

Why States Should Adopt the...

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

The Uniform Real Property Transfer on Death Act (URPTODA) enables an owner of real property to pass the property simply and directly to a beneficiary on the owner's death without probate. The property passes by operation of law by means of a recorded transfer on death (TOD) deed.

During the owner's lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the deed. On the owner's death, the property passes to the beneficiary, much like the survivorship feature of joint tenancy.

The TOD deed offers a number of advantages over joint tenancy. Because the TOD deed does not convey an immediate interest to the beneficiary, the property is not subject partition or to the beneficiary's creditors. The deed remains revocable, enabling the owner to make a different disposition of the property. It does not trigger an acceleration clause in a mortgage or a property tax reassessment during the transferor's life. Nor does it create adverse Medicaid consequences for either the owner or the beneficiary.

A decedent routinely passes personal property to a named beneficiary outside of probate. Common examples include a beneficiary designation in a life insurance policy or pension plan, registration of securities in TOD form, and a pay on death bank account. But a straightforward, inexpensive, and reliable means of passing real property (which may be the decedent's major asset) directly to a beneficiary is not generally available.

Thirteen states have previously enacted legislation authorizing a TOD deed: Missouri (1989), Kansas, Ohio, New Mexico, Arizona, Nevada, Colorado, Arkansas, Wisconsin, Montana, Oklahoma, Minnesota, and Indiana. The device is popular in those states and experience with it is favorable. The TOD deed has proved to be a useful addition to the tools available to an estate planner.

The Uniform Real Property Transfer on Death Act builds on the existing state statutes. It spells out the operation and effect of the TOD deed and provides a standardized method for the straightforward nonprobate transfer of real property. It has been developed with the assistance of the estate planning, real property, title insurance, banking, and senior legal communities. There is substantial interest in the Uniform Act, and it is appropriate for enactment in all states.

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