



Representative Ivy Spohnholz

House Health & Social Services Committee Co-Chair

*Serving House District 16: College Gate, Russian Jack, Nunaka Valley, & Reflection Lake
Committee Member: Resources, Energy, & Legislative Budget & Audit*

MEMORANDUM

DATE: May 7, 2019

TO: Representative Matt Claman, Chair of the House Judiciary Committee

RE: Questions and Answers regarding HB 110 from HJUD Committee, 5/3/19

The House Judiciary Committee offered several questions on Friday, May 3rd regarding House Bill 110 relating to transfer on death (TOD) titles for vehicles and boats. Below are the questions and answers.

1. How does this differ from how real estate is transferred? What are the differences between these transfers for boats (TOD titles) vs real estate (TOD deeds)?

The mechanism for TOD titles is nearly identical to the existing process for TOD deeds, with one minor exception. TOD titles will be obtained through the Division of Motor Vehicles (DMV), whereas the forms for TOD deeds must be notarized through the recorder's office.

2. Will the IRS be able to make claims on TOD titles years after it is transferred?

Yes. Although there is a state law applying to TOD assets that enforces a 12-month window in which claims must be filed, the IRS has no statute of limitations and can enforce a tax liability at any time.

They can do so both through a tax lien applied to all the decedent's assets, as well as by making an allowed claim against the estate. If the estate could not satisfy the claim, the IRS would enforce their liability on TOD assets, boats and vehicles included.

3. What boats are federally documented, and therefore, not required to be issued titles through the state?

Vessels of five net tons or more used for fishing and coastwide trade on U.S waters or in the Exclusive Economic Zone (EEZ) and owned by U.S. citizens are required to be documented by the U.S. Coast Guard.

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Most vessels more than 25 feet in length will measure 5 net tons or more. Since the DMV only requires vessels of over 25 ft long to be titled with exception to those documented by the U.S.C.G., boats longer than 25 ft long that are not used for fishing or coastwide trade are required to be titled through the state and will be eligible for TOD titles.

There will not be issues of overlap, i.e. a federally documented boat that is also titled through the state, as documented boats may not be titled by the state. 46 U.S.C. 12106(a) states:

“A documented vessel may not be titled by a State or required to display numbers under chapter 123 of this title, and any certificate of title issued by a State for a documented vessel shall be surrendered as provided by regulations prescribed by the Secretary.”

For more information about vessel documentation, see the [U.S.C.G website](#).

4. If an individual has debts and they transfer their TOD title, how do we resolve that scenario? Or what happens when a claim is filed against the estate, but the estate isn’t sufficient to satisfy the claim?

If the estate is insufficient to satisfy an allowed claim, they can enforce that liability on TOD titles under section 3(j) of the bill. There are similar provisions for TOD deeds, bank accounts and other assets, as these assets are removed from probate but are not removed from the decedent’s debts, liens, contracts, etc. Section 3(j) of the bill reads:

“to the extent the owner’s probate estate is insufficient to satisfy an allowed claim against the estate, the costs of administration of the estate, or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against a boat or vehicle transferred at the owner’s death by a transfer on death title.”

Although transferring the title upon death does remove it from the estate, it does not mean that creditors forfeit their right to enforce liability upon the titles if necessary. If the creditor is unable to satisfy their claim through the decedent’s estate, then they can enforce their liability upon a TOD title within 1 year after the owner’s death, (section 3(l)).

The beneficiary is not liable for paying estate debts of the decedent, but this does not limit the authority of creditors, a surviving spouse, and others from pursuing and satisfying an allowed claim and from accessing the TOD asset if they cannot do so through the estate.

5. Is there any cap on what can be transferred automatically? Could there a valuable asset be transferred automatically, leaving creditors of the estate with nothing to pay them?

There is no cap on what can be transferred through a TOD title, just like there is no cap for similar transfers of real property through TOD deeds, which are often of greater value than vehicles and boats.

The transfer upon death of an asset, no matter how valuable, does not affect a creditor's ability to enforce their liability upon that asset if necessary. The creditor maintains the right to make an allowed claim against the debtor's estate. If the decedent's estate is unable to satisfy the creditor's claim, the creditor could enforce the liability upon the TOD title as provided by Section 3(j) of the bill. TOD titles do not free the asset from the decedent's debts, they simply rearrange the process by which the creditor can access the asset if necessary. TOD assets are removed from probate, but can be pulled back in to if the decedent's estate cannot repay all their debts and obligations.

Feel free to contact my office or Megan Holland at 465-4940 if there are any further questions.