

Minnesota Transfer on Death Deeds; Examples

When Is a Minnesota Transfer on Death Deed Advisable?

While a Minnesota **Transfer on Death Deed** can be used in numerous situations in order to establish real property title ownership more quickly in persons who would otherwise acquire such title upon the death(s) of the grantor(s), the advisability of doing so in each situation must be considered.

Compare the following two situations:

- ♦ one situation favoring the use of a Minnesota **Transfer on Death Deed**,
and
- ♦ one situation where the appointment of a personal representative by a Minnesota probate court may be more advisable than using a Minnesota **Transfer on Death Deed**.

1. **Situation Favoring the Use of a Transfer on Death Deed; One Child**

Assume that an unmarried person owns a house that will be sold upon her death because her only living child does not want to keep it after her death.

A. Minnesota Probate Court Procedures

If a person dies owning a house and her child is entitled to it after her death - either pursuant to a Will provision or other Minnesota laws - the surviving child will have to complete either one of two Minnesota probate court procedures in order to obtain the legal authority to sell the house:

A. Be appointed by a Minnesota probate court as the personal representative of the decedent's estate;

or

B. Obtain a Minnesota probate court decree declaring that the child is the owner of the house pursuant to Minnesota statutes governing the descent of a homestead.

Under the first procedure, the child can be authorized to sell the house as the personal representative of the estate eight to ten weeks after the death of the owner.

Under the second procedure, the child can be authorized to sell the house - as its new owner - eight to twelve weeks after the death of the owner.

B. Minnesota Probate Costs - Appointment of a Personal Representative

The costs required in order to obtain the authority to sell the house to a third party pursuant to the child's appointment as personal representative of the decedent's estate would include the following:

1. Attorney fees required in order to prepare and file Minnesota probate court documents necessary:
 - ♦ to petition for the appointment of the child as the personal representative of the decedent's estate,
 - and
 - ♦ to obtain such court appointment;
2. Administrative fees required in order to obtain certified copies of the **Probate Letters of Authority**, the **Will** (if any), and the **Court's Order of Probate of the Will** (if any), and **Appointment of Personal Representative**;
and
3. Administrative fees required in order to record the **Probate Letters of Authority**, the **Will** (if any), and the **Court's Order of Probate of the Will** (if any), and **Appointment of Personal Representative** in the appropriate Minnesota County real estate office.

C. Minnesota Probate Costs - Court Decree

The costs required in order to transfer title to the child pursuant to a Minnesota probate court title decree procedure would include the following:

1. Attorney fees required in order to prepare and file Minnesota probate court documents necessary:
 - ♦ to petition for a Minnesota probate court's decree that the child is the owner of the house,
 - and
 - ♦ to obtain the requested Minnesota probate court decree - which will necessitate providing evidence that the County has no lien claim for the recovery of medical assistance expenses paid on behalf of the decedent;
2. Administrative fees required in order to obtain certified copies of the Minnesota Probate Court's **Decree of Ownership**;
and
3. Administrative fees required in order to record the Minnesota Probate Court's **Decree of Ownership**.

D. Minnesota Transfer on Death Deed Procedure

Alternatively, had the owner used a Minnesota **Transfer on Death Deed** in order to transfer the house title to her child upon the owner's death, the child - as its new owner - could be authorized to sell the house approximately four weeks after the death of the owner - which is the time it would take in order to:

- ◆ obtain and record the owner's death certificate and medical assistance clearance certificate,
and
- ◆ prepare and record an **Affidavit of Survivorship**.

Therefore, if the child had acquired title to the house pursuant to a Minnesota **Transfer on Death Deed**, the child could be authorized to sell the house one to two months sooner than if the child had been required to seek authority from a Minnesota probate court.

E. Costs of a Minnesota Transfer on Death Deed Procedure

The costs required in order to transfer title to the child pursuant to a Minnesota **Transfer on Death Deed** include the following:

1. Attorney fees required in order to prepare and record the Minnesota **Transfer on Death Deed** (before the death of the decedent);
2. Attorney fees required in order to prepare an **Affidavit of Survivorship** (after the death of the decedent);
3. Attorney fees required in order to prepare and obtain a **Medical Assistance Clearance Certificate** from the appropriate county agency (after the death of the decedent);
and
4. Administrative fees required in order to record the **Affidavit of Survivorship, Death Certificate, and Medical Assistance Clearance Certificate** (after the death of the decedent), in the appropriate Minnesota County real estate office.

Summary

In a situation where the decedent is survived by only one child, transferring real property title to the child pursuant to a Minnesota **Transfer on Death Deed** may be a better option than utilizing a Minnesota probate court procedure in order to obtain authorization for the child to sell the house.

2. Situation Not Favoring Use of a Minnesota Transfer on Death Deed; Five Children.

Assume that an unmarried person owns a house that will be sold upon her death because her five living children - who are all married - do not want to keep it after her death.

