designated or entitled to receive property pursuant to a nonprobate transfer on surviving one or more persons;

(2) "Beneficiary designation", a provision in writing that is not a will that designates the beneficiary of a nonprobate transfer, including the transferee in an instrument that makes the transfer effective on death of the owner, and that complies with the conditions of any governing instrument, the rules of any transferring entity and applicable law;

(3) "Death of the owner", in the case of joint owners, means death of the last surviving owner;

(4) "In proper form", a phrase which applies to a beneficiary designation or a revocation or change thereof, or a request to make, revoke or change a beneficiary designation, which complies with the terms of the governing instrument, the rules of the transferring entity and applicable law, including any requirements with respect to supplemental documents;

(5) "Joint owners", persons who hold property as joint tenants with right of survivorship and a husband and wife who hold property as tenants by the entirety;

(6) "LDPS", an abbreviation of lineal descendants per stirpes which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 461.045;

(7) "Nonprobate transfer", a transfer of property taking effect upon the death of the owner, pursuant to a beneficiary designation. A nonprobate transfer under sections 461.003 to 461.081 does not include survivorship rights in property held as joint tenants or tenants by the entirety, a transfer to a remainderman on termination of a life tenancy, a transfer under a trust established by an individual, either inter vivos or testamentary, a transfer pursuant to the exercise or nonexercise of a power of appointment, or a transfer made on death of a person who did not have the right to designate his or her estate as the beneficiary of the transfer;

(8) "Owner", a person or persons having a right, exercisable alone or with others, regardless of the terminology used to refer to the owner in any written beneficiary designation, to designate the beneficiary of a nonprobate transfer, and includes joint owners. The provisions of this subdivision shall apply to all beneficiary deeds executed and filed at any time, including, but not limited to, those executed and filed on or before August 28, 2005;

(9) "Ownership in beneficiary form", holding property pursuant to a registration in beneficiary form or other writing that names the owner of the property followed by a transfer on death direction and the designation of a beneficiary;

(10) "Person", living individuals, entities capable of owning property and fiduciaries;

(11) "Proof of death", includes a death certificate or record or report that is prima facie proof or evidence of death under section 472.290;

(12) "Property", any present or future interest in property, real or personal, tangible or intangible, legal or equitable. Property includes a right to direct or receive payment of a debt, money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust or law, a right to receive performance remaining due under a contract, a right to receive payment under a promissory note or a debt maintained in a written account record, rights under a certificated or uncertificated security, rights

under an instrument evidencing ownership of property issued by a governmental agency and rights under a document of title within the meaning of section 400.1-201;

(13) "Registration in beneficiary form", titling of an account record, certificate, or other written instrument evidencing ownership of property in the name of the owner followed by a transfer on death direction and the designation of a beneficiary;

(14) "Security", a certificated or uncertificated security as defined in section 400.8-102, including securities as defined in section 409.401\*;

(15) "Transfer on death direction", the phrase "transfer on death to" or the phrase "pay on death to" or the abbreviation "TOD" or "POD" after the name of the owners and before the designation of the beneficiary; and

(16) "Transferring entity", a person who owes a debt or is obligated to pay money or benefits, render contract performance, deliver or convey property, or change the record of ownership of property on the books, records and accounts of an enterprise or on a certificate or document of title that evidences property rights, and includes any governmental agency, business entity or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property.

(L. 1989 H.B. 145 § 18, A.L. 1995 S.B. 116, A.L. 2005 S.B. 407 merged with S.B. 420 & 344)

\*Section 409.401 was repealed in 2003 by H.B. 380, effective 9-01-03.

**Nonprobate transfers not subject to requirements of a will--effect with or without consideration.**

461.009. Nonprobate transfers are effective with or without consideration, and are not to be considered testamentary or subject to section 473.087, (dealing with the requirement to probate a will), and section 474.320, (dealing with will form, execution and attestation).

(L. 1989 H.B. 145 § 19, A.L. 1995 S.B. 116)

**Transferring entity acting as agent for owner subject to nontransfer law, agency does not end with death of owner, duties.**

461.011. For the purpose of discharging its duties under the nonprobate transfers law, the authority of a transferring entity acting as agent for an owner of property subject to a nonprobate transfer shall not cease at death of the owner. The transferring entity shall transfer the property to the designated beneficiary in accordance with the governing instrument, the rules of the transferring entity and sections 461.003 to 461.081.

(L. 1995 S.B. 116)

**Nonprobate transfers subject to agreement of transferring entity, when.**

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461.012. 1. When any of the following is required, provision for a nonprobate transfer is a matter of agreement between the owner and the transferring entity, under such rules, terms and conditions as the owner and transferring entity may agree:

(1) Submission to the transferring entity of a beneficiary designation under a governing instrument;

(2) Registration by a transferring entity of a transfer on death direction on any certificate or record evidencing ownership of property;

(3) The consent of a contract obligor for a transfer of performance due under the contract;

(4) The consent of a financial institution for a transfer of an obligation of the financial institution; or

(5) The consent of a transferring entity for a transfer of an interest in the transferring entity.

2. Whenever subsection 1 of this section is applicable, sections 461.003 to 461.081 do not impose an obligation on a transferring entity to accept an owner's request to make provision for a nonprobate transfer of property.

3. When a beneficiary designation, revocation or change is subject to acceptance by a transferring entity, the transferring entity's acceptance of the beneficiary designation, revocation or change relates back to and is effective as of the time when the request was received by the transferring entity.

