

PREP MEETING

Date November 13, 2008

Held at: Pizza Ranch, 1522 Broadway, Alexandria MN 56308

Hosted by: Bunny Johnston and Tina Peterson

Note Taker: Tina Peterson

Thank you to Lisa Bowen, Attorney at Law, Thornton, Reif, Dolan, Bowen & Klecker, P.A. who spoke regarding Transfer on Death Deeds (TODDs). Lisa Bowen handed out an outline regarding TODDs which is attached hereto.

Key points discussed during the presentation include:

TODDs are used for estate planning purposes regarding an interest in real estate. Attorneys are using TODDs, and are using them more than anticipated.

What are they? Transfer real estate at death of the owner without probate. Used to save costs and has a similar concept as a life estate and can serve as a "Will replacement".

Requirements for TODDs: Must convey a real property interest; this includes judgment interests, mortgage, liens and contract for deed interests.

The TODD must be recorded prior to the death of Grantor or it is not valid.

No certification required that the taxes are current.

No State Deed Tax, not even the minimum of \$1.65.

On the deed tax line, she has been typing EXEMPT.

NO Certificate of Real Estate Value required.

Torrens Examiner does not need to approve.

An Affidavit of Identity and Survivorship with Death Certificate is required to show the transfer, as well as the clearance from Human Services regarding any medical assistance payments that may have been made. All three instruments may be recorded as one document.

TODDs are like adding a beneficiary to an account.

Some disadvantages of TODDs are:

If there are a number of beneficiaries how will they own it? Joint tenancy, tenants in common, or fractional interests?

What happens if a beneficiary pre-deceases the Grantor?

TODDs may create title problems in the future if poorly drafted.

If the beneficiary is a minor, then there may need to be a conservatorship in place.

The beneficiary does not own the interest being transferred, they can not mortgage it, creditors can not get it, can not be a part of a dissolution of marriage.

The Grantor Owner can revoke the TODD.

Revocation must be made and recorded prior to death. The Grantor Owner must have capacity to revoke. Wills do not revoke TODDs.

The sale of the real property or real property interest automatically revokes the TODD.

Control of the real property or real property interest remains with the Grantor Owner.

State forms are available.

Thank you again to Lisa Bowen for joining us and providing so much good information.

Other Items:

Introductions were made and the floor was opened up for open discussion.

Items discussed were:

Real Estate Foreclosures

Manufactured Homes and transfer and surrender to Department of Motor Vehicles.

Short sales and the fact that the borrower may still be liable under the Note even if the Mortgage itself is released from the property. The amount forgiven in a short sale is taxes as taxable income.

Hope for Homeowners tax incentive, is it a part of the bailout?

Next Meeting / Co Chairs

It was agreed to have the next meeting in the Spring and that Alexandria worked as a good central location. Having a lunch meeting again was also agreed upon.

Bunny Johnston and Tina Peterson will remain on as Co Chairs with the addition of Dawn Crouse.

TRANSFER ON DEATH DEED LEGISLATION

PREP Meeting, November 13, 2008

TRANSFER ON DEATH DEEDS-WHAT ARE THEY?

1. Transfer on Death Deeds (commonly referred to as TODD or TODDs) are a new estate planning tool allowing the transfer of real estate at the death of the owner without the need for a probate.
2. The legislation can be found at Minnesota Statutes Section 501.071 et seq. This statute is effective August 1, 2008 and applies to TODDs drafted prior to that date but recorded after August 1, 2008. See Minnesota Session Laws 2008, Chapter 341, Article 2, Section 9.
3. Essentially, these nifty deeds can serve as a "Will replacement," transferring the property upon the death of the Grantor-owner, without requiring a probate.

TRANSFER ON DEATH DEEDS-LEGAL REQUIREMENTS

1. The legal requirements of an effective TODD are set out at Minn. Stat. §507.071, Subd.1-24.
 - a. The deed must convey an interest in real property. This includes an interest in a mortgage, judgment, or any other lien against the real property. The interest can be a fee interest or a fractional interest.

Point of Interest: Note however that if the ownership is a joint tenancy interest, the TODD only would work if the joint tenancy is first severed, or if the grantor was the last owner to die.
 - b. The deed must identify the grantee beneficiary or beneficiaries who will receive the property interest.
 - c. The deed must state that it is only effective on the death of one or more of the grantor owners and must identify the grantor owner or owners whose deaths will trigger the transfer.
 - d. The deed must comply with Minnesota statutory deed requirements, such as the joinder of spouses in homesteads and standard recording requirements.
 - e. The deed must be recorded **PRIOR** to the death of the grantor owner in a county in which at least part of the real estate is located.

