

Points of Law

Number 2001-2

August 15, 2001

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THANKS TO READERS

Thank you to all the readers of the first edition of my quarterly newsletter. Your kind comments were appreciated.

This issue discusses statutory transfer on death (TOD) issues. The subject was brought to my attention by Beth Chase of Edward Jones. Because our clients often designate property to be transferred on death to a named person, I think you will find the subject of interest. Please feel free to call me to discuss TOD and other estate related subjects. I accept referrals.

WHAT ABOUT TOD?

When requested, security brokers generally register TOD client accounts or TOD securities under specified rules. Accountants, brokers, lawyers, title examiners, and insurers often need to review and interpret TOD instruments that have been signed by clients. Most pass without objection, but others are of unclear intent or uncertain provenance. NM Stat. Chapter 45 allows TOD in New Mexico and honors similar statutes allowing TOD in other states. Clients rely on all of us to tell them what the TOD designation does and when use of it is appropriate.

It is easy enough to tell clients that a TOD designation:

1. May be used by an owner to transfer nearly any asset at death.
2. May be canceled at any time by the owner who made it.
3. Does not limit the rights of creditors of the owner.
4. Conveys no rights before the owner's death.
5. Causes the asset to be delivered to the designated person(s) surviving the owner.

It is harder to answer a client's questions concerning when a TOD designation may be appropriate. Those questions can only be answered with full knowledge of the client's estate needs. Cases where TOD may be desirable include transfers between spouses, transfer of a single asset of nominal

value, or transfers where only one beneficiary is to receive anything from the estate.

CASE STUDY

The following illustrates the harm that a TOD designation could do if carelessly employed by a client. A New Mexico resident mother and widower had about \$200,000 in security accounts and a house worth about \$200,000. Daughter Nell lived with her and attended to her needs, daughter Sam lived in Florida with her second husband Rick. Mother told her financial advisor, "I want to be fair to both of them. I'll leave the house to Nell as she needs a place to live and has only a small income. I'll leave the security account to Sam." The advisor told her about TOD designations and registration. She registered her securities account TOD to Sam, then filled out and signed a deed form that the advisor had given to her. The deed designated a TOD of the house to Nell.

Four years later mother died. After the funeral Sam stopped by the broker's office and closed the security account. Nell recorded mother's death certificate but the clerk would not record the deed to the house as mother's signature was not notarized. Two weeks later, Nell found a letter from IRS in the mail box. It seems mother and dad's corporation had owned an RV for business purposes. When they had closed their corporation they transferred title to the RV to their own names but did not report any income. IRS eventually claimed \$40,000 taxes, interest and penalties on account of unreported income. Mother's medical bills totaled \$20,000 for drugs and nursing care that Medicare did not cover. Sam complains that she should be entitled to half of mother's Cadillac, household possessions and personal effects as title to all was in mother's name. Sam does not know that the TOD of the house was ineffective. Nell has already asked Sam for money to help. Sam has informed her that she has spent all of the money from the security accounts to clear past due bills and for Rick's back surgery.

Nell consults a probate attorney. He advises Nell that the house is not hers and will likely be sold to pay mother's debts and that Sam in addition to the security

account she has already received will receive one half the net from probate of the estate. He estimates Nell will be left with no house and perhaps \$50,000 after expenses. It is not the result mother wanted.