



AN ACT REVISING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; APPLYING RULES OF CONSTRUCTION APPLICABLE TO WILLS AND APPLYING RULES APPLICABLE TO OTHER NONPROBATE TRANSFERS TO TRANSFER ON DEATH DEEDS; REVISING THE OPTIONAL TRANSFER ON DEATH DEED; REVISING THE OPTIONAL FORM OF REVOCATION; AND AMENDING SECTIONS 72-6-412, 72-6-415, AND 72-6-416, MCA.

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

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

**"72-6-412. Effect of transfer on death deed at transferor's death.** (1) Except as otherwise provided 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 subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

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

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

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

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

(2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at

the transferor's death. For purposes of this subsection and Title 70, chapter 21, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

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

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

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

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

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

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

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

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

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

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

Printed name

Mailing address, if available

ALTERNATE BENEFICIARY - Optional

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

Printed name

Mailing address, if available

TRANSFER ON DEATH

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

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

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

{{SEAL}}

Signature

Date

{{SEAL}}

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 and recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

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

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

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

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

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

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

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

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

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

I have other questions about this form. What should I do? This form is designed to fit some but not all



(insert acknowledgment here)

(back of form)

#### COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

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

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

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

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

- END -

I hereby certify that the within bill,  
SB 200, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

SENATE BILL NO. 200

INTRODUCED BY D. SANDS, B. MERCER

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