PacificCPE

COURSE
40758A

Executor Essentials: Probate Procedures

Wrapping up an estate requires navigating formal legal processes that vary by size and circumstance. This course covers payable-on-death asset claims, simplified procedures available for small estates, and the full regular probate process—including what happens when the named executor is unavailable or from out of state. It also addresses business continuity during probate, Medicaid recovery claims, and Texas-specific considerations. CPAs and tax professionals who support clients through estate settlement will gain practical insight into how probate concludes and where legal counsel is most critical.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

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Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recall the types of property people name payable-on-death (POD) beneficiaries for.
- Recognize how small estates are defined. Every state has streamlined procedures for winding up "small estates"—though what qualifies as a small estate varies greatly from place to place. (In some cases, you can use small estate procedures even for very large estates if it turns out that most of the assets don't go through probate.) These methods are simpler, quicker, and cheaper than regular probate.
- Identify the most common type of probate proceeding used in Uniform Probate Code states.

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Chapter 1: CLAIMING PAYABLE-ON-DEATH ASSETS

Chapter Objective

After completing this chapter, you should be able to:

- Recall the types of property people name payable-on-death (POD) beneficiaries for.

These days, people leave lots of valuable assets to inheritors by using "payable-on-death" (POD) or "transfer-on-death" (TOD) designations. Typically, the owner of the property simply names a POD or TOD beneficiary on a form. Then, when the owner dies, the property doesn't have to go through probate. The named beneficiary can claim it directly.

It's common for people to name payable-on-death beneficiaries for:

- Bank accounts
- Vehicles
- Stocks and bonds, held either separately or in a mutual fund or brokerage account
- U.S. savings bonds, and
- Real estate.

Each of these is discussed below.

Related Topic

IRAs and retirement plans. People name beneficiaries for individual retirement accounts and plans, too. Collecting these funds doesn't require probate, but it does involve many IRS rules. See Chapter 4 of course 40757B.

IF THE ASSET WAS CO-OWNED

If property is jointly owned, any POD beneficiary inherits it only after both owners have died.

Example

Melanie and Zachary are married and own a bank account together in joint tenancy. They name their daughter Fiona as the POD beneficiary. When the first spouse dies, the surviving spouse will own the account. When the second spouse dies, Fiona will inherit it.

THE EFFECT OF DIVORCE ON POD BENEFICIARIES

Most states have laws providing that if someone names their spouse as a POD beneficiary and the couple later divorces, then the beneficiary designation is automatically canceled. These laws are based on the assumption that people who don't change the beneficiary designation of a former spouse probably meant to do so.

Example

Carly names her husband, Bob, as the POD beneficiary of her savings account. They later get divorced, but Carly doesn't get around to changing her POD beneficiary on the bank's form. When Carly dies, the law of her state provides that Bob does not inherit the account, even though his name is still listed in the bank's records as the POD beneficiary. Instead, the money goes to Carly's estate. It will pass under the residuary clause of her will, or if she had no will, to her heirs under state law.

These state laws do not, however, affect assets that are governed by federal law, including 401(k) retirement plans, employer-provided life insurance policies, and pension plans. (These are governed by the federal Employee Retirement Income Security Act, better known as ERISA.) The U.S. Supreme Court has ruled that under ERISA, when the plan participant dies, the plan administrator must simply pay the proceeds to the beneficiary the deceased person named. The administrator does not have to try to figure out who should get the money under a particular state's law. (*Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).)

HOW BENEFICIARIES CAN CLAIM ASSETS

What a beneficiary needs to do to claim POD assets depends on the kind of asset. But the processes are fairly similar and should be simple.

Bank Accounts

If the deceased person owned a bank account as a payable-on-death (POD) account (sometimes called a Totten trust), the POD beneficiary can collect the money promptly, without probate. All the beneficiary needs to do is to show the bank proof of death (a certified copy of the death certificate) and personal identification. The bank will have a record of who the account owner named as beneficiary.

Health Savings Accounts

If the surviving spouse is the named beneficiary, the account can be transferred to the surviving spouse. The surviving spouse will become the new owner and will be able to withdraw money tax-free for the surviving spouse's own qualified medical expenses.

