

Committee Report

REGULAR CALENDAR

October 18, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred HB
124,**

**AN ACT adopting the uniform real property transfer on
death act. Having considered the same, report the
same: RECOMMENDED FOR FUTURE LEGISLATION.**

Rep. Edward Gordon

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 124
Title:	adopting the uniform real property transfer on death act.
Date:	October 18, 2022
Consent Calendar:	REGULAR
Recommendation:	RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT

This bill clearly has merit for people who wish to pass property onto others without the formality of probate administration or the creation of a trust. However, the initial bill lacked protections against fraud and undue influence. Therefore, the committee decided that it needed more work. Estate planning practitioners have been working with the committee to revise a proposal which will be acceptable for future legislation.

Vote 19-0.

Rep. Edward Gordon
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 124, adopting the uniform real property transfer on death act. **RECOMMENDED FOR FUTURE LEGISLATION** .

Rep. Edward Gordon for Judiciary. This bill clearly has merit for people who wish to pass property onto others without the formality of probate administration or the creation of a trust. However, the initial bill lacked protections against fraud and undue influence. Therefore, the committee decided that it needed more work. Estate planning practitioners have been working with the committee to revise a proposal which will be acceptable for future legislation. **Vote 19-0.**

CONSENT CALENDAR

September 28, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred HB
124,**

**AN ACT adopting the uniform real property transfer on
death act. Having considered the same, report the same
with the recommendation that the bill be REFERRED
FOR INTERIM STUDY.**

Rep. Troy Merner

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 124
Title:	adopting the uniform real property transfer on death act.
Date:	September 28, 2021
Consent Calendar:	CONSENT
Recommendation:	REFER FOR INTERIM STUDY

STATEMENT OF INTENT

The committee recommended that this bill be sent to Interim Study. The bill has some merit, but the committee was uncertain as to what impact it would have on banks holding mortgages, on procedures at the registries of deeds, and on established and future estate plans. Therefore, before passing the bill, the committee decided it needed more work.

Vote 21-0.

Rep. Troy Merner
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 124, adopting the uniform real property transfer on death act. **REFER FOR INTERIM STUDY.**

Rep. Troy Merner for Judiciary. The committee recommended that this bill be sent to Interim Study. The bill has some merit, but the committee was uncertain as to what impact it would have on banks holding mortgages, on procedures at the registries of deeds, and on established and future estate plans. Therefore, before passing the bill, the committee decided it needed more work.

Vote 21-0.

HOUSE COMMITTEE ON Judiciary

BILL NUMBER: HB 124

**BILL TITLE: adopting the uniform real property transfer on death
act.**

DATE: March 2, 2021

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.

Rep. Gordon, Chair

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 124

BILL TITLE: adopting the uniform real property transfer on death act.

DATE: October 18, 2022

LOB ROOM: 206-208

MOTION:

Interim Study (2nd yr) Recommended for Future Legislation

Moved by Rep. McLean

Seconded by Rep. Notter

Vote: 19-0

Respectfully submitted,

Rep Kurt Wuelper, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 124

BILL TITLE: adopting the uniform real property transfer on death act.

DATE: September 28, 2021

LOB ROOM: 206-208

MOTIONS: REFER FOR INTERIM STUDY

Moved by Rep. Merner

Seconded by Rep. Notter

Vote: 19-1

Reconsideration of Vote on HB124

MOTIONS: REFER FOR INTERIM STUDY

Moved by Rep. Merner

Seconded by Rep. Notter

Vote: 21-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Kurt Wuelper, Clerk



2022 SESSION

Judiciary

Bill #: HB124 Motion: Recommend AM #: _____ Exec Session Date: 10-18-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	✓		
McLean, Mark Vice Chairman	✓		
Sylvia, Michael J.	✓		
Wuelper, Kurt F. Clerk	✓		
Alexander, Joe H. Johnson, Dawn	✓		
Greene, Bob J.	_____		
Notter, Jeanine M.	✓		
Merner, Troy E.	✓		
Kelley, Diane E.	✓		
Trottier, Douglas R.	_____		
Andrus, Louise	✓		
Smith, Marjorie K.	✓		
Berch, Paul S. Rung, R	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
Chase, Wendy	✓		
Kenney, Cam E. Chretien	✓		
Langley, Diane M.	✓		
McBeath, Rebecca Susan	✓		
Paige, Mark	✓		
Simpson, Alexis	✓		

