



FORT SILL LEGAL ASSISTANCE



Transfer on Death Deeds

What is a Transfer on Death Deed?

A Transfer on Death Deed (TODD) is a deed that allows the owner of real estate to name a beneficiary or beneficiaries who will succeed to ownership of the real estate at the owner's death. TODDs are not offered by every state, but Oklahoma does allow for them.

How do you get a TODD?

If the property is located in Oklahoma, you can make an appointment with a legal assistance attorney. Your legal assistance attorney will need a true copy of the original deed in order to prepare the documents necessary to establish a TODD. After the documents are prepared, signed, and notarized, they must be filed in the County Clerk's Office in the county where the property is located. If you do not file the TODD it will not go into effect.

What are the benefits?

If a TODD is properly executed and filed, and the beneficiary submits the necessary forms to the County Clerk within nine months of your death, your real estate will not be subject to probate at your death. It will pass automatically to the person or persons named on the TODD once they simply record an Affidavit and Death Certificate with the County Clerk at the time of your death. However, if the beneficiary or beneficiaries do not perform these steps within nine months of your death, the TODD will lapse, and they must go through the probate process. Avoiding the need to probate your estate will save the beneficiary or beneficiaries the time and expense of a court proceeding. If a beneficiary on a TODD should predecease you, that beneficiary's share is terminated. It will not pass to his or her heirs and it will be as if you never executed a TODD.

As the current owner of the real estate, you retain all the rights of ownership and have exclusive control over the property. The beneficiary has no present interest in the property. You may have more than one beneficiary listed on your TODD. The TODD can be revoked at any time prior to death. If you wish to change the beneficiary or revoke your TODD during your lifetime, you may do so at any time, and without obtaining the signature of the original named beneficiaries as long as you have maintained mental competence. A TODD cannot be revoked by a Last Will and Testament.

What if my spouse and I own the real estate as joint tenants?

If joint tenants want to transfer real estate by a TODD, then both joint tenants should execute the TODD. If only one tenant signs the TODD, it may be ineffective, unless the tenant who signed it, becomes the surviving joint tenant. If joint tenants execute a TODD, the beneficiary only becomes owner of the real estate after the death of the last surviving owner.

If I utilize a TODD, do I avoid taxes?

Filing a TODD has no effect on estate taxes. However, giving property through a Will or through a TODD ensures the beneficiary's basis in the property will be its fair market value on the date of the owner's death. By receiving a stepped up basis in the house, it may allow the beneficiary to report less gain for income tax purposes if the beneficiary sells the property. If you elect to sell your property prior to your death, rather than executing a TODD or passing the property through the probate process, you will have a basis in the property based upon the value of the property at the time of purchase. This may lead to higher income taxes for you than your beneficiary would have to pay if you pass it to them through a TODD or through your Will.

As the beneficiary of a TODD, do I receive the property free from creditor's claims?

In order to receive the real estate, the beneficiary must record an Affidavit and Death Certificate with the County Clerk within nine months of the deceased owner's death. The beneficiary receives the real estate subject to any interests in the property including a mortgage, judgment or any other lien against the property.

As the beneficiary, what do I need to do to file the TODD?

Any beneficiary named in this deed is hereby advised that in order to accept an interest in real estate pursuant to a transfer on death deed, the person or persons receiving the property must execute an affidavit that provides date of the grantor's death, whether the grantor and the person or persons receiving the property were married at the time of the grantor's death, and the legal description of the real estate. In addition, a copy of the grantor's death certificate must be attached to the affidavit. This affidavit and attached copy of the death certificate must be recorded in the office of the county clerk where the property is located within nine (9) months of the grantor's death.

For more information about transfer on death deeds, feel free to schedule an appointment with a legal assistance attorney.

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If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Sill Legal Assistance Office is located on the 4th floor of Building 4700, Hartell Hall (Welcome Center) on Mow-Way Road.