

What a Transfer-On-Death Deed Can Do For You

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The last thing you want when you die, is for your passing to spark a battle royale among your loved ones. A transfer-on-death deed can be an important estate planning tool to avoid such chaos.

A transfer-on-death deed is also known as a Lady Bird Deed. The name came from the Lyndon B. Johnson era. When President Johnson deeded property to his wife, Lady Bird Johnson, the name stuck. “When a Lady Bird Deed is drafted correctly, these deeds will transfer your real property to your heirs upon death. Unlike a bank account, where you can name a beneficiary to an account, you can’t name a beneficiary to your house,” explains Patrick Simasko, principal of Simasko Law. “These deeds are the next best thing. Until your death, you have the right to sell, lease or convey your property.”

Why this can be ideal

What’s the big advantage of a transfer-on-death deed? “You avoid the cost and delay of probate. There is an automatic transfer of your real property upon death to named beneficiaries. This transfer also allows beneficiaries to avoid paying any filing and inventory fees for a house that would be associated with the probate process,” says Simasko.

With any real property there’s always Uncle Sam to worry about. However, with a transfer-on-death deed, there is no county transfer tax or state transfer tax to be paid, says Simasko. Your property will also not lose a step up in basis under IRS Code 1014 and 2036(a), he says.

“The beneficiaries can sell the house at your death and not pay taxes on the proceeds. Another advantage is that you avoid the hassle of transferring liability insurance. By keeping the property in your name for your lifetime, you avoid unnecessary transfer paperwork for both taxes and insurance,” says Simasko.

There’s more good news. For Medicaid planning, you are allowed to keep your home or one primary residence as an exempt asset. These deeds keep your home in your name and allow you to keep this exemption during your lifetime when applying for Medicaid. This is critically important, explains Simasko because Medicaid has the right to file a lien on your loved one’s probate estate to get reimbursed for the benefits paid while living in the nursing home. “This means that if the home or any other asset has to go through probate, Medicaid can be reimbursed for the benefits that they paid out. However, with a Lady Bird Deed, there is no divestment for Medicaid purposes, the home never goes through probate, and no lien will be attached.”

Understand the particulars

However, there is much to know about transfer-on-death deeds. “In my experience the first thing people think is that a TOD is perfect. You still need to talk to an attorney or financial planner to be sure it’s good for you,” says Bijan Golkar, a certified financial planner with FPC Investment Advisory.

For one thing, a transfer-on-death deed may be too simple for a complex estate. “If the only thing you own is a house, this is a good option,” says Golkar.

It’s important to know the rules. “Generally, they cannot be revoked by will, only by recorded revocation, and they may be not useful where minor beneficiaries are involved. The property also generally remains subject to debts of the decedent,” says Sam Long, of counsel at the law firm of Shackelford, Bowen, McKinley & Norton.

In California, Golkar says there are requirements, “the property must be a single family home, or condo, can’t have more than four units, farming land of more than 40 acres,” among other things.

Know too, that not all states allow them. “In states like New York, it is not possible to create a deed that transfers ownership of the property to a third party that is not currently in the title upon the owner’s death,” says Alan Doran, general counsel of OneTitle National Guaranty Company.

But for many people, a transfer-on-death deed is an important piece of the estate planning pie. Says Simasko, “Used with other estate planning tools, like a will, trust, power of attorney, and patient advocate, you can protect yourself on a legal and financial level.”

<https://www.depositaccounts.com/blog/transfondeath-deed.html>