

WHERE PROPERTY LIVES AND DIES: HOW IOWA’S ADOPTION OF THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT WOULD ELIMINATE THE PRACTICE OF PROBATE LAW

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ABSTRACT

This Note examines Iowa's repeated rejection of the Uniform Real Property Transfer on Death Act, arguing that its adoption would effectively dismantle the state's entire probate system. While the Act streamlines the transfer of real property of probate, what is deemed to be a "barrier" to avoiding probate for estate planners, it would also eliminate the vital procedural safeguards and undermine the role of probate attorneys in the state. Particularly here, given Iowa's high agricultural land values and citizens' strong interest in estate preservation, the pressure to adopt transfer-on-death deeds is mounting. Despite those benefits, this Note contends that bypassing probate would jeopardize creditor protections, shift legal burdens onto untrained heirs, and threaten the viability of attorneys continuing to practice in the legal area altogether. Through legislative history, judicial interpretation, and economic analysis, this Note concludes that Iowa's decision to reject the Uniform Real Property Transfer on Death Act is justified, and further adoption efforts should be resisted to maintain the integrity of its estate administration system. All parties can agree that estate planners may seek promising time and cost savings, but all savings come with a cost; some costs are not worth such savings.

I. INTRODUCTION

In 2009, the Uniform Law Commission (the Commission) passed the Uniform Real Property Transfer on Death Act (the Act).¹ The Commission works to pass universal legislation in the more unclear areas of law, but are not effective in any state until adopted by the state's legislature.² The Act has been influential for several states in their adoption of transfer-on-death deeds, while others have adopted more individualized rules.³ The Act was directly adopted by 19 states before 2020 and has been introduced by six more since then.⁴ At least five other

1. UNIF. REAL PROP. TRANSFER ON DEATH ACT (UNIF. L. COMM'N 2009).

2. *About Us*, UNIF. L. COMM'N (Mar. 27, 2025, 1:19 PM), <https://www.uniformlaws.org/aboutulc/overview> [<https://perma.cc/86X6-6XPN>].

3. Miles Almadrones & Allison DeSantis, *What Is a Transfer on Death Deed and How Does it Work?*, LEGALZOOM (Jan. 31, 2025), <https://www.legalzoom.com/articles/understanding-the-transfer-on-death-deed> [<https://perma.cc/8KPM-4HFN>].

4. *Real Property Transfer on Death Act*, UNIF. L. COMM'N (Mar. 27, 2025, 1:21 PM), <https://www.uniformlaws.org/committees/community-home?CommunityKey=a4be2b9b-5129-448a-a761-a5503b37d884> [<https://perma.cc/7Z87-2WH7>].

states have adopted some form of transfer-on-death deeds.⁵ This includes lady bird deeds, for example, which create a form of co-ownership with full transfer at the testator's death.⁶

It seems nothing less than perfect to consider this type of land transfer for Iowa real property. The United States' average agricultural land value was at an all-time high in 2023, at \$4,048 per acre.⁷ Iowa boosts that number with the fifth highest average value of agricultural land across the country at \$9,930 per acre.⁸ Crop value in the United States also reached an all-time high in 2023 at \$5,460 per acre, where Iowa paves the way with the third highest value at \$10,100 per acre.⁹

It only makes sense that some of Iowa's greatest legal fights involve probate proceedings consisting of wasted money, lost time, and unreasonable pain that the Act causes in estate planning—especially with its application to family farms.¹⁰ Iowa has not budged.¹¹ The outcomes of recent legislative denials to accept the Act aligns with Iowa judicial findings on how Iowa views probate law.¹²

This Note provides a background of what Iowa values in probate law, including what probate law practitioners value in probate law. Without them, this debate would be overruled by the quick fix in adopting the Act. Without attorneys practicing probate law, the job can be done improperly. It is possible, but relies on untrained people to do an extremely meticulous job.¹³ The collection of fees, expenses, and debts is one of the most important aspects of probate law.¹⁴ This collection of fees and expenses might only be possible because of the strict lines

5. Almadrones & DeSantis, *supra* note 3.

6. *How Lady Bird Deeds Protect a Medicaid Recipient's Home for Their Loved Ones*, AM. COUNCIL ON AGING (Jan. 20, 2025), <https://www.medicaidplanningassistance.org/lady-bird-deeds/> [<https://perma.cc/G6K6-2EZN>].

7. Daniel Munch, *U.S. Agricultural Land Values and Cropland Cash Rents Reach New Highs*, FARM BUREAU (Aug. 7, 2023), <https://www.fb.org/market-intel/u-s-agricultural-land-values-and-cropland-cash-rents-reach-new-highs> [<https://perma.cc/7FYH-2M44>].

8. *Id.*

9. *Id.*

10. *See generally* King v. Smith, No. 20-0137, 2021 WL 2453051, at *8 (Iowa Ct. App. June 16, 2021).

11. *Id.* at *5.

12. *See id.*

13. *See generally* Doug Luftman, *How to Probate a Will Without a Lawyer*, TR. & WILL (Mar. 27, 2025, 1:34 PM), <https://trustandwill.com/learn/how-to-probate-a-will-with-no-lawyer> [<https://perma.cc/5K3T-EYBC>].

14. *See generally* IOWA CODE ANN. § 633.199 (West 2025).

laid out in the Probate Code, by the court, and by the attorneys who work with executors and administrators.¹⁵

As Iowa agricultural land is valued so high compared to other states, it only follows that it would make Iowans' estates of higher value.¹⁶ This Note is about how adding transfer-on-death property deeds will kill the entire practice of probate law. Where do Iowans turn when attorneys refuse to take probate cases? Estates are now worth pennies. Clients take the transfer-on-death funds, belongings, and property, and they run. As if this work is not already some of the most emotional and time-consuming of the law practiced in Iowa, causing it to undercompensate attorneys makes even less sense.

Any version of the Act has not survived the Iowa Courts, nor should it.¹⁷ Whatever implementation these new regulations have had in other jurisdictions, are already being set up to fail.¹⁸ The Act emphasizes the ability to probate without an attorney, but without providing any additional safeguard to promote proper procedure.¹⁹

This Note will identify how mentions of the Act have been treated in Iowa, and how it holds no place in its probate structure. This Note will attempt to analyze how transfer-on-death property can be a useful estate planning tool, but one that is costly for courts, creditors, attorneys, and the entire funding system of the government. The Iowa Legislature has considered three bills on adopting the Act, each time resulting in concern and disinterest in the content.²⁰ This Note will argue that this was the correct finding, and the Act has no place in Iowa.

