

# SINGLE OWNER TRANSFER ON DEATH (TOD) DEED

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**Recording requested by:** [GRANTOR NAME]

**When recorded, mail to:** [WHO SHOULD RECEIVE THE RECORDED DEED] [MAILING ADDRESS FOR RECORDED DEED RETURN]

**Assessor's Parcel Number (APN):** [APN]

**This Transfer on Death Deed is exempt from documentary transfer tax** (Cal. Rev. & Tax. Code §11930 where applicable; TOD deeds are exempt in most states because no present interest passes).

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## REVOCABLE TRANSFER ON DEATH DEED

**Governed by the laws of the State of [STATE].** Executed on .

### 1. Grantor

I, [GRANTOR NAME], residing at [GRANTOR ADDRESS] (the "Grantor"), being the sole owner of the real property described below, hereby execute this Revocable Transfer on Death Deed.

### 2. Property

The real property subject to this deed (the "Property") is located in [COUNTY] County, State of [STATE], and is commonly known as:

| *[PROPERTY ADDRESS]*

**Assessor's Parcel Number:** [APN]

### Legal Description:

| *[LEGAL DESCRIPTION]*

*Reminder: a street address alone is not legally sufficient. The legal description must match the existing recorded deed exactly — e.g., "Lot 7 of Tract No. 1234, in the City of Happy Valley, County of Los Angeles, State of California, as per Map recorded in Book 15, Page 34 of Maps, at the Office of the County Recorder of said County."*

This deed transfers all of the Grantor's right, title, and interest in the Property, together with all improvements, fixtures, easements, and appurtenances belonging thereto, subject to all existing encumbrances, liens, easements, restrictions, and rights of record.

### 3. Transfer on Death — Beneficiary Designation

Upon the death of the Grantor, the Grantor's interest in the Property shall transfer to:

[BENEFICIARY NAME], residing at [BENEFICIARY ADDRESS] (the "Primary Beneficiary"),

if the Primary Beneficiary is then living. The Primary Beneficiary has no present interest in the Property during the Grantor's lifetime.

### 4. Contingent Beneficiary

If the primary beneficiary or beneficiaries named above do not survive the Grantor (or, for the organization beneficiary, do not exist at the Grantor's death), the Grantor's interest in the Property shall instead transfer to:

\*\*\*\*, residing at (the "Contingent Beneficiary"),

if the Contingent Beneficiary is then living. The Contingent Beneficiary has no present interest in the Property during the Grantor's lifetime.

### 5. No Present Interest; Retention of Ownership

**The Grantor retains full ownership, possession, and control of the Property during the Grantor's lifetime.** No beneficiary named in this deed acquires any present right, title, or interest in the Property during the Grantor's lifetime. The Grantor reserves the absolute right to sell, convey, lease, mortgage, encumber, or otherwise dispose of the Property without the consent of, or any notice to, any beneficiary named herein. Any such disposition shall — to the extent of the interest disposed — revoke this TOD deed as to the disposed interest.

This deed conveys no present interest and shall not be construed as a gift, assignment, or conveyance effective before the Grantor's death.

### 6. Revocability

**This deed is revocable.** The Grantor retains the right to revoke this deed at any time prior to death, without the consent of any beneficiary, by any of the following methods:

1. **Execute and record a Revocation of Transfer on Death Deed** in the office of the recorder of the county in which the Property is located. The revocation must be signed, notarized, and recorded before the Grantor's death. (In California, the revocation form under Cal. Prob. Code §5628 requires notarization; witnesses are not statutorily required for the revocation itself, though they are required for the original deed under §5624.)
2. **Record a new Transfer on Death Deed** for the Property. The later-recorded TOD deed supersedes and revokes this one to the extent of any inconsistency.

3. **Convey the Property** (in whole or in part) to a third party — this revokes the TOD deed as to the interest conveyed.
4. **Transfer the Property into a trust** or other entity — the change of legal ownership revokes this TOD deed.

