

# Death deed property transfer works in some situations

## FARM & FAMILY

BY MARK BALZARINI



**OWNERS OF REAL estate** located in Minnesota may use a transfer on death deed to transfer property to a named beneficiary upon the owner's death without the need for the property to be transferred through the probate process.

Minnesota Statute 507.071 provides the form and rules for a transfer on death deed.

For this type of deed to work, the owner of the real estate must execute a deed in the form provided by Minnesota Statute 507.071. On this form, the owner will indicate the owners of the property, the owner's death on which the property will transfer to the beneficiary, the legal description of the property, and the person or entity to whom the property will be transferred. This form must be recorded in the recorder's office or the register of titles for the county in which the property is located prior to the death of the owner. The owner

can revoke a transfer on death deed by recording a revocation form that meets the specifications of Minnesota Statute 507.071.

Though a transfer on death deed may seem like simple alternative to avoid the need for probate, owners should consult with their legal counsel before executing and recording a transfer on death deed. There are many pitfalls to using this type of deed of which an owner should be aware. Some of these include:

- If you are a joint owner of property, you should be aware that the transfer on death deed will not transfer the property to the beneficiary you have named if you predecease the joint owner. Rather, your interest in the property will go to the other joint owner. If that joint owner has not joined with you on the transfer on death deed, or decides after your death to revoke the transfer on death deed, the property may not pass to the beneficiary you have chosen.

- If there are multiple beneficiaries to whom you want the real estate to go, you should beware of using a transfer on death deed. When there are multiple beneficiaries, there is the risk that

beneficiaries will not be able to decide how to care for and manage the property. A better option is to appoint a trustee of the property after your death in a will or revocable living trust.

- A transfer on death deed is not recommended if you are transferring real estate to minor children. A better option is to provide the children with the real estate in trust while they are minors, or until a later age of maturity of your choosing, by using a will or revocable trust.

- The transfer on death deed cannot be used if you wish to provide restrictions on the use of the property. For example, if you wish to provide a family member who is farming with the right to use your farm building site, the right to rent your farmland or the right to purchase the other beneficiaries' interest in the real estate, a better option would be to provide the beneficiary these rights using a will or revocable trust.

- A transfer on death deed is not a good option if there is potential for an estate tax liability. A transfer on death deed does not provide the opportunity for credit shelter planning that would allow a married couple



**PASSING IT ON:** A transfer on death deed in Minnesota is an option for landowners who would like to pass on their real estate to a beneficiary and avoid probate. However, depending on your estate plan objectives, it might not be the right option for you.

to use both spouses' Minnesota and federal estate tax exclusion amounts, while also providing the surviving spouse with access to the deceased spouse's income and principal interest in the real estate.

Additionally, with an outright transfer at death, there may be a difficulty in assuring that the estate tax liability is apportioned and paid properly. A better option is to use a revocable trust to properly plan for these estate tax issues.

- A transfer on death deed is not a good option when there is a risk of a beneficiary being disabled or incapacitated. By using a transfer on death deed, the property would be transferred to the beneficiary outright upon the death of the owner; and if the beneficiary was on public benefits, he or she may lose these benefits when receiving the property. A better option would be to have the property distributed to a supplemental

needs trust so the beneficiary's eligibility for public benefits is not compromised.

- A transfer on death deed does not protect the asset from the beneficiary's creditors. If the beneficiary has a bankruptcy, divorce or legal claim against him or her, the property will become subject to these claims. It is better to use a will or revocable trust to distribute property to a beneficiary in trust so the property can be protected for the beneficiary.

Though the transfer on death deed may be a good option for some circumstances, many people will find that it does not address all the issues they are concerned about. So beware of these issues and consult an estate planning attorney before using a transfer on death deed.

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