

## ***Planning Ahead***



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## **Revocable Transfer On Death Deed**

The Revocable Transfer on Death Deed (“TOD Deed”) is a new kind of Deed, introduced this year in 2016, that may be a good option for estate planning in certain limited circumstances. It is not, however, without some risk and controversy.

Very simply, the TOD Deed is signed and recorded during your lifetime but does not become effective until your death. Nothing is transferred and nobody gains any rights to the property until you die. When you die, the property will transfer to the beneficiary named in the TOD Deed without a probate.

In order for it to work, the TOD Deed must be signed, dated, notarized and recorded not later than 60 days after the date it is signed. The form of a TOD Deed is provided under the Probate Code. You can only use the TOD Deed to transfer your home (residential property up to 4 units or a condominium.)

The TOD Deed can be revoked at any time, using another form provided in the Probate Code that is signed, dated, notarized and recorded. No consent of the beneficiary named in the TOD Deed is required, in fact, the beneficiary may never even know about the deed. The TOD Deed is also revoked if you sell the property or give it away or transfer it to a Trust before you die, or if you make and record a new TOD Deed for the same property. But you can’t revoke the TOD Deed by a Will. If your Will leaves the property to someone other than the beneficiary named in a recorded TOD Deed, the property will go to the beneficiary named in the TOD Deed, not the person named in the Will. If you own the property in joint tenancy or as community property with right of survivorship and you die first, the property will go to the surviving joint tenant or surviving spouse, not the beneficiary named in the TOD Deed.

When making the TOD Deed, you must name beneficiaries by name – you can’t use general terms to describe beneficiaries such as “my children.” If you name more than one beneficiary, they will become equal co-owners. If there is more than one beneficiary named and one of them dies before you, the share of the deceased beneficiary will be added to the share or shares of the surviving beneficiary or beneficiaries. If no beneficiary named in the TOD Deed outlives you, then the TOD Deed will have no effect.

The TOD Deed may be an estate planning alternative to a living trust in the case where a person’s house is the only significant asset, with little else; this way, the person’s estate will not be subject to probate. Even in such cases, however, it is not a perfect solution. For example, if you have two children named in the TOD Deed and one dies before you, the entirety of the deceased child’s share will go to the surviving child. If the deceased child has children of his or her own (your grandchildren) the grandchildren would not receive anything. Or if you had two children named in the TOD Deed and later another child was born, the later-born child would not receive anything. Or for another example, if you wanted to name more than one beneficiary but not make them equal owners, the TOD Deed will not work.

Because the TOD Deed is likely to be used without advice from an attorney, I expect that many transfers at death will not work out as intended. Grandchildren may be inadvertently disinherited. Or a person may forget about a TOD Deed recorded years earlier, or not understand when or how it must be revoked.

The biggest concern estate planning attorneys have with the TOD Deed is that it will become a common tool for elder abuse and fraud. Only time will tell how the TOD Deed will be used.

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