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AN ACT

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

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

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 Section 45-6-401 NMSA 1978 (being Laws 2001, Chapter 236, Section 1) is repealed and a new Section 45-6-401 NMSA 1978 is enacted to read:

"45-6-401. SHORT TITLE.--Sections 45-6-401 through 45-6-417 NMSA 1978 may be cited as the "Uniform Real Property Transfer on Death Act"."

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

"45-6-402. DEFINITIONS.--As used in the Uniform Real Property Transfer on Death Act:

A. "beneficiary" means a person that receives property under a transfer on death deed;

B. "designated beneficiary" means a person designated to receive property in a transfer on death deed;

C. "essential elements" means the names of the grantor and the grantee, a clause transferring title, a description of the property transferred, the grantor's signature and acknowledgment by the grantor in the presence

1 of a notary public or in the presence of another individual  
2 authorized by law to take acknowledgments;

3 D. "joint owner" means an individual who owns  
4 property concurrently with one or more other individuals with  
5 a right of survivorship. "Joint owner" includes a joint  
6 tenant but does not include a tenant in common;

7 E. "person" means an individual, corporation,  
8 business trust, estate, trust, partnership, limited liability  
9 company, association, joint venture, public corporation,  
10 government or governmental subdivision, agency or  
11 instrumentality, or any other legal or commercial entity;

12 F. "property" means an interest in real property  
13 located in New Mexico that is transferable on the death of  
14 the owner;

15 G. "transfer on death deed" means a deed  
16 authorized under the Uniform Real Property Transfer on Death  
17 Act; and

18 H. "transferor" means an individual who makes a  
19 transfer on death deed."

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

22 "45-6-403. APPLICABILITY.--The Uniform Real Property  
23 Transfer on Death Act applies to a transfer on death deed  
24 made before, on or after January 1, 2014 by a transferor  
25 dying on or after January 1, 2014."

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

3 "45-6-404. NONEXCLUSIVITY.--The Uniform Real Property  
4 Transfer on Death Act does not affect any method of  
5 transferring property otherwise permitted under the laws of  
6 New Mexico."

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

9 "45-6-405. TRANSFER ON DEATH DEED AUTHORIZED.--An  
10 individual may transfer property to one or more beneficiaries  
11 effective at the transferor's death by a transfer on death  
12 deed."

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

15 "45-6-406. TRANSFER ON DEATH DEED REVOCABLE.--A  
16 transfer on death deed is revocable even if the deed or  
17 another instrument contains a contrary provision."

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

20 "45-6-407. TRANSFER ON DEATH DEED NONTESTAMENTARY.--A  
21 transfer on death deed is nontestamentary."

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

24 "45-6-408. CAPACITY OF TRANSFEROR.--The capacity  
25 required to make or revoke a transfer on death deed is the

1 same as the capacity required to make a will."

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

4 "45-6-409. REQUIREMENTS.--A transfer on death deed  
5 shall:

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

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

10 C. be recorded before the transferor's death in  
11 the public records in the office of the county clerk for the  
12 county where the property is located."

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

15 "45-6-410. NOTICE, DELIVERY, ACCEPTANCE OR  
16 CONSIDERATION NOT REQUIRED.--A transfer on death deed does  
17 not require:

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

20 B. consideration."

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

23 "45-6-411. REVOCATION BY INSTRUMENT AUTHORIZED--  
24 REVOCATION BY ACT NOT PERMITTED.--

25 A. Subject to Subsection B of this section, an

1 instrument is effective to revoke a recorded transfer on  
2 death deed, or any part of it, only if the instrument:

3 (1) is acknowledged by the transferor after  
4 the acknowledgment of the deed being revoked;

5 (2) is recorded before the transferor's  
6 death in the public records in the office of the county clerk  
7 for the county in which the deed is recorded; and

8 (3) is:

9 (a) a transfer on death deed that  
10 revokes the deed or part of the deed expressly or by  
11 inconsistency;

12 (b) an instrument of revocation that  
13 expressly revokes the deed or part of the deed; or

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

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

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

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

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

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

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

3 "45-6-412. EFFECT OF TRANSFER ON DEATH DEED DURING  
4 TRANSFEROR'S LIFE.--During a transferor's life, a transfer on  
5 death deed does not:

6 A. affect an interest or right of the transferor  
7 or any other owner, including the right to transfer or  
8 encumber the property;

9 B. affect an interest or right of a transferee,  
10 even if the transferee has actual or constructive notice of  
11 the deed;

12 C. affect an interest or right of a secured or  
13 unsecured creditor or future creditor of the transferor, even  
14 if the creditor has actual or constructive notice of the  
15 deed;

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

18 E. create a legal or equitable interest in favor  
19 of the designated beneficiary; or

20 F. subject the property to claims or process of a  
21 creditor of the designated beneficiary."

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

24 "45-6-413. EFFECT OF TRANSFER ON DEATH DEED AT  
25 TRANSFEROR'S DEATH.--

1           A. Except as otherwise provided in the transfer on  
2 death deed or in Subsection B, C or D of this section or in  
3 Section 45-2-603, 45-2-702, 45-2-706, 45-2-707, 45-2-802,  
4 45-2-803 or 45-2-804 NMSA 1978, on the death of the  
5 transferor, the following rules apply to property that is the  
6 subject of a transfer on death deed and owned by the  
7 transferor at death:

8                   (1) provided that the designated beneficiary  
9 survives the transferor, the interest in the property is  
10 transferred to the designated beneficiary in accordance with  
11 the deed;

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

14                   (3) subject to Paragraph (4) of this  
15 subsection, concurrent interests are transferred to the  
16 beneficiaries in equal and undivided shares with no right of  
17 survivorship; and

18                   (4) if the transferor has identified two or  
19 more designated beneficiaries to receive concurrent interests  
20 in the property, the share of one that lapses or fails for  
21 any reason is transferred to the other, or to the others in  
22 proportion to the interest of each in the remaining part of  
23 the property held concurrently.

