

1 AN ACT relating to the transfer of real property on death.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 19 of this Act, unless the context requires otherwise:*

6 *(1) "Beneficiary" means a person that receives property under a transfer on death*
7 *deed;*

8 *(2) "Designated beneficiary" means a person designated to receive property in a*
9 *transfer on death deed;*

10 *(3) "Joint owner" means an individual who owns property concurrently with one or*
11 *more other individuals with a right of survivorship. The term includes a joint*
12 *tenant and tenant by the entirety. The term does not include a tenant in common*
13 *or owner of community property without a right of survivorship;*

14 *(4) "Person" means an individual, corporation, business trust, estate, trust,*
15 *partnership, limited liability company, association, joint venture, public*
16 *corporation, government or governmental subdivision, agency, or*
17 *instrumentality, or any other legal or commercial entity;*

18 *(5) "Property" means an interest in real property located in this state which is*
19 *transferable on the death of the owner;*

20 *(6) "Transfer on death deed" means a deed authorized under Sections 1 to 19 of this*
21 *Act; and*

22 *(7) "Transferor" means an individual who makes a transfer on death deed.*

23 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
24 READ AS FOLLOWS:

25 *An individual may transfer property to one (1) or more beneficiaries effective at the*
26 *transferor's death by a transfer on death deed.*

27 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

1 READ AS FOLLOWS:

2 *A transfer on death deed shall be revocable even if the deed or another instrument*
3 *contains a contrary provision.*

4 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
5 READ AS FOLLOWS:

6 *A transfer on death deed shall be nontestamentary.*

7 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
8 READ AS FOLLOWS:

9 *The capacity required to make or revoke a transfer on death deed shall be the same as*
10 *the capacity required to make a will.*

11 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
12 READ AS FOLLOWS:

13 *A transfer on death deed:*

14 *(1) Except as otherwise provided in subsection (2) of this section, shall contain the*
15 *essential elements and formalities of a properly recordable inter vivos deed;*

16 *(2) Shall state that the transfer to the designated beneficiary is to occur at the*
17 *transferor's death; and*

18 *(3) Shall be recorded before the transferor's death in the office of the county clerk*
19 *where the property to be transferred is located.*

20 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
21 READ AS FOLLOWS:

22 *A transfer on death deed shall be effective without notice or delivery to or acceptance*
23 *by the designated beneficiary during the transferor's life or consideration.*

24 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
25 READ AS FOLLOWS:

26 *(1) Except as provided in subsection (2) of this section, an instrument shall be*
27 *effective to revoke a recorded transfer on death deed, or any part of it, only if the*

1 instrument is one (1) of the following:

2 (a) A transfer on death deed that revokes the deed or part of the deed expressly
3 or by inconsistency;

4 (b) An instrument of revocation that expressly revokes the deed or part of the
5 deed; or

6 (c) An inter vivos deed that expressly revokes the transfer on death deed or part
7 of the deed;

8 and is acknowledged by the transferor after the acknowledgment of the deed
9 being revoked and recorded before the transferor’s death in the public records in
10 the office of the county clerk of the county where the deed is recorded.

11 (2) If a transfer on death deed is made by more than one (1) transferor:

12 (a) Revocation by a transferor shall not affect the deed as to the interest of
13 another transferor; and

14 (b) A deed of joint owners is revoked only if it is revoked by all of the living
15 joint owners.

16 (3) After a transfer on death deed is recorded, it shall not be revoked by a revocatory
17 act on the deed.

18 (4) Nothing in this section shall limit the effect of an inter vivos transfer of the
19 property.

20 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
21 READ AS FOLLOWS:

22 During a transferor’s life, a transfer on death deed does not:

23 (1) Affect an interest or right of the transferor or any other owner, including the
24 right to transfer or encumber the property;

25 (2) Affect an interest or right of a transferee, even if the transferee has actual or
26 constructive notice of the deed;

27 (3) Affect an interest or right of a secured or unsecured creditor or future creditor of

- 1 the transferor, even if the creditor has actual or constructive notice of the deed;
2 (4) Affect the transferor's or designated beneficiary's eligibility for any form of
3 public assistance;
4 (5) Create a legal or equitable interest in favor of the designated beneficiary; or
5 (6) Subject the property to claims or process of a creditor of the designated
6 beneficiary.

