

What Is a Transfer-on-Death Deed?

Similar to payable-upon-death provisions that many of us utilize in our estate and tax planning to avoid probate, and have our bank accounts or securities transferred promptly to our designated beneficiaries upon our death, a transfer on death deed (TOD) allows the owner of real property to designate the person who will succeed to ownership of real property upon the owner's death. In 2005, Wisconsin included itself among a small handful of states which have statutorily adopted this concept as a means of allowing landowners to legally transfer their real property at the time of death and avoid the cost and expense of probate. See Wisconsin Statutes § 705.15.

TODs have some significant advantages over traditional mechanisms to transfer real property upon the landowner's death. For example, unlike a deed containing rights of survivorship, a TOD does not affect ownership of the real property until a landowner's death and can be canceled or changed by the landowner without the consent of the beneficiary, by executing and recording another deed that designates a different beneficiary or no beneficiary at all. See § 705.15(3). Also, unlike partial transfers of real property in which the landowner retains a remainder interest such as a life estate to continue to use or occupy the real property, a TOD is not subject to gift taxes as it is not a completed gift since the designation remains revocable.

In terms of costs, a TOD is significantly less expensive to prepare and record than a revocable trust which also has the aforementioned advantages of retained landowner control during the landowner's lifetime and avoidance of probate. Moreover, in addition to the professional fees incurred in navigating the probate requirements, a TOD or revocable trust will eliminate probate fees assessed on the value of the real property being transferred, as the subject real property will not be considered a part of the probate estate. (Note: The TOD does not exempt the subject property from the landowner's taxable estate. In addition to any Federal estate tax, Wisconsin will likely reinstitute a state estate tax beginning January 1, 2010). County probate fees are currently 0.02% of all probate assets.

While a TOD is a refreshingly simple and relatively inexpensive mechanism to assist landowners in the transfer of their real property to loved ones upon death, it does not substitute for a well-crafted estate plan that will also help with estate tax planning issues and other control issues. Care must also be taken to insure that the designee of a TOD is kept current. Unlike a trust which contains

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alternative provisions in the event the beneficiary predeceases the landowner/grantor, the TOD often times does not. [The Reinhart team can](#) assist in the preparation and recordation of a TOD and can also assist in making sure a TOD seamlessly fits into your larger estate and/or tax planning.

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