

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

—
H.P. 120 - L.D. 196

**An Act to Implement the Recommendations of the Probate and Trust Law
Advisory Commission for Amending the Maine Uniform Probate Code and
Related Provisions of Law**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Uniform Probate Code took effect September 1, 2019, but the new confidentiality of records provisions applicable to adult guardianships, conservatorships and other protective arrangements were delayed until January 1, 2023 to allow the development and adoption of rules governing those records by the Supreme Judicial Court; and

Whereas, the rules governing confidentiality of probate court records have not yet been adopted; and

Whereas, the effective date of the statutory provisions should be delayed until the rules are adopted and any appropriate statutory amendments can be made; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §307, first ¶, as corrected by RR 2021, c. 1, Pt. B, §11, is amended to read:

When a judge or register of probate is interested in that judge's or register of probate's own right, trust, or in any other manner, or is within the degree of kindred, by which in law that judge or register of probate may, by possibility, be heir to any part of the estate of the person deceased, or is named as executor, trustee or guardian of minor children in the will of any deceased resident of the county, such estate must be settled in the probate court of any adjoining county, which has as full jurisdiction thereof as if the deceased had died in that adjoining county. If the judge's or register of probate's interest arises after jurisdiction of such estate has been regularly assumed or existed at the time of the judge's or register of

probate's appointment to office, and in all cases where an executor, administrator, guardian or trustee, whose trust is not fully executed, becomes judge or register of probate for the county in which that judge's or register of probate's letters were granted, further proceedings in that county must be transferred to the probate court in any adjoining county and there remain until completed, as if such court had had original jurisdiction thereof, unless said disability is removed before that time. Whenever in any case ~~within~~ under this section the disability of the judge or register is removed before the proceedings have been fully completed, the proceedings must then be transferred to the probate court in the county of original jurisdiction or to the probate court that otherwise would have had jurisdiction. In all such cases the register in such adjoining county shall transmit copies of all records relating to such estate to the probate office of the county where such estate belongs, to be there recorded. If there are fewer than 4 counties adjoining the county of a probate court that is required to transfer proceedings to an adjoining county under this section, the proceedings must be transferred to a probate court in one of the 4 counties nearest to the transferring probate court, as measured by the shortest distance along paved roads between the building in which the registry of probate is located in the transferring county and the building in which the registry of probate is located in the other county.

Sec. 2. 18-C MRSA §1-504, sub-§2, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

2. Certification. When required by subsection 1, the register shall certify to the register of deeds in the county where any affected real estate is situated a true copy of the portion of the will that devises the real estate, an abstract of the appointment of the personal representative or ~~a true copy of an~~ an abstract of the petition for an elective share. Each certification must also include:

- A. A description of the real estate derived from the probated will or the petition upon which the appointment of the personal representative was made;
- B. The name of the decedent;
- C. The name or names of the devisees or heirs; and
- D. In the case of a will, the date of allowance of the will and an indication whether the will was probated formally or informally.

Sec. 3. 18-C MRSA §1-505, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is repealed and the following enacted in its place:

§1-505. Notices to devisees and heirs; furnishing of copies

1. Notice to devisees and heirs. A register shall, within 30 days after the filing of an application for the appointment of a personal representative, notify by mail all of the decedent's devisees and heirs of the right of a surviving spouse to demand an elective share and the time limit for making such an election and of the rights of a surviving spouse and children to the homestead allowance, exempt property and family allowance.

2. Notice to devisees of probated will. A register shall, within 30 days after a will is probated, notify by mail all devisees under the will that devises have been made to them, stating the name of the testator and the name of the personal representative, if a personal representative has been appointed at the time this notification is sent.

3. Furnishing of copies. Devises in a will may, upon application to the register, be furnished with a copy of the probated will upon payment of a fee of \$1 per page.

