

**CONSENT CALENDAR**

**April 14, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Judiciary to which was referred SB  
243,**

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

**Rep. Mark McLean**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Judiciary</b>
Bill Number:	<b>SB 243</b>
Title:	<b>permitting transfer on death deeds for real property.</b>
Date:	<b>April 14, 2022</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>REFER FOR INTERIM STUDY</b>

### STATEMENT OF INTENT

This bill provides a mechanism for the non-probate transfer of real estate through the use of a transfer on death deed. The benefit of such a deed is that it would save those seeking to transfer property from the expense of drafting a will or creating a trust. Twenty-eight states and the District of Columbia have already implemented legislation enabling this type of deed. While many stakeholders see the value in these deeds, testimony revealed that the proposed New Hampshire legislation had several gaps relative to notification, acceptance, and disclaiming. Protections against fraud and undue influence were also found to be lacking. For these reasons, the committee unanimously recommended holding the bill for Interim Study.

Vote 21-0.

Rep. Mark McLean  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### Judiciary

**SB 243**, permitting transfer on death deeds for real property. **REFER FOR INTERIM STUDY.**

Rep. Mark McLean for Judiciary. This bill provides a mechanism for the non-probate transfer of real estate through the use of a transfer on death deed. The benefit of such a deed is that it would save those seeking to transfer property from the expense of drafting a will or creating a trust. Twenty-eight states and the District of Columbia have already implemented legislation enabling this type of deed. While many stakeholders see the value in these deeds, testimony revealed that the proposed New Hampshire legislation had several gaps relative to notification, acceptance, and disclaiming. Protections against fraud and undue influence were also found to be lacking. For these reasons, the committee unanimously recommended holding the bill for Interim Study. **Vote 21-0.**

Original: House Clerk

Cc: Committee Bill File

**HOUSE COMMITTEE ON JUDICIARY**

**EXECUTIVE SESSION on SB 243**

**BILL TITLE:** permitting transfer on death deeds for real property.

**DATE:** April 14, 2022

**LOB ROOM:** 206-208

**MOTIONS: REFER FOR INTERIM STUDY**

Moved by Rep. McLean

Seconded by Rep. Gordon

Vote: 21-0

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Kurt Wuelper, Clerk

OFFICE OF THE HOUSE CLERK



9/28/2021 10:41:09 AM  
Roll Call Committee Registers  
Report

2021 SESSION

Judiciary

Bill #: SB243 Motion: IS AM #: \_\_\_\_\_ Exec Session Date: 4-14-2022

<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.	✓		
Greene, Bob J. <i>Laseelles, Rich</i>	✓		
Notter, Jeanine M.	✓		
Merner, Troy E.	✓		
Kelley, Diane E.	✓		
Trottier, Douglas R.	✓		
Andrus, Louise	✓		
Smith, Marjorie K.	✓		
Berch, Paul S. <i>Woods, GARY</i>	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
Chase, Wendy	✓		
Kenney, Cam E. <i>Meuse, GARY</i>	✓		
Langley, Diane M.	✓		
McBeath, Rebecca Susan	✓		
Paige, Mark	✓		
Simpson, Alexis	✓		

*Kurt Wuelper*

21 0

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 243-FN

**BILL TITLE:** permitting transfer on death deeds for real property.

**DATE:** 4/13//2022

**LOB ROOM:** SH 100

**Time Public Hearing Called to Order:** 10:30 AM

**Time Adjourned:** 11:34 PM

**Committee Members:** Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Notter, Merner, Greene, D. Kelley, Andrus, Trottier, M. Smith, Borch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

**Bill Sponsors:** Sen. D'Allesandro, Dist 20; Sen. Cavanaugh, Dist 16; Rep. B. Griffin, Hills. 6

TESTIMONY

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

**\*Sen. D'Allesandro Sponsor Support** This bill would add a new section to our law regarding small estates. This bill was requested by a citizen. It provides that within 60 days of a decedent's death ...It simplifies handling simple estates.

