

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIFORM REAL PROPERTY TRANSFER ON
5 DEATH ACT; APPLYING RULES OF CONSTRUCTION APPLICABLE TO WILLS AND APPLYING RULES
6 APPLICABLE TO OTHER NONPROBATE TRANSFERS TO TRANSFER ON DEATH DEEDS; REVISING THE
7 OPTIONAL TRANSFER ON DEATH DEED; REVISING THE OPTIONAL FORM OF REVOCATION; AND
8 AMENDING SECTIONS 72-6-412, 72-6-415, AND 72-6-416, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 72-6-412, MCA, is amended to read:

13 **"72-6-412. Effect of transfer on death deed at transferor's death.** (1) Except as otherwise provided
14 in the transfer on death deed, in 72-2-712, 72-2-716, 72-2-813, 72-2-814, 72-6-112, or in this section, and
15 subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that
16 is the subject of a transfer on death deed and owned by the transferor at death:

17 (a) Subject to subsection (1)(b), the interest in the property is transferred to the designated
18 beneficiary in accordance with the deed.

19 (b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the
20 transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

21 (c) Subject to subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and
22 undivided shares with no right of survivorship.

23 (d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests
24 in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others
25 in proportion to the interest of each in the remaining part of the property held concurrently.

26 (2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances,
27 encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at
28 the transferor's death. For purposes of this subsection and Title 70, chapter 21, the recording of the transfer on

1 death deed is deemed to have occurred at the transferor's death.

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

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

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

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

9 **Section 2.** Section 72-6-415, MCA, is amended to read:

10 **"72-6-415. Optional form of transfer on death deed.** The following form may be used to create a
11 transfer on death deed. The other sections of this part govern the effect of this or any other instrument used to
12 create a transfer on death deed:

13 (front of form)

14 REVOCABLE TRANSFER ON DEATH DEED

15 NOTICE TO OWNER

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

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

19 IDENTIFYING INFORMATION

20 Owner or Owners Making This Deed:

Printed name

Mailing address

Printed name

Mailing address

21

22 Legal description of the property:

23 PRIMARY BENEFICIARY

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

Printed name

Mailing address, if available

1

2 ALTERNATE BENEFICIARY - Optional

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

Printed name

Mailing address, if available

5

6 TRANSFER ON DEATH

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

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

9 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

{{SEAL}}

Signature

Date

{{SEAL}}

Signature

Date

10

11 ACKNOWLEDGMENT

12 (insert acknowledgment for deed here)

13 (back of form)

14 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

20 How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other

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

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

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

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

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

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

15 How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD
16 deed:

17 (1) Complete and acknowledge a revocation form, and record it in each county where the property is
18 located.

19 (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in
20 each county where the property is located.

21 (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly
22 revokes the TOD deed. You may not revoke the TOD deed by will.

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

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

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

1
 2 **Section 3.** Section 72-6-416, MCA, is amended to read:
 3 **"72-6-416. Optional form of revocation.** The following form may be used to create an instrument of
 4 revocation under this part. The other sections of this part govern the effect of this or any other instrument used
 5 to revoke a transfer on death deed.

6 (front of form)
 7 REVOCATION OF TRANSFER ON DEATH DEED
 8 NOTICE TO OWNER

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

11 IDENTIFYING INFORMATION

12 Owner or Owners of Property Making This Revocation:

Printed name	Mailing address
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Printed name	Mailing address
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13
 14 Legal description of the property:

15 REVOCATION

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

17 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

{{SEAL}}

Signature	Date
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{{SEAL}}

Signature	Date
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18
 19 ACKNOWLEDGMENT

20 (insert acknowledgment here)

1 (back of form)

2 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

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

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

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

18 - END -