15. *See generally id.*

16. *See* Tia M. McDonald, Ron Durst & Christine Whitt, *ERS Modeling Shows Most Farm Estates Would Have No Change in Capital Gains Tax Liability Under Proposed Changes*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC. (Dec. 7, 2021), <https://www.ers.usda.gov/amber-waves/2021/december/ers-modeling-shows-most-farm-estates-would-have-no-change-in-capital-gains-tax-liability-under-proposed-changes/> [<https://perma.cc/9CFG-35EL>].

17. *See* King, 2021 WL 2453051 at *8.

18. *See* Strobe-Robinson v. State Farm Fire and Cas. Co., 429 F. Supp. 3d 634, 646 (D. Minn. 2019).

19. *See* UNIF. REAL PROP. TRANSFER ON DEATH ACT prefatory note (UNIF. L. COMM'N 2009).

20. *See generally* S. File 2117, 86th Gen. Assemb., Reg. Sess. (Iowa 2016); S. File 393, 87th Gen. Assemb., Reg. Sess. (Iowa 2017); S. File 2030, 88th Gen. Assemb., Reg. Sess. (Iowa 2020).

II. HOW IOWA TRANSFERS PROPERTY NOW

Although Iowa probate law does not have transfer-on-death deeds like those prescribed by the Act, the probate process is laid out in Iowa Code.²¹ Probate is a process which involves the court.²² It seeks orderly transfer of assets, protection of inheritance rights, and preservation of the debts and expenses owed to secured, unsecured, or potential creditors.²³

A decedent's estate is filled with their real and personal property, to be distributed per testate or intestate succession.²⁴ Inheritors could include a spouse, children, stepchildren, parents, more distant family, friends, neighbors, organizations, or charities.²⁵ Yet, estates are frequently planned to include distributions in more ways than these traditional inheritors in the family unit.

Iowa law offers multiple ways to go through probate, although parties individually seek ways to avoid it.²⁶ Between ownerships, wills, and trusts, smart estate planning requires Americans to learn their options. Estate planning may be done by the citizens, but the citizens' estate planning is done with the lawyers, tax experts, and financial advisors, who know why and how this needs to be done in order to avoid extraordinary probate fees.

A. Probate Fees

The largest contention with probate, among taxpayers, is the imbedded fees. Probate fees include, but are not limited to: court costs, attorney fees, fiduciary fees, property maintenance, inheritance tax, and federal estate tax.²⁷ Payment of these fees is one of the responsibilities of the executor who is appointed by the decedent or the court to administer an estate.²⁸

21. See generally IOWA CODE ANN. § 633 (West 2025).

22. *Id.* § 633.10.

23. Jennifer Harrington, *An Overview of the Probate Process*, IOWA STATE UNIV. CTR. FOR AGRIC. L. & TAX'N (May 10, 2022), <https://www.calt.iastate.edu/article/overview-probate-process> [<https://perma.cc/EBS7-AKMP>].

24. IOWA CODE ANN. § 633.3.

25. *Estate Planning for People with No Heirs*, CHARLES SCHWAB (Sept. 23, 2021), <https://www.schwab.com/learn/story/estate-planning-people-with-no-heirs> [<https://perma.cc/R5M6-VXLE>].

26. See Scott Steinberg, *How to Avoid Probate: 5 Ways to Keep Your Estate Private After Death*, ROCKET MONEY (July 18, 2023), <https://www.rocketmoney.com/learn/investing/avoid-probate> [<https://perma.cc/P2ES-TJZG>].

27. IOWA CODE ANN. § 633.3.

28. *Id.*

Since the decedent's property passes to their estate before reaching the hands of the beneficiaries, the value of the estate is what provides for calculation of these fees.²⁹ The clerk charges court costs equal to 0.2% of the value of the report and inventory's probate assets.³⁰ Attorney fees are set at 6% of the report and inventory's probate assets for the first \$1,000, 4% for the next \$4,000, and 2% for all value over \$5,000.³¹ Following the statutory ceiling, Iowa attorneys frequently charge only 2% for estates that require administration,³² but are entitled to a higher fee if extraordinary time, complexity, or responsibility is required to administer the estate.³³

B. Avoiding Probate Fees

Smart estate planning, however, consists of avoiding these fees by minimizing the amount of probate assets in an estate. Iowa has defined an estate more broadly than federal law and includes assets in its definition that may be otherwise excludable, such as legal interest with title.³⁴

Life insurance proceeds are a typical example of a decedent's assets which pass outside of an estate and qualify as a non-probate asset.³⁵ Non-probate assets include accounts which are payable on death including checking, trading, and investment accounts.³⁶ These types of transfers are believed to simplify and speed up the probate process.³⁷ To an even greater degree, Iowa believes these accounts are not to be included as probate assets since the decedent has no property right at the time that they pass and, rather, they are an asset of the beneficiary.³⁸ Iowa is a state that allows opportunity for these types of ownership.³⁹

29. *Id.* § 633.31.

30. *Id.*

31. *Id.* § 633.197.

32. *Iowa Attorney Fees in Probate*, IOWA EST. PLAN (Aug. 26, 2007), <https://www.iowaestateplan.com/2007/08/iowa-attorney-fees-in-probate.html> [<https://perma.cc/LH5F-LAJN>].

33. IOWA CODE ANN. § 633.199.

34. *See* Torgerson v. Barkema (*In re* Barkema Trust), 690 N.W.2d 50, 55 (Iowa 2004).

35. IOWA CODE ANN. § 633.5.

36. SHELDON F. KURTZ, KURTZ ON IOWA ESTATES: INTESTACY, WILLS, AND ESTATE ADMINISTRATION 451 (3d ed. 1995).

37. Kat Aoki, *Payable-On-Death Bank Account: Pros and Cons*, FORBES (Aug. 10, 2023, 9:57 AM), <https://www.forbes.com/advisor/banking/payable-on-death-bank-account> [<https://perma.cc/TV73-HRWZ>].

38. *In re* Estate of Myers, 825 N.W.2d 1, 7–8 (Iowa 2012).

39. Jeff Burtka, *Avoiding Probate in Iowa*, NOLO (Nov. 7, 2024), <https://www.nolo.com/legal-encyclopedia/iowa-avoiding-probate-31971.html> [<https://perma.cc/F44X-H2V7>].

