

TRANSFER ON DEATH (TOD) ACCOUNTS

A Prudent Way to Distribute Assets or a Trap for the Unwary?

By James A. Ritter, Esq.

In recent years, there has been a substantial increase in the use of Transfer on Death (TOD) accounts by financial planners under the theory that the assets will bypass the probate process and the assets will “immediately” pass to the beneficiaries upon death. In some cases, it may be part of a valid estate plan; however, before doing so, make sure that you have considered the following:

TOD ACCOUNTS DO NOT AVOID DEATH TAXES!

In Pennsylvania, the entire value of a TOD account is subject to inheritance tax.

WHO IS TO PAY THE DECEDENT’S FINAL BILLS?

With TOD accounts, the liquid assets are distributed “immediately” after death, before the payment of the decedent’s final bills and inheritance tax.

If all liquid assets are registered TOD accounts, a concern arises as to whether the estate has enough “cash flow” to pay the decedent’s bills, including Pennsylvania Inheritance Tax. In many cases, the heirs must “loan” the money back to the estate to pay the bills. This may be problematic if one of the heirs refuses to pay his or her share of the bills from his or her TOD account.

Traditionally, under the probate process, the decedent’s assets are used to pay the decedents final bills, including inheritance tax. After all assets are liquidated, including the disposition of any real estate, distribution of the net estate occurs. Generally speaking, the average time for settlement of a probate estate is six to nine months

AGE OF BENEFICIARY OF TOD ACCOUNT

With a TOD account, distribution is mandatory to the beneficiary at twenty-one. Traditionally, under a Will, the testator can determine the proper age for the beneficiary to receive an inheritance. Many clients choose the age of twenty-five or older.

BENEFICIARY OF TOD ACCOUNT DIES BEFORE ACCOUNT HOLDER

Under the TOD account, the contract of the particular institution that holds the TOD account must be examined to determine a successor beneficiary. For example, some companies provide that the share goes to the remaining beneficiaries of the account holder (i.e. siblings) and not the deceased beneficiaries’ children.

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Traditionally, under a Will, if a beneficiary dies, the Testator can provide for a successor beneficiary (i.e. child or children of deceased beneficiary).

WHO PAYS THE DEATH TAX?

Traditionally, under the probate process, the estate pays all of the death taxes. In the event that the heirs under the Will are different than the named beneficiaries of the TOD account, an unexpected result may occur. The language in a Will regarding payment of the death tax should be reviewed carefully in the case of the establishment of any TOD accounts.

In conclusion, TOD Accounts should be used sparingly and with extreme caution.

JAMES A. RITTER focuses his practice in the areas of real estate, wills, estate planning and estate administration. Jim helps families plan for the future with wills, powers of attorney, living wills and advanced health care directives, estate planning, trusts, elder law and business succession planning.

Protecting and maintaining the financial security of your family is our goal. **Gross McGinley's Wills, Trusts and Estates Group** has extensive experience in estate planning and the administration of estates and trusts. Our skilled and knowledgeable attorneys design a customized estate plan to fit your particular financial and familial situation including young families at the start of their journey, blended families, business owners, and professionals. If you would like to further discuss your estate planning needs and the use of TOD accounts, please contact us today.

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