



The Hidden Costs of DIY Estate Planning: Why Delaware's New Transfer on Death Deeds Aren't a Complete Solution

Delaware recently adopted the Uniform Real Property Transfer on Death Act, giving property owners a new tool to avoid probate. At first glance, Transfer on Death (TOD) deeds seem like an attractive DIY solution because they're simple, inexpensive, and promise to transfer your home directly to your beneficiaries without court involvement.

But as with many aspects of estate planning, what appears simple on the surface can create costly complications down the road.

Understanding Delaware's TOD Deed Law

The new law allows Delaware property owners to execute and record a TOD deed designating beneficiaries who will automatically receive real estate upon the owner's death. The Act provides standardized forms, creates notification procedures for the Register of Wills, and ensures property insurance coverage for 60 days after death.

Importantly, TOD deeds take precedence over instructions in your Will, meaning if there's a conflict, the TOD deed wins.

For someone who owns only Delaware real estate with no other significant assets, a TOD deed might seem sufficient. But this is rarely the full picture. Here's what TOD deeds can't do:

They Only Cover Delaware Real Estate If you own property in multiple states, you'll still face probate proceedings in each jurisdiction where your real estate isn't covered by a TOD deed. A properly funded Trust, by contrast, can hold all your real property regardless of location, avoiding probate in each state where property is owned.

They Don't Address Your Other Assets Bank accounts, investment portfolios, vehicles, and personal property all remain exposed to probate. A TOD deed solves one piece of the puzzle while leaving the rest of your estate vulnerable to the time and expense of court proceedings.

TITLING YOUR DELAWARE AND OUT OF STATE REAL ESTATE IN YOUR TRUST WILL AVOID PROBATE IN EACH STATE.

They Offer Zero Flexibility Trusts allow you to craft specific instructions for different scenarios. TOD deeds don't. Consider these limitations:

- **No sale provisions:** Your beneficiaries receive the property as-is, even if selling it and dividing cash would be far more practical given market conditions or their circumstances.
- **No contingency planning:** If your named beneficiary dies before you, the property may end up in probate anyway, defeating the entire purpose.
- **No protective provisions:** Trusts can shield inheritances from a beneficiary's divorce, bankruptcy, creditors, or impact on public benefits eligibility. TOD deeds provide no such protection.

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The Co-Ownership Problem When you name multiple beneficiaries on a TOD deed, they become co-owners of the property. This often creates exactly the kind of family conflict estate planning should prevent. What happens when:

- One sibling wants to sell and another wants to keep the family home?
- Co-owners have different financial abilities to contribute to taxes, insurance, and maintenance?
- One beneficiary wants to live in the property while others want rental income?

Every decision requires unanimous agreement, and resolving disputes may ultimately require court intervention, potentially costing more than probate would have.

Long-Term Care Exposure Perhaps most significantly, TOD deeds do nothing to protect your real estate from long-term care costs. If you require nursing home care and need to qualify for Medicaid, your home remains a countable asset. Proper Medicaid planning through a Trust can help preserve your property rather than seeing it

depleted by care costs that can exceed \$150,000 annually.

Deed Fraud Deed fraud is on the rise nationwide, with criminals filing fraudulent documents to steal property. While no system is foolproof, the formality of Trust ownership may give bad actors pause. More importantly, if someone attempts to file a TOD deed on property already titled in a Trust, the inconsistency should raise red flags at the Recorder of Deeds office, potentially stopping fraud before it succeeds.

Delaware's TOD deed law provides a useful tool in very specific, yet limited circumstances. But like most DIY estate planning shortcuts, it's not a comprehensive solution. The "hidden costs" are often able to be measured in dollars, but they also appear as family conflict, lost flexibility, vulnerability to care costs, and missed opportunities to protect your beneficiaries.

Estate planning isn't one-size-fits-all. Before choosing a TOD deed, or any other do-it-yourself approach, consider discussing your complete situation with an experienced estate planning and elder law attorney. The modest investment in proper planning now can save your family from significant expense, stress, and heartache later.

DEATH CERTIFICATES - YOU MAY NEED FEWER THAN YOU THINK

Many financial institutions have updated their policies regarding death certificates, reducing the number needed during the course of administration. Consider ordering 5 original death certificates initially. Since certificates cost \$25 each, starting with fewer can save money, and you can order more later if needed.

