

MEMORANDUM

To: ABA Leadership

From: Dennis M. Horn,
ABA Advisor for NCCUSL Uniform Law Project

Dated: December 4, 2007

Re: Real Estate Transfer on Death Deeds

What is a Transfer on Death Deed:

Probate is an expensive process, both in the court resources used and in expenses to the litigants. Under the leadership of the ABA and the National Conference of Commissioners on Uniform State Laws (NCCUSL), states have promulgated laws authorizing will substitutes for the transfer of property at death without probate. Examples of assets that today routinely pass outside of probate include the proceeds of life insurance policies and pension plans, securities registered in transfer-on-death (TOD) form, and funds held in pay-on-death (POD) bank accounts.

A new device, the Transfer on Death deed (TOD deed), is designed to transfer real property upon the death of the owner without encumbering the real property during the owner's life and without probate. By executing and recording a TOD deed, an owner may designate a beneficiary or beneficiaries to receive the property at the owner's death without waiting for probate and without the beneficiary designation needing to comply with the witnessing requirements of wills. By these deeds, the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime, the beneficiaries have no interest in the property, and the owner retains full power to transfer or encumber the property or to revoke the TOD deed.

NCCUSL Timetable:

Ten states currently authorize TOD deeds. In the chronological order of the statutes' enactment, the states are: Missouri (1989), Kansas (1997), Ohio (2000), New Mexico (2001), Arizona (2002), Nevada (2003), Colorado (2004), Arkansas (2005), Wisconsin (2006), and Montana (2007). Some other states, including California and Minnesota, are studying the issue. In 2006, NCCUSL agreed to draft a uniform law to implement TOD deeds and appointed a Drafting Committee. The aim of our Drafting Committee is to produce a Uniform Real Property Transfer on Death Act for states to consider for enactment. The Drafting Committee has met twice and has developed a working draft of the law, which is available for review and comment on NCCUSL's website. The current plan is to complete the drafting process within two years, hence to submit the uniform law to NCCUSL for approval in Summer 2009 and to the ABA in the year following adoption by NCCUSL.

Information and Feedback:

At the request of the ABA, the ABA Real Property and Trust Section has appointed both an ABA Section Advisor and an ABA Advisor to the Committee. As the ABA Advisor, I am tasked with disseminating information about the draft law within the ABA and obtaining feedback.

Information about the Committee's work and the full text of drafts and memoranda circulated to the Committee can be found on NCCUSL's website at www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=278

Comments and suggestions on this project in progress are welcome. Please direct your comments either to me, as the ABA Advisor, at Dennis.Horn@hklaw.com or to the Reporter, Thomas P. Gallanis, Professor of Law, University of Minnesota, at gallanis@umn.edu