

Transfer on Death Deeds (TODD)
Under new Minnesota Statute §507.071

Subd. 2. Effect of Transfer on Death Deed: A deed that conveys or assigns an interest in real property to a grantee beneficiary (which includes a successor grantee beneficiary) and that expressly states that the deed is only effective on the death of one or more of the grantor owners, transfers the interest to the grantee beneficiary upon the death of the grantor owner upon whose death the conveyance or transfer is stated to be effective.

Subd. 3. Rights of Creditors. The interest transferred, after the death of the grantor owner is transferred subject to all effective conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, judgments, tax liens and other encumbrances made by the grantor owner or to which the property was subject during the grantor owner's lifetime, including any claim by a surviving spouse.

Subd. 4. Multiple Grantee Beneficiaries. A TODD may designate multiple grantee beneficiaries to take title as joint tenants or tenants in common.

Subd. 5. Successor Grantee Beneficiaries. This is unique to a TODD. A TODD may designate one or more successor grantee beneficiaries or a class of successor grantee beneficiaries or both. So it could say - all of my children.

Subd. 6. Multiple Joint Tenant Grantors - Transfers the interest of the grantor owner only after the death of the last surviving grantor owner. If the last surviving joint tenant owner did not execute the TODD, the deed is ineffective. An estate in joint tenancy is not severed (it mains owned in joint tenancy) by execution of a TODD, unless the deed specifically states that it severs the joint tenancy ownership.

Subd. 7. A TODD may be executed by the Attorney-in-Fact.

Subd. 8. Recording Requirements. May be recorded without certification by County Auditor as to transfer of ownership and current and delinquent taxes and no CREV is required. If property is registered land, the Registrar of Titles shall accept the TODD for recording only if at least one of the grantors who execute the TODD appears of record to have an ownership interest in the property. No certification or approval is required by the Examiner of Titles.

Subd. 9. A TODD may transfer an interest to the trustee of an Inter Vivos Trust, a Testamentary Trust or other legal entity qualified to hold title to real property under Minnesota law.

Subd. 10. Revocation or Modification of TODD. (a) This also makes the TODD unique. The TODD may be revoked at any time by the grantor owner or, if there is more than one grantor owner, by any of the grantor owners. The revocation must be recorded before the death of the grantor owners. It is not effective until the revocation is recorded. If the property is owned as joint tenants and if the revocation is not executed by all of the grantor owners, the revocation is not effective unless executed by the last surviving grantor owner. (b) If the grantor owner(s) convey(s) to a third party subsequent to recording a TODD, no transfer of the conveyed interest shall occur on the grantor owner's death.

Subd. 11. Anti-lapse; Deceased Beneficiary; Words of Survivorship. (a) If a grantee beneficiary who is a grandparent or lineal descendent of a grandparent of the grantor owner fails to survive the grantor owner, the issue of the deceased grantee beneficiary who survive the grantor owner take in place of the deceased grantee beneficiary. (b) If a deed includes words of survivorship, such as to "my surviving children", then the beneficiary must survive the grantor owner.

Subd. 12. Lapse. If no beneficiaries survive the grantor owner, no transfer shall occur and the TODD is void.

Subd. 13. If the grantor owner executes and records more than one TODD conveying the same property, the TODD that has the latest acknowledgment date and that is recorded before the death of the grantor owner is the effective TODD and all other TODDs on the same property are void.

Subd. 16. A grantee beneficiary's interest under a TODD may be disclaimed as provided in Section 501B.86.

Subd. 18. The signature or consent of the grantee beneficiary under a TODD or the delivery of the TODD to the grantee beneficiary is not required.

Subd. 20. Proof of Survivorship and Clearance from Public Assistance Claims or Liens. An Affidavit of Identity and Survivorship with a certified copy of record of death as an attachment (similar to clearing a joint tenancy or life estate interest) may be combined with a Clearance Certificate and the combined documents may be recorded separately or as one document and are prima facie evidence of the facts stated.

Subd. 21. A TODD is not effective to transfer an interest in real estate acquired by the grantor owner subsequent to the date of signing of a TODD, unless there is specific language in the TODD that the TODD will apply to any interest in the described property acquired by the grantor owner after the signing or recording of the deed.

Subd. 22. A beneficiary to whom the interest is transferred after the death of a grantor owner shall be liable to account to the state or county agency which has a claim or lien authorized by law for medical assistance, but such liability is limited

to the value of the interest transferred to the beneficiary. To establish compliance that the lien is released, the beneficiary must record a Clearance Certificate.

Subd. 23. Clearance for Public Assistance Claims and Liens. This subdivision talks about applying for a Clearance Certificate, which must contain the legal description of the property. If the property is Registered Property, a new Certificate of Title must not be issued until a Clearance Certificate is recorded.

Subd. 24. Form of Transfer on Death Deed. A TODD **may** be substantially in the following form.

Transfer on Death Deed

I (we) _____ (grantor owner or owners and spouses, if any, with marital status designated), grantor(s), hereby convey(s) and quitclaim(s) to _____ (grantee beneficiary, whether one or more) effective (check only one of the following)

___ on the death of the grantor owner, if only one grantor is named above, or on the death of the last of the grantor owners to die, if more than one grantor owner is named above, or

___ on the death of (name of grantor owner)

_____ (must be one of the grantor owners named above), the following described real property.

(Legal Description)

If checked, the following option statement applies:

___ When effective, this instrument conveys any and all interests in the described real property acquired by the grantor owner(s) before, on or after the date of this instrument.

Signature of grantor(s)

(Acknowledgment)

Subd. 25. Form of Instrument of Revocation. An instrument of revocation may be substantially in the following form.

Revocation of Transfer on Death Deed

The undersigned hereby revokes the transfer on death deed recorded on _____, as Document No. _____ (or in Book _____ of _____, page _____) in the office of the (County Recorder)(Registrar of Titles) of _____ County, Minnesota, affecting real property legally described as follows:

(legal description)

Dated:

Signature

(acknowledgment)

M.S. 508.52. Conveyance. This statute was amended to change the words "file" and "filed" to "record" and "recorded". It also stated that the Registrar shall not carry forward as a memorial on the new Certificate of Title any memorials of a TODD if the grantors of the TODD retain no fee interest in the land covered by the new Certificate.

M.S. 524.2-702. Requirement of Survival for 120 hours. This added language that states that a beneficiary named in a TODD under Section 507.071 who fails to survive by 120 hours the grantor owner upon whose death the conveyance to the beneficiary becomes effective, is deemed to have predeceased the grantor owner for purposes of determining title to property passing by the TODD.

Effective Date. The new statutes are effective August 1, 2008 and apply to instruments of conveyance of real property recorded on or after that date, regardless of the instrument's date of execution.