

All about

Estate Planning & Types of Deeds



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Your Presenters

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Types of Deeds

01. Warranty Deed

02. Special Warranty Deed

03. QuitClaim Deed

04. Trustee's Deed

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Warranty Deed

- Conveyances Act, 765 ILCS 5/1, et seq.
- Grantor covenants to warrant and defend title against all claims
 - Lawful owner
 - Free from encumbrances
 - Warrants to heirs and assigns peaceable possession and will defend against claims to the contrary

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Special Warranty Deed

A Promise of Clear Title, Philip J. Vacco, ISBA Journal March 2021

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Special Warranty Deed

- Grantor warrants and defends title against claims arising under the Grantor
 - Limits liability of Grantor
 - Limits liability of Grantee as well
- 7.0 allows for such a deed, as the contract only requires “good and merchantable title to the Real Estate (sic) by recordable Warranty Deed....”

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Quitclaim Deed

- Grantee beware-conveys title to the property without warranting Grantor has ownership and there are no encumbrances; no warranty of title.

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Transfer on Death Instruments (TODIs): What are they?



A legal document that allows an owner of real estate to transfer their interest in the property upon death without going through probate court.

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TODIs: How do they work?

- » Designate a beneficiary to receive the property upon death
- » Owner retains full control and ownership during lifetime
- » Property transfers automatically to beneficiary at time of death

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TODI: Benefits

1. MAY Avoid probate court
2. Simplify the transfer of assets after death
3. Provides flexibility for changing life circumstances
4. Can save time and money for beneficiaries
5. Owner can change or revoke TODI at any time
6. Beneficiary can be individual or organization

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TODI updates

- If made after 1/1/12 and owner dies after 1/1/22, can transfer any real estate, commercial or residential.
 - Co-op excluded
- If revoked, revocation must be recorded prior to Grantor's death
- Owner's spousal rights
 - Spouse can renounce within seven (7) months
 - If Grantor has descendants renouncing spouse gets 1/3 interest
 - If Grantor has no descendants, renouncing spouse gets 1/2 interest
- POA cannot be used to create a TODI, but a Grantor can direct another to execute a TODI

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Limited Liability Companies (LLCs): What are they?



An LLC is a legal business entity that combines the limited liability protection of a corporation with the flexibility and pass-through taxation of a partnership.

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LLCs: How do they work?

- »» A separate legal entity created to own and manage property
- »» Owners called “members” and have limited liability for debts or liabilities incurred
- »» Can be managed by member or designated manager

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LLCs: What are the benefits?

- »» Liability Protection
- »» Privacy
- »» Pass-Through Taxation

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Estate Planning

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Estate Planning

- What is estate planning?
- Why should your clients be interested in estate planning?

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Estate Planning Goals

- While Living
 - Provides for asset management in the event of disability
 - Provides instructions for healthcare decision making
 - Protects assets from long term care costs and expenses
- At Death
 - Determines directions for asset distribution after death
 - Effective tool for tax planning
 - Reduces expenses and delays

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What does your estate look like?

» Assets: Life insurance policies, real estate, personal property, business interests, stocks, bonds, cryptocurrency

» Liabilities: final expenses, accounting fees, appraiser fees, debts to the decedent, probate fees, attorneys fees, executor commission

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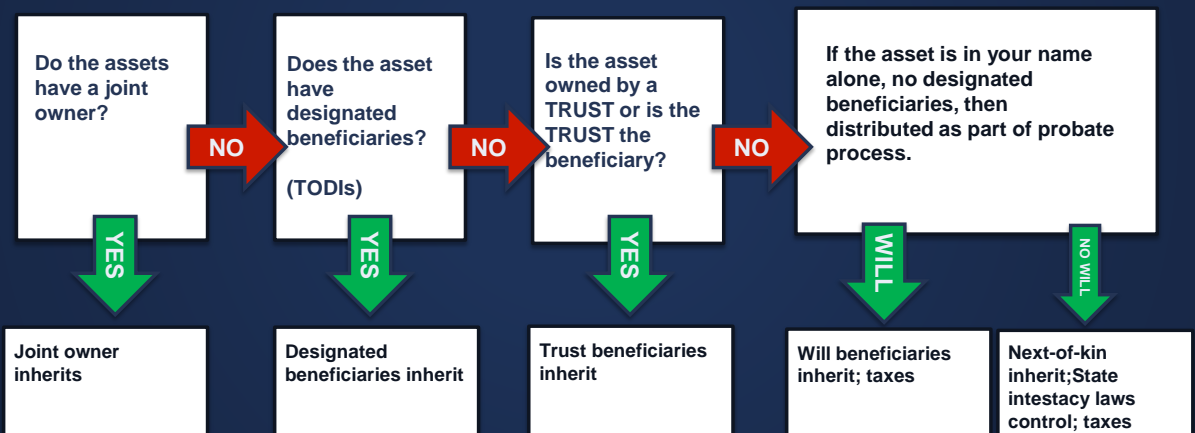
Why should your clients consider Proactive planning?