7 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
8 READ AS FOLLOWS:

- 9 (1) Except as otherwise provided in the transfer on death deed, in this section, or in
10 KRS 381.280, 394.092, 394.400, or 397.1002, on the death of the transferor, the
11 following rules shall apply to property that is the subject of a transfer on death
12 deed and owned by the transferor at death:
13 (a) The interest in the property is transferred to the designated beneficiary in
14 accordance with the deed;
15 (b) Subject to paragraph (c) of this subsection, concurrent interests are
16 transferred to the beneficiaries in equal and undivided shares with no right
17 of survivorship; and
18 (c) If the transferor has identified two (2) or more designated beneficiaries to
19 receive concurrent interests in the property, the share of one (1) which
20 lapses or fails for any reason is transferred to the other, or to the others in
21 proportion to the interest of each in the remaining part of the property held
22 concurrently.
23 (2) Subject to KRS 382.010 to 382.385, a beneficiary shall take the property subject
24 to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and
25 other interests to which the property is subject at the transferor's death. For
26 purposes of this subsection and Section 21 of this Act, the recording of the
27 transfer on death deed shall be deemed to have occurred at the transferor's

1 death.

2 (3) If a transferor is a joint owner and is:

3 (a) Survived by one (1) or more other joint owners, the property that is the
4 subject of a transfer on death deed shall belong to the surviving joint owner
5 or owners with right of survivorship; or

6 (b) The last surviving joint owner, the transfer on death deed is effective.

7 (4) A transfer on death deed shall transfer property without covenant or warranty of
8 title even if the deed contains a contrary provision.

9 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
10 READ AS FOLLOWS:

11 A beneficiary may disclaim all or part of the beneficiary's interest as provided by KRS
12 394.035.

13 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) To the extent the transferor's probate estate is insufficient to satisfy an allowed
16 claim against the estate or a statutory allowance to a surviving spouse or child,
17 the estate may enforce the liability against property transferred at the transferor's
18 death by a transfer on death deed.

19 (2) If more than one (1) property is transferred by one (1) or more transfer on death
20 deeds, the liability under subsection (1) of this section shall be apportioned
21 among the properties in proportion to their net values at the transferor's death.

22 (3) A proceeding to enforce the liability under this section shall be commenced no
23 later than twelve (12) months after the transferor's death.

24 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) In this section, "beneficiary designation" shall mean an instrument, other than
27 an instrument creating a trust, naming the beneficiary of:

- 1 (a) An annuity or insurance policy;
- 2 (b) An account with a designation for payment on death;
- 3 (c) A security registered in beneficiary form;
- 4 (d) A pension, profit-sharing, retirement, or other employment-related benefit
- 5 plan; or
- 6 (e) Any other nonprobate transfer at death.
- 7 (2) Subject to subsections (3) to (12) of this section, delivery of a disclaimer may be
- 8 effected by personal delivery, first-class mail, or any other method likely to result
- 9 in its receipt.
- 10 (3) In the case of an interest created under the law of intestate succession or an
- 11 interest created by will, other than an interest in a testamentary trust:
- 12 (a) A disclaimer shall be delivered to the personal representative of the
- 13 decedent's estate; or
- 14 (b) If no personal representative is then serving, it shall be filed with a court
- 15 having jurisdiction to appoint the personal representative.
- 16 (4) In the case of an interest in a testamentary trust:
- 17 (a) A disclaimer shall be delivered to the trustee then serving or, if no trustee is
- 18 then serving, to the personal representative of the decedent's estate; or
- 19 (b) If no personal representative is then serving, it shall be filed with a court
- 20 having jurisdiction to enforce the trust.
- 21 (5) In the case of an interest in an inter vivos trust:
- 22 (a) A disclaimer shall be delivered to the trustee then serving;
- 23 (b) If no trustee is then serving, it shall be filed with a court having jurisdiction
- 24 to enforce the trust; or
- 25 (c) If the disclaimer is made before the time the instrument creating the trust
- 26 becomes irrevocable, it shall be delivered to the settlor of a revocable trust
- 27 or the transferor of the interest.