Sec. 4. 18-C MRSA §2-402, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

§2-402. Homestead allowance

A decedent's surviving spouse is entitled to a homestead allowance of \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate other than costs and expenses of administration and reasonable funeral expenses. ~~Homestead~~ The homestead allowance is in addition to any benefit or share passing to the surviving spouse or minor or dependent child by intestate succession or by way of elective share and is in addition to any benefit or share passing to the surviving spouse or minor or dependent child by the decedent's will unless otherwise provided by intestate succession or by way of elective share the decedent's will expressly provides that the benefit or share passing to the surviving spouse or minor or dependent child is intended to be made in lieu of the homestead allowance. The personal representative shall promptly satisfy the homestead allowance from available assets.

Sec. 5. 18-C MRSA §2-403, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

§2-403. Exempt property

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding \$15,000 in excess of any security interests in the estate of tangible personal property, including, but not limited to, in household furniture, automobiles, furnishings, appliances and personal effects. ~~If~~ Except as otherwise provided in this section, if there is no surviving spouse, children of the decedent are entitled jointly to the same value; however, the decedent, by will, may exclude one or more adult children from the receipt of exempt property. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$15,000 value. ~~Rights~~ The rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate other than costs and expenses of administration and reasonable funeral expenses, except that the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. ~~These rights are~~ The right to exempt property is in addition to any benefit or share passing to the surviving spouse or children by intestate succession or by way of elective share and is in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided by intestate succession or by way of elective share the decedent's will expressly provides that the benefit or share passing to the surviving spouse or children is intended to be made in lieu of the exempt property right or unless the decedent's will expressly excludes one or more adult children from the receipt of exempt property without providing a benefit or share in lieu thereof. The personal representative shall promptly satisfy the exempt property from available assets.

Sec. 6. 18-C MRSA §2-404, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

§2-404. Family allowance

1. Family allowance during administration. In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims ~~but not over~~ except costs and expenses of administration, reasonable funeral expenses and the homestead allowance. The personal representative shall promptly satisfy the family allowance from available assets.

2. ~~Not chargeable against~~ Additional benefit or share; right terminates on death. The family allowance is ~~not chargeable against~~ in addition to any benefit or share passing to the surviving spouse or minor or dependent children by intestate succession or by way of elective share and is in addition to any benefit or share passing to the surviving spouse or minor or dependent children by the decedent's will unless otherwise provided by intestate succession or by way of elective share the decedent's will expressly provides that the benefit or share passing to the surviving spouse or minor or dependent children is intended to be made in lieu of the allowance. The death of any person entitled to family allowance terminates that person's right to allowance not yet paid.

Sec. 7. 18-C MRSA §3-108, sub-§1, ¶D, as amended by PL 2021, c. 4, §1, is further amended to read:

D. Regardless of whether the decedent dies before, on or after the effective date of this Code, an informal testacy or appointment proceeding or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate;

Sec. 8. 18-C MRSA §3-108, sub-§1, ¶E, as amended by PL 2019, c. 417, Pt. A, §4, is further amended to read:

E. A An informal or formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from a person other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will; and

Sec. 9. 18-C MRSA §3-805, sub-§1, ¶B-1 is enacted to read:

B-1. Homestead allowance;

Sec. 10. 18-C MRSA §3-805, sub-§1, ¶B-2 is enacted to read:

B-2. Family allowance;

Sec. 11. 18-C MRSA §3-805, sub-§1, ¶B-3 is enacted to read:

B-3. Exempt property;

Sec. 12. 18-C MRSA §5-308, sub-§4, as amended by PL 2021, c. 4, §2, is further amended to read:

4. Effective date. This section takes effect ~~January~~ April 1, ~~2023~~ 2025.

Sec. 13. 18-C MRSA §5-409, sub-§4, as amended by PL 2021, c. 4, §3, is further amended to read:

4. Effective date. This section takes effect ~~January~~ April 1, ~~2023~~ 2025.

Sec. 14. 18-C MRSA §5-511, sub-§4, as amended by PL 2021, c. 4, §6, is further amended to read:

4. Effective date. This section takes effect ~~January~~ April 1, ~~2023~~ 2025.

Sec. 15. 18-C MRSA §6-417, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

§6-417. Optional ~~form of~~ template for transfer on death deed

The following ~~form~~ template may be used to create a transfer on death deed. This template is not intended to be printed and recorded in its current format. 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~~ the "Common Questions about the Use of this Template" before using this template to create a transfer on death deed. YOU MAY WANT ARE ENCOURAGED TO CONSULT A LAWYER BEFORE USING THIS FORM TEMPLATE.

