

Revocable Transfer on Death Deed (OR)

by Layla K. McLean, Buckley Law PC, with Practical Law Trusts & Estates

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A Standard Document that provides a revocable transfer on death deed (TODD) for an owner of real property in Oregon to designate a beneficiary to receive the property on the owner's death. This estate planning tool allows for the nontestamentary transfer of property, potentially avoiding the need for probate. This Standard Document conforms to the requirements of Oregon's Uniform Real Property Transfer on Death Act (URPTDA), as outlined under Or. Rev. Stat. §§ 93.948 to 93.985. It explores the circumstances under which a TODD may be an effective part of an estate plan, while also detailing situations where it may be inadvisable. The document outlines the critical requirements for creating, executing, and recording a valid TODD, as well as the methods for revocation. It also examines the significant practical implications for beneficiaries, including the extended 18-month creditor claim period under Or. Rev. Stat. § 93.973, potential title insurance complications, and the treatment of the property for estate tax and Medicaid estate recovery purposes.

DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

The Uniform Real Property Transfer on Death Act (URPTDA) governs transfer on death deeds in Oregon (Or. Rev. Stat. §§ 93.948 to 93.985). A transfer on death deed (TODD) is a deed that allows a real property owner (also called a grantor or transferor) to designate a beneficiary to receive the real property on the grantor's death. The TODD conveys no rights to the beneficiary during the grantor's lifetime. The grantor can revoke or amend a TODD at any time during the grantor's lifetime, while the grantor has capacity.

On the grantor's death, property subject to a TODD transfers automatically to the qualified beneficiary without a probate (see Drafting Note, Identifying Beneficiaries and Their Shares). A TODD is a nontestamentary instrument that enables the grantor to transfer real property without:

- The formalities required for creating a will or trust.
- The necessity of a probate or trust administration.

Oregon provides a statutory TODD form, which is not mandatory, but is commonly used (Or. Rev. Stat. § 93.975). This Standard Document complies with the Oregon statutory form and includes integrated notes and drafting tips that outline the requirements, advantages, and disadvantages of using a TODD in Oregon.

When to Use a TODD

A TODD may be useful:

- When real property is intended to remain in the family.

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- When real property will not be immediately sold after the property owner's death.
 - Where a trust may be undesirable.
 - Where the value of an estate, including the real property, might otherwise qualify for Oregon's simple estate administration process by affidavit (formerly called small estate administration), but the real property value is higher than that permitted under Or. Rev. Stat. § 114.510. Depending on the value of the real property and the size of the grantor's estate, using a TODD to transfer the real property in these circumstances can reduce the probate estate so that the balance of the estate may qualify for simple estate administration. For more information on simple estate affidavits (Affidavits of Claiming Successors or Affiants) and the administration of simple estate proceedings, see [State Q&A, Probate: Oregon: Question 19: Simple Estate Proceeding](#).
- For more information on the advantages of TODDs, see Drafting Note, Advantages of TODDs.

When to Avoid a TODD

A TODD is generally not preferred if:

- Potential TODD beneficiaries do not get along or might disagree about how the property should be managed or sold, or both, on the property owner's death.
 - The property owner owns the property jointly with other individuals, with or without survivorship rights.
 - The property owner has numerous creditors. Oregon attorneys rarely recommend TODDs for their clients because of the issues that may arise with the statutory 18-month creditor claim period, particularly those with property encumbered by liens and mortgages (Or. Rev. Stat. § 93.973 and see Disadvantages of TODDs).
 - There is a likelihood that the property owner's probate estate will enforce a liability against the property transferred at the death of the owner by TODD because the probate estate of the property owner is (or will be) insufficient to satisfy:
 - a creditor claim allowed or established by summary determination or separate action against the probate estate under Or. Rev. Stat. §§ 114.505 to 114.560 or Or. Rev. Stat. §§ 115.001 to 115.335; or
 - a statutory allowance to a surviving spouse or child under Or. Rev. Stat. § 114.015.(Or. Rev. Stat. §§ 93.190 and 93.973.)
- The estate of the property owner or property owner's spouse is likely to have a Medicaid claim asserted against the estate by the [Oregon Medicaid Estate Administration Unit \(EAU\)](#) for reimbursement of up to the amount of benefits paid on behalf of the property owner or the property owner's spouse, during the lifetimes of the owner and the owner's spouse (Or. Rev. Stat. § 416.350(2), (6)(a)).
 - A beneficiary of the TODD is receiving government needs-based benefits, such as Medicaid and Supplemental Security Income (often referred to as SSI).

