

Payable on Death: Not the Safest and Best Way to Transfer Funds Upon Death

We earn it, we protect it, we think about it, and we use it daily. But what happens to a person's money when they die? People want to ensure that their money goes to the correct beneficiary. They assume that naming a payable on death (P.O.D.) beneficiary on their bank account creates a simple, straightforward transfer upon their passing (thus avoiding the need for an estate plan altogether), but people must operate with the correct assumptions. While naming a P.O.D. beneficiary on an account prevents that particular account from going through probate, it allows for a host of legal issues to arise that may be counterintuitive to estate-planning goals. First, P.O.D. designations take precedence over provisions in a will, which may result in a certain beneficiary receiving more of the estate than anticipated (or perhaps they may receive less or nothing at all). Second, as an estate pre-planning measure, P.O.D. designations offer no asset protection from creditors. We will address these concerns in turn.

The creation of a payable on death account does not amount to a transfer of property from the account owner to the named beneficiary during the owner's lifetime. The original owner still has complete control over the account and can change the P.O.D. beneficiary at any time. A P.O.D. beneficiary receives the remainder of the account value upon the account owner's death. The P.O.D paperwork is completed and filed at the bank where the account is located. It remains on the bank's records until the owner passes away, at which point the money is transferred to the designated beneficiary on the bank's file system for each respective account.

Unfortunately, many people do not monitor their P.O.D. beneficiaries. This is particularly a concern if someone establishes a will to designate the beneficiaries of their estate and wishes that their beneficiaries receive a certain portion of the whole estate. In practice, the P.O.D. beneficiary on file at the bank takes precedence over a provision in the will. The account with a P.O.D. beneficiary on it is excluded from the ultimate distribution after the estate is finalized and debts are paid. This means that the money in a P.O.D. account does not get dispersed according to the distribution provisions in the will; thus, certain beneficiaries may get more or less of the estate than intended, which may lead to family disputes. In order to ensure that your goals are met, it is recommended that you talk with your estate planning attorney to find the best option to manage and transfer your accounts upon your passing to avoid this issue.

In addition to unintended consequences, there is no asset protection when it comes to a P.O.D. beneficiary on an account. Since the P.O.D beneficiary does not take effect until the owner passes away, the account is vulnerable to creditors during the account owner's lifetime. The Department of Health and Family Services may collect from funds held by the decedent immediately before death in a P.O.D. account. The amount that could be collected is equal to the cost of medical assistance, long term community support services, or family care benefits that were received prior to the death of one or both spouses. As a result, the P.O.D. beneficiary may not receive the funds from the account. Ultimately, the best way to ensure that assets are going to the right beneficiaries in the correct amount while maintaining asset protection, is an asset protection trust. You should talk with your estate planning attorney to find the best asset protection plan to meet your goals.

At Hildebrand Law Firm, LLC we are passionate about helping you create an estate plan to fit your family's needs. The experienced team at Hildebrand Law Firm, LLC can assist you with your pre-planning needs and provide you with direction on the best options for asset protection and probate prevention.