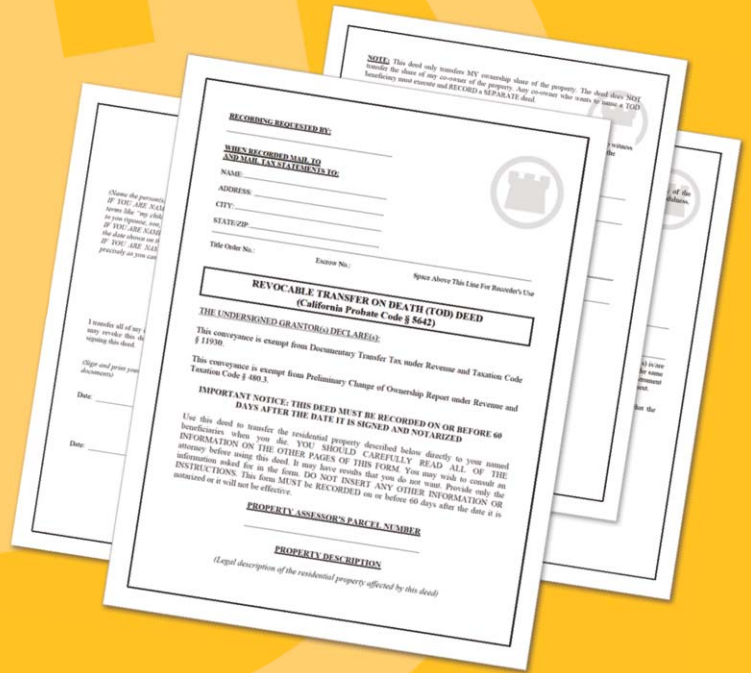


# Understanding the Transfer on Death Deed (California Probate Code § 5642)



A Transfer on Death Deed (TOD) lets a property owner pass residential real estate to a designated beneficiary outside of the probate process. The beneficiary you name on the TOD doesn't come into ownership of the property until after you die. A TOD deed is also known as a Revocable Transfer on Death Deed. You can call your local Chicago Title Customer Service to obtain a copy of your Deed to help fill out the TOD. This will show your current vesting and legal description.

**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 NONRESIDENTIAL PROPERTY?** No. This deed can only be used to transfer residential property. Also, the deed cannot be used to transfer a unit in a stock cooperative or a parcel of agricultural land that is over 40 acres in size.

**CAN I USE THIS DEED TO TRANSFER A MOBILEHOME?** The deed can only be used to transfer a mobilehome if it is a "fixture" or improvement under Section 18551 of the Health and Safety Code. If you are unsure whether your mobilehome is a fixture, you may wish to consult an attorney. An error on this point could cause the transfer of your mobilehome to fail.

**HOW DO I USE THE TOD DEED?** Complete this form. Have it signed by two persons who are both present at the same time and who witness you either signing the form or acknowledging the form. Then NOTARIZE your signature (witness signatures do not need to be 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 notarize it or the deed has no effect.

**IF I AM UNABLE TO SIGN THE DEED, MAY I ASK SOMEONE ELSE TO SIGN MY NAME FOR ME?** Yes. However, if the person who signs for you would benefit from the transfer of your property, there is a chance that the transfer under this deed will fail. You may wish to consult an attorney before taking that step.

**CAN A PERSON WHO SIGNS THE DEED AS A WITNESS ALSO BE A BENEFICIARY?**

Yes, but this can cause serious legal problems, including the possible invalidation of the deed. You should avoid using a beneficiary as a witness.

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

**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 witnessed and notarized, and RECORD a revocation form. (2) Create, have witnessed and 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.

*continued on reverse...*



# Transfer on Death Deed continued...

**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 within 120 days after the TOD deed would otherwise operate, the TOD deed will have no effect. If the transfer document is not RECORDED within that time period, 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 do all of the following: (1) RECORD evidence of your death (Prob. Code § 210), (2) File a change in ownership notice (Rev. & Tax. Code § 480). (3) Provide notice to your heirs that includes a copy of this deed and your death certificate (Prob. Code § 5681). Determining who is an “heir” can be complicated. Your beneficiary should consider seeking professional advice to make that determination. (4) RECORD an affidavit affirming that notice was sent to your heirs (Prob. Code § 5682(c)). (5) 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). Your beneficiary may wish to consult a professional for assistance with these requirements.

**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?** (1) If the beneficiary is a person, you MUST state the person’s FULL name. You MAY NOT use general terms to describe beneficiaries, such as “my children.” You may also briefly state that person’s relationship to you (for example, my spouse, my son, my daughter, my friend, etc.) but this is not required. (2) If the beneficiary is a trust, you MUST name the trust, name the trustee(s), and state the date shown on the trust’s signature page. (3) If the beneficiary is a public or private entity, name the entity as precisely as you can.

**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.

**WHERE CAN I GET A BLANK TOD DOCUMENT FORM?** You can download a Blank Form from our website at [www.MyChicagoTitle.com](http://www.MyChicagoTitle.com)



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