

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

No. 196

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H.P. 120

House of Representatives, January 17, 2023

**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**

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Reported by Representative MOONEN of Portland for the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

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

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

4 When a judge or register of probate is interested in that judge's or register of probate's  
5 own right, trust, or in any other manner, or is within the degree of kindred, by which in law  
6 that judge or register of probate may, by possibility, be heir to any part of the estate of the  
7 person deceased, or is named as executor, trustee or guardian of minor children in the will  
8 of any deceased resident of the county, such estate must be settled in the probate court of  
9 any adjoining county, which has as full jurisdiction thereof as if the deceased had died in  
10 that adjoining county. If the judge's or register of probate's interest arises after jurisdiction  
11 of such estate has been regularly assumed or existed at the time of the judge's or register of  
12 probate's appointment to office, and in all cases where an executor, administrator, guardian  
13 or trustee, whose trust is not fully executed, becomes judge or register of probate for the  
14 county in which that judge's or register of probate's letters were granted, further  
15 proceedings in that county must be transferred to the probate court in any adjoining county  
16 and there remain until completed, as if such court had had original jurisdiction thereof,  
17 unless said disability is removed before that time. Whenever in any case ~~within~~ under this  
18 section the disability of the judge or register is removed before the proceedings have been  
19 fully completed, the proceedings must then be transferred to the probate court in the county  
20 of original jurisdiction or to the probate court that otherwise would have had jurisdiction.  
21 In all such cases the register in such adjoining county shall transmit copies of all records  
22 relating to such estate to the probate office of the county where such estate belongs, to be  
23 there recorded. If there are fewer than 4 counties adjoining the county of a probate court  
24 that is required to transfer proceedings to an adjoining county under this section, the  
25 proceedings must be transferred to a probate court in one of the 4 counties nearest to the  
26 transferring probate court, as measured by the shortest distance along paved roads between  
27 the building in which the registry of probate is located in the transferring county and the  
28 building in which the registry of probate is located in the other county.

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

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

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

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

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

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

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

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

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

15 **§2-402. Homestead allowance**

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

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

31 **§2-403. Exempt property**

32 In addition to the homestead allowance, the decedent's surviving spouse is entitled from  
33 the estate to a value, not exceeding \$15,000 in excess of any security interests in the estate  
34 of tangible personal property, including, but not limited to, in household furniture,  
35 automobiles, furnishings, appliances and personal effects. If Except as otherwise provided  
36 in this section, if there is no surviving spouse, children of the decedent are entitled jointly  
37 to the same value; however, the decedent, by will, may exclude one or more adult children  
38 from the receipt of exempt property. If encumbered chattels are selected and the value in  
39 excess of security interests, plus that of other exempt property, is less than \$15,000, or if  
40 there is not \$15,000 worth of exempt property in the estate, the spouse or children are  
41 entitled to other assets of the estate, if any, to the extent necessary to make up the \$15,000  
42 value. ~~Rights~~ The rights to exempt property and assets needed to make up a deficiency of  
43 exempt property have priority over all claims against the estate other than costs and  
44 expenses of administration and reasonable funeral expenses, except that the right to any

1 assets to make up a deficiency of exempt property abates as necessary to permit earlier  
2 payment of homestead allowance and family allowance. ~~These rights are~~ The right to  
3 exempt property is in addition to any benefit or share passing to the surviving spouse or  
4 children by intestate succession or by way of elective share and is in addition to any benefit  
5 or share passing to the surviving spouse or children by the decedent's will unless otherwise  
6 provided by intestate succession or by way of elective share the decedent's will expressly  
7 provides that the benefit or share passing to the surviving spouse or children is intended to  
8 be made in lieu of the exempt property right and unless the decedent's will expressly  
9 excludes one or more adult children from the receipt of exempt property without providing  
10 a benefit or share in lieu thereof. The personal representative shall promptly satisfy the  
11 exempt property from available assets.

