

*It Sure Can Get Cold in Des Moines**:
Why the Iowa Legislature Has Remained
Frozen on Transfer on Death Deeds for
Real Property

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ABSTRACT: The Iowa State Legislature has considered the Real Property Transfer on Death Act three times since 2016. Each time it has failed to pass the legislation. This means Iowans are unable to transfer real property at death outside of probate. Without the Act, Iowans are subject to the time and expense of probate to transfer what is often their most valuable asset—real property. The Act would allow real property to pass outside of probate, easing the burden of transferring real property and simplifying the procedure. Iowans are unable to transfer real property in this manner, but their neighbors in Missouri, Illinois, Wisconsin, Minnesota, Nebraska, and South Dakota can. The legislature considered three bills, each reflecting the Uniform Law Commission’s Real Property Transfer on Death Act’s text. The language of each bill was similar, but not identical. The slight differences in word choice in each act may indeed be significant. The Act failed in the legislature due to opposition from lobbyists representing interest groups with concerns about its impact, combined with a lack of widespread interest in the legislature to pass it. In addition to comparing each bill, this analysis includes input from those involved in advancing the Act in Iowa, as well those opposed to it. This Note will argue that the Act should be passed in Iowa with adequate education and awareness of the Act’s benefits, and with certain textual changes to the proposed legislation that may address concerns about its passage.

* TOM T. HALL, *It Sure Can Get Cold in Des Moines*, on IN SEARCH OF A SONG (Mercury Records 1971).

** J.D. Candidate, The University of Iowa College of Law, 2023; M.S., B.S., University of Missouri, 2015. I dedicate this Note to Mark B. Flaherty, the greatest Iowa Hawkeye I know. A very special thank you to Missouri and Kansas trust and estates attorney Jim Hart for his valuable insight. I also thank the professors at The University of Iowa College of Law, state legislators, state lobbyists, and the *Iowa Law Review* Editors and Student Writers. This piece would not be possible without them.

INTRODUCTION	903
I. PRESENT-DAY REAL PROPERTY TRANSFERS IN IOWA, AND THE DEVELOPMENT OF THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT	904
A. <i>OPTIONS CURRENTLY AVAILABLE FOR TRANSFERRING REAL PROPERTY AT DEATH IN IOWA</i>	905
B. <i>THE ULC'S ROLE IN DEVELOPING UNIFORM LAWS</i>	906
C. <i>THE BENEFITS AND LIMITATIONS OF UNIFORM LAWS DEVELOPED BY THE ULC</i>	908
D. <i>IOWA'S RELATIONSHIP WITH UNIFORM LAWS DEVELOPED BY THE ULC</i>	908
E. <i>THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT'S TERMS AND ITS IMPLEMENTATION IN OTHER JURISDICTIONS</i>	909
1. The Act's Terms	909
2. The Act in Other Jurisdictions	911
F. <i>THE DRAFTING OF THE UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT</i>	912
II. AVOIDING PROBATE	913
III. CONSIDERATION OF THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT IN IOWA	914
A. <i>THE HISTORY OF THE ACT IN THE IOWA STATE LEGISLATURE</i>	914
B. <i>TEXTUAL COMPARISON OF EACH BILL</i>	916
C. <i>THE OPPOSITION TO THE ACT IN IOWA</i>	917
1. Identifying Those Groups Opposed to the Act.....	918
i. <i>S.F. 2117</i>	918
ii. <i>S.F. 393</i>	919
iii. <i>S.F. 2030</i>	920
2. Identifying the Reasons for Opposition to Enacting the Act in Iowa.....	921
D. <i>THE SUPPORT FOR THE ACT IN IOWA</i>	922
1. Identifying Those in Favor of the Act.....	923
2. Identifying Proponents' Reasons for Supporting the Act.....	923
i. <i>Responding to Iowans' Requests for a Nonprobate Mechanism for Real Property</i>	924
ii. <i>Competition with Other Similarly Situated States</i>	924
IV. RECOMMENDATIONS	926
A. <i>TEXTUAL SOLUTIONS AND RECOMMENDATIONS</i>	926
B. <i>OTHER RECOMMENDATIONS</i>	928

CONCLUSION	928
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INTRODUCTION

In June 2021, the Iowa Court of Appeals decided *King v. Smith*.¹ The case represents a tale familiar to many Iowans: a dispute over succession of the family farm.² Charley and Lillie Smith tried to transfer their farm through a deed, which transferred the property to their children upon their death, while retaining use of the farm during their lifetime.³ After both Charley and Lillie died, a niece and nephew of the Smith’s challenged the purported transfer.⁴ The Iowa Court of Appeals held the deed invalid,⁵ noting that the Smiths attempted a “transfer-on-death deed, which was not authorized in Iowa at the time and which [the court] do[es] not sanction now.”⁶ The Smiths’ story is not unique; for any Iowan attempting to transfer real property at their death, probate of a will or the creation of a trust is required.⁷

Perhaps most strikingly, the court reached its conclusion despite recognizing the clear intention of the Smiths.⁸ As the court explained, “[t]he best made plans can be defeated without the proper tools.”⁹ That tool is

1. *King v. Smith*, No. 20-0137, 2021 WL 2453051, at *1 (Iowa Ct. App. June 16, 2021).

2. *Id.* at *1–3.

3. The court explained that the Smiths attempted to execute a “warranty deed” to convey property to two of their three children, Carolyn Stanley and Ward Smith, as tenants in common, while retaining her ability to possess and profit off the farm during their life. *Id.* The relevant language of the deed is included below:

Grantors herein reserve unto themselves, and each of them, or the survivor of them, for their natural lives or the natural life of the survivor of them, all the rights of possession, rents and profits of the above described real estate, and further reserve unto themselves, each of them, or the survivor of them, the right to mortgage, sell, or transfer said property for and during their natural life and the natural life of the survivor of them, in accordance with Supreme Court decisions of the State of Iowa, without the consent of the grantees herein. It is understood by grantors herein that they are creating or retaining an estate in joint tenancy with right of survivorship in the above described property for themselves as husband and wife.

Id. at *1.

4. *Id.* at *1–3.

5. *Id.* at *4–8. However, other states have upheld statutes allowing the use of a form to transfer real property at death, even where another state’s interest is at issue. *See Lomelino v. Lomelino*, No. 28530, 2020 WL 1991421, at *2 (Ohio Ct. App. Apr. 24, 2020) (“Ohio’s interest in upholding a transfer on death of Ohio real property outweighed Illinois’s interest that its guardianship laws be enforced.”).

6. *King*, 2021 WL 2453051, at *6.

7. *Id.* at *6–7.

8. *Id.* at *6 (“We recognize the stated intention of Lillie and Charley—to both convey the family farm to their children in an inter vivos conveyance while keeping all rights and interests in the property for themselves during their lifetimes—is at odds with what one can do with a deed under Iowa law.”).

9. *Id.* at *1.

the Uniform Real Property Transfer on Death Act of 2009 (“Act”).¹⁰ This Act would have allowed the Smiths to transfer their family farm as they both intended. However, the Act, despite its benefits and adoption by a growing number of states, has yet to be adopted by the Iowa legislature.¹¹ The Iowa Court of Appeals acknowledged in *King* that the state legislature failed to pass the Act three times in recent years.¹² The outcome of *King*, along with the interests of real property-owning Iowans, necessitates a discussion as to why this powerful tool is unavailable within the state and why each attempt at passing legislation allowing a transfer on death deed failed in the state legislature.

This Note provides a background of transfer on death deeds. It identifies why these deeds are not possible in Iowa by aggregating the legislative history on transfer on death deeds in the state legislature and compares three separate versions of the Act recently considered by the legislature. Each bill was met with support and opposition, and the reasons for each position are outlined below. Finally, this Note proposes a solution that addresses the concerns of proponents and opponents of the legislation. A Uniform Real Property Transfer on Death Act can be passed in Iowa that addresses the concerns of those opposed to it, while retaining the Act’s core benefits.

I. PRESENT-DAY REAL PROPERTY TRANSFERS IN IOWA, AND THE DEVELOPMENT OF THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

The Iowa State Legislature has failed to pass the Uniform Real Property Transfer on Death Act. The failure to adopt the Act should be understood in context. First, this Note discusses the options currently available for Iowans attempting to transfer real property at death. Second, it discusses the process of developing uniform laws. Third, it identifies the benefits and limitations of the Uniform Law Commission (“ULC”) in developing uniform laws. Fourth, this Note discusses some of the uniform laws the Iowa State Legislature has adopted, and fifth, it documents the Uniform Real Property Transfer on Death Act’s terms and its implementation in other jurisdictions. Sixth, this Note acknowledges the success of the Act in other jurisdictions. Through this lens, one may fully understand the text of the Act, and identify potential solutions to any textual shortcomings identified by those opposed to the Act. The growing number of states¹³ adopting the Uniform Real Property Transfer on Death Act weighs in favor of Iowa’s legislature reconsidering the Act.

10. See *id.* at *5.

11. *Id.* (“Iowa is not one of those states.”).

12. *Id.* (“In fact, the Uniform Real Property Transfer on Death Act has been introduced in the Iowa legislature at least three times without being adopted.”).

13. See *Real Property Transfer on Death Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?communitykey=a4be2b9b-5129-448a-a761-a5503b37d884&tab=groupdetails> [<https://perma.cc/7V7W-XWL4>].

