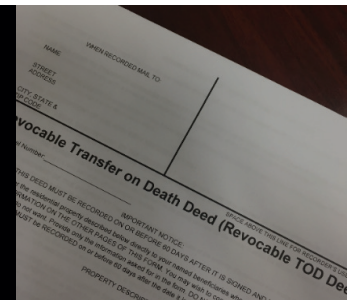




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## Effective January 1, 2016 **TRANSFER ON DEATH (TOD) DEED** California

### **What you absolutely have to know:**

Assembly Bill 139 becomes effective on January 1, 2016. AB 139 provides for the automatic transfer of ownership of residential real property upon the death of the owner without the need for probate. The new law requires the recording of a statutory form document entitled "Simple Revocable Transfer on Death (TOD) Deed".

Residential property is defined as 1-4 residential units, a condominium or agricultural land improved with a residence and consisting of 40 acres or less.

The TOD is effective for any transferor who dies on or after January 1, 2016, whether or not the TOD was executed or recorded before, on or after January 1, 2016. The law is scheduled to remain in effect until January 1, 2021. No TOD may be executed or recorded after that date.

An Affidavit of Death or other evidence of death is recorded when the owner dies, transferring the ownership to the named beneficiary. A Change in Ownership Notice must accompany the evidence of death. An affidavit will be deemed to be void if the owner of the property holds title in joint tenancy or as community property with right of survivorship at the time of death. The TOD may be revoked by recording the statutory form "Revocation of Revocable Transfer on Death (TOD) Deed."

California and Federal Estate Taxes are unaffected by this new law. Please continue to follow existing guidelines governing California and Federal Estate Taxes.

### **Additional Information:**

A valid TOD must meet the following requirements:

1. The TOD must be signed and dated by the record owner and acknowledged before a notary public.
2. The TOD must be recorded on or within 60 days of execution. The deed will be deemed to be ineffective if it is not recorded in that time frame.
3. The TOD form must substantially comply with the statutory form set out in Probate Code Section 5642, which includes a list of common questions about the use of the form.

NOTE: The TOD will be deemed to be void if the owner of the property holds title in joint tenancy or as community property with right of survivorship at the time of death.

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Evidence of death of the owner (transferor) must be recorded in order to vest title in the beneficiary(ies) shown on the TOD.

Evidence of death may be in the form of an affidavit or declaration and should be reviewed by an underwriter prior to vesting title in the beneficiary(ies).

The evidence of death must include all of the following:

1. Name of the decedent
2. Date and place of the decedent's death
3. A description of the real property being transferred
4. Either of the following, as appropriate:
  - a. The affiant or declarant is the surviving spouse of the decedent.
  - b. The affiant or declarant is not the surviving spouse of the decedent, but the rights of the affiant or declarant to the described property are not affected by Probate Code Section 5040 or 5042.

Note: Any recorded affidavit of death will require a certified copy of the death certificate.

**There are three ways to revoke a TOD:**

1. Sign, notarize and record a statutory form revocation
2. Sign, notarize and record a new TOD.
  - a. The later revocation of the new TOD does not revive a TOD that had been previously revoked by recordation of the new TOD.
  - b. If there are multiple recorded TODs for the same property, the later executed deed is the operative instrument.
3. Sell or transfer the property prior to death and record the transfer deed. NOTE: A TOD cannot be revoked by a will.

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**TYPING OF REAL ESTATE DOCUMENTS**

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|--------------------------------|---|
| ✓ Grant Deeds/Quitclaim Deeds  | ✓ Reconveyances & Releases of Mortgage/Lien           |
| ✓ Transfer on Death (TOD Deed) | ✓ Promissory Notes Secured by Deeds of Trust/Mortgage |
| ✓ Affidavits of Death          | ✓ Out-of-State and same-day services available        |
| ✓ Easement Deeds               | ✓ ...and many more                                    |

## COMMON QUESTIONS ABOUT THE USE OF THIS FORM

**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.

**HOW DO I USE THE TOD DEED?** Complete this form. Have it notarized. RECORD the form in the county where the property is located. The form MUST be recorded on or before 60 days after the date you sign it or the deed has no effect.

**IS THE "LEGAL DESCRIPTION" OF THE PROPERTY NECESSARY?** Yes.

**HOW DO I FIND THE "LEGAL DESCRIPTION" OF THE PROPERTY?** This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county recorder for the county where the property is located. If you are not absolutely sure, consult an attorney.

**HOW DO I "RECORD" THE FORM?** Take the completed and notarized form to the county recorder for the county in which the property is located. Follow the instructions given by the county recorder to make the form part of the official property records.

**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.

**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 IF I NAME MORE THAN ONE BENEFICIARY?** Your beneficiaries will become co-owners in equal shares as tenants in common. If you want a different result, you should not use this form.

**HOW DO I NAME BENEFICIARIES?** You MUST name your beneficiaries individually, using each beneficiary's FULL name. You MAY NOT use general terms to describe beneficiaries, such as "my children." For each beneficiary that you name, you should briefly state that person's relationship to you (for example, my spouse, my son, my daughter, my friend, etc.).

**WHAT IF A BENEFICIARY DIES BEFORE I DO?** If all beneficiaries die before you, the TOD deed has no effect. If a beneficiary dies before you, but other beneficiaries survive you, the share of the deceased beneficiary will be divided equally between the surviving beneficiaries. If that is not the result you want, you should not use the TOD deed.

**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.

**IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO MY DEBTS?** Yes. DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE TAXES? No.

**HOW DOES THE TOD DEED AFFECT PROPERTY TAXES?** The TOD deed has no effect on your property taxes until your death. At that time, property tax law applies as it would to any other change of ownership.

**DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?** No.

**AFTER MY DEATH, WILL MY HOME BE LIABLE FOR REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?** Your home may be liable for reimbursement. If you have questions, you should consult an attorney.