19 0



1/10/2022 9:06:23 AM
Roll Call Committee Registers
Report

2022 SESSION

Judiciary

Bill #: _____ Motion: _____ AM #: _____ Exec Session Date: _____

TOTAL VOTE: _____





2021 SESSION

Judiciary

Bill #: HB124 Motion: IS AM #: _____ Exec Session Date: 9-28-21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	21		
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2		
Wuelper, Kurt F. Clerk	3		
Alexander, Joe H.	4		
Rice, Kimberly A. ANDREWS, Louise	5		
Silber, Norman J. MERNER	6		
Greene, Bob J.	7		
Kelley, Diane E.	8		
Tausch, Lindsay NOTTER	9		
Trottier, Douglas R. McGUIRE, CAROL	10		
Smith, Marjorie K.	11		
Berch, Paul S.	12		
Horrigan, Timothy O.	13		
DiLorenzo, Charlotte I.	14		
Chase, Wendy	15		<input checked="" type="checkbox"/>
Kenney, Cam E. Query, Josh	16		
Langley, Diane M.	17		
McBeath, Rebecca Susan	18		
Paige, Mark	19		
Simpson, Alexis	20		
TOTAL VOTE:	21	0	



2021 SESSION

Judiciary

Bill #: HB124 Motion: Reconsider AM #: _____ Exec Session Date: 9-28-21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	19		
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2		
Wuelper, Kurt F. Clerk	3		
Alexander, Joe H.	4		
Rice, Kimberly A. & <u>ANDRUS, Louise</u>	5		
Silber, Norman J. <u>MERNER, TROY</u>	6		
Greene, Bob J.	7		
Kelley, Diane E.	8		
Tausch, Lindsay <u>NOTTER, JEANINE</u>	9		
Trottier, Douglas R. <u>MCGUIRE, CAROL</u>		1	
Smith, Marjorie K.	10		
Berch, Paul S.	11		
Horrigan, Timothy O.	12		
DiLorenzo, Charlotte I.	13		
Chase, Wendy			✓
Kenney, Cam E. <u>QUERY, JOSH</u>	14		
Langley, Diane M.	15		
McBeath, Rebecca Susan	16		
Paige, Mark	17		
Simpson, Alexis	18		
TOTAL VOTE:	19	1	



2021 SESSION

Judiciary

Bill #: HB124 Motion: IS AM #: _____ Exec Session Date: 9-28-21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	19		
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2		
Wuelper, Kurt F. Clerk	3		
Alexander, Joe H.	4		
Rice, Kimberly A. ANDREWS, Louise	5		
Silber, Norman J. MERRINER, Troy	6		
Greene, Bob J.	7		
Kelley, Diane E.	8		
Tausch, Lindsay NOTTNER, JEANINE	9		
Trottier, Douglas R. McGUIRE, CAROL	10		
Smith, Marjorie K.	11		
Berch, Paul S.	12		
Horrigan, Timothy O.	13		
DiLorenzo, Charlotte I.		1	
Chase, Wendy			✓
Kenney, Cam E. QUERRY, Josh	14		
Langley, Diane M.	15		
McBeath, Rebecca Susan	16		
Paige, Mark	17		
Simpson, Alexis	18		

19 - 1

Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 124

BILL TITLE: adopting the uniform real property transfer on death act.

DATE: 2/2/2021

LOB ROOM: Remote

Time Public Hearing Called to Order: 1:03 PM

Time Adjourned: 1:19 Pm

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Rice, Silber, Greene, D. Kelley, Tausch, Trotter, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors:

Rep. Schmidt,

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

*Rep. Schmidt Introduced the bill which means to provide a mechanism to transfer real property without going through probate. The bill is complex.

Q Berch-Without going through line by line, can you tell us from the Uniform Real property transfer on death act as approved by the Uniform Commission? A It does not to my knowledge.

Q McBeath-Is this a taxable transfer? A I do not see tax listed at all in the bill.

Q Silber- Page 1 line 28 transfer is revocable. By whom? A I guess it would go to court. Q Has DRA taken a position A I haven't inquired.

Q Alexander- Would this avoid the Federal estate tax? A Silber: No

Maureen Franklin Self Supports I am a widowed Senior with no children. I bought my home in 2009. Three attorneys advised the documents I need on death would cost about \$3500. I haven't a high net worth so I wouldn't need a trust. I understand 38 states have this law. I don't want my heirs to have to go through probate to pass my house, my only asset, along. I just want to pass my house along without the expensive probate process. Shouldn't that be the case in the Live Free or Die state?