(L. 1989 H.B. 145 § 20, A.L. 1995 S.B. 116)

#### **Transferring entity, obligation resulting from acceptance and registration.**

461.014. When a transferring entity accepts a beneficiary designation or beneficiary assignment, or registers property in beneficiary form, the acceptance or registration constitutes the agreement of the owner and transferring entity that, unless the beneficiary designation is revoked or changed prior to the owner's death, on proof of death of the owner and compliance with the transferring entity's requirements for showing proof of entitlement, the property will be transferred to and placed in the name and control of the beneficiary in accordance with the beneficiary designation or transfer on death direction, the agreement of the parties and sections 461.003 to 461.081.

(L. 1989 H.B. 145 § 21, A.L. 1995 S.B. 116)

#### **Beneficiary designation under written instrument or law, effect.**

461.021. A beneficiary designation, under a written instrument or law, that authorizes a transfer of property pursuant to a written designation of beneficiary, transfers the right to receive the property to the designated beneficiary who survives, effective on death of the owner, if the beneficiary designation is executed and delivered in proper form to the transferring entity prior to the death of the owner.

(L. 1989 H.B. 145 § 23, A.L. 1995 S.B. 116)

**Assignments effective on death of owner--delivery, effect.**

461.023. 1. A written assignment of a contract right that assigns the right to receive any performance remaining due under the contract to an assignee designated by the owner, that expressly states that the assignment is not to take effect until the death of the owner, transfers the right to receive performance due under the contract to the designated assignee beneficiary, effective on death of the owner, if the assignment is executed and delivered in proper form to the contract obligor prior to the death of the owner or is executed in proper form and acknowledged before a notary public or other person authorized to administer oaths. A beneficiary assignment need not be supported by consideration or be delivered to the assignee beneficiary.

2. This section does not preclude other methods of assignment that are permitted by law and that have the effect of postponing enjoyment of a contract right until the death of the owner.

(L. 1989 H.B. 145 § 24, A.L. 1995 S.B. 116)

**Deeds effective on death of owner--recording, effect.**

461.025. 1. A deed that conveys an interest in real property to a grantee designated by the owner, that expressly states that the deed is not to take effect until the death of the owner, transfers the interest provided to the designated grantee beneficiary, effective on death of the owner, if the deed is executed and filed of record with the recorder of deeds in the city or county or counties in which the real property is situated prior to the death of the owner. A beneficiary deed need not be supported by consideration or be delivered to the grantee beneficiary. A beneficiary deed may be used to transfer an interest in real property to a trust estate, regardless of such trust's revocability.

2. This section does not preclude other methods of conveyancing that are permitted by law and that have the effect of postponing enjoyment of an 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 interest and estates therein provided, that is not recorded until after the death of the owner.

(L. 1989 H.B. 145 § 25, A.L. 1994 S.B. 701, A.L. 1995 S.B. 116)

**Procedure to transfer tangible personal property to take effect on death of owner.**

461.026. 1. A deed of gift, bill of sale or other writing intended to transfer an interest in tangible personal property, that expressly states that the transfer is not to take effect until the death of the owner, transfers ownership to the designated transferee beneficiary, effective on death of the owner, if the instrument is in other respects sufficient to transfer the type of property involved and is executed by the owner and acknowledged before a notary public or other person authorized to administer oaths. A beneficiary transfer

instrument need not be supported by consideration or be delivered to any transferee beneficiary.

2. This section does not preclude other methods of transferring ownership of tangible personal property that are permitted by law and that have the effect of postponing enjoyment of property until the death of the owner.

(L. 1995 S.B. 116)

**Transferor may directly transfer property to a transferee to hold as owner in beneficiary form--transferee shall be owner of property for all purposes--transfer effective, when.**

461.027. 1. A transferor of property, with or without consideration, may directly transfer the property to a transferee to hold as owner in beneficiary form.

2. A transferee under an instrument described in subsection 1 of this section shall be the owner of the property for all purposes and shall have all the rights to the property otherwise provided by law to owners, including the right to revoke or change the beneficiary designation.

3. A direct transfer of property to a transferee to hold as owner in beneficiary form is effective when the writing perfecting the transfer becomes effective to make the transferee the owner.

(L. 1995 S.B. 116)

**Registration of property, including accounts and securities in beneficiary form, effect.**

461.028. 1. Property may be held or registered in beneficiary form by including in the name in which the property is held or registered a direction to transfer the property on death of the owner to a beneficiary designated by the owner.

2. Property is registered in beneficiary form by showing on the account record, security certificate or instrument evidencing ownership of the property the name of the owner, and the estate by which two or more joint owners hold the property, followed in substance by the words "transfer on death to ..... (name of beneficiary)". In lieu of the words "transfer on death to" the words "pay on death to" or the abbreviation "TOD" or "POD" may be used.

3. A transfer on death direction may only be placed on an account record, security certificate or instrument evidencing ownership of property by the transferring entity or a person authorized by the transferring entity.

4. A transfer on death direction transfers the owner's interest in the property to the designated beneficiary, effective on the owner's death, if the property is registered in beneficiary form prior to the death of the owner, or if the request to make the transfer on

death direction is delivered in proper form to the transferring entity prior to the owner's death.

5. An account record, security certificate or instrument evidencing ownership of property that contains a transfer on death direction written as part of the name in which the property is held or registered, is conclusive evidence in the absence of fraud, duress, undue influence or evidence of clerical mistake by the transferring entity that the direction was regularly made by the owner and accepted by the transferring entity, and was not revoked or changed prior to the death giving rise to the transfer; and the transferring entity shall have no obligation to retain the original writing, if any, by which the owner caused the property to be registered in beneficiary form, more than six months after the transferring entity has mailed or delivered to the owner, at the address shown on the registration, an account statement, certificate or instrument that shows the manner in which the property is held or registered in beneficiary form.

(L. 1989 H.B. 145 § 26, A.L. 1995 S.B. 116)

### **Effect of beneficiary designation on ownership of property during lifetime and at death.**

461.031. 1. Prior to the death of the owner, a beneficiary shall have no rights in the property by reason of the beneficiary designation and the signature or agreement of the beneficiary shall not be required for any transaction respecting the property.

