

1 SENATE BILL 107

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Peter Wirth

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7  
8 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9  
10 AN ACT

11 RELATING TO PROPERTY INTERESTS; AMENDING THE UNIFORM PROBATE  
12 CODE; ENACTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT;  
13 REPEALING AND REENACTING SECTION 45-6-401 NMSA 1978 (BEING LAWS  
14 2001, CHAPTER 236, SECTION 1).

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 45-6-401 NMSA 1978 (being Laws 2001,  
18 Chapter 236, Section 1) is repealed and a new Section 45-6-401  
19 NMSA 1978 is enacted to read:

20 "45-6-401. [NEW MATERIAL] SHORT TITLE.--Sections 45-6-401  
21 through 45-6-417 NMSA 1978 may be cited as the "Uniform Real  
22 Property Transfer on Death Act"."

23 SECTION 2. A new Section 45-6-402 NMSA 1978 is enacted to  
24 read:

25 "45-6-402. [NEW MATERIAL] DEFINITIONS.--As used in the

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- 1 Uniform Real Property Transfer on Death Act:
- 2           A. "beneficiary" means a person that receives
- 3 property under a transfer on death deed;
- 4           B. "designated beneficiary" means a person
- 5 designated to receive property in a transfer on death deed;
- 6           C. "essential elements" means the names of the
- 7 grantor and the grantee, a clause transferring title, a
- 8 description of the property transferred, the grantor's
- 9 signature and acknowledgment by the grantor in the presence of
- 10 a notary public or in the presence of another individual
- 11 authorized by law to take acknowledgments;
- 12           D. "joint owner" means an individual who owns
- 13 property concurrently with one or more other individuals with a
- 14 right of survivorship. "Joint owner" includes a joint tenant
- 15 but does not include a tenant in common;
- 16           E. "person" means an individual, corporation,
- 17 business trust, estate, trust, partnership, limited liability
- 18 company, association, joint venture, public corporation,
- 19 government or governmental subdivision, agency or
- 20 instrumentality, or any other legal or commercial entity;
- 21           F. "property" means an interest in real property
- 22 located in New Mexico that is transferable on the death of the
- 23 owner;
- 24           G. "transfer on death deed" means a deed authorized
- 25 under the Uniform Real Property Transfer on Death Act; and

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1           H. "transferor" means an individual who makes a  
2 transfer on death deed."

3           SECTION 3. A new Section 45-6-403 NMSA 1978 is enacted to  
4 read:

5           "45-6-403. [NEW MATERIAL] APPLICABILITY.--The Uniform  
6 Real Property Transfer on Death Act applies to a transfer on  
7 death deed made before, on or after January 1, 2014 by a  
8 transferor dying on or after January 1, 2014."

9           SECTION 4. A new Section 45-6-404 NMSA 1978 is enacted to  
10 read:

11           "45-6-404. [NEW MATERIAL] NONEXCLUSIVITY.--The Uniform  
12 Real Property Transfer on Death Act does not affect any method  
13 of transferring property otherwise permitted under the laws of  
14 New Mexico."

15           SECTION 5. A new Section 45-6-405 NMSA 1978 is enacted to  
16 read:

17           "45-6-405. [NEW MATERIAL] TRANSFER ON DEATH DEED  
18 AUTHORIZED.--An individual may transfer property to one or more  
19 beneficiaries effective at the transferor's death by a transfer  
20 on death deed."

21           SECTION 6. A new Section 45-6-406 NMSA 1978 is enacted to  
22 read:

23           "45-6-406. [NEW MATERIAL] TRANSFER ON DEATH DEED  
24 REVOCABLE.--A transfer on death deed is revocable even if the  
25 deed or another instrument contains a contrary provision."

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1           SECTION 7. A new Section 45-6-407 NMSA 1978 is enacted to  
2 read:

3           "45-6-407. [NEW MATERIAL] TRANSFER ON DEATH DEED  
4 NONTESTAMENTARY.--A transfer on death deed is nontestamentary."