~~This form~~ A transfer on death deed 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, if any).....

Signature.....Date.....

.....

(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS ~~FORM~~ TEMPLATE

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.~~ You may use this template to create a TOD deed but be aware that the registry of deeds of each Maine county has specific requirements for a document to be accepted for recording, including requirements related to the top, bottom and side margins. Have ~~it~~ the TOD deed acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the ~~form~~ TOD deed in each county where any part of the property is located. The ~~form~~ TOD deed 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 registry of deeds for the county where the property is located. If you are not absolutely sure, consult a lawyer.

What is the proper form for the required acknowledgment of signatures on the TOD deed? Forms of acknowledgment may be found in Title 33, section 775 of the Maine Revised Statutes. You may also consult a notary public or a lawyer for the proper form of an acknowledgment.

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 TOD deed.

How do I "record" the TOD deed? Take the completed and acknowledged ~~form~~ TOD deed to the registry of deeds of the county where the property is located. Follow the instructions given by the register of deeds to make the ~~form~~ TOD deed part of the official property records. If the property is in more than one county, you should record the TOD 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 TOD 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~~ make a TOD deed. What should I do? Do not ~~complete this form~~ make a TOD deed 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~~ template. What should I do? This ~~form~~ template TOD deed is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

Sec. 16. 18-C MRSA §6-418, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

§6-418. Optional ~~form~~ template for revocation

The following ~~form~~ template may be used to create an instrument of revocation under this Part. This template is not intended to be printed and recorded in its current format. The other sections of this Part govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read the "Common Questions about the Use of this Template" before using this template to revoke a transfer on death deed. YOU ARE ENCOURAGED TO CONSULT A LAWYER BEFORE USING THIS TEMPLATE.

This A revocation must be recorded before you die or it will not be effective. This A revocation is effective only as to the interests in the property of owners who sign this the revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

.....
.....

Printed name.....Mailing address

.....

Printed name.....Mailing address

Legal description of the property:

.....

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

.....

(SEAL, if any).....

Signature.....Date.....

.....

(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT

(insert acknowledgment)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS ~~FORM~~ TEMPLATE

How do I use this ~~form~~ template to revoke a Transfer on Death (TOD) deed? ~~Complete this form.~~ You may use this template to create a revocation but be aware that the registry of deeds of each Maine county has specific requirements for a document to be accepted for recording, including requirements related to the top, bottom and side margins. Have # the revocation acknowledged before a notary public or other individual authorized to take acknowledgments. Record the ~~form~~ revocation in the public records in the registry of deeds of each county where the property is located. The ~~form~~ revocation 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 registry of deeds for the county where the property is located. If you are not absolutely sure, consult a lawyer.

What is the proper form for the required acknowledgment of signatures on the revocation? Forms of acknowledgment may be found in Title 33, section 775 of the Maine Revised Statutes. You may also consult a notary public or a lawyer for the proper form of an acknowledgment.

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

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

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

Sec. 17. Report. The Supreme Judicial Court shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 1, 2025 summarizing the court's progress toward adopting rules governing the confidentiality of records in probate court proceedings, specifically rules governing the confidentiality of adult guardianship, conservatorship and other protective arrangement proceedings, and identifying any potential conflicts between the adopted or proposed rules and any provisions of the Maine Uniform Probate Code. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation to the 132nd Legislature in 2025 based on the report.

Sec. 18. Retroactivity. Those sections of this Act that amend the Maine Revised Statutes, Title 18-C, section 5-308, subsection 4; section 5-409, subsection 4; and section 5-511, subsection 4 apply retroactively to January 1, 2023.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.