



Real estate transfer methods - by James Ricca

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There are various methods for the transfer of real estate, whether in the context of arm's length transfers to third parties, or personal family transfers to one's heirs for estate planning purposes.

Methods of real estate transfers have progressed over the ages. The rituals of real estate transfers practiced in medieval Europe evolved into modern real estate law. The early concept of land ownership in Anglo-Saxon England involved a manual transfer that embodied a practice or act (a "deed"). Quite literally, the transfer of land required one party to "hand" the land over to the other, through a "turf and twig" ceremony where a clump of dirt or a twig was cut from the parcel and handed over to the recipient in a symbolic gesture. Another method was the two parties would stand within sight of the land and the transferring party would verbally declare his intention to transfer the property to the recipient, and then the recipient would physically step onto the land. In practice, with these "deeds" performed, the land was legally transferred to the new owner.

Today, the most common method for a typical arm's length transaction is conveying title using a Bargain and Sale Deed with Covenants Against Grantor's Acts.

But various methods are employed to convey property to one's heirs for estate planning purposes. These include: Deeds providing for a Life Estate; Deeds providing for a Joint Tenancy; through a Trust; Probating a Last Will and Testament; Administration of a decedent's estate where there is no Will. In addition, often overlooked (though not recommended) in the absence of a Will New York law provides that unlike personal property, real estate automatically passes by operation of law to a decedent's heirs at law.

Recently, a new method for transferring real estate for estate planning purposes has emerged in the form of an amendment to the New York Real Property Law, Section 424 – the "Transfer on Death Deed" (TODD), which takes effect July 19, 2024. This new section creates another option to name a beneficiary for a specific parcel of real estate. The TODD provides a grantor may execute a deed designating a future beneficiary. The new law, intended to reduce the need for Probating a Will and reduce costs still requires careful adherence to formalities. The TODD like all other deeds, must be signed in the presence of a notary and in the presence of two (2) witnesses (just like a Will), and thereafter must be recorded by the Clerk of the County where the property is located during the life of the owner. There are diverse opinions among real estate professionals whether the TODD simplifies or complicates the process of transferring real estate for estate planning purposes.

Notwithstanding, the various methods of transferring real estate outlined above offer options to real estate owners that can be applied to their individual circumstances.

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