5           SECTION 8. A new Section 45-6-408 NMSA 1978 is enacted to  
6 read:

7           "45-6-408. [NEW MATERIAL] CAPACITY OF TRANSFEROR.--The  
8 capacity required to make or revoke a transfer on death deed is  
9 the same as the capacity required to make a will."

10          SECTION 9. A new Section 45-6-409 NMSA 1978 is enacted to  
11 read:

12          "45-6-409. [NEW MATERIAL] REQUIREMENTS.--A transfer on  
13 death deed shall:

14               A. contain the essential elements and formalities  
15 of a properly recordable inter vivos deed;

16               B. state that the transfer to the designated  
17 beneficiary is to occur at the transferor's death; and

18               C. be recorded before the transferor's death in the  
19 public records in the office of the county clerk for the county  
20 where the property is located."

21          SECTION 10. A new Section 45-6-410 NMSA 1978 is enacted  
22 to read:

23          "45-6-410. [NEW MATERIAL] NOTICE, DELIVERY, ACCEPTANCE OR  
24 CONSIDERATION NOT REQUIRED.--A transfer on death deed does not  
25 require:

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1           A. notice or delivery to or acceptance by the  
2 designated beneficiary during the transferor's life; or

3           B. consideration."

4           SECTION 11. A new Section 45-6-411 NMSA 1978 is enacted  
5 to read:

6           "45-6-411. [NEW MATERIAL] REVOCATION BY INSTRUMENT  
7 AUTHORIZED--REVOCATION BY ACT NOT PERMITTED.--

8           A. Subject to Subsection B of this section, an  
9 instrument is effective to revoke a recorded transfer on death  
10 deed, or any part of it, only if the instrument:

11                   (1) is acknowledged by the transferor after  
12 the acknowledgment of the deed being revoked;

13                   (2) is recorded before the transferor's death  
14 in the public records in the office of the county clerk for the  
15 county in which the deed is recorded; and

16                   (3) is:

17                           (a) a transfer on death deed that  
18 revokes the deed or part of the deed expressly or by  
19 inconsistency;

20                           (b) an instrument of revocation that  
21 expressly revokes the deed or part of the deed; or

22                           (c) an inter vivos deed that expressly  
23 revokes the transfer on death deed or part of the deed.

24           B. If a transfer on death deed is made by more than  
25 one transferor:

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1 (1) revocation by a transferor does not affect  
2 the deed as to the interest of another transferor; and

3 (2) a deed of joint owners is revoked only if  
4 it is revoked by all of the living joint owners.

5 C. After a transfer on death deed is recorded, it  
6 may not be revoked by a revocatory act on the deed.

7 D. This section does not limit the effect of an  
8 inter vivos transfer of the property."

9 SECTION 12. A new Section 45-6-412 NMSA 1978 is enacted  
10 to read:

11 "45-6-412. [NEW MATERIAL] EFFECT OF TRANSFER ON DEATH  
12 DEED DURING TRANSFEROR'S LIFE.--During a transferor's life, a  
13 transfer on death deed does not:

14 A. affect an interest or right of the transferor or  
15 any other owner, including the right to transfer or encumber  
16 the property;

17 B. affect an interest or right of a transferee,  
18 even if the transferee has actual or constructive notice of the  
19 deed;

20 C. affect an interest or right of a secured or  
21 unsecured creditor or future creditor of the transferor, even  
22 if the creditor has actual or constructive notice of the deed;

23 D. affect the transferor's or designated  
24 beneficiary's eligibility for any form of public assistance;

25 E. create a legal or equitable interest in favor of

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1 the designated beneficiary; or

2 F. subject the property to claims or process of a  
3 creditor of the designated beneficiary."

4 SECTION 13. A new Section 45-6-413 NMSA 1978 is enacted  
5 to read:

6 "45-6-413. [NEW MATERIAL] EFFECT OF TRANSFER ON DEATH  
7 DEED AT TRANSFEROR'S DEATH.--

8 A. Except as otherwise provided in the transfer on  
9 death deed or in Subsection B, C or D of this section or in  
10 Section 45-2-603, 45-2-702, 45-2-706, 45-2-707, 45-2-802,  
11 45-2-803 or 45-2-804 NMSA 1978, on the death of the transferor,  
12 the following rules apply to property that is the subject of a  
13 transfer on death deed and owned by the transferor at death:

