

Transfer On Death Deed (TODD) An Estate Planning Tool

The Minnesota legislature enacted a law allowing persons to sign deeds that become effective on death. These deeds are known as Transfer on Death Deeds or TODD. The Transfer on Death Deed is similar to a payable on death (POD) designation on a bank account or a transfer on death (TOD) designation for securities. The use of a TODD is inexpensive, flexible and another option for persons with simple estates to avoid probate for their real estate.

Characteristics of a TODD Transfer:

Real Estate Taxes

A TODD does not affect homestead real estate taxes.

Gift Taxes

A TODD does not require a gift tax return because it is not effective until the owner's death.

Estate Taxes

The entire value of the homestead conveyed in a TODD will be included in the current owner's estate on death. This will not cause any Minnesota estate tax consequences unless the taxable estate exceeds the current estate tax minimum of one million dollars.

Income Taxes

Real estate transferred with a TODD will be included in the previous owner's estate at death and will receive a full stepped-up tax basis. The beneficiaries report no capital gains on the sale of the property if it is sold for the fair market value on the date of death.

Recording

A TODD must be recorded prior to death.

Mortgages

A TODD allows the current owner to mortgage the homestead without the signature or consent of the beneficiaries. The beneficiaries take the property at the death of the grantor subject to all mortgages on the real estate.

Medical Assistance

A TODD has no effect on an individual's ability to apply for Medical Assistance because it is not effective until death. A TODD does not prevent the owner from selling the property during their lifetime if a sale is needed to meet Medical Assistance eligibility requirements. A TODD will not protect property from Medical Assistance claims or liens and the beneficiaries of the property will take the property subject to Medical Assistance claims or liens.

Probate

A TODD creates a non-probate asset. Thus, the real estate is transferred at death without probate. A determination of whether a probate proceeding is advisable in your particular situation should be discussed with your attorney.