**Will does not revoke.** In most TOD-deed states, a provision in the Grantor's will purporting to dispose of the Property does **not** revoke this TOD deed. Revocation must be made by one of the methods above, during the Grantor's lifetime and prior to the Grantor's death.

## 7. Post-Death Transfer Mechanics

Upon the death of the Grantor, the named beneficiary (or the beneficiary's personal representative) must complete the transfer by:

1. Obtaining a **certified copy of the Grantor's death certificate**;
2. Preparing and executing an **Affidavit of Death of Grantor** (or Affidavit of Survivorship) identifying the beneficiary, the Property, and this recorded TOD deed;
3. **Recording** the death certificate and affidavit in the office of the recorder of [COUNTY] County, [STATE];
4. Filing any Change of Ownership or similar form required by the [COUNTY] County Assessor;
5. **Contacting the mortgage servicer** (if the Property is mortgaged — see Section 9 below);
6. Paying any creditor claims of the Grantor's estate to the extent applicable under state law (see Section 8 below).

The Company (or attorney preparer) recommends the beneficiary consult a title-insurance company or real-estate attorney to confirm marketable title before any subsequent sale or refinance.

## 8. Successor Liability for Grantor's Debts

In most TOD-deed states, the beneficiary takes the Property subject to the Grantor's unpaid debts to the extent of the value of the Property received. For example, **California Probate Code §5697** imposes liability on TOD-deed beneficiaries for the Grantor's unsecured debts up to the fair market value of the Property received, for a limited period after the Grantor's death. The beneficiary should verify applicable state law before disposing of the Property within the creditor-claim period.

## 9. Existing Encumbrances and Mortgage

The Grantor represents that, as of the Effective Date, no mortgage or deed of trust encumbers the Property. Existing easements, covenants, conditions, and restrictions of record remain in effect.

## 10. Spousal Rights; Homestead and Elective Share

**This deed does not override a surviving spouse's statutory rights.** In many states, a surviving spouse has non-waivable rights that may take priority over a TOD-deed beneficiary designation, including:

- **Homestead rights** — in states with constitutional or statutory homestead protection (e.g., Florida, Texas), a surviving spouse (and sometimes minor children) may have rights in the primary residence that defeat or limit a TOD transfer to others.
- **Elective share / spousal forced share** — many non-community-property states allow a surviving spouse to claim a statutory percentage of the decedent's augmented estate, which may reach TOD-transferred property.
- **Community-property rights** — in community-property states, one spouse cannot unilaterally transfer the community interest of the other.

**If the Grantor is married and the spouse is not the sole beneficiary, the Grantor should either obtain the spouse's written consent/joinder or consult an estate-planning attorney before recording.**

## 11. Beneficiary Disclaimer

A beneficiary named in this deed may **disclaim** all or part of the interest transferred, in accordance with Internal Revenue Code §2518 and applicable state disclaimer law. A qualified disclaimer must generally be in writing, signed, delivered to the personal representative or title-holding authority, and executed within nine (9) months of the Grantor's death, and the disclaimant must not have accepted the interest or any benefits from it. Upon a valid disclaimer, the disclaimed interest passes as if the disclaimant had predeceased the Grantor — that is, to the contingent beneficiary (if any), or by the anti-lapse rule in Section 3, or otherwise through the Grantor's estate.

## 12. Tax and Benefits Disclosures

**Stepped-up basis (IRC §1014).** Real property transferred by TOD deed is generally includable in the decedent's gross estate under IRC §2033 and therefore receives a stepped-up income tax basis to fair market value at the date of the Grantor's death, consistent with IRC §1014. This reduces capital-gains tax on a later sale. *Caveat: tax law is subject to Congressional amendment, and the stepped-up basis rule has been the subject of ongoing legislative debate. Consult a tax advisor.*

**Federal estate tax.** The Property's fair market value at the Grantor's death is includable in the Grantor's gross estate. For 2024-2025, the federal estate tax exemption is approximately \$13.61 million per individual; most estates will owe no federal estate tax. The Tax Cuts and Jobs Act's doubled exemption is scheduled to sunset after 2025 absent further Congressional action.

