



## Transfer on Death Deeds

### Can I transfer my home to my children and avoid probate?

Yes, Minnesota has a law that lets you transfer the title to real estate when you die to avoid probate. It is an estate planning tool called a **Transfer on Death Deed (TODD)**. It is like the "payable on death" (POD) designation on a bank account. The beneficiary (new owner) takes ownership of the property when the current owner dies. They have no rights or control of the property until the owner dies.

DO NOT use a TODD to give property to someone under 18 years of age.

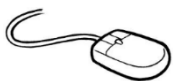
DO NOT use a TODD to give property to an adult who gets government benefits because of a disability and their low income. Their benefits could stop if the estate is not handled the right way. Talk to an elder law lawyer if you are in this situation.



### How does a TODD work?

A TODD can be used instead of a will to transfer real estate at your death. It can allow you to avoid probate. A TODD can be an easy way to transfer your property to your children at your death. You can also use a TODD to transfer property to your life partner or to anyone else you want to.

There is a form at the end of this fact sheet. Or you can find a [fillable form online](http://www.mn.gov/commerce) at: [www.mn.gov/commerce](http://www.mn.gov/commerce).



- Toward the top right of the page click on "How do I..."
- Click on "Get a blank form"
- Under "How to Access the Forms" click on "list of available forms"
- Scroll and click on "10.8.4 Transfer on Death Deed Statutory Form"

The TODD is signed while you are alive but the transfer of ownership doesn't happen until your death.

You can cancel (revoke) the TODD at any time before your death. You don't need the permission of the future owner to revoke it if you change your mind.

### **Will a TODD avoid a mortgage, lien or estate claim against my property?**

No, the new owner steps into your shoes at the time of your death. They take the property along with all mortgages, liens, judgments or other claims against the property. The TODD does not avoid a claim or lien the state has against your property even if you had Medical Assistance (MA) or General Assistance (GA) in your lifetime.

On the other hand, a TODD won't keep you from getting MA for nursing home care. You are not giving any interest away during your lifetime and the new owner takes the property along with any MA liens.

### **How do I know my TODD is valid and legally binding?**

A TODD has to be recorded with the County Recorder before the death of the homeowner in order to be valid.

A TODD that was signed before August 1, 2008 is valid as long as it is recorded on or after August 1, 2008.

You don't have to give the TODD to the beneficiary during your lifetime and you don't need their permission to cancel it.



### **How is a TODD different than other property ownership methods?**

The **TODD** doesn't give anyone ownership in the property while you are living.

A **joint tenancy** gives part ownership to the joint tenant (joint owner) while you are still alive.

A **life estate** gives someone a future interest in the property. That person is called the remainderman. They own the property after your death.

A quit claim deed gives your property away once it is recorded. Talk to a lawyer before giving your home to your children or someone else in a quit claim deed. You may use a quit claim deed to avoid probate court but you also put yourself at risk for many legal problems.

You can't cancel (revoke) a joint tenancy, life estate or quit claim deed unless all parties, and their spouses, agree and sign off.

A TODD can be cancelled (revoked) or changed any time before your death. You don't need permission from anyone to change your mind.

## How do I cancel a TODD?

You can cancel (revoke) a TODD in several ways.

- You can file a revocation in the county where the property is located. There is a [fillable form online](#). Go to the web page mentioned in second section “How does a TODD work?” The form number is 10.8.10.
- You can file a new TODD, giving the same or a greater interest in the property to someone else. The TODD with the latest date is the one that is valid.
- You can give all or part of your interest in the property to someone else through a standard deed. If you sell or give your house to someone while you are living, you no longer have an interest to pass to your children through the TODD at your death.

Unless the TODD says something else, a divorce or annulment will automatically revoke a TODD interest given to your former spouse.

**It is important to know that the TODD can't be revoked by your will.**

**You can't use a TODD to keep your spouse from getting their interest in real estate at your death.** If you are legally married to someone then they have inheritance rights to the house.



