

TRANSFER ON DEATH DEEDS

Washington Land Title Association Education Seminar

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Presented by: John Martin



Gale Hickok, WLTA President



John Martin, Education Chair



George Peters, Executive Director



**2014 WLTA EDUCATION SEMINAR
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YAKIMA CONVENTION CENTER**

WHAT IS A TODD?











WHAT IS "TODD"?

- The owner records a Deed that states it is to become effective at his/her death. When that occurs, the grantee becomes the legal owner automatically.
- *The TODD is an alternative to expensive estate planning for simple estates.*
- *The TODD allows owners to retain control of their property*
- Codified in RCW 64.80

HOW DID THE "TODD" COME ABOUT?

- Raging...yers?



NO

Requested by Uniform Law Commission. Past products of commission:



- Uniform Commercial Code
 - Probate Code
 - Partnership Code
 - 23 State have enacted TODD legislation, each with own variations
 - Other area states with TODD legislation: Oregon, Montana, Alaska
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WHEN DOES ACT APPLY

- Bill's effective date was June 12, 2014
- A TODD effectively transfers property to the designated beneficiary if it was recorded and the Transferor dies on or after June 12, 2014.
- Thus, you could have created the deed before the effective date of the act as long as the death is on or after the act

TERMINOLOGY

- Beneficiary – person that receives property under a transfer of death deed
 - Designated Beneficiary – person designated to receive property under a transfer of death deed
 - Person – Individual, Corporation, Trust, Joint Venture, LLC, Public Corporation
 - Transferor - Individual who make the Transfer
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WILL THE LPO BOARD FORMULATE A FORM
TRANSFER ON DEATH DEED?

IF NOT, MAY AN LPO PREPARE A TODD?

To: Limited Practice Officers

From: Washington State Limited Practice Board

On June 12, 2014, the Washington Uniform Real Property Transfer On Death Act ([HB 1117, 2nd Engrossed Substitute](#)) was enacted making it possible for a person to transfer real property through the use of a deed taking effect at the transferor's death (a "TOD deed"). The Act provides that for an otherwise legally effective deed to transfer property on a transferor's death the deed simply needs to state that "the transfer to the designated beneficiary is to occur at the transferor's death." LPO's should review the Act and familiarize themselves with its provisions and requirements. LPOs should remember, however, that a TOD deed is an estate-planning tool that should only be employed by transferors after consultation with an attorney, and that LPOs are not authorized to provide advice to transferors on the use of TOD deeds.

If an LPO receives written instructions from a party or parties to a transaction indicating that they wish the LPO to prepare a TOD deed, there is nothing in APR 12 that would prevent the LPO from inserting the above-quoted language, verbatim, into an LPB approved deed form. The Board considers this situation to be similar to the modifications normally needed to use an LPB deed form to establish a joint tenancy, separate estate, or undivided interests. LPOs are nevertheless advised to review the situation with their management and/or legal counsel prior to agreeing to prepare a TOD deed.

An issue has also recently arisen that raises concerns similar to those raised by the adoption of the Act. HUD (or a HUD vendor) now appears to be routinely requesting the insertion of additional language in the LPB approved form of deed for closings involving the sale of foreclosed property. If the parties to the transaction each agree in writing to the insertion of specific language, an LPO may insert the agreed upon language in the deed, verbatim, in accordance with the provisions of APR 12. Once again, however, the LPO is advised to seek the advice of their management and/or legal counsel if he or she has any questions related to the possible impact of adding the agreed language to the deed or a possible conflict between the warranties contained in the selected agreement deed form and the language requested to be added.

Regards,

Talia Clever, LPO Program and Law Clerk Program Lead
Washington State Bar Association // 1325 4th Ave Ste 600, Seattle WA 98101

REQUIREMENTS OF A TODD

- Must contain the essential elements and formalities of a properly recorded inter vivos deed;
 - Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and
 - Must be recorded in the public records in the county where the property is located before the transferor's death.
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REQUIREMENTS CONTINUED

- All the requisites of the deed, except the present intent to convey the designated beneficiaries
 - Property in more than one county, need to record in all counties
 - May be executed by attorney in fact if authorized by the Power of Attorney
 - Mental capacity of grantor is the same for a will – must comprehend what is happening; nature and extent of property, natural objects of bounty, relationship of the elements
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WHAT IS NOT REQUIRED

- Notice, delivery, or acceptance by the Designated Beneficiary during Transferor's Life
- Consideration from the Designated Beneficiary

WHO MAY BE A TRANSFEROR OR GRANTEE

- Only an individual may be a transferor
- A corporation, business trust, estate, trust, partnership, limited partnership, LLC, joint venture, etc. **may not be a transferor**
- Multiple individuals may be transferors on the same deed; all joint tenants; both spouses of community property, even different estate owners, such as life and future estate together.

