

Recording requested by (name):

When recorded, mail to  
and mail tax statements to:

Recorder's Use Only

## SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED

Assessor's Parcel No.: \_\_\_\_\_

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.

### 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 OR INSTRUCTIONS. This form MUST be RECORDED on or before 60 days after the date it is signed and notarized or it will not be effective.

### PROPERTY DESCRIPTION

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

### BENEFICIARY(IES)

Print the FULL NAME(S) of the person(s) who will receive the property on your death (DO NOT use general terms like "my children") and state the RELATIONSHIP that each named person has to you (spouse, son, daughter, friend, etc.):

### 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: \_\_\_\_\_

\_\_\_\_\_  
(Signature of declarant)

\_\_\_\_\_  
(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.

&gt;&gt;Home &gt;&gt;Law 101

**Sample TOD Deed with Instructions: Children as Beneficiaries**

Recording requested by (name):

Sara Sample

The name of the person who will be turning the deed in to the Recorder's Office.

And when recorded, mail this deed and tax statements to (name and address):

Sara Sample123 Main StreetSacramento, CA95814

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

The APN (Assessor's Parcel Number) of the property. This is on the current deed.

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

**SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED**Assessor's Parcel Number (APN): 0000-123-45-6789**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 requested in the form. DO NOT INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form must be recorded on or before 60 days after the date it is signed and 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 the map of said addition, recorded January 30, 1965, in Book 625, Page 013065. Or: attach a copy marked "Exhibit A" and write "See Exhibit A."**

Enter the exact legal description of the property as shown on the current deed.

OR: attach the description on a separate piece of paper labeled "Attachment A" and type or write "See Description in Attachment A" in this space.

**BENEFICIARY(IES)**

Print the FULL NAME(S) of the person(s) who will receive the property on your death (DO NOT use general terms like "my children") and state the RELATIONSHIP that each named person has to you (spouse, son, daughter, friend, etc.):

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

List the beneficiaries and relationship to you.

**TRANSFER ON DEATH**

I, Sara Sample, 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

Write your name as shown on your current deed. Sara Sample

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

Date: Nov. 12, 2015

Sign in front of notary.

(Signature of declarant)

Sara Sample

**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.**

## **NEXT STEPS:**

**1. Sign the Revocable Transfer on Death Deed in front of a notary public.**

**2. Record the Deed at the Recorder's Office in the county where the property is located.**

The Recorder's Office charges a filing fee (currently \$21/first page plus \$3 for additional pages).

Current Sacramento fees are available at the Sacramento County Recorder's website at

[www.ccr.saccounty.net/Pages/Fees.aspx](http://www.ccr.saccounty.net/Pages/Fees.aspx).

If you attached the property description (instead of typing it out), be sure to include the attachment when you record the Deed.

## **FOR MORE INFORMATION**

For more information about transferring property, see our website at

[saclaw.org/law-101/transfer-real-property-topic/](http://saclaw.org/law-101/transfer-real-property-topic/)

### **On the Web:**

- Sacramento County Clerk-Recorder's Office  
[www.ccr.saccounty.net/](http://www.ccr.saccounty.net/)
- Sacramento County Assessor's Office  
[www.assessor.saccounty.net/default.htm](http://www.assessor.saccounty.net/default.htm)

### **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.

### ***How can the Sacramento County Public Law Library help me?***

The Sacramento County Public Law Library offers free public access to a substantial collection of do-it-yourself legal books, as well as more in-depth practice guides, books, and databases, all designed to assist our patrons in their legal transactions and court affairs.

A team of highly skilled reference librarians can recommend the books and material you need to answer your legal questions.

### **Lawyers in the Library**

Our Lawyers in the Library Program offers free 20-minute consultations with a volunteer attorney on any topic. A lottery for appointments starts at 5:15 p.m.

The program is held every Monday night. A bilingual Spanish-speaking attorney is available on the first and third Monday of the month.

**Sacramento County Public Law Library**  
609 9<sup>th</sup> Street  
Sacramento, CA 95814  
[www.saclaw.org](http://www.saclaw.org)

### ***Transfer on Death Deed***



**SACRAMENTO  
COUNTY  
PUBLIC LAW  
LIBRARY**

*A free informational guide courtesy of the Sacramento County Public Law Library.*

*This pamphlet is intended for general educational use only, and is not intended as legal advice or as a substitute for your own legal research or consultation with an attorney.*

## 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 take effect in California on Jan. 1

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](http://www.saclaw.org/legal-forms)

## Transferring Your Home with a Transfer on Death Deed (TOD) - What You Need to Know

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

A new law that became effective January 1, 2016, creates a Revocable Transfer on Death Deed ("TOD Deed") as a way for California residents to transfer residential property to named beneficiaries, effective upon death.