**\*Barbara Schult** It was introduced into the House last year as HB 174 and sent to Interim Study. Self Support This bill received no negative testimony in the Senate. 31 states allow this. I want to avoid the very public, time-consuming and expensive probate process. This bill will allow me to avoid probate without setting up a trust or going through the confusing probate process. HB 174 was sent to Interim Study because of "unknown consequences". There are none. This process is similar to changing the name on a deed. It is very simple. Rep. Griffin, who has experience in this sort of thing, is a co-sponsor.

**Q** McLean: In the states where this is law, what changes?,

**Ans:** Only the name on the deed. All encumbrances, mortgages, etc., remain in effect. See email below.

**\*Susan Cragin** **Register of Deeds, Merrimack County** Oppose I am testifying on my own behalf because the registry doesn't think it really affects us. I have on small problem. The lack of any consideration in the bill means property can be thrust upon an unwitting person who may not want it. Some properties contain serious problems like environmental concerns or mold, and many others, including financial obligations. There has to be notice and acceptance on the deed itself.

**Q** Simpson: When you say notice and acceptance, does that mean one could refuse the property after someone has dies?

**Ans:** That is one problem. There can be a period of time when ownership of the land is entirely unknown. If the bill does not provide notice and there is a provision for me to refuse, that could lead to real problems. The bill would be much better with a notice and a line on the deed indicating acceptance. From the donor's perspective this is great, but from the recipient's ,maybe not. According to this bill you just fill out a piece of paper and register that on the deed. What if the paper gets lost?

**Q** McLean: Do you know why there is no notice in the bill?

**Ans:** No .

**Q:** how about in the other 31 states that have it?

**Ans:** I don't know. This bill comes from the Uniform Law Commission and they don't follow amendments to their bills, so the states may have done that with or without amendments. We just had a situation with the Remote notarization bill we passed and the Commission has modified, but they say what we passed is fine.

**Kelly Ovit Puc** Opposed This bill may create more problems than it solves. Since the beneficiary isn't required to be notified. The disclaimer provision is only open for 60 days, but .. no notice to anyone, This could easily be a burden on the town to figure out who owns the property, how

to contact them, etc. We already have a process to avoid probate : create a trust. The property may be subject to a claim from the state for up to 18 months. If Title changes in that period the recipient might be responsible for that. There is no revocation process etc. Such a transfer could create challenges for title researchers,

**Q Chase:** How large an estate would this apply?

**Ans:** All sizes.

**Q Gordon:** How can the town be properly notified of a transfer like this?

**Ans:** Good question. There is a huge gap in this process. I urge the committee to consider interrelated statutes.

**Ellsie Salek Self** Oppose I am an estate planning attorney. Of the 31 states that have similar legislation only 19 were made from this standard language. If we adopt it as is we will be missing a third of the needed language. I think we should have transfer on death statute, but I think this bill needs improvement. I have a big concern about the elderly population being persuaded to transfer property to relatives. I think California did it right. They wrote a “look back” provision in their law. One thing they added was the requirement to sign a transfer-on-death deed. Now they require that signature be witnessed by two others. We absolutely need to tackle the issue of influence, Revocation also needs to be addressed. What happens if you leave your property to two children and one is not alive when you die. Typically, parents include a provision for contingent beneficiaries, but that is missing from this bill. I am also concerned about electronic signatures. The bill does not talk to that issue. My other issue is what about powers of attorney? Do we want to allow agents to sign a transfer-on-death deed? The law should speak to that explicitly and make possible changes to the power of attorney statutes. We need a provision to allow people to contest such a deed as there might be fraud or other problems in its execution. In short, the bill has a lot of flaws.

