**Creating a Transfer on Death Instrument**

When a person passes away, his or her will must go through probate. Unfortunately, this can be a costly and time-consuming process. Fortunately, there are some ways to avoid probate, one of which is to create a Transfer on Death Instrument (TODI), which was made possible by the passage of The Illinois Residential Real Property Transfer Act in 2012. Under this law, a person can transfer residential real estate to one or more beneficiaries upon his or her death, without having to go through probate. To learn more about preparing a TODI, please contact a member of our legal team to schedule a case evaluation with an experienced [estate planning](http://orlowskywilson.com/areas-of-law/estate-planning-services/trusts/) attorney.

**Preparing a TODI**

TODIs are created prior to the original owner’s death and will only become effective when he or she passes away. If the property was owned jointly, then the TODI will not go into effect until the last joint tenant’s death. TODIs are known as [non-testamentary transfers](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3382&ChapterID=60), which means that the property can pass to one or more specified beneficiaries without needing to go through the probate process. Possible beneficiaries include:

* Individuals;
* Corporations;
* Business trusts;
* Estates;
* Testamentary, irrevocable, and revocable trusts;
* Land trusts;
* Partnerships;
* Limited liability companies;
* Associations;
* Joint ventures;
* Public corporations;
* Government subdivisions;
* Agencies;
* Instrumentalities; and
* Any other commercial or legal entity.

Before any of these individuals or entities can be declared a beneficiary, the TODI must meet a series of requirements, including that it:

* Complies with the conditions of a deed;
* States that the transfer will not take place until the owner’s death;
* Is recorded in the county where the property is located; and
* Is in writing and signed in the presence of two witnesses and a notary public.

Finally, the property owner must be over the age of 18 years old and of sound mind.

**Revocation**

TODIs are revocable, so owners who change their minds about one or more beneficiaries can amend the TODI by creating either:

* A subsequent TODI that revokes the beneficiary designation of the former either expressly or by inconsistency; or
* An [instrument of revocation](https://www.isba.org/ibj/2011/12/thetransferondeathinstrumentcomesto).

As long as it was signed in the presence of witnesses and a notary, and the owner was of sound mind, a revocation will be considered valid. This is an important step because the last acknowledged and recorded TODI will be the transfer that goes into effect. In the event that an heir believes that a TODI was not created according to legal standards, the validity of the instrument can be challenged, as long as the action commences within either two years of the owner’s death or within six months of the date that the Letters of Office were issued for the estate. Finally, if the property owner sells the real estate prior to his or her death, the beneficiary will be entitled to any proceeds remaining from the sale.

**Call an Experienced Highland Park Estate Planning Attorney**

If you own real estate and are interested in bequeathing it to someone else upon your death, please contact [Orlowsky & Wilson, Ltd. Attorneys at Law](http://orlowskywilson.com/contact-us/) at 847-325-5559 to speak with an estate planning attorney who can explain your options.