

Passing on Assets Outside of Probate: **PODs and TODs¹**

For a variety of reasons, people sometimes want some or all of their assets to pass directly to specific individuals upon their deaths, outside of probate. One way to accomplish this is to set up a “payable on death” (POD) account for money in a bank account or a “transfer on death” (TOD) account if funds are in a brokerage account.

Probate is the process through which a court determines how to distribute property after an individual dies. Some assets are distributed to heirs by the court (probate assets) and some assets bypass the court process and go directly to beneficiaries (non-probate assets). With POD and TOD accounts, the account owner names a beneficiary (or beneficiaries) to whom the account assets are to pass when the owner dies. Generally all that is required to get the money or control of the account is for a beneficiary to show the bank manager or the brokerage firm an original death certificate. The funds pass outside of probate, meaning that the beneficiaries can receive the money quickly without the involvement of the probate court. The account assets also receive a “step-up” in basis when the original owner passes away, meaning that no capital gains tax should be due if investments are liquidated in order to be transferred.

Only the account owner has access to the assets while alive; the named beneficiaries have no control over the account, and the owner can change beneficiaries at any time, if competent to do so. If the named beneficiary predeceases the account owner, then the assets are distributed to the remaining beneficiaries or to successor beneficiaries, depending on what the owner writes on the beneficiary designation form or online. If there is only one beneficiary and he or she predeceases the owner, and the owner makes no subsequent changes to the beneficiary designation, the assets go into the account owner’s probate estate.

But receiving assets could be a problem for certain beneficiaries, such as a child with special needs who depends on Medicaid and other public benefits. If the account amount is large enough, it could be advisable to do special needs planning to avoid the assets interfering with the receipt of public benefits. (For more on special needs planning, visit Special Needs Answers.)

Also, some attorneys discourage passing assets through accounts like these for the simple reason that people sometimes forget about the accounts, and their existence can confuse an individual’s estate plan. For example, the will may say that everything should be distributed equally to the account owner’s three children, but the POD or TOD account passes assets to only one child, creating unequal shares among the children. If avoiding probate is the goal, it may be better to put all assets into one revocable trust that clearly states who should get what. But these potential problems are much less of an issue if the estate is a simple one – for example, one surviving parent with only one child.

For more on POD accounts, [click here](#).

For more on TOD accounts, [click here](#). (Also, note that according to Kiplinger News, TOD accounts are not an available option in Texas and Louisiana.)

Some states allow transfer on death deeds, through which a house or other property can be passed outside of probate. For more information, [click here](#). Another way to accomplish this, at least in some states, is through a “Lady Bird deed.”

The best course before using any of these account or deed options is to speak to your attorney about your overall estate planning goals.

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¹ <https://www.elderlawanswers.com/passing-on-assets-outside-of-probate-pods-and-tods-15137#:~:text=With%20POD%20and%20TOD%20accounts,pass%20when%20the%20owner%20dies.&text=The%20ofunds%20pass%20outside%20of,involvement%20of%20the%20probate%20court>.