

Transfer on Death Deed (TODD): Information and Answers

Transfer on Death Deed Project - Texas Legal Services Center

(<https://texaslawhelp.org/directory/legal-resource/transfer-death-deed-project-texas-legal-services-center>) [1]

Click below for a Toolkit on passing on your house or land without a will

[CLICK HERE FOR THE TRANSFER ON DEATH DEED TOOLKIT \(HTTPS://T\)](https://texaslawhelp.org/directory/legal-resource/transfer-death-deed-project-texas-legal-services-center)

[2]

What is a Transfer on Death Deed?

A Transfer on Death Deed (sometimes called a TODD) is a simple way to transfer real estate to someone else after you die. With a properly recorded Transfer on Death Deed, no probate is needed to transfer the real property. If you don't have a will or a Transfer on Death Deed, 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 Transfer on Death Deed, you can avoid probate and decide in advance who should inherit your real property interest.

How does a Transfer on Death Deed work?

A Transfer on Death Deed 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 Transfer on Death Deed (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 Transfer on Death Deed or making a new one. You do not need to tell the beneficiary of the Transfer on Death Deed about any changes that you make to it.

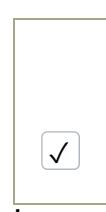
If you are a joint owner, you can transfer your interest to another joint owner (your spouse, for example), or to non-owners (for example, your grandchildren) by naming them as Transfer on Death Deed beneficiaries. After you die, the beneficiary should file an Affidavit of Death in the deed records to ensure clear title.

What is considered real property?

Real property that can be transferred with a Transfer on Death Deed includes land, homes, buildings, uncut timber and mineral rights. It can NOT be used to transfer personal property such as furniture, jewelry, china, clothing, etc.

Can I use a Transfer on Death Deed for real property in other states?

No, while currently about 1/2 of the states in the U.S. have some form of Transfer on Death Deed, the Texas Transfer on Death Deed law and its related forms can only be used for real property located in Texas. You will have to check the laws in the other states to determine if they have a similar deed.



I already have a will. Why would I want a Transfer On Death Deed?

Whether you have a will or not, your property will still have to go through the probate court system. A Transfer on Death Deed conveys property outside of probate. Not having to go through probate allows you to avoid incurring court costs and administrative costs to deed the property to your beneficiary. Under current law, it also excludes the real property from Medicaid estate recovery.

Does a Transfer on Death Deed replace a will?

The Transfer on Death Deed does not completely replace a will. A will can still be an important part of your estate plan. Your will may provide how real or personal property without beneficiary designations passes, and may provide what happens if all beneficiaries predecease you. Your will may allow you to provide in detail who gets items of personal property, including your motor vehicles, heirlooms, and furniture. You should consult your attorney about how a Transfer on Death Deed fits into your estate plan.

What are the requirements of the Transfer on Death Deed?

The Transfer on Death Deed must:

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

Where is a Transfer on Death Deed filed (recorded)?

It must be signed, notarized and recorded in the county where the property is located before the property owner dies. There is usually a per page fee for filing the deed.



I don't have my deed, but I have a copy of the tax record. Is this ok?

No. It is highly recommended that a copy of the actual deed is obtained from the county where the property is located as the legal description of the property in tax records can be incomplete or inaccurate.

When is a Transfer on Death Deed effective?

A properly executed Transfer on Death Deed is effective if it is recorded with the County Clerk in the county in which the real property is located, before the death of the grantor. If the deed is not recorded before the death of the grantor, it is ineffective.

Can I name more than one beneficiary?

Yes, the Transfer on Death Deed law allows you to name more than one beneficiary. Also, the law allows you to name an alternate beneficiary. This is highly recommended in case the first beneficiary dies before you do.

What if the beneficiary I chose dies?

A beneficiary must survive the grantor by 120 hours (5 days) for the transfer to be effective. It is highly recommended that a person executing a Transfer on Death Deed always identify an alternate beneficiary. If there is no beneficiary upon death, the Transfer on Death Deed is not valid and the property must be placed into probate.

