



# Friday Fast Facts

## Transfer on Death Deeds

### June 7, 2024

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The New York State Real Property Law has been amended by adding Section 424. This new section approves the use of a Transfer on Death Deed (TOD) and this new statute takes effect on 7/19/24.

The main benefit of the TOD deed is to transfer the real property of the owner without having to probate the owner's Last Will and Testament or administer the estate of the owner who dies intestate. The owner maintains full ownership and control of the property during his lifetime and can change the grantees on the TOD at any time. The transfer of title by a TOD deed only becomes effective upon the death of the owner.

One of the requirements is that the TOD deed be witnessed by 2 people who were present when the owner signed the TOD deed.

If the owner wants to revoke the TOD deed, the owner can simply record a new deed to replace the earlier deed. Please note that the TOD deed cannot be revoked by the owner's Last Will & Testament and a new deed is therefore required to revoke the earlier deed. Since the owner can revoke the transfer at any time, the owner has not completed a gift to the grantee and there is no gift tax.

While all other deeds require delivery by the grantor with the intention to convey title and acceptance by the grantee, the TOD deed does not require acceptance by the grantee. The grantee has the right to renounce all or part of their interest in the TOD deed in the same manner as if the interest was included in the owner's Last Will & Testament.

If the grantee in a TOD deed dies before the owner, then the transfer lapses and title remains in the owner's estate. The grantee's interest is contingent on surviving the transferring owner. The owner may want to designate an alternate grantee to avoid probate or administration if the original grantee predeceases the owner.

The owner retains full control over the property and can sell or mortgage the property during his lifetime without the consent of the grantee since the transfer only takes effect upon the death of the owner. The grantee's creditors cannot enforce their judgment or lien against the property since the grantee has no interest in the property until the owner dies. This differs from a life estate deed where the remainderman has a vested interest that will allow creditors to collect their judgment or lien against their vested interest in the property.

Upon the owner's death, the grantee takes title subject to all liens and encumbrances.

The TOD deed may be signed and witnessed prior to the 7/19/24 effective date of the statute. However, if the owner dies prior to 7/19/24, then no transfer occurred and title remains in the owner's estate. The TOD deed must be recorded prior to the death of the owner to be effective.

If the owner designates multiple grantees, then all of the grantees will become the new owners of the property and they may disagree on whether to sell or retain the property which may result in a partition action that is more expensive than probate. There is no fiduciary to sell the property with a TOD deed as there is with probate, estate administration or trusts.

If multiple owners sign a TOD deed, then the last one surviving can revoke the deed or change the grantees against the wishes of the other deceased owners. If there are multiple owners as tenants in common, all owners should sign the TOD deed and the transfer will take effect upon the death of the last tenant in common. If the TOD deed is only signed by one owner and that owner predeceased the other tenants in common, then no transfer takes place upon the death of the grantor since there are other surviving owners. The transfer will only be effective if the grantor is the last of the tenants in common to die.

Please see below for the Transfer on Death Deed form:

[Transfer on Death Deed.pdf](#)



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