The statute's popularity among states reflects its importance and its necessity. The legal development allowing specific assets to be transferred at death through the use of a form "has been one of the most important recent innovations in American property law."¹⁴ For many Americans, regardless of their means, real property can be their most significant asset.¹⁵ By allowing real property to pass outside of probate through the use of a form, the Act allows "an economical and simple" way for families to transfer property from one generation to the next.¹⁶ One wishing to transfer real property at death through the use of a form may prefer this method of transfer for a variety of reasons, not the least of which is avoiding the costly and lengthy process of probate itself.¹⁷ Probate can consume considerable time, financial resources, and erode privacy.¹⁸

A. *OPTIONS CURRENTLY AVAILABLE FOR TRANSFERRING REAL PROPERTY AT DEATH IN IOWA*

For Iowans planning to transfer real property at death, there are three main options. First, Iowans dying without a will may pass real property based on default rules. These rules allow individuals to transfer real property at their death to surviving spouses,¹⁹ lineal descendants,²⁰ and others.²¹ The transfer is governed by the legislature's default rules, known as intestacy statutes, which are designed to approximate how the *majority* of people would pass property at their death and are not tailored to fit the needs of every individual

14. Jared N. Kawashima & Dwight K. Muraoka, *The Hawai'i Uniform Real Property Transfer on Death Act—Another Tool in the Estate Planner's Arsenal*, 16 HAW. BAR J. 43, 43-44 (2013).

15. John O. McGinnis, *The Sharing Economy as an Equalizing Economy*, 94 NOTRE DAME L. REV. 329, 337-38 (2018) (detailing the flow of capital in modern society and acknowledging that "people's most important capital asset . . . [is] their home").

16. Kawashima & Muraoka, *supra* note 14, at 46.

17. Stephanie Emrick, Note, *Transfer on Death Deeds: It Is Time to Establish the Rules of the Game*, 70 FLA. L. REV. 469, 475-76 (2018).

18. *Id.* (noting that probate includes costs for attorneys, court costs, personal representative costs, and explaining that public probate proceedings often undermine families' privacy).

19. See IOWA CODE § 633.211 (2022) (describing that "legal or equitable estates in real property" will pass to a surviving spouse when a decedent dies without a will).

20. *Id.* The Iowa Code defines issue as "all lawful lineal descendants of a person, whether biological or adopted, except those who are the lineal descendants of the person's living descendants." *Id.* § 633.3.

21. *Id.* § 633.219. If there is no surviving spouse and no issue of the decedent, the estate will pass "to the issue of the decedent's mother . . . [and] to the issue of the decedent's father." *Id.*

transferring property at death.²² A court must also supervise the transfer of ownership, in a process known as *probate*.²³

Second, Iowans may transfer real property through the creation of a will.²⁴ For a will to be valid, it must comply with formalities enumerated in the corresponding Iowa statute.²⁵ A court must determine whether the will is valid.²⁶ Property transfers through a will are also subject to probate, and a court must supervise the transfer of ownership.²⁷

Third, Iowans may transfer real property at death through trusts.²⁸ Trusts are created by separating legal and equitable property interests by vesting legal title in one or more persons for the equitable benefit of others.²⁹ Property “in a trust will pass to the persons named as beneficiaries of the trust.”³⁰ In Iowa, trusts do not require probate.³¹ However, if an individual’s will transfers property to a trust (as is often the case when individuals are seeking to transfer property at their death outside of probate),³² the will itself still must be probated.³³ Trusts creation can be prohibitively expensive.³⁴

Finally, the Uniform Real Property Transfer on Death Act, developed by the ULC, could provide a fourth option to Iowans.³⁵

B. THE ULC’S ROLE IN DEVELOPING UNIFORM LAWS

To adequately evaluate the Uniform Real Property Transfer on Death Act, it is beneficial to understand the organization responsible for drafting

22. Mary Louise Fellows, *In Search of Donative Intent*, 73 IOWA L. REV. 611, 657 (1988) (arguing that intestacy laws represent the majority of individuals’ intent in passing their property at death and advocating for the majoritarian approach in default laws with respect to transferring property at death).

23. *Probate*, IOWA STATE BAR ASS’N, <https://www.iowabar.org/?pg=LegalInfoProbate> [<https://perma.cc/RCL2-FBMM>].

24. IOWA CODE § 633.264.

25. *See id.* 633.279 (enumerating the requirements for wills to be valid, including that wills “must be in writing, signed by the testator . . . and witnessed, at the testator’s request, by two competent persons who signed as witnesses in the presence of the testator”).

26. *See Probate, supra* note 23.

27. *See id.*

28. IOWA CODE § 633.275.

29. *See Trust*, BLACK’S LAW DICTIONARY (10th ed. 2014).

30. *Probate, supra* note 23.

31. *Id.*

32. *See* PRAC. L. TRUSTS & ESTS., POUR-OVER WILL, Westlaw W-009-2315, [https://1.next.westlaw.com/Document/I79987b8c6ada11e79bef99c0e06c731/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)&view=hidealldraftingnotes](https://1.next.westlaw.com/Document/I79987b8c6ada11e79bef99c0e06c731/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)&view=hidealldraftingnotes) [<https://perma.cc/69KW-6DQ8>].

33. *See Probate, supra* note 23.

34. *Id.*

35. *See* King v. Smith, No. 20-0137, 2021 WL 2453051, at *5-6 (Iowa Ct. App. June 16, 2021).

uniform laws. Uniform laws are developed by the ULC.³⁶ The ULC was established in 1892 and “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”³⁷ Individual states appoint members to the ULC.³⁸ These members run the gamut of the legal profession, including judges, attorneys, lawmakers, and professors, but each is required to be a member of the bar in which they practice.³⁹ States provide funding for the ULC, which is a nonprofit entity.⁴⁰

The purposes of the ULC are varied, but several are particularly important to the pecuniary concerns of Iowans. The ULC seeks to encourage economic growth in the laws it develops.⁴¹ It seeks to promote this growth through creating commissions to draft laws in a variety of contexts, including wide-ranging subjects such as trade secret law,⁴² online privacy,⁴³ tribal law,⁴⁴ philanthropic law,⁴⁵ and most relevantly, probate law.⁴⁶ The ULC has a joint editorial board for developing Uniform Trust and Estate Acts.⁴⁷ The economic benefits of the Uniform Real Property Transfer on Death Act (drafted by the ULC) are significant and will result in pecuniary benefits to Iowans by reducing the cost of transferring what is often a family’s most valuable asset: land.⁴⁸ Transferring real property outside of probate reduces the cost of the transfer, and these savings can be significant.⁴⁹

36. *About Us*, UNIF. L. COMM’N, <https://uniformlaws.org/aboutulc/overview> [<https://perma.cc/58W3-9R3X>].

37. *Id.*

38. *Id.* It is also important to note the ULC’s positive impact on Federalism. “ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.” *Id.*

39. *Id.*

40. *Id.* This status is important because the ULC provides services that otherwise may be unavailable to states. The “ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.” *Id.*

41. *Id.*

42. See Matthew M. Allen, Comment, *How Secret Is Secret Enough? The Need to Clarify Ohio’s “Reasonable Efforts to Maintain Secrecy” Standard*, 84 U. CIN. L. REV. 1335, 1339–40 (2016).

43. See Samuel A. Thumma, *When You Cannot “Just Say No”: Protecting the Online Privacy of Employees and Students*, 69 S.C. L. REV. 1, 4 (2017).

44. See Marc L. Roark, *Scaling Commercial Law in Indian Country*, 8 TEX. A&M L. REV. 89, 91 (2020).

45. See generally David M. Lenz, *The Philanthropic Conversation in 2019—More Than Just Tax Talk*, 29 OHIO PROB. L.J. NL 14 (2019) (discussing philanthropic and tax-exempt law).

46. See generally Richard E. Davis & Danielle J. Halachoff, *Back to the Past: A Return to the Gilded Age?*, 28 OHIO PROB. L.J. 7 (2018) (discussing trusts and probate law).

47. See *Joint Editorial Board for Uniform Trust and Estate Acts*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=b8aed336-27d8-460b-818d-gc20fb64a213> [<https://perma.cc/4D2P-E8WV>] (listing the current board members in 2022).

48. See sources cited *supra* notes 15–16 and discussion *infra* Part II.

49. See *infra* Part II.

C. *THE BENEFITS AND LIMITATIONS OF UNIFORM LAWS DEVELOPED BY THE ULC*

Uniform laws developed by the ULC provide significant benefits. The ULC leverages expertise from a variety of gifted professionals.⁵⁰ These professionals are tasked with a significant challenge, to develop laws that will fit the needs of each state and that will be adopted by each state legislature.⁵¹

However, the ULC's uniform laws are not without limitations. To be sure, the ULC is an unelected body, and its members are not subject to the constraints of the electorate.⁵² Also, because the ULC often consists of experts in a particular field of study, there is a potential that the laws it drafts are overly technical.⁵³ There is also a risk that the ULC, because it is a relatively small, unelected body, may be susceptible to the policy preferences of its members, rather than drafting laws that reflect the policy preferences of the widest possible swath of the American population.⁵⁴ The benefits of the ULC, and its limitations, reflect the tradeoff inherent in allowing experts to promulgate laws for adoption by each state's legislature.

D. *IOWA'S RELATIONSHIP WITH UNIFORM LAWS DEVELOPED BY THE ULC*

Iowa has enacted laws promulgated by the ULC. In 2021 alone, the Iowa legislature has enacted the ULC's Custodial Trust Act and the Civil Remedies for Unauthorized Disclosure of Intimate Images Act.⁵⁵ The state also adopted ULC laws pertaining to gifts at death.⁵⁶ In 2007, the state adopted the Uniform Anatomical Gift Act.⁵⁷ The Uniform Anatomical Gift Act allows that the "gift of a donor's body or part may be made during the life of the donor

50. See Edward J. Janger, *Predicting When the Uniform Law Process Will Fail: Article 9, Capture, and the Race to the Bottom*, 83 IOWA L. REV. 569, 582–84 (1998) (acknowledging the potential strengths of the ULC drafting process while also discussing its limitations).

51. See *id.*

52. See *id.* (arguing that because the ULC is unelected, it presents issues with representation, specifically that "[i]n short, there are two forces that may lead to a failure of the uniform law process: failure of representation at either the ALI/NCCUSL level or at the state level, and state competition in its pernicious form" (footnote omitted)).

