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Bulletin No. 2001-7

To: All Agents, Direct Offices and Attorneys in the State of New Mexico

From: Shannon J. Savage

Date: 08/30/01

Re: Transfer on Death Deeds

Effective July 1, 2001, the New Mexico State Legislature added a new section of Chapter 45, Article 6 **NMSA** 1978. The new law allows real property owners to record a "Transfer on Death Deed" naming a beneficiary to take their real property after their death. This bulletin is intended to help explain how Transfer on Death Deeds work and to outline Old Republic Title's underwriting guidelines for insuring a transaction where a Transfer on Death deed is involved. **Summary**

of Transfer on Death Deeds: The new law allows a real property owner(s) to sign and record a deed designating a grantee beneficiary or beneficiaries. The deed transfers ownership of that interest upon the death of the owner. The deed must be in substantially the forms shown on Exhibits A, B, or C attached hereto.

- A transfer on death deed is not effective until the death of the record owner. The beneficiary or beneficiaries named in the deed have no interest in the property during the owner's lifetime. Therefore, the owner of the property can do whatever he/she wishes with the property without the beneficiaries' approval.
- A transfer on death deed can be revoked by recording a revocation (see Exhibit D), selling all interest in the property, or recording a new transfer on death deed naming a different beneficiary.
- The beneficiaries' specific names must appear on the face of the deed. The law does not allow classes, such as "all of my children" to be named as beneficiary. In addition, beneficiaries need not sign the deed or consent to any revocation.
- The deed must be recorded prior to the death of the property owner.
- If the deceased's will and the transfer on death deed are inconsistent the transfer on death deed will control who owns the property. However, if the assets of the estate are insufficient, the transfer on death deed is not effective

to the extent the property is needed to pay claims against the estate or to satisfy the statutory allowances to surviving spouse and children.

- When there is a joint tenancy the rights of the surviving joint tenant prevail over a grantee beneficiary in a death deed. If all joint tenants sign a transfer on death deed, the deed takes effect only when the last surviving joint tenant dies.
- If a beneficiary dies prior to the death of the owner and an alternative beneficiary is not named in the deed the transfer lapses.
- A transfer on death deed does not allow property owners to escape creditors after death. The beneficiaries take subject to all assignments, contracts, liens, etc.

Underwriting Guidelines:

When being asked to issue insurance in a situation involving a transfer on death deed Old Republic Title will require the following:

1. Proof of the grantor's death either a death certificate or evidence of probate. If this is a joint tenant transfer on death deed we will require evidence that all joint tenants are deceased.
2. Confirm the transfer on death deed was recorded prior to grantors death.
3. If grantor died testate we must receive an affidavit from the personal representative of the estate stating that the assets of the estate are sufficient to pay all claims against the estate and to pay the statutory allowances to surviving spouse and children.
4. If grantor died intestate we must be provided with an affidavit of heirship establishing grantors heirs. All heirs must then sign the same affidavit described in number 3 above.
5. There are 3 forms of transfer on death deeds attached to this bulletin. Exhibit A is a form without warranties. If asked, please encourage use of only the forms containing warranties.

If you have any questions please feel free to call Shannon Savage or David Rhodes at 1-888-678-1700.

Exhibit "A"
TRANSFER ON DEATH DEED

owner(s), grant(s) and transfer(s) on death to the following named grantee beneficiary(y) (ies), (in the percentages which appear following their names,) as grantee beneficiary(y) (ies), the following described real estate in _____ County, New Mexico. If any named beneficiary should predecease owner(s) grant(s) that interest to the alternate grantee beneficiary (whose name appears after that interest). (If both the named grantee beneficiary and the first alternate grantee beneficiary should predecease owner(s) grant(s) that interest to the second alternate grantee beneficiary.)

Name	Percentage	Alternate 1	Alternate 2
_____	_____	_____	_____
_____	_____	_____	_____

(description)

THIS TRANSFER ON DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE.

This Transfer on Death Deed is made pursuant to §45-6-401 et seq- NMSA 1978.

WITNESS my hand and seal this _____ day of _____, _____.

Owner

ACKNOWLEDGMENT

STATE OF NEW MEXICO

)ss.

COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____,
_____.

Owner

My commission expires:

Name of owner(s) and martial status. If married, add "joined by spouse
_____"

Exhibit "B"

**WARRANTY DEED
TO TRANSFER ON DEATH DEED**

_____, owner(s), grant(s) and transfer(s) on death to the following named grantee berieficiar(y)(ies), (in the percentages which appear following their names,) as grantee beneficiar(y)(ies), the following described real estate in County, New Mexico. If any named beneficiary should predecease owner(s) grant(s) that interest to the alternate grantee beneficiary (whose name appears after that interest). (if both the named grantee beneficiary and the first alternate grantee beneficiary should predecease owner(s) grant(s) that interest to the second alternate grantee beneficiary.)

Name	Percentage	Alternate 1	Alternate 2
_____	_____	_____	_____

description
with

warranty covenants.

Subject to reservations, encumbrances and easements of record.

THIS TRANSFER ON DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE.

This Transfer on Death Deed is made pursuant to §45-6-401 et seq. NMSA 1978-

WITNESS my hand and seal this
_____ day of

_____, _____, _____.
Owner

ACKNOWLEDGMENT

2 Name of owner(s) and martial status. If married, add "joined by spouse

_____”

Exhibit "C"
WARRANTY DEED
TO TRANSFER ON DEATH DEED
(JOINT TENANTS)

_____, owner(s), grant(s) and transfer(s) on death to the following named grantee beneficiar(y) (ies) as joint tenants, as grantee beneficiar(y) (ies), the following described real estate in _____ County, New Mexico. If any named beneficiary should predecease owner(s) grant(s) that interest to the alternate grantee beneficiary (whose name appears after that interest). (If both the named grantee beneficiary and the first alternate grantee beneficiary should predecease owner(s) grant(s) that interest to the second alternate grantee beneficiary.)

Name	Alternate 1	Alternate 2
_____	_____	_____

(description)with
warranty covenants.

Subject to reservations, encumbrances and easements of record.

THIS TRANSFER ON DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE.

This Transfer on Death Deed is made pursuant to §45-6-401 et seq. NMSA 1978.

WITNESS my hand and seal this _____ day of _____, _____.

Owner

ACKNOWLEDGMENT

- 3 Name of owner(s) and martial status. If married, add "joined by spouse
- 4 Joint tenants cannot have unequal shares.

Exhibit "D"
REVOCATION OF
TRANSFER ON DEATH DEED

_____, hereby revoke(s) all prior transfer on death deeds (including the transfer on death deed dated _____, recorded by the Clerk of _____, in book _____, page _____,) for the following described interest in real estate.

(description)

WITNESS my hand and seal this _____ day of _____, _____.

Owner

My commission expires:

This instrument was acknowledged before me this _____ day of _____,
_____.

Owner

My commission expires:

(description)

Notary Public

5 Name of owner(s) and martial status. If married, add joined by spouse _____”