
California's Transfer on Death deed: One option to avoid probate on your home

Homeowners often want to leave their home to children, partners, or others without forcing them to go through the probate court after the owner dies. There are several ways to set this up in California. Living trusts are a great option, but usually require a lawyer and a lot of paperwork.

Looking for directions for transferring a property to the beneficiaries? Use our guide [“Transferring Title to Beneficiaries after a Transfer on Death Deed Takes Effect.”](https://www.saclaw.org/resource_library/transferring-title-to-beneficiaries-after-a-transfer-on-death-deed-takes-effect/)
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One popular option is to add the heirs to the title of the house as joint tenants. This works, but because the kids become full owners immediately, it can create a host of problems, from higher taxes to liens from the kids' creditors, to inability to refinance or get a reverse mortgage.

Another option is a transfer on death (TOD) deed, also called a beneficiary deed. This lets you deed your house to your kids (or anyone) without probate and without the complications of a joint tenancy:

By filling out a simple form, notarizing it, having two witnesses sign, and recording it with the County Recorder's Office, you name a person or people to receive the property upon your death – the beneficiaries. Unlike a joint tenant deed, the TOD deed can be revoked if you change your mind.

How to fill out and record a TOD deed.

A 2022 law substantially changed the TOD deed requirements in California.

It is crucial to fill out and record the TOD deed form correctly.

The TOD deed requires very specific language to be effective. If any requirements are missing or incorrect, your deed may be invalid or have unpredicted results. The requirements include:

1. All owners must fill out their own TOD deeds. This means that a married couple, for instance, must fill out and record two separate TOD deeds.
2. Each form must be notarized.
3. Each form must be signed by two witnesses.
4. The TOD form must be recorded within 60 days of being signed and notarized.
5. The property description and your name must match the title documents (usually your current deed) exactly.
6. You must list the beneficiaries by name. You may state their relationship to you (spouse, son, daughter,

friend, etc.), but it is not required.

Read the TOD deed carefully before signing.

The deed form includes important information about the effect of the deed, how to use it, and your right to revoke it if you change your mind. As always, be sure you understand what you are signing. If you feel pressured to sign, don't do it! Contact another family member – or even the district attorney.

What if I change my mind?

You can revoke your TOD deed at any time by notarizing and recording a Revocation of Revocable Transfer on Death Deed. This form is very similar to the TOD deed itself. It must also have two witness signatures and must be recorded prior to your death to be effective.

How do my beneficiaries receive the property?

Your beneficiaries must follow a specific set of requirements. They must notify any legal heirs; notarize and record a simple form called Affidavit of Death of Transferor under TOD Deed, along with a death certificate; and notify Medi-Cal if you received benefits. Unless any legal heirs object, they then become the owner.

NOTE: 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.

Why use a TOD deed instead of adding your heirs as joint tenants?

One popular way to avoid probate is adding your heirs to the deed as joint tenants. While this works, it can cause serious problems, which the revocable TOD avoids.

Revocable any time

The joint tenancy deed makes your intended beneficiaries full legal owners immediately. You can revoke the revocable transfer on death deed at any time. A joint tenancy deed is permanent.

You still own the property

Adding owners can cause problems selling or refinancing; liability for their debts; acceleration of your mortgage (100% due now); loss of control of the property (unwelcome roommates, even being evicted), much higher property taxes (lose Prop 13 protection); changes to who inherits your property; and more, depending on your situation.

The beneficiary or TOD deed does not give the heirs any immediate rights to the property, so it avoids these problems.

No tax complications

The IRS considers adding a joint tenant a gift, so you must file a gift tax return. The transfer may also result in

higher property taxes. TOD deeds do not. (But note that as of 2022, the parent-child reassessment exclusion is significantly limited, which may decrease this advantage.)

When might a joint tenancy still be the right choice?

If you intend to give other person a current ownership interest, a joint tenancy lets you do that, while retaining an ownership interest yourself. For example, you might agree to add them if they are helping you pay for the property, or if they are actually living there and you want to make their ownership official.

Download the Forms

[TOD Deed](https://saclaw.org/wp-content/uploads/2023/04/form-TOD-deed.pdf) (https://saclaw.org/wp-content/uploads/2023/04/form-TOD-deed.pdf)

[Revocation of TOD Deed](https://saclaw.org/wp-content/uploads/2023/04/form-revocation-TOD-deed.pdf) (https://saclaw.org/wp-content/uploads/2023/04/form-revocation-TOD-deed.pdf)

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