53. See *id.* at 583.

54. See *id.* at 585–86.

55. UNIF. L. COMM'N, LEGISLATIVE REPORT BY STATE – 2021, at 2 (2021), <https://www.uniformlaws.org/viewdocument/legislative-report-by-state> [<https://perma.cc/T2XP-MDDC>].

56. *Anatomical Gift Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=015e18ad-4806-4dff-b011-8e1ebcod1dof> [<https://perma.cc/FZ8F-LSDV>]. The Iowa Supreme Court also recognized the importance of honoring decedents' wishes for their bodily property at death. See Timothy J. Farmer, *Don't Die in Iowa: Restoring Iowans' Right to Direct Final Disposition of Their Bodily Remains*, 100 IOWA L. REV. 1813, 1816 (2015) ("The Iowa Supreme Court said it best: '[I]t always has been, and will ever continue to be, the duty of courts to see to it that the expressed wish of one, as to his final resting place, shall, so far as it is possible, be carried out.'" (alteration in original) (quoting *Thompson v. Deeds*, 61 N.W. 842, 843 (Iowa 1895))).

57. *Anatomical Gift Act*, *supra* note 56.

for the purposes of transplantation, therapy, research, or education.”⁵⁸ However, Iowa has also lagged behind other states in adopting uniform laws in other contexts, including estate tax.⁵⁹ Iowa remains one of fifteen states yet to adopt the Uniform Trust Code.⁶⁰

E. THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT’S TERMS AND ITS IMPLEMENTATION IN OTHER JURISDICTIONS

1. The Act’s Terms

The Act’s terms attempt to address the pitfalls associated with the probate process. First, and most significantly, the Act allows landowners to continue their ownership during life and transfer their ownership to beneficiaries only at their death.⁶¹ The Act authorizes persons to “transfer property to one or more beneficiaries effective at the transferor’s death by a transfer on death deed.”⁶² This feature allows landowners to transfer land at their death without a will to beneficiaries of their choice, thus avoiding Iowa’s default rules for those dying without a will and avoiding the process of probating a will. The Act also allows a landowner to retain full ownership during life and transfer at death without creating a trust.⁶³

The Act allows landowners to avoid probate while also maintaining land records. At the transferor’s death, “the interest[s] in the property [are] transferred to the designated beneficiar[ies] in accordance with the deed.”⁶⁴ This transfer is automatic and takes place without court supervision or

58. IOWA CODE § 142C.3 (2019).

59. *Estate Tax Apportionment Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=12be76fb-24cd-4db6-a8cb-87f1d654a1fe> [<https://perma.cc/GC56-5MSK>] (showing the act has been adopted by Mississippi, Maine, Colorado, Massachusetts, Arkansas, Alabama, New Mexico, Washington, Idaho, North Dakota, and Hawaii).

60. *Trust Code*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d> [<https://perma.cc/829J-GT82>] (showing the code has been adopted by Hawaii, Illinois, Connecticut, Colorado, New Jersey, Minnesota, Kentucky, Maryland, Mississippi, Wisconsin, Montana, Massachusetts, West Virginia, Michigan, Vermont, Arizona, North Dakota, Ohio, Alabama, Florida, Pennsylvania, Oregon, Arkansas, North Carolina, Virginia, South Carolina, New Hampshire, Missouri, Tennessee, Maine, Utah, New Mexico, Wyoming, Nebraska, and Kansas as well as introduced in New York).

61. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 12 (UNIF. L. COMM’N 2009).

62. *Id.* § 5. In an introductory note to the Act, the ULC acknowledged that “[o]ne of the main innovations in the property law of the twentieth century has been the development of asset-specific will substitutes for the transfer of property at death. By these mechanisms, an owner may designate beneficiaries to receive the property at the owner’s death without waiting for probate and without the beneficiary designation needing to comply with the witnessing requirements of wills.” *Id.* prefatory note at 1.

63. *Id.* prefatory note at 1.

64. *Id.* § 13(a). The Act also allows several optional exceptions according to state law, including “state statutes on antilapse, revocation by divorce or homicide, survival and simultaneous death, and elective share, if applicable to nonprobate transfers.” *Id.*

probate.⁶⁵ The Act also includes a proposed form landowners can use to create a transfer on death deed.⁶⁶ The form instructs the user to identify the “[l]egal description of the property,” to have the form notarized as well as recorded, and provides details as to how the transfer on death deed may be revoked prior to death.⁶⁷

The Act maintains privacy for landowners. It allows landowners to determine their beneficiaries without notifying or involving the beneficiaries in the creation of the transfer on death deed.⁶⁸ It also does not require acceptance from the beneficiaries.⁶⁹ This contrasts with a trust, which requires trustees to inform beneficiaries of legal and equitable interests in the trust.⁷⁰ The Act also preserves landowners’ privacy relative to wills, as wills require court supervision during probate.

Transfer on death deeds authorized by the Act also provide flexibility. In effect, the transfer on death deed seeks to allow transferors to retain control of their real property during life and transfer it at death in a simple manner that is also revocable.⁷¹ The form grants property rights to the transferor’s beneficiaries, but these rights are not effective until the transferor’s death.⁷²

The deed is a powerful mechanism through which people can achieve flexibility in their affairs but also retain simplicity in transferring real property. Transfer on death deeds are flexible because they are revocable during a landowner’s life.⁷³ They are simple because they allow an individual to fill out a single form that transfers the landowner’s ownership in real property to beneficiaries at their death.⁷⁴ This transfer does not require probate, a will, or a trust, nor does it require an attorney (although the recommended form’s instructions make it clear that the user should consult an attorney).⁷⁵ Because of this flexibility and simplicity, it is easy to understand why many state legislatures have adopted some form of the Act.

Iowa is not one of them. Despite the growing trend of states allowing nonprobate transfers, Iowa has yet to adopt a statute allowing transfers of

65. *Id.*

66. *Id.* § 16 (“The following form may be used to create a transfer on death deed. The other sections of this [act] govern the effect of this or any other instrument used to create a transfer on death deed” (alteration in original)).

67. *Id.*

68. *Id.* § 10.

69. *Id.*

70. Alan Newman, George Gleason Bogert, George Taylor Bogert & Amy Morris Hess, *BOGERT’S THE LAW OF TRUSTS AND TRUSTEES* § 962 (1977).

71. Emrick, *supra* note 17, at 477 (“The key advantages of this combination include retained control for the transferor, simplicity, and revocability. The hallmark of the transfer on death deed is that the owner or grantor retains control during their lifetime.” (footnotes omitted)).

72. *Id.*

73. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 6.

74. *Id.* § 5.

75. *Id.* § 16.

real property at death through the use of a deed or form.⁷⁶ Despite allowing the use of transfer on death forms for securities⁷⁷ and authorizing the use of payable-on-death bank accounts,⁷⁸ the Iowa legislature has yet to authorize a transfer on death form for the transfer of real property at death.⁷⁹ The transfer on death deed's ease and effectiveness makes it difficult to understand why the Iowa legislature has not adopted its use.

2. The Act in Other Jurisdictions

Uniform Transfer on Death for Real Property Act has been successful in other jurisdictions as part of a growing trend referred to as “the nonprobate revolution.”⁸⁰ The term refers to the growing number of jurisdictions that increasingly allow individuals to transfer property—whether personal or real—at death through the use of a form, rather than through probate.⁸¹ The Act has been enacted in seventeen states, the U.S. Virgin Islands, and Washington, D.C.⁸² In 2021, the Act was introduced in three state legislatures, including New Hampshire, North Carolina, and Tennessee.⁸³ This list does not include the nine states mentioned above that authorized the transfer on death form for real property prior to the ULC's drafting of a uniform law on the subject.⁸⁴ At least twenty-six states, the U.S. Virgin Islands, and Washington,

76. *Real Property Transfer on Death Act*, *supra* note 13; see also Brody Swanson, Note, *Allowing Farmers to “Take Back” What’s Theirs: Adoption of the Revocable Life Estate Deed*, 21 DRAKE J. AGRIC. L. 409, 414 (2016) (explaining that Iowa has not adopted the Uniform Real Property Transfer on Death Act, but “does recognize the concept of transferring property upon death for securities”).

77. Swanson, *supra* note 76, at 414.

78. IOWA CODE § 524.805 (2021).

A state bank may receive deposits from one or more persons with the provision that upon the death of the depositors the deposit account shall be the property of the person or persons designated by the deceased depositors as shown on the deposit account records of the state bank. After payment by the state bank, the proceeds shall remain subject to the debts of the decedent and the payment of Iowa inheritance tax, if any. A state bank paying the person or persons designated shall not be liable as a result of that action for any debts of the decedent or for any estate, inheritance, or succession taxes which may be due this state.

Id.

79. Swanson, *supra* note 76, at 414.

80. Emrick, *supra* note 17, at 471–76. The ULC also expressly acknowledged this trend in its prefatory note to the Uniform Real Property Transfer on Death Act, explaining that “[t]oday, nonprobate transfers are widely accepted. The trend has largely focused on assets that are personal property [And] [a] small but growing number of jurisdictions have implemented the principle of UPC Section 6-101 by enacting statutes providing an asset-specific mechanism for the nonprobate transfer of land.” UNIF. REAL PROP. TRANSFER ON DEATH ACT prefatory note at 1.

81. UNIF. REAL PROP. TRANSFER ON DEATH ACT prefatory note at 1.

82. *Real Property Transfer on Death Act*, *supra* note 13.

83. *Id.*

84. See Memorandum from Thomas P. Gallanis, Washington & Lee Univ., to the Drafting Comm. for Unif. TOD for Real Prop. Act 3 (Feb. 14, 2007), <https://www.uniformlaws>

D.C., allow residents to transfer real property at death by using a form.⁸⁵ The growing number of states adopting a statute allowing individuals to transfer real property at death through use of a form is further evidence of the ongoing revolution.