## What are the benefits to the TODD?

A TODD can be helpful for estates that don't need estate tax planning and where the only asset subject to probate is the home.

An asset in an estate needs probate if it is only in the name of the person who dies and it has a value of more than \$75,000.

In the past, the only way to avoid probate if you owned real estate was to add someone's name to the title of the property. But, adding someone's name to the title during your lifetime created several problems. It could:

- limit your ability to sell or mortgage your home
- sometimes keep you from getting MA for nursing home care
- cause tax problems for your children if they want to sell the home after your death

- make your children's problems your problems if their name is on your title during your lifetime and they go through divorce, file bankruptcy or get sued.

With a TODD, you are not giving up your home or any part of your home during your lifetime so these problems are avoided.

### **Is there anything I should worry about with a TODD?**

As with any estate planning decision talk to a lawyer about your options. A TODD may not be the best choice for everyone. There may be more problems if you are not the only owner of the property. A TODD can't stop a surviving spouse or joint tenant from trying to make claims against the property. A TODD can't avoid MA liens or estate claims.

You also need to plan for what will happen if the beneficiary dies before you. But you can have more than one beneficiary on the TODD and lay out how they will hold title to the property.

You can also designate one or more successors. Successors are people who get the property if the beneficiaries die before you.



TODDs can work best when they name only 1 or 2 people who get along well with each other. For example, if a TODD leaves a house to 4 children and the children are all married, then it would take the agreement of all 8 people (the children and their spouses) for a sale to go through or other change of title on the house. This can get complicated.

Get legal advice before deciding if a TODD is the best option for you.

For information on other estate planning tools see our fact sheets:

[Questions About Probate](#) and [Common Questions About Wills](#)

Find more fact sheets at [www.lawhelpmn.org/LASMfactsheets](http://www.lawhelpmn.org/LASMfactsheets)

Find your local legal aid office at [www.lawhelpmn.org/resource/legal-aid-offices](http://www.lawhelpmn.org/resource/legal-aid-offices)

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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TRANSFER ON DEATH DEED  
Statutory form  
Minn. Stat. 507.071

Minnesota Uniform Conveyancing Blanks  
Form 10.8.4 (2011)

NO DEED TAX DUE  
pursuant to Minn. Stat. 287.22(15)

DATE: \_\_\_\_\_  
(month/day/year)

I (we) \_\_\_\_\_  
(insert name of Grantor Owner or Owners and spouses, if any, with marital status designated)

\_\_\_\_\_ ("Grantor(s)"),

hereby convey(s) and quit claim(s) to \_\_\_\_\_  
(insert name of Grantee Beneficiary, whether one or more)

\_\_\_\_\_ ("Grantee Beneficiary"), effective

(check  on the death of the Grantor Owner, if only one grantor is named above, or on the  
only one death of the last of the Grantor Owners to die, if more than one Grantor Owner is  
box)  named above, or

on the death of \_\_\_\_\_,  
(insert name of Grantor Owner, must be one of the Grantor Owners named above)

the following described real property:

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto.

**NOTE: Pursuant to Minn. Stat. 507.071, subd. 8, this deed must be recorded before the death of the Grantor Owner upon whose death the conveyance or transfer is effective.**

If checked, the following optional statement applies:

- When effective, this instrument conveys any and all interests in the described real property acquired by the Grantor Owner(s) before, on, or after the date of this instrument.

Grantor(s)

\_\_\_\_\_  
*(signature)*

\_\_\_\_\_  
*(signature)*

State of Minnesota, County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, by  
*(month/day/year)*

\_\_\_\_\_  
*(insert name and marital status of each grantor)*

(Stamp)

\_\_\_\_\_  
*(signature of notarial officer)*

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_  
*(month/day/year)*

THIS INSTRUMENT WAS DRAFTED BY:  
*(insert name and address)*