

ADVERTISEMENT

THE Love Law Group, LLC

ELDER LAW • ESTATE PLANNING

Estate Planning: Transfer on Death Frequently Asked Questions

What is a Transfer on Death plan?

- The goal of a transfer on death plan is to avoid probate by having all your assets covered with beneficiary designations. If you can guarantee that all your assets are covered by beneficiaries, then probate should be fully avoided.
- With a transfer on death plan, the assets are transferred immediately upon death to the named beneficiary(ies). This makes the transfer on death plan seamless and inexpensive because it does not require an administrative process such as a will through the probate court process.

What documents are included in this type of plan?

- A common list of documents would be the following:
 - Financial durable power of attorney
 - Healthcare durable power of attorney
 - A separate beneficiary deed for each tract of real property owned
 - Transfer on death document for personal property
 - Asset schedule that is personalized to each client with reminders of the action steps needed to avoid probate with respect to each asset
 - A last will and testament for each spouse, if wills are desired
- The above list is a comprehensive list of documents for a transfer on death plan. Some clients only want a last will and testament. Some only want the incapacity documents – that is, a financial durable power of attorney and a healthcare durable power of attorney. Others only want to proceed with a beneficiary deed.

Are there probate issues that I should consider when choosing this plan?

- If you happen to miss assigning a beneficiary to an asset, or, you are the victim of a personal injury, then there is going to be a probate estate. Without a will, you will be depending upon the Missouri intestate statute, meaning you died without a will. Some will choose to take that risk and not have a will. Others choose to have a will.

- The previous statements deal with death. You can also go through the probate process during your lifetime. This is called guardianship and conservatorship. Guardianship and conservatorship is when the probate court appoints someone to make healthcare and financial decisions respectively upon incapacity. Many people think that a marriage certificate is adequate to avoid this consequence. It is not. To avoid guardianship requires a healthcare durable power of attorney. To avoid conservatorship requires a financial durable power of attorney. The word durable in the power of attorney simply means that it is good through incapacity. To make it durable the documents require specific language from the Missouri statutes.

Do I need a will with this plan?

- You are not required to have a will. It is up to you if you want to take the risks described above.

Who handles final financial arrangements?

- A family that is highly committed to a successful transfer on death plan chooses some trusted family members to manage a small account to wrap up their financial affairs. They do this verbally or in a personal note or request. This might further involve an account that names this limited number of persons as beneficiaries with your personal instructions to use the funds to pay outstanding debts and to wrap up your personal affairs. Usually, this works well because most beneficiaries are relieved that there is not a long post-death administrative process.

Do I need an executor* of a will?

- If the goal is that all of the assets avoid probate through beneficiary designations, then the person named as executor under a will has nothing to do. A will is your personal instructions to the probate court to administer assets that do not have beneficiary designations. The executor is appointed through the probate court process and has no authority outside that court process. In a successful transfer on death plan, the executor will have no authority, because there are no assets to administer through probate. (*In Missouri the executor is called a personal representative).

What is the role of the financial durable power of attorney?

- The power given to the agent under a financial durable power of attorney ceases at the death of the principal. The purpose of the power of attorney is to name an agent to assist the principal during the principal's lifetime. This arrangement ends at death.

What assets are included in a transfer on death plan?

- Home: Beneficiary Deed
 - If you choose the transfer on death solution for your home, the document is called a beneficiary deed in the State of Missouri. Upon death (of both spouses if applicable), the named beneficiaries will immediately own the real property. The named beneficiaries will need to work together to choose a realtor and sign all the required documents to sell the property at the time of sale at a title company. The title company, upon the sale will send checks to the beneficiaries based upon the percentage owned by each beneficiary.

- If your home has a debt on it at the time the beneficiaries receive it under the beneficiary deed, then they take subject to that debt. Most likely, the property would be sold, and the lender would be paid as part of the closing at the title company. The beneficiaries would receive their respective share of the net sale proceeds after the cost of selling the property and after the lender is paid.
- If you sell your home and purchase a new home, a new beneficiary deed will be needed. The prior beneficiary deed on the previous home would automatically be canceled by the sale of your previous home.
- A beneficiary deed is a highly technical document and therefore it is recommended that you use an experienced attorney to help prepare this document. If it is improperly drafted, it may not work in the way you thought it would.
- **Vehicles:** Title
 - In respect to automobiles, you would take your original titles to the Missouri Department of Revenue (licensing office) and request that transfer on death beneficiaries be added to each of your vehicles. New titles will be issued by the Missouri Department of Revenue that would have the names of you (and your spouse if applicable) with the names of the transfer on death beneficiaries on the face of the title.
- **Financial Accounts:** Transfer on Death or Pay Upon Death
 - Contact your financial institutions to place a transfer on death or pay upon death designation on your accounts. You will list beneficiaries for each of the accounts.
- **Personal Property:**
 - You can name beneficiaries at any time on your assets. You can list items individually or generally.

Disclosure Notice: The choice of a lawyer is an important decision and should not be based solely upon advertisements. Disregard this solicitation if you have already engaged in a lawyer in connection with the legal matter referred to in this solicitation. You may wish to consult your lawyer or another lawyer instead of us. The exact nature of your legal situation will depend on many facts not known to us at this time. You should understand that the advice and information in this solicitation is general and that your own situation may vary. Further, neither the Supreme Courts of Missouri or Kansas nor the Missouri or Kansas Bars review or approve certifying organizations or specialist designations. This disclosure statement is required by rule of the Supreme Courts of Missouri and Kansas.

Legal Disclaimer: This information has been provided for informational purposes only. It does not constitute legal advice. The receipt of this information does not establish attorney-client privilege. Proper legal advice can only be given upon consideration of all the relevant facts and laws. Therefore, you should not act upon any of the information contained herein without seeking appropriate counsel.