

Changes to Wisconsin's Transfer-on-Death Statute: Why Avoiding Probate Just Got Easier

The Wisconsin legislature recently enacted a number of changes to a Wisconsin statute allowing for non probate transfers of real property (i.e., land) upon death. The changes will allow more people to take advantage of the statute and should minimize the necessity for a probate proceeding after death.

Generally, assets titled in an individual's name without a designated beneficiary become part of the individual's probate estate upon death. Alternatively, assets that pass to a designated beneficiary (other than the owner's estate), or by operation of law (such as survivorship marital property), do not become part of the probate estate. For example, if you own a home and a bank account, and both are in your sole name, those assets will likely become part of your probate estate upon death. On the other hand, if your home is titled jointly with right of survivorship and your bank account specifically designates a beneficiary, the home passes directly to the surviving joint owner, and the bank account similarly passes directly to its designated beneficiary, both without probate.

Why does this matter? A probate proceeding can be expensive. In addition to court fees (based upon the value of the probate assets), many estates incur significant attorneys' fees. A probate proceeding can also be time-consuming – in most instances it takes well over a year to close out the probate estate with the court. Finally, probate is a court-supervised process, which means that documents filed with the court in relation to the probate are public record. These documents often include sensitive information, such as a listing of the decedent's assets and liabilities.

A "transfer-on-death" designation operates in the same way as a beneficiary designation—the designated individual or entity receives the asset automatically upon the owner's death (without probate). Under the prior statute, individuals could only designate a transfer-on-death beneficiary of real property via a transfer-on-death deed. Under the revised statute, individuals can designate a beneficiary in any document as long as the document includes (1) the name of the owner(s) of the real property, (2) the name of the designated beneficiary, (3) a statement that the transfer is effective only upon the death of the owner(s) of the real property, and (4) if the real property is classified as marital property under Wisconsin law, the signature of both spouses.

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The new law requires that the transfer-on-death document and any recording fees be submitted for recording to the register of deeds before the death of the owner(s). The revised statute also broadens what types of real property interests are eligible for a transfer-on-death designation, including interests in real property owned as tenants-in-common and interests owned by spouses as marital property but without right of survivorship.

Finally, the new law creates a 120-day statute of limitations for claims to recover real property transferred by a transfer-on-death document. More specifically, a creditor is required to file an action to confirm or change the ownership of the real property and file a lis pendens (a formal notice of a pending legal action) against the real property in the county where the real property is located. While this statute of limitations is similar to those imposed in a probate proceeding (3 to 4 months), it is triggered automatically upon the real property owner's death, with no additional action required by anyone.

For additional information, please contact [Kelsey Berns](#) or a member of Reinhart's [Trusts and Estates](#) team.

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