TIME OUT — STAFF PROFILE

Torrie M. Lubinski - Client Services Coordinator

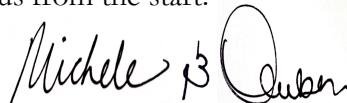


ON THE CLOCK: When you walk into our Seaford office, the first person you'll meet is Torrie Lubinski, and chances are, she'll greet you with a warm smile and remember you from your last visit. After earning her Bachelor of Arts in Political Science from Salisbury University, Torrie discovered that her passion wasn't just about understanding systems and policies, it was about the people those systems serve. Torrie has launched her career in roles that allow her to support people when they need it the most. Whether she's coordinating schedules, fielding questions, or simply offering a listening ear, Torrie takes pride in creating positive experiences for everyone. Her background in crisis intervention has given her a unique ability to stay calm under pressure and help others feel grounded during uncertain times.

OFF THE CLOCK: Outside the office, you'll find Torrie doing what she loves most: relaxing at the beach with her French Bulldog, Baxter. There's nothing quite like a morning walk on the sand or an afternoon with her toes in the water to help her recharge. Baxter, for his part, is less interested in the ocean and more interested in snacks and naps.

A note from the attorneys...

As we step into 2026, we're reminded that meaningful progress is about enhancement, not overhaul. This year, we're embracing growth that honors our foundation; welcoming new team members, adapting to new laws, and finding new ways to serve you and our community better, all while staying rooted in the values that have guided us from the start.



LEGAL MUMBO JUMBO *Legal Language in Layman's Terms*

SPENDTHRIFT PROVISION

A clause in a trust that prevents the beneficiary from selling or pledging their future payments and protects the trust assets from the beneficiary's creditors.

UPCOMING EVENTS

28	What Happens When You Die: Panel 5:00 p.m. (also 1/29 at 9 & 11:30 a.m.) Jan CAMP Rehoboth
10	CARES: Off The Clock 11:30 a.m. Feb GoToWebinar
11	Office Closure February 11th - 16th Feb
18	Elder Law Workshop 2:00 p.m. Feb Nanticoke Senior Center

For more information, visit:
pwwlaw.com/events-resources



BELLA'S BRIEF *The Office from a Dog's Perspective*

Humans obsess over "New Year, New You" like they're getting a software update on January 1st. Spoiler alert: you're running the same operating system, just with a fresh calendar and maybe some questionable resolutions about kale.

But here's the thing, sometimes "new" actually means something. This edition is packed with info about the newest changes affecting estate planning and elder law; the kind of stuff that actually impacts your plans and your people. But if you need proof that laws are changing everywhere, concentrate on this: California just banned cat declawing, Colorado made it illegal for insurance companies to discriminate based on dog breeds, and there's serious debate about whether dogs should have "unrestricted access to outdoor exercise yards large enough to achieve full stride." The law is moving for humans, and apparently for us canines too.

And speaking of new, we've got three fresh faces around the office. That's not turnover, folks. That's what happens when you're doing something right and people actually want to join the pack. It's growth. It's expansion. It's proof that good work attracts good humans. I've been conducting my standard vetting process (sniff test, treats protocol, proper head-scratching technique), and I'm pleased to report they're all passing with flying colors.

Here's what I've learned from watching countless new years roll by: the best kind of "new" isn't about reinventing yourself or starting from scratch. It's about building on what's already solid. Taking what works and making it better. Adding to the team without losing what made you special in the first place. That's the sweet spot, evolution without identity loss.

Mom's always going on about how change is the only constant, which sounds like something she read on a motivational poster, but even a stopped clock is right twice a day. The trick isn't avoiding change, it's steering into it with your tail up and your ears forward.

