Administrator Program
Wednesday, November 16, 2022
9:30am-10:30am

CC2_Texas’ Better Way to Preserve Family Estate Property

Presented by:
Paul Zambie, Attorney, Texas Legal Services Center
TRANSFER ON DEATH DEED

Texas’ Better Way to Preserve Family Estate Property

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Who is TLSC?

- Founded in 1977, TLSC is a nonprofit organization which manages more than a dozen practice areas and serves all 254 Texas counties.

- Our mission is to ensure equal justice for all Texans by providing legal advice, advocacy, education, and by empowering, and representing vulnerable and underserved Texans while reshaping the greater legal system that impacts us all.

WE HELP WITH

Family, Parenting, and Child Welfare

Supporting families and individuals through domestic legal matters, such as custody, visitation rights, child support, child safety, and name changes.

- Parenting Order Livechat (POLL)
- Family Helpline
WE HELP WITH

Accessing Government Benefits
Helping you get the Medicare and Medicaid.
- Legal Hotline for Texans (LHT)

WE HELP WITH

Senior Retirement
Offering support, education, and guidance for legal matters that affect us later in life.
- South Central Pension Rights Project
WE HELP WITH

Overcoming Violence, Abuse, and Stalking

Helping individuals who’ve experienced domestic violence, sexual abuse, and other violent crimes stay safe, receive financial compensation, and work through numerous legal considerations.

- Crime Victims Legal Services
- LASSA Hotline (Sexual assault)

WE HELP WITH

Discrimination and Social Justice

Challenging inequities faced by people with disabilities, people of color, immigrants, women, and the LGBTQ+ community.

- Impact Litigation
WE HELP WITH

Employment and Work-Relates Concerns
Expunging criminal records, helping acquire occupational driver’s licenses, and removing other legal barriers that hold you back from landing a job.
- Virtual Self-Help Center

WE HELP WITH

Accessing Military Benefits and Other Veterans Issues
Helping veterans and their families in most civil legal matters, including military discharge upgrades and accessing VA benefits.
- Texas Veterans Legal Assistance
WE HELP WITH
Housing and Financial Matters
Ensuring your home is a safe place to live, and helping you navigate bankruptcy, debt collection, and other financial issues.

- Eviction Helpline
- Veterans Foreclosure Prevention Project

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Transfer on Death Deed

What is the Transfer on Death Deed

- Transfers real property without the need for probate
- TODD effective in Texas as of September 1, 2015
- Ch. 114 of the Estates Code
- ½ of states have TODD/Beneficiary deed
Impacts of Dying without a Will

- Court decides recipients of property
- May be split among several heirs
- Adds stress/uncertainty to financial matters
- May lead to unpaid taxes/loss of revenue
- May result in abandonment
- More difficult to hold wealth and transfer to heirs

Benefits of TODD

- No need for costly and lengthy probate
- Deed passes right/title to property upon death
- Avoids splintering of Estate Property
- Avoids Medicaid estate recovery provisions
- Can negate need for a will in certain situations
Medicaid Estate Recovery (MERP)

- Property may be included in recoverable assets for Medicaid long term care
- History of MERP in Texas
- People refuse much needed benefits
- 5 year lookback

Who Qualifies

Transferor(s)
- Any property owner in Texas
- Any age or income level
- Can NOT be executed by agent with Power of Attorney
  - Must be competent
- Must own property outside of trust or corporation
- Only for real property, not personal property
- Transfers interest owned at time of death
Who Qualifies

Beneficiary(s)
- Must survive passing of Grantor by 5 days (120 days)
- May designate multiple or alternate beneficiaries
- May leave to organization or association

Requirements
- Name/Address of Grantor
- Legal description of property
- Name/Address of one or more beneficiaries
- Have deed notarized
- File TODD with local County Clerk where property is located before death of Transferor
- May not be prepared for another by a non-attorney – www.TexasLawHelp.org
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**TODD vs Will**

**TODD vs Will**

- Will and TODD requirements
- TODD provisions trump those in a will
- Avoid Inconsistencies
- Recording vs Informing

**TODD**

**Effect of TODD Filing**

- Transferor retains all ownership rights and responsibilities
  - must pay taxes, remaining mortgage
  - may sell, obtain mortgage
- No Interest in Beneficiary
- No effect-public assistance
- Not reachable by Beneficiary’s creditors
Receiving Real Property Through TODD

- Beneficiary steps in shoes of grantor
- Must file death certificate and affidavit of death
- Liens, creditors’ claims pass with property
- Title may be unsettled for two (2) years
- Mortgages, taxes responsibility of new owner
- Estate Representative may assert claims
- Stepped up value
- Taxes may be higher
- May disclaim

AFFIDAVIT OF HEIRSHIP

- When someone dies intestate without a will
- False sense of security
- Filled out by Family from deceased perspective
- Must be signed by a disinterested 3rd party
- Filed at County clerk’s office – Deed Records
- On file for 5 years before have to accept
Separate vs Community Property

Community Property
- Property acquired during the marriage
- Property passes to Surviving Spouse upon submission of further proof - Affidavit of heirship
- TODD does not correct past title issues

Separate Property
- Owned prior to Marriage
- Obtained during marriage by gift or inheritance
- Spouse may transfer his/her share to anyone

Revocation

TODD may be revoked

In a number of ways:
- File a Cancellation
- File a new Transfer on Death Deed
- Divorce - if current spouse is beneficiary
- All documents must be filed before death
- A subsequent will does not revoke a TODD
- Tearing up deed does not revoke
Texas Legal Services Center

- Serves all 254 counties in Texas
- Spanish speaking
- Notarization and filing fees

Resources

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<thead>
<tr>
<th>The Family Helpline</th>
<th>The Legal Hotline for Texans</th>
<th>Texas Veterans Legal Assistance Project</th>
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<tr>
<td>Monday - Friday</td>
<td>9:00 AM - 6:00 PM</td>
<td>Monday - Friday</td>
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<tr>
<td>844.888.6565</td>
<td>800.622.2520, Option 3</td>
<td>800.622.2520, Option 2</td>
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<th>South Central Pension Rights Project</th>
<th>Crime Victims Legal Services</th>
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<tr>
<td>844.303.SAFE (7233), Option 1</td>
<td>800.443.2528</td>
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