



Transfer On Death Deeds: The Role of the Real Estate Attorney

By Robert Q. Williams

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In 2008, the Minnesota Legislature enacted legislation authorizing use of the transfer on death deed (TODD), a hybrid conveyancing instrument frequently utilized to avoid probate. A TODD provides for conveyance of an ownership or other interest in real estate to one or more grantees upon the death of a specific grantor or grantors. Useful in some circumstances to avoid a lengthy and expensive probate proceeding of the grantor's estate, the one-size-fits-all approach of the TODD is not a substitute for a will or revocable trust, and should only be used upon consultation with an estate planning attorney as other alternatives may be more desirable in some situations.

Here are some TODD basics for the real estate practitioner:

FORM: A form TODD appears in the statute at 507.071, Subd. 24. Its vesting language is similar to that of a quit claim deed yet with the condition that said grant is "effective on the death of..." the grantor as designated on the TODD. The statutory form provides several choices to identify the particular grantor(s) upon whose death the transfer is conditioned. All spouses of grantors or owners should join in the TODD. *See Id.* at Subd. 2, 3; Minn. Stat. 507.02; Minn. Stat. 507.24. A TODD may convey after-acquired title if specifically provided for on the instrument. Minn. Stat. § 507.071, Subd. 21.

RECORDING: A TODD must be recorded in the county in which at least part of the described land is located, and must be recorded before the death of the grantor upon whose death the transfer is conditioned. Minn. Stat. § 507.071, Subd. 8. However, the TODD is not effective for race/notice purposes until it is recorded in the county where the specific real property to be transferred is situated. *Id.* When presented for recording, no certification from the county auditor as to transfer of ownership or current/delinquent taxes is required, nor is a TODD required to be accompanied by a certificate of real estate value. *Id.* If the land is registered (Torrens), no certification by the examiner of titles is required before recording with the Registrar of Titles. *Id.*

EFFECT AND VALIDITY: A TODD is effective only on the death of all grantors whose deaths are designated in the TODD as conditions of the transfer, so long as the grantee survives the designated grantor by at least 120 hours. Minn. Stat. §§ 507.071, Subds. 2, 6; 524.2-702. If the interest in the real



property was owned in joint tenancy, the last surviving joint tenant must execute the TODD, otherwise the TODD is ineffective to transfer any interest and is considered void. Minn. Stat. § 507.071, Subd. 6. If the grantor conveyed the property to a third party or filed a revocation of the TODD prior to the grantor's death, the TODD shall be ineffective as to the conveyed or revoked interest, but remains effective as to the other interests described in the TODD owned by the grantor at the time of the grantor's death. Minn. Stat. § 507.071, Subd. 10(a) and (b). Unlike other conveyances, delivery of the instrument to the grantee is not required. *Id.* at Subd. 18.

RIGHTS OF CREDITORS: The interest transferred to a grantee under a TODD is subject to all valid conveyances, liens and encumbrances to which the property was subject during the grantor's lifetime, including public and medical assistance, if other assets of the grantor's estate are insufficient to pay the amount of such claims. Minn. Stat. § 507.071, Subd. 3. The grantee's liability is limited to the value of the interest transferred. *Id.* Before conveying out to a third party, the grantee must obtain and file a clearance certificate in accordance with Section 507.071, Subdivision 23.

REVOCATION: A form TODD revocation appears in the statute at 507.071, Subd. 25. A TODD may be revoked at any time by any grantor, or any one of them, by recording a revocation instrument, conveying the interest to a third party, or executing a second TODD acknowledged on a later date. Minn. Stat. § 507.071, subd. 10. The revocation instrument is subject to the same recording rules as the TODD. *Id.* Similarly, if the interest in the real property was owned in joint tenancy, the last surviving joint tenant must execute the revocation, or the revocation is ineffective. *Id.* A TODD is not revoked by the provisions of a will. Minn. Stat. § 507.071, Subd. 19.

As an estate planning vehicle, a TODD is best left in the hands of the experts. As an instrument of conveyance however, real estate lawyers must understand the TODD's fundamentals in order to provide valuable counsel to clients and colleagues alike.

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