

## Transfer on Death Deeds

On August 1, 2008, Minnesota joined ten other states in allowing the use of “**Transfer on Death Deeds**” - a probate avoidance technique involving real property transfers by which “grantor(s)” conditionally transfer title to one or more beneficiaries, with the conveyance only taking effect upon the death(s) of the grantor(s).

### A Transfer on Death Deed:

- ◆ conveys no present interest in the real property to the intended beneficiary or beneficiaries,
- and
- ◆ can be revoked at any time prior to the death(s) of the grantor(s).

The primary benefit of using a **Transfer on Death Deed** is that title to real property can be transferred more quickly to persons who would otherwise acquire title to such property upon the death(s) of the grantor(s), without the delay and expense involved in opening a probate court file.

Perfecting a transfer of real property pursuant to a **Transfer on Death Deed** is not for do-it-your-selves. While the conditional conveyance is completed by:

- ◆ the proper preparation and execution of the **Transfer on Death Deed**,
- and
- ◆ the timely recording thereof,

there are traps for the unwary.

### Basic Requirements

The basic requirements for a **Transfer on Death Deed** are the following:

1. one or more “Grantor Owners”;
  2. transfer an interest in real property;
  3. to one or more “Grantee Beneficiaries”;
  4. pursuant to a deed that:
    - A. **expressly states** that it will be effective only upon the death(s) of one or more of the Grantor Owners;
- and

- B. is recorded in the proper county office prior to the death(s) of the Grantor Owner(s) upon whose death(s) the conveyance is to be effective.

### **Definition - Grantor Owner.**

A “Grantor Owner” is defined by the statute to be an owner named as a grantor in a **Transfer on Death Deed** upon whose death the transfer of the real property is conditioned.

### **Definition - Grantee Beneficiary.**

A “Grantee Beneficiary” is defined by the statute to be a person or entity named as a grantee beneficiary in a **Transfer on Death Deed**.

### **Requirements for the Signature of the Grantor’s Spouse**

If a spouse of a Grantor Owner fails to sign a **Transfer on Death Deed** with respect to real property that is their homestead, the deed will be void and ineffective for any purpose.

Therefore, both spouses must sign all **Transfer on Death Deeds**, regardless of which spouse “owns” the property, because all real property is assumed to be the grantor’s homestead in the absence of a court order declaring it to be otherwise.

### **Can a Transfer on Death Deed be Used to Avoid Paying for the Cost of Nursing Home Care?**

No. A **Transfer on Death Deed** cannot be used to avoid paying for the cost of nursing home care, for a couple of reasons:

1. A **Transfer on Death Deed** will only be effective upon the death(s) of the Grantor Owner(s). Therefore, a county agency may be able to force the sale of real property to a third party prior to the death(s) of the Grantor Owner(s), generating funds the Grantor Owner(s) may be required to use in order to pay for the Grantor Owner’s costs of nursing home care.
2. Any interest(s) transferred by the Grantor Owner(s) to a beneficiary will be subject to a claim by the county agency for the recovery of all costs of caring for the Grantor Owner(s) in a nursing home.

### **Can a Transfer on Death Deed be Revoked Prior to the Death of the Grantor Owner?**

Yes. A Transfer on Death Deed can be revoked prior to the death of the Grantor Owner.

If a Grantor Owner changes his or her mind regarding a decision to execute and record a **Transfer on Death Deed**, the decision can be reversed by recording a “Revocation of Transfer on Death Deed” in the same recording office in which the original **Transfer on Death Deed** was recorded.

Alternatively, if a Grantor Owner conveys the same real property described in a **Transfer on Death Deed** to a third party pursuant to a regular deed, the conveyance to the Grantee Beneficiaries identified on the **Transfer on Death Deed** will be void and of no effect.

### **Do the Grantee Beneficiaries of a Transfer on Death Deed Need to Consent to the Deed?**

No. The Grantee Beneficiaries of a **Transfer on Death Deed** need not consent to, accept delivery of, or put their signatures upon, the **Transfer on Death Deed**.

However, after the death(s) of the Grantor Owner(s), the Grantee Beneficiaries may refuse to accept the interests conveyed to them in a **Transfer on Death Deed** pursuant to a statutory procedure which requires filing “disclaimers” with both local officials, and the Internal Revenue Service.

