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## REAL ESTATE

# Many older adults in Cook County die without an estate plan. A newer legal tool is helping heirs hold onto family homes.

By Lizzie Kane

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Kina Smith stands outside the North Lawndale two-flat owned by her family for decades, on Nov. 20, 2023. (Brian Cassella/Chicago Tribune)

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Kenneth Ratliff's parents passed away years ago without any estate plan.

Ratliff, 57, said he is struggling to find a pro bono attorney to help him through the probate process — a lengthy and expensive court proceeding that helps heirs gain legal control of their family properties by getting their name on the title. Many attorneys have told him they have a backlog of cases just like his, he said.

Ratliff said he has been doing his best to pay the property tax and utility bills and maintain the brick two-flat his parents bought in 1974. He lives in the Lawndale home with other family members and previously lived there to take

LAWNDALE HOME WITH OTHER FAMILY MEMBERS AND PREVIOUSLY LIVED THERE TO TAKE care of his parents. But, Ratliff said, he is worried about losing the home and thinks it will need substantial repairs soon.

“It is frustrating trying to find someone who can help,” Ratliff said. “If we lost the property, where would we go? I don’t know.”

Ratliff’s family is not alone. Many heirs in Chicago and across the country are struggling to recover their family homes because their relatives did not have an estate plan when they died, leading to what is called a “tangled title” or “heirs’ property.” But, over the last decade in Cook County, an increasing number of homeowners, particularly older adults, are using transfer on death instruments, or TODIs, a cheaper and simpler estate planning tool.

Illinois passed the Illinois Residential Real Property Transfer on Death Instrument Act to legalize the option for owners of residential properties under five units in 2012.

In order for an owner’s home to be legally passed on to an heir, there needs to be legal documentation detailing who will claim title to the property. In Illinois, this could be in the form of a will, land trust or transfer on death instrument.

If there is a will, the heir still needs to go through the probate process. If there is a land trust — when an organization takes authority over a property while the landowner maintains ownership — the property is typically kept out of probate when the landowner dies and gets passed directly to the designated heir.

Both of these processes are more expensive than a TODI, which also leads to an automatic transfer of ownership (no probate court required) as with a land trust.

When the law passed legalizing TODIs, property owners had to pay \$98 to record the document with the Cook County clerk’s office. The Center for Disability & Elder Law worked with the county to introduce an ordinance that

temporarily lowered the cost to \$50 during the pandemic. Recently, the fee has gone up to \$59, still making it the least expensive estate planning option.

If there is no legally documented estate plan, relatives of the landowner are left with a tangled title. In order to untangle the title, an heir must go through the probate process. Divorced couples may also run into tangled title issues when one of them holds the title to the house, but the other receives the property in the divorce agreement.

The probate process takes at least six months, with the vast majority of cases in Cook County closing within 14 months, according to Judge Daniel Malone, presiding judge of the probate division for the Circuit Court of Cook County. At the same time, mortgage payments on the house might have gone unpaid, so the property may be in foreclosure, and the property may need repairs since maintenance cannot be legally performed on the property if the title is tangled.

The probate process can cost thousands of dollars in legal fees, sometimes draining the generational wealth that is passed along to heirs. It is also common for the property to be the only form of inheritance passed along for homeowners with tangled titles, according to attorneys in Cook County.

And if there is no will, the probate process is more costly because the heir who steps forward as the representative for the property has to pay a bond totaling one and a half times the value of the estate. The bond is intended to prevent people from clearing out bank accounts of the deceased person and leaving the area, Malone said.

“The probate system, in general, I think is a very fair system. It’s designed to try to help expedite cases, and most of the cases do get handled that way,” Malone said. “It’s just where these disputed cases come that cause a lot of angst and emotion.”

*[\[ More than 15,000 Illinois homeowners stayed in their homes thanks to](#)*

*pandemic aid. That money has run out. ]*

Some Cook County residents are able to access free or discounted legal services through the Probate Court Assistance Program run by Chicago Volunteer Legal Services. The program started in 2016. In probate court, a lawyer must be present to represent the estate.

Margaret Benson, executive director of Chicago Volunteer Legal Services, said her organization is unable to help everyone in need given “fairly strict” requirements on whose cases they can take. The organization will not handle cases where family members disagree over who should get title to the home.

Heirs can end up losing their family homes for a variety of reasons. The heir seeking title to the home is required to track down all family members who are legally entitled to the property, which can be dozens of people, and have them sign away their right to ownership in probate, but sometimes family members refuse to sign or cannot be found.

Meanwhile, while the family is fighting over the property, there could be an ongoing foreclosure process, and the bank could end up seizing the home.

Other heirs may not know they have to pay property taxes on the home and end up losing the property to an investor in the county tax sale.

Benson said many people only realize they have a tangled title when the property enters foreclosure, a legal process that has to be dealt with separately from probate court. There is no automatic stay of the foreclosure when someone is going through probate; some mortgage servicers are willing to wait out the probate process but others are not, Benson said.

