QUINLIVAN & HUGHES, P.A.
ATTORNEYS AT LAW

Transfer on Death Deeds (TODD)

ADVANTAGES

⇒ Avoids Probate
No probate is necessary upon the death of grantor owner for any property transferred.

⇒ Value to Beneficiary
Grantee beneficiary receives a tax basis stepped up to the fair market value of the property, as of the date of the grantor owner's death.

⇒ Lifetime Control
- Grantor owner maintains absolute control over the property during lifetime, including the sole right to live on the property and control the use of during lifetime.
- No loss of control for sale during lifetime or to mortgage the property.

⇒ Revocable
Grantor owner can revoke the deed by a revocation document, later TODD, or transfer to a third party.

⇒ Real Estate Taxes
- Grantor owner can retain homestead status as long as living in the home.
- For agricultural properties, grantor owner can continue to seek Green Acres tax treatment provided he or she otherwise qualifies for the program.

⇒ Corporate Farming Act
A TODD is not a current transfer of title and therefore the grantor owner remains the owner of farm property. Compare to a deed into a revocable trust, which requires a corporate farm application.

DISADVANTAGES

⇒ No Effect on Medical Assistance
- A transfer of a life estate may be able to shelter some part of property from Medical Assistance claims or liens but a TODD does not convey a present interest and therefore the grantee beneficiary receives the property subject to any claim or lien against the property for Medical Assistance.
- An Application for a Certificate of Clearance must be submitted to the applicable county's Medical Assistance Estate Recovery Program, which will then either release any potential claim or encumber the property.

⇒ County Record Required
A TODD must be filed with the County Recorder of Registrar of Titles prior to the death of the grantor owner to be effective.

⇒ Title Issues
- Property held by joint tenants may create potential unintended consequences if the TODD is incorrectly drafted to address joint tenancy.
- Although a deed to a class of individuals is technically possible, (e.g. "to my children who survive me") doing so without naming the children would require a probate proceeding to identify the members of the class gift.
- A TODD does not transfer after-acquired title unless specifically stated in the deed.

⇒ Insurance
Contact your insurance agent to arrange for insurance after death of grantor owner or make beneficiary aware of need to insure property immediately upon death.

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