C. Probate Requiring Non-Administration

Estates valued below \$50,000 are not subject to probate administration at all if they do not consist of any real property.⁴⁰ This is done by filing an affidavit of small estate.⁴¹ This policy requires payment to successors without letters of appointment if there is no debt owed to the Department of Health and Human Services, no inheritance owed to the Department of Revenue, and creditors will be paid to the extent of available funds.⁴² Affidavits may be executed by a successor with an inheritor's interest including but not limited to a spouse, children, step-children, parents, or more distant family, friends, neighbors, organizations, or charities.⁴³

Iowa also differentiates estates with probate assets below \$200,000 to be distributed with small estate administration.⁴⁴ Small estate administration falls between all categories of fees and complexity in comparison to normal estates over \$200,000 and estates which do not require probate administration.⁴⁵

D. Requiring an Attorney for Probate

Estates, whether administered or not, require application and approval with the courts.⁴⁶ If administered, an attorney petitions the clerk to issue the executor's letter of appointment.⁴⁷ Petitioning for administration requires information of the decedent, information of the beneficiaries, method of distribution, qualification of assets, and information of the executor or administrator.⁴⁸ If not petitioning for administration, property can be transferred by affidavit.⁴⁹ This is only an option when the estate is considered "very small," less than \$50,000.⁵⁰ This is an instrument of probate law for which not all estates qualify.⁵¹ Heirs likely do not

40. *GN 02315.053 Iowa Small Estates*, SOC. SEC. ADMIN. (Feb. 16, 2024), <https://secure.ssa.gov/poms.nsf/lnx/0202315053> [<https://perma.cc/Z3YA-MM8A>].

41. *Id.*

42. *Id.*

43. *See* IOWA CODE ANN. § 633.356(1)–(3) (West 2025).

44. *GN 02315.053 Iowa Small Estates*, *supra* note 40.

45. *See id.*

46. *See* Maya Powers, *What Happens if I Don't File for Probate?*, TR. & WILL (Mar. 27, 2025, 1:25 PM), <https://trustandwill.com/learn/what-happens-if-no-probate-is-filed> [<https://perma.cc/MPT5-ZRMW>].

47. IOWA CODE ANN. § 635.1.

48. *Id.* § 635.2.

49. *Id.* § 633.356.

50. *Id.*

51. *See id.*

know these tools associated with probate law; in fact, their first time hearing about them might be from an attorney.

E. Considering a Trust

Iowa's acceptance of trusts in estate planning also provides a way to beat probate fees.⁵² Trusts offer similar methods of ownership while alive to estates, but different methods of distribution at a decedent's passing.⁵³ However, probate does not get the luxury to touch trusts.⁵⁴

Revocable trusts are most common, since ownership is very similar to traditional property ownership; rather than owning property as an individual, individuals own a property-owning trust.⁵⁵ Revocable trusts allow the settlor to maintain control of the trust they created during their life.⁵⁶ Settlers also maintain control of all property owned within the trust.⁵⁷ Another benefit to revocable trusts is that they are not subject to the fee calculations of probate.⁵⁸

Irrevocable trusts, though similar, do not allow the settlor to access, transfer, or alter the assets of the trust after creation.⁵⁹ The inability to change the trust is not appealing to people, though one can beat probate with an irrevocable trust, since they cannot be considered someone's asset at death.⁶⁰ Since the settlors have non-contingent interests during their life, they are not considered to be probate assets when their estate needs to be administered.⁶¹

52. *See generally id.* § 633A.

53. *See id.* §§ 633A.2201, .2203(2).

54. *See Probate*, IOWA STATE BAR ASS'N (March 27, 2025, 1:36 PM), <https://www.iowabar.org/?pg=LegalInfoProbate> [<https://perma.cc/V3D6-MRLR>].

55. *What Is the Most Common Type of Trust?*, RILUS L. GRP. (April 19, 2025), <https://www.riluslaw.com/blog/what-is-the-most-common-type-of-trust> [<https://perma.cc/88CK-YPAE>].

56. *A Short Primer on Trusts and Trust Taxation*, SPECIAL NEEDS ALL. (March 27, 2025, 1:37 PM), <https://www.specialneedsalliance.org/the-voice/a-short-primer-on-trusts-and-trust-taxation-2/> [<https://perma.cc/Z3ER-VF75>].

57. *Id.*

58. IOWA CODE ANN. § 633.31.

59. *See Irrevocable Trust*, CORNELL L. SCH. LEGAL INFO. INST. (Mar. 2022), https://www.law.cornell.edu/wex/irrevocable_trust [<https://perma.cc/J972-9LT9>].

60. *See id.*

61. *See Revocable Trusts*, IOWA STATE BAR ASS'N (June 20, 2025, 11:01 PM), <https://www.iowabar.org/?pg=RevocableTrusts> [<https://perma.cc/9PJE-WTPR>].

F. Revocable Life Estate Deeds

Owning property as a life estate is another assistive avenue since this form of land ownership only lasts during the life of the property owner.⁶² With ownership limited to life, a step less than traditional fee simple ownership, the value at the owner's passing is significantly lower.⁶³ A life estate allows the grantor to continue use of the property during their life, while the grantee has the remainder use at their passing.⁶⁴ Nonetheless, each person has a value assigned to their property rights, which are included in a person's estate value.⁶⁵

III. WHAT THE 2009 UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT WOULD ENTAIL

A. What the Act Allows

The Act was designed to make the property transfer process even easier in estate planning.⁶⁶ It allows property owners to designate a beneficiary to receive a piece of property by means of a recorded transfer-on-death deed.⁶⁷ While the property owner is alive, they retain full property rights without change.⁶⁸ Property owners still retain the bundle of sticks—the right to possess, right to use, right to exclude others, right to transfer, and right to modify or destroy.⁶⁹ The named beneficiaries have no interest during the property owner's life, but property rights are transferred in full at the time of death.⁷⁰

The Act compares its new treatment of transfer-on-death deeds to the way all states treat life insurance, pensions, and payable on death security accounts.⁷¹ The Act does so in reliance on the acceptance of non-probate transfers in the Uniform Probate Code.⁷² The Commission found 2009 to be a ripe time to provide

62. See *Health Mgmt. Sys., Inc. v. Laughead (In re Estate of Laughead)*, 696 N.W.2d 312, 316 (Iowa 2005); see also *Beeman v. Stilwell*, 189 N.W. 969, 971 (Iowa 1922).

