



SHINE BRIGHT

TRANSFER-ON-DEATH DEEDS: WHAT AGENTS SHOULD KNOW FOR CLIENT CONSULTING

When estate planning, some families want to keep their home out of probate. Creating a living trust is one way to do this – or, if the home is owned jointly with a spouse or someone else, the survivor may inherit without probate. Another option is a Transfer-on-Death Deed (TODD).

Available now in approximately half of the states, a TODD allows a property owner to convey the property to a designated beneficiary effective upon the death of the owner. A TODD is similar to a conventional deed in that it must contain the names of the transferor and beneficiary, contain a valid legal description, and be signed and notarized. It must be filed in the local real property records prior to death in order to be effective. The property owner may change the beneficiary and/or revoke the TODD at any time during his or her lifetime.

After the owner dies, the beneficiary will file documents required by state statute showing that the transferor is deceased. Once filed in the land records, this establishes title in the beneficiaries name. The beneficiary takes title subject to any liens on the property in effect on the date of the death of the transferor. The beneficiary also takes title subject to the rights of any co-owners.

In most states, however, selling the property may not be possible for several months after the owner's death because creditors of the deceased may have a certain period of time to file a claim against the property. Additionally, title companies are likely to require assurances that the TODD was executed while the transferor was of sound mind and not under duress. Of course, title companies are unlikely to accept a TODD that contains technical flaws. Such flaws cannot be fixed, because the transferor is deceased.

Consulting a client as to the advisability of a Transfer on Death Deed constitutes the practice of law, as does the actual preparation of the deed for someone else. Clients who ask for advice regarding these instruments should be told to consult with an attorney.

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