24           B. Subject to Chapter 14, Article 9 NMSA 1978, a  
25 beneficiary takes the property subject to all recorded

1 conveyances, encumbrances, assignments, contracts, mortgages,  
2 liens and other recorded interests to which the property is  
3 subject at the transferor's death. For purposes of this  
4 subsection and Chapter 14, Article 9 NMSA 1978, the recording  
5 of the transfer on death deed is deemed to have occurred at  
6 the transferor's death.

7 C. If a transferor is a joint owner and is:

8 (1) survived by one or more other joint  
9 owners, the property that is the subject of a transfer on  
10 death deed belongs to the surviving joint owner or owners  
11 with right of survivorship; or

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

14 D. A transfer on death deed transfers property  
15 without covenant or warranty of title even if the deed  
16 contains a contrary provision."

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

19 "45-6-414. DISCLAIMER.--A beneficiary may disclaim all  
20 or part of the beneficiary's interest as provided by the  
21 Uniform Disclaimer of Property Interests Act."

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

24 "45-6-415. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY  
25 ALLOWANCES.--A beneficiary of a transfer on death deed is



1 liable for an allowed claim against the transferor's probate  
2 estate and statutory allowances to a surviving spouse and  
3 children to the extent provided in Section 45-6-102 NMSA  
4 1978."

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

7 "45-6-416. OPTIONAL FORM OF TRANSFER ON DEATH DEED.--  
8 The following form may be used to create a transfer on death  
9 deed. The provisions of the Uniform Real Property Transfer  
10 on Death Act govern the effect of this or any other  
11 instrument used to create a transfer on death deed:

12 (front of form)

13 "REVOCABLE TRANSFER ON DEATH DEED

14 NOTICE TO OWNER

15 You should carefully read all information on the other side  
16 of this form. You may want to consult a lawyer before using  
17 this form.

18 This form must be recorded before your death or it will not  
19 be effective.

20 IDENTIFYING INFORMATION

21 Owner or Owners Making This Deed:

22 \_\_\_\_\_  
23 Printed name Mailing address

24 \_\_\_\_\_  
25 Printed name Mailing address

1 Legal description of the property:

2 \_\_\_\_\_

3 PRIMARY BENEFICIARY

4 I designate the following beneficiary if the beneficiary  
5 survives me.

6 \_\_\_\_\_

7 Printed name Mailing address, if available

8 ALTERNATE BENEFICIARY - Optional

9 If my primary beneficiary does not survive me, I designate  
10 the following alternate beneficiary if that beneficiary  
11 survives me.

12 \_\_\_\_\_

13 Printed name Mailing address, if available

14 TRANSFER ON DEATH

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

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

18 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

19 \_\_\_\_\_

20 Signature Date

21 \_\_\_\_\_

22 Signature Date

23 ACKNOWLEDGMENT

24 (insert acknowledgment for deed here)"

25 (back of form)

1 "COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

16 Is the "legal description" of the property necessary? Yes.  
17 How do I find the "legal description" of the property? This  
18 information may be on the deed you received when you became  
19 an owner of the property. This information may also be  
20 available in the office of the county clerk for the county  
21 where the property is located. If you are not absolutely  
22 sure, consult a lawyer.

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

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

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

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

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

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

25 I have other questions about this form. What should I do?

1 This form is designed to fit some but not all situations. If  
2 you have other questions, you are encouraged to consult a  
3 lawyer."."

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

6 "45-6-417. OPTIONAL FORM OF REVOCATION.--The following  
7 form may be used to create an instrument of revocation under  
8 the Uniform Real Property Transfer on Death Act. The  
9 provisions of the Uniform Real Property Transfer on Death Act  
10 govern the effect of this or any other instrument used to  
11 revoke a transfer on death deed.

12 (front of form)

13 "REVOCATION OF TRANSFER ON DEATH DEED

14 NOTICE TO OWNER

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

18 IDENTIFYING INFORMATION

19 Owner or Owners of Property Making This Revocation:

20 \_\_\_\_\_

21 Printed name

Mailing address

22 \_\_\_\_\_

23 Printed name

Mailing address

24 Legal description of the property:

25 \_\_\_\_\_

1 REVOCATION

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

4 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

5 \_\_\_\_\_

6 Signature

Date

7 \_\_\_\_\_

8 Signature

Date

9 ACKNOWLEDGMENT

10 (insert acknowledgment here)"

11 (back of form)

12 "COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

25 How do I "record" the form? Take the completed and

1 acknowledged form to the office of the county clerk of the  
2 county where the property is located. Follow the instructions  
3 given by the county clerk to make the form part of the  
4 official property records. If the property is located in more  
5 than one county, you should record the form in each of those  
6 counties.

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

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

13 SECTION 18. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is January 1, 2014. \_\_\_\_\_

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