63. See *In re Estate of Laughead*, 696 N.W.2d at 314.

64. See *id.* at 316.

65. See *id.* at 314.

66. See UNIF. REAL PROP. TRANSFER ON DEATH ACT prefatory note (UNIF. L. COMM'N 2009).

67. *Id.* § 5.

68. *Id.* § 12.

69. See JERRY L. ANDERSON & DANIEL B. BOGART, *PROPERTY LAW: PRACTICE, PROBLEMS, AND PERSPECTIVES* 4 (Aspen Publishing, 2d ed. 2019).

70. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 12 cmt.

71. *Id.* § 7 cmt.

72. See UNIF. PROB. CODE § 6-102 (UNIF. L. COMM'N 2019).

uniform guidance on transfer of property upon death because 13 states had enacted statutes on their own by that point, including Missouri who first enacted theirs in 1989.⁷³

The Act provides an additional avenue to transfer real property.⁷⁴ This addition grants a property owner the ability to specify a “designated beneficiary” on a deed to receive the property at their death under the Act.⁷⁵ The interpretation and application could be left to the state’s discretion when adopting the Act, but it is intended to provide a uniform landscape for states to rely upon.⁷⁶

B. As Implemented in Other States

Iowa is landlocked in an ocean of states that recognize transfer-on-death designations for real property: Minnesota,⁷⁷ Wisconsin,⁷⁸ Illinois,⁷⁹ Missouri,⁸⁰ Nebraska,⁸¹ and South Dakota⁸² all recognize transfer-on-death real estate with their own unique circumstances within. Moreover, transfer-on-death real property exists in every other state west of the Mississippi River aside from Idaho, Louisiana, and, of course, Iowa.⁸³

73. UNIF. REAL PROP. TRANSFER ON DEATH ACT prefatory note.

74. *Id.* § 2.

75. *Id.* §§ 2, 9.

76. *About Us, supra* note 2.

77. MINN. STAT. ANN. § 507.071 (West 2025).

78. WIS. STAT. ANN. § 705.15 (West 2025).

79. 755 ILL. COMP. STAT. ANN. 27/40 (West 2025).

80. MO ANN. STAT. § 461.028 (West 2025).

81. NEB. REV. STAT. ANN. § 76-3410 (West 2025).

82. S.D. CODIFIED LAWS § 29A-6-403 (West 2025).

83. ROBERT H. SITKOFF & JESSE DUKEMINIER, WILLS, TRUSTS, AND ESTATES 506–07 (Aspen Publishing, 11th ed. 2022).

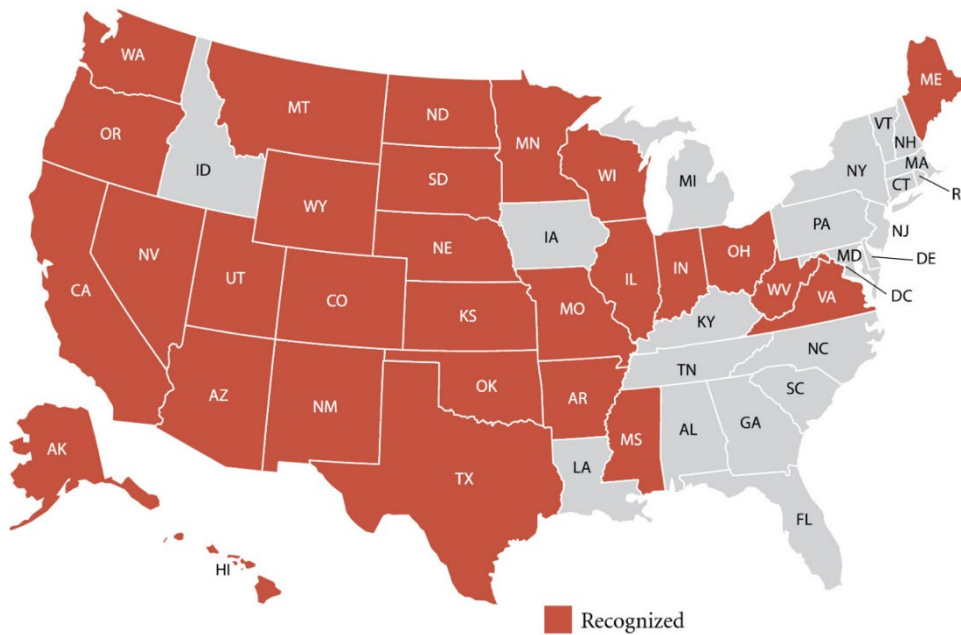


Figure 1 – Source: Wills, Trusts, & Estates⁸⁴

The states shown in red in Figure 1 are those which have adopted the Act, the Uniform Probate Code, or some other unique rules which allow for real property in the state to be transferred on death without a probate proceeding.⁸⁵

Implementation in these states has not eliminated the need to follow the rules of probate or similar rules governing a decedent's property. In Nebraska, for example, property transferred by a transfer-on-death deed is still subject to an inheritance tax.⁸⁶ Transfer-on-death deeds must still contain all customary elements of an otherwise standard *inter vivos* land transfer deed.⁸⁷ The deed must still be signed, dated, notarized, and recorded by someone of sound mind and body.⁸⁸ It need not be delivered, accepted, or justified by the designated beneficiary with consideration.⁸⁹

84. *Id.*

85. *Id.*

86. *Chambers v. Bringenberg*, 963 N.W.2d 37, 50–51 (Neb. 2021).

87. *Id.* at 53.

88. *See* UNIF. REAL PROP. TRANSFER ON DEATH ACT § 9 cmt. 1 (UNIF. L. COMM'N 2009).

89. *Id.* § 10.

The transfer-on-death deed is still revocable.⁹⁰ Revocation is possible through inconsistency with a new transfer-on-death deed, a different instrument stating revocation of that transfer-on-death deed, or an *inter vivos* gift of that deeded property to contradict the deed.⁹¹

This type of transfer-on-death deed does not change any interest or right of the transferor or the transferee.⁹² This means that the original property owner is still responsible for property taxes, mortgage payments, or homeowners association fees.⁹³

Further, this kind of transfer-on-death deed does not change any interest or right to collection of any secured, unsecured, or unknown future creditors.⁹⁴ The Act also allows two types of alternatives for adoption depending on how the state governs creditor rights to non-probate transfers.⁹⁵ Beneficiaries who receive these non-probate assets are responsible for the claims filed in the transferor's estate when they pass.⁹⁶

Texas is one of many states who implemented this language from the Act.⁹⁷ In addition to passing along the ownership, property rights, and financial sum to a beneficiary, Texas passes along the debts of creditors that may be attached at the time of the transferor's death.⁹⁸ If there is an executor or administrator appointed for an estate, and a creditor files a claim, that executor or administrator has the responsibility to direct that claim as otherwise appropriated in Texas claim procedures.⁹⁹

Along with other things, following proper procedure relies on an estate being opened.¹⁰⁰ This Note is about the glaringly obvious flaws that these states deal with or will deal with soon.