Kina Smith, 50, lives in the North Lawndale neighborhood in a two-flat her grandparents purchased in 1974. Smith said her grandmother passed away in 2016 before estate plans were finished. Her mother and aunt then tried to get title to the property but they also died before any probate process was

due to the property, but they also died before any probate process was completed, Smith said.



Kina Smith stands outside the North Lawndale two-flat owned by her family for decades on Nov. 20, 2023. (Brian Cassella/Chicago Tribune)

Smith moved back to the home, where she also grew up, in 2015 when her grandmother needed care and now lives there with her brother. The two have gone without any heat since early this year. She has tried to access Illinois' Low Income Home Energy Assistance Program to replace her furnace but can't go through the program without papers proving she owns the house.

She is concerned about the upcoming winter given that she only has space heaters for warmth and said she would not know where she would go if she lost her home.

"It would really just crush me. My grandmother and my aunt worked so hard for (this home)," Smith said, who is unemployed after she got sick last year and her job as a home health care aid ended once her client moved to a nursing home

*[ As evictions tick back up in Cook County, new proposal aims to help renters who land in court ]*

The number of people who have tangled titles in the Chicago area is not known, according to experts who spoke with the Tribune. But data from other cities shows and conversations with local experts suggest the issue disproportionately affects Black and Latino homeowners.

In Philadelphia, at least 10,407, or about 2%, of the city's 509,258 residential properties had tangled titles, according to a 2021 report from the Pew Charitable Trust, the primary funder of the Pew Research Center. The total value of the properties was greater than \$1.1 billion. The neighborhoods most affected were predominantly Black communities, as well as neighborhoods that tended to have low incomes and high poverty rates. Philadelphia has a population of 1.5 million compared with Chicago's 2.6 million, according to U.S. Census Bureau data.

Across the country, people of color are less likely to have wills compared with white people, with 82% of Hispanics, 77% of Blacks, 67% of English-speaking Asians and 61% of whites not having a will, according to Consumer Reports. The organization's survey found the Hispanic community in particular tends to think they don't have enough assets to warrant a will, whereas the Black and English-speaking Asian communities are more averse to thinking about death, just two of the cited reasons for why people of color may be less likely to have wills.

But the use of transfer on death instruments in Cook County is on the rise. Data from DePaul University's Institute for Housing Studies released Tuesday shows steady growth in the use of the documents in Cook County, with around 30,000 filed between 2012 and 2022 on around 26,500 different properties. More than one TODI can be filed on a property given that some owners may need to

update the information.

The use of the document has been most common among older adults in Black communities and low- and moderate-income communities but is lagging in majority Latino communities. Nearly 7% of properties with a senior exemption — a type of property tax reduction that helps older adult homeowners — in Cook County’s predominantly Black neighborhoods have a recorded TODI, a percentage that is high compared with other neighborhoods.

The research finds that residential parcels with TODIs still represent a small share of total parcels in the county.

Geoff Smith, executive director of the institute, said there is room to expand outreach, with efforts having been concentrated mainly in predominantly Black neighborhoods.

And the discussion around TODIs and the transferring of wealth to heirs has to be a part of a larger conversation about neighborhood investment, Smith said.

“It situates in a bigger conversation about why it’s important to continue to invest in neighborhoods and reduce the gap that has been created through this history of disinvestment,” Smith said.

In 2022, Illinois’ law legalizing TODIs was amended to include all kinds of real estate as opposed to just residential. Illinois is one of 29 states that has legalized the tool, according to Trust & Will, an online estate planning company.

Caroline Manley, executive director of the Center for Disability & Elder Law, a group that helps people record TODIs, said having a tangled title can lock up the equity of the house, but a TODI is a powerful tool to preserving intergenerational wealth.

“Having these succession plans in place is a benefit, obviously, for the family,”

Manley said. “The other great benefit of making sure that communities are aware of the importance of these documents and getting them done is that it improves the entire community.”

While the recording fee for the document can still be prohibitive for some people, Manley said, some local organizations like the Greater Auburn Gresham Development Corporation have funds to cover the costs for homeowners who cannot afford them.

Linda Johnson, director of housing and senior services at the Greater Auburn Gresham Development Corporation, said her organization has provided Manley’s organization with two \$1,000 grants to assist with recording fees for residents in the Auburn Gresham neighborhood.

Johnson’s organization has hosted around six workshops, each with about 30-50 attendees, with most people signing up for the estate planning documents, she said.

On a personal level, Johnson herself has benefited from the tool.

Two years ago, her father and her sister died on the same day. Afterward, she asked her then 87-year-old mother if she had an estate plan and discovered she had a TODI. Johnson got the document adjusted given the deaths in her family and has one for her own home now too.

“TODIs could actually save our communities,” Johnson said.

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