(See Drafting Note, Disadvantages of TODDs.)

Property owners wanting to use TODDs should consult with an attorney:

- To make sure a TODD is the most appropriate device for their specific circumstances and goals at death.
- To determine whether, or what type of, further estate planning might be desirable or necessary to accomplish their goals and effectuate their intentions regarding the real property, the owner's overall estate, and all non-TODD assets.

If the client owns real property in another state and wants to use a TODD for non-Oregon property, counsel should research the state specific requirements of a TODD and consult with counsel in the applicable state before advising the client on this issue. For more information on transfer on death deeds in other states, see [State Transfer on Death Deed Chart](#) and [State Transfer on Death Deed Toolkit](#).

TODD Law Effective Date

URPTDA applies to TODDs from grantors who die on or after January 1, 2012, whether the grantor

executed or recorded the TODD before, on, or after that date (Or. Rev. Stat. § 93.950).

Qualifying Real Property

A TODD can convey any interest in real property located in the state of Oregon (Or. Rev. Stat. § 93.949(5)).

Requirements to Create a TODD

A TODD must satisfy the following conditions:

- When creating the TODD, the grantor must have the capacity to create a will (testamentary capacity) (Or. Rev. Stat. § 93.959(1)). To establish testamentary capacity, it must appear that the grantor, when creating the TODD is of sound mind, and understands:
 - the nature of that act;
 - the nature and extent of the grantor's property;
 - the persons who are or should have been the natural object of the grantor's bounty; and
 - the scope of the TODD provisions.

(*In re Ellingson's Estate*, 339 P.2d 447, 448 (Or. 1959).) A conservator may also execute a TODD for a conservatee (the protected person) with prior court approval in certain circumstances (Or. Rev. Stat. § 125.440). If the conservatee is mentally competent, the conservatee may execute estate planning documents, including a TODD (Or. Rev. Stat. § 125.455). However, it is good practice to first obtain a court order authorizing the execution of the TODD by the conservator or conservatee in advance of signing or recording a TODD. Similarly, an agent or attorney-in-fact with the power to convey land and other real property, which authorizing power of attorney is properly recorded in the county in which the real property is located, may execute and record a TODD for the property owner. (Or. Rev. Stat. § 93.670). For more information on powers of attorney in Oregon, see [Standard Document, Power of Attorney \(OR\)](#).

- The form of the TODD instrument must:
 - contain the essential elements and formalities of a properly recordable *inter vivos* deed, except that the TODD must state that the transfer to the designated beneficiary (or beneficiaries, if the TODD names more than one beneficiary) is to occur at the grantor's death (see Recording Requirements in Oregon);
 - identify the beneficiary by name (a beneficiary designation that identifies beneficiaries only as members of a class is void); and
 - be recorded before the grantor's death in the deed records in the office of the county clerk for the county in which the real property is located.

(Or. Rev. Stat. § 93.961.)

Recording Requirements in Oregon

To be enforceable on a grantor's death, a valid, executed TODD must be recorded before the grantor's death in the deed records in the office of the county clerk for the county in which the real property is located (Or. Rev. Stat. § 93.961(1)(d)). This is different from other types of valid, executed deeds that do not need to be recorded before the grantor's death.

In addition to this timing requirement, to be recorded, a TODD must meet certain other requirements including those regarding:

- Formatting (see Formatting Requirements).
- Content (see Content Requirements and Cover Sheet).
- Acknowledgment (see Acknowledgment).
- Additional local requirements or forms specifically required by the county where the real property is located (see Consult the County Webpage for Additional Recording and eRecording Requirements).