### **After the Death(s) of the Grantor Owner(s), What Action Must be Taken in Order to Establish Title in the Grantee Beneficiaries?**

After the death(s) of the Grantor Owner(s), the following documents must be filed with the county recording office in which the **Transfer on Death Deed** was originally recorded:

1. An **Affidavit of Identity and Survivorship**, which identifies that the Grantee Beneficiary or Beneficiaries survived the deaths of all the Grantor Owners by at least 120 hours.
2. **Certified Copies of Death Certificates** for each of the Grantor Owners.
3. A **Medical Assistance Clearance Certificate** issued by the county agency in which the real property is located for each Grantor Owner.

### **When Should a Transfer on Death Deed be Considered for Use?**

While a **Transfer on Death Deed** can be used in numerous situations in order to transfer real property title more quickly to persons who would otherwise acquire such title upon the death(s) of the grantor(s), the advisability of doing so in each situation must be considered.

Compare the following two situations - one situation favoring the use of a **Transfer on Death Deed**, and one situation where the appointment of a personal representative by the probate court may be more appropriate than use of a **Transfer on Death Deed**.

## 1. **Situation Favoring the Use of a Transfer on Death Deed; One Child**

Assume that an unmarried person owns a house that will be sold upon her death because her only living child does not want to keep it after her death.

### **Probate Court Procedures**

If a person dies owning title to a house and her child is entitled to it after her death - either pursuant to a Will provision or other laws - the surviving child will have to complete one of two probate court procedures in order to obtain the legal authority to sell the house:

- A. Be appointed by the probate court as the personal representative of the decedent's estate;

or

- B. Obtain a court decree declaring that the child is the owner of the house pursuant to Minnesota statutes governing the descent of a homestead.

Under the first procedure, the child can be authorized to sell the house as the personal representative of the estate six to eight weeks after the death of the owner.

Under the second procedure, the child can be authorized to sell the house - as its new owner - eight to twelve weeks after the death of the owner.

### **Probate Costs - Appointment of a Personal Representative**

The costs required in order to obtain the authority to sell the house to a third party pursuant to the child's appointment as personal representative of the decedent's estate, include the following:

1. Attorney fees required in order:
  - ♦ to prepare and file probate court documents necessary to petition for the appointment of the child as the personal representative of the decedent's estate, and
  - ♦ to obtain court approval thereof;
2. Administrative fees required in order to obtain certified copies of the "**Probate Letters**", the **Will** (if any), and the **Court's Order of Probate of the Will** (if any);  
and

3. Administrative fees required in order to record the “**Probate Letters**”, the **Will** (if any), and the **Court’s Order of Probate of the Will** (if any).

### **Probate Costs - Court Decree**

The costs required in order to transfer title to the child pursuant to a probate court title decree procedure include the following:

1. Attorney fees required in order:
  - ♦ to prepare and file probate court documents necessary to petition for the court’s decree that the child is the owner of the house,  
and
  - ♦ to obtain court approval of the requested decree;
2. Administrative fees required in order to obtain certified copies of the Court’s **Decree of Ownership**;  
and
3. Administrative fees required in order to record the Court’s **Decree of Ownership**.

### **Transfer on Death Deed Procedure**

Alternatively, had the owner used a **Transfer on Death Deed** in order to transfer the house title to her child upon the owner’s death, the child - as its new owner - could be authorized to sell the house approximately two weeks after the death of the owner - the time it would take in order to:

- ♦ obtain the owner’s death certificate and medical assistance clearance certificate,  
and
- ♦ prepare an Affidavit of Survivorship.

Therefore, if the child had acquired title to the house pursuant to a **Transfer on Death Deed**, the child could be authorized to sell the house one to two months sooner than if the child had been required to seek authority from the probate court.

### **Costs of Transfer on Death Deed Procedure**

The costs required in order to transfer title to the child pursuant to a **Transfer on Death Deed** include the following:

1. Attorney fees required in order to prepare the **Transfer on Death Deed** (before the death of the decedent);
2. Administrative fees required in order to record the **Transfer on Death Deed** (before the death of the decedent);

3. Attorney fees required in order to prepare an **Affidavit of Survivorship** (after the death of the decedent);
4. Attorney fees required in order to prepare and obtain a **Medical Assistance Clearance** form from the appropriate county agency (after the death of the decedent);  
and
5. Administrative fees required in order to record the **Affidavit of Survivorship, Death Certificate, and Medical Assistance Clearance** (after the death of the decedent).

## **Conclusion**

In a situation where the decedent is survived by only one child, transferring real property title to the child pursuant to a **Transfer on Death Deed** may be a better option than utilizing a probate court procedure in order to obtain authorization for the child to sell the house.