14 (1) provided that the designated beneficiary  
15 survives the transferor, the interest in the property is  
16 transferred to the designated beneficiary in accordance with  
17 the deed;

18 (2) the interest of a designated beneficiary  
19 that fails to survive the transferor lapses;

20 (3) subject to Paragraph (4) of this  
21 subsection, concurrent interests are transferred to the  
22 beneficiaries in equal and undivided shares with no right of  
23 survivorship; and

24 (4) if the transferor has identified two or  
25 more designated beneficiaries to receive concurrent interests

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1 in the property, the share of one that lapses or fails for any  
2 reason is transferred to the other, or to the others in  
3 proportion to the interest of each in the remaining part of the  
4 property held concurrently.

5 B. Subject to Chapter 14, Article 9 NMSA 1978, a  
6 beneficiary takes the property subject to all recorded  
7 conveyances, encumbrances, assignments, contracts, mortgages,  
8 liens and other recorded interests to which the property is  
9 subject at the transferor's death. For purposes of this  
10 subsection and Chapter 14, Article 9 NMSA 1978, the recording  
11 of the transfer on death deed is deemed to have occurred at the  
12 transferor's death.

13 C. If a transferor is a joint owner and is:  
14 (1) survived by one or more other joint  
15 owners, the property that is the subject of a transfer on death  
16 deed belongs to the surviving joint owner or owners with right  
17 of survivorship; or

18 (2) the last surviving joint owner, the  
19 transfer on death deed is effective.

20 D. A transfer on death deed transfers property  
21 without covenant or warranty of title even if the deed contains  
22 a contrary provision."

23 SECTION 14. A new Section 45-6-414 NMSA 1978 is enacted  
24 to read:

25 "45-6-414. [NEW MATERIAL] DISCLAIMER.--A beneficiary may  
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1 disclaim all or part of the beneficiary's interest as provided  
2 by the Uniform Disclaimer of Property Interests Act."

3 SECTION 15. A new Section 45-6-415 NMSA 1978 is enacted  
4 to read:

5 "45-6-415. [NEW MATERIAL] LIABILITY FOR CREDITOR CLAIMS  
6 AND STATUTORY ALLOWANCES.--A beneficiary of a transfer on death  
7 deed is liable for an allowed claim against the transferor's  
8 probate estate to the extent provided by law for a surviving  
9 joint tenant."

10 SECTION 16. A new Section 45-6-416 NMSA 1978 is enacted  
11 to read:

12 "45-6-416. [NEW MATERIAL] OPTIONAL FORM OF TRANSFER ON  
13 DEATH DEED.--The following form may be used to create a  
14 transfer on death deed. The provisions of the Uniform Real  
15 Property Transfer on Death Act govern the effect of this or any  
16 other instrument used to create a transfer on death deed:

17 (front of form)

18 "REVOCABLE TRANSFER ON DEATH DEED

19 NOTICE TO OWNER

20 You should carefully read all information on the other side of  
21 this form. You may want to consult a lawyer before using this  
22 form.

23 This form must be recorded before your death or it will not be  
24 effective.

25 IDENTIFYING INFORMATION

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1 Owner or Owners Making This Deed:

2 \_\_\_\_\_

3 Printed name Mailing address

4 \_\_\_\_\_

5 Printed name Mailing address

6 Legal description of the property:

7 \_\_\_\_\_

8 PRIMARY BENEFICIARY

9 I designate the following beneficiary if the beneficiary  
10 survives me.

11 \_\_\_\_\_

12 Printed name Mailing address, if available

13 ALTERNATE BENEFICIARY - Optional

14 If my primary beneficiary does not survive me, I designate the  
15 following alternate beneficiary if that beneficiary survives  
16 me.