**Q Merner:** Wouldn't your last be a matter for Probate court?

**Ans:** Well, it makes sense to me, but there is nothing speaking to that in the bill.

**Pam NewkirkSelf** Oppose I am a lawyer doing probate law. The disclaimer issue has been addressed. I iterate, this will be the only type of gift that doesn't need acceptance and deadlines are triggered by date of death, which is different from typical probate law. Re Creditors: NH probate statute has a clear process for notification and for lawsuits to value claims. Appointment of executors may not be made in a timely manner consistent with this bill. It is not clear if this could be used to avoid using other assets to pay claims against the property. If the property transferred on death is subject to satisfying other claims against the estate, we need to know what priority it should get. The bill says the “estate” will be responsible for paying creditors, but there is no process for establishing an “estate” in the bill. Contrary to our existing laws about creditors, there is no process here for them to be notified which can create major issues.



Rep Kurt Wuelper







# House Remote Testify

## Judiciary Committee Testify List for Bill SB243 on 2022-04-13

Support: 10 Oppose: 0 Neutral: 0 Total to Testify: 0

[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, Jan	Nashua, NH tesha4@gmail.com	An Elected Official	Nashua	Support	No	No	4/5/2022 3:05 PM
Littlefield-Baas, Laurie	Chichester, NH walkingll@gwi.net	A Member of the Public	Myself	Support	No	No	4/11/2022 3:43 PM
Shafer, Margaret	Weare, NH mfshafer@aol.com	A Member of the Public	Myself	Support	No	No	4/11/2022 4:24 PM
white, edna	Goffstown, NH whiteedn@yahoo.com	A Member of the Public	Myself	Support	No	No	4/11/2022 9:32 PM
Morgan, Marie	Goffstown, NH mmdgm2008@yahoo.com	A Member of the Public	Myself	Support	No	No	4/12/2022 5:50 PM
Mercier, Jody	Goffstown, NH JodyMercier53@gmail.com	A Member of the Public	myself	Support	No	No	4/12/2022 7:40 PM
Seeley, Dana	Goffstown, NH danaseeley1712@gmail.com	A Member of the Public	Myself	Support	No	No	4/12/2022 7:41 PM
Cutshall, Catherine	Bedford, NH vivadofamily@aol.com	A Member of the Public	Myself	Support	No	No	4/12/2022 9:20 PM
Vivado, Mauricio	Bedford, NH maumajo@aol.com	A Member of the Public	Myself	Support	No	No	4/12/2022 9:20 PM
Carbonneau, Barbara	Goffstown, NH glenlake.nh@comcast.net	A Member of the Public	Myself	Support	No	No	4/13/2022 10:47 AM

## Submitted Testimony for SB 243

Emailing my spoken testimony from this morning's hearing so that you have it for the record.  
Barbara Schult  
Goffstown NH

I am here in full support of SB243 and hope you will give it your full support as well.

I would like to emphasize that SB243 received no opposing testimony in the Senate committee hearing and passed unanimously through the committee and the full Senate.

While I understand this committee (House Judiciary) reviewed a similar bill (HB124) in November 2021, I hope you will look at SB243 with an open mind and a fresh set of eyes and ears. The fact that this TOD deed bill has originated in both houses of our legislature is a strong indicator that the people of NH want and need this.

HB124 was referred to interim study and I will address the concerns that arose with regard to that bill later in my testimony.

A TOD deed is a simple inexpensive estate planning tool not currently available in NH. It should be noted 31 states allow this, and I feel it should be allowed here.

I am a single person, whose main asset is my home. I have a small estate. I want to avoid the very public, time consuming, and expensive probate process. The TOD deed that SB243 would allow when passed would resolve this issue for me. It will allow me to avoid probate without incurring legal bills or setting up a trust, which can be an expensive process.

A TOD deed is easy and importantly, inexpensive, to set up and is revocable or changeable, also without undue expense.

I will now address the concerns raised by this committee which were brought up in HB124. The summary report of your committee member, Rep Troy Werner, stated the bill was referred for further study due to unknown effects on:

1). banks holding mortgages

There is no effect on banks holding mortgages. A TOD deed does NOT avoid liens or creditors.

