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 let you 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, or a charity.

You can get fillable forms online at https://mn.gov/commerce/business/real-estate/forms.jsp. Use the one that fits your situation.

10.8.1 Transfer on Death Deed - Unmarried - fillable.pdf

10.8.2 Transfer on Death Deed - Married, Sole Spouse in Title - fillable.pdf

10.8.3 Transfer on Death Deed - Married, Joint Tenants - fillable.pdf

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.

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. See section below, *How Do I Cancel a TODD?*

Does a TODD avoid a mortgage, lien, or estate claim against my property?

No, the new owner has the same responsibilities that you did 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 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 signed, notarized, and recorded with the County Recorder before the death of the homeowner for it 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 of 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 but have rights even when you are alive.

A quit claim deed gives your property away when it is given to the grantee or recorded with the county. 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

You can cancel (revoke) or change a TODD 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?" Look for forms. 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 filed 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 automatically revokes a TODD interest given to your former spouse.

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

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 that might need probate is the home.

An estate needs probate if:

- There is a house in the name of the person who has died and there is no valid TODD on file with the county for that house
- the total of property (without a valid TODD) and money (without a Payable on Death designation) is worth 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 creates 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.
- Make the other person ineligible for some government benefits if they don't live in the home.

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 would 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 name 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 all 8 people (the children and their spouses) have to agree about what to do with the house after you die. This might be to sell the house or do a change of title on the house. This can get complicated.

After you do your TODD, make sure you notify your insurance company about the TODD and your beneficiaries. Then, when you die, your homeowners insurance continues for 30 days after your death.

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*.

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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