- 1 (6) In the case of an interest created by a beneficiary designation which is disclaimed
2 before the designation becomes irrevocable, the disclaimer shall be delivered to
3 the person making the beneficiary designation.
- 4 (7) In the case of an interest created by a beneficiary designation which is disclaimed
5 after the designation becomes irrevocable:
- 6 (a) The disclaimer of an interest in personal property shall be delivered to the
7 person obligated to distribute the interest; and
- 8 (b) The disclaimer of an interest in real property shall be recorded in the
9 county clerk's office of the county where the real property that is the subject
10 of the disclaimer is located.
- 11 (8) In the case of a disclaimer by a surviving holder of jointly held property, the
12 disclaimer shall be delivered to the person to whom the disclaimed interest passes.
- 13 (9) In the case of a disclaimer by an object or taker in default of exercise of a power
14 of appointment at any time after the power was created:
- 15 (a) The disclaimer shall be delivered to the holder of the power or to the
16 fiduciary acting under the instrument that created the power; or
- 17 (b) If no fiduciary is then serving, it shall be filed with a court having authority
18 to appoint the fiduciary.
- 19 (10) In the case of a disclaimer by an appointee of a nonfiduciary power of
20 appointment:
- 21 (a) The disclaimer shall be delivered to the holder, the personal representative
22 of the holder's estate, or the fiduciary under the instrument that created the
23 power; or
- 24 (b) If no fiduciary is then serving, it shall be filed with a court having authority
25 to appoint the fiduciary.
- 26 (11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the
27 disclaimer shall be delivered as provided in subsection (3), (4), or (5) of this

1 section, as if the power disclaimed were an interest in property.

2 (12) In the case of a disclaimer of a power by an agent, the disclaimer shall be
3 delivered to the principal or the principal's representative.

4 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) The following form may be used to create a transfer on death deed. In addition,
7 each county clerk shall offer the following form to the public, as prescribed by
8 the Department for Libraries and Archives, to effect a transfer on death deed.

9 (2) The provisions of this chapter shall govern the effect of this or any other
10 instrument used to create a transfer on death deed:

11 (front of form)

12 REVOCABLE TRANSFER ON DEATH DEED

13 NOTICE TO OWNER

14 You should carefully read all information on the other side of this form. You
15 May Want to Consult a Lawyer Before Using This Form.

16 This form must be recorded before your death, or it will not be effective.

17 IDENTIFYING INFORMATION

18 Owner or Owners Making This Deed:

19 _____

20 Printed name _____ Mailing address

21 _____

22 Printed name _____ Mailing address

23 Legal description of the property:

24 _____

25 PRIMARY BENEFICIARY

26 I designate the following beneficiary if the beneficiary survives me.

27 _____

1 Printed name Mailing address, if available

2 **ALTERNATE BENEFICIARY – Optional**

3 If my primary beneficiary does not survive me, I designate the following alternate
4 beneficiary if that beneficiary survives me.

5 _____

6 Printed name Mailing address, if available

7 **TRANSFER ON DEATH**

8 At my death, I transfer my interest in the described property to the beneficiaries
9 as designated above.

10 Before my death, I have the right to revoke this deed.

11 **SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED**

12 _____ [(SEAL)]

13 Signature Date

14 _____ [(SEAL)]

15 Signature Date

16 **ACKNOWLEDGMENT**

17 (insert acknowledgment for deed here)

18 (back of form)

19 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

20 1. What does the Transfer on Death (TOD) deed do? When you die, this deed
21 transfers the described property, subject to any liens or mortgages or other
22 encumbrances on the property at your death. Probate is not required. The TOD deed
23 has no effect until you die. You can revoke it at any time. You are also free to transfer
24 the property to someone else during your lifetime. If you do not own any interest in the
25 property when you die, this deed will have no effect.

26 2. How do I make a TOD deed? Complete this form. Have it acknowledged
27 before a notary public or other individual authorized by law to take acknowledgments.

1 Record the form in each county where any part of the property is located. The form
2 has no effect unless it is acknowledged and recorded before your death.

3 3. Is the "legal description" of the property necessary? Yes.

