

PREPARING

Your Texas Real Estate for Inheritance

If you work in Texas real estate, focusing on special district notices, title insurance, and client events, ensuring a smooth transition of your property to heirs can spare your loved ones significant legal and financial headaches. Proactive estate planning can help your heirs avoid court battles, delays, and unwelcome surprises.

Here are some key real estate steps to take in Texas before passing. By planning ahead with these tools and best practices, you can ensure your Texas real estate and related assets transfer smoothly to your heirs, minimizing cost, delay, and confusion.

1 CREATE ESSENTIAL LEGAL DOCUMENTS

WILL: Ensure you have a clear, up-to-date will specifying how you want your assets distributed. Without one, state intestacy laws will decide, which may not reflect your wishes.

POWERS OF ATTORNEY: Appoint an agent to manage your affairs if you become incapacitated. It is paramount that your will together with any amendments which are also known as a codicil be kept together in a secure location which is often the attorney whom assisted you with the will's preparation. Any old power of attorney(s) should be revoked and the agent notified.

BENEFICIARY DESIGNATIONS: For financial accounts, retirement accounts, and life insurance, regularly update named beneficiaries to match your wishes.

2 TITLE & OWNERSHIP ARRANGEMENTS

JOINT OWNERSHIP WITH RIGHT OF SURVIVORSHIP: Property held in this way passes directly to the surviving owner, bypassing probate. This is especially useful for married couples as Texas is a community property state.

For survivorship rights to be effective, the Deed itself must indicate the survivorship rights amongst the owners of the property and should be accompanied by a separate document filed in the public records which details the survivorship rights.

3 PROBATE-AVOIDANCE MECHANISMS

REVOCABLE AND IRREVOCABLE TRUST: Place your real estate and other assets into a trust, which directly transfers assets to named beneficiaries outside of probate.

TRANSFER ON DEATH DEED (TODD): Allows you to name a beneficiary for real property (like a house or land) without probate. The deed must be recorded in the county records before your death. The beneficiary receives property subject to existing liens, and title companies may be cautious during the creditor claim period (two years after death).

LADY BIRD & ENHANCED LADY BIRD DEED: In a Lady Bird Deed, the Grantor retains full ownership and control of the property while they are alive. Like the Transfer on Death Deed, an Enhanced Lady Bird Deed affords the Grantor the right to change, amend, or revoke the deed. Lady Bird deeds may sometimes be used to protect real property from Medicaid Estate Recovery claims as they are currently outside of Section 114.106 of the Estates Code.

4 HANDLING SPECIAL NOTICES & DISTRICTS

SPECIAL DISTRICT NOTICES (E.G., MUDS, PIDS): If your property is in a special district, ensure all required statutory notices are documented and up-to-date. Provide these to heirs and buyers as part of the records, as Texas law requires disclosure on transfer or sale.

STAY CURRENT WITH ANY RULE CHANGES: Texas periodically updates notice requirements—keep up with these to ensure compliance and avoid issues at closing.

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5 AFFIDAVIT OF HEIRSHIP

FOR HEIRSHIP TRANSFERS (NO WILL/PROBATE): If property needs to be transferred after death and probate is not desired, an Affidavit of Heirship may be prepared, notarized, and filed in the county records. This document identifies heirs and is often accepted by title companies for clean title if no dispute exists, though it does not transfer title alone—record a deed alongside it if heirs wish to sell or transfer.

6 KEEP RECORDS CLEAN

TITLE INSURANCE: Ensure all liens, mortgages, judgments, and encumbrances are documented so heirs can settle claims efficiently.

MAINTAIN A CLEAN CHAIN OF TITLE: Maintain a Clean Chain of Title: Any errors or missing links in title can delay transfers and sales, so resolve outstanding title issues now.

7 COMMUNICATE & EDUCATE

INFORM YOUR HEIRS: Share records, explain your intent, and instruct them on steps such as notice delivery requirements and how to file an affidavit of death for a TODD.

PROFESSIONAL GUIDANCE: Regularly consult an estate planning attorney (*one knowledgeable in Texas real estate and title*) to adapt to any law or procedural changes.

8 OTHER SMART PRACTICES

UPDATE DOCUMENTS AFTER MAJOR LIFE CHANGES: Marriage, divorce, births, or deaths should trigger an update to your will, trusts, and beneficiary designations.

DOCUMENT LOCATION: Store original deeds, policies, and special district paperwork in a secure, accessible place for your heirs.

HOW DOES SETTING UP A LIVING TRUST SPECIFICALLY PREVENT PROBATE DELAYS OR DISPUTES?

A living trust prevents probate delays and disputes by transferring asset ownership to the trust during your lifetime, thus excluding them from your probate estate upon your death. For the trust to be effective in avoiding probate, it is essential that **all relevant assets are properly transferred into the trust**. Assets not included in the trust may still be subject to probate. This process bypasses the slow and public probate process, allowing for swift asset transfer, clear instructions to minimize disputes, and maintaining family privacy, ultimately reducing legal complexities and delays for your heirs.

- **AVOIDS PROBATE DELAYS:** When you die, assets in a living trust are controlled by the successor trustee you've appointed, who can distribute them immediately according to your instructions, without waiting for a court-supervised probate process. Probate can take months or even years due to mandatory waiting periods, court schedules, and potential legal challenges—but trust administration is usually much faster.
- **REDUCES RISK OF DISPUTES:** The trust document gives explicit, detailed instructions about which beneficiaries receive which assets and when. By spelling out your intentions and allowing for immediate asset transfer, the trust minimizes room for disagreements and family conflict. Distributions are handled privately outside of court, limiting legal challenges and keeping decisions out of public view.
- **MINIMIZES ADMINISTRATIVE HASSLE:** Probate requires court filings, inventories, accountings, and public notices, all of which can lead to additional costs and confusion—and may spark disputes over interpretation of your will. A funded living trust avoids these steps by transferring authority to the trustee and beneficiaries directly, reducing paperwork and public scrutiny.
- **PRESERVES PRIVACY:** Probate records are public, which can attract contesting parties or outside interest. Trusts are private documents, so the distribution of your assets remains confidential, greatly reducing unwanted challenges.

Remember
By failing to prepare, you are preparing to fail.



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