90. *Id.* § 6.

91. *Id.* § 11.

92. *Id.* § 12.

93. *Property Tax Frequently Asked Questions*, IOWA STATE CNTY. TREASURER'S ASS'N. (Apr. 8, 2025, 4:16 PM), <https://www.iowatreasurers.org/index.php?module=pfaq> [<https://perma.cc/3ANR-GE25>].

94. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 12.

95. *Id.* § 15.

96. *Id.*

97. *See* TEX. EST. CODE ANN. §§ 114.101–106 (West 2025).

98. *Id.* § 114.104.

99. *Id.*

100. *Id.*

C. Why Is Iowa Different?

Iowa has strict rules regarding what assets can be excluded when estate claims remain.¹⁰¹ Iowa forbids the transfer of property out of the decedent's own estate with the intent to defraud the decedent's creditors.¹⁰² There is reasonable fear that an affluent debtor might leave a creditor vulnerable merely because of their method of property ownership and disposition.¹⁰³ Iowa has feared fixing the way that joint tenancy accomplishes this goal because "the cure might be worse than the disease,"¹⁰⁴ but that does not apply to Iowa's distaste for transfer-on-death property, nor its failure to adopt the Act.¹⁰⁵

Medicaid eligibility is another clear example of unpaid debt living on. When an applicant becomes eligible for Medicaid long-term care, Medicaid requires proof that the applicant is below the qualification-specific asset limit.¹⁰⁶ A grantor's personal property may be distributed per transfer-on-death pursuant to a contract between grantors and administrators of the personal property accounts.¹⁰⁷

IV. HOW THE ACT WOULD ALLOW PEOPLE TO BEAT PROBATE

The Act allows an individual to "transfer property to one or more beneficiaries effective at the transferor's death by a transfer-on-death deed."¹⁰⁸ The Act was introduced to change the way we transfer property and allow for real property to be treated the same as other assets passing outside of probate.¹⁰⁹ It cannot be argued that this Act fails to help the consumer. In fact, the Act provides tremendous incentivization for people to make estate plans while living.¹¹⁰

101. See IOWA CODE ANN. § 633.368 (West 2025).

102. *Id.*

103. N. William Hines, *Real Property Joint Tenancies: Law, Fact, and Fancy*, 51 IOWA L. REV. 582, 597 (1966).

104. *Rembe v. Stewart*, 387 N.W.2d 313, 314–15 (Iowa 1986).

105. See S. File 2117, 86th Gen. Assemb., Reg. Sess. (Iowa 2016).

106. *Iowa Medicaid Eligibility for Long Term Care: Income & Asset Limits*, AM. COUNCIL ON AGING (Dec. 05, 2024), <https://www.medicaidplanningassistance.org/medicaid-eligibility-iowa> [https://perma.cc/CVN9-8YS5].

107. IOWA CODE ANN. § 633D.11(1) ("A transfer on death resulting from a registration in beneficiary form shall be effective by reason of the contract regarding the registration between the owner and the registering entity under the provisions of this chapter, and is not testamentary.").

108. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 5 (UNIF. L. COMM'N 2009).

109. See *id.* at prefatory note.

110. See Eric Reed, *What Are Transfer on Death (TOD) Accounts for Estate Planning?*, SMARTASSET (Feb. 13, 2025, 10:15 PM), <https://smartasset.com/estate-planning/tod-account> [https://perma.cc/94JS-HUVT].

Supporters of the Act focus on the potential path for people, both fiduciaries and beneficiaries, to save some of the money, time, and hassle that are frequently associated with probate, which tend to be of greatest issue within legal proceedings.¹¹¹

A. Saving Money

The Earth of estate planning tends to revolve around the Sun of probate being wildly expensive; the smartest consumers by nature must avoid probate if possible.¹¹² Yet, it just so happens that all widely-accepted probate avoidance tools are also expensive.¹¹³ Benjamin Franklin said, “A [p]enny sav[e]d is [t]wopence clear.”¹¹⁴ General economic theory of money management teaches everyone that money possessed today is worth more than money possessed tomorrow, deriving significant value for the opportunity to maintain and build wealth.¹¹⁵

The Act allows real property, once considered a universal probate asset, to instead be passed as a non-probate asset.¹¹⁶ Since probate fees involve a calculation based on the value of assets within an estate, the Act serves as a tool to minimize that fee owed to the clerk and provide taxpayers with great savings.¹¹⁷

B. Saving Time and Hassle

In Iowa, traditional transfer-on-death securities transfer ownership as soon as the managing entity has been notified and has proven that the owner is deceased.¹¹⁸ By not reaching the estate, assets which pass directly to a beneficiary are not required to be probated.¹¹⁹ These transfer-on-death securities only reach

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

112. See Michelle Kaminsky, *Why Avoid Probate?*, LEGALZOOM (Jan. 22, 2025), <https://www.legalzoom.com/articles/do-you-know-the-top-reasons-to-avoid-probate> [<https://perma.cc/S9BG-4PY3>].

113. Rickie Houston, *How Much Does It Cost to Set Up a Trust?*, SMARTASSET (Jan. 31, 2025, 6:05 PM), <https://smartasset.com/estate-planning/how-much-does-it-cost-to-set-up-a-trust> [<https://perma.cc/Y3LZ-NMJX>].

114. BENJAMIN FRANKLIN, *POOR RICHARD’S ALMANAC* 40 (David McKay Co., Inc. 1961).

115. Catherine Cote, *Time Value of Money (TVM): A Primer*, HARVARD BUS. SCH. ONLINE (June 16, 2022), <https://online.hbs.edu/blog/post/time-value-of-money> [<https://perma.cc/PQ87-9AJ2>].

116. See UNIF. REAL PROP. TRANSFER ON DEATH ACT prefatory note (UNIF. L. COMM’N 2009).

117. See IOWA CODE ANN. § 633.31 (West 2025).

118. *Id.* § 633D.9.