2). A concern about procedures at Registry of Deeds

There is no effect. Recording a TOD deed is no different than when a deed is retitled from a single or joint owner into the name of a trust, or when the deed changes for any other reason (divorce etc.).

3). future or current estate plans

Future estate plans would have an additional option for estate planning, another tool or choice to choose from. As far as current plans already created, sure, they can be reconsidered as they would be when any law is changed. It is unlikely someone who has already paid for and created a trust would then go backwards to a simpler TOD deed, but yes, that's an option that would be available to them.

I am not a lawyer but would like to emphasize that two of your colleagues, with legal expertise, Sen Perkins Kwoka and Rep Barbara Griffin, are in support of this bill. Rep Barbara Griffin communicated with me that she is unable to be here due to chairing an executive session of her own committee.

The TOD deed is a useful estate planning tool that should be available to NH residents, and is needed and supported by same. I am counting on your support of SB243. Thank you.

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## Submitted Testimony for SB 243

Members of the Committee:

My name is Susan Cragin and I am Register of Deeds in Merrimack County. As Legislative Representative, I was asked to evaluate SB 243 Transfer-on-Death Deeds. Although I wasn't sure that NH Deeds as a whole should be in opposition, I will testify personally, in opposition to the bill.

The bill creates a period after death where property is "transferred" without "notice, delivery, acceptance, or consideration" to another person, who may not want the property (and which may be worth less than zero). My husband and I recently had a situation where this would have been a disaster for us.

(1) 563-D:10 Notice, Delivery, Acceptance, Consideration not required.

My husband was bequeathed by will 1/4 of a house when his mother died, and he immediately disclaimed the gift. Why? Because he didn't want the property, and there were good reasons for it.

1. There were environmental hazards that my husband had had notice of. The water wasn't potable. There was black mold in the basement. Decades-old fir trees grew within a couple of feet of the house, one of which could crush the tiny house in the right wind. The woodpile had been kept too close to the house.
2. There were obligations that "ran with the land" that he didn't want to take on, including partial responsibility for keeping a watercourse clear.
3. He thought a creditor lien might exceed the real value of the property. (The appraisal was inflated.) He had cash that the bank could go after in a deficiency action.
4. Ownership would be partial among 4 siblings, three of whom wanted to keep the house for "sentimental" reasons. One of those three we suspected was insolvent and knew was irresponsible with money, and a second mentioned using it as a weekend "retreat" for a religious group we disliked. And those were the two siblings he got along with best.
5. If he had not disclaimed under the will, he would have had to take time to go to New York State, and get a lawyer to arrange the transfer, with resultant expenses and headache.

My husband had asked his mother to keep him out of the will, but she was unwilling to treat him different than his siblings. That's a common feeling.

AARP thinks there are at least 6 reasons to decline a request of real property.

<https://www.aarp.org/money/estate-planning/info-04-2011/reasons-to-reject-a-bequest.html>

1. It's a good tax move. (e.g. If the property will then go to your child, who has a lower tax consequence.)
2. It's a dog of a property. Property taxes on unused land, environmental risk. Other reasons. (Properties towns won't take for taxes.)
3. It will trigger a government aid eligibility review. Medicaid you can't have more than \$2,000 in assets. (Mom in nursing home.)
4. It will trigger a family drama. Summer cottages and anything with "memories."
5. It will go to your creditors. Are you on the brink of bankruptcy?
6. It's the right thing to do.

Now suppose that, in addition to all this, the "beneficiary" does not get notice of the death or of the transfer? Suppose before I die I execute a TOD deed on a toxic dump to a person I do not know but despise, or who is difficult to locate? What happens then?

I believe strongly that one of the primary bases of American exceptionalism is its guardianship of the right to private property, and the need for unambiguous and public ownership of real property.

And I am sure the towns want to know where to send their tax bills.

Yours truly,  
Susan Cragin

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## Submitted Testimony for SB 243

I would like to add a couple of things to my earlier testimony, now that SB-243 is going to interim study.