A. Minnesota Probate Court Procedures

If a person dies owning title to a house and her children are entitled to it after her death - either pursuant to a Will provision or other Minnesota laws - the decedent's children will have to complete either one of two Minnesota probate court procedures in order to obtain the legal authority to sell the house:

- A. one or more persons - who may be children of the decedent - must be appointed by a Minnesota probate court to be the personal representative(s) of the decedent's estate;

or

- B. the children must obtain a decree from a Minnesota probate court declaring that they are the owners of the house pursuant to Minnesota statutes governing the descent of a homestead.

Under the first procedure, the personal representative(s) of the estate can be authorized to sell the house eight to ten weeks after the death of the decedent.

Under the second procedure, the children can be collectively authorized to sell the house - as its new owners - eight to twelve weeks after the death of the decedent.

However, all of the children and their spouses must sign any purchase agreement and deed conveying the Minnesota real property to a third party.

This means that in this situation, ten signatures would be required on any purchase agreement and deed conveying title to Minnesota real property to a third party.

B. Minnesota Probate Costs - Appointment of a Personal Representative

The costs required in order for a personal representative to obtain authority to sell the house to a third party pursuant to a Minnesota probate court procedure include the following:

1. Attorney fees required in order to prepare and file Minnesota probate court documents necessary:
 - ◆ to petition a Minnesota probate court for the appointment of a personal representative of the decedent's estate,
 - and
 - ◆ to obtain such court appointment;
2. Administrative fees required in order to obtain certified copies of the **Probate Letters of Authority**, the **Will** (if any), and the **Court's Order of Probate of the Will** (if any) and **Appointment of Personal Representative**;
- and

3. Administrative fees required in order to record the **Probate Letters of Authority**, the **Will** (if any), and the **Court's Order of Probate of the Will** (if any), and **Appointment of Personal Representative** in the appropriate Minnesota County real estate office.

C. Minnesota Probate Costs - Court Decree

The costs required in order to transfer title to the house to the children pursuant to a Minnesota probate court decree procedure include the following:

1. Attorney fees required in order to prepare and file Minnesota probate court documents necessary:
 - ◆ to petition for a Minnesota probate court's decree that the children are the new owners of the house,
and
 - ◆ to obtain court approval of the requested decree - which will include providing evidence that the County has no lien claim for the recovery of medical assistance expenses paid on behalf of the decedent.
2. Administrative fees required in order to obtain certified copies of a Minnesota probate Court's **Decree of Ownership**;
and
3. Administrative fees required in order to record a Minnesota probate **Court's Decree of Ownership**.

One problem that will arise in this situation after obtaining the Minnesota probate court's decree that all of the children own the house is that both the children, and all of their spouses, will be required to sign any purchase agreement and deed conveying title to a third party, which in this situation would require ten signatures.

D. Minnesota Transfer on Death Deed Procedure

Alternatively, had the owner used a Minnesota **Transfer on Death Deed** in order to convey the house title to her children upon her death, the children could be collectively authorized to sell the house - as its new owners - approximately four weeks after the death of their mother - the time it would take in order to:

- ◆ obtain her death certificate and **Medical Assistance Clearance Certificate**,
and
- ◆ prepare an **Affidavit of Survivorship**,

which is one or two months sooner than could be accomplished pursuant to a Minnesota probate court procedure.

E. Costs of a Minnesota Transfer on Death Deed Procedure

The costs required in order to transfer title to the children pursuant to a Minnesota **Transfer on Death Deed** include the following:

1. Attorney fees required in order to prepare and record a Minnesota **Transfer on Death Deed** (before the death of the decedent);
2. Attorney fees required in order to prepare an **Affidavit of Survivorship** (after the death of the decedent);
3. Attorney fees required in order to prepare and obtain **Medical Assistance Clearance Certificate** from the appropriate county agency (after the death of the decedent);
and
4. Administrative fees required in order to record the **Affidavit of Survivorship, Death Certificate, and Medical Assistance Clearance Certificate** (after the death of the decedent), in the appropriate Minnesota County real estate office.

Summary

Requiring multiple signatures on any purchase agreement or deed increases the risk that some event could happen which would delay the closing, and/or incur additional expense, such as:

- ◆ the death or bankruptcy of any of the children in title,
- ◆ a judgment or tax lien being filed against any of the children's interests in the real property,
or
- ◆ a divorce involving any of the children's interests in the real property.

However, even if none of the above issues are applicable, just getting all of the children and their spouses to agree on the terms of a purchase agreement, and to sign the paperwork, can be very difficult.

Therefore, in a situation where there are multiple children, it may be preferable to have only one person appointed as the personal representative by a Minnesota probate court - in which case only one signature would be required on any purchase agreement or deed conveying title to a third party.

Conclusion

Please contact Minnesota Attorney Gary C. Dahle for assistance with the preparation, execution, or recording of any Minnesota **Transfer on Death Deed**.

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Minnesota Transfer on Death Deeds - Examples
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