17 \_\_\_\_\_

18 Printed name Mailing address, if available

19 TRANSFER ON DEATH

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

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

23 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

24 \_\_\_\_\_

25 Signature Date

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Signature \_\_\_\_\_ Date \_\_\_\_\_

ACKNOWLEDGMENT

(insert acknowledgment for deed here)"  
(back of form)

"COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.  
How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk for the county where the

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1 property is located. If you are not absolutely sure, consult a  
2 lawyer.

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

6 How do I "record" the TOD deed? Take the completed and  
7 acknowledged form to the office of the county clerk of the  
8 county where the property is located. Follow the instructions  
9 given by the county clerk to make the form part of the official  
10 property records. If the property is in more than one county,  
11 you should record the deed in each county.

12 Can I later revoke the TOD deed if I change my mind? Yes. You  
13 can revoke the TOD deed. No one, including the beneficiaries,  
14 can prevent you from revoking the deed.

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

24 I am being pressured to complete this form. What should I do?  
25 Do not complete this form under pressure. Seek help from a

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1 trusted family member, friend or lawyer.  
2 Do I need to tell the beneficiaries about the TOD deed? No,  
3 but it is recommended. Secrecy can cause later complications  
4 and might make it easier for others to commit fraud.  
5 I have other questions about this form. What should I do?  
6 This form is designed to fit some but not all situations. If  
7 you have other questions, you are encouraged to consult a  
8 lawyer."."

9 SECTION 17. A new Section 45-6-417 NMSA 1978 is enacted  
10 to read:

11 "45-6-417. [NEW MATERIAL] OPTIONAL FORM OF REVOCATION.--

12 The following form may be used to create an instrument of  
13 revocation under the Uniform Real Property Transfer on Death  
14 Act. The provisions of the Uniform Real Property Transfer on  
15 Death Act govern the effect of this or any other instrument  
16 used to revoke a transfer on death deed.

17 (front of form)

18 "REVOCATION OF TRANSFER ON DEATH DEED

19 NOTICE TO OWNER

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

23 IDENTIFYING INFORMATION

24 Owner or Owners of Property Making This Revocation:  
25 \_\_\_\_\_

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1 Printed name Mailing address

2 \_\_\_\_\_

3 Printed name Mailing address

4 Legal description of the property:

5 \_\_\_\_\_

6 REVOCATION

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

9 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

10 \_\_\_\_\_

11 Signature Date

12 \_\_\_\_\_

13 Signature Date

14 ACKNOWLEDGMENT

15 (insert acknowledgment here)"

16 (back of form)

17 "COMMON QUESTIONS ABOUT THE USE OF THIS FORM

18 How do I use this form to revoke a Transfer on Death (TOD)  
19 deed? Complete this form. Have it acknowledged before a  
20 notary public or other individual authorized to take  
21 acknowledgments. Record the form in the public records in the  
22 office of the county clerk of each county where the property is  
23 located. The form must be acknowledged and recorded before  
24 your death or it has no effect.

25 How do I find the "legal description" of the property? This

1 information may be on the TOD deed. It may also be available  
2 in the office of the county clerk for the county where the  
3 property is located. If you are not absolutely sure, consult a  
4 lawyer.

5 How do I "record" the form? Take the completed and  
6 acknowledged form to the office of the county clerk of the  
7 county where the property is located. Follow the instructions  
8 given by the county clerk to make the form part of the official  
9 property records. If the property is located in more than one  
10 county, you should record the form in each of those counties.

11 I am being pressured to complete this form. What should I do?  
12 Do not complete this form under pressure. Seek help from a  
13 trusted family member, friend or lawyer.

14 I have other questions about this form. What should I do?  
15 This form is designed to fit some but not all situations. If  
16 you have other questions, consult a lawyer."."

17 **SECTION 18. EFFECTIVE DATE.**--The effective date of the  
18 provisions of this act is January 1, 2014.