

# Revocable Transfer on Death (TOD) Deed

## New Law Effective January 1, 2016

Effective January 1, 2016 California Assembly Bill 139 modifies portions of the existing Family Code and creates a new section of the Probate Code beginning with Section 5600, et seq. This Bill authorizes Revocable Transfer on Death (TOD) Deeds (sometimes referred to as "TODD" or "RTDD"). The statute is slated to expire on January 1, 2021.

The effect of the TODD is to pass the property directly to the beneficiary (named grantee) without probate upon the death of the owner. Its main purpose is to provide an affordable alternative to traditional estate planning. The TODD does not affect any ownership rights during the lifetime of the transferor and does not convey any immediate rights to the transferee beneficiary.

The deed is effective only where the transferor dies on or after January 1, 2016, even if the deed was executed and recorded before the effective date. No TODD may be executed or recorded after January 1, 2021, unless the California Legislature elects to extend this legislation.



The TODD must substantially comply with the statutory form set forth in Probate Code Section 5642. This code section also addresses common questions regarding TODD, some of these are:

### WHAT DOES THE TOD DEED DO?

When you die, the identified property will transfer to your named beneficiary without probate. The TOD deed has no effect until you die. You can revoke it at any time.

### CAN I USE THIS DEED TO TRANSFER BUSINESS PROPERTY?

This deed can only be used to transfer (1) a parcel of property that contains one to four residential dwelling units, (2) a condominium unit, or (3) a parcel of agricultural land of 40 acres or less, which contains a single-family residence.

### WHAT IF I SHARE OWNERSHIP OF THE PROPERTY?

This form only transfers YOUR share of the property. If a co-owner also wants to name a TOD beneficiary, that co-owner must complete and RECORD a separate form.

### CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND?

Yes. You may revoke the TOD deed at any time. No one, including your beneficiary, can prevent you from revoking the deed.

### HOW DO I REVOKE THE TOD DEED?

There are three ways to revoke a recorded TOD deed: (1) Complete, have notarized, and RECORD a revocation form. (2) Create, have notarized, and RECORD a new TOD deed. (3) Sell or give away the property, or transfer it to a trust, before your death and RECORD the deed. A TOD deed can only affect property that you own when you die. A TOD deed cannot be revoked by will.

### CAN I REVOKE A TOD DEED BY CREATING A NEW DOCUMENT THAT DISPOSES OF THE PROPERTY (FOR EXAMPLE, BY CREATING A NEW TOD DEED OR BY ASSIGNING THE PROPERTY TO A TRUST)?

Yes, but only if the new document is RECORDED. To avoid any doubt, you may wish to RECORD a TOD deed revocation form before creating the new instrument. A TOD deed cannot be revoked by will, or by purporting to leave the subject property to anyone via will.

For additional information please contact your  
Cypress Title Account Executive.

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## IF I SELL OR GIVE AWAY THE PROPERTY DESCRIBED IN A TOD DEED, WHAT HAPPENS WHEN I DIE?

If the deed or other document used to transfer your property is RECORDED before your death, the TOD deed will have no effect. If the transfer document is not RECORDED before your death, the TOD deed will take effect.

## I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT SHOULD I DO?

Do NOT complete this form unless you freely choose to do so. If you are being pressured to dispose of your property in a way that you do not want, you may want to alert a family member, friend, the district attorney, or a senior service agency.

## DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?

No. But secrecy can cause later complications and might make it easier for others to commit fraud.

## WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE?

Your beneficiary must RECORD evidence of your death (Prob. Code § 210), and file a change in ownership notice (Rev. & Tax. Code § 480). If you received Medi-Cal benefits, your beneficiary must notify the State Department of Health Care Services of your death and provide a copy of your death certificate (Prob. Code § 215).

## WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP?

If you are the first joint tenant or spouse to die, the deed is VOID and has no effect. The property transfers to your joint tenant or surviving spouse and not according to this deed. If you are the last joint tenant or spouse to die, the deed takes effect and controls the ownership of your property when you die. If you do not want these results, do not use this form. The deed does NOT transfer the share of a co-owner of the property. Any co-owner who wants to name a TOD beneficiary must complete and RECORD a SEPARATE deed.