Q DiLorenzo Is there a mortgage on your House A NO, I worked hard to clear it.



Rep Kurt Wuelper

Testimony

House Remote Testify

Judiciary Committee Testify List for Bill HB124 on 2021-02-02

Support: 7 Oppose: 0 Neutral: 0 Total to Testify: 3

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Schmidt, Representative Jan	tesha4@gmail.com	An Elected Official	Myself	Support	Yes (0m)	No	1/27/2021 2:52 PM
Franklin, Maureen	azzelda@peoplepc.com	A Member of the Public	Myself	Support	Yes (0m)	No	1/27/2021 4:16 PM
Schmidt, Rep Jan	tesha4@gmail.com	An Elected Official	Myself	Support	Yes (0m)	No	2/2/2021 12:38 PM
Lord, Kit	kitlord@yahoo.com	A Member of the Public	Myself	Support	No	No	2/1/2021 3:57 PM
Menas, Francine	franmenas@yahoo.com	A Member of the Public	Myself	Support	No	No	2/1/2021 9:31 PM
Rathbun, Eric	ericrathbun@gmail.com	A Member of the Public	Myself	Support	No	No	2/1/2021 11:16 PM
Johnson, II, Robert	robj@nhfarmbureau.org	A Lobbyist	NH Farm Bureau Federation	Support	No	No	2/2/2021 8:01 AM

Bill as
Introduced

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

21-0080
10/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT adopting the uniform real property transfer on death act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Uniform Real Property Transfer on Death Act. Amend RSA by inserting after chapter 563-C the following new chapter:

CHAPTER 563-D

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

563-D:1 Short Title. This chapter may be cited as the Uniform Real Property Transfer on Death Act.

563-D:2 Definitions. In this chapter:

- I. "Beneficiary" means a person that receives property under a transfer on death deed.
- II. "Designated beneficiary" means a person designated to receive property in a transfer on death deed.
- III. "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant, owner of community property with a right of survivorship, and tenant by the entirety. The term does not include a tenant in common or owner of community property without a right of survivorship.
- IV. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- V. "Property" means an interest in real property located in this state which is transferable on the death of the owner.
- VI. "Transfer on death deed" means a deed authorized under this chapter.

VII. "Transferor" means an individual who makes a transfer on death deed.

563-D:3 Applicability. This chapter applies to a transfer on death deed made before, on, or after the effective date of this chapter by a transferor dying on or after the effective date of this chapter.

563-D:4 Nonexclusivity. This chapter does not affect any method of transferring property otherwise permitted under the law of this state.

563-D:5 Transfer on Death Deed Authorized. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

563-D:6 Transfer on Death Deed Revocable. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

563-D:7 Transfer on Death Deed Nontestamentary. A transfer on death deed is nontestamentary.

563-D:8 Capacity of Transferor. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

563-D:9 Requirements. A transfer on death deed:

I. Except as otherwise provided in paragraph II, shall contain the essential elements and formalities of a properly recordable inter vivos deed;

II. Shall state that the transfer to the designated beneficiary is to occur at the transferor's death; and

III. Shall be recorded before the transferor's death in the public records in the office of the county register of deeds of the county where the property is located.

563-D:10 Notice, Delivery, Acceptance, Consideration Not Required. A transfer on death deed is effective without:

I. Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

II. Consideration.

563-D:11 Revocation by Instrument Authorized; Revocation by Act not Permitted.

I.(a) Subject to subparagraph (b), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed; or

(C) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county register of deeds of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor:

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

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

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

III. This section does not limit the effect of an inter vivos transfer of the property.

563-D:12 Effect of Transfer on Death Deed During Transferor's Life. During a transferor's life, a transfer on death deed does not:

I. Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

II. Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

III. Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

IV. Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

V. Create a legal or equitable interest in favor of the designated beneficiary; or

VI. Subject the property to claims or process of a creditor of the designated beneficiary.

563-D:13 Effect of Transfer on Death Deed at Transferor's Death.

I. Except as otherwise provided in the transfer on death deed, in this section, or in statutes governing antilapse, revocation by divorce or homicide, survival and simultaneous death, and elective share, if applicable to nonprobate

transfers, 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 subparagraph (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 subparagraph (d), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified 2 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.

II. Subject to RSA 477, 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 section and RSA 477, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

III. 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.

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

563-D:14 Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by RSA 563-B.

563-D:15 Liability For Creditor Claims And Statutory Allowances.

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

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

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

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