

Top Ten Estate Planning Mistakes
#5 Failure to Consider a Transfer on Death Deed

As of July 1, 2009, Indiana residents can now name a beneficiary of their real estate just like they can name a beneficiary on an insurance policy. Mom can sign a Transfer on Death deed to her children. The children have no interest in the real estate while mom is alive; so if a child dies, gets divorced, etc., mom still owns her real estate. The children automatically own the real estate at mom's death outside of the probate process.

Transfer on Death deeds are not for all families. Transfer on Death deeds should not be used unless all children get along, because no one is in charge under a Transfer on Death deed, unlike an estate. When four children agree to sell the real estate and the fifth child does not, the family may end up in court – with attorney fees that far exceed the costs of probate.

The following memorandum explains more about Transfer on Death deeds. Please contact our office if you would like to learn more about this new estate-planning tool.

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MEMORANDUM
REGARDING TRANSFER ON DEATH DEEDS

Transfer on Death Deeds (“TOD deeds”) are a real estate conveyance mechanism that became available in Indiana on July 1, 2009, to owners who wish to transfer real estate at death to a specified beneficiary or beneficiaries, but at the same time wish to retain control and the ability to change the beneficiary(ies) any time during the owner’s lifetime.

Contrary to a deed wherein the owner retains a life estate, the TOD real estate remains in the name of the owner and is not subject to claims of creditors of the beneficiary(ies).

The owner has the right to change the beneficiary(ies) at any time during the owner’s lifetime, without the consent or approval of the beneficiary(ies), by recording another deed, much the same as changing a beneficiary designation on a life insurance policy. The owner may or may not choose to notify the beneficiary(ies) of the TOD deed.

TOD deeds should be recorded immediately in the county where the real estate is located. Contrary to all other deeds, a TOD deed is void if it is not recorded before the death of the owner.

TOD deeds should also state specifically the owner’s intentions if a TOD beneficiary predeceases the owner.

Preparers of TOD deeds need to inquire about any former TOD deeds, because they will automatically be revoked by the new TOD deed. The preparer should identify on the new TOD deed the former TOD deed that is being revoked, giving recording information about the former TOD deed.

At the death of the owner, a search should be completed by a title company to determine if any TOD deeds were recorded prior to the owner’s death.

Following the death of the owner, an affidavit will need to be transferred and recorded in the county where the real estate is located in order to identify the TOD beneficiary(ies) as the new owner(s) and transfer the real estate to him/her/them on the books of the County Auditor.