

Use of Transfer on Death (TOD) Deeds Broadened Under New Statute

Article By:

Jacqueline L. Messler

The Governor recently signed 2018 Wisconsin Act 332, which affects a method to transfer real property without going through a probate proceeding known as a transfer on death (“TOD”) deed. The new law gives clients more options to transfer real property without having to go through a probate proceeding.

A TOD deed does not affect the current ownership of the property but essentially functions like a beneficiary designation would on a life insurance policy or retirement account – it designates who is to receive the property after the current owner’s death or upon the last death of multiple owners. Under the previous law, a person could transfer certain interests in real property to a designated beneficiary and avoid a probate proceeding by designating a beneficiary on a TOD deed. The interests in real property that could be transferred on a TOD deed were interests that were (1) solely owned, (2) owned by spouses as survivorship marital property, or (3) owned by two or more persons as joint tenants. However, the prior law did not allow property held as tenants-in-common to be transferred using a TOD deed.

Owning property as joint tenants mean that the last surviving owner receives the entire property. Owning property as tenants-in-common means that at the death of each owner, the deceased owner has the ability to pass his or her interest in the property to his or her successors, often through a probate proceeding.

Under the new section 705.15(1)(m) of the Wisconsin Statutes, a person may designate a TOD beneficiary in any document, not solely in a deed. Further, the law provides that the interests in real property that may be transferred using a TOD document include an interest in real property owned as tenants-in-common and an interest in real property owned by a spouse as marital property without a right of survivorship.

Additionally, the new law requires that a TOD document and any recording fees must be submitted to the register of deeds in the county where the property is located prior to the death of the owner.

Lastly, the new law creates a statute of limitations for claims to recover real property transferred to a beneficiary using a TOD document. Under the bill, such a claim is barred unless a complaint is filed and a lis pendens (a notice of pending action) is filed or recorded within 120 days after the death of

the sole owner or the last to die of the multiple owners who executed the TOD document.

One circumstance where the new law may be useful is for the family cottage. In that case, the parents pass the family cottage to children at their deaths. If the intent is for all the children and grandchildren to continue using the cottage (rather than surviving child taking the whole property), then the parents would want to pass the cottage to their children as tenants-in-common so that each child has an ability to pass his or her interest in the cottage to his or her children. Under the new law, each child can designate in a TOD document that his or her interest in the cottage passes to his or her family upon death. However, we often see that having multiple families and multiple generations owning property tends to become unwieldy. Common issues that arise include who is able to use the cottage during holidays? Who pays for repairs? What happens when an owner cannot or will not chip in his or her fair share? If the cottage will continue to stay in the family, usually transferring the property into a trust or LLC that sets out all of the rules of ownership will be a good solution. You should discuss the use of a TOD document with your attorney as part of your overall estate plan.

© 2025 Davis|Kuelthau, s.c. All Rights Reserved

National Law Review, Volume VIII, Number 138

Source URL: <https://natlawreview.com/article/use-transfer-death-tod-deeds-broadened-under-new-statute>