119. See *id.* § 633.357(2).

the estate if none of the named primary or contingent beneficiaries survive all owners of the security.¹²⁰

In Iowa, real property requires transfer through probate.¹²¹ Although not all cases are the same, probate can often take more than two years depending on the complexity of the estate.¹²² This delay is typically a result of notifying creditors, waiting for claims, collecting assets, selling property, and filing tax returns.¹²³ Iowa requires an estate be closed within three years, unless granted an extension by the court.¹²⁴

The Act, by allowing real property to be assigned transfer-on-death designations, transfers the real property no differently than transfer-on-death securities.¹²⁵ Following the Act, real property is transferred as of the transferor's date of death.¹²⁶ With the Act, the only time wasted is the time spent waiting for the decedent's death certificate to arrive in the mail instead of going through probate to transfer real property.¹²⁷ Ordering these vital records in Iowa, even at its slowest, only take two to three weeks.¹²⁸

Avoiding probate will save time in other ways. Lawyers are typically involved in the process of probate and transferring property because issues frequently arise.¹²⁹ Attorneys draft necessary documents, fill out beneficiary forms, and address any vague terms in the will.¹³⁰ Attorneys deal with heirs

120. *Id.* § 633D.9.

121. *See Probate*, *supra* note 54.

122. KELVIN LEIBOLD, EVALUATING YOUR ESTATE PLAN: THE ESTATE SETTLEMENT PROCESS, IOWA STATE UNIV. EXTENSION AND OUTREACH AG DECISION MAKER 3 (May 2014), <https://www.extension.iastate.edu/agdm/wholefarm/pdf/c4-53.pdf> [<https://perma.cc/QM22-C7L5>].

123. *Id.*

124. IOWA CODE ANN. § 633.473.

125. *See id.* § 633D.9; *see also* UNIF. REAL PROP. TRANSFER ON DEATH ACT § 5 (UNIF. L. COMM'N 2009).

126. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 5 (UNIF. L. COMM'N 2009).

127. *See generally* *How to Get a Certified Copy of a Death Certificate*, USA.GOV (Nov. 27, 2024), <https://www.usa.gov/death-certificate> [<https://perma.cc/689L-UXXA>].

128. *How Do I Get Marriage, Birth, and Death Records?*, IOWA.GOV (Mar. 27, 2025, 2:02 PM), <https://www.iowa.gov/how-do-i-get-marriage-birth-and-death-records> [<https://perma.cc/KG4K-ES8N>].

129. *See Probate*, *supra* note 54.

130. *See, e.g.,* *Simpson v. Calivas*, 650 A.2d 318, 320 (N.H. 1994).

contesting, creditor negotiations, gaining access to accounts, and notifying mass amounts of people with a claim to an estate.¹³¹

C. Incentivizing People to Care

To call it polarizing would be a stretch, but only a small percentage of the American population cares about their estate plan.¹³² Although a 2024 survey showed that 64% of Americans believed that having a will is very or somewhat important, not even 32% of Americans had one.¹³³

Although that number includes young people who may not have gotten around to creating an estate plan yet, the concern comes from seeing a decline in the percentage of older Americans with wills.¹³⁴ Since 2020, the percentage of Americans over 55-years-old with a will has decreased from 48% to 46%.¹³⁵

The Act primarily applies to wealthier people, those who own more real property than the average person.¹³⁶ Transfer-on-death real property provides the most value to people with more assets.¹³⁷ Although estate planning tools are not just for wealthy land owners, we see a disproportionate amount of wills being set up in the country.¹³⁸ In 2024, survey results showed that 34% of White Americans had a will compared to 31% of Black Americans and 22% of Hispanic Americans.¹³⁹ Approximately 40% of Americans said they had no estate plan because they do not own enough assets.¹⁴⁰ However, 65.9% of Americans own a home, which would force them into probate without adoption of the Act or similar

131. *What You Can Expect to Pay a Lawyer During Probate*, EMPATHY (Mar. 27, 2025, 2:01 PM), <https://www.empathy.com/probate/what-you-can-expect-to-pay-a-lawyer-during-probate> [https://perma.cc/CK7V-4YHF].

132. See Rachel Lustbader, *2024 Wills and Estate Planning Study*, CARING (Mar. 31, 2025), <https://www.caring.com/resources/2024-wills-survey/> [https://perma.cc/54VZ-QVCM].

133. *Id.*

134. *See id.*

135. Daniel de Visé, *Where's the Inheritance? Why Fewer Older Americans Are Writing Wills or Estate Planning*, USA TODAY (Oct. 4, 2023, 8:18 PM), <https://www.usatoday.com/story/money/personalfinance/2023/10/03/fewer-older-americans-are-writing-wills-planning-estates/70994383007/>.

136. See UNIF. REAL PROP. TRANSFER ON DEATH ACT § 2 (UNIF. L. COMM'N 2009) (defining property as “an interest in real property” for purposes of the Act).

137. *See id.* § 12 (describing retained interests and rights of transfer-on-death deed during the transferor's life).

138. *See Lustbader, supra* note 132.

139. *Id.*

140. *Id.*

local legislation.¹⁴¹ Iowa is one of the states leading the charge of home ownership—almost 75% of Iowa residents own their home(s).¹⁴² Iowans are some of the few who cannot transfer property on death, and must transfer title through probate.¹⁴³ Adopting the Act in Iowa may incentivize Iowans, no matter their socioeconomic class, age, race, or ethnicity, to engage in estate planning solely for an easier route around probate.

V. THE ACT HAS BEEN INTRODUCED IN THE IOWA LEGISLATURE REPEATEDLY WITHOUT BEING ADOPTED

Iowa has not ignored the Act or the Uniform Probate Code.¹⁴⁴ The Act has been introduced several times to the Iowa Legislature and Iowa courts.¹⁴⁵ At each introduction, it has been met with warm welcomes, fuzzy looks, and harsh tastes alike.¹⁴⁶ The Act has yet to survive the scrutiny of the Iowa Legislature any further than the initial steps of introduction.¹⁴⁷ To this day, no additional steps have been taken to adopt the Act in Iowa.¹⁴⁸

A. Failure in 2016

In early 2016, groups of Iowans began to talk about the Act.¹⁴⁹ On February 8, 2016, Senate File 2117 was introduced in the Iowa Senate.¹⁵⁰ The bill, if adopted, would not affect any prior transferring methods, but rather would accept the Act and allow for a transfer-on-death deed to transfer real property outside of probate.¹⁵¹

141. Tony Mariotti, *Homeownership Statistics*, RUBYHOME (Aug. 23, 2023, 1:30 PM), <https://www.rubyhome.com/blog/homeownership-stats/> [<https://perma.cc/8MAG-W6UF>].

