

Transfer on Death

Many states have adopted the Uniform TOD Security Registration Act. TOD is an acronym that stands for “transfer on death”. The provisions of the Act permit securities and securities accounts to be registered so that ownership automatically passes to named beneficiaries upon the death of the owner or the last-to-die of multiple owners. In general, the result is a simplified, nonprobate transfer similar to pay-on-death (POD) transfers of bank accounts or Totten trusts. Assets transferred via TOD registration generally receive a full step-up in cost basis.

In the case of multiple owners, the property must be titled so that ownership will vest in the survivor of them before the asset passes to the named beneficiary. Thus, the owners may hold the property as joint tenants, as tenants by the entireties, or as “owners of community property held in survivorship form.” A disadvantage of multiple ownership is that all parties must sign for any future account changes.

Beneficiary Designations

Beneficiary designations determine who receives the assets at death. The Act allows naming a substitute beneficiary to receive the assets if the beneficiary fails to survive. It also provides that “lineal descendants per stirpes¹” may be substitute beneficiaries.

Acronyms Approved in Statute	Example of Use
TOD = transfer on death	John S. Doe TOD John S. Doe, Jr.
POD = pay on death	John S. Doe POD John S. Doe, Jr.
JT TEN = joint tenants	John S. Doe Mary B. Doe JT TEN TOD John S. Doe, Jr.
SUB BENE = substitute beneficiary	John S. Doe TOD John S. Doe, Jr. SUB BENE Peter Doe
LDPS = lineal descendants per stirpes	John S. Doe Mary B. Doe TOD John S. Doe, Jr. LDPS

Creditor and Third-Party Claims

Generally, the Act does not provide any protection against the claims of third parties such as creditors, or individuals with other interests, such as a spouse’s community property interest. A creditor or other party asserting a conflicting interest can do so simply by giving notice to the registering entity (the broker-dealer). As a practical matter, this will usually block transfer of the asset until the conflict is resolved.

Seek Professional Guidance

As a general rule, TOD registration as an estate planning tool is most useful in smaller estates, those without estate tax problems, or in situations involving a single estate owner with a single beneficiary. Estate owners are advised to seek the advice and counsel of a competent estate planning attorney in their state of residence before making any decisions regarding the use of TOD registration.

¹ “Per stirpes” is a Latin term meaning “in the stirrups of.” In estate planning it refers to a common method of dividing an estate among the heirs of an estate owner.