2. On death of one of two or more joint owners, property with respect to which a beneficiary designation has been made belongs to the surviving joint owner or owners, and the right of survivorship continues as between two or more surviving joint owners.

3. On death of the owner, property passes by operation of law to the beneficiary.

4. If two or more beneficiaries survive, there is no right of survivorship among the beneficiaries in the event of death of a beneficiary thereafter unless the beneficiary designation expressly provides for survivorship among them, and, unless so expressly provided, surviving beneficiaries hold their separate interests in the property as tenants in common. The share of any subsequently deceased beneficiary belongs to that beneficiary's estate.

5. If no beneficiary survives the owner, the property belongs to the estate of the owner.

(L. 1989 H.B. 145 § 27, A.L. 1995 S.B. 116)

### **Revocation or change of beneficiaries designation.**

461.033. 1. A beneficiary designation may be revoked or changed in whole or in part during the lifetime of the owner. A revocation or change of a beneficiary designation involving property of joint owners may only be made with the agreement of all owners then living.

2. A subsequent beneficiary designation revokes a prior beneficiary designation unless the subsequent beneficiary designation expressly provides otherwise.

3. A revocation or change in a beneficiary designation shall comply with the terms of the governing instrument, the rules of the transferring entity and the applicable law.

4. A beneficiary designation may not be revoked or changed by the provisions of a will unless the beneficiary designation expressly grants the owner the right to revoke or change a beneficiary designation by will.

5. A transfer during the owner's lifetime of the owner's interest in property, with or without consideration, terminates the beneficiary designation with respect to the property transferred.

6. The effective date of a revocation or change in a beneficiary designation shall be determined in the same manner as the effective date of a beneficiary designation.

(L. 1989 H.B. 145 § 28, A.L. 1995 S.B. 116)

**Agents may not make, revoke or change beneficiary unless document establishes agent's right or court order authorizes--authorized withdrawals may extinguish beneficiary's right to transfer.**

461.035. 1. An attorney in fact, custodian, conservator or other agent may not make, revoke or change a beneficiary designation unless the document establishing the agent's right to act, or a court order, expressly authorizes such action and such action complies with the terms of the governing instrument, the rules of the transferring entity and applicable law.

2. This section shall not prohibit the authorized withdrawal, sale, pledge or other present transfer of the property by an attorney in fact, custodian, conservator or other agent notwithstanding the fact that the effect of the transaction may be to extinguish a beneficiary's right to receive a transfer of the property at the death of the owner.

(L. 1995 S.B. 116)

**Property designated for a beneficiary if lost, destroyed, damaged or involuntarily converted, during owner's lifetime, effect.**

461.037. In the event property subject to a beneficiary designation is lost, destroyed, damaged or involuntarily converted during the owner's lifetime, the beneficiary succeeds to any right with respect to the loss, destruction, damage or involuntary conversion which the owner would have had if the owner had survived, but has no interest in any payment or substitute property received by the owner during the owner's lifetime.

(L. 1995 S.B. 116)

**Effect of collateral conveyances or liens on property subject to nonprobate transfer.**

461.039. 1. A beneficiary of a nonprobate transfer takes the owner's interest in the property at death subject to all conveyances, assignments, contracts, setoffs, licenses, easements, liens and security interests made by the owner or to which the owner was subject during the owner's lifetime.

2. A beneficiary of a nonprobate transfer of an account with a bank, savings and loan association, credit union, broker or mutual fund takes the owner's interest in the property at death subject to all requests for payment of money issued by the owner prior to death, whether paid by the transferring entity before or after death, or unpaid. The beneficiary is liable to the payee of an unsatisfied request for payment, to the extent that it represents an obligation that was enforceable against the owner during the owner's lifetime. To the extent that a claim properly paid by the personal representative of the owner's estate includes the amount of an unsatisfied request for payment to the claimant, the personal representative shall be subrogated to the rights of the claimant as payee. Each beneficiary's liability with respect to an unsatisfied request for payment is limited to the same proportionate share of the request for payment as the beneficiary's proportionate share of the account under the beneficiary designation. Beneficiaries shall have the right of contribution among themselves with respect to requests for payment which are satisfied after the owner's death, to the extent the requests for payment would have been enforceable by the payees. In no event shall a beneficiary's liability to payees, the owner's estate and other beneficiaries under this section and section 461.300 with respect to all requests for payment exceed the value of the account received by the beneficiary. If a request for payment which would not have been enforceable under this section is satisfied from a beneficiary's share of the account, the beneficiary shall not be liable to any other payee or the owner's estate under this section or section 461.300 for the amount so paid, but the beneficiary shall have no right of contribution against other beneficiaries with respect to that amount.

(L. 1989 H.B. 145 § 30, A.L. 1995 S.B. 116)

### **Survival required.**

461.042. 1. An individual who is a beneficiary of a nonprobate transfer shall not be entitled to a transfer unless the individual survives the owner by one hundred twenty hours.

2. If an owner provides and the transferring entity accepts, or if a governing instrument or applicable law provides, a period of survival different than one hundred twenty hours, the period designated shall determine the survival requirement of beneficiaries under this section. An owner and transferring entity may agree that certain circumstances raise a different presumption of survival or nonsurvival.

3. This section does not apply to survivorship rights of joint owners.

(L. 1989 H.B. 145 § 31, A.L. 1995 S.B. 116)

**Beneficiary designation designating a trustee under trust not invalid because trust is amendable or revocable--trust that is revoked, terminated or does not exist at death of owner, effect.**

461.043. 1. A beneficiary designation designating a trustee under a trust established or to be established by the owner or some other person, including a funded or unfunded trust, shall not be invalid because the trust is amendable or revocable or both or because the trust was amended after the designation.