### (1) Role of the Uniform Law Commission -

The Uniform Law Commission "strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states."

In short, the ULC drafts entire laws, that are meant to be passed in their entirety, and not just cherry-picked for language. Where states are expected to put in their own interpretations, the ULC offers suggestions that are explicitly stated, usually showing two or more options in square brackets.

When NH representatives present a bill as a "Uniform Law" they must always be questioned on whether the law is in fact uniform, and is as the ULC intended it to be. A law is not uniform if many of its provisions have been omitted or changed.

Despite this, many other states have passed a law using cherry-picked language from the ULC. Some states change just a bit of the law, to conform to other laws on their books. Most add protections. Some change them a lot.

The ULC does not investigate whether its laws are being passed as written or in some other form. In that respect, all its statistics in this regard may be misleading.

### (2) Role of the registries of deeds -

The registries of deeds record deeds. We also are required to notify towns when ownership deeds change.

We do not notify towns in any situation where property changes hands without documentary (filing of deed) notice to us.

We do NOT notify mortgage holders or other interested parties.

### (3) The Real Estate Transfer Tax -

Whether the transfer is subject to transfer tax or not may become an issue.

The following is from the NH Department of Revenue's website

<https://www.revenue.nh.gov/faq/real-estate-transfer.htm>

"What is a non-contractual transfer?"

A non-contractual transfer is essentially a gift and is evidenced by the transferor's donative intent toward the transferee, actual delivery of the property to the transferee, and complete relinquishment of control over the property."

So when does the transfer take place? It says you need intent, actual delivery, and relinquishment of control. Relinquishment of control would presumably occur at the death of the property owner.

Intent may be inferred by the document. But what about delivery? Delivery requires an action by both parties: a handing over with intent, and acceptance. When do those things take place?

For tax purposes, may the transfer date be different from other purposes?

For instance, I would assume there is no gap in obligation to pay ongoing expenses such as the property tax and the mortgage.

In conclusion, this bill raises many questions to my mind, and many of them are not solved by making the bill right with the Registries of Deeds. I suggest recourse to counsel, and AT MINIMUM following the exact wording of the Uniform Law.

Submitted Testimony for SB 243

Susan Cragin  
Testifying personally

Jan Schmidt

I am thrilled that this bill is coming forward, as a constituent asked for this in the past, having moved here from a state with this law on the books she was surprised that NH hadn't passed this yet.

Covid intervened and the committee had neither the time nor the expertise to manage this issue, new to them all in HB124 last year.

1) There will be no impact on banks holding mortgages, as a transfer on death deed does NOT avoid creditors. The impact on registry of deeds? Virtually none, it's recording a deed, same as any other deed.2) It can easily fit into all estate planning and indeed, make an easier transition of real property.3) It provides a simple process for the non-probate transfer of real estate. The act allows an owner of real property to designate a beneficiary to automatically receive the property upon the owner's death without a probate procedure.

Thank you your consideration, Rep Jan Schmidt, Nashua



Laurie Littlefield-Baas

This bill needs to pass as it makes estate planning easier and less expensive for some citizens in NH. It offers an additional tool for NH residents without causing any problems at the registry of deeds. There is no impact on creditors and it just allows a simpler way to transfer property in certain circumstances. It is available in the majority of states but not currently in NH. PLEASE vote to pass this bill.

edna white

I support this recognition that low and moderate interest citizens should not be required to set up expensive trusts, merely to ensure that the beneficiary will inherit one's property. This bill should be passed to keep NH current with most other states.

SB 243 - AS AMENDED BY THE SENATE

03/24/2022 1102s

2022 SESSION

22-2910

11/08

SENATE BILL **243**

AN ACT permitting transfer on death deeds for real property.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Cavanaugh, Dist 16; Rep. B. Griffin, Hills. 6

COMMITTEE: Election Law and Municipal Affairs

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ANALYSIS

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

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT permitting transfer on death deeds for real property.