4 4. How do I find the "legal description" of the property? This information
5 may be on the deed you received when you became an owner of the property. This
6 information may also be available in the county clerk's office for the county where the
7 property is located. If you are not absolutely sure, consult a lawyer.

8 5. Can I change my mind before I record the TOD deed? Yes. If you have not
9 yet recorded the deed and want to change your mind, simply tear up or otherwise
10 destroy the deed.

11 6. How do I "record" the TOD deed? Take the completed and acknowledged
12 form to the county clerk's office of the county where the property is located. Follow the
13 instructions given by the county clerk to make the form part of the official property
14 records. If the property is in more than one county you should record the deed in each
15 county.

16 7. Can I later revoke the TOD deed if I change my mind? Yes. You can revoke
17 the TOD deed. No one, including the beneficiaries, can prevent you from revoking the
18 deed.

19 8. How do I revoke the TOD deed after it is recorded? There are three ways to
20 revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and
21 record it in each county where the property is located. (2) Complete and acknowledge a
22 new TOD deed that disposes of the same property, and record it in each county where
23 the property is located. (3) Transfer the property to someone else during your lifetime
24 by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD
25 deed by will.

26 9. I am being pressured to complete this form. What should I do? Do not
27 complete this form under pressure. Seek help from a trusted family member, friend, or

1 lawyer.

2 10. Do I need to tell the beneficiaries about the TOD deed? No, but it is
3 recommended. Secrecy can cause later complications and might make it easier for
4 others to commit fraud.

5 11. I have other questions about this form. What should I do? This form is
6 designed to fit some but not all situations. If you have other questions, you are
7 encouraged to consult a lawyer.

8 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) The following form may be used to create an instrument of revocation under
11 Sections 1 to 19 of this Act. In addition, each county clerk shall offer the
12 following form to the public, as prescribed by the Department for Libraries and
13 Archives, to revoke a transfer on death deed.

14 (2) The provisions of Sections 1 to 19 of this Act shall govern the effect of this or any
15 other instrument used to revoke a transfer on death deed:

16 (front of form)

17 REVOCATION OF TRANSFER ON DEATH DEED

18 NOTICE TO OWNER

19 This revocation must be recorded before you die or it will not be effective. This
20 revocation is effective only as to the interests in the property of owners who sign this
21 revocation.

22 IDENTIFYING INFORMATION

23 Owner or Owners of Property Making This Revocation:

24 _____
25 Printed name _____ Mailing address

26 _____
27 Printed name _____ Mailing address

1 Legal description of the property:

2 _____

3 **REVOCATION**

4 I revoke all my previous transfers of this property by transfer on death deed.

5 **SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION**

6 _____ [(SEAL)]

7 Signature _____ Date

8 _____ [(SEAL)]

9 Signature _____ Date

10 **ACKNOWLEDGMENT**

11 (insert acknowledgment here)

12 _____ (back of form)

13 1. How do I use this form to revoke a Transfer on Death (TOD) deed?
14 Complete this form. Have it acknowledged before a notary public or other individual
15 authorized to take acknowledgments. Record the form in the public records in the
16 county clerk's office of each county where the property is located. The form must be
17 acknowledged and recorded before your death or it has no effect.

18 2. How do I find the "legal description" of the property? This information
19 may be on the TOD deed. It may also be available in the county clerk's office for the
20 county where the property is located. If you are not absolutely sure, consult a lawyer.

21 3. How do I "record" the form? Take the completed and acknowledged form
22 to the county clerk's office of the county where the property is located. Follow the
23 instructions given by the county clerk to make the form part of the official property
24 records. If the property is located in more than one county, you should record the form
25 in each of those counties.

26 4. I am being pressured to complete this form. What should I do? Do not
27 complete this form under pressure. Seek help from a trusted family member, friend, or

1 lawyer.

2 5. I have other questions about this form. What should I do? This form is
3 designed to fit some but not all situations. If you have other questions, consult a
4 lawyer.

5 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
6 READ AS FOLLOWS:

7 In applying and construing this uniform act, consideration shall be given to the need
8 to promote uniformity of the law with respect to its subject matter among the states that
9 enact it.

