
Transfer on Death (TOD) Deed: Naming Beneficiaries

Background

The “Revocable Transfer on Death Deed,” also called “TOD Deed” or “beneficiary deed,” is a simple way to leave a residence to your beneficiaries without the need for probate. The current owner or “transferor” names the intended heirs as “beneficiaries.” The deed has no effect until the transferor dies, so you can change your mind, refinance, or sell the property if you choose. When you die, the beneficiaries receive the property without going to court, although they do have to notify all heirs and file or record several documents.

As of Jan. 1, 2022, TOD deeds must now be signed by two witnesses, and after the donor dies, the beneficiaries must notify all heirs and file multiple papers.

Removing Transferor’s Name after a Death

Beneficiaries who are transferring real estate into their name should use our guide [Transferring Title to Beneficiaries after a Transfer on Death Deed Takes Effect](http://saclaw.org/tod-deed-affidavit) (<http://saclaw.org/tod-deed-affidavit>).

Revoking a Transfer on Death Deed

You can revoke your TOD Deed at any time, for any reason. Use our guide [Revoking Transfer on Death Deeds](https://saclaw.org/resource_library/revoking-tod-deeds/) (https://saclaw.org/resource_library/revoking-tod-deeds/) for more information.

A TOD deed is intended to be an inexpensive way to plan who inherits your home after you die. It can only be used to transfer a property with one to four residential dwelling or condominium units, or a single-family residence with less than 40 acres of agricultural land. A mobile home may be transferred only if it is a “fixture.”

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;
- 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;

- Title companies may refuse to issue title insurance for three years after your death, blocking sales or refinancing of the property, out of concern the TOD deed will be challenged;
- 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.

Filling Out and Recording a TOD deed

These steps help you fill out a “Revocable Transfer on Death (TOD) Deed,” which you can download from our website at the link above.

1. Locate the Current Deed for the Property

You will need information from your current deed (the deed you received when you bought or received the property) in Step 2.

If you do not have a copy of the current deed, you can purchase one from the Recorder's Office. In Sacramento, this costs \$1 per page. You can call the Sacramento office at (916) 874-6334 or visit one of the office locations (see [Sacramento Clerk/Recorder website](http://www.ccr.saccounty.net/) (<http://www.ccr.saccounty.net/>) for addresses and more information).

Make sure you are looking at the deed which gives you ownership of the property. Look for a name like “Grant Deed,” “Quitclaim Deed,” “Interspousal Deed,” “Corporation Deed,” or “Transfer Deed.” **Ignore any “Deed of Trust.”** That is related to the mortgage on your property. It will not have all the information you need.

2. Read the “Common Questions” Listed on Page 3-4 of the TOD Deed

Before you sign the deed, you are required to read the questions and answers about how the TOD deed works. They are written in small type on page three and four contain important information you need to know prior to filling out the deed, including how to complete it; how to revoke it; its effects on taxes, Medi-Cal eligibility and reimbursement requirements; and more.

Prefer a larger version? Download a [large-print version of the common questions](https://saclaw.org/wp-content/uploads/2023/10/common-TOD-questions-large-text-2022.pdf) (<https://saclaw.org/wp-content/uploads/2023/10/common-TOD-questions-large-text-2022.pdf>) from our website.

3. Fill Out the TOD Deed (Do Not Sign)

The TOD deed can be typed, filled out online then printed, or neatly handwritten in dark blue or black ink.

You will need the following information:

- Assessor's Parcel Number.
- Your name as spelled on the current deed.
- Names of "beneficiaries" (your intended heirs).
- The legal description of the property. This must match the current deed **exactly**. Attach the legal description as an exhibit if it is too long for the page.

A sample completed "Revocable Transfer on Death (TOD) Deed" with more detailed instructions is available at the end of this guide.

4. Sign in Front of a Notary; Have Two Witnesses Sign

You will need to sign the TOD deed in front of a notary. The notary will charge a fee for this service. You can find notaries at many banks, mailing services, and title companies.

Two witnesses need to sign. Their signatures do not need to be notarized. They must either witness you signing, or witness you acknowledging the form. (In other words, you must tell them, in person, what the form is and that you have signed it.)

Beneficiaries do not need to sign the TOD deed, but it is legal for them to be a witness. However, if anyone challenges the TOD deed, the court must presume that the beneficiary/witness tricked or forced you to sign, and must invalidate the deed unless the beneficiary can prove otherwise.

5. Record the Deed at the Recorder's Office within 60 Days of Notarizing It

You must record a TOD deed within 60 days of notarizing it or it becomes invalid. This is the easiest way for TOD deeds to fail.

Record the TOD deed in the county where the property is located. The Recorder's Office charges a recording fee and additional fees as set by state law. Current Sacramento fees are available at the [County Clerk/Recorder's website](https://ccr.saccounty.gov/Pages/Fees.aspx) (<https://ccr.saccounty.gov/Pages/Fees.aspx>).

