



**KANSAS BAR  
ASSOCIATION**

**TO: The Honorable Fred Patton, Chair**  
And Members of the House Judiciary Committee

**FROM: Timothy O’Sullivan**  
On behalf of the Kansas Bar Association

**RE: KBA Support for HB 2016** - Clarifying how property held under a transfer-on-death deed is distributed when one beneficiary predeceases the grantor.

**DATE: January 17, 2023**

Chairman Patton and members of the House Judiciary Committee, my name is Tim O’Sullivan and I appear on behalf of the Kansas Bar Association in **SUPPORT** of HB 2152 which would clarify how property, held under a transfer on death deed, is distributed when a beneficiary dies before the grantor.

The Kansas Bar Association Probate, Trust and Real Property Section proposed this bill because KSA 59-3504 required clarification.

As background, I represent clients primarily in connection with their estate and tax planning and the administration of trusts and estates. I develop and implement both simple and complex estate planning techniques. I represent both individual and institutional fiduciaries in the administration of trusts and estates. I am a member and past president of the Kansas Bar Association Probate & Trust Section. I am also an Adjunct Professor in Estate Planning for Washburn Law School.

The Kansas Bar Association Probate, Trust and Real Property Section has reviewed KSA 59-3504 and found it to be vague when there is more than one TOD beneficiary and at least one beneficiary predeceases the Grantor, and the deed does not provide either that the beneficiary must survive the Grantor to take or provide for an alternative living beneficiary should such beneficiary predecease the Grantor. Under current law it is unclear if the transfer would lapse for the deceased beneficiary or if the entire transfer would lapse. The amendment would make clear that the transfer to the surviving beneficiary would still be valid and only the share left to the deceased beneficiary would lapse.

In the event the deceased beneficiary would leave a surviving issue the transfer would not lapse, and the interest would vest in the surviving issue. The changes to KSA 59-3504 would best fulfill the intent of the grantor who used a transfer on death deed to transfer real property. It would

avoid the probate process when possible and allow the real property to vest in the named beneficiaries or their children.

The KBA is interested in clearing up this area of law to ensure title in real property is clear for future transfers.

Thank you for your time and attention. I am happy to stand for questions when appropriate.

**About the Kansas Bar Association:**

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 7,200 members include lawyers, judges, law students, and paralegals. [www.ksbar.org](http://www.ksbar.org)