Formatting Requirements

Oregon statutes contain many additional requirements for deeds submitted for recording, including that:

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- The page size of the deed must be no larger than 8 1/2 by 14 inches.
- The text must be typed, written, or printed in eight-point type or larger.
- The paper must be of sufficient quality for reproduction photographically.
- There must be enough space for the recording sticker (4 by 2 inches) to be placed on the first page of the document (preferably in the upper right-hand corner).

(Or. Rev. Stat. § 205.232 and see, for example, [Multnomah County: Recording Requirements](#).)

These statutory formatting requirements apply to TODDs, but do not apply to out-of-state notarial acts or to certified copies of public records presented to a county clerk for recording.

Content Requirements and Cover Sheet

When an individual presents a TODD to the county clerk for recording, the first page of the document (or a cover sheet submitted with the TODD, if the TODD does not contain this information) must include:

- The name of this transaction, which in this case is the title of the TODD (Or. Rev. Stat. § 205.236(1)).
- The names of the persons involved in the transaction, which in this case is the grantor and beneficiary (Or. Rev. Stat. § 205.160(2)(b), (c)).
- The name and address where the recorded document should be sent after recording, which for a TODD is generally the grantor's name and address or the name and address of the attorney recording the TODD (Or. Rev. Stat. § 205.180(4)).
- The name and address of the person or persons to receive the real property tax statements, which for a TODD is generally the grantor's name and address (Or. Rev. Stat. § 93.260(1)).

(Or. Rev. Stat. § 205.234.)

When a signed and acknowledged TODD is missing the information required on the first page of the document, a cover sheet may be attached to the TODD that includes the missing information required by statute (Or. Rev. Stat. 205.234(2)). Any

cover sheet submitted with a TODD becomes a part of the recorded document.

Unlike all other Oregon deeds, a TODD does not require consideration (payment for the property) or a statement of the true and actual consideration paid for the transfer on the TODD (Or. Rev. Stat. §§ 93.030(6), 93.963, and 205.234(1)(d)).

When recording the TODD, counsel must also prepare and attach any transfer tax affidavit or transfer tax affidavit exception form required by the county in which the real property is located (see, for example, an [Application for Exemption from Washington County Transfer Tax](#), where the selling price is less than \$13,999). Counsel should consult the county assessor's website for the applicable transfer tax affidavit requirements (see Consult the County Webpage for Additional Recording and eRecording Requirements).

Acknowledgment

For a TODD to be recorded, the grantor must acknowledge the TODD before a notary public or other authorized official, in the same manner as required for the execution and acknowledgement of any other type of deed (Or. Rev. Stat. §§ 93.410 and 93.961). However, deeds (including TODDs) need not be notarized in Oregon to be valid and recorded in the state of Oregon, provided that:

- The notarial acknowledgement is valid in the state in which the TODD is executed.
- The grantor personally appears before the notary, acknowledges that the grantor willingly and knowingly signed the TODD, and the notary identifies the grantor as the one who did indeed sign the TODD. The grantor may sign before, but not after, the notarization. (Or. Rev. Stat. § 194.215(1)) Alternatively, the grantor, if remotely located, may perform this acknowledgment of the TODD and the notary public can perform this identification by using communication technology, provided the notary and grantor communicated with each other simultaneously by sight and sound and complied with the requirements of Or. Rev. Stat. § 194.235. (Or. Rev. Stat. § 194.277).
- The deed includes:
 - the notary's signature and title;
 - the expiration of the notary's authority;

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- the date the document was signed;
- the county and state in which the TODD was executed.
- the name of the person for whom the notarial act is performed; and
- the notary's state issued stamp or seal on the deed.

(Or. Rev. Stat. §§ 194.260 and 194.280.) Any cover sheets included with the TODD do not need to be separately signed or acknowledged (Or. Rev. Stat. 205.234(2)).

For more information on acknowledgment, see Drafting Note, Notarial Acknowledgment.

Consult the County Webpage for Additional Recording and eRecording Requirements

Each county recorder may have additional policies, tax affidavits, fees, and procedures governing recordation of deeds and other documents in the recorder's county. Counsel should consult the applicable county recorder's official website or contact a local title company to verify that their TODD form complies with state and local laws and practices and to obtain any required tax forms and information on recording and other fees related to any required tax affidavit. Counsel should do this before the owner executes the document and submits the TODD for recording.