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

14 **§2-404. Family allowance**

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

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

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

41 D. Regardless of whether the decedent dies before, on or after the effective date of this  
42 Code, an informal testacy or appointment proceeding or a formal testacy or  
43 appointment proceeding may be commenced more than 3 years after the decedent's  
44 death if no proceeding concerning the succession or estate administration has occurred  
45 within the 3-year period after the decedent's death, but the personal representative has

1 no right to possess estate assets as provided in section 3-709 beyond that necessary to  
2 confirm title in the successors to the estate, and claims other than expenses of  
3 administration may not be presented against the estate;

4 **Sec. 8. 18-C MRSA §3-108, sub-§1, ¶E**, as amended by PL 2019, c. 417, Pt. A,  
5 §4, is further amended to read:

6 E. A An informal or formal testacy proceeding may be commenced at any time after  
7 3 years from the decedent's death for the purpose of establishing an instrument to direct  
8 or control the ownership of property passing or distributable after the decedent's death  
9 from a person other than the decedent when the property is to be appointed by the terms  
10 of the decedent's will or is to pass or be distributed as a part of the decedent's estate or  
11 its transfer is otherwise to be controlled by the terms of the decedent's will; and

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

13 B-1. Homestead allowance;

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

15 B-2. Family allowance;

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

17 B-3. Exempt property;

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

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

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

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

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

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

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

29 **§6-417. ~~Optional form of~~ template for transfer on death deed**

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

34 (front of form)

35 **REVOCABLE TRANSFER ON DEATH DEED**

36 **NOTICE TO OWNER**

37 You should carefully read ~~all information on the other side of this form~~ the "Common  
38 Questions about the Use of this Template" before using this template to create a transfer on

1 death deed. YOU MAY WANT ARE ENCOURAGED TO CONSULT A LAWYER  
2 BEFORE USING THIS FORM TEMPLATE.

3 ~~This form~~ A transfer on death deed must be recorded before your death, or it will not  
4 be effective.

5 IDENTIFYING INFORMATION

6 Owner or Owners Making This Deed:

7 .....  
8 .....

9 Printed name.....Mailing address

10 .....

11 Printed name.....Mailing address

12 Legal description of the property:

13 .....

14 PRIMARY BENEFICIARY

15 I designate the following beneficiary if the beneficiary survives me.

16 .....  
17 .....

18 Printed name.....Mailing address, if available

19 ALTERNATE BENEFICIARY - Optional

20 If my primary beneficiary does not survive me, I designate the following alternate  
21 beneficiary if that beneficiary survives me.

22 .....  
23 .....

24 Printed name.....Mailing address, if available

25 TRANSFER ON DEATH

26 At my death, I transfer my interest in the described property to the beneficiaries as  
27 designated above.

28 Before my death, I have the right to revoke this deed.

29 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

30 .....

31 (SEAL, if any).....

32 Signature.....Date.....

33 .....

34 (SEAL, if any).....

35 Signature.....Date.....

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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 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.



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

4 Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended.  
5 Secrecy can cause later complications and might make it easier for others to commit fraud.

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

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

11 **§6-418. Optional ~~form~~ template for revocation**

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

16 (front of form)

17 REVOCATION OF TRANSFER ON DEATH DEED

18 NOTICE TO OWNER

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

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

25 IDENTIFYING INFORMATION

26 Owner or Owners of Property Making This Revocation:

27 .....  
28 .....

29 Printed name.....Mailing address

30 .....

31 Printed name.....Mailing address

32 Legal description of the property:

33 .....

34 REVOCATION

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

37 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

38 .....

1 (SEAL, if any).....  
2 Signature.....Date.....

3 .....  
4 (SEAL, if any).....  
5 Signature.....Date.....

6 ACKNOWLEDGMENT  
7 (insert acknowledgment)

8 (back of form)

9 COMMON QUESTIONS ABOUT THE USE OF THIS FORM TEMPLATE

10 How do I use this ~~form~~ template to revoke a Transfer on Death (TOD) deed? ~~Complete~~  
11 ~~this form.~~ You may use this template to create a revocation but be aware that the registry  
12 of deeds of each Maine county has specific requirements for a document to be accepted for  
13 recording, including requirements related to the top, bottom and side margins. Have it the  
14 revocation acknowledged before a notary public or other individual authorized to take  
15 acknowledgments. Record the ~~form~~ revocation in the public records in the registry of deeds  
16 of each county where the property is located. The ~~form~~ revocation must be acknowledged  
17 and recorded before your death or it has no effect.

