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Posted on Mon, Jun. 27, 2005

Transfer-on-death deeds After death, a good deed

By Gloria Irwin
Beacon Journal business writer

Wilma Stroia of Jackson Township is putting her affairs in order.

She's just turned 87. She has no children but "lots and lots of nieces and nephews scattered all over."

Two live nearby and have helped care for her. She wants them to have her home after she dies.

In mid-May, her attorney filed what's called a transfer-on-death deed for Stroia's home. The deed names her niece, Christine, and her nephew, Jerry, as beneficiaries.

"I wanted it taken care of while I had my good mind," Stroia said.

After Stroia's death, the two beneficiaries will need to take a notarized affidavit and a death certificate to the recorder's office. The home will automatically be deeded over to them. They won't have to wait months for settlement of their aunt's estate, as would happen through the traditional route of putting the house in a will -- or not having a will at all.

In the meantime, their aunt retains full ownership and complete control of her home.

Transfer-on-death deeds are available in Ohio and six other states -- Arizona, Colorado, Kansas, Missouri, Nevada and New Mexico.

In Ohio, the General Assembly made the deeds available in late 2000. They're still relatively unknown, but are gradually growing in use.

A study for the Web site nonprobate.com of deeds filed in 2001, 2002 and 2003 concluded that if current rates continue, about 10 percent of all Ohio homes will be covered by transfer-on-death deeds by 2015.



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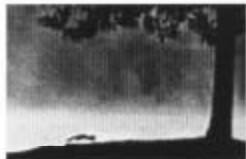
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The chief advantage is that the property can be transferred without the usual legal delays and costs associated with settling an estate. Probate court will have no say over transfer of the property, although the home must be listed as an asset of the estate if taxes are due.

Sandra Murphy of Creston inherited her mother's house through a transfer-on-death deed about a year ago.

The attorney for her mother, Emma Siers, recommended using the deed to avoid the time and expense of going through probate, Murphy said.

"I was with her when she did it," Murphy said.

"It automatically became my property at her death," she said.

Her mother, after becoming a widow, had purchased a home to the rear of Murphy's residence. She said she has since sold the property and divided the proceeds with a brother and sister.

"That was her wishes," she said.

For owners who wish to use transfer-on-death deeds, they have the flexibility to name one or several beneficiaries. They also can name contingent beneficiaries who will inherit if a beneficiary dies. Any beneficiary can be changed whenever the owner wants simply by filing a new deed.

And the owner can completely change his or her mind, and file a new deed that changes title back to its original form.

For some people, the chief advantage is added peace of mind.

That's the case for Marie Drake of Lake Township, who wants to make sure her three adult handicapped children have a home after she dies.

Drake is 66 and in good health.

"I don't have anything wrong with me that would be a big worry but you never know at that age," she said recently.

After the unexpected death of a relative's husband, Drake took steps to ensure her children's future.

She filed a transfer-on-death deed that names as beneficiary her ex-husband, with whom she is still on good terms. After she dies, he will move into the home and continue to care for the children.

"I want them taken care of in the worst way," Drake said.

Joint survivorship deeds, usually naming a spouse as beneficiary, are the most common form used, said David Woodburn, an attorney specializing in real estate and estate planning at Buckingham, Doolittle and Burroughs LLP in downtown Akron. Transfer-on-death deeds are becoming more popular, he said.

"For widows or widowers, I see it all the time in estate planning," Woodburn said.

The deeds also are useful in nontraditional settings, such as for unmarried couples, Woodburn said. "That's a huge planning tool for that type of situation," he said.

Single people also use the deeds.

There are few problems, he said. Like many other legal documents, "you can always challenge them for a lack of capacity" by showing that the owner was mentally incompetent at the time the deed was created, Woodburn said.

He said he hasn't seen any situations where the deeds have been challenged, and hasn't encountered any

probate problems with them, either.

One disadvantage, Woodburn said, is that a beneficiary must be named. In a will, for example, property or assets can be left to an unknown heir, such as "my wife on the time of my death" or to unborn heirs.

That won't work with a transfer-on-death deed, Woodburn said. "You have to specifically name the beneficiaries," he said.

Forms for filing the deeds are widely available on the Internet and at supply stores.

They're generally not provided by county offices, and county employees also won't give advice on how to complete the forms.

At the Stark County Recorder's office, records manager Jenny Owens said she gets lots of inquiries from the public. "I tell them to go straight to an attorney," she said.

Because a home is often the most valuable asset any person owns, Woodburn said it's best to get legal help for deed work.

Attorneys are responsible for ensuring that the property is accurately described on the deed and that all other content is correct.

"There's little pitfalls with recording," such as the way a beneficiary is listed, that an average person might miss, Woodburn said.

In Stark County, the recorder's office checks only to determine that the deed is legible, signed, notarized and contains a legal description, Owens said.

Recorder Rick Campbell said the deed is presumed to be legitimate if it's properly notarized. "The notary is there to stop the fraud," he said.

The cost of recording or filing the deed with the county is \$28 for the first two pages of a deed and \$8 for each additional page. Those fees are standard throughout the state's recorder's offices.

Woodburn said attorneys usually prepare a deed in conjunction with other legal work, but estimated just drawing up the deed would cost \$75 to \$100.

Advice of an attorney is what persuaded Charles Donley of Canton to draw up a transfer deed after he recently fell and broke his hip.

Donley, 89, is being cared for by his son, who recently updated the house and moved in with his wife and three children.

"I never wanted to take away the property and stuff from him," said son Charles, 51.

Although he's been named as beneficiary, the younger Donley won't have any ownership in the home after his father's death.

In the meantime, he said, he intends to "provide the care that he provided for me when I was young."


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