10 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
11 READ AS FOLLOWS:

12 The provisions of Sections 1 to 19 of this Act modify, limit, and supersede the Federal
13 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001 et
14 seq., but do not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec.
15 7001(c), or authorize electronic delivery of any of the notices described in Section
16 103(b) of that Act, 15 U.S.C. sec. 7003(b).

17 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
18 READ AS FOLLOWS:

19 Sections 1 to 19 of this Act does not affect any method of transferring property
20 otherwise permitted under the laws of this state.

21 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
22 READ AS FOLLOWS:

23 Sections 1 to 19 of this Act shall apply to a transfer on death deed made before, on, or
24 after the effective date of this Act by a transferor dying on or after the effective date of
25 this Act.

26 ➔Section 20. This chapter may be cited as the Uniform Real Property Transfer on
27 Death Act.

1 ➔Section 21. KRS 382.110 is amended to read as follows:

- 2 (1) All deeds, mortgages, transfer on death deeds, and other instruments required by
3 law to be recorded to be effectual against purchasers without notice, or creditors,
4 shall be recorded in the county clerk's office of the county in which the property
5 conveyed, or the greater part thereof, is located.
- 6 (2) No county clerk or deputy county clerk shall admit to record any deed of
7 conveyance of any interest in real property equal to or greater than a life estate,
8 unless the deed plainly specifies and refers to the immediate source from which the
9 grantor derived title to the property or the interest conveyed therein.
- 10 (3) An authentic photocopy of any original record may be certified, as a true, complete,
11 unaltered copy of the original record on file by the official public custodian of the
12 record. A certified copy of a document certified by the official public custodian of
13 that document may be submitted for filing in any other filing officer's jurisdiction as
14 though it were the original record. However, no county clerk or deputy county clerk
15 shall accept for filing any original document or certified copy of any document
16 unless the original document and its certified copy conforms to all statutory
17 requirements for filing the document under KRS Chapter 382. The provisions of this
18 subsection shall apply only to a record generated and filed in Kentucky, and only if
19 the certified copy thereof is to be utilized in Kentucky. If the record is a foreign
20 record or a Kentucky record to be filed or utilized in a foreign jurisdiction, then this
21 subsection shall not apply and applicable federal, Kentucky, or foreign law shall
22 apply.
- 23 (4) If the source of title is a deed or other recorded writing, the deed offered for record
24 shall refer to the former deed or writing, and give the office, book and page where
25 recorded, and the date thereof. If the property or interest therein is obtained by
26 inheritance or in any other way than by recorded instrument of writing, the deed
27 offered for record shall state clearly and accurately how and from whom the title

1 thereto was obtained by the grantor.

2 (5) If the title to the property or interest conveyed is obtained from two (2) or more
3 sources, the deed offered for record shall plainly specify and refer to each of the
4 sources in the manner provided in subsections (2) and (4), and shall show which part
5 of the property, or interest therein, was obtained from each of the sources.

6 (6) No grantor shall lodge for record, and no county clerk or deputy shall receive and
7 permit to be lodged for record, any deed that does not comply with the provisions of
8 this section.

9 (7) No clerk or deputy clerk shall be liable to the fine imposed by subsection (1) of KRS
10 382.990 because of any erroneous or false references in any such deed, nor because
11 of the omission of a reference required by law where it does not appear on the face
12 of such deed that the title to the property or interest conveyed was obtained from
13 more than one (1) source.

14 (8) This section does not apply to deeds made by any court commissioner, sheriff or by
15 any officer of court in pursuance of his duty as such officer, nor to any deed or
16 instrument made and acknowledged before March 20, 1928. No deed shall be invalid
17 because it is lodged contrary to the provisions of this section.

18 (9) A mortgage holder shall file a deed in lieu of foreclosure in the county clerk's office
19 of the county in which the property conveyed, or the greater part thereof, is located,
20 no later than forty-five (45) days after the date the deed in lieu of foreclosure is
21 executed.

22 (10) A deed filed pursuant to KRS 426.577 shall be filed by the grantee within five (5)
23 business days of receipt of the deed from the commissioner appointed by a court to
24 convey the property.