F. *THE DRAFTING OF THE UNIFORM TRANSFER ON DEATH FOR REAL PROPERTY ACT*

The Act reflects the careful consideration of issues surrounding real property transfers at death. In drafting the statute creating a transfer on death for real property, the ULC identified major areas of focus.⁸⁶ These areas included operational issues, transferor's rights, beneficiaries' rights, family members' rights, creditors' rights, third-party purchasers' rights, tax matters, Medicaid, and the transfer on death deed implementation.⁸⁷ The Drafting Committee's stated purpose was "to produce a Uniform TOD for Real Property Act, to be promulgated as a stand-alone act."⁸⁸

With this as its starting place, the ULC Drafting Committee created a draft text of the Act in November 2007, and after several drafts, formally approved the proposed text in 2009.⁸⁹ At the time of drafting, the Committee also considered the statutes of the nine states that had already authorized the transfer on death form for the transfer of real property.⁹⁰ As a result of the breadth of issues the drafting committee considered, and its multi-year drafting process, the text of the Uniform Transfer on Death for Real Property Act hardly reflects a hastily produced statute for adoption by state legislatures. To the contrary, this process indicates the Act reflects the careful consideration of issues surrounding real property transfers at death.

.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=02bb980a-faf7-48f-a-fae0-e03d818e6068&forceDialog=0 [https://perma.cc/8EEZ-W87D]. Prior to the ULC drafting the Uniform Real Property Transfer on Death Act, the drafting committee's memo noted that "[n]ine states currently authorize the TOD registration of land. In the chronological order of the statutes' enactment, the states are: Missouri (1989), Kansas (1997), Ohio (2000), New Mexico (2001), Arizona (2002), Nevada (2003), Colorado (2004), Arkansas (2005), and Wisconsin (2006)." *Id.*

85. *Id.* (showing nine states allowed transfer on death deeds for real property prior to the Uniform Real Property Transfer on Death statute); *Real Property Transfer on Death Act*, *supra* note 13 (mapping the seventeen states, Washington D.C. and the U.S. Virgin Islands that have all adopted the Real Property Transfer on Death Act).

86. *See* Memorandum from Thomas P. Gallanis, *supra* note 84, at 4.

87. *See generally id.* (discussing the listed areas in an overview of the draft for the Act).

88. *Id.* at 3.

89. *See generally* UNIF. REAL PROP. TRANSFER ON DEATH ACT (UNIF. L. COMM'N 2009) (providing the final full version of the Act).

90. *See* Memorandum from Thomas P. Gallanis, *supra* note 84, at 3. The drafting committee acknowledged that nine states already authorized the transfer on death statute through the use of a form and included the statutes in its consideration memo. *Id.* These states included Missouri, Kansas, Ohio, New Mexico, Arizona, Nevada, Colorado, Arkansas, and Wisconsin. *Id.*

II. AVOIDING PROBATE

Perhaps the most significant motivating factor behind proponents' support of the Act is allowing those passing real property at death to avoid probate. There are a variety of reasons to avoid probate, including its cost, its length, and its complexity.

First, probate can be costly. As one commentator points out, "[t]he costs in probate proceedings have been estimated to be between 5-10% of the value of the estate, and generally involve the fees paid to the personal representatives and the attorneys as well as the court costs to initiate the proceedings."⁹¹ Other sources indicate the cost of probate may be more variable, ranging from five to seven percent of the value of the estate.⁹² The cost of probate can be significant, particularly for low-income families.⁹³

Second, the probate process can take considerable time. According to the Iowa State Bar Association, "[p]robate can take two years or even longer for a large or contested estate."⁹⁴ This lengthy time is not unique to Iowa; the median length of time for probate estates is over a year in neighboring Wisconsin.⁹⁵ Furthermore, probate often requires such a lengthy process regardless of the simplicity (or complexity) of the estate's assets.⁹⁶

Third, probate is often highly technical and complex, which may give rise to protracted and costly litigation.⁹⁷ Such litigation may create a public record

91. See Emrick, *supra* note 17, at 475 (footnotes omitted).

92. Terri Williams, *How Much Does Probate Cost? Real Estate Fees and Other Expenses*, REALTOR.COM (Jan. 27, 2020), <https://www.realtor.com/advice/sell/how-much-does-probate-cost-real-estate-fees-and-other-expenses> [<https://perma.cc/3MT6-4M4Y>] ("The overall cost of probate will vary depending on the estate's value. Typically the cost will be from 3% to 7% of the estate plus various fees."). Additionally, probate costs include more than attorney's fees. Jim Gallagher, *Pay-on-Death Can Beat Probate — but Be Careful*, ST. LOUIS POST-DISPATCH (Sept. 25, 2016), https://www.stltoday.com/business/local/pay-on-death-can-beat-probate-but-be-careful/article_136c468b-625a-5241-8ebd-018ea1ea8866.html [<https://perma.cc/3EV6-4LJR>]. "The lawyer fee alone will run at least \$11,550 on a \$400,000 estate, not counting court fees and a cut for the executor. Those can double the cost. The more you leave behind, the more your heirs will pay in probate expenses." *Id.*

93. *Why Your State Should Adopt the Uniform Real Property Transfer on Death Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=30792b62-1a81-1904-d25f-89ff61bege00&forceDialog=0> [<https://perma.cc/DJD4-9KZ5>].

94. *Probate*, *supra* note 23.

95. Mark T. Johnson, Comment, *A "Simple" Probate Should Not Be This Complicated: Principles and Proposals for Revising Wisconsin's Statutes for Probate Summary Procedures*, 2008 WIS. L. REV. 575, 580 n.21 (2008) ("In 2006, the median lengths of time to settle estates by formal probate and informal probate were 434 days and 373 days, respectively."). In 2006, Wisconsin began allowing the nonprobate transfer of real property on death perhaps in response to such a lengthy average time required for probate. See WIS. STAT. § 705.15 (2006).

96. See Emrick, *supra* note 17, at 475 ("Realistically, 'regardless of how simple an estate appears to be or actually is, it is almost impossible to close an estate through the probate system in less than one year.'" (quoting GEORGE M. TURNER, 1 REVOCABLE TRUSTS § 7:4 (5th ed. 2016))).

97. See *id.*

of private family information and pit family members against one another during the process.⁹⁸ The probate process also injects significant judicial involvement into matters that are often private, intra-family matters that many individuals may prefer to keep from public record or judicial scrutiny.⁹⁹

With these potential drawbacks, it is understandable why the ULC drafted a mechanism to pass real property outside of the probate process. The proponents of the Act in Iowa seek to avoid this costly, lengthy, and litigious process for Iowans seeking to transfer real property at death. Indeed, such mechanism passed by the legislature would have undoubtedly changed the outcome for the Smith family in *King v. Smith*.¹⁰⁰

III. CONSIDERATION OF THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT IN IOWA

The benefits of allowing the transfer of real property through a form, prior to death, are well documented, but the benefits are also unavailable in Iowa. The analysis below: (1) discusses the history of the Act in Iowa; (2) compares each of the three bills considered by the state legislature; (3) identifies the opposition to the legislation; and (4) identifies the support for the legislation within the state.

A. THE HISTORY OF THE ACT IN THE IOWA STATE LEGISLATURE

The failure to enact a transfer on death statute for real property on the part of the Iowa legislature is not due to a lack of interest or awareness. Since 2016, there has been a growing number of groups within Iowa that acknowledge the necessity for some mechanism to allow Iowans to transfer real property at death outside of probate. Scholarly commentary, the courts, and even some members of the Iowa legislature have called for legislation that would allow for this mechanism.

Agricultural interests within the state have pointed out the benefits that such a statute would provide to Iowa farmers.¹⁰¹ Specifically, farmers would benefit from a statute allowing farms to pass easily within families, as approximately ninety-six percent of U.S. farms are owned by families, and

98. See generally Bonnie G. Camden, *Maybe You Shouldn't Avoid Probate*, 16 OHIO PROB. L.J. 27 (2005) (discussing the drawbacks of the probate process, including the impacts on the family unit and “[t]he public nature of the probate process is a negative aspect of probate, especially from a privacy concern, but this public access can provide additional opinions and scrutiny”).

99. *Id.* (arguing the involvement of the probate court could be a negative attribute of the probate process).

100. See generally *King v. Smith*, No. 20-0137, 2021 WL 2453051 (Iowa Ct. App. June 16, 2021) (noting transfer on death deeds are not valid in Iowa).

101. Swanson, *supra* note 76, at 422–26 (“Because of the high percentage of family-run farms, it is very important that parent farmers have an efficient method of helping their children get started in the farming business. Once again, the revocable life estate deed will allow the parent to transfer the essential farm equipment, land, etc. that the child needs to get started farming.”).

this necessitates ease of family transfers of real property.¹⁰² The transfer on death form is particularly beneficial for farmers because it allows a living farmer to continue to derive income from farming the land after transferring the land through a transfer on death deed, while also allowing the land to pass to the farmer's devisees (colloquially referred to as heirs or descendants) at the farmer's death.¹⁰³ Also, the farming sector requires real property, and through easing the process of transferring real property, a uniform statute would facilitate farming within the state.¹⁰⁴

This is of particular concern for Iowa, which in 2020 had 30.5 million acres dedicated to farm operations and \$9.87 billion worth of corn produced on those operations.¹⁰⁵ With the importance of agriculture to the Iowa economy, it is clear why agricultural interests recognize the importance of a uniform statute.

