

## Illinois Adopts a New Estate Planning Tool

Probate court proceedings are often confusing, costly, and time consuming. It is easy to see why so many people take steps to spare their families the hassle. In January, 2012, the State of Illinois joined sixteen other states in providing an option to help ease the process: Transfer on Death Deed.

The Illinois Uniform Real Property Transfer on Death Act permits owners of residential real property to execute a transfer on death deed, which allows the property to be transferred to a designated beneficiary upon the owner's death. Using this option can be an easy way to transfer the ownership of residential property when you die.

There are three requirements for creating a transfer on death deed. First, the transfer on death deed must name one or more new owners and be executed, witnessed, and acknowledged as set forth in Section 45 of the Act. Second, the deed must state that the transfer will occur upon the owner's death. Finally, the deed must be recorded before the owner's death in the public records of the county recorder of the county in which any part of the real estate is located. Failure to comply with any of these requirements renders the deed ineffective.

The Act prohibits an irrevocable transfer on death deed. The owner is free to revoke the beneficiary designation at any time prior to his or her death, by recording either:

- 1) a subsequent transfer on death deed that expressly or by inconsistency revokes the prior deed, or

- 2) an instrument of revocation that expressly revokes the prior deed.

Just as the deed must be recorded to be effective, a subsequent instrument must be recorded to effectuate a revocation.

The fundamental benefit of the transfer on death deed is that it does not operate until the owner's death. The beneficiary acquires no rights or interest in the property until then. An owner can sell the property during his lifetime and the deed becomes null and void.

When the real estate is owned in joint tenancy, an interesting scenario arises. The execution by a single joint owner does not sever the joint tenancy and the deed becomes ineffective unless the last living joint owner executes a transfer on death deed. The deed is also ineffective for individuals who own real estate as tenants in common.

Prior to the enactment of the property transfer on death act, putting the property in a revocable trust was the primary estate planning tool to avoid probate. However, revocable trusts involve significant costs for setup and maintenance over the course of the owner's lifetime. The transfer on death deed now offers individuals greater flexibility in estate planning and a cost-effective probate alternative.

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