

THE GOOD, THE BAD, AND
THE UGLY OF

TOD / POD

TRANSFER ON DEATH,
PAYABLE ON DEATH

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OAK CREST LAW GROUP

ESTATE PLANNING, TRUST & PROBATE

TOD, POD

Transfer on Death (TOD) and Payable on Death (POD) accounts are recognized in many states as a means of transferring assets outside of probate. TOD accounts are generally used for investment accounts, (including mutual funds and stocks and bonds held in a brokerage account). POD accounts are used mostly with bank accounts (such as checking, savings and CDs). TODs are also allowed in some states for deeds to transfer property ownership outside of probate. So, when the account owner dies, the assets will pass directly to the beneficiary previously named by the owner. All that is usually required is an original death certificate for the owner provided to the bank or investment firm.

THE GOOD

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- Generally, TOD and POD accounts are easy to establish. Although, each investment company or financial institution has its own procedure and forms, these accounts are common and not very complex to open or change an existing account.
- As stated previously, TOD and POD accounts transfer assets outside of probate. Probate can be an expensive and lengthy procedure depending on state law and individual circumstances. In addition, everything is made public and available for anyone to find and see. In bypassing probate, a TOD or POD account provides the option to transfer the account directly to the beneficiaries even if the account owner had a last will and testament or revocable living trust that stated otherwise.
- Joint accounts (multiple owners with rights of survivorship) can have an undivided interest in TOD/POD accounts. Upon death, the investments are divided between the surviving owners equally. Tenancy in common and tenancy by the entirety are also possible.
- The account owner maintains control over the assets in the accounts while alive and can change the beneficiaries at any time, if competent to do so. At death, assets pass immediately.

NOTE: if a revocable living trust is named as the beneficiary, an EIN (employee identification number) will need to be obtained for the trust before the investments can be transferred to the successor trustee of the trust after the owner dies.

THE BAD

- Since alternate or contingent beneficiaries cannot be named, if the beneficiary predeceases the owner and another is not named, the assets will end up going through probate as part of the probate estate.
- If the beneficiary falls out of favor and the owner wanted to disinherit but dies before naming another, the assets will pass regardless, even if a will or trust state otherwise.
- Naming minors, under age 18, as TOD/POD beneficiaries has special laws and may result in unintended consequences if death occurs while the beneficiaries are still minors. Minor beneficiaries DO NOT have any legal authority to receive investments under most state law. Usually, a court-supervised guardianship or conservatorship must be established to manage the assets. Upon reaching age 18, the beneficiary will have full access to the assets.

NOTE: With changing circumstances, it is particularly important to make sure to update your beneficiary selection on TOD/POD accounts to reflect desires. If a revocable living trust exists, careful coordination of the trust with the named TOD/POD beneficiaries should be done. If the trust is named as the beneficiary of a TOD/POD account, then each time the beneficiaries of the trust are changed so will change the TOD/POD account beneficiaries on file with the investment company or bank.

THE UGLY

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- To pass assets, one has to die. Death unfortunately comes with debt...expenses such as paying final bills, paying for either burial or cremation and final tax payments are obligations of the estate and the person designated as executor/executrix legally assumes the responsibility to pay the debt. TOD/POD accounts are thereby legally subject to creditors' claims during life and after death. If all or most of the estate assets pass by TOD/POD there may be a shortfall of assets to meet estate liabilities. For example, if a decedent had two children, named one executor in a will, and desired the estate to be divided equally (50%/50%), the executor child might be shorted (or left with nothing) if left to pay the estate debt by themselves. Some states only permit an equal distribution of funds in TOD/POD accounts eliminating the ability to adjust for different needs and responsibilities of the beneficiaries.
- For married couples with joint TOD/POD accounts, following a death, the surviving spouse will have full control to change the beneficiaries. In "Brady Bunch" second marriage scenarios, where children have come from other marriages, the surviving spouse can disinherit the children of the first spouse who dies.
- If an individual is deemed incompetent, changing beneficiaries is not allowed. So, in even those situations where the beneficiary predeceases the owner, the account may not be changed. The assets would end up in the probate estate and subject to probate distribution law.
- For an individual with special needs receiving means-tested public benefits, receiving funds from a TOD/POD account may disqualify the individual from the benefits.

A background image of a sunset sky with a bird in flight. The sky transitions from a deep teal at the top to a soft pink and orange at the bottom. A small, dark silhouette of a bird is visible in the center of the sky.

CONCLUSION



TOD and POD accounts have a place in estate planning. Like all things, these accounts have pros and cons. They can be an inexpensive solution to many situations. Used improperly or alone, they can have negative and expensive outcomes.

The complexities of life, family circumstances and situations often require expertise in examining and exploring options. Personalized solutions can usually be obtained at reasonable cost without sacrificing desires and wishes. The Oak Crest Law Group is ready to assist you and wants you to have genuine peace of mind knowing your wishes are understood and respected and will be honored.

For additional information, contact: trusts@oakcrestlaw.com