The judiciary in Iowa also acknowledges the popularity of transfer on death deeds in other jurisdictions and its notable absence in Iowa. The Iowa Court of Appeals noted that "seventeen states plus the District of Columbia and the U.S. Virgin Islands have" enacted the Uniform Real Property Transfer on Death Act, in addition to the states that authorized transfer on death deeds before the Act was drafted.¹⁰⁶ The court noted that the Smith family in *King* intended to create a transfer on death deed,¹⁰⁷ while also explaining that it had no authority to recognize such deeds and would not recognize them as a matter of "judicial restraint."¹⁰⁸ As discussed above, in *King* the court clearly recognized the Smiths' intentions: to possess and profit on the farm during their lives and transfer the farm after their death.¹⁰⁹ However, the court noted that the mechanism through which the Smiths attempted their transfer was not possible in Iowa, due to the failure of the state legislature to enact a statute that would allow it.¹¹⁰ Despite the Smiths intending to give their farm to two of their children after death,¹¹¹ and despite the intent of the decedent serving as a lodestar for donative transfer jurisprudence,¹¹² the

102. *Id.*

103. *Id.* at 423.

104. *Id.* at 422–26.

105. U.S. DEP'T OF AGRIC., 2020 STATE AGRICULTURE OVERVIEW (2021), https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IOWA [<https://perma.cc/CL2J-9ZQT>].

106. *King v. Smith*, No. 20-0137, 2021 WL 2453051, at *5 (Iowa Ct. App. June 16, 2021) ("In fact, the Uniform Real Property Transfer on Death Act has been introduced in the Iowa legislature at least three times without being adopted.").

107. *Id.*

108. *Id.* at *6 (quoting *State v. Wahlert*, 379 N.W.2d 10, 14 (Iowa 1985)).

109. *Id.*

110. *Id.*

111. *Id.*

112. *See, e.g., In re Est. of Pfeiffer*, 76 N.W.2d 193, 195 (Iowa 1956) ("It is a cardinal rule in connection with the construction of a will by a court it should endeavor to ascertain the

absence of a statute rendered the Smiths' intention ineffective under Iowa law.¹¹³

Some members of the Iowa legislature have also recognized the need for legislation. In 2016,¹¹⁴ 2017,¹¹⁵ and again in 2020,¹¹⁶ Iowa senators introduced the Uniform Real Property Transfer on Death Act to the Senate. Each attempt at enacting the Act in Iowa never advanced beyond the Judiciary Subcommittee.¹¹⁷ The analysis below explores the reasons for its failure.

B. TEXTUAL COMPARISON OF EACH BILL

On balance, each of the bills proposed in the Iowa State Legislature reassemble each other. The text of each of these bills, S.F. 2117, S.F. 393, and S.F. 2030 are substantially similar, but there are minor differences between S.F. 2117 on the one hand and S.F. 393 and S.F. 2030 on the other. While most of these differences are insignificant (e.g., differing bill number, capitalization of certain words) there are some textual differences between

expressed intent of the testator.”); *In re Est. of Thompson*, 511 N.W.2d 374, 377 (Iowa 1994) (“The primary goal in interpreting a will is to discern the intent of the testator.”).

113. *King*, 2021 WL 2453051, at *6. This is particularly interesting given the emphasis in trust and estate law on honoring the decedents' intentions. The Smiths attempted to transfer property through a transfer on death deed, as opposed to a will, but their intent was frustrated by Iowa law, which requires property to pass through probate. *Id.* at *2–4.

114. *See* S.F. 2117, 86th Gen. Assemb., Reg. Sess. (Iowa 2016).

115. *See* S.F. 393, 87th Gen. Assemb., Reg. Sess. (Iowa 2017).

116. *See* S.F. 2030, 88th Gen. Assemb., Reg. Sess. (Iowa 2020).

117. The first attempt at enacting a version of the ULC's Uniform Real Property Transfer on Death Act failed. On February 8, 2016, Senator Ragan introduced a bill, S.F. 2117. *Bill History for Senate File 2117*, THE IOWA LEGISLATURE, <https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=SF%202117&ga=86> [<https://perma.cc/4NHP-PUPR>]. The bill's description contained the following: “[A] bill for an act relating to creation of transfer on death deeds and to disclaimers of an interest in real property, and including applicability provisions.” *Id.* The Senate referred the bill to the Judiciary Subcommittee, specifically to Senators Horn, Kinney, and Whitver. *Id.*

The second attempt at enacting a version of the ULC's Uniform Real Property Transfer on Death Act also failed. On March 1, 2017, Senator Schneider introduced a bill, S.F. 393. *Bill History for Senate File 393*, THE IOWA LEGISLATURE, <https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=SF%20393&ga=87> [<https://perma.cc/G7TK-VYVA>]. The bill's description contained the following: “[A] bill for an act relating to creation of transfer on death deeds and to disclaimers of an interest in real property, and including applicability provisions.” *Id.* The Senate referred the bill to the Judiciary Subcommittee, specifically to Senators Schneider, Garrett, and Taylor. *Id.*

The third attempt fared no better in the Iowa State Senate. On January 16, 2020, Senator R. Taylor introduce a bill, S.F. 2030. *Bill History for Senate File 2030*, THE IOWA LEGISLATURE, <https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=SF%202030&ga=88> [<https://perma.cc/JT52-Z9FS>]. The bill's description contained the following: “[A] bill for an act relating to creation of transfer on death deeds and to disclaimers of an interest in real property, and including applicability provisions.” *Id.* The Senate referred the bill to the Judiciary Subcommittee, specifically to Senators Nunn, Sinclair, and R. Taylor. *Id.*

If the history of each bill mentioned above appears repetitive, that is because it is. Each of the three proposed legislation above failed to advance beyond the Judiciary Subcommittee.

each bill that could be more consequential to Iowans. The analysis below includes a comparison of the bills and a discussion of the textual changes made to S.F. 2117 that appear in the two later bills, S.F. 393 and S.F. 2030.

All three bills—S.F. 2117, S.F. 393, and S.F. 2030—explicitly authorize Iowans to use a form to transfer real property at their death. Senator Ragan introduced the first version of the Act in 2016, which was “[a]n Act relating to creation of transfer on death deeds and to disclaimers of an interest in real property, and including applicability provisions.”¹¹⁸ This exact same description appeared in S.F. 393 in 2017 and S.F. 2030 in 2020.¹¹⁹

Each bill expressly authorizes the transfer of real property on death through a transfer on death deed.¹²⁰ All three bills provide an example of the “[o]ptional form of transfer on death deed” for Iowans to use.¹²¹ Furthermore, S.F. 393 and S.F. 2030 contain identical substantive language.¹²² The two bills’ text only differs on the bill number, the bill year, and the state legislator who introduced the legislation.¹²³

The text of S.F. 2117 differs from S.F. 393 and S.F. 2030 only in one meaningful way. S.F. 2117 provides an example transfer on death deed that *mandates* that the user of the form “consult a lawyer” if the user has questions.¹²⁴ This is in contrast to the text of S.F. 393 and S.F. 2030, which *merely suggest* that the user of the form is “encouraged to consult a lawyer” if the user has questions.¹²⁵ This difference, as the analysis below suggests, may be critical.¹²⁶

C. THE OPPOSITION TO THE ACT IN IOWA

The opposition to the Uniform Real Property Transfer on Death Act represents a variety of different interests from different groups. Through (1) identifying those groups that are opposed to the Act and (2) identifying the reasons those groups are opposed to the Act, one can understand more

118. S.F. 2117.

119. Compare S.F. 393 (“An Act relating to creation of transfer on death deeds and to disclaimers of an interest in real property, and including applicability provisions.”), with S.F. 2030 (“An Act relating to creation of transfer on death deeds and to disclaimers of an interest in real property, and including applicability provisions.”).

120. S.F. 2117 § 5 (“An individual may transfer property to one or more beneficiaries effective at the transferor’s death by a transfer on death deed.”). This language is identical to the bill considered in 2017. See S.F. 393 § 5 (“An individual may transfer property to one or more beneficiaries effective at the transferor’s death by a transfer on death deed.”).

121. See S.F. 2117 § 16; S.F. 393 § 16; S.F. 2030 § 16.

122. Both bills differ only in reference to bill number, date, and capitalization of certain words. Compare S.F. 2030 (using language from the Uniform Real Property Transfer on Death Act), with S.F. 393 (using the language from the Uniform Real Property Transfer on Death Act).

123. See *supra* notes 121–22 and text accompanying.

124. S.F. 2117 § 17 (“If you have other questions, consult a lawyer.”).

125. S.F. 393 § 17 (“If you have other questions, you are encouraged to consult a lawyer.”); S.F. 2030 § 17 (“If you have other questions, you are encouraged to consult a lawyer.”).

126. See *infra* Part IV.

robustly the viability of the Act in Iowa and the likelihood the Act could pass the scrutiny of the Iowa State Legislature.

1. Identifying Those Groups Opposed to the Act

Each year the Act has appeared in the state legislature, it has attracted increased attention. The groups opposed to the Act include lobbyists representing industry groups, professional organizations, and presumably the legislators in the Judiciary Committee that chose not to advance the Act to the legislature.

Lobbyists in Iowa “encourage[] . . . the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order before the general assembly.”¹²⁷ It is typical for certain industry lobbyists to take positions on proposed legislation, by declaring that the lobbyist is for, against, or undecided on a particular bill on behalf of the lobbyist’s clients.¹²⁸ However, it is not unusual for different lobbyists representing *the same client* to have *different declarations* (e.g., lobbyist A for X industry group is undecided, while lobbyist B for X industry group is against the proposed legislation)¹²⁹ or for lobbyists to make no declarations at all.¹³⁰ The positions lobbyists declare on a particular bill undoubtedly serve as a signaling device to state lawmakers as to how certain industry groups may view the bill.

