



Transfer on Death Instruments

Everything you need to know

755 ILCS 27 - Real Property Transfer on Death Instrument Act

- ▶ A Transfer on Death Instrument is a document used to transfer real property upon the death of the owner(s) - TODI is limited to real property located in Illinois
- ▶ A designated beneficiary means a person designated to receive the property under a TODI
- ▶ Owner means individual who owns an interest in real property; owner does not include a trustee or individual acting in a fiduciary, representative or agency capacity who holds an interest in real property

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- ▶ A trust can be a beneficiary of a TODI if:
- ▶ The TODI is created at the time of a trust is in existence and identified in the TODI; or
- ▶ The TODI is created to a trustee of a trust created under the owner's will; or
- ▶ The TODI creates a trust

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- ▶ A TODI is revocable
- ▶ A TODI is nontestamentary
- ▶ If you use a TODI, the estate cannot use this to take the place of a will or other testamentary document
- ▶ A TODI is an estate planning tool used to reduce the estate to avoid probate
- ▶ Testamentary capacity is required

THIS INSTRUMENT WAS PREPARED BY/MAIL TO:

NAME & ADDRESS OF PROPERTY OWNER:

**ILLINOIS REAL PROPERTY TRANSFER ON DEATH INSTRUMENT (TODI)
PURSUANT TO § 755 LCS27/1 ET SEQ.**

THIS TRANSFER ON DEATH INSTRUMENT (hereinafter referred to as a TODI), which was completed and signed before a notary public on the following date: _____, by the property owner or owners, whose name(s) is/are: _____, and currently live(s) at the street address of: _____ in the City of: _____, and County of: _____, in the State of: _____ with a zip code of: _____, while being of sound mind and disposing memory, do/does now hereby make(s), declare(s) and publishes this TODI, stating and attesting to the following: That the above-referenced property owner(s), is/are, the **SOLE** owner(s) of the real property, under a duly recorded **DEED** or other **CONVEYANCE INSTRUMENT** which was recorded on the date of: _____ as document number: _____ with the proper County Agency in the County of: _____ in the State of Illinois. Furthermore, this TODI is intended to transfer the following real property:

LEGAL DESCRIPTION: CHECK WHICH APPLIES – WRITEN BELOW - or - SEE ATTACHED

PROPERTY INDEX NUMBER (PIN): _____

COMMONLY REFERRED TO ADDRESS: _____

Finally, the owner(s), while also being of competent mind and capacity, while waiving and releasing all rights under the Homestead Exemption laws of the State of Illinois, do(es) now hereby **CONVEY** and **TRANSFER** effective upon the death of the above-named **OWNER**, or last to die of the **OWNERS**, the above-described real property to the named **BENEFICIARY** or **BENEFICIARIES** on the following page in the specified **TENANCY TYPE** if multiple **BENEFICIARIES**.

SPECIAL NOTICE: This form is provided compliments of COOK COUNTY CLERK KARENA YARBROUGH, and DOES NOT CONSTITUTE LEGAL ADVICE. Furthermore, it is provided WITHOUT any TITLE EXAMINATION or REVIEW of your individual estate plan. PLEASE CONTACT AN ATTORNEY OR LICENSED ESTATE PLANNING PROFESSIONAL if you have additional questions, comments or concerns regarding how to complete this form. COOK COUNTY CLERK'S OFFICE STAFF MAY NOT assist you with the preparation of this, or any legal document.

TRANSFER ON DEATH INSTRUMENT – PAGE 2 (THIS INSTRUMENT IS EXEMPT PURSUANT TO § 35 LCS 200/31-45, PARA. PROPERTY TAX CODE)

As referenced on the foregoing page, the aforementioned OWNER(S) does now hereby CONVEY and TRANSFER, effective upon the death of the above-named OWNER, or last to die of the OWNERS, the above-described real property to the named BENEFICIARY or BENEFICIARIES in the specified TENANCY TYPE if multiple BENEFICIARIES are listed. Additionally, in the event the BENEFICIARY or BENEFICIARIES pre-decease the OWNER or OWNERS, the following CONTINGENCY BENEFICIARY or BENEFICIARIES should receive the interest outlined in this instrument, in the designated TENANCY TYPE:

BENEFICIARY (A)	BENEFICIARY (B)	BENEFICIARY (C)	BENEFICIARY (D)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If more BENEFICIARIES are desired, please attach separate sheet of paper with the full names of the desired additional BENEFICIARIES. Also, if there are multiple beneficiaries, the OWNER(S) desire(s) receive the transfer, it should be BENEFICIARIES IN THE FOLLOWING TENANCY TYPE:

CHOOSE ONE (ONLY): JOINT TENANTS IN COMMON W/ RIGHT OF SURVIVORSHIP -OR- TENANTS IN COMMON W/O RIGHT OF SURVIVORSHIP

In the event all of the above-referenced BENEFICIARIES pre-decease the owner/owners, the following CONTINGENCY BENEFICIARIES shall replace them:

CONTINGENCY BENEFICIARY (A)	CONTINGENCY BENEFICIARY (B)	CONTINGENCY BENEFICIARY (C)	CONTINGENCY BENEFICIARY (D)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I, or we, the SOLE OWNER(S) hereby swear and affirm that the foregoing wishes were made as my/our free and voluntary act for the purposes set forth.

