Transfer on Death Deeds in Virginia

Description

Article by Jerry C. Booth, Jr.

The Uniform Real Property Transfer on Death Act (Virginia Code Â§ 64.2-621 et seq.) became effective on July 1, 2013. It was enacted to permit Transfer on Death Deeds (â??TODDâ??sâ?•) which can be used to transfer title to real estate after the death of the owner to a named beneficiary/grantee (â??Beneficiaryâ?•). Details of TODDâ??s and the statutory requirements are below.

Basic Requirements

In order to be effective, a TODD must be executed by the property owner (the â??Transferorâ?• or â??Grantorâ?•), and recorded in the land records of the circuit court in the jurisdiction where the property is located prior to the death of the Transferor. If it is recorded after the death of the Transferor, it is not valid. Va. Code Â§ 64.2-628. A TODD must conform to all other standard deed requirements. An optional form TODD is provided in Va. Code Â§ 64.2-635.

VLTA Examiner

Effect of TODD Prior to Transferorâ??s Death

Pursuant to Va. Code Â§ 64.2-631, the transfer of property under a TODD does not take effect until the Transferorâ??s death. Further, the TODD does not convey any legal or equitable property interest during the lifetime of the Transferor, and the Transferor is free to do as he or she pleases with property, including revoking the TODD, during his or her lifetime. Details regarding the revocation of a TODD are discussed below, including the most recent amendment to the statute regarding revocation which was passed by the General Assembly in the 2025 session, and supported by the VLTA.

Effect of TODD Upon Transferorâ??s Death

Per Va. Code Â§ 64.2- 632, upon the death of the Transferor, assuming the Beneficiary survives the Transferor, the property interest vests in the Beneficiary at the time of the death of the Transferor. If the Beneficiary predeceases the Transferor, the TODD transfer fails as to that Beneficiary, and it **does not** go to the heirs, devisees or descendants of such a Beneficiary who predeceased the Transferor. The conveyance to such Beneficiary simply lapses. Va. Code Â§ 64.2- 632(A)(2). However, a TODD may provide for an alternate Beneficiary who would take in the event the prior Beneficiary predeceases the Transferor.

Further, the Beneficiary takes title under a TODD subject to â??all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferorâ??s death.â?• Va. Code Â§ 64.2- 632(B). As such, the examiner must report all title objections occurring prior to and during the Transferorâ??s ownership, including after the recording of the TODD. For example, if the Transferor records a TODD, and then subsequently grants a deed of trust against the property, the deed of trust would attach to the property, and the Beneficiary would take

title subject to the deed of trust upon the Transferorâ??s death. In addition, a TODD â??transfers property without covenant or warranty of title even if the deed contains a contrary provision.â?• Va. Code Â§ 64.2- 632(D).

If there are multiple Beneficiaries, they take title in equal and undivided shares with no right of survivorship, regardless of whether the TODD provides otherwise. Va. Code Â§ 64.2- 632(A)(3). In the event that one of multiple Beneficiaries fails to take title for any reason, such as predeceasing the Transferor, then the surviving Beneficiaries take that beneficiaryâ??s interest in proportional shares. Va. Code Â§ 64.2- 632(A)(4).

Liability for Creditor Claims and Statutory Allowances

Pursuant to Va. Code Â§ 64.2-634(A), after the death of the Transferor, â??property transferred at the transferorâ??s death by a transfer on death deed is subject to claims of the transferorâ??s creditors, costs of administration of the transferorâ??s estate, the expenses of the transferorâ??s funeral and disposal of remains, and statutory allowances to a surviving spouse and children of the transferor including the family allowance, the right to exempt property, and the homestead allowance to the extent the transferorâ??s probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.â?•

VLTA Examiner

Revocation of a TODD

An optional form for the revocation of a TODD is now contained in Va. Code Â§ 64.2-636. As the title suggests, it is merely optional, and another form or document manifesting the intent to revoke the TODD during the Transferorâ??s lifetime is sufficient to revoke the TODD.

Under Va. Code Sec. 64.2-630, the following revoke a prior TODD:

a. A transfer on death deed that revokes the transfer on death deed or part of the transfer on death deed expressly;

b. A transfer on death deed that names a designated beneficiary that is inconsistent with the designated beneficiary in a prior transfer on death deed;

c. An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed;â?¦

In addition, under prior law, it was not entirely clear whether a TODD was revoked if a subsequent inter vivos deed to a different grantee was recorded that did not state expressly that it revoked the TODD. On March 18, 2025, the Governor signed into law a bill amending Va. Code Sec. 64.2-630(a)(1)(d) to provide that a TODD is revoked by â??an inter vivos deed that conveys real property to another so the transferor is no longer the owner at the time of the transferorâ??s death.â?• These changes were effective immediately, but please note that the statute revision is not retroactive, and the change does not affect a prior TODD where the Transferor died prior to March 18, 2025.

Finally, where a TODD grants property to a spouse as Beneficiary, divorce or annulment of the marriage revokes a TODD, unless the deed specifically provides otherwise.



VLTA Examiner

Jerry C. Booth, Jr.
Jerry Booth has practiced in real estate and title insurance for over 30 years, and is currently Underwriting Counsel in Virginia and West Virginia for Fidelity National Title Insurance Company. A graduate of Wake Forest University and the University of Richmond School of Law, he was previously a title attorney, agency counsel and claims counsel for Lawyers Title, LandAmerica and Fidelity. Before joining Fidelity in 2016, he was engaged in the private practice of law where his practice focused on commercial real estate transactions and real estate and business related litigation.

Category

1. Uncategorized

Tags

1. featured

Date Created
2025/12/30
Author
vltaexaminer