Lobbyists have been active in each of the three proposals of the Uniform Real Property Transfer on Death Act in Iowa. The involvement of a variety of interest groups and their lobbyists opposed to the Act contributed to the Act’s failure to advance beyond the Judiciary Committee. The lobbyist activity of each interest group on the Act in 2016, 2017, and 2020 highlight how the Act gained increased attention from interest groups each time the legislature considered it.

i. S.F. 2117

On its initial introduction to the state legislature, lobbyists were split on opposing the bill. Lobbyists representing several interest groups opposed S.F. 2117 in 2016, but lobbyists representing other interest groups were undecided. Both lobbyists representing the Iowa Academy of Trust and Estate Counsel

127. IOWA CODE § 68B.2 (2022).

128. *Lobbyist Legal Information*, THE IOWA LEGISLATURE, <https://www.legis.iowa.gov/lobbyist/legalInformation> [https://perma.cc/CAT3-TTXY].

129. *See, e.g.*, LOBBYIST DECLARATIONS, S.F. 2131, 89th Gen. Assemb. (Iowa 2022), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=89&ba=SF2131> [https://perma.cc/62DG-MAH8].

130. *See, e.g.*, LOBBYIST DECLARATIONS, S.F. 2138, 89th Gen. Assemb. (Iowa 2022), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=89&ba=SF2138> [https://perma.cc/ZKQ6-FX5L].

opposed the bill in 2016.¹³¹ However, the four lobbyists representing the Iowa State Bar Association were undecided.¹³² Additionally, lobbyists representing the Iowa Department on Aging and the Home Builders Association of Iowa were undecided on the passage of the Act.¹³³ While there was no uniform opposition on behalf of lobbyist groups, those groups opposed to the Act undoubtedly contributed to the legislature's failure to enact S.F. 2117.

ii. S.F. 393

The Act's second appearance in the Judiciary Committee in 2017 drew increased interest from lobbyists and interest groups. Interestingly, some of the same lobbyist groups that were undecided on the Act in 2016 were opposed to the Act in 2017. Lobbyists representing the Iowa State Bar Association that were undecided on the Act in 2016 were opposed to the Act in 2017.¹³⁴ The Iowa State Bar Association retained a new lobbyist to represent it with respect to the Act, and the additional lobbyist also opposed the Act, creating unanimous opposition to the Act among the Bar Association's lobbyists.¹³⁵ With every lobbyist representing the Iowa State Bar Association opposed to the bill (without even a single undecided declaration),¹³⁶ lawmakers were sent a clear signal: The Iowa State Bar Association, through its lobbyists, is unequivocally opposed to the Act.

The Act also attracted more attention from lobbyists and interest groups in 2017. Lobbyists representing seven interest groups made seventeen declarations (either against or undecided) on S.F. 393 in 2017, compared to eight lobbyists representing four interest groups making declarations (either against or undecided) on S.F. 2117 in 2016.¹³⁷ The Iowa Funeral Directors

131. LOBBYIST DECLARATIONS, S.F. 2117, 86th Gen. Assemb. (Iowa 2016), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=86&ba=SF2117> [<https://perma.cc/HNNQ-NAR8>] (collecting lobbyists Katherine Carlucci and Thomas Stanberry, who both opposed the Act's passage in 2016). One can certainly imagine that the concerns of trust and estate attorneys could be similar to the concerns of funeral directors: that attorneys may become unsecured creditors in the event that assets in the estate are insufficient.

132. *Id.* (identifying lobbyists as George Appleby, Jim Carney, Doug Struyk, and Jennifer Tyler).

133. *Id.* (noting that Joel Wulf, representing the Iowa Department on Aging, and Jay Iverson, representing the Home Builders Association of Iowa, were both undecided on the Act in 2016).

134. *Id.* Jim Carney and Doug Struyk, both representing the Iowa State Bar Association, were undecided in 2016. *See id.* However, in 2017, both opposed the Act on behalf of the Iowa State Bar Association. LOBBYIST DECLARATIONS, S.F. 393, 87th Gen. Assemb. (Iowa 2017), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=87&ba=SF393> [<https://perma.cc/C8PM-NCR8>].

135. LOBBYIST DECLARATIONS, S.F. 393. Shannon Henson opposed the Act on behalf of the Iowa State Bar Association in 2017. *See id.*

136. *Id.*; *see also* E. Phelps Gay, *Legislature and the LSBA*, 48 LA. BAR J. 358, 358–59 (2001) (discussing the critical role the state bar association serves in advising the state legislature in Louisiana and the impact the bar association can have on the enactment of state laws).

137. *See supra* notes 130–36 and accompanying text.

Association, represented by three lobbyists, unanimously opposed the bill.¹³⁸ The Iowa Bankers Association and Iowa Trust Association, each represented by two lobbyists in 2017, unanimously opposed the bill's passage.¹³⁹ Additionally, five lobbyists representing the Iowa Credit Union League filed undecided declarations on the bill¹⁴⁰ and the Iowa Land Title Association's lobbyist was also undecided.¹⁴¹

iii. S.F. 2030

In 2020, the trend of increasing attention to the Act by interest groups and lobbyists continued. In all, lobbyists representing seven interest groups filed twenty-four declarations on S.F. 2030.¹⁴² This increased attention by interest groups resulted in the bill meeting the same fate as its predecessor bills (S.F. 2117 and S.F. 393), ultimately failing to advance beyond the Judiciary Committee.

Many interest groups' positions on the Act remained the same. Most significantly, the Iowa State Bar Association remained unanimously opposed to S.F. 2030 in 2020.¹⁴³ The importance of this opposition cannot be understated, as state bar associations enjoy significant influence in many state legislatures.¹⁴⁴ Lobbyists for the Iowa Academy of Trust and Estate Counsel and the Iowa Funeral Directors Association also remained opposed or undecided with respect to the Act.¹⁴⁵ The Iowa Credit Union League lobbyists remained undecided.¹⁴⁶

However, some interest groups appeared to walk back their opposition to the Act. Lobbyists representing the Iowa Bankers Association and the Iowa Trust Association filed undecided declarations on the bill in 2020, despite unanimously opposing the bill's predecessor in 2017.¹⁴⁷ This suggests

138. LOBBYIST DECLARATIONS, S.F. 393.

139. *Id.*

140. *Id.* (showing Lon Anderson, John Cacciatore, Justin Hupfer, and Jon Murphy all represented the Iowa Credit Union league in 2017, and each were undecided). The Iowa Credit Union League was not represented by lobbyists in 2016. See LOBBYIST DECLARATIONS, S.F. 2117, 86th Gen. Assemb. (Iowa 2016), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=86&ba=SF2117> [<https://perma.cc/HNN9-NAR8>].

141. See LOBBYIST DECLARATIONS, S.F. 393.

142. LOBBYIST DECLARATIONS, S.F. 2030, 88th Gen. Assemb. (Iowa 2020), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=88&ba=SF2030> [<https://perma.cc/E3V9-5RPC>] (noting that this number includes the same lobbyists who filed declarations of "undecided" and "opposed" representing the same client).

143. *Id.* (showing Jim Carney, Jennifer Dorman, and Doug Struyk—each representing the Iowa State Bar Association—opposed the bill).

144. See Gay, *supra* note 136, at 358–59.

145. See LOBBYIST DECLARATIONS, S.F. 2030.

146. *Id.* (showing Gracie Brandsgard and Justin Hupfer each filed undecided declarations on behalf of the Iowa Credit Union League).

147. *Id.* (showing that Robert Hartwig, Jenica Lensmeyer, Sharon Presnall, and Mike Rozenboom all filed undecided declarations on behalf of the Iowa Bankers Association and on behalf of the

that there is potential for the Act to gain support from interest groups previously opposed to its passage or, at the very least, avoid ardent opposition from interest groups previously opposing it.

Additionally, an interest group not previously represented by lobbyists in 2016 or in 2017 joined the fray in 2020. The Iowa County Recorders Association was represented by two separate lobbyists, but both filed undecided declarations.¹⁴⁸ To be sure, with each appearance in the state legislature, the Act has gained increasing attention from a number of different interest groups, and also attracted additional lobbyist attention from some of the same interest groups involved in probate matters.

2. Identifying the Reasons for Opposition to Enacting the Act in Iowa

The groups opposed to the Act in Iowa have legitimate concerns about the legislation. While the legislative record is far from exhaustive as to why groups opposed the Act, important insights, likely common to many groups opposing the Act in Iowa, can be gleaned from the concerns of certain groups. These concerns include the Act's impact on creditors and debtors of the decedent. For example, Mike Triplett, a lobbyist for the Iowa Funeral Directors Association who filed declarations opposing the Act in 2017 and again in 2020, articulated financial concerns.¹⁴⁹ Specifically, Mr. Triplett expressed concern on behalf of funeral directors' ability to collect payment if the Act passed, explaining that "[w]hen you take assets out of the estate, it lessens our ability to get paid."¹⁵⁰ In the estate context, Mr. Triplett expressed the desire of funeral directors "to avoid becoming . . . unsecured creditors."¹⁵¹

Undoubtedly, these concerns are not unique to Iowa Funeral Directors. Any individual or entity seeking to recover amounts owing from a decedent would share the same concerns—the fewer the assets in the estate, the less security a creditor feels they have in receiving payment.

This concern may very well be a contributing factor in the Iowa State Bar Association's staunch opposition to the Act, as well as the Iowa Academy of Trust and Estate Counsel's unanimous opposition. Probate generates attorney fees, and these fees are payable "as part of the costs of administration of estates."¹⁵² It is quite possible that both the Iowa State Bar Association and the

Iowa Trust Association). However, Robert Hartwig and Sharon Presnall both opposed the bill on behalf of the Iowa Bankers Association and the Iowa Trust Association in 2017. LOBBYIST DECLARATIONS, S.F. 393, 87th Gen. Assemb. (Iowa 2017), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=87&ba=SF393> [<https://perma.cc/C8PM-NCR8>].

148. LOBBYIST DECLARATIONS, S.F. 2030 (showing Stacie Herridge and John Murphy both filed undecided declarations on the bill in 2020).