- Provides a sense of security, forethought, and independence
- Promotes estate preservation
- Allows for intentions to be carried forward and honored

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Probate Process



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Probate Disadvantages

- Time
- Cost*
 - Court Fees
 - Executor Fees
 - Attorneys' Fees
 - Accounting Fees
 - Appraisal & Valuation Fees
 - Bond Fees
- Publicity

<https://www.thebalancemoney.com/how-much-does-probate-cost-3505268>

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Land Trusts: What are they?



trustee holds title to real property on behalf of a beneficiary



beneficiary has rights to use and enjoy the property; trustee has legal ownership and control.

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Land Trusts: Illinois Law



Any express agreement or arrangement whereof a use, confidence or trust is declared of any land, or of any charge upon land, for the use or benefit of any beneficiary, under which the title to real property, both legal and equitable, is held by a trustee, subject only to the execution of the trust, which may be enforced by the beneficiaries who have the exclusive right to manage and control the real estate, to have the possession thereof, to receive the net proceeds from the rental, sale, hypothecation or other disposition thereof, and under which the interest of the beneficiary is personal property only.

765 ILCS 405/1

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Land Trusts: Illinois Law



any arrangement under which the title, both legal and equitable, to real property, is held by a trustee and the interest of the beneficiary is personal property and under which the beneficiary or any person designated in writing by the beneficiary, has the exclusive power to direct or control the trustee in dealing with the title and the exclusive control of the management, operation, renting and selling of the trust property together with the exclusive right to the earnings, avails and proceeds of said property is in the beneficiary of the trust.

765 ILCS 430/1

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Land Trusts: Illinois Law



“Beneficial interest” means “any interest, regardless of how small or minimal such interest may be, in a land trust, held by a trustee for the benefit of beneficiaries of such land trust.”

765 ILCS 405/1

“Beneficiary” means “any person, body politic, corporate or other entity having a beneficial interest in a land trust.” Id.

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Trusts: Who are the parties?



Grantor: Creates Trust



Trustee: Manages Trust



Beneficiary: Benefits from Trust

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Land Trusts: How do they work?

- »» The arrangement is created using two instruments: a deed in trust and a trust agreement.
- »» The trust identifies beneficiaries who retain rights related to the use and enjoyment of the property.
- »» Trustee retains legal control; Trust retains legal ownership.

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Land Trusts: Benefits

- »» Privacy Protection
- »» Ease of Transfer + Liability Protection
- »» Ease of succession

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Land Trusts: Drawbacks

- »» Often associated with maintenance fees asserted by 3rd party trustee
- »» When beneficiaries finally sell, the accumulated administration fees may burden estate
- »» Can only hold real estate or related assets (physical property, notes, mortgages, etc)

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Revocable Trusts



trustee holds title to real property on behalf of a beneficiary



beneficiary has rights to use and enjoy the property; trustee has legal ownership and control.

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Revocable Trusts: How do they work?

- » The arrangement is created using two instruments: a deed in trust and a trust agreement.
- » The trust identifies beneficiaries who retain rights related to the use and enjoyment of the property.
- » Trustee retains legal control; Trust retains legal ownership.

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Revocable Trusts: How do they work?

- » Allows settlor to manage assets during their life, including during any time when settlor is incapacitated, at which point revocable trust may become irrevocable by its terms or functionally irrevocable if settlor doesn't have capacity to revoke.
- » Often used as a will substitute, to dispose of assets at death.

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Revocable Trusts: Requirements

»» At least 18 years old.

»» Of sound mind and memory.

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Soundness of Mind

Soundness of mind and memory requires that the settlor, at the time settlor executes the trust, be capable of knowing:



- Who the natural objects of the settlor's bounty are.

This typically includes individuals related to the testator by blood or affection (*DeHart v. DeHart*, 2013 IL 114137, ¶ 20 (2013)). Persons related to testator by affection include a stepchild or an unmarried partner (see *In re Estate of Glogovsek*, 248 Ill. App. 3d 784, 795-96 (1993)).

- The nature and extent of the settlor's property.
- That the settlor is creating a trust and disposing of the settlor's property (see *Carnahan v. Hamilton*, 265 Ill. 508, 526 (1914)).

(*Kelley v. First State Bank of Princeton*, 81 Ill. App. 3d 402, 412 (1980).)

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Revocable Trusts: Key Statutes

- » Illinois Trust Code (760 ILCS 3/101 to 3/1506):
Sets out specific rules governing trusts and fiduciaries
- » Illinois Principal and Income Act (760 ILCS 15/1 to 15/17):
Sets out rules governing management and investment of trust property.
- » Disclaimer Under Nontestamentary Instrument Act (760 ILCS 25/0.01 and 25/1): Provides for disclaimer of property under nontestamentary instruments.

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Revocable Trusts: Benefits

- » Don't let your client's assets devolve into a generational tug of war!
- » Avoid the administration and transfer costs associated with land trusts
- » Most lenders will work with you!

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You've Got Options!