So here's to the new: new laws to consider, new team members who get it, and another year of doing what we do best, just better.

xoxo, Bella


NEW & NOTEWORTHY

*We've seen so many changes related to our work.
Let's recap 2024 & 2025 legal updates.*

UNIFORM HEALTH CARE DECISIONS ACT OF 2023

1. Effective September 30, 2025, The Uniform Health-Care Decisions Act of 2023 (UHCDA) is a law that governs health care decisions and Advance Health Care Directives in Delaware, superseding the 1993 Act.
2. An Agent's authority to make health-care decisions only begins when the patient lacks capacity. The UHCDA modernizes guidelines for determining incapacity, recognizing that capacity can vary by decision type. The UHCDA does not authorize mercy killing, assisted suicide, or euthanasia. *See below.*
3. The UHCDA removes some of the administrative barriers, like signing formalities and acceptable witnesses, making the creation of an Advance Health Care Directive less cumbersome.
4. The UHCDA authorizes the use of Advance Health Care Directives exclusively for mental health care. An institution providing mental health care must check if the individual has a mental health directive, offer educational material, and assist individuals who wish to create one.
5. When a patient lacks capacity and has no appointed Agent, the UHCDA allows "surrogates" to make decisions. The priority list begins with a spouse or domestic partner, then children or parents, but now includes cohabitants and, in some cases, adults who have routinely assisted the patient in supported decision-making.

HOUSE BILL 140: THE END OF LIFE OPTIONS ACT

Delaware's End-of-Life Options Act, signed into law on May 20, 2025, allows terminally ill adults with a prognosis of six months or less to request life-ending medication. The law requires strict safeguards including confirmation by two doctors, multiple requests (two oral, one written), waiting periods, discussion of alternative treatments, and ensures only the patient, with full capacity and the right to change their mind, can make the request.

Q: Does this new law affect my Advance Health Care Directive?

A: No. Advance Health Care Directives apply when a person lacks capacity, while the End-Of-Life Options Act requires decision-making ability.

Q: If The End-of-Life Options Act interests me do I still need an Advance Health Care Directive?

A: Yes. These documents serve different purposes and apply in different situations.

Q: Am I required to update my existing estate plan because of this new law?

A: No. The End-of-Life Options Act doesn't require changes to your existing estate plan.

Q: Can my Agent(s) under my Power of Attorney make this end-of-life decision for me?

A: No. The law specifically states that no one can request this medication on behalf of another person.

Q: If I move to a nursing home or care facility, would that affect my right to use this option?

A: Possibly. Healthcare institutions may prohibit this practice on their premises, so inquire about policies when considering facilities.

Q: Are there any special estate planning considerations if I'm diagnosed with a terminal illness?

A: While not directly related to this law, consider ensuring documents are updated, beneficiary designations are current, and whether accelerating planned gifts might be appropriate.

NEW & NOTEWORTHY RECAP CONT'D

H.R. 1, AKA ONE BIG BEAUTIFUL BILL ACT

Signed into law on July 4, 2025, OBBBA includes significant tax changes *relevant to estate planning and elder law*.

Federal Estate Tax (Effective January 1, 2026)

- Exemption permanently set at \$15 million per individual and \$30 million for married couples, adjusted annually.
- Portability for married couples has not been interrupted.
- Less than 0.2% of adult decedents will owe federal estate tax.
- Delaware has no death taxes, but if you own real estate in other states, check their estate/inheritance tax rules.

Gift Tax

- Annual exclusion remains \$19,000 per person per year.
- Gifts exceeding this amount require a gift tax return and reduce your \$15 million lifetime exemption, though no immediate tax is owed.

Notable Provisions

- Social Security income will not be reduced as a result of the Act. Consult your tax advisor to explore the new \$6,000 tax deduction for taxpayers 65 and older.
- Medicaid Long-Term Care eligibility rules, including lookback periods and asset limits, remain unchanged.

For most clients, OBBBA won't affect existing estate plans or elder law needs. We recommend consulting tax and financial planning professionals for personalized advice.

VEHICLE BENEFICIARIES - A NEW MUST-DO

Delaware law allows you to name a Transfer-on-Death (TOD) beneficiary for your vehicle, but this designation must be recorded on the title during your lifetime. We recommend visiting the DMV now to reissue the title showing your TOD beneficiary. The DMV no longer accepts a TOD form after the vehicle owner's death.

DEED FRAUD PREVENTION

Many clients have seen warnings about deed fraud. All Delaware counties offer alert systems that notify you if your deed is accessed or changed. While alerts don't prevent fraud, immediate notification helps resolve issues quickly.

Sussex County: <https://sussexcountyde.gov/deed-fraud-alert>

Kent County: www.kentcountyde.gov/My-Government/Departments/Deeds-Office/Property-Fraud

New Castle County: www.newcastledo.gov/2398/AlertMe

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