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

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

3 CHAPTER 563-D

4 UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

5 563-D:1 Short Title. This chapter may be cited as the Uniform Real Property Transfer on Death  
6 Act.

7 563-D:2 Definitions. In this chapter:

8 I. "Beneficiary" means a person that receives property under a transfer on death deed.

9 II. "Designated beneficiary" means a person designated to receive property in a transfer on  
10 death deed.

11 III. "Joint owner" means an individual who owns property concurrently with one or more  
12 other individuals with a right of survivorship. The term includes a joint tenant, owner of community  
13 property with a right of survivorship, and tenant by the entirety. The term does not include a tenant  
14 in common or owner of community property without a right of survivorship.

15 IV. "Person" means an individual, corporation, business trust, estate, trust, partnership,  
16 limited liability company, association, joint venture, public corporation, government or governmental  
17 subdivision, agency, or instrumentality, or any other legal or commercial entity.

18 V. "Property" means an interest in real property located in this state which is transferable  
19 on the death of the owner.

20 VI. "Transfer on death deed" means a deed authorized under this chapter.

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

22 563-D:3 Applicability. This chapter applies to a transfer on death deed made before, on, or after  
23 the effective date of this chapter by a transferor dying on or after the effective date of this chapter.

24 563-D:4 Nonexclusivity. This chapter does not affect any method of transferring property  
25 otherwise permitted under the law of this state.

26 563-D:5 Transfer on Death Deed Authorized. An individual may transfer property to one or  
27 more beneficiaries effective at the transferor's death by a transfer on death deed.

28 563-D:6 Transfer on Death Deed Revocable. A transfer on death deed is revocable even if the  
29 deed or another instrument contains a contrary provision.

30 563-D:7 Transfer on Death Deed Nontestamentary. A transfer on death deed is  
31 nontestamentary.

**SB 243 - AS AMENDED BY THE SENATE**  
**- Page 2 -**

1           563-D:8 Capacity of Transferor. The capacity required to make or revoke a transfer on death  
2 deed is the same as the capacity required to make a will.

3           563-D:9 Requirements. A transfer on death deed:

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

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

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

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

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

14          II. Consideration.

15          563-D:11 Revocation by Instrument Authorized; Revocation by Act not Permitted.

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

18                  (1) Is one of the following:

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

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

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

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

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

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

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

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

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

36          563-D:12 Effect of Transfer on Death Deed During Transferor's Life. During a transferor's life,  
37 a transfer on death deed does not:

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

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

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

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

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

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

11 563-D:13 Effect of Transfer on Death Deed at Transferor's Death.

12 I. Except as otherwise provided in the transfer on death deed, in this section, or in statutes  
13 governing antilapse, revocation by divorce or homicide, survival and simultaneous death, and  
14 elective share, if applicable to nonprobate transfers, on the death of the transferor, the following  
15 rules apply to property that is the subject of a transfer on death deed and owned by the transferor at  
16 death:

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

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

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

24 (d) If the transferor has identified 2 or more designated beneficiaries to receive  
25 concurrent interests in the property, the share of one which lapses or fails for any reason is  
26 transferred to the other, or to the others in proportion to the interest of each in the remaining part of  
27 the property held concurrently.

28 II. Subject to RSA 477, a beneficiary takes the property subject to all conveyances,  
29 encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is  
30 subject at the transferor's death. For purposes of this section and RSA 477, the recording of the  
31 transfer on death deed is deemed to have occurred at the transferor's death.

32 III. If a transferor is a joint owner and is:

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

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

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



**SB 243 - AS AMENDED BY THE SENATE**

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1           563-D:14 Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as  
2 provided by RSA 563-B, but shall do so within 60 days of the transferor's death. The beneficiary  
3 shall record a copy of the disclaimer in the registry of deeds of the county in which the property or  
4 interest disclaimed is located.

5           563-D:15 Liability For Creditor Claims And Statutory Allowances.

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

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

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

14           2 Effective Date. This act shall take effect January 1, 2023.