Point of Interest: In estate planning, it has not been uncommon for deeds transferring property to be recorded after a person's death if appropriate delivery receipts have been obtained. With the TODD, recording in at least one county involved in the transaction must occur prior to the person's death.

RECORDING REQUIREMENTS FOR TODDS.

1. Recording requirements are found at Minn. Stat. §507.071, Subd. 8.
2. There is no requirement for county auditors certification that taxes are current-even parcels with taxes in arrears can be subject to the TODD.
3. The deeds are exempt from state deed tax- not even the minimum of \$1.65 is required.
4. A Certificate of Real Estate Value does not need to be filed.
5. If the property is Torrens, no Examiner of Titles approval is necessary.

TRANSFER ON DEATH DEEDS: GRANTOR OWNERS AND REGULAR OWNERS

1. The statute specifically differentiates between a "Grantor Owner" and an "Owner."
 - a. A Grantor owner is one of the owners who is named as a grantor in the TODD and upon whose death the transfer of the real estate occurs. Minn. Stat. §507.071 Subd. (1)c.
 - b. An owner is a person who has an ownership or other interest in the property, or a portion of the property, who does not execute the TODD. Minn. Stat. §507.071 Subd. (1)(d).
 - c. Why does this matter?
 - ▶ If two brothers own ag real estate as Tenants in Common, one brother can execute a TODD for his share of the real estate. It does not affect the second brother's share.
 - ▶ Joint ownership poses a more difficult problem, because unless the last survivor executed the TODD, the deed is does not work (void).
 - ▶ If all joint owners execute the TODD, then all of the property interest passes to the beneficiaries but not until the last of the joint owners dies.

WHAT REQUIREMENTS ARE NECESSARY TO DOCUMENT THE TRANSFER OF OWNERSHIP?

1. The requirements are found at Minn. Stat. §507.071, Subd. 20.
2. The following documents must be recorded in EACH county in which real estate is located:
 - a. Affidavit of Survivorship which should indicate the beneficiaries survived all grantor owners by at least 120 hours.
 - b. Certified Copies of Death Certificates for each grantor owner whose death is a condition of the transfer as set out in the original TODD.
 - c. The Clearance Certificate for the county agency in which the property is located for all grantor owners (not just the last to die) confirming the release of any public assistance lien or claim.

Point of Interest: the documents can be combined and recorded as one document to save on recording fees.

WHAT ARE SOME DISADVANTAGES OF THE TODD?

1. Multiple Grantees.
 - a. A deed may provide for a number of grantee/beneficial owners and the deed should provide some indication of how those parties will take title. A well drafted TODD will cover this by describing the interest as joint tenancy, tenancy in common, fractional interests, life estate/remainder interests, interests in contracts for deeds, etc. BUT a poorly drafted TODD may not and this could result in title problems at a later date.
2. Successor Grantees.
 - a. The statute allows successor grantees and those can be named beneficiaries or a class of beneficiaries. If successor grantees are named, the TODD must explain the condition or requirements for the successor to take the interest. Most commonly this will be shown as a survivorship issue:

For Example: "To son Joe, if surviving. If Joe does not survive the grantor/owner, then to Joe's children, in equal shares."
 - b. Successor Grantee language may then result in further affidavit requirements depending upon the conditions imposed, and verification of owners upon the triggering death can get a bit more complicated.

c. Minor Successor Grantees can pose a significant problem for real estate sales. Example: A named grantee dies, and in the TODD such interest passes to the children of the deceased, in equal shares. The children are ages 10 and 15. Minors now have an interest in the real estate upon the death of the Grantor/Owner. A court appointed conservator will be required for the minors in order to convey or transfer the minor's interest in the real estate.

3. Revocation and Capacity issues.

a. TODDs can be revoked or changed at any time. The revocation must be in writing and it must be recorded prior to the death of the grantor owner. Minn. Stat. §507.071, Subd. 10(a). The Grantor/owner must have capacity to revoke the TODD, but an attorney-in-fact may execute a TODD. Consider whether this could create estate planning problems...

b. TODDs can not be revoked by a will.

c. TODDS are revoked by a conveyance to a third party.

d. TODDS can be revoked by a subsequent TODD

SUMMARY:

TODDs provide a new and helpful manner of avoiding probate for some families. In situations that may be a bit more complicated, however, TODDs may not be the right answer and the traditional Revocable Living Trust may still be appropriate. This would be a case where minors or successor beneficiaries come into play.

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