2. Unless a beneficiary designation provides otherwise, a trust that was revoked or terminated before the death of the owner shall be deemed not to have survived the owner.

3. Unless a beneficiary designation provides otherwise, a legal entity or trust that does not exist or come into existence at the time of the owner's death shall be deemed not to have survived the owner.

(L. 1995 S.B. 116)

### **Lineal descendant substitutes.**

461.045. 1. Whenever a person designated as beneficiary of a nonprobate transfer is a lineal descendant of the owner, and the beneficiary is deceased at the time the beneficiary designation is made or does not survive the owner, or is treated as not surviving the owner, the nonsurviving beneficiary's share shall belong to that beneficiary's lineal descendants per stirpes who survive the owner, to take in place of and in substitution for the nonsurviving beneficiary, the same as the beneficiary would have taken if the beneficiary had survived. This subsection shall not apply to a beneficiary designation with the notation "no LDPS" after a beneficiary's name or other words negating an intention to direct the transfer to the lineal descendant substitutes of a nonsurviving beneficiary.

2. A beneficiary designation may provide that the share of any beneficiary not related to the owner as provided in subsection 1 of this section, and who does not survive the owner, shall belong to that beneficiary's lineal descendants per stirpes who survive the owner, by including after the name of the beneficiary the words "and lineal descendants per stirpes" or the abbreviation "LDPS".

3. Lineal descendants, taking as substitutes for a beneficiary of a nonprobate transfer, if they are of the same degree of kinship to the nonsurviving beneficiary, share equally, but if they are of unequal degree, then those of more remote degree take the share of their parent by representation.

4. Whenever a nonprobate transfer is to be made to a beneficiary's lineal descendants per stirpes, the property shall belong to such lineal descendants of the beneficiary who survive the owner, and in such proportions, as would result if the survivors were inheriting personal property of the beneficiary under the laws of Missouri and the beneficiary had died at the time of the owner's death, intestate, unmarried, domiciled in Missouri and possessed of such property.

5. Whenever a beneficiary of a nonprobate transfer does not survive the owner and the beneficiary is a person for whom the beneficiary's surviving lineal descendants take as substitutes under subsection 1 or 2 of this section, if there are no lineal descendants of the beneficiary who survive the owner, the beneficiary's share shall belong to the surviving beneficiaries, or to the owner's estate, as would be the case if transfer to the beneficiary's lineal descendants were not required to be considered.

(L. 1989 H.B. 145 § 32, A.L. 1995 S.B. 116)

**Disclaimer.**

461.048. If a beneficiary of a nonprobate transfer disclaims in whole or in part the nonprobate transfer in the manner provided by law, then with respect to the disclaimed transfer, the disclaimant is treated as having predeceased the owner unless the beneficiary designation provides otherwise; but the possibility that a beneficiary or descendant may disclaim a transfer shall not require any transferring entity to withhold making the transfer in the normal course of business.

(L. 1989 H.B. 145 § 33, A.L. 1995 S.B. 116)

**Marriage dissolution or annulment--revocation of transfer to former spouse or relative of spouse, exception--remarriage to spouse, nullification of annulment, effect, relative of the owner's spouse, defined.**

461.051. 1. If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former spouse or a relative of the owner's former spouse is revoked on the date the marriage is dissolved or annulled, whether or not the beneficiary designation refers to marital status. The beneficiary designation shall be given effect as if the former spouse or relative of the former spouse had disclaimed the revoked provision.

2. Subsection 1 of this section does not apply to a provision of a beneficiary designation that has been made irrevocable, or revocable only with the spouse's consent, or that is made after the marriage was dissolved, or that expressly states that marriage dissolution shall not affect the designation of a spouse or relative of a spouse as beneficiary.

3. Any provision of a beneficiary designation revoked solely by this section is revived by the owner's remarriage to the former spouse or by a nullification of the marriage dissolution or annulment.

4. In this section, "a relative of the owner's former spouse" means an individual who is related to the owner's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the owner by blood, adoption or affinity.

(L. 1989 H.B. 145 § 34, A.L. 1995 S.B. 116)

(2001) State statute providing that designation of spouse as beneficiary of a nonprobate asset was automatically revoked upon divorce held to be invalid as preempted by Employee Retirement Income Security Act (ERISA). *Egelhoff v. Egelhoff ex rel. Breiner*, 121 S.Ct. 1322, 149 L.Ed.2d 264.

**Disqualification for fraud, duress and undue influence and causing owner's death--proceeding to determine disqualification.**

461.054. 1. A beneficiary designation or a revocation of a beneficiary designation that is procured by fraud, duress or undue influence is void.

2. A beneficiary who willfully and unlawfully causes or participates with another in causing the death of the owner, or the insured individual under a life insurance policy or certificate, is disqualified from receiving any benefit of a nonprobate transfer from the owner or any proceeds payable as a result of the death of an individual insured under a life insurance policy or certificate. The beneficiary designation shall be given effect as if the disqualified beneficiary had disclaimed it. The fact that a beneficiary willfully and unlawfully caused or participated with another in causing the death of the owner may be established by a criminal conviction or guilty plea, after the right of direct appeal has been exhausted, or determined in a proceeding pursuant to subsection 3 of this section using a preponderance of the evidence standard.

3. On petition of any interested person or the transferring entity, the trier of fact shall determine whether a beneficiary designation or a revocation of a beneficiary designation is void by reason of subsection 1 of this section or whether subsection 2 of this section applies to prevent any person from receiving any benefit of the nonprobate transfer. The trier of fact may mitigate the effect of subsection 1 or 2 on any person as the trier of fact determines justice requires. Any party may demand a jury trial.