For help

Senior Legal Hotline

Toll Free: (800) 222-1753; Sacramento County: (916) 551-2140

[Legal Services of Northern California](https://lsnc.net/) (<https://lsnc.net/>)

Free legal assistance for Sacramento residents age 60 and over on almost any civil issue, including property transfers and deeds.

Capitol Pro Bono (<https://capitalprobono.org/>)

916-551-2102

Free estate planning assistance for low-income residents.

For More Information

On the Web:

California Advocates for Nursing Home Reform (CANHR)

[“Transferring Your Home with a Transfer on Death Deed \(TOD\) – What You Need to Know”](https://canhr.org/transferring-your-home-with-a-transfer-on-death-deed-tod-what-you-need-to-know/)

(<https://canhr.org/transferring-your-home-with-a-transfer-on-death-deed-tod-what-you-need-to-know/>)

Links several resources discussing advantages and disadvantages of TOD deeds, including a webinar for estate planning attorneys. CANHR also has a referral service to help you find attorneys specializing in elder law.

At the Law Library:

California Estate Planning (KFC 195 .A16 C3)

This book, published by CEB, discusses TOD deeds some of their tax and other implications, and possible alternatives in chapter 7.

Electronic Access: On the Law Library’s computers, using *OnLaw*.

Samples

Revocable Transfer on Death Deed

Recording requested by (name):
Sara Sample

When recorded mail to and mail tax statements to:
Sara Sample
123 Main St.
Sacramento, CA 95814

The name of the person who will be turning the deed in to the recorder's office.

The name and address of the people who will receive stamped deed and the tax statements.

The APN (assessor's parcel number) of the property. This is on the current deed.

Recorder's Use Only

REVOCABLE TRANSFER ON DEATH (TOD) DEED
(California Probate Code Section 5642)

This document is exempt from documentary transfer tax under Rev. & Tax. Code § 11930. This document is exempt from preliminary change of ownership report under Rev. & Tax. Code § 480.3.

Assessor's Parcel No.:
123-456-7890-0000

Declaration of Exemption From Gov't Code § 27388.1 Fee

Transfer is exempt from fee per GC § 27388.1(a)(2):
 recorded concurrently "in connection with" transfer subject to DTT
 recorded concurrently "in connection with" a transfer of residential dwelling to an owner-occupier

Transfer is exempt from fee per GC 27388.1(a)(1):
 Fee cap of \$225.00 reached Not related to real property

IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND NOTARIZED

Use this deed to transfer the residential property described below directly to your named beneficiaries when you die. YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER PAGES OF THIS FORM. You may wish to consult an attorney before using this deed. It may have results that you do not want. Provide only the information asked for in the form. DO NOT INSERT ANY OTHER INFORMATION. INSTRUCTIONS. This form MUST be RECORDED on or before 60 days after the deed is notarized or it will not be effective.

PROPERTY DESCRIPTION

Print the legal description of the residential property affected by this deed:

Lot 14 of Blackacre Addition to the City of Sacramento, as delineated on a map of said addition, recorded January 30, 1965, in Book 625, page 01301965.

OR: attach a copy of the legal description marked "Exhibit A" and type or write "See Exhibit A" here.

Enter the exact legal description as shown on the current deed.
OR: attach the description on a separate piece of paper labeled "Exhibit A" and type or write "See Exhibit A" in this space.

BENEFICIARY(IES)

Name the person(s) or entity(ies) who will receive the described property on your death.

IF YOU ARE NAMING A PERSON, state the person's FULL NAME (DO NOT use general terms like "my children"). You may also wish to state the RELATIONSHIP that the person has to you (spouse, son, daughter, friend, etc.), but this is not required.

IF YOU ARE NAMING A TRUST, state the full name of the trust, the name of the trustee(s), and the date shown on the signature page of the trust.

IF YOU ARE NAMING A PRIVATE OR PUBLIC ENTITY, state the name of the entity as precisely as you can.

Dora Sample, my daughter, and Saul Sample, my son.

List the beneficiaries and (optional) their relationship to you.

Revocable Transfer on Death Deed (TOD Deed) (page 1)

TRANSFER ON DEATH

I transfer all of my interest in the described property to the named beneficiary(ies) on my death. I may revoke this deed. When recorded, this deed revokes any TOD deed that I made before signing this deed.

Sign and print your name below (your name should exactly match the name shown on your title documents):

Date: March 12, 2022

Sign in front of notary

(Signature of declarant)

Sara Sample

(Typed or written name of declarant)

NOTE: This deed only transfers MY ownership share of the property. The deed does NOT transfer the share of any co-owner of the property. Any co-owner who wants to name a TOD beneficiary must execute and RECORD a SEPARATE deed.

WITNESSES

To be valid, this deed must be signed by two persons, both present at the same time, who witness your signing of the deed or your acknowledgment that it is your deed. The signatures of the witnesses do not need to be acknowledged by a notary public.

Witness #1

Print and sign your name:

Witness #2

Print and sign your name:

Wilma Witness

Walter Witness

Two witnesses must sign.

Revocable Transfer on Death Deed (TOD Deed) (page 2)

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