

California has a new option to keep your home out of probate

People often want to add others, frequently their children, to the title of their house as joint tenants, so they can inherit the family home without probate. This works, but because the kids become full owners immediately, it can create a

Revocable transfer on death deeds took effect in California on Jan. 1, 2016

host of problems, from higher taxes to liens from the kids' creditors. A living trust is a great way to avoid probate, but if your home is your main asset, it may not be worth the hassle and expense.

Now there is an easy, inexpensive way to deed your house to your kids (or anyone) without probate and without the complications of a joint tenancy: the **revocable transfer on death (TOD) deed**, also called a **beneficiary deed**.

TOD deeds are now legal in 27 states, including California. By filling out a simple form, notarizing it, 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.

TOD deed aka beneficiary deed

It is crucial to fill out and record the TOD form correctly. Luckily, it is also pretty simple.

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. The TOD form must be recorded within 60 days of being signed and notarized.
4. The property description and your name must match the title documents (usually your current deed) exactly.
5. You must list the beneficiaries by name, and state their relationship to you (spouse, son, daughter, friend, etc.),

Read the TOD deed carefully before signing.

The form should include important information about the effect of the deed, and about 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 be recorded prior to your death to be effective.



How do my beneficiaries receive the property?

If you are the only owner, or if your co-owner has already passed away, your heirs receive the property. In order to put their name on the title, they notarize and record a simple form called **Affidavit of Death of Transferor under TOD Deed**, along with a death certificate.

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. (That's why co-owners have to sign separate TOD deeds if they both want the same beneficiaries.)

Download the TOD Deed, Revocation, and Affidavit of Death
www.saclaw.org/legal-forms

Why is a TOD deed better than adding your kids as joint tenants?

Until now, a popular way to avoid probate was adding your child or children to the deed as joint tenants. While this works, it can cause serious problems, which the revocable TOD avoids.

Revocable any time, and you still own the property

You can revoke the revocable transfer on death deed at any time. The joint tenancy deed makes your intended beneficiaries *full legal owners immediately*. This can cause problems selling or refinancing; your kids' debts could cause liens; and you can't change your mind. The beneficiary or TOD deed does not give the kids 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 taxes in the future. TOD deeds do not.

When might a joint tenancy still be the right choice?

If you intend to give other person current ownership interest, a joint tenancy lets you do that but still retain an ownership interest yourself. For example, you might agree to add them if they are helping you pay for the property, or if having them on title helps with getting a loan, or if they are actually living there and you want to make their ownership official.

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