(L. 1989 H.B. 145 § 35, A.L. 1995 S.B. 116)

**Omitted spouse or child, probate rules do not apply--after-born child or after-adopted child, effect on nonprobate transfers.**

461.059. 1. No law intended to protect a spouse or child from unintentional disinheritance by the will of a testator shall apply to a nonprobate transfer.

2. A beneficiary designation designating the children of the owner or any other person as a class and not by name shall include all children of the person, whether born or adopted before or after the beneficiary designation is made.

3. If a beneficiary designation names an individual who is a child of the owner, and if the owner has a child born or adopted after the owner makes the beneficiary designation, the after-born or after-adopted child shall be entitled to receive a fractional share of any property otherwise transferable to any child of the owner who is named in the beneficiary designation, computed as follows: the numerator of the fraction shall be one, and the denominator shall be the total number of the owner's children, whether born or adopted before or after the beneficiary designation was made and whether named or not in the beneficiary designation. The property otherwise transferable to the owner's children named in the beneficiary designation shall be reduced in the proportion that their shares bear to each other. If there is no share designated for any child of the owner an after-born or after-adopted child shall receive no share of the property subject to the nonprobate transfer.

4. A beneficiary designation, a governing instrument or the rules of any transferring entity may provide that the after-born child rule does not apply, in which case after-born and after-adopted children of the owner shall receive no share of property designated for named children of the owner.

5. A transferring entity shall have no obligation to apply subsection 3 of this section in making distribution with respect to property registered in beneficiary form. This exception for the transferring entity shall not affect the ownership interest of the after-born or after-adopted child.

(L. 1989 H.B. 145 § 36, A.L. 1995 S.B. 116)

### **Nonprobate transfer rules.**

461.062. 1. The rights and obligations of the owner, beneficiary and transferring entity shall be governed by the nonprobate transfers law of Missouri.

2. When provision for a nonprobate transfer is a matter of agreement between the owner and the transferring entity pursuant to section 461.012, a transferring entity may adopt rules for the making, revocation, acceptance and execution of beneficiary designations and a transferring entity may adopt the rules in subdivisions (1) to (15) of subsection 3 of this section in whole or in part by incorporation by reference.

3. The following rules in subdivisions (1) to (15) of this subsection shall apply to all beneficiary designations except as otherwise provided by any governing instrument, the rules of any transferring entity, applicable law or the beneficiary designation:

(1) A beneficiary designation or a request for registration of property in beneficiary form shall be made in writing, signed by the owner and dated, except as provided in subdivision (2) of this subsection;

(2) A security that is not presently registered in the name of the owner may be registered in beneficiary form on instructions given by a broker or a person delivering the security;

(3) A beneficiary designation may designate one or more primary beneficiaries and one or more contingent beneficiaries;

(4) On property registered in beneficiary form, primary beneficiaries are the persons shown immediately following the transfer on death direction. Words indicating that the persons shown are primary beneficiaries are not required. If contingent beneficiaries are designated, their names in the registration shall be preceded by the words "contingent beneficiaries", or an abbreviation thereof, or words of similar meaning;

(5) Unless a different percentage or fractional share is stated for each beneficiary, surviving multiple primary beneficiaries or multiple contingent beneficiaries share equally. When a percentage or fractional share is designated for multiple beneficiaries, either primary or contingent, surviving beneficiaries share in the proportion that their designated shares bear to each other;

(6) Provision for a transfer of unequal shares to multiple beneficiaries for property registered in beneficiary form may be expressed in the registration by a number preceding the name of each beneficiary that represents a percentage share of the property to be transferred to that beneficiary. The number representing a percentage share need not be followed by the word "percent" or a percent sign;

(7) A nonprobate transfer of property also transfers any interest, rent, royalties, earnings, dividends or credits earned or declared on the property, but not paid or credited before the owner's death;

(8) If a distribution by a transferring entity pursuant to a nonprobate transfer results in fractional shares in a security or other property that is not divisible, the transferring entity may distribute the fractional shares in the name of all beneficiaries as tenants in common or as the beneficiaries may direct, or the transferring entity may sell the property, that is not divisible and distribute the proceeds to the beneficiaries in the proportions to which they are entitled;

(9) On death of the owner, the property, less a setoff for all amounts and charges owing by the owner to the transferring entity, shall belong to the surviving beneficiaries, and their lineal descendants when required as substitutes, as follows:

(a) If a multiple primary beneficiary does not survive and has no surviving lineal descendant substitutes, the nonsurviving primary beneficiary's share shall belong to the surviving primary beneficiaries in the proportion that their shares bear to each other;

(b) If no primary beneficiary or lineal descendant substitute survives, the property shall belong to the surviving contingent beneficiaries in equal shares or in the percentage or fractional share stated;

(c) If a multiple contingent beneficiary does not survive and has no lineal descendant substitutes, the nonsurviving contingent beneficiary's share shall belong to the surviving contingent beneficiaries in the proportion that their shares bear to each other;

(d) If no beneficiary survives the owner, the property shall belong to the owner's estate;

(10) If a trustee designated as a beneficiary does not survive the owner, resigns or is unable or unwilling to execute the trust as trustee, and, if within one year of the owner's death no successor trustee has been appointed or has undertaken to act, or if a trustee is designated as beneficiary and no trust instrument or probated will creating an express trust has been presented to the transferring entity, the transferring entity may in its discretion make the distribution as it would be made if the trust did not survive the owner;

(11) If, within six months of the owner's death, the transferring entity has not been presented evidence that a nonsurviving beneficiary for whom LDPS distribution applies had lineal descendants who survived the owner, the transferring entity may in its discretion make the transfer as if the beneficiary's descendants, if any, did not survive the owner;