## **2. Situation Not Favoring Use of a Transfer on Death Deed; Five Children.**

Assume that an unmarried person owns a house that will be sold upon her death because her five living children - who are all married - do not want to keep it after her death.

### **Probate Court Procedures**

If a person dies owning title to a house and her children are entitled to it after her death - either pursuant to a Will provision or other laws - the decedent's children will have to complete one of two probate procedures in order to obtain the legal authority to sell the house:

- A. one or more persons - who may be children of the decedent - must be appointed by the probate court to be the personal representative(s) of the decedent's estate;  
  
or
- B. the children must obtain a decree from the probate court declaring that they are the owners of the house pursuant to Minnesota statutes governing the descent of a homestead.

Under the first procedure, the personal representative(s) of the estate can be authorized to sell the house six to eight weeks after the death of the decedent.

Under the second procedure, the children can be collectively authorized to sell the house - as its new owners - eight to twelve weeks after the death of the decedent.

However, all of the children and their spouses must sign any purchase agreement and deed conveying the real property to a third party. This means that in this situation, ten signatures would be required on any purchase agreement and deed conveying title to a third party.

### **Probate Costs - Appointment of a Personal Representative**

The costs required in order for a personal representative to obtain authority to sell the house to a third party pursuant to a probate court procedure include the following:

1. Attorney fees required in order:
  - ◆ to prepare and file probate court documents necessary to petition for the appointment of a personal representative of the decedent's estate,
  - and
  - ◆ to obtain court approval thereof;
2. Administrative fees required in order to obtain certified copies of the “**Probate Letters**”, the **Will** (if any), and the **Court's Order of Probate of the Will** (if any);  
and
3. Administrative fees required in order to record the “**Probate Letters**”, the **Will** (if any), and the **Court's Order of Probate of the Will** (if any).

### **Probate Costs - Court Decree**

The costs required in order to transfer title to the house to the children pursuant to the court decree probate procedure include the following:

1. Attorney fees required in order:
  - ◆ to prepare and file probate court documents necessary to petition for the court's decree that the children are the new owners of the house,
  - and
  - ◆ to obtain court approval of the requested decree;
2. Administrative fees required in order to obtain certified copies of the Court's **Decree of Ownership**;  
and
3. Administrative fees required in order to record the **Court's Decree of Ownership**.

One problem that will arise in this situation after obtaining the court's decree that all of the children own the house is that both the children and all of their spouses will be required to sign any purchase agreement and deed conveying title to a third party, which in this situation would require ten signatures.

## Transfer on Death Deed Procedure

Alternatively, had the owner used a **Transfer on Death Deed** in order to convey the house title to her children upon her death, the children could be collectively authorized to sell the house - as its new owners - approximately two weeks after the death of their mother - the time it would take in order to:

- ◆ obtain her death certificate and medical assistance clearance certificate,  
and
- ◆ prepare an Affidavit of Survivorship,

which is one or two months sooner than could be accomplished pursuant to a probate court procedure.

## Costs of Transfer on Death Deed Procedure

The costs required in order to transfer title to the children pursuant to a **Transfer on Death Deed** include the following:

1. Attorney fees required in order to prepare the **Transfer on Death Deed** (before the death of the decedent);
2. Administrative fees required in order to record the **Transfer on Death Deed** (before the death of the decedent);
3. Attorney fees required in order to prepare an **Affidavit of Survivorship** (after the death of the decedent);
4. Attorney fees required in order to prepare and obtain **Medical Assistance Clearance** forms from the appropriate county agency (after the death of the decedent);  
and
5. Administrative fees required in order to record the **Affidavit of Survivorship, Death Certificate, and Medical Assistance Clearance Certificate** (after the death of the decedent).

## Conclusion

Requiring multiple signatures on any purchase agreement and deed increases the risk that some event could happen which would delay the closing, and/or incur additional expense, such as:

- ◆ the death or bankruptcy of any of the children in title,
- ◆ a judgment or tax lien being filed against any of the children's interests in the real property,

or

- ◆ a divorce involving any of the children's interests in the real property.

In such cases, just getting all of the children and their spouses to agree on the terms of a purchase agreement can be very difficult.

Therefore, in a situation where there are multiple children, it may be preferable to have only one person appointed as the personal representative by the probate court - in which case only one signature would be required on any purchase agreement or deed conveying title to a third party.

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