142. *Id.*

143. Kitt Tovar Jensen, *Iowa Court of Appeals Affirms Transfer-on-Death Deed of Farmland as Void*, IOWA STATE UNIV. CTR. FOR AGRIC. L. & TAX'N (June 16, 2021), <https://www.calt.iastate.edu/article/iowa-court-appeals-affirms-transfer-death-deed-farmland-void> [<https://perma.cc/U4AR-7N3Y>].

144. See Mark Stephen Hart, *It Sure Can Get Cold in Des Moines: Why the Iowa Legislature Has Remained Frozen on Transfer on Death Deeds for Real Property*, 108 IOWA L. REV. 901, 914 (2023).

145. Tovar Jensen, *supra* note 143.

146. Hart, *supra* note 144, at 914.

147. See *id.* at 918–21.

148. Tovar Jensen, *supra* note 143.

149. See S. File 2117, 86th Gen. Assemb., Reg. Sess. (Iowa 2016).

150. See *id.*

151. *Id.*

In 2016, the issue was new and of first-impression in Iowa.¹⁵² There was no case law or widespread acceptance by legal practitioners to guide Iowa at the time.¹⁵³ By the end, of all registered lobbyists involved, only two of the seven decided their position.¹⁵⁴ The two decisive lobbyists, Katherine Carlucci and Thomas Stanberry with the Iowa Academy of Trust and Estate Counsel, were against the Act.¹⁵⁵ In consideration of voices for and against Senate File 2117, Iowa denied the Act's adoption and showed its position, revealing how difficult it would be to overcome Iowa Legislature's scrutiny on the matter.¹⁵⁶

B. Failure in 2017

The Act was of greater importance when reintroduced to create the transfer-on-death deed for the second time just one year later.¹⁵⁷ The greatest change within the language of Senate File 393 was replacing *mandated* attorney contact¹⁵⁸ with simply *encouraged* attorney contact.¹⁵⁹ Another difference: lobbyists with the Iowa State Bar Association, Iowa Funeral Directors Association, Iowa Bankers Association, and Iowa Trust Association joined in opposition of the Act.¹⁶⁰ Eleven lobbyists now were against the Act, and nobody was in support.¹⁶¹ The Iowa Senate sided with them.¹⁶²

C. Failure in 2020

As mentioned earlier, 19 states had directly adopted the Act prior to 2020.¹⁶³ Needless to say, the Act was gaining real traction. That is why the Act was reintroduced for a third time the Iowa Senate in 2020.¹⁶⁴ Changes were minimal

152. Brody Swanson, *Allowing Farmers to "Take Back" What's Theirs: Adoption of the Revocable Life Estate Deed*, 21 DRAKE J. AGRIC. L. 409, 414–15 (2016).

153. *Id.* at 416.

154. *Lobbyist Declarations*, IOWA LEGIS. (Apr. 7, 2025), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=86&ba=SF2117> [<https://perma.cc/8KER-2PGA>].

155. *Id.*

156. Hart, *supra* note 144, at 916.

157. See S. File 393, 87th Gen. Assemb., Reg. Sess. (Iowa 2017).

158. S. File 2117, 86th Gen. Assemb., Reg. Sess. § 17 (Iowa 2016) ("If you have other questions, consult a lawyer.").

159. S. File 393, 87th Gen. Assemb., Reg. Sess. § 17 (Iowa 2017) ("If you have other questions, you are encouraged to consult a lawyer.").

160. See *Lobbyist Declarations*, IOWA LEGIS. (May 22, 2025), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=87&ba=SF393> [<https://perma.cc/C333-2KDW>].

161. See *id.*

162. S. File 393, 87th Gen. Assemb., Reg. Sess. (Iowa 2017) (see bill history).

163. *Real Property Transfer on Death Act*, *supra* note 4.

164. See S. File 2030, 88th Gen. Assemb., Reg. Sess. (Iowa 2020).

when compared to previous introductions, but the new societal acceptance of the Act could have led to a different result.¹⁶⁵

This time, there was limited progress in support of the Act.¹⁶⁶ Still, nobody was lobbying for the Act, but a lobbyist previously against the Act moved back to an undecided, neutral position.¹⁶⁷ The Iowa State Bar Association and Iowa Funeral Directors Association remained in opposition to the Act, but the Iowa Bankers Association and Iowa Trust Association moved back to an undecided position.¹⁶⁸ The Iowa County Recorders Association joined the mix.¹⁶⁹ Although remaining undecided as to their position, the increasing presence of groups as years went on provides insight into the attention that the Act was getting in Iowa.¹⁷⁰

D. Failure in 2021

Courts in Iowa also faced the prototypical Iowan story of transfer-on-death real property.¹⁷¹ In *King v. Smith*, the Iowa Court of Appeals did not accept a deed that transferred the family farm at death.¹⁷² The court made clear that they would not accept the deed, drafted in 1974, as an enhanced life estate.¹⁷³ The court similarly made clear the Act had no place in the state of Iowa, despite appellant's argument that transfer-on-death real estate was widely accepted.¹⁷⁴

Instead of finding transfer-on-death real property to be widely accepted, the court saw how the Act was rejected by the Iowa Senate three times in the last five years.¹⁷⁵ Courts in Iowa have not legalized transfer-on-death deeds, and the state's court of appeals reiterated in 2021 that title to real property must be transferred through a decedent's estate.¹⁷⁶

165. *See id.*

166. *See Lobbyist Declarations*, IOWA LEGIS. (May 22, 2025), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=88&ba=SF2030> [<https://perma.cc/C3MS-Y2G3>].

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

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

172. *Id.* at 6.

173. *Id.* at 8.

174. *Id.* at 5.

