

# HOUSE BILL 147

## IS MY ESTATE PLAN AFFECTED BY THIS NEW LAW?



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**The Uniform Real Property Transfer on Death Act** allows owners of Delaware real estate to execute and record a Transfer on Death (TOD) deed designating one or more beneficiaries who will receive the real estate upon the owner's death, without a probate procedure.

The Act outlines the following:

- Transfer on Death deeds will take precedence over any other instruction, including those in a Will
- Provides the forms needed to create or revoke a TOD deed
- Creates a procedure for beneficiaries to notify the Register of Wills office of a death
- Ensures property subject to transfer is covered by insurance up to 60 days following date of death

**Does this new law limit the benefits of a Trust?** No. Consider the following:

**Geographic Limitations:** Delaware residents should title their in-state *and* out-of-state property in the formal name of their Trust, ensuring probate avoidance in Delaware and in the other state(s). This Act addresses DE real estate only.

**Limited Asset Coverage:** While TOD deeds can prevent real estate from being exposed to probate, they won't help avoid probate on any other assets, including cash accounts, investments, and personal property.

**Reduced Flexibility:** Unlike Trusts, TOD deeds don't allow for customizations.

- There are no sale provisions in this designation, meaning real estate transfers as-is to beneficiaries, even if selling and distributing cash proceeds would be more practical.
- There are no contingency designations, addressing what should happen if named beneficiaries predecease the owner.
- There's no allowance for custom directions in case beneficiaries are experiencing divorce, bankruptcy, lawsuits, the need for public benefits, and more at the time of inheritance.

**Forced Co-Ownership:** When multiple beneficiaries inherit real estate as joint owners, the arrangement can lead to disagreements about property use and maintenance, financial strain derived from different owners' ability to contribute, and a requirement for all owners to agree on each decision. Forced co-ownership can be a recipe for conflict.

**Exposure to Long-Term Care Costs:** TOD deeds can't shelter real estate from being exposed to, or depleted on, the costs of long-term care such as in a skilled nursing facility.

**Consider Current Trends in Deed Fraud:** While using a Trust doesn't prevent deed fraud, the formality could make a person with malicious intent feel more caution. Additionally, if the Recorder of Deeds received a TOD deed filing for property already titled in Trust, this could raise red flags. Since Trusts designate beneficiaries and provide directions, there wouldn't be a logical reason for a TOD deed form to be filed. This inconsistency could prompt closer scrutiny and help prevent fraudulent filings from being processed.