

Transfer on Death Deed: A Transfer on Death Deed (TODD) is a simple way to transfer real estate to someone else after you die. It is a non-probate transfer of property using a simple deed, similar to a Payable on Death account at a bank, only for real estate. If you don't have a will or a TODD, your real estate must go through the probate court and your property will pass to your heirs according to Texas law. Probate can be lengthy and expensive, with attorney fees and court costs paid from your estate. With a TODD, you can avoid probate and decide in advance who should inherit your real property interest.

How does a TODD work? A TODD lets you keep all ownership rights to the property during your lifetime, so you can sell it or use it as collateral on a loan. When you die, your property interest passes to the person you named in the TODD (the "beneficiary") without any probate action. You can name more than one beneficiary, and you can change the beneficiary at any time by cancelling the TODD or making a new one. You do not need to tell the beneficiary of the TODD or any changes that you make to it. If you are a joint owner, you can transfer your interest to another joint owner (your spouse, for example), or to non-owners (for example, your grandchildren) by naming them as TODD beneficiaries. After you die, the TODD beneficiary should file an Affidavit of Death in the deed records to ensure clear title.

What are the requirements for a TODD? A TODD must:

- Be in writing, signed by the owner and notarized;
- Have a legal description of the property (found on the deed to the property or in the deed records. Do not use tax roll information, which is often incorrect), and the name and address of the beneficiary(ies);
- State that the transfer will happen at the owner's death; and
- Be properly recorded *during the owner's lifetime* in the deed records in the county where the property is located.

Can I cancel or change a TODD? Yes. You can cancel (or "revoke") the TODD or make a new one naming someone else as beneficiary at any time. To revoke it, you must file a Cancellation of the Transfer on Death Deed, or file a new TODD that states that the property should pass to a different beneficiary.

Do I need a TODD if I have a will? A *TODD is completely different legal document than a will*. Even if you have a will, you can still use a TODD to transfer real property outside of probate. If you don't have a will and don't own much aside from real property, a TODD might be all that you need to make sure that your property interest passes to the person you want to inherit it after you die.

Doesn't a Joint Tenancy with Right of Survivorship do the same thing? No. Your interest in property owned under a JTROS passes to the surviving joint owner(s). Under a TODD, your interest passes to the TODD beneficiary of your choosing.

Are there any pitfalls to a TODD? Some things you should know:

- A *TODD must be filed in the deed records during the owner's lifetime*. Making the TODD is not enough.
- *You can't transfer more than you own*. If you own property jointly with anyone (your spouse, for example) get legal advice.
- A *TODD will not protect the property from creditor claims*. The TODD beneficiary takes subject to all mortgages, liens and claims. If you die with outstanding debts, the property could be tied up in probate for up to two years, until the period for creditors to make claims against the estate expires.
- A *TODD trumps a will*. A will has no effect on a TODD. For example, suppose that you make a TODD naming your child as beneficiary and file it in the deed records. Later, you make a will leaving the same property to your spouse. When you die the property will pass to your child under the TODD. If you want your spouse to inherit the property instead, you must change or revoke the old TODD.
- *If the TODD beneficiary doesn't survive you by at least 120 hours*, the property is treated as if there were no TODD.

For sample TODD forms, visit www.texaslawhelp.org