If the beneficiary isn't the surviving spouse, the account ceases being an HSA when the account owner dies. The full market value of the assets in the HSA is included in the beneficiary's gross income in the tax year of the death.

If no beneficiary was named, the account assets go the estate.

The account beneficiary should contact the plan administrator to find out what paperwork is required to claim the assets and either transfer them to the surviving spouse's name or withdraw them. A death certificate and claim form will likely be required.

U.S. Savings Bonds

If the deceased person was the sole owner of the savings bond, the POD beneficiary automatically becomes the bond's sole owner. (But if the savings bond was co-owned, the surviving co-owner becomes the new owner; see Chapter 2 of course 40757B.) The beneficiary can:

- Do nothing with the bond
- Redeem the bond by taking it to a bank or another financial institution that cashes in savings bonds (the beneficiary will need personal identification), or
- Get the bond reissued (reregistered) in the beneficiary's name alone or with some other person.

If the beneficiary is inheriting an electronic savings bond, contact Treasury Direct (the website run by the Treasury Department). You can find contact information at https://treasurydirect.gov/contact-us. A hold will be placed on the deceased person's account, and someone will walk you through the steps.

If the savings bond is in paper form and you want to get a new bond showing the beneficiary as the owner, the beneficiary must complete FS Form 4000, *Request to Reissue United States Savings Bonds*. It's available at www.treasurydirect.gov.

The form comes with instructions for filling it in. As part of getting the bond reregistered, the beneficiary can add a co-owner or a new POD beneficiary. That's often a good idea.

After the form is complete, the beneficiary must sign it in front of someone who is authorized to "certify" the signature. This isn't the same as notarization. Most banks have employees who are authorized certifying officers.

Finally, the beneficiary must send the signed form, with a certified copy of the death certificate, to the address listed on the form.

Vehicles

If you've inherited a car that was registered in TOD (beneficiary) form, you'll need to get the vehicle reregistered in your name. It should be an easy process, involving a fill-in-the-blanks form and a small fee.

You'll need to submit several documents to the state motor vehicles department, including:

- An application for the new certificate of ownership
- The old certificate, if you have it, and
- A copy of the death certificate.

After you submit these documents and the fee, the state will issue a new registration.

For forms and instructions, contact your state's motor vehicles department. Try the agency's website first; you might find everything you need there.

If the car wasn't paid for at the owner's death, the new owner inherits the debt as well as the car.

Real Estate

If you're transferring property left by a transfer-on-death deed or beneficiary deed (valid in more than half the states; see Chapter 1 of course 40757B), the person who inherits the real estate must put something in the public land records showing that ownership has changed. The office that keeps local land records goes by different names in different states; for example, in some places it's called the register of deeds, recorder of deeds, or simply the county clerk.

Not all states' laws set out a specific procedure for the beneficiary to follow. The ones that do generally require the beneficiary to record two documents:

- A certified copy of the death certificate, and
- An affidavit (sworn statement signed in front of a notary public) setting out certain information.

For example, the Ohio statute (Ohio Rev. Code Ann. § 5302.222) requires the affidavit to contain the following information:

- The name and address of each transfer-on-death beneficiary who survived the deceased owner
- The date of the deceased owner's death
- A description of the real estate, and
- The name of any TOD beneficiary who did not survive the deceased owner.

In addition, in Ohio (as well as a few other states), the beneficiary must also fill out and submit a Medicaid estate recovery form if the deceased person or the deceased's spouse was ever a Medicaid recipient, or if the beneficiary isn't sure whether either was. (Ohio Rev. Code Ann. § 5302.221.)

Some states impose additional requirements.

For example, California requires beneficiaries to also file a Change in Ownership statement (available from the county assessor), to send notice to the deceased person's heirs, and to file an affidavit in the land records office stating that the beneficiary sent this notice. (Cal. Prob. Code §§ 5681(b) and 5682(c).)

If the TOD deed named more than one beneficiary but not all of them survived the original owner, then the surviving beneficiaries must also record certified copies of the death certificates of the deceased beneficiaries.

The fee to record these documents is usually modest at a few tens of dollars, but California and Washington have significantly higher recording fees—over $300 in Washington. You can call ahead to find out.