18 How do I find the "legal description" of the property? This information may be on the  
19 TOD deed. It may also be available in the registry of deeds for the county where the  
20 property is located. If you are not absolutely sure, consult a lawyer.

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

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

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

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

36 **Sec. 17. Retroactivity.** Those sections of this Act that amend the Maine Revised  
37 Statutes, Title 18-C, section 5-308, subsection 4; section 5-409, subsection 4; and section  
38 5-511, subsection 4 apply retroactively to January 1, 2023.

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## SUMMARY

This bill, which amends the Maine Uniform Probate Code and related provisions of law, is proposed by the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803, subsection 2.

Under current law, if a judge of probate or register of probate has an interest in an estate, the estate must be transferred to and settled in the probate court in an adjoining county. This bill provides that, if there are fewer than 4 counties adjoining the county of the probate court in which the conflict of interest arises, the estate must be transferred to any one of the 4 county probate courts that are nearest to the probate court of the transferring county.

The bill provides that, when a petition for an elective share indicating that the decedent owned real estate has been filed, the register of probate must record in the registry of deeds an abstract of the petition for an elective share and not the entire petition.

The bill requires the register of probate to notify the decedent's devisees and heirs, within 30 days after the filing of an application for the appointment of a personal representative, 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, to exempt property and to the family allowance.

The bill provides that the homestead allowance, exempt property and family allowance have priority over all claims against an estate except for reasonable funeral expenses and administrative expenses; that a testator may expressly provide that the benefit or share passing to a surviving spouse or children through a will is intended to be made in lieu of the homestead allowance, exempt property or family allowance; and that the personal representative has the duty to promptly pay the homestead allowance, exempt property and family allowance from available assets, without requiring any demand by the surviving spouse or children.

The bill authorizes the filing of informal testacy proceedings more than 3 years after a decedent's death in the same circumstances in which formal testacy proceedings may be filed more than 3 years after the decedent's death under current law.

The bill further delays until January 1, 2025 the effective date of the statutes governing the confidentiality of proceedings for guardianships of adults, conservatorships and other protective arrangements. These statutes currently have an effective date of January 1, 2023. The January 1, 2023 effective date was established by Public Law 2021, chapter 4 and was designed to give the Supreme Judicial Court time to address the confidentiality of all court records and then give the commission an opportunity to propose amendments to these statutes to ensure consistency with provisions adopted by the Supreme Judicial Court. The Supreme Judicial Court adopted the Maine Rules of Electronic Court Systems with an effective date of August 21, 2020, and these rules contain extensive provisions governing the confidentiality of records filed with the Supreme Judicial Court, the Superior Court and the District Court. The Supreme Judicial Court has not yet had an opportunity to consider rules governing confidentiality of records filed with the probate courts. This bill further delays the effective date of these confidentiality statutes to January 1, 2025 to provide additional time for the Supreme Judicial Court, in conjunction with the commission and the Advisory Committee on Probate Procedure Rules, to complete its review and approval of rules governing confidentiality of records in the probate courts. Because this bill will

1 not take effect before January 1, 2023, these changes are made retroactive to January 1,  
2 2023.

3 The bill clarifies that the statutory forms for a transfer on death deed and for the  
4 revocation of a transfer on death deed are intended to be used as templates for the creation  
5 of these instruments, preferably with the assistance of a lawyer, and not as fill-in-the-blank  
6 documents. Maine's registers of deeds have encountered situations in which individuals  
7 take screen shots of the statutory form for a transfer on death deed, print them out, fill in  
8 the blanks and bring them to registries of deeds for recording. Printed screen shots of the  
9 statutory form do not meet the margin requirements for recording and often fail to contain  
10 the required legal description of the property.