

## VOICES FROM THE GREAT BEYOND

### *“Transfer on Death” Deeds of Real Property*

By: Seth J. Groman

Bills were recently introduced in both houses of the Maryland Legislature that would make Maryland part of a growing group of states that recognize “transfer on death” deeds. Presently, Maryland law permits individuals to transfer personal property to a named beneficiary outside of probate. For example, individuals may designate a beneficiary on a life insurance policy or name a pay-on-death beneficiary of a bank account. However, no such means of transferring real property currently exists under Maryland law.

House Bill 186 and Senate Bill 101, known as the Maryland Uniform Real Property Transfer-on-Death Act (the “Act”), amend Maryland law to permit owners of real property located in Maryland to record deeds that transfer such property to one or more individuals effective upon the death of the owner. Although such deeds are recorded in the Maryland land records, the property that is the subject of the deed is not transferred until the death of the current property owner. Thus, the deed does not place any restrictions on the current owner of the real property. The owner may sell the property, transfer it to someone other than the beneficiary named in the transfer-on-death deed, or place a mortgage on the property. Moreover, the property owner is free to revoke the deed at any time. If a person who records a transfer-on-death deed does not own the property named in the deed at the time of their death, the deed simply has no effect.

If the Act is enacted by the legislature and signed into law by the Governor, Maryland residents will gain a new means of passing real property directly to a beneficiary at death without the trouble and expense of probate. Unlike a joint tenancy deed or life estate deed which also avoid probate, a transfer-on-death deed does not give the named beneficiary a present interest in the property. Thus, the owner does not make a gift that could be subject to gift taxes. Further, the beneficiary’s creditors cannot reach the property. Finally, the owner of the property has the flexibility to change the beneficiary at any time by revoking the deed and recording a new one.

Although efforts to enact a law permitting transfer-on-death deeds have failed in each of the past two legislative sessions, it appears as though the current bills have more momentum than in past years. In 2013 and 2014, only the House of Delegates considered a bill regarding transfer-on-death deeds; however, this year the State Senate has joined the House in considering legislation. Another sign of the improved chances of the legislation being passed is the number of co-sponsors for the bills. House Bill 186 has 15 co-sponsors, which is far greater than the number of co-sponsors of past House bills – 3 co-sponsors in 2013 and 1 co-sponsor in 2014.

The attorneys at Rosenberg Martin Greenberg will monitor the Act as it continues through the legislative process. If the Act ultimately becomes law, it will become effective October 1.

For any of your transactional tax & estate planning needs, please contact an attorney in our Tax & Wealth Planning group:

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