PRINT OWNER NAME (A): _____	PRINT OWNER NAME (B): _____
SIGNATURE OF OWNER (A): _____	SIGNATURE OF OWNER (B): _____
DATE SIGNED BEFORE NOTARY: _____	DATE SIGNED BEFORE NOTARY: _____

WITNESS DECLARATION – THIS SECTION IS TO BE ATTESTED TO AND SIGNED IN THE PRESENCE OF THE OWNER/OWNERS, ALL WITNESSES, AND A NOTARY PUBLIC.

We, the undersigned witnesses, hereby certify that the foregoing TODI was executed and signed on the date referenced above, and signed by the owner(s) as her, his, or their voluntary TODI in our presence, at the request of her, him or them, and while also in the presence of one another. We also do now hereby swear and affirm that we are signing our names to this instrument with the belief and knowledge that the owner or owners, was or were, at the time of signing of sound mind and memory, and free from any undue influence or coercion by any parties, including us as witnesses.

PRINT WITNESS NAME (A): _____	PRINT WITNESS NAME (B): _____
SIGNATURE OF WITNESS (A): _____	SIGNATURE OF WITNESS (B): _____
DATE SIGNED BEFORE NOTARY: _____	DATE SIGNED BEFORE NOTARY: _____

NOTARY VERIFICATION SECTION:

STATE OF _____)	DATE NOTARIZED: _____
)S	
S COUNTY OF _____)	

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that the owner or owners, and witnesses, personally known to me to be the same persons whose names are subscribed on the foregoing instrument, appeared before me on the below date and signed, sealed and delivered the foregoing instrument as their free and voluntary act, for the uses and purposes therein set forth.

APPROXIMATE NOTARY STAMP BELOW:

PRINT NOTARY NAME: _____	SIGNATURE OF NOTARY: _____
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755 ILCS 27 - Real Property Transfer on Death Instrument Act valid, void and invalid

- ▶ To be valid, the TODI needs 2 witnesses and a notary
- ▶ When is a TODI invalidated?
 - ▶ - Spouse or beneficiary is a witness to execution
- ▶ Effect: the TODI is void to that witness's interest *only*
- ▶ Of course, there is an exception...
- ▶ Can be valid if there are 2 valid witnesses and a notary in addition to the invalid witness
- ▶ Testamentary capacity is required

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- ▶ TODI is effective without notice to the beneficiaries and no consideration is required
- ▶ TODI has no effect during owner's life time and does not change owner's responsibilities
- ▶ TODI does not effect the beneficiary's interest during owner's life time
~creditors or claimants of a beneficiary cannot make claims against the property
- ▶ Conversely, any claims filed against the owner's estate do attach to the real property as in a probate action
- ▶ Statute of Limitations on an action to contest the validity of a TODI is two years after date of death or six months if Letters of Office are issued

755 ILCS 27 - Death of Owner

- ▶ Upon the death of the owner(s), the beneficiaries execute and file Notice of Death Affidavit and Acceptance of TODI.

COOK COUNTY CLERK NOTICE OF DEATH AFFIDAVIT & TRANSFER ON DEATH INSTRUMENT (TODI) DEED
PAGE 2 OF 2 (COURTESYFORM)

In witness whereof, the undersigned beneficiaries hereby accept the transfer of residential real estate under the Transfer on Death Instrument, this _____ (day) of _____ (month), _____ (year).

Beneficiary Name & Signature Section:

_____	_____
Print Beneficiary Name Above	Print Beneficiary Name Above
_____	_____
Beneficiary Signature Above	Beneficiary Signature Above
_____	_____
Print Beneficiary Name Above	Print Beneficiary Name Above
_____	_____
Beneficiary Signature Above	Beneficiary Signature Above
_____	_____
Print Beneficiary Name Above	Print Beneficiary Name Above
_____	_____
Beneficiary Signature Above	Beneficiary Signature Above

Notary Public Section:

STATE OF ILLINOIS }
COUNTY OF _____ } SS

I, the undersigned, a Notary Public in and for the State aforesaid, DO HEREBY CERTIFY THAT

List the Name(s) of ALL Beneficiary(ies) who appeared personally before you ABOVE

personally known to me to be the same person or persons whose name or names are subscribed to the foregoing instrument, appeared before me this day in person and swore on oath to the above foregoing affidavit.

Signed and sworn to before me this _____ (day) of _____ (month), _____ (year).

Signature of Notary Above

Print Name of Notary Above

AFFIX NOTARY STAMP HERE

This form is
compliments of:

KARENA YARBROUGH
COOK COUNTY RECORDER OF DEEDS

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755 ILCS 27 - Real Property on Death Instrument Act - Advantages

- ▶ Avoid probate if real property is the only asset of the estate or if used in conjunction with a payable on death account for checking and savings accounts to dispose of estate assets
- ▶ TODI is less costly to draft and record than other estate planning documents
- ▶ Owners retain all rights and interests in the property while he/she/they are alive
- ▶ A beneficiary's creditors cannot file claims against the property while the owner is still alive



755 ILCS 27 - Real Property on Death Instrument Act - Disadvantages

- ▶ Does not avoid estate taxes
- ▶ Some young thang in a thong



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