HB 124 - AS INTRODUCED

2021 SESSION

21-0080 10/05

HOUSE BILL **124**

AN ACT adopting the uniform real property transfer on death act.

SPONSORS: Rep. J. Schmidt, Hills. 28; Rep. Van Houten, Hills. 45

COMMITTEE: Judiciary

ANALYSIS

This bill adopts the uniform real property transfer on death act. The act provides a mechanism for the nonprobate transfer of land, done by permitting owners of interests in real property to execute and record a transfer on death (TOD) deed.

Explanation:Matter added to current law appears in **bold italics.**
Matter removed from current law appears [in brackets and struckthrough.]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 124 - AS INTRODUCED

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT adopting the uniform real property transfer on death act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1	1 New Chapter; Uniform Real Property Transfer on Death Act. Amend RSA by inserting after
2	chapter 563-C the following new chapter:
3	CHAPTER 563-D
4	UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT
5	563-D:1 Short Title. This chapter may be cited as the Uniform Real Property Transfer on Death
6	Act.
7	563-D:2 Definitions. In this chapter:
8	I. "Beneficiary" means a person that receives property under a transfer on death deed.
9	II. "Designated beneficiary" means a person designated to receive property in a transfer on
10	death deed.
11	III. "Joint owner" means an individual who owns property concurrently with one or more
12	other individuals with a right of survivorship. The term includes a joint tenant, owner of community
13	property with a right of survivorship, and tenant by the entirety. The term does not include a tenant
14	in common or owner of community property without a right of survivorship.
15	IV. "Person" means an individual, corporation, business trust, estate, trust, partnership,
16	limited liability company, association, joint venture, public corporation, government or governmental
17	subdivision, agency, or instrumentality, or any other legal or commercial entity.
18	V. "Property" means an interest in real property located in this state which is transferable
19	on the death of the owner.
20	VI. "Transfer on death deed" means a deed authorized under this chapter.
21	VII. "Transferor" means an individual who makes a transfer on death deed.
22	563-D:3 Applicability. This chapter applies to a transfer on death deed made before, on, or after
23	the effective date of this chapter by a transferor dying on or after the effective date of this chapter.
24	563-D:4 Nonexclusivity. This chapter does not affect any method of transferring property
25	otherwise permitted under the law of this state.
26	563-D:5 Transfer on Death Deed Authorized. An individual may transfer property to one or
27	more beneficiaries effective at the transferor's death by a transfer on death deed.
28	563-D:6 Transfer on Death Deed Revocable. A transfer on death deed is revocable even if the
29	deed or another instrument contains a contrary provision.
30	563-D:7 Transfer on Death Deed Nontestamentary. A transfer on death deed is

31 nontestamentary.

HB 124 - AS INTRODUCED - Page 2 -

1	563-D:8 Capacity of Transferor. The capacity required to make or revoke a transfer on death
2	deed is the same as the capacity required to make a will.
3	563-D:9 Requirements. A transfer on death deed:
4	I. Except as otherwise provided in paragraph II, shall contain the essential elements and
5	formalities of a properly recordable inter vivos deed;
6	II. Shall state that the transfer to the designated beneficiary is to occur at the transferor's
7	death; and
8	III. Shall be recorded before the transferor's death in the public records in the office of the
9	county register of deeds of the county where the property is located.
10	563-D:10 Notice, Delivery, Acceptance, Consideration Not Required. A transfer on death deed is
11	effective without:
12	I. Notice or delivery to or acceptance by the designated beneficiary during the transferor's
13	life; or
14	II. Consideration.
15	563-D:11 Revocation by Instrument Authorized; Revocation by Act not Permitted.
16	I.(a) Subject to subparagraph (b), an instrument is effective to revoke a recorded transfer on
17	death deed, or any part of it, only if the instrument:
18	(1) Is one of the following:
19	(A) A transfer on death deed that revokes the deed or part of the deed
20	expressly or by inconsistency;
21	(B) An instrument of revocation that expressly revokes the deed or part of the
22	deed; or
23	(C) An inter vivos deed that expressly revokes the transfer on death deed or part
24	of the deed; and
25	(2) Is acknowledged by the transferor after the acknowledgment of the deed being
26	revoked and recorded before the transferor's death in the public records in the office of the county
27	register of deeds of the county where the deed is recorded.
28	(b) If a transfer on death deed is made by more than one transferor:
29	(1) Revocation by a transferor does not affect the deed as to the interest of another
30	transferor; and
31	(2) A deed of joint owners is revoked only if it is revoked by all of the living joint
32	owners.
33	II. After a transfer on death deed is recorded, it may not be revoked by a revocatory act on
34	the deed.
35	III. This section does not limit the effect of an inter vivos transfer of the property.
36	563-D:12 Effect of Transfer on Death Deed During Transferor's Life. During a transferor's life,
37	a transfer on death deed does not:

HB 124 - AS INTRODUCED - Page 3 -

1	I. Affect an interest or right of the transferor or any other owner, including the right to
2	transfer or encumber the property;
3	II. Affect an interest or right of a transferee, even if the transferee has actual or constructive
4	notice of the deed;
5	III. Affect an interest or right of a secured or unsecured creditor or future creditor of the
6	transferor, even if the creditor has actual or constructive notice of the deed;
7	IV. Affect the transferor's or designated beneficiary's eligibility for any form of public
8	assistance;
9	V. Create a legal or equitable interest in favor of the designated beneficiary; or
10	VI. Subject the property to claims or process of a creditor of the designated beneficiary.
11	563-D:13 Effect of Transfer on Death Deed at Transferor's Death.
12	I. Except as otherwise provided in the transfer on death deed, in this section, or in statutes
13	governing antilapse, revocation by divorce or homicide, survival and simultaneous death, and
14	elective share, if applicable to nonprobate transfers, on the death of the transferor, the following
15	rules apply to property that is the subject of a transfer on death deed and owned by the transferor at
16	death:
17	(a) Subject to subparagraph (b), the interest in the property is transferred to the
18	designated beneficiary in accordance with the deed.
19	(b) The interest of a designated beneficiary is contingent on the designated beneficiary
20	surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor
21	lapses.
22	(c) Subject to subparagraph (d), concurrent interests are transferred to the beneficiaries
23	in equal and undivided shares with no right of survivorship.
24	(d) If the transferor has identified 2 or more designated beneficiaries to receive
25	concurrent interests in the property, the share of one which lapses or fails for any reason is
26	transferred to the other, or to the others in proportion to the interest of each in the remaining part of
27	the property held concurrently.
28	II. Subject to RSA 477, a beneficiary takes the property subject to all conveyances,
29	encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is
30	subject at the transferor's death. For purposes of this section and RSA 477, the recording of the
31	transfer on death deed is deemed to have occurred at the transferor's death.
32	III. If a transferor is a joint owner and is:
33	(a) Survived by one or more other joint owners, the property that is the subject of a
34	transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or
35	(b) The last surviving joint owner, the transfer on death deed is effective.
36	IV. A transfer on death deed transfers property without covenant or warranty of title even if

37 the deed contains a contrary provision.

HB 124 - AS INTRODUCED - Page 4 -

1 563-D:14 Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as 2 provided by RSA 563-B.

3 563-D:15 Liability For Creditor Claims And Statutory Allowances.

I. 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.

II. If more than one property is transferred by one or more transfer on death deeds, the
liability under paragraph I is apportioned among the properties in proportion to their net values at
the transferor's death.

10 III. A proceeding to enforce the liability under this section shall be commenced not later11 than 18 months after the transferor's death.

12 2 Effective Date. This act shall take effect January 1, 2022.