Must the beneficiary be a person?

No, a beneficiary may be a person, organization, institution, charity, trust, etc.

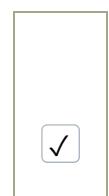
Can the beneficiary be a general group of people?

No, be specific. The Transfer on Death Deed does not allow you to name classes of relatives, such as "all of my children". The beneficiaries' individual names and addresses must appear on the face of the deed.

Does a beneficiary need to sign a Transfer on Death Deed?

No, the beneficiary need not sign or agree to a Transfer on Death Deed.

Further, the Transfer on Death Deed does not need to be delivered to the beneficiary to be effective. While it is up to you whether you tell the beneficiary that you have named him/her in a Transfer on Death Deed, it is recommended that you inform affected persons of your plans.



Does a Transfer on Death Deed affect my rights while I'm alive?

No, the Transfer on Death Deed is not effective until you die. That means the beneficiary you name in the Transfer on Death Deed cannot control your property. You do not need the beneficiary's permission to sell or mortgage the land. Your property is not subject to the beneficiary's debts. Your interest in the real property goes to the beneficiary only after you die.

I named my son as beneficiary in my will. What if I name someone else in the Transfer on Death Deed?

If your will and Transfer on Death Deed are inconsistent, the Transfer on Death Deed controls who owns your real property after your death. This applies to wills executed before or after the Transfer on Death Deed.

What if I own the property with someone else?

You can only give someone the portion of the property that you own. For example, if you and your spouse own the property in equal shares and you file a transfer on death deed giving the property to someone, like a child or a friend, that person only gets your share of the property. Your spouse still has her share.

I own the property with my wife. As Texas is a community property state, I do not need a Transfer on Death Deed, correct?

If a husband and wife own community property in Texas, it is true that the surviving spouse can claim the deceased's share of the property in certain circumstances. If a spouse dies without a will, though, the surviving spouse will have to file an "affidavit of heirship." Challenges to this can be made and the affidavit alone does not confer title. Further evidence of family members may be needed. A Transfer on Death Deed transfers title and eliminates the need for additional affidavit proof.

I own the property with my spouse and hold power of attorney for their financial affairs. Can I execute a Transfer on Death Deed for both of us?

No, a power of attorney can NOT be used to execute a Transfer on Death Deed. The person executing the deed must be competent and sign it himself/herself.

Can I file a Transfer on Death Deed even if I have not paid it off yet?

Yes, you may file a Transfer on Death Deed even though you have not finished paying off a mortgage. You will still have to make payments while you are alive and if you have not finished paying the loan by the time you have passed away, the beneficiary will still have to pay the mortgage.



Does a Transfer on Death Deed shield the property from creditors?

No, property owners cannot escape the claims of creditors with a Transfer on Death Deed. All valid liens, mortgages, and judgments, as well as claims of other creditors, may be applied against the real property. Mortgages, liens and notes follow the property and will now be the responsibility of the new owner.

Note: Creditors are not notified of a change in ownership when a transferor dies. The beneficiary can do so.

Will the property be subject to Medicaid Estate Recovery under current law if I currently receive or plan to apply for long term care?

No, as the property does not go through the probate system, under current law it is not subject to Medicaid Estate Recovery, whether you are currently receiving long term care or plan to apply for it.

What are the tax consequences of a Transfer on Death Deed?

For tax purposes, property transferred with the new deed should be treated in the same way as real property passing through probate. For most estates, there should be no federal or state estate tax (check with your accountant about current estate taxes). Additionally, the heirs should get the "stepped up basis" (value on the date of death) in the real property and may owe no tax on their inheritance.

Doesn't a Joint Tenancy with Right of Survivorship do the same thing?

No. Your interest in property owned under a Joint Tenancy with Right of Survivorship passes to the surviving joint owner(s). Under a Transfer on Death Deed, your interest passes to the beneficiary of your choosing.

Can I cancel or change a Transfer on Death Deed?

