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# TWO THINGS CERTAIN®

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## WHAT DOES A TRANSFER ON DEATH (TOD) DESIGNATION REALLY SOLVE?

*By Spencer M. Baxter*

Although staggering in number, around 45% of U.S. adults have never taken the time to memorialize their wishes in a Last Will and Testament. Many people feel that their personal circumstances do not meet the level of complexity, nor does their wealth meet sufficient levels to warrant "formal" Estate Planning. Albeit often incorrect, the belief that complexity and/or wealth are necessary for "formal" Estate Planning continues to plague families dealing with the death and incapacity of their loved ones. Although many people do not have formal Wills, many rely on Transfer on Death (TOD) designations and Payable-on-Death (POD) designations, sometimes without fully understanding the intricacies and consequences.

Transfer-on-Death (TOD) or Payable-on-Death (POD) designations are routinely used with bank and financial institution accounts. Upon the death of the account owner, these designations cause assets to pass directly to named beneficiaries. These account designations avoid Probate, the court proceeding that validates the Will and transfers property after death. With the avoidance of Probate, assets are not typically subject to the delay and expenses associated with the court proceeding.

The main purposes of Estate Planning are to allow for the controlled and stable transfer of assets at death to be as effortless and as inexpensive as possible, as well as to make sure that the beneficiaries are receiving the assets at the right time and in the right manner. Estate Planning also serves the additional purpose of naming and empowering trusted individuals and/or entities to make decisions upon the occurrence of incapacity.

### **Probate Avoidance**

TOD and POD designations are quite efficient at transferring assets to beneficiaries without the hassle of Probate, but be wary before filling out the next POD/TOD designation at the bank. The quick access and distribution of these accounts is similar to putting a pile of cash in front of the beneficiary as well as all their creditors. For example, if an adult son is named in a TOD

designation, and that son is receiving Medicaid benefits, at the death of the account owner, the son's benefits may very well be canceled. Probate on the account assets has been avoided, but at what cost to the account owner's son? Additionally, if a TOD/POD beneficiary dies before the account owner, Probate would still be necessary to transfer the account assets at the owner's death.

### **Problems with Incapacity**

Unfortunately TOD and POD designations do nothing for incapacity planning. The person named as the TOD/POD beneficiary has no legal right to the account until the account owner is deceased. Upon the owner's incapacity, the options are rather limited. Powers of Attorney may grant access to a named agent to make decisions or gain access to the account, but this is contingent on the Power of Attorney being accepted by the bank or financial institution, which does not happen all the time. Another alternative is for someone to petition the court and become the incapacitated account owner's legal guardian. Guardianship proceedings can be rather expensive, and should always be considered as a last resort.

### **Conclusion**

In conclusion, TOD and POD designations are not terrible choices, and are preferable to doing nothing and subjecting accounts to Probate at the death of the owner. Alternatives exist that will not only avoid Probate, but can also allow for avoidance of court guardianship as well as avoid the inconsistent treatment typical with Powers of Attorney. Accounts can be titled in the name of Revocable Living Trusts that will not only allow immediate access during the incapacity of an account owner, but also avoid Probate at the death of the account owner. The attorneys of Johnson, Gasink & Baxter, LLP routinely counsel their clients on the various Estate Planning options that are available. No one Estate Plan will be the perfect fit for everyone, but all options and alternatives should all be given their due consideration, regardless of how complex or how much wealth someone does or does not have.



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**About the Author:**

Spencer Baxter is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Spencer takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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