(12) If a beneficiary cannot be located at the time the transfer is made to located beneficiaries, the transferring entity shall hold the missing beneficiary's share. If the missing beneficiary's share is not claimed by the beneficiary or the beneficiary's personal representative or successors within one year of the owner's death, the transferring entity shall transfer the share as if the beneficiary did not survive the owner. The transferring entity shall have no obligation to attempt to locate a missing beneficiary, to pay interest on the share held for a missing beneficiary or to invest the missing beneficiary's share in any different property. Cash, interest, rent, royalties, earnings or dividends payable to the missing beneficiary may be held by the transferring entity at interest or reinvested by the

transferring entity in the account or in a dividend reinvestment account associated with a security held for the missing beneficiary;

(13) If a transferring entity is required to make a nonprobate transfer to a minor or a disabled adult the transfer may be made pursuant to the Missouri transfers to minors law, chapter 404, the Missouri personal custodian law, chapter 404, or a similar law of another state;

(14) A written request for execution of a nonprobate transfer may be made by any beneficiary, a beneficiary's legal representative or attorney in fact, or the owner's personal representative. The request shall be under oath or affirmation, subscribed before a notary public or other person authorized to administer oaths, and shall include the following:

(a) The full name, address and tax identification number of each beneficiary;

(b) The percentage or fractional share to be distributed to each beneficiary;

(c) The manner in which percentage or fractional shares in nondivisible property or the proceeds therefrom are to be distributed;

(d) A statement that there are no known disputes as to the persons entitled to a distribution under the nonprobate transfer or the amounts to be distributed to each person, and no known claims that would affect the distribution requested;

(e) Such other information as the transferring entity may require;

(15) A written request pursuant to subdivision (14) of this subsection shall be accompanied by the following:

(a) Any certificate or instrument evidencing ownership of the contract, account, security or property;

(b) Proof of death of the owner and any nonsurviving beneficiary;

(c) An inheritance tax waiver from states that require it;

(d) Where the request is made by a legal representative, a certified copy of the court order appointing the legal representative; and

(e) Such other proof of entitlement as the transferring entity may require.

(L. 1989 H.B. 145 § 37, A.L. 1995 S.B. 116)

### **Transferring entity, protection.**

461.065. 1. The owner in making provision for a nonprobate transfer under sections 461.003 to 461.081 gives to the transferring entity the protections provided in this section for executing the owner's beneficiary designation.

2. The transferring entity may execute a nonprobate transfer with or without a written request.

3. The transferring entity may rely and act on:

(1) A certified or authenticated copy of a death certificate issued by an official or agency of the place where the death occurred as showing the fact, place, date, time of death and the identity of the decedent; or

(2) A certified or authenticated copy of any report or record of a governmental agency, domestic or foreign, that a person is missing, detained, dead or alive and the dates, circumstances and places disclosed by the record or report.

4. The transferring entity may rely and act on, and shall have no duty to verify, information in a written request made by a person specified in subdivision (14) of subsection 3 of section 461.062, under oath or affirmation, subscribed before a notary public or other person authorized to administer oaths, for execution of the beneficiary designation.

5. The transferring entity shall have no duty:

(1) To give notice to any person of the date, manner and persons to whom transfer will be made under the beneficiary designation, except as provided in subsection 6 of this section;

(2) To attempt to locate any beneficiary or lineal descendant substitute, or determine whether a nonsurviving beneficiary or descendant had lineal descendants who survived the owner;

(3) To locate a trustee or custodian, obtain appointment of a successor trustee or custodian, or discover the existence of a trust instrument or will that creates an express trust; or

(4) To determine any fact or law that would cause the beneficiary designation to be revoked in whole or in part as to any person because of change in marital status or other reason, or that would qualify or disqualify any person to receive a share under the nonprobate transfer, or that would vary the distribution provided in the beneficiary designation.

6. (1) The transferring entity shall have no duty to withhold making a transfer based on knowledge of any fact or claim adverse to the transfer to be made unless, prior to the transfer, the transferring entity has received written notice at a place and time and in a manner which affords a reasonable opportunity to act on it before the transfer is made, that:

(a) Asserts a claim of beneficial interest in the transfer adverse to the transfer to be made;

(b) Gives the name of the claimant and an address for communications directed to the claimant;

(c) Identifies the deceased owner and the property to which the claim applies; and

(d) States the amount and nature of the claim as it affects the transfer.

(2) If a notice as provided in subdivision (1) of this subsection is received by the transferring entity, the transferring entity may discharge any duty to the claimant by delivering a notice or sending a notice by certified mail to the claimant at the address given in the notice of claim advising that a transfer adverse to the claimant's asserted claim may be made in thirty days from the date of delivery or mailing unless the transfer is restrained by a court order. If the transferring entity so delivers or mails such a notice it shall withhold making the transfer for thirty days after the date of delivery or mailing and may then make the transfer unless restrained by a court order.

(3) No other notice or other information shown to have been available to the transferring entity, its transfer agent and their employees, shall affect the right to the protections provided in sections 461.003 to 461.081.

7. The transferring entity shall have no responsibility for the application or use of property transferred to a fiduciary which the fiduciary as such is entitled to receive.

8. Notwithstanding the protections provided the transferring entity in sections 461.003 to 461.081, in the event the transferring entity is uncertain as to the beneficiary entitled to receive a transfer or the beneficiary's proper share, or in the event of a dispute as to the proper transfer, the transferring entity may require the parties to adjudicate their respective rights or to furnish an indemnity bond protecting the transferring entity.

9. A transfer by the transferring entity in accordance with sections 461.003 to 461.081 and pursuant to the beneficiary designation in good faith and in reliance on information the transferring entity reasonably believes to be accurate, discharges the transferring entity from all claims for the amounts paid and the property transferred.

10. The protections provided a transferring entity in sections 461.003 to 461.081 are in addition to protections provided by chapters 400, 403, 404 and 456.