## CAN I ADD OTHER CONDITIONS ON THE FORM?

No. If you do, your beneficiary may need to go to court to clear title.

**NOTE:** Title companies are not required to rely on TODDs when underwriting a policy of title insurance under the new law – an especially important detail given that there may be circumstances under which the TODD may be void or superseded by another document. A probate proceeding or quit-claim deed may be required as a condition of issuing a policy of title insurance.

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

RECORDING REQUESTED BY	SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY
AND WHEN RECORDED MAIL DOCUMENT AND TAX STATEMENT TO:	
NAME	
STREET ADDRESS	
CITY, STATE & ZIP CODE	
TITLE ORDER NO.	ESCROW NO.
<b>SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED</b> (California Probate Code Section 5642)	
<b>ASSESSOR'S PARCEL NUMBER:</b> This document is exempt from documentary transfer tax under Revenue & Taxation Code 11930. This document is exempt from preliminary change of ownership report under Revenue & Taxation Code 480.3.	
<b>IMPORTANT NOTICE:</b> 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. 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 deed. ANY OTHER INFORMATION OR INSTRUCTIONS. This form MUST BE RECORDED on or before 60 days after the date it is signed or it will not be effective.	
<b>PROPERTY DESCRIPTION</b> Print the legal description of the residential property affected by this deed.	
<b>BENEFICIARY(IES)</b> Print the FULL NAME(S) of the person(s) who will receive the property at your death (DO NOT use general terms like "my children") and state the RELATIONSHIP that each named person has to you (e.g., "daughter, friend, etc.").	
<b>TRANSFER ON DEATH</b> I transfer all of my interest in the described property to the named person(s) on my death. I may revoke this deed. When recorded, this deed revokes any TOD deed that I may have previously recorded. Sign and print your name below (your name should exactly match the name shown on your title documents). NOTE: This deed only transfers MY ownership share of the property. It 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.	
Date	Signature of Grantor
Typed or Printed Name of Grantor	
A notary public or other authorized officer of the State of California verifies only the identity of the individual who signed the document to which this certificate is attached. This certificate does not verify the truthfulness, accuracy, or validity of that document.	
STATE OF _____	
COUNTY OF _____	
(Date)	(Name and title of the officer)
I, _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.	
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.	
WITNESS my hand and official seal.	
Signature of officer	
* There are various types of deed forms depending on each person's legal status. Before you use this form you may want to consult an attorney if you have questions concerning which document form is appropriate for your transaction. (Seal)	

## REVOCATION OF REVOCABLE TRANSFER ON DEATH (TOD) DEED

WHEN RECORDED MAIL TO:	SPACE ABOVE THIS LINE FOR RECORDER'S USE
NAME	
STREET ADDRESS	
CITY, STATE & ZIP CODE	
<b>Revocation of Revocable Transfer on Death (TOD) Deed</b>	
Assessor's Parcel Number: _____	
<b>IMPORTANT NOTICE:</b> THIS FORM MUST BE RECORDED TO BE EFFECTIVE	
This revocation form MUST BE RECORDED before your death or it will not be effective. This revocation form only applies to a TOD deed that YOU made. A transfer on death deed made by a co-owner of your property is not affected by this revocation form. A co-owner who wants to revoke a transfer on death deed that he/she made must complete and RECORD a SEPARATE revocation form.	
<b>PROPERTY DESCRIPTION</b> (Insert Legal Description)	
I revoke any TOD deed to transfer the described property to the named beneficiary(ies) before executing this form.	
Sign and print your name below (your name should exactly match the name shown on your title documents):	
Signature	Type or print name
Dated: _____	
A notary public or other authorized officer of the State of California verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.	
On _____ before me _____ personally appeared _____	
(here insert name and title of the officer)	
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.	
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.	
Signature _____ (SEAL)	