

Transfer-On-Death Deed Avoids Probate

Q.: Can an individual of limited means transfer real estate, including a house, upon death without creating a trust to do so?

A.: Yes. An Ohio law allows individuals of modest means, who do not need the tax benefits of a trust, to avoid probate on their real estate by creating a Transfer-On-Death (TOD) Deed.

Q.: What is a Transfer-On Death Deed?

A.: A Transfer-On-Death Deed is simply a real estate deed with a special provision allowing the property owner to directly transfer the ownership of real estate at the owner's death to whomever the owner designates by name.

Q.: How does it work?

A.: The Transfer-On-Death Deed permits the direct transfer of the described property to the designated beneficiary upon the death of the owner after a death certificate and an affidavit are filed in the Recorder's office by a designated beneficiary. However, a Transfer-On-Death Deed does not eliminate any estate taxes that otherwise would have been payable.

Q.: Can the designated beneficiary claim an interest in the real property before the owner dies?

A.: No; the designated beneficiary has no rights during the owner's lifetime. The new law specifically provides that a TOD Deed has no effect on the present ownership of real property, and a person designated as a Transfer-On-Death beneficiary has no interest in the real property until the death of the owner of the interest.

Q.: Can more than one beneficiary be designated?

A.: Yes; the new law permits the designation of "one or more other persons identified in the deed by name." Because individuals must be named, a designation of "my children" would not be valid.

Q.: What if the transfer beneficiary dies before the owner?

A.: A contingent Transfer-On-Death beneficiary can be designated. For example,

the Transfer-On-Death beneficiary could be "Mary Smith, if living; otherwise John Smith." If no named beneficiary is living, the real estate becomes part of the owner's probate estate.

Q.: How can a Transfer-On-Death Deed be created?

A.: Consult an attorney to prepare a Transfer-On-Death Deed. Simply provide the attorney with a copy of the current deed and the name of the intended beneficiaries.

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Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association (OSBA). This article was prepared by Morton Bobowick, an attorney associated with the Toledo firm, Eastman & Smith LTD. It was updated by John W. Eilers of Wood & Lamping LLP in Cincinnati.

Articles appearing in this column are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

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