



TRANSFER ON DEATH DEED FACT SHEET

A law that became effective January 1, 2016, creates a Revocable Transfer on Death Deed (“TOD Deed”) as a way for California residents to transfer residential property to named beneficiaries, effective upon death.

The stated purpose of the TOD Deed, according to the author of the bill, is to allow seniors and individuals whose estates consist primarily of a home, to avoid costly and/or complicated probates or trust administrations. In short, a TOD Deed, when properly executed, notarized and recorded is supposed to be a simple and inexpensive way to transfer residential property, while avoiding the necessity of a living trust or a will that may be subject to probate.

DEFINITIONS:

Grantor: The individual (the owner on title) who transfers property through the TOD Deed

Beneficiary: The individual who inherits property through the TOD Deed

REQUIREMENTS OF THE REVOCABLE TOD AND STATUTORY FORM

- The form must be substantially similar to the form provided under California Probate Code Section 5642.
- You can download the form by scanning the QR code below or at your county website.
- The beneficiary or beneficiaries are identified in the deed by name. Although beneficiaries were limited to natural persons under the prior law, amendments effective January 1, 2022, allow a beneficiary to be one or more natural persons, trusts, or legal entities.
- The person executing the deed (grantor) or revoking the deed has capacity to contract (which requires a higher level of understanding of the nature and consequences of the person’s action than testamentary capacity).

SIGNING AND RECORDING:

For the TOD deed to be effective, the following must be satisfied:

- The grantor signs and dates the deed;
- The deed is also signed by two witnesses who were present at the same time and who witnessed either the signing of the deed or the transferor’s acknowledgment that the transferor had signed the deed; and
- The deed is acknowledged before a notary public;
- If more than one beneficiary is named in the TOD, the ownership interests must be divided equally.

You must record a TOD deed within 60 days of notarizing it or it becomes invalid.

cont’d

The TOD deeds must be signed by two witnesses, and after the donor dies, the beneficiaries must notify all heirs and file multiple papers.



SCAN ME FOR TOD FORM

TRANSFER ON DEATH DEED FACT SHEET

cont'd

REVOKING A TOD DEED:

- The TOD Deed may be revoked by the Grantor at any time, but the Grantor must record a revocation form or another deed 60 days after it is acknowledged by the notary.
- The TOD Deed can be revoked at any time and a new estate planning strategy can be pursued.
- A TOD Deed may be revoked by recording a new and different TOD deed, as the law allows more than one revocable TOD deed, and provides that the effective deed will be the one which has the most recent recording date.
- A TOD Deed may be revoked by transferring the property to someone else by any type of legally valid deed and recording that deed, prior to the transferor's death.

ADVANTAGES:

- Avoids probate, if done correctly and if no unexpected family changes occur (like beneficiaries who die before transferor);
- Simple, inexpensive alternative to a living trust or other probate avoidance techniques;
- Can be revoked at any time during the lifetime of the transferor;
- Same tax advantages as transfers by trust or inheritance under a will.

DISADVANTAGES:

- Technical requirements are simple but very strict, and errors can void the TOD deed;
- The home is not protected from your debts. If you die with a mortgage or other debt, your beneficiaries may get nothing;
- Title companies may refuse to issue title insurance for three years after your death, blocking sales or refinancing of the property;
- If a beneficiary dies before the transferor, their share won't go to their heirs. Instead, the remaining beneficiaries split it. If no beneficiaries survive, your home will probably need to go through probate;
- After your death, the beneficiaries must take several steps to transfer the property, including notifying any possible heirs, allowing them to challenge the TOD deed.

If you co-own the property as joint tenancy or community property with right of survivorship, the other owner receives your share of the property upon your death. The TOD deed has no effect unless you outlive your co-owner. If co-owners want to use a TOD deed, they must each sign a separate one.

FOR MORE INFORMATION, PLEASE VISIT YOUR COUNTY WEBSITE.

SOURCE: saclaw.org

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. Please contact a legal attorney for assistance.