The stated purpose of the TOD Deed, according to the author of the bill, is to allow seniors and individuals whose estates consist primarily of a home, to avoid costly and/or complicated probates or trust administrations. In short, a TOD Deed, when properly executed, notarized and recorded is supposed to be a simple and inexpensive way to transfer residential property, while avoiding the necessity of a living trust or a will that may be subject to probate.

### Definitions:

1. **Grantor:** The individual who transfers property through the TOD Deed
2. **Beneficiary:** The individual who inherits property through the TOD Deed

As with most "simple" and "inexpensive" legal strategies, there are pros and a lot of cons to the TOD Deed.

### The Disadvantages:

- The TOD Deed offers no protection from the Grantor's creditors, including Medi-Cal Estate Recovery for those who die prior to 1/1/2017. **However, based on recently passed CANHR-sponsored legislation, for those who die on or after 1/1/2017, property transferred via TOD Deed will not be subject to Medi-Cal Recovery claims.**
- Because there may be unsatisfied creditor's claims against the property transferred via TOD Deed, some title companies are not willing to issue title insurance to the beneficiary until three years after the Grantor's death
- Although the TOD law was written to minimize the use of attorneys, because of the specificity of the form, a consumer may unwittingly void the transfer because of an error in the completion of the form.
- Because the TOD Deed offers no protection from creditors, the beneficiary may end up with nothing if the debts of the Grantor are larger than the worth of the property.
- Can only be used to transfer one to four residential dwelling units or condominium units, or a single-family residence with less than 40 acres of agricultural land.
- Cannot be used to transfer residential property held as Joint Tenancy or as Community Property with Right of Survivorship, and cannot be used to create split interests such as a life estate.
- Does not permit the designation of beneficiaries by class description (e.g., "my children"); the beneficiary or beneficiaries have to be specifically named.
- Cannot designate "contingent beneficiaries": if a beneficiary dies before the Grantor, the property goes to the other surviving beneficiaries in equal shares or, if no other beneficiaries, then it reverts to the Grantor estate and may then require a probate.

- Can subject the Grantor (particularly elders with dementia) to undue influence and elder abuse, or cause resentment among family members.
- Notaries, who must acknowledge the TOD Deed, are not mandated reporters for elder abuse.

### **The Advantages:**

- The new TOD Deed may be simple to use, will be less expensive than creating a living trust, and may eliminate the waiting and expense of a probate.
- The TOD Deed can be revoked at any time during the lifetime of the Grantor.
- A TOD Deed should simplify the transfer process at death, as long as the deed is not voided by a drafting error in the part of the Grantor.
- A TOD Deed retains the tax advantages of a transfer via trust or inheritance under a will.

### **Signing and Recording:**

- A revocable TOD deed is not effective unless the Grantor signs and dates the deed before a notary public.
- The deed does not need to be delivered to the beneficiary.
- The deed must be recorded 60 days or less from the time it is signed. To be safe and until this issue is clarified, be sure to record every page of the form, including the “common questions” or “frequently asked questions” pages.
- If more than one beneficiary is named in the TOD, the ownership interests must be divided equally.

### **Revoking a TOD Deed:**

- The TOD Deed may be revoked by the Grantor at any time, but the Grantor must record a revocation form or another deed.
- The TOD Deed can be revoked at any time and a new estate planning strategy can be pursued.
- A TOD Deed may be revoked by recording a new and different TOD deed, as the law allows more than one revocable TOD deed, and provides that the effective deed will be the one which has the most recent recording date.
- A TOD Deed may be revoked by transferring the property to someone else by any type of legally valid deed, and recording that deed, prior to the transferor's death.

### **Where to Find the Form:**

The new law requires use of a specific form with specific provisions, and includes a “frequently asked questions” provision. The form and FAQ is available for online download at a number of county sites (see for example Sacramento County’s form):

<https://saclaw.org/wp-content/uploads/form-TOD-deed.pdf>

The statutory deed form and revocation form are in the California Probate Code, Sections 5642 and 5644.

**Note:** AB 139 directs the California Law Revision Commission to study the effect of the TOD Deed as to whether the deed is working effectively, whether it has been used to perpetuate financial abuse, whether it needs changes and whether it should be continued, and to report back to the Legislature no later than January 1, 2020. Unless the Legislature acts otherwise, the law will sunset on January 1, 2021, but that would not invalidate any revocable TOD Deed executed before that date.