

Transfer on Death Deeds

When we meet with our clients to discuss their estate plan, many express concerns about the time and expense that can be associated with probate. We sometimes advise the client to consider alternative ways of passing property to heirs beyond simply making a Will. In 2019, the Maine legislature gave us another tool to use in meeting the challenge of passing property without having to resort to probate. This tool is known as the “Transfer on Death Deed.” When properly drafted, executed, and recorded, the Transfer on Death (TOD) Deed allows the person who is transferring real estate to continue to own the property until he/she dies. Then, the real estate automatically becomes the property of the beneficiary named in the TOD deed, without having to go through the process of probating a Will.

As with a regular deed, a TOD deed has certain characteristics which must be present in order for it to be considered a valid transfer of the property. These characteristics include:

1. The name of the person (or persons, if more than one owner) who are transferring the property;
2. A legal description of the property being transferred;
3. A person named to receive the property; and
4. A notarized signature of the person(s) that are transferring the property.

After the TOD deed has been properly written and signed, it must be recorded in the Registry of Deeds for the county in which the property is located. Once recorded, the transfer of the real estate will happen automatically at the death of the person(s) that signed the deed. If there are two owners who own the property as tenants in common and only one owner has died, the interest of only the deceased owner will pass to the recipient named in the TOD deed. If two or more owners hold title to the real estate as joint tenants, the ownership interest will not pass until all owners are deceased.

If the client changes his/her mind about making the gift of property and the TOD deed has been recorded, the TOD deed can be revoked, but again there are specific procedures that must be followed. In order to revoke a TOD deed, the client must either: (1) complete and record a revocation form; (2) complete and record a new TOD deed that transfers the same property; or (3) transfer the property to someone else during the client's lifetime by a normal deed which also expressly revokes the TOD deed.

If you are thinking about using a Transfer on Death Deed as part of your estate plan, you should consult with a lawyer first to make sure that it is the right estate planning "tool" for you. A lawyer from our office can tell you whether the TOD deed is a good fit for your existing estate plan, an important piece of a new estate plan, or something that would interfere with your existing estate plan.

Finally, we recommend that you always consult with a lawyer before making any transfer of real estate; unexpected consequences may arise if the property is mortgaged or if you later need MaineCare assistance to pay for a nursing home. Whether we have already drafted an estate plan for you, or you are a client who is new to our firm, we would be happy to discuss whether the Transfer on Death Deed should be part of your estate plan.

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The information presented on this website is general in nature and not intended to be legal advice. No attorney-client relationship will exist with Jones, Kuriloff & Sargent, LLC unless agreed to in writing. Please contact us to discuss your particular situation.