175. *Id.*

176. Tovar Jensen, *supra* note 143.

VI. TRYING TO DISINHERIT THE GOVERNMENT AND CREDITORS

Probate allows for the proper distribution of a decedent's property, provides evidence of proper title transfer, protects creditors and beneficiaries through structure and procedure, and allows an avenue for challenging error.¹⁷⁷

The Iowa Code intends a primary function of probate to include the estate's requirement to fulfill all claims of creditors before closing.¹⁷⁸ This desire remains in the Uniform Probate Code, which the Act is supported by, and requires outside transfer beneficiaries to be held personally liable for claims in the estate.¹⁷⁹ The Act provides two methods for debts to be paid when property transfers outside of the estate.¹⁸⁰ In Alternative A, transfer-on-death beneficiaries are held personally liable for successful claims against the decedent's assets.¹⁸¹ Since the assets passed outside of the estate, the beneficiary is to pay whatever share is required out of those funds.¹⁸² In Alternative B, the liability is to be placed against the property which is transferred outside of probate.¹⁸³

Iowa specifies that creditors are authorized to pursue payment from the executors and administrators when estates are left empty in an attempt to defraud them of the debts and obligations owed to them.¹⁸⁴ Iowa viewed and accepted the public policy approach relating to intention to defraud, such that the rule allows a decedent to anticipate significant debts in his estate, and protect his assets and "thwart his creditors" by avoiding their reach.¹⁸⁵

There is some notion, especially in a state like Iowa, that the only way to save money and protect your assets is to beat the system—to disinherit the Internal Revenue Service.¹⁸⁶ Some assert that Uncle Sam is a major heir of everyone's estate, and that Americans work so hard to earn income, build wealth, retire, and pass it all along, just for it to be stolen by "confiscatory taxation."¹⁸⁷ That idea is absurd.

177. See Harrington, *supra* note 23.

178. IOWA CODE ANN. § 633.366 (West 2025).

179. UNIF. PROB. CODE § 6-102(b) (UNIF. L. COMM'N 2019).

180. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 15 (UNIF. L. COMM'N 2009).

181. *Id.*

182. *See id.*

183. *Id.*

184. IOWA CODE ANN. § 633.368 (West 2025).

185. Rembe v. Stewart, 387 N.W.2d 313, 314–15 (Iowa 1986).

186. See generally Aviva Sapers, *Disinherit the IRS With a Zero Estate Tax Strategy*, SAPERS & WALLACK (Dec. 7, 2022), <https://sapers-wallack.com/disinherit-the-irs-with-a-zero-estate-tax-strategy/> [<https://perma.cc/LY6C-PM3B>].

187. *Id.*

To insinuate that the typical 2% of estate funds spent during probate comes without justification is to neglect the purpose.¹⁸⁸ As mentioned before, that fee is associated with work from the court, work from an attorney, management from any other fiduciary, and the taxes imposed on inheritance regardless of how property is transferred.¹⁸⁹ The distaste for probate only arises when failing to see the benefits provided such as estate tax preparation, cost of final disposition, cost of liquidating assets, and an avenue to pursue error in the estate.¹⁹⁰ It fails to account for that work being done for the beneficiaries, the ability to use them as a tax write-off, and avoiding the method of assigning personal liability.¹⁹¹

VII. WHY WOULD ANY ATTORNEY PRACTICE PROBATE LAW?

The Act eliminates all incentives for attorneys to do probate work, without eliminating the need for the work to be done. This Note draws a delicate line between calling attorneys “money hungry” and “properly compensated.” The same way probate is an unpleasant experience for beneficiaries due to the wait, the fights, and the tax, it is no different from an attorney’s perspective.

If the Act were adopted, even in the initial steps, there would still be a need to talk to an attorney.¹⁹² As mentioned above, estates in Iowa below \$50,000 need not go through probate.¹⁹³ To get to this point Iowans would still need to talk to an attorney, discover if assets reach the threshold, and then fill out the necessary documents.¹⁹⁴ The precision and complexity involved in this type of paperwork is what requires attorney involvement.

What the Act does to attorneys is put the money out of reach. Now, instead of the estate’s checking account to pay bills, attorneys look to the pockets of the beneficiaries. Sure, it is with the estate’s funds, but it just feels different. Milton Friedman once said: “If you spend your own money on yourself, you care how much you spend and what you spend it on . . . If you spend someone else’s money

188. IOWA CODE ANN. § 633.197(1)(c).

189. *Id.* § 633.3(10).

190. See Harrington, *supra* note 23; see also Maya Powers, *What Is a Probate Attorney - A Complete Guide*, TRUST & WILL (June 21, 2025, 1:51 AM), <https://trustandwill.com/learn/probate-attorney> [<https://perma.cc/JRT3-KWPG>].

191. Maya Powers, *Are Probate Fees Tax Deductible?*, TRUST & WILL (Mar. 27, 2025, 1:48 PM), <https://trustandwill.com/learn/are-probate-fees-tax-deductible> [<https://perma.cc/MQH7-V5PK>].

192. See, e.g., *GN 02315.053 Iowa Small Estates*, *supra* note 40.

193. IOWA CODE ANN. § 633.356(1).

194. See *GN 02315.053 Iowa Small Estates*, *supra* note 40.

on yourself, you don't care how much you spend, but care what you spend it for."¹⁹⁵

All of a sudden, beneficiaries are being asked to spend their inheritance on tax preparation, attorney fees, and court costs. It is awkward, difficult, and puts everyone in an uncomfortable spot. For work that is already unpleasant, the Act tends to make it even harder on attorneys.

Similarly, the Act begins to hinder and complicate other areas of practice. How do big firms justify their real estate department when the source of fees for the estate planning and probate departments are eliminated? How can solo practitioners be willing to prepare more transfer-on-death deeds as opposed to setting up and managing trusts? With transfer-on-death deeds being more focused, simpler, and more affordable, it seems clear that the method proposed by the Act would draw more attention. For middle-class Americans who make too little for a trust to be reasonable, the Act provides a way to transfer real property—one of the only universal probate assets in Iowa.

VIII. CONCLUSION

Iowa has been clear in expressing no desire to adopt the Act.¹⁹⁶ As the idea of transfer-on-death property makes its wave across the country, it is only a matter of time until Iowa revisits it. Advocacy for it will be clear, but the advocacy against it should be more present than ever before. Adoption of the Act will force attorneys out of this practice of law, undoing all the good it was searching for. Iowa should not give in.

195. Marcus Lehmann, *Other People's Money*, THE SPOKESMAN-REV. (Nov. 1, 2019), <https://www.spokesman.com/stories/2019/nov/01/other-peoples-money/> [<https://perma.cc/NL7W-72UP>].

196. See *Lobbyist Declarations*, IOWA LEGIS. (May 22, 2025), <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=87&ba=SF393> [<https://perma.cc/C333-2KDW>].