Yes, you can cancel or change the beneficiary for a Transfer on Death Deed several ways:

- Record a new Transfer on Death Deed with a different beneficiary
- Record a Cancellation of Transfer on Death Deed (The Cancellation must

be filed before the death of the grantor in the county where the property is located.)

- **Divorce** -- If the Transfer on Death Deed says that the property will go to your spouse, a divorce decree will invalidate your spouse as a beneficiary.

These instruments must be filed before the death of the grantor in the county where the property is located.



Cancellation Form (<https://texaslawhelp.org/guided-form/cancellation-transfer-death-deed-guided-form>) [3]: You can use this form to cancel a Transfer on Death Deed. Go [here \(<https://texaslawhelp.org/guided-form/cancellation-transfer-death-deed-guided-form>\) \[3\]](https://texaslawhelp.org/guided-form/cancellation-transfer-death-deed-guided-form) for the guided **Cancellation Form and instructions (<https://texaslawhelp.org/guided-form/cancellation-transfer-death-deed-guided-form>) [3]**.

Can I sell my property even though I have filed a Transfer on Death Deed?

Yes, the filing of a Transfer on Death Deed does not change your ownership rights. It does not take effect until you die so you can sell the property, get loans on it, and maintain your tax exemptions.

Do I need a Transfer on Death Deed 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 Transfer on Death Deed to transfer real property outside of probate. If you don't have a will and don't own much aside from real property, a Transfer on Death Deed 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.

What happens when the property owner dies?

The person who is named as a beneficiary should file an "Affidavit of Death" in the county records. The person named will then own the property without having to go to probate court.

What recent changes have been made to the Transfer on Death Deed?

In September of 2017, the Texas legislature added more boxes to more specifically designate beneficiaries. For instance, if you have named 2 or more primary beneficiaries, the Transfer on Death Deed form now allows you to choose whether the share of a beneficiary who dies before the property owner goes to the beneficiary's children...or to the other named beneficiaries.

Are there any pitfalls to a Transfer on Death Deed?

Some things you should know:

- **A Transfer on Death Deed must be filed in the deed records during the owner's lifetime.** Making the Transfer on Death Deed 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 Transfer on Death Deed will not protect the property from creditor claims.** The Transfer on Death Deed 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 Transfer on Death Deed trumps a will.** A will has no effect on a Transfer on Death Deed. For example, suppose that you make a Transfer on Death Deed 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 Transfer on Death Deed. If you want your spouse to inherit the property instead, you must change or cancel the old Transfer on Death Deed.
- **If the Transfer on Death Deed beneficiary doesn't survive you by at least 120 hours,** the property is treated as if there were no Transfer on Death Deed.



What Other Forms Do I Need?

Affidavit of Death (<https://texaslawhelp.org/guided-form/affidavit-death-guided-form>) [4]: When the property owner who created a Transfer on Death Deed dies, this form is used by a named beneficiary to get legal ownership of the property. Title to the property does not pass to the beneficiary(ies) until the Affidavit of Death is filed. Without legal title, you cannot sell the property, or get property tax exemptions, or use the property as collateral on a loan.

Go [here](https://texaslawhelp.org/guided-form/affidavit-death-guided-form) (<https://texaslawhelp.org/guided-form/affidavit-death-guided-form>) [4] for the guided **Affidavit of Death Form and instructions** (<https://texaslawhelp.org/guided-form/affidavit-death-guided-form>) [4].

Watch the Video

Transfer on Death Deed Video



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Links

- [1] <https://texaslawhelp.org/directory/legal-resource/transfer-death-deed-project-texas-legal-services-center>
- [2] <https://texaslawhelp.org/legal-topics/before-and-after-death/transfer-death-deed/toolkit/i-want-pass-my-house-or-land-without-will?tid=561>
- [3] <https://texaslawhelp.org/guided-form/cancellation-transfer-death-deed-guided-form>
- [4] <https://texaslawhelp.org/guided-form/affidavit-death-guided-form>