A TODD MAY NOT BE USED TO EFFECTUATE A
DEED IN LIEU OF FORECLOSURE

DISTINGUISHING LANGUAGE OF A TODD:

*"The Transfer to Designated Beneficiary is to occur
at the transferor's death"*

EFFECT OF A TODD DURING TRANSFEROR'S LIFE

- Prior to Grantor's death, does not affect the Grantor's creditors, encumbrances, liens, deeds of trust or other title matters;
- The Grantor may convey the property to another, may make any change to the title, may revoke, may replace with a different TODD, and may encumber with a mortgage.
- Designated Beneficiary's creditors cannot attach the property.

EFFECT OF A TODD DURING TRANSFEROR'S LIFE

- Prior to the Grantor's death, the recording of the TODD does not give the Grantee any rights, or any interest in the property.
 - A judgment, a divorce, a bankruptcy, and anything else related to the Beneficiary, cannot affect the property while the Grantor is alive.
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EFFECT OF A TODD DURING TRANSFEROR'S LIFE

- TODD does not affect:
- Interest of any owner, including the transferor, including the right to transfer or encumber the property
- Right of a transferee even if they have notice of the TODD
- Does not affect the transferor's or designated beneficiary's right to public assistance
- Does not create a legal or equitable interest in favor of the designated beneficiary

REVOCAION OF TODD

- A TODD may be revoked by the Transferor by:
 - ✓ A later recorded TODD expressly revoking or inconsistent with earlier TODD
 - ✓ Written, recorded revocation
 - ✓ Later, recorded inter vivos conveyance
- Must expressly revoke the prior TODD
- Must be acknowledged after the TODD, and recorded before the Grantor's death in the county where the property is located.
- May not be revoked by will or by act

REVOCAION OF TODD

- A TODD joined by multiple owners may be revoked by one alone, effective only as to the revoking party, and the TODD remains effective as to the other Grantors.
- A TODD related to a joint tenancy, or community property, must be revoked by all the Grantors.
 - ✓ During life of both CP owners, both are required to revoke.
 - ✓ Upon death of one spouse/partner, the survivor may revoke.

JOINT OWNERS

A TODD that is signed by all tenant in common:

- When Grantor dies, the TODD is effective for the interest of the Grantor.
- Does not affect the rights of the survivor tenant(s) in common.
- The TODD remains in force to be operative at the death of other Grantor tenant(s) in common.
- The TODD may be revoked by any surviving Grantor, affecting only the share of the person revoking.

EFFECT OF TRANSFERS BY JOINT OWNERS

A TODD that is signed by all joint tenants:

- When a Grantor decedent is survived by other joint tenants, the TODD is not yet effective.
- Take effect when last surviving joint tenant dies;
- Unless, surviving joint tenant(s) revoke.

EFFECT OF TRANSFERS BY JOINT OWNERS

A TODD for Community Property that is *only signed by one spouse/partner*:

- When the Grantor dies while still married or a partner, the TODD takes effect as to that person's interest in the Community Property.
- The TODD does not affect the interest of the surviving spouse/partner.

EFFECT OF TRANSFERS BY JOINT OWNERS

A TODD for Community Property that is signed by both spouse/partner:

- When one Grantor dies while still married or a partner, and the other survives, the TODD is not effective to convey any interest.
- When the second Grantor dies, the TODD is effective only with respect to the Grantor's interest at the time of death.
- Note, the survivor Grantor may revoke the TODD prior to death.

WHEN GRANTOR DIES

- Grantee must be alive for the TODD to be effective.
- If multiple Grantees, the share of the predeceased Grantee goes to other Grantees.
- At the time of the transferor's death, title to the property is transferred automatically to the beneficiary.
- The Grantee takes subject to any conveyances, encumbrances, assignments, liens, or other interests in the property.
- The beneficiary receives only whatever interest the transferor owned at the time of death. In all ways, the TODD has no effect until the death of the Grantor.

WHEN GRANTOR DIES

- An excise affidavit is required at the death of the Grantor.
 - No Excise tax is due at the death of the Grantor, except if the TODD was due to a contractual obligation of the decedent owed to the recipient of the property.
 - The transfer legally occurs automatically – but a certified copy of the death certificate is recorded to perfect title.
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WHEN GRANTOR DIES

- A beneficiary may disclaim the transferred interest. Then the TODD is completely ineffective.
- Just like after the death of a joint tenant, or a life estate beneficiary, the DSHA liens for medical care attach after the decedent has no real estate interest and does affect the Grantee's title.
- Even if the TODD has stated warranties, there are none given.

TITLE AND ESCROW CONSIDERATIONS

- Transaction involving a living grantor – TODD disclosed on Schedule BII as a note or exception. Not shown on policy.
- Grantor has conveyed the property to third party or recorded revocation – not necessary to disclose TODD on report.
- Informed that TODD Grantor is deceased, but no death certificate. Require certified copy of death certificate to vest in Grantee.
- Possible DSHA lien for medical services. Question regarding time to assert lien.
- Federal and state estate tax lien
- Grantor's creditors