

California Transfer on Death Deeds

Homeowners have multiple ways in which they can transfer their real property upon their death. The most common ways to transfer property is through a trust, will or by holding title as joint tenants. In 2016, Governor Jerry Brown signed Assembly Bill 139, which introduced and allowed a new way to transfer property upon death – through a revocable transfer on death deed (“TOD deed”). The law was set to expire on January 1, 2021, but Senate Bill 1305 extended it until January 1, 2022. TOD deeds executed before January 1, 2022, will remain valid until the transferor’s death.

The TOD deed method allows for the transfer of real property upon ones death without needing to probate the asset. TOD deeds allow those who own property in California to transfer the property to an individual of their choice without establishing a trust, going through a trust administration or without a probate process. A win-win for some, but there are pitfalls.

TOD Deeds are not too expensive and are relatively easy to prepare. However, certain requirements must be met in order for the TOD deed to be effective and valid:

1. The real property subject to the TOD deed must be one of the following:
 - a. a single family home or condominium;
 - b. a multiple residence with no more than four residential dwelling units; or
 - c. a single family residence on no more than 40 acres of agricultural land;
2. A transferor must sign and date a revocable TOD deed before a notary public; and
3. The TOD deed must be recorded within 60 days or less from the date it is signed.
If a TOD deed is not recorded within the statutory deadline it is invalid.

TOD deeds are revocable; thus the transferor can revoke the deed in one of three ways, by:

1. Recording a formal notice of revocation;
2. Recording a new Transfer on Death Deed; or
3. Transferring the real property to someone else prior to the transferor’s death\

As with anything, TOD deeds come with pros and cons.

Some of the pros are as follows:

1. Preparation and filing of TOD deeds is relatively fast, simple, and inexpensive (more so when compared to establishing a living trust or last will and testament);
2. TOD deeds are fully revocable during the property owner’s life;
3. If the beneficiary survives the transferor then probate can be avoided;
4. The transferor remains the owner of the property until death.
5. Because the property passes outside of the probate process, the property is not subject to Medi-Cal recovery claims

Some of the cons are as follows:

1. If your beneficiary predeceases you, and the deed is not revoked, the property will be subject to probate;
2. A TOD deed does not plan for your incapacity. Unlike a trust, a TOD deed cannot be used to manage, sell, or borrow against the property during your incapacity;
3. TOD deeds have no creditor protection.
4. If the beneficiary of a TOD deed is a minor upon your death, a court-appointed custodian will need to be named to control your property until the child reaches legal age. With a living trust, you get to name a trustee to manage your assets until your child reaches legal age, and you can control how your child inherits the property;
5. Some title insurers have balked at issuing title insurance when TOD deeds have been used to transfer property. This could impact the ability of the beneficiary to sell the property.

TOD deeds can be most beneficial to single individuals, or married individuals who own separate property and do not want to establish a revocable trust or will. TOD deeds are more useful for single people or individual owners, as opposed to married couples. For married couples who own as joint tenants, if a spouse passes away, his or her share will automatically go to the remaining spouse/joint tenant. Another avenue of transfer for married couples, which also avoids probate, is owning the home or other property titled as community property with right of survivorship. This titling method allows the surviving spouse to automatically receive the deceased spouse's interest in the property.

TOD deeds have been around for a relatively short period of time, thus they have shortcomings and implications not yet fully known or understood. Still, they can be a viable option in some cases, taking into consideration your finances, the amount of assets you have, the urgency of your situation, and many other factors.

If situations allow, a well thought out estate plan, although pricier than a TOD deed, are more beneficial, as they address more concerns and issues people will encounter during their lifetimes and at their deaths. However any planning is, under most circumstances, a step in the right direction.