149. Zoom Interview with Mike Triplett, Lobbyist, Iowa Funeral Dirs. Ass'n (Oct. 22, 2021).

150. *Id.*

151. *Id.* Mr. Triplett also analogized the goals of funeral directors in receipt of payment for services, explaining that funeral directors "are no different from a bank that is trying to get paid," and funeral directors "are trying to get reimbursed for services that have been provided." *Id.*

152. IOWA CODE § 633.198 (2021).

Iowa Academy of Trust and Estate Counsel would prefer both the fees generated from the probate of real property and the security of retaining real property in the estate to ensure payment.

The use of a form to transfer real property at death also gives rise to other concerns. Commentators have pointed out some of the uncertainties created by transfer on death deeds. Perhaps most significant is the uncertainty as to whether a transferor of real property may revoke a transfer on death deed and restore full ownership rights or “fee simple” to himself or herself.¹⁵³ Other concerns include the near impossibility of changing a transfer on death deed after the death of the transferor in the case of a unilateral mistake,¹⁵⁴ the complications that may arise in joint ownership arrangements,¹⁵⁵ and the difficulties transfer on death deeds may present for title insurance companies.¹⁵⁶ However, it appears that in Iowa, title companies are less concerned about the passage of the Act, or at least are not staunchly opposed to its passage.¹⁵⁷ These uncertainties may contribute to the opposition of the Act by groups like the Iowa State Bar Association as well, because transfer on death deeds could prevent the correction of an error in the case of a landowner who has already died, or could increase the burden on attorneys attempting to identify titleholders.

D. THE SUPPORT FOR THE ACT IN IOWA

The Act enjoys support from lawmakers and legal commentators in Iowa. To adequately elucidate the support for the Act within the state, it is necessary to (1) identify those groups in favor of the Act in Iowa and (2), to discuss why those who support the Act (both in Iowa and elsewhere) do so. As three

153. Emrick, *supra* note 17, at 490 (“One of the most significant legal uncertainties—and likely the most litigated issue that arises on the subject of transfer on death deeds—is whether the life tenant with reserved additional powers retains the power to revoke the remainder interest and restore the full fee simple title to themselves or convey it to a third party, without the joinder of the remainder beneficiaries.”).

154. Swanson *supra* note 76, at 418 (“The first disadvantage of this deed is that it cannot be reformed to correct a unilateral mistake after the owner’s death; therefore, if an owner wants the beneficiary to receive any payments that are accrued and unpaid upon the owner’s death, it should be specified within the property description at transfer.” (footnotes omitted)).

155. *Id.* at 419 (“Another disadvantage of the revocable life estate deed involves ownership entitlement, specifically involving surviving spouses and tenants in common.”). However, this concern is addressed by the most recent bill considered by the Iowa legislature. In section 13, S.F. 2030 indicates that “[i]f a transferor is a joint owner and is survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship.” S.F. 2030, 88th Gen. Assemb. § 13, Reg. Sess. (Iowa 2020).

156. Swanson *supra* note 76, at 420.

157. LOBBYIST DECLARATIONS, S.F. 393, 87th Gen. Assemb. (Iowa 2017), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=87&ba=SF393> [<https://perma.cc/C8PM-NCR8>] (showing Mike St. Clair, representing the Iowa Land Title Association, was undecided in 2017; this was the only year the Association was represented by a lobbyist with respect to the Act).

different lawmakers have introduced the Act since 2016,¹⁵⁸ the Act seems to be gaining momentum within the state.

1. Identifying Those in Favor of the Act

Proponents of the Uniform Real Property Transfer on Death Act in Iowa include both Republican and Democratic lawmakers representing different regions of the state. Senator Ragan, a Democrat representing Cerro Gordo County in northern Iowa, introduced the Act in 2016.¹⁵⁹ Senator Schneider, a Republican representing Dallas County in central Iowa, introduced the Act again in 2017¹⁶⁰ with minor changes to the recommended form used to transfer real property at death.¹⁶¹ Senator Rich Taylor, a Democrat representing rural Henry County in southeast Iowa,¹⁶² introduced the Act in 2020.¹⁶³ The Act Senator Taylor introduced was substantially the same Act that his Republican counterpart, Senator Schneider, introduced in 2017.¹⁶⁴

This bipartisan support from different regions of the state suggests the Act spans both political and regional divides within the state. This is notable given the partisan divide in Iowa leading up to 2016,¹⁶⁵ when the Act was first introduced, and the resilience of the bipartisan effort in the period following the 2016 election. Allowing Iowans to transfer real property outside of probate is an issue that attracts interest from lawmakers in both parties and from different regions of the state.

2. Identifying Proponents' Reasons for Supporting the Act

In Iowa and elsewhere, proponents of the Act have different reasons for supporting the Act. Perhaps two of the most salient are responding to constituents' request for a nonprobate option for real property and the growing trend of states allowing nonprobate transfer of real property as part of the growing "nonprobate revolution." In Iowa specifically, legal commentators have echoed these concerns.¹⁶⁶ The ULC's promulgation of the Act may also serve as significant reason for some advocates.¹⁶⁷

158. See discussion *supra* note 117.

159. *Legislators*, THE IOWA LEGISLATURE, <https://www.legis.iowa.gov/legislators/senate> [<https://perma.cc/K2X8-PHUJ>] (showing the senators of the 89th General Assembly). Furthermore, it is worth noting Senator Ragan, a Democrat, introduced the bill initially to the state legislature. This suggests the bill enjoys bipartisan support.

160. *Id.*

161. See *supra* Section III.B.

162. *Legislators*, *supra* note 159.

163. S.F. 2030, 88th Gen. Assemb., Reg. Sess. (Iowa 2020).

164. See *supra* Section III.B.

165. Rod Boshart, *Iowa Faces Deep Partisan Divide, New Poll Shows*, THE GAZETTE (July 6, 2015, 11:29 AM), <https://www.thegazette.com/news/iowa-faces-deep-partisan-divide-new-poll-shows> [<https://perma.cc/6TWT-XEEY>].

166. Swanson, *supra* note 76, at 418.

167. See *supra* Section I.D.

i. Responding to Iowans' Requests for a Nonprobate Mechanism for Real Property

At least two of the attempts to pass the Uniform Real Property Transfer on Death Act in Iowa were initiated by concerned constituents. S.F. 393, a version of the Act that Senator Schneider introduced in 2017, was in response to an email from a constituent.¹⁶⁸ This constituent suggested that the Act would save time and money; the constituent also identified that other states had enacted similar legislation, but Iowa had not.¹⁶⁹ According to former Senator Schneider, he had “no strong opinions on [the Act],” but he introduced the legislation in response to this request.¹⁷⁰

Similarly, S.F. 2117, a version of the Act that Senator Ragan introduced in 2016, was in response to a constituent’s concerns.¹⁷¹ The constituent requested a change in Iowa state law that would allow Iowans to transfer real property at death outside of probate.¹⁷² Interest from constituents evidences the growing nonprobate revolution and the increasing desire of Iowans to transfer real property outside of probate.

The Iowa legislature has weighed constituents’ interests against lobbyists’ interests¹⁷³ on three separate occasions, each time siding with interest groups represented by lobbyists.¹⁷⁴ Favoring interest groups’ initiatives “at the expense of the general public” is hardly a new phenomenon in American politics.¹⁷⁵ Perhaps a fourth consideration of the Act is necessary.

ii. Competition with Other Similarly Situated States

The Iowa legislature’s failure to enact the Uniform Real Property Transfer on Death Act may make Iowa a noticeable outlier among other states, including its neighbors. States sharing Iowa’s Midwestern, agrarian posture were some of the first states to allow citizens to transfer real property

168. Zoom Interview with Charles Schneider, Former Iowa State Senator (Oct. 29, 2021) (discussing how Mr. Schneider introduced S.F. 393 in 2017).

169. *Id.* This constituent is not alone in her assertion that transfer on death deeds save money. In fact, Kansas Legal Services expressly acknowledges this: “In some states the cost of probate is great, and in any state a probate proceeding will cost more than the fees related to a TOD deed.” *Kansas Transfer on Death Deed*, KAN. LEGAL SERVS. (July 6, 2022), <https://www.kansaslegalservices.org/node/1583/kansas-transfer-death-deed> [<https://perma.cc/TZK9-NE6M>].

170. Zoom Interview with Charles Schneider, *supra* note 168. Mr. Schneider introduced S.F. 393 in 2017. *Id.*

171. Email from Ron Parker, Dir., Senate Democratic Staff, to Mark Hart, Student Writer, Iowa L. Rev. Volume 107 (Nov. 1, 2021, 08:55 CST) (on file with author) (“Senator Ragan recalls that a constituent requested a change in law.”).

172. *Id.*

173. *See supra* Section III.C.

174. *See supra* Section III.C.

175. Susanne Lohmann, *An Information Rationale for the Power of Special Interests*, 92 AM. POL. SCI. REV. 809, 809 (1998).

outside of probate.¹⁷⁶ States allowing transfer on death deeds for real property surround Iowa, including Missouri, Illinois, Minnesota, Nebraska, South Dakota, and Wisconsin.¹⁷⁷ Commentators identified the benefits the Act would provide to farmers,¹⁷⁸ and, unsurprisingly, several states sharing Iowa's agrarian heritage and border have passed some version of the Act.¹⁷⁹ At least twenty-six states, Washington D.C., and the U.S. Virgin Islands allow citizens to transfer real property on death outside of probate.¹⁸⁰ In 2021, legislators in three states introduced the Act to their state legislatures.¹⁸¹

The Act has been successful in neighboring states. Missouri pioneered the transfer on death deed for real property in 1989.¹⁸² Since its adoption, the transfer on death deed "has worked well in Missouri."¹⁸³ The Act has "been very effective to transfer homes" between parties.¹⁸⁴ Presumably, Missouri lawmakers recognized the benefits transfer on death deeds would have on ordinary citizens seeking to transfer real property. Undoubtedly, those lawmakers also weighed the benefits of transfer on death deeds against interest groups' concerns (e.g., fewer assets in the estate that creditors could access) and found that the benefits to the public outweighed the costs to specific interest groups. It is time for Iowa lawmakers to do the same.