The county recorder will briefly review a TODD submitted for recording to ensure compliance with applicable state and local recording requirements. The recorder will either:

- Reject the deed for noncompliance.
- Record the deed, but require a correction deed for one or more issues with the deed submitted for recording.
- Accept the deed and record it in the public records.

This process is generally completed within a few days or weeks. It can take longer, especially during year-end or heavy use periods, during holidays, in heavily populated counties, and during times of governmental budgetary constraints, if the TODD is being mailed to the county for recording.

Oregon also allows for the electronic recording (known as eRecording) of deeds, including TODDs, and other documents (Or. Rev. Stat. § 93.804 and see, for example, [Multnomah County, Recording Documents](#)). eRecording allows for faster and more efficient recording of a TODD or other document than if the document is mailed to the county recorder's office.

To use eRecording, the original TODD (or other document) a person with physical possession of the TODD submits the TODD for recording through a third-party eRecording vendor (see, for example, [Multnomah County, Recording Documents](#)). TODDs and other documents sent to a county through a third-party eRecording vendor, if properly submitted with the payment for the required recording fees, are typically processed within two business days of submission. Once the TODD is submitted and the county recording office processes it, the eRecording service returns a copy of the recorded TODD with an electronic deed recording sticker. Any failure of the TODD to comply with the county's recording requirements will delay recording of the TODD.

The real property assessor's office website for each county in Oregon includes links to each county's published recording requirements.

Recording Fees

Oregon imposes a minimum \$86 recording fee for a one-page instrument recording real property, including a TODD, plus a \$5 recording fee for:

- Each additional page of the deed.
- A cover page.
- Each additional transaction embodied in one document such as for deeds that include and convey more than one parcel of real property.

(Or. Rev. Stat. §§ 205.236, 205.320, and 205.323(1).) The recording fee for deeds imposed by a county in Oregon can change no more frequently than every six months (Or. Rev. Stat. 203.115). Each county in Oregon charges its own varying rates for recording documents. County recorders typically publish current fees charged for recording documents online. There may be additional recording or service fees on

TODDs being recorded electronically using a third-party eRecording vendor (see Consult the County Webpage for Additional Recording and eRecording Requirements).

If the document does not comply with the content or formatting requirements, but can still be legally recorded, the county will charge a minimum of \$20 in addition to the standard recording fee as a penalty for presenting a nonstandard instrument for recording (Or. Rev. Stat. § 205.327). Additional recording fees apply if the document contains a mistake and must be re-recorded (Or. Rev. Stat. §§ 205.320 and 205.323).

For more information on the formatting and content requirements, see Drafting Note, Content Requirements and Cover Sheet.

Re-Recording Requirements

If a deed, including a TODD, is recorded and the county later notices a mistake on the deed, such as an incorrect legal description, the county may instruct the grantor to correct the missing or inaccurate information and present the deed for re-recording. Similarly, if a grantor notices an error or mistake on the deed, the grantor may correct the missing or inaccurate information and present the deed for re-recording.

When presenting a deed for re-recording, the grantor must include, on the first page of the deed, or on a cover sheet authorized by Or. Rev. Stat. § 205.234(2), a re-recording statement that includes the following words:

“RERECORDED AT THE REQUEST OF
[GRANTOR NAME] TO CORRECT [PRIOR
DOCUMENT NAME] PREVIOUSLY
RECORDED [IN BOOK [BOOK NUMBER]
AND PAGE [PAGE NUMBER]/AS FEE
NUMBER [FEE NUMBER]].”

Effect of a TODD During Grantor's Life

During the grantor's life, execution and recordation of a TODD does not:

- Affect the ownership rights of the grantor (or any other property owner). For example, the

grantor (or other property owner) may sell, rent, encumber, or otherwise deal with the specified real property, while the grantor is alive and has testamentary capacity. The property remains subject to claims of the grantor's creditors.