(L. 1989 H.B. 145 § 38, A.L. 1995 S.B. 116)

**Rights of owners and beneficiaries--improper distribution, liability of distributee--purchasers from distributee protected.**

461.067. 1. Any protection provided to a transferring entity or to a purchaser or lender for value under sections 461.003 to 461.081 shall have no bearing on the rights of beneficiaries or others in disputes among themselves concerning the ownership of the property.

2. Unless the payment or transfer can no longer be questioned because of adjudication, estoppel or limitations, a transferee of money or property pursuant to a nonprobate transfer that was improperly distributed or paid, is liable to return to the transferring entity or deliver to the rightful transferees the money or property improperly received and the income earned thereon by the transferee. If the transferee does not have the property, then the transferee is liable to return the value of the property as of the date of disposition, and the income and gain received by the transferee from the property and its proceeds. If the transferee has encumbered the property, the transferee shall satisfy any debt incurred that imposes an encumbrance on the property, sufficient to release any security interest, lien or other encumbrance on the property.

3. A purchaser for value of property or a lender who acquires a security interest in the property from a beneficiary of a nonprobate transfer after the death of the owner, in good faith, takes the property free of any claims of or liability to the owner's estate, creditors of the owner's estate, persons claiming rights as beneficiaries under the nonprobate transfer or heirs of the owner's estate, in absence of actual knowledge that the transfer was improper or that the information in an affidavit, if any, provided pursuant to subdivision (14) of subsection 3 of section 461.062 is not true; and, a purchaser or lender for value shall have no duty to verify sworn information relating to the nonprobate transfer. The protection provided by this subsection applies to information that relates to the ownership interest of the beneficiary in the property and the beneficiary's right to sell, encumber and transfer good title to a purchaser or lender and does not relieve a purchaser or lender from the notice imparted by instruments of record respecting the property.

4. A nonprobate transfer that is improper because of the application of sections 461.045 to 461.059 shall impose no liability on the transferring entity if made honestly in good faith, regardless of any negligence in determining the proper transferees. The remedy of the rightful transferees shall be limited to an action against the improper transferees.

(L. 1989 H.B. 145 § 39, A.L. 1995 S.B. 116)

#### **Rights of creditors.**

461.071. A deceased owner's creditors, surviving spouse and unmarried minor children shall have the rights set forth in section 461.300 with respect to the value of property passing by nonprobate transfer.

(L. 1989 H.B. 145 § 40, A.L. 1995 S.B. 116)

#### **Scope and application of law.**

461.073. 1. Subject to the provisions of section 461.079, sections 461.003 to 461.081 apply to a nonprobate transfer on death if at the time the owner designated the beneficiary:

(1) The owner was a resident of this state;

(2) The obligation to pay or deliver arose in this state or the property was situated in this state; or

(3) The transferring entity was a resident of this state or had a place of business in this state or the obligation to make the transfer was accepted in this state.

2. The direction for a nonprobate transfer on death of the owner and the obligation to execute the nonprobate transfer remain subject to the provisions of sections 461.003 to 461.081 despite a subsequent change in the beneficiary, in the rules of the transferring entity under which the transfer is to be executed, in the residence of the owner, in the residence or place of business of the transferring entity or in the location of the property.

3. Sections 461.003 to 461.045 and 461.059 to 461.065 do not apply to accounts or deposits in financial institutions unless the provisions of sections 461.003 to 461.081 are

incorporated into the certificate, account or deposit agreement in whole or in part by express reference.

4. Sections 461.003 to 461.081 apply to transfer on death directions given to a personal custodian under the Missouri personal custodian law to the extent that they do not conflict with section 404.560.

5. Sections 461.003 to 461.045 and 461.059 to 461.065 do not apply to certificates of ownership or title issued by the director of revenue.

6. Sections 461.003 to 461.045, 461.051 and 461.059 to 461.081 do not apply to property, money or benefits paid or transferred at death pursuant to a life or accidental death insurance policy, annuity, contract, plan or other product sold or issued by a life insurance company unless the provisions of sections 461.003 to 461.081 are incorporated into the policy or beneficiary designation in whole or in part by express reference.

7. Sections 461.003 to 461.045 and 461.059 to 461.065 do not apply to any nonprobate transfer where the governing instrument or law expressly provides that the nonprobate transfers law of Missouri shall not apply.

8. Section 461.051 shall not apply to any employee benefit plan governed by 29 U.S.C. Section 1001 et seq.

(L. 1989 H.B. 145 § 41, A.L. 1995 S.B. 116, A.L. 2001 H.B. 644 merged with S.B. 227)

#### **Jurisdiction of probate division of circuit court.**

461.076. The probate division of the circuit court may hear and determine questions and issue appropriate orders concerning the determination of the beneficiary who is entitled to receive a nonprobate transfer, the proper share of each beneficiary and any action to obtain the return of any money or property, or its value and earnings, improperly distributed to any person.

(L. 1989 H.B. 145 § 42, A.L. 1995 S.B. 116)

#### **Beneficiary designation valid under law of another state enforceable in Missouri--effect of transfer determined by local law selected in document or designation.**

461.079. 1. A beneficiary designation that purports to have been made and which is valid under the Uniform Probate Code, Uniform TOD Security Registration Law or similar law of another state is governed by the law of that state and the nonprobate transfer may be executed and enforced in this state.

2. The meaning and legal effect of a nonprobate transfer shall be determined by the local law of the particular state selected in a governing instrument or beneficiary designation.

3. The provisions of this chapter shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of this chapter among states enacting a similar law.

(L. 1995 S.B. 116)

**Nonprobate transfer laws to be effective when--prior transfers to be valid.**

461.081. 1. Sections 461.003 to 461.081 shall apply to beneficiary designations for nonprobate transfers made on and after August 28, 1989. Sections 461.003 to 461.081 shall apply to all nonprobate transfers occurring on and after January 1, 1990.