Iowans noticed this growing trend in the nonprobate transfer of land. Constituents in separate Iowa state districts, in separate years, requested the Act's consideration *because* of the Act's success in states neighboring Iowa.¹⁸⁵ Also, according to one lobbyist, at least one Iowa legislator identified the

176. See Memorandum from Thomas P. Gallanis, *supra* note 84, at 3.

177. See *id.*; 755 ILL. COMP. STAT. 27/1 (2022); MINN. STAT. ANN. § 507.071 (2014); NEB. REV. STAT. § 76-3402 (2013); S.D. CODIFIED LAWS § 29A-6-402 (2014). Additionally, practitioners in other states have noted Iowa's increasingly peculiar requirement that all real property pass through probate. Jim Hart, a trust and estate attorney practicing in Missouri and Kansas, indicated that Iowa stands apart from many of its border states because it does not allow a transfer on death deed. Telephone Interview with Jim Hart, Attorney, Hart L. Co. (Nov. 5, 2021). According to Mr. Hart, the transfer on death deed has become a popular device for Missouri and Kansas residents seeking to transfer real property at their death, while retaining the beneficial interests of ownership during life. *Id.* Mr. Hart (the author's father) owns Hart Law Company, P.C. in Kansas City, Missouri, a firm specializing in trust and estate matters. *Id.*

178. Swanson, *supra* note 76, at 414.

179. See Memorandum from Thomas P. Gallanis, *supra* note 84, at 3; *Real Property Transfer on Death Act*, *supra* note 13.

180. See *supra* note 85 and accompanying text.

181. *Real Property Transfer on Death Act*, *supra* note 13 (indicating these states to be New Hampshire, North Carolina, and Tennessee in 2021).

182. Emrick, *supra* note 17, at 472 n.22.

183. *Debating Transfer on Death Deed Legislation*, AM. LAND TITLE ASS'N (Aug. 2, 2012), <https://web.archive.org/web/20150921033314/https://www.alta.org/news/news.cfm?newsID=18501> [<https://perma.cc/H4Q4-RZXL>].

184. *Id.*

185. Zoom Interview with Charles Schneider, *supra* note 168; email from Ron Parker, *supra* note 171.

availability of the Act in other states as his reason for introducing the bill.¹⁸⁶ This concern is exacerbated for Iowans living near the border of any of the six states that currently allow real property to be transferred on death outside of probate. One can certainly imagine the frustration of a Lamoni, Iowa farmer who cannot execute a transfer on death deed for his family farm, but his friend residing twelve miles south, in Eagleville, Missouri, can enjoy the ease of filling out a form to transfer real property at his death, while also avoiding the expensive and time-consuming probate process.

IV. RECOMMENDATIONS

The passage of legislation allowing Iowans to transfer real property at death outside of probate is possible. This type of legislation would save Iowans time, money, and ease the burden of estate planning. However, certain changes may be necessary to effectuate this goal. These changes include: (1) certain textual recommendations to amend the Act the legislature has considered previously; and (2) other recommendations including educating the legislature about the benefits of the Act as well as allowing for ample time for the Judiciary Committee to consider the legislation.

A. TEXTUAL SOLUTIONS AND RECOMMENDATIONS

First, the legislation authorizing the transfer on death form for real property should explicitly authorize creditors' claims for unpaid estate administrative expenses and costs. Each of the bills considered by the Iowa legislature provide: "To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed."¹⁸⁷ The phrase "to satisfy an allowed claim" does little to identify what creditor claims are allowed (or prohibited) if the estate's assets are insufficient and leaves open the possibility that certain creditors of the estate (including funeral directors and attorneys) will be unable to recover the costs of their services.

The legislature should include a provision in the bill that explicitly allows for unpaid estate administration expenses and other estate costs to be enforced against real property transferred outside of probate. For example, in Missouri, a statute contains a provision that explicitly authorizes creditors to recover estate administration expenses and estate costs from assets transferred by the

186. Zoom Interview with Mike Triplett, *supra* note 149 (explaining that Senator Rich Taylor's primary reason for supporting the Uniform Real Property Transfer on Death Act in Iowa was because "it passed in Missouri").

187. S.F. 2030, 88th Gen. Assemb. § 15, Reg. Sess. (Iowa 2020) ("Liability for creditor claims and statutory allowances."); S.F. 393, 87th Gen. Assemb. § 15, Reg. Sess. (Iowa 2017) ("Liability for creditor claims and statutory allowances."); S.F. 2117, 86th Gen. Assemb. § 15, Reg. Sess. (Iowa 2016) ("Liability for creditor claims and statutory allowances.").

decedent outside of probate.¹⁸⁸ Importantly though, this provision also includes a time limit for creditors looking to recover such costs.¹⁸⁹

An explicit mention of estate administration costs would ameliorate some of the concerns of those opposed to the Act's passage. For example, a lobbyist for the Iowa Funeral Directors Association indicated the strong desire of funeral directors to avoid becoming unsecured creditors.¹⁹⁰ A textual change explicitly acknowledging creditors' ability to make claims against property transferred outside of probate (if the estate is insufficient) could greatly reduce estate creditors' concerns that they will be unable to receive payment for the services they provide to estates.

Second, the "[o]ptional form of transfer on death deed" included in the legislation should use mandatory phrasing when discussing whether the user of the form should consult an attorney.¹⁹¹ The first version of the Act considered by the state legislature included an example transfer on death form that mandates that the user "consult a lawyer" if the user has questions.¹⁹² Later versions of the Act contained suggestive phrasing, indicating that the user is "encouraged to consult a lawyer."¹⁹³ The mandatory phrasing is important. It calls the users' attention to the significance and impact the form will have on the users' assets and personal affairs. It also explicitly instructs the user to involve an attorney. This explicit language addresses attorneys' (and perhaps the Iowa State Bar Association's) concerns that the Uniform Real Property Transfer on Death Act will reduce attorney involvement in Iowans' estate planning. The language gives clear notice to the user of the form that an attorney should be involved in the deed.

188. MO. REV. STAT. § 461.300(1) (2004) ("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 . . .").

189. *Id.* § 461.300(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.").

190. *See supra* Section III.C.2. The concern is that if real estate, often a substantial asset of an estate, passes outside of probate, funeral directors and other estate creditors have fewer assets from which to collect. *See id.*

191. S.F. 2117 § 16.

192. *Id.* § 17. ("If you have other questions, consult a lawyer."). It is worth noting this was the first version of the Uniform Real Property on Death Act considered by the Iowa State Legislature in 2016. *See id.* The bill included an "[o]ptional form of transfer on death deed" to provide an example of how a transfer on death deed may look and to show what language may be used in such a deed. *Id.* § 16.

193. S.F. 393, 87th Gen. Assemb. § 17, Reg. Sess. (Iowa 2017) ("If you have other questions, you are encouraged to consult a lawyer."); S.F. 2030, 88th Gen. Assemb. § 17, Reg. Sess. (Iowa 2020) ("If you have other questions, you are encouraged to consult a lawyer.").

B. OTHER RECOMMENDATIONS

Increased awareness and education about the benefits of transferring real property outside of probate can also contribute to the Uniform Real Property Transfer on Death Act's passage in Iowa. The nonprobate trend for transferring real property is gaining momentum.¹⁹⁴ Indeed, some constituents in Iowa have noticed this movement.¹⁹⁵ However, it seems the legislature is less enthusiastic. The opposition of the Iowa State Bar Association and other groups has undoubtedly influenced this lack of enthusiasm.¹⁹⁶

Passage of the bill will require sufficient time for consideration by the Judiciary Committee. Insufficient time for consideration was a factor in the demise of at least one of the attempts to pass the Act in Iowa.¹⁹⁷ The bill should be introduced early enough in the legislative process¹⁹⁸ to allow legislators time to fully understand the impact such legislation would have on all Iowans, not just its impact on a select number of interest groups with lobbyists at their disposal.

CONCLUSION

The Iowa legislature can pass a version of the Uniform Real Property Transfer on Death Act. The Act would ease the burden and expense of probate for Iowa families who, like the Smiths did, wish to transfer real property outside of probate. This legislation can address the concerns of those currently opposed to it. However, the Act's passage will require advocacy from Iowa legislators.

This advocacy will likely necessitate education and awareness of the benefits that transferring real property outside of probate will have on all Iowans. The Act has been successful in other jurisdictions, and it is time Iowa joined its peer states.

194. See *supra* Section III.D. This is particularly true for agrarian states in the Midwest, including the states sharing borders with Iowa. See *supra* Section III.D.2.ii. Given what appears to be at least in part an agrarian interest in passing the Uniform Real Property on Death Act, it would seem that agricultural interests within Iowa would actively advocate for its passage, but the lobbyist declarations available show no such advocacy. See *supra* Sections III.C–D.

195. See *supra* Section III.D.2.ii (discussing how at least two of the bills brought before the Iowa State Legislature were prompted by Iowans concerned about other states allowing the nonprobate transfer of real property).

196. Zoom Interview with Charles Schneider, *supra* note 168 (explaining that while he had “no strong opinions on [the bill]” that “there was a lot more opposition . . . from [lobbyist groups]”). The Iowa State Bar Association “zealously guards” opportunities for Iowa attorneys; for example, Iowa is the only state that requires an attorney to pass property titles. *Id.*

197. *Id.* (discussing how the bill S.F. 393 “was filed . . . just before the first funnel deadline in March . . . which may have . . . limited the amount of time the Judiciary Committee had to review the bill”).

198. *Id.*