25 ➔Section 22. KRS 391.360 is amended to read as follows:

26 (1) A written provision for a nonprobate transfer on death in an insurance policy,
27 contract of employment, bond, mortgage, promissory note, certified or uncertified

1 security account agreement, custodial agreement, deposit agreement, compensation
2 plan, pension plan, individual retirement plan, employee benefit plan, trust,
3 conveyance, deed of gift, marital property agreement, transfer on death deeds, or
4 other written instrument of a similar nature is nontestamentary. These written
5 provisions shall include, but not be limited to, written provisions which provide that:

- 6 (a) Money or other benefits due to, controlled, or owned by a decedent before
7 death shall be paid after the decedent's death to a person whom the decedent
8 designates either in the instrument or in a separate writing, including a will,
9 executed before, at the same time, or after the instrument is executed;
- 10 (b) Money due or to become due under the instrument shall cease to be payable in
11 the event of the death of the promisee or the promisor before payment or
12 demand; or
- 13 (c) Any property, controlled by or owned by the decedent before death, which is
14 the subject of the instrument shall pass to a person the decedent designates
15 either in the instrument or in a separate writing, including a will, executed
16 before, at the same time, or after the instrument is executed.

17 (2) This section shall not limit the rights of creditors under other laws of this state.

18 ➔Section 23. KRS 403.190 is amended to read as follows:

- 19 (1) In a proceeding for dissolution of the marriage or for legal separation, or in a
20 proceeding for disposition of property following dissolution of the marriage by a
21 court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction
22 to dispose of the property, the court shall assign each spouse's property to him. It
23 also shall divide the marital property without regard to marital misconduct in just
24 proportions considering all relevant factors including:
- 25 (a) Contribution of each spouse to acquisition of the marital property, including
26 contribution of a spouse as homemaker;
- 27 (b) Value of the property set apart to each spouse;

- 1 (c) Duration of the marriage; and
- 2 (d) Economic circumstances of each spouse when the division of property is to
- 3 become effective, including the desirability of awarding the family home or the
- 4 right to live therein for reasonable periods to the spouse having custody of any
- 5 children.
- 6 (2) For the purpose of this chapter, "marital property" means all property acquired by
- 7 either spouse subsequent to the marriage except:
- 8 (a) Property acquired by gift, bequest, devise, or descent during the marriage and
- 9 the income derived therefrom unless there are significant activities of either
- 10 spouse which contributed to the increase in value of said property and the
- 11 income earned therefrom;
- 12 (b) Property acquired in exchange for property acquired before the marriage or in
- 13 exchange for property acquired by gift, bequest, devise, or descent;
- 14 (c) Property acquired by a spouse after a decree of legal separation;
- 15 (d) Property excluded by valid agreement of the parties; and
- 16 (e) The increase in value of property acquired before the marriage to the extent
- 17 that such increase did not result from the efforts of the parties during marriage.
- 18 (3) All property acquired by either spouse after the marriage and before a decree of legal
- 19 separation is presumed to be marital property, regardless of whether title is held
- 20 individually or by the spouses in some form of co-ownership such as joint tenancy,
- 21 tenancy in common, tenancy by the entirety, and community property. The
- 22 presumption of marital property is overcome by a showing that the property was
- 23 acquired by a method listed in subsection (2) of this section.
- 24 (4) If the retirement benefits of one spouse are excepted from classification as marital
- 25 property, or not considered as an economic circumstance during the division of
- 26 marital property, then the retirement benefits of the other spouse shall also be
- 27 excepted, or not considered, as the case may be. However, the level of exception

1 provided to the spouse with the greater retirement benefit shall not exceed the level
2 of exception provided to the other spouse. Retirement benefits, for the purposes of
3 this subsection shall include retirement or disability allowances, accumulated
4 contributions, or any other benefit of a retirement system or plan regulated by the
5 Employees Retirement Income Security Act of 1974, or of a public retirement
6 system administered by an agency of a state or local government, including deferred
7 compensation plans created pursuant to KRS 18A.230 to 18A.275 or defined
8 contribution or money purchase plans qualified under Section 401(a) of the Internal
9 Revenue Code of 1954, as amended.

10 (5) For the purposes of this section, property exempted under subsection (2)(a) of
11 this section shall include property transferred to either spouse pursuant to a
12 transfer on death deed.