

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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:

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.

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.

4 I. To the extent the transferor's probate estate is insufficient to satisfy an allowed claim
5 against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the
6 liability against property transferred at the transferor's death by a transfer on death deed.

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

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

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