

## **CREATING TRANSFER ON DEATH or PAYABLE ON DEATH ACCOUNTS and TRANSFER ON DEATH TITLES**

First and foremost, if you are married or have a partner, you should make sure that all of your accounts are in survivorship so that your spouse or partner does not have to go to court to get things transferred.

In addition to making sure that everything is in survivorship, it is also now possible to set up your accounts so that the accounts transfer automatically upon your death to the person, persons or place that you designate. You can choose to have your accounts payable to one, two or however many persons or places you designate.

If you do this, whoever is scheduled to get your account, will be able to access the account by showing a certified copy of the death certificate to the place where the account is or to take the certified copy of the death certificate to the title bureau and have the title transferred. They will be able to do this without having to go to court, probate a will or hire an attorney to get these things.

What is also good about doing this is that the account is yours completely as long as you are alive. The person or persons you designate as the transfer on death beneficiary has no ownership in the account, cannot access the account and cannot keep you from spending any or all of the money in the account. You would also be able to sell the automobile, get a lien on it or do anything else you want with it as long as you are alive. ***HAVING A TRANSFER ON DEATH or PAYABLE ON DEATH ACCOUNT or TITLE SIMPLY MEANS IF YOU HAPPEN TO STILL OWN IT OR HAVE THE ACCOUNT WHEN YOU DIE, THE PERSON OR PERSONS CAN GET IT WITHOUT GOING TO COURT.***

To do this, you will need to go to each place where an account is held. For instance, your checking and/or savings account is at a bank or credit union. You would go to the bank or credit union and tell them you want to set up a payable on death designation. The bank or credit union will give you the paperwork to do this.

To set it up with stocks, bonds or any other type of account, you should contact the place who handles the account and tell them the same thing. They should be able to give you the paperwork to get this done.

To set this up with an automobile or camper title, you simply take the title to the title bureau and they will help you get the person or persons name onto the title.

To set this up with real estate you own, you will have to create a transfer on death designation affidavit which must meet certain guidelines established by law. You should consult with an attorney to prepare this to make sure it is done correctly.

# What You Should Know about P.O.D. Accounts

**Q: What is a “P.O.D. account”?**

**A:** “P.O.D.” stands for “payable on death.” A P.O.D. account is owned by one person (called the owner) who has named another person (called the beneficiary) to receive any money left in the account when the owner dies. A P.O.D. account may be a savings account, checking account or certificate of deposit at a bank, building and loan or savings and loan association, credit union or society for savings.

**Q: Who can be the owner of a P.O.D. account?**

**A:** A natural person, adult or minor, can be the owner of a P.O.D. account. Corporations, partnerships and limited liability companies cannot be the owner of a P.O.D. account.

**Q: If I own a P.O.D. account, who controls the money in the account while I’m still alive?**

**A:** You, the owner, control the money. You can withdraw the entire amount if you wish. While you are alive, the beneficiary has no right or interest in the account and cannot withdraw any money from your account.

**Q: Can I change the beneficiary after my P.O.D. account has been opened?**

**A:** Yes. You have the right to change the beneficiary as often as you wish while you are still alive and capable. However, it is important for you to contact your bank, because no change of beneficiary is effective unless it is completed on the form used by the bank in the manner designated by the bank.

**Q: Does the beneficiary have to be a person? What about charities and other organizations?**

**A:** No, the beneficiary does not have to be a person. Under Ohio law, any entity or organization can be named as a beneficiary of a P.O.D. account, including charities. You can also designate a trust as the beneficiary of a P.O.D. account.

**Q: Can I name more than one beneficiary at a time?**

**A:** Yes; Ohio law allows you to name more than one beneficiary for your P.O.D. account. However, you should determine whether your bank permits multiple beneficiaries and if your bank has a special form to designate multiple beneficiaries.

**Q: What happens to the money in my P.O.D. account when I die?**

**A:** Any money in the account when you die will pass automatically to your beneficiary or beneficiaries. As long as your designated beneficiaries survive you, the money will not pass under your last will and testament and will not be subject to administration in the probate court.

5/31/2016

*This "Law You Can Use" consumer legal information column was provided by the Ohio State Bar Association. It was prepared by Michael L. Wear, JD, MBA.*



# Transfer-On-Death Designation Affidavit Avoids Probate of Real Estate

**Q: Can an individual transfer real estate, such as a house and property, and avoid probate administration upon death without creating a trust to do so?**

**A:** Yes. Ohio law allows individuals who do not need the estate administration benefits of a trust agreement to avoid Probate on the transfer of real property by executing a legal document called a Transfer-On-Death (“TOD”) Designation Affidavit.

**Q: What is a TOD Designation Affidavit?**

**A:** A TOD Designation Affidavit is an “effective upon death deed” showing the clear intent of the owner of real property to directly transfer the ownership of the real property upon the owner’s death to whomever the owner designates by name.

**Q: How does it work?**

**A:** The TOD Designation Affidavit, when properly recorded, permits the direct transfer of the described real property to the designated beneficiary or beneficiaries upon the death of the owner, thus avoiding Probate administration. The recording of the transfer is accomplished by filing a death certificate and an affidavit signed by any person knowing the facts of the transfer, including possibly the designated beneficiary, in the Recorder’s office. The owner of the real property can change and/or revoke a TOD designation at any time by executing and properly recording a new TOD Designation Affidavit. However, a TOD Designation Affidavit does not eliminate any federal estate taxes that otherwise would have been payable.

**Q: Can the person who is designated as the TOD beneficiary claim an interest in the real property before the owner dies?**

**A:** No. A TOD Designation Affidavit has no effect on the present owner of the real property and the designated beneficiary has no rights or interest in the real property during the owner’s lifetime.

**Q: Does the law allow for more than one beneficiary?**

**A:** Yes. Under Ohio law, the owner of real property may designate one or more other persons identified in the TOD Designation Affidavit by name and the owner may also designate contingent TOD beneficiaries by name. Due to the requirement that the beneficiaries be identified in the TOD Designation Affidavit by name, a designation of “my children” would not be valid.

**Q: What if the TOD beneficiary dies before the owner?**

**A:** The owner of the real property can designate contingent beneficiaries by name and those contingent beneficiaries would then receive the interest of the previously deceased TOD beneficiary. For example, the TOD beneficiary could be “Mary Smith, if living; otherwise John Smith.” If no named TOD beneficiary is living at the time of the owner’s death, the real property becomes part of the owner’s Probate Estate.

**Q: Can an individual who owns real property with a “joint and survivorship” title execute a TOD Designation Affidavit?**

**A:** Yes. Individuals who own real property titled as “joint and survivorship” can execute a TOD Designation Affidavit. Upon the death of such an individual, the real property passes to the surviving owner

and only upon the death of the last surviving joint and survivorship owner does the real property pass to the beneficiary or beneficiaries named in the TOD Designated Affidavit. The last joint and survivorship owner however must join in the TOD Designated Affidavit.

**Q: How can a TOD Designation Affidavit be created?**

**A:** Consult an attorney to prepare a TOD Designation Affidavit. Provide the attorney with a copy of the current deed and the name of the intended beneficiary and/or beneficiaries and any contingent beneficiaries.

8/11/2016

*This "Law You Can Use" consumer legal information column was provided by the Ohio State Bar Association (OSBA). It was prepared by John W. Eilers of Wood & Lamping LLP in Cincinnati and updated by Garrick O. White of Anspach Meeks Ellenberger LLP in Toledo.*