**Gift tax.** A TOD deed is **not** a completed gift during the Grantor's lifetime (no present interest is conveyed). No gift tax return is required solely for executing this deed.

### 13. Contestability

**A TOD deed may be contested.** Although a TOD deed avoids probate, interested parties (heirs, creditors, disappointed beneficiaries) may challenge its validity in court on grounds including fraud, undue influence, lack of mental capacity at signing, and improper execution. **Capacity standard.** In many TOD-deed states (including California, Arizona, and Colorado), the legal standard for capacity to execute a TOD deed is **contractual capacity**, which is higher than the testamentary capacity required for a will. A Grantor with mild cognitive decline who could still execute a valid will may lack capacity to execute a valid TOD deed.

### 14. State-Specific Provisions

#### 15. General Provisions

**Governing Law.** This deed is governed by the laws of the State of [STATE], where the Property is located.

**Severability.** If any provision of this deed is held invalid or unenforceable, the remainder shall continue in full force and effect, and the invalid provision shall be modified to the minimum extent necessary to be enforceable while preserving the Grantor's intent.

**Construction.** This deed shall be construed to give maximum effect to the Grantor's intent to transfer the Property at death without probate and to revoke all prior inconsistent TOD deeds of the Property executed by the Grantor.

**Recording required. This deed is not effective until recorded with the [COUNTY] County Recorder** in [STATE] during the Grantor's lifetime.

**Deed preparer.** This deed was prepared by the Grantor.

### 16. Signatures

The Grantor has executed this Revocable Transfer on Death Deed as of .

**Grantor**

\_\_\_\_\_ PRINTED NAME

\_\_\_\_\_ SIGNATURE

\_\_\_\_\_ DATE

## Notary Acknowledgment

State of [STATE] County of [COUNTY]

On this \_\_\_\_\_ day of \_\_\_\_\_, 20, before me, the undersigned notary public, personally appeared [GRANTOR NAME], proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same for the purposes therein contained.

I certify under PENALTY OF PERJURY under the laws of the State of [STATE] that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public: \_\_\_\_\_ My commission expires: \_\_\_\_\_ [Notary Seal]

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## RECORDING INSTRUCTIONS (for the Grantor)

1. **Sign** this deed in the presence of a notary public.
2. **Record** the signed original with the [COUNTY] County Recorder's office in [STATE].
3. **Pay the recording fee** (varies by county — check your county recorder's website).
4. **TOD deeds are exempt from documentary transfer tax.** Tell the recorder's office this is a TOD deed; you should not be charged transfer tax.
5. **Keep a copy.** Store the original recorded deed with your estate-planning documents. Tell your beneficiary where it is.
6. **Update as needed.** Review every 3-5 years or after major life events (marriage, divorce, death of a beneficiary, sale of the property).

## BENEFICIARY POST-DEATH ACTION CHECKLIST

*Provide this checklist to your beneficiary (or keep with this deed for their use).*

After the Grantor's death, the beneficiary should:

1.  Obtain at least **two certified copies of the death certificate** from the state vital-records office.
2.  Prepare and notarize an **Affidavit of Death of Grantor** (or Affidavit of Survivorship) — many county recorders have standard forms.
3.  **Record** the death certificate and affidavit in the [COUNTY] County Recorder's office where this deed was recorded.
4.  File any **Change of Ownership form** required by the [COUNTY] County Assessor.

5.  Confirm there are no mortgages, liens, or judgments encumbering the Property.
6.  **Obtain a title-insurance commitment** before selling or refinancing, to confirm marketable title.
7.  **Update homeowner's insurance** to name the beneficiary as insured.
8.  **Address property taxes** — redirect tax bills, confirm any homestead or senior exemptions.
9.  **Consult a CPA** regarding stepped-up basis reporting if you later sell.
10.  **Wait the applicable creditor-claim period** before making major dispositions. In California, creditors may pursue TOD-transferred property for a limited period (Cal. Prob. Code §5697).
11.  **Consider whether to disclaim** (IRC §2518) — a disclaimer must generally be made within 9 months of the Grantor's death and before accepting any benefits from the Property.