- Create any legal or equitable right in the beneficiary or subject the specified real property to the beneficiary's creditors, legal issues, or future divorce proceedings.
- Transfer any right, title, or interest in the specified real property before the grantor's death. Though not common, a TODD may not transfer any property interest until the subsequent death of the grantor's spouse where a grantor and the grantor's spouse own the property as tenants in common (without rights of survivorship) and convey the real property together (Or. Rev. Stat. §§ 93.280 and 93.969(3)).

(Or. Rev. Stat. § 93.967.)

Effect of a TODD After Grantor's Death

Except in certain cases where there are joint owners, a TODD transfers all the grantor's interest (not more, even if the deed purports to convey more than the grantor's ownership interest in the real property) in the specified real property on the grantor's death to the designated beneficiaries (Or. Rev. Stat. §§ 93.150 and 93.969, and see Transfer on Death of TODD Property Owned Jointly with Rights of Survivorship). A TODD transfers the property without covenant or warranty of title even if the deed contains a contrary provision (Or. Rev. Stat. § 93.969(4)).

Memorializing Transfer on Death

After the grantor's death, the beneficiary (or beneficiaries) need only record a certified copy of the grantor's death certificate with the county in which the real property is located to transfer title into the beneficiary's name. This recording provides notice to all third parties that title to the real property was transferred to the named TODD beneficiary. The death certificate must be a short form death certificate that does not include the cause of the grantor's death. To record the death certificate, a certified copy (original) must be

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attached to either a cover sheet or a blank page, which includes a place for:

- The recording sticker.
- The name and address of where to return the recorded document.
- The decedent's name.
- Any other requirements that are specific to the Oregon county in which the death certificate is being recorded.

(Or. Rev. Stat. §§ 205.234(2) and 432.355.)

Payment of Grantor's Debts and Liens on Death

The named beneficiary receives the TODD real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the grantor's death, including any claims or liens legitimately asserted by the [Oregon Medicaid Estate Administration Unit \(EAU\)](#), including those for Medicaid claims or medical assistance paid on behalf of the grantor or the grantor's spouse, during their lifetimes, under statute (Or. Rev. Stat. § 93.969(2) and Or. Admin. Rules 461-135-0832 and 461-135-0835).

EAU may assert a claim against the estate of the Medicaid recipient or the estate of the Medicaid recipient's spouse, or both. The estate of the Medicaid recipient or the Medicaid recipient's spouse includes the Medicaid recipient's share or interest in the real property, after the death of the surviving spouse, but only if the transfer of the Medicaid recipient's interest in the real property either:

- Was made before the person either became a Medicaid recipient or applied for that aid,
- Was made without adequate consideration.
- Was intended to hinder or prevent estate recovery.

(Or. Rev. Stat. §§ 411.620(2), 411.630(2), 416.350, OAR 461-180-0090, and see *Dept. of Human Services v. Hobart*, 507 P.3d 299, 304-05 (Or. Ct. App. 2022).) However, EAU may not be successful in asserting or recovering Medicaid or medical

assistance claims against the grantor's estate, including against real property that is the subject of a TODD, when:

- The grantor is survived by a spouse, minor children, adult disabled children, or a caregiving child that qualifies under the Medicaid rules, in certain cases (42 U.S.C. § 1396p(b)(2), Or. Rev. Stat. § 416.350(2), Or. Admin. Rule 461-135-0832, and see *Nay v. Dep't of Human Servs.*, 385 P.3d 1001 (Or. (2016)).
- EAU determines, in its sole discretion, after application by the impacted individuals, that the recovery claim would create an undue hardship for the beneficiaries, heirs, or family members of the deceased grantor entitled to the grantor's assets (Or. Rev. Stat. § 416.350(2) and Or. Admin. Rule 461-135-0841).

If the trust or probate estate of the property owner is insufficient to pay the statutory allowance to a surviving spouse or child under Or. Rev. Stat. § 114.015 (subject to the support limitations under Or. Rev. Stat. § 114.065), or valid creditor claims, the trustee or personal representative of the property owner's estate may enforce a creditor claim or lien against TODD property transferred at the property owner's death within 18 months of the grantor's death. If the grantor transfers multiple real properties by one or more TODDs, these liabilities are apportioned among the transferred properties in proportion to the net value of each property transferred at the grantor's death. (Or. Rev. Stat. §§ 93.190 and 93.973.)

