

## The Elderlaw Forum: “Beneficiary deed”™ may preserve romance

by Professor\_Michael\_Myers

Later life dating contains emotional risk. Later life marriage contains financial risk. In some states a “beneficiary deed” can minimize financial risk.

I so advised a 67-year-old senior legal helpline caller who was widowed in 2001. She has had a five-year relationship with a man in his early 70s. “We have gotten along quite well and we are now seriously considering marriage. We both have children from our previous marriage and wish to pass along our assets to our respective children,” she said.

Each has a home in Arizona. He has a second home in California. Her home “with an appraised value of \$410,000-- is her major asset. He has considerable wealth beyond his homes. “I want to make certain there is no chance for my home going to anyone other than my two daughters,” she said.

She lives in one of eight states that since 1995 have passed laws creating a “nonprobate” method of leaving real estate to heirs. It involves the execution of a new deed, called either a “transfer on death deed” or a “beneficiary deed.” They are Arizona, Arkansas, Colorado, Kansas, Missouri, Nevada, New Mexico, and Ohio. Upon death, the deed automatically transfers real estate to the designated beneficiary.

The automatic transfer prevents the house or land from being subjected to probate, thereby avoiding delay and costs. Beneficiary deeds can avoid the need to probate smaller estates by permitting the inheritance of real estate by simply filing an affidavit. Upon death, the beneficiary deed passes marketable title to a "grantee-beneficiary" while protecting the rights of other parties in the property.

During the lifetime of the owner the grantee-beneficiary has no legal right or interest in the property. During her lifetime the caller will retain full authority and control over the house. It is considered superior to the common practice of adding an intended heir as a joint tenant. There is no gift tax issue and no exposure to a joint tenant's creditors.

To be effective it must be recorded before the owner's death. It can be revoked by simply recording a revocation of deed. The caller and her fiancé should execute a prenuptial agreement detailing their intentions regarding the disposition of their respective assets. It should make reference to their Arizona beneficiary deeds.

Prenuptial agreements and estate planning tools such as beneficiary deeds may not be romantic, but in the long run they may preserve the romance that brought them together.

(Pro bono legal information and advice is available to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu; opinions are solely those of the author and not the University of South Dakota).

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