

# The Importance of TOD & JTWRROS Designations

*A convenient move that could ward off probate on your accounts.*

Provided by Benedict A. Mitchell Jr.

**TOD, JTWRROS...what do these obscure acronyms signify?** They are shorthand for *transfer on death* and *joint tenancy with right of ownership* – two designations that permit automatic transfer of bank or investment accounts from a deceased spouse to a surviving spouse.

This automatic transfer of assets reflects a legal tenet called the *right of survivorship* – the idea that the surviving spouse should be the default beneficiary of the account. In some states, a TOD or JTWRROS beneficiary designation is even allowed for real property.<sup>1</sup>

When an account or asset has a TOD or JTWRROS designation, the right of survivorship precedes any beneficiary designations made in a will or trust.<sup>1,2</sup>

There are advantages to having TOD and JTWRROS accounts ... and disadvantages as well.

**TOD & JTWRROS accounts can usually avoid probate.** As TOD and JTWRROS beneficiary designations define a direct route for account transfer, there is rarely any need for such assets to be probated. The involved financial institution has a contractual requirement (per the TOD or JTWRROS designation) to pay the balance of the account funds to the surviving spouse.<sup>1</sup>

In unusual instances, an exception may apply: if the deceased account owner has actually outlived the designated TOD beneficiary or beneficiaries, then the account faces probate.<sup>3</sup>

What happens if both owners of a JTWRROS account pass away at the same time? In such cases, a TOD designation applies (for any named contingent beneficiary).<sup>3</sup>

To be technically clear, *transfer on death* signifies a route of asset transfer while *joint tenancy with right of ownership* signifies a form of asset ownership. In a variation on JTWRROS called *tenants by entirety*, both spouses are legally deemed as equal owners of the asset or account while living, with the asset or account eventually transferring to the longer-living spouse.<sup>3</sup>

**Does a TOD or JTWRROS designation remove an account from your taxable estate?** No. A TOD or JTWRROS designation makes those assets non-probate assets, and that will save your executor a little money and time – but it doesn't take them out of your gross taxable estate.

In fact, 100% of the value of an account with a TOD beneficiary designation will be included in your taxable estate. It varies for accounts titled as JTWRROS. If you hold title to a JTWRROS account with your spouse, 50% of its value will be included in your taxable estate. If it is titled as JTWRROS with someone besides your spouse, the entire value of the account will go into your taxable estate unless the other owner has made contributions to the account.<sup>4</sup>

**How about capital gains?** JTWR0S accounts in common law states typically get a 50% step-up in basis upon the death of one owner. In community property states, the step-up is 100%.<sup>5</sup>

**Could gift tax become a concern?** Yes, if the other owner of a JTWR0S account is not your spouse. If you change the title on an account to permit JTWR0S, you are giving away a percentage of your assets; the non-spouse receives a gift from you. If the amount of the gift exceeds the annual gift tax exclusion, you will need to file a gift tax return for that year. If you retitle the account in the future so that you are again the sole owner, that constitutes a gift to you on behalf of the former co-owner; he or she will need to file a gift tax return if the amount of the gift tops the annual exclusion.<sup>5</sup>

**TOD & JTWR0S designations do make account transfer easy.** They simplify an element of estate planning. You just want to be careful not to try and make things too simple.

**TOD or JTWR0S accounts are not cheap substitutes for wills or trusts.** If you have multiple children and name one of them as the TOD beneficiary of an account, that child will get the entire account balance and the other kids will get nothing. The TOD beneficiary can of course divvy up those assets equally among siblings, but in doing so, that TOD beneficiary may run afoul of the yearly gift tax exclusion.<sup>2</sup>

JTWR0S accounts have a potential drawback while you are alive. As they are jointly owned, you have a second party fully capable of accessing and using the whole account balance.<sup>2</sup>

**As you plan your estate, respect the power of TOD & JTWR0S designations.** Since they override any beneficiary designations made in wills and trusts, you want to double-check any will and trust(s) you have to make sure that you aren't sending conflicting messages to your heirs.<sup>2</sup>

That aside, TOD & JTWR0S designations represent convenient ways to arrange the smooth, orderly transfer of account balances when original account owners pass away.

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**Citations.**

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