Disclaimer of TODD Interest

While uncommon, a beneficiary can disclaim all or a part of the beneficiary's interest in the real property transferred by a TODD after the grantor's death (Or. Rev. Stat. §§ 93.971 and 105.623-105.649). A beneficiary may not disclaim an interest in the real property or estate if the disclaimer is barred or limited under Or. Rev. Stat. §105.643, or if the purpose or effect of the disclaimer is to prevent recovery of money or property to be applied against a judgment for restitution or for state recovery of medical assistance, costs and benefits (Medicaid) paid for or on behalf of the decedent (Medicaid recipient) or the spouse of the decedent (Medicaid

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recipient's spouse) during the lifetime of the Medicaid recipient or the Medicaid recipient's spouse (Or. Rev. Stat. § 105.643(6)).

A disclaimer of an interest in property is also barred if, before the disclaimer becomes effective, either:

- The disclaimant accepts the interest sought to be disclaimed.
- The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so.
- The interest sought to be disclaimed is sold by a judicial sale.
- The disclaimer is barred by a written waiver of the right to disclaim.
- The disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power, unless the power is exercisable in favor of the disclaimant.
- The disclaimer is barred or limited if provided by a law other than Or. Rev. Stat. §§ 105.623 to 105.649.
- The disclaimer is barred if the purpose or effect of the disclaimer is to prevent recovery of money or property to be applied against a judgment for restitution under Or. Rev. Stat. §§ 137.101 to 137.109.

(Or. Rev. Stat. § 105.643.)

A beneficiary or heir may decide to disclaim an interest, for example:

- When there are environmental contamination issues and the property is more of a liability than an asset.
- When the equity in the property may or is likely to be consumed by creditor claims.
- When the beneficiary or heir is wealthy and wants the property to pass to the beneficiary's issue, lineal descendants, the contingent beneficiaries named in the instrument, or to other beneficiaries or heirs.
- To equalize distributions among other beneficiaries or family members of the property owner.

- To carry out the property owner's intent regarding the grantor's overall estate plan, if the TODD creates an unintended or unfair result and the beneficiaries agree as to the reapportionment of the decedent's probate, trust, TODD, or other estate assets (often through a nonjudicial settlement agreement) (Or. Rev. Stat. § 130.045).

A disclaimed share passes similar to a lapsed share (see Drafting Note, Lapse on Beneficiary's Death).

Transfer on Death of TODD Property Owned Jointly with Rights of Survivorship

Oregon law defines a joint owner as a joint tenant, a tenant by the entirety, tenancy in common with rights of survivorship, and any other co-owner of property that is held in a manner that entitles one or more of the owners to ownership of the entire real property on the death of one or more of the other owners (Or. Rev. Stat. § 93.949(3)).

Owners holding real property with a right of survivorship can transfer the property by a TODD, but the transfer is subject to the survivorship rights of the other property owners. Therefore, when real property held by a joint owner with a right of survivorship is transferred by a TODD, if the grantor under the TODD is:

- Not the last joint owner to die, the grantor's interest in the real property belongs to the surviving owners with a survivorship right.
- The last surviving joint owner to die, the real property transfers on the grantor's death by the TODD.

(Or. Rev. Stat. § 93.969(3) and see Revocation by Joint Owner.)

Revocation of a TODD

A grantor may revoke a TODD if the grantor has the capacity to make a will (Or. Rev. Stat. § 93.959(1)). For more information on capacity, see Drafting Note, Requirements to Create a TODD.

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A grantor may revoke a TODD by recording an acknowledged document revoking the TODD before the grantor's death in the records of the county where the property is located and the TODD was previously recorded. This document may include:

- A subsequent TODD that revokes the deed expressly or by inconsistency (for example, if the grantor signs and records a TODD that names a beneficiary different from a prior recorded TODD for the same property interest on the TODD previously recorded). However, rather than simply recording a new TODD, the grantor should record a statement of TODD revocation with the county recorder's office