

New “Transfer on Death” Deed

A new Minnesota law allows a person to transfer property upon death by creating a Transfer on Death Deed (“TODD”). A TODD is comparable to the use of pay-on-death or transfer-on-death accounts at banks or with brokerage houses in that a TODD allows the owner of real property to designate a beneficiary of the property, and, upon the death of the owner, the property passes to the beneficiary as non-probate property, without the disadvantages of using a joint tenancy or life estate deed.

How to Use a TODD

- ✓ A TODD must be recorded during the lifetime of the owner to be valid, but the transfer of the real estate becomes effective only after the death of the owner.
- ✓ After the owner’s death, the beneficiary named in the TODD must record a death certificate and affidavit of survivorship and clearance certificate (from medical assistance claims and liens) to have the property put into the beneficiary’s name.
- ✓ The new law specifically provides that a designated beneficiary has no rights to the owner’s property during the owner’s lifetime. Beneficiaries cannot transfer, mortgage or pledge any interest in the property as long as the owner is alive.
- ✓ Unlike other types of deeds, if the owner changes his or her mind about who should get the real estate, the owner can revoke the TODD or simply record a new one naming a different beneficiary. Like the TODD, a revocation must be recorded prior to the owner’s death.
- ✓ An owner can name more than one person as a beneficiary. An owner can name a contingent beneficiary or class of beneficiaries who get the property if the original beneficiary dies.
- ✓ A TODD is exempt from state deed tax per Minn. Stat. § 287.22(15).
- ✓ See Minn. Stat. § 507.071 for provisions, including suggested deed and revocation forms.

What the New Law Does Not Do

A TODD transfers property upon death, but there are several things that it does not do:

- ▶ A TODD does not avoid estate taxes.
- ▶ It does not protect the property from creditors. Mortgages or other liens that become attached to the property during the owner’s lifetime carry over to the beneficiaries.

- ▶ A TODD does not protect the owner's home or other real estate from a medical assistance claim or lien.

When to Use a TODD

A TODD can be very beneficial for small estates, including situations where there is one owner and one beneficiary, unmarried committed partners or individuals who do not need the tax benefits of a trust.

Jane's situation is one good example. Jane is a widow. She owns her own house and has income from a small pension. Her other assets are insignificant. Jane has one son, Abe. If Jane dies with a will leaving her property to Abe, her real estate will go through probate. Without a TODD, Jane may decide to put Abe on the title to her house as a joint tenant, but the disadvantages are significant. If Abe wants to, he can force a partition and sale of the house. Or, his creditors (including a former spouse in a divorce) may be able to reach his interest in the house. In contrast to a joint tenancy deed, Jane can use a TODD to ensure that her house will be transferred to Abe after her death without probate and her house will remain protected during her lifetime.

Effective Date

The new Transfer on Death Deed law became effective on August 1, 2008.

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