2. Any provision for a nonprobate transfer of money, benefits or property at death as now permitted in sections 461.003 to 461.081, purported to have been made before August 28, 1989, is validated notwithstanding that there was no specific statutory authority for making the nonprobate transfer in that manner at the time provision for the nonprobate transfer was made.

(L. 1989 H.B. 145 § 43)

**Recipients of recoverable transfer to pay pro rata share of all property received to cover statutory allowances and claims due estate, enforced by action for accounting, time limitation--action affect on transferring entity.**

461.300. 1. Each recipient of a recoverable transfer of a decedent's property shall be liable to account for a pro rata share of the value of all such property received, to the extent necessary to discharge the statutory allowances to the decedent's surviving spouse and dependent children, and claims remaining unpaid after application of the decedent's estate, including expenses of administration and costs as provided in subsection 3 of this section, and including estate or inheritance or other transfer taxes imposed by reason of the decedent's death only where payment of those taxes is a prerequisite to satisfying unpaid claims which have a lower level of priority. No proceeding may be brought under this section when the deficiency described in this subsection is solely attributable to costs and expenses of administration.

2. The obligation of a recipient of a recoverable transfer may be enforced by an action for accounting commenced within eighteen months following the decedent's death by the decedent's personal representative or a qualified claimant, but no action for accounting under this section shall be commenced by any qualified claimant unless the personal representative has received a written demand therefor by a qualified claimant, within sixteen months following the decedent's death. If the personal representative fails to commence an action within thirty days of the receipt of a written demand to do so, any qualified claimant may commence such action. If the personal representative fails to commence the action, the personal representative shall disclose to the qualified claimant or qualified claimants who made such written demand all material knowledge within the possession of the personal representative reasonably relating to the identity of any recipient of a recoverable transfer made by the decedent. In the event the personal representative fails to provide such information with respect to any recoverable transfer of the decedent's property to the personal representative, the eighteen-month limitation is tolled for such recoverable transfer until such time as the personal representative provides such information. In the event the personal representative is alleged in a verified pleading to be a recipient of a recoverable transfer from the decedent, the court may appoint an administrator ad litem to represent the estate in any proceeding brought pursuant to this

section. Sums recovered in an action for accounting under this section shall be administered by the personal representative as part of the decedent's estate.

3. The judgment in a proceeding authorized by this section shall take into account the expenses of administration of the estate including the cost of administering the additional assets obtained in the proceeding, and the costs of the proceeding to the extent authorized by this subsection. The court may order the costs of the proceeding, including attorney fees, to be treated as expenses of administration of the estate.

4. If an action for accounting has been commenced under this section within eighteen months following the decedent's death, then any party to the proceeding may join and bring into the action for accounting any other recipient of a recoverable transfer of the decedent's property even if the other recipient is not joined until more than eighteen months following the decedent's death. If an action for accounting has been commenced under this section more than eighteen months following the decedent's death pursuant to the tolling provisions of subsection 2 of this section, then the personal representative, or former personal representative, who received a recoverable transfer of the decedent's property shall be liable to account under the provisions of subsection 1 of this section for the value of all such property received by such personal representative, or former personal representative, and no other recipient of a recoverable transfer of the decedent's property may be joined or brought into the action, and in such case, full recovery, rather than pro rata recovery, may be had from the recoverable property received by such personal representative or former personal representative.

5. This section shall not affect the right of any transferring entity, as defined in section 461.005, to execute a direction of the decedent to make a payment or to make a recoverable transfer on death of the decedent, or make the transferring entity liable to the decedent's estate, unless before the payment or transfer is made the transferring entity has been served with process in a proceeding brought under this section and the transferring entity has had a reasonable time to act on it.

6. This section does not create a lien on any property that is the subject of a recoverable transfer, except as a lien may be perfected by the way of attachment, garnishment, or judgment in an accounting proceeding authorized by this section.

7. An action for accounting under the provisions of this section may be filed in the probate division of the circuit court, and the probate division of the circuit court may hear and determine questions and issue appropriate orders in an action for accounting under this section. Any proceeding under this section and any statements by a personal representative in connection with any recoverable transfer shall be deemed to be proceedings or statements under the probate code that are subject to section 472.013.

8. The recipient of any property held in trust that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, and the recipient of any property held in joint tenancy with right of survivorship that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, are subject to this section, but only to the extent of the decedent's contribution to the value of the property.

9. The provisions of this section shall apply to all actions commenced after August 28, 1995, except that with respect to decedents dying prior to August 28, 1995, an action for

accounting under this section may be commenced within two years following the decedent's death.

10. As used in this section, the following terms mean:

(1) "Creditor", any person to whom the decedent is liable, which liability survives whether arising in contract, tort, or otherwise, and any person to whom the decedent's estate is liable for funeral expenses and the reasonable cost of a tombstone;

(2) "Dependent child", the decedent's minor children whom the decedent was obligated to support and the children who were in fact being supported by the decedent;

(3) "Qualified claimant", a creditor, surviving spouse, dependent child, or a person acting for a dependent child of the decedent;

(4) "Recoverable transfer", a nonprobate transfer of a decedent's property under sections 461.003 to 461.081 and any other transfer of a decedent's property other than from the administration of the decedent's probate estate that was subject to satisfaction of the decedent's debts immediately prior to the decedent's death, but only to the extent of the decedent's contribution to the value of such property.

*Educational Material provided by*

**RICHARD J. HERNDON**

*Attorney at Law*

455 Sam Barr Drive, Suite 207

P.O. Box 617

Kearney, Missouri 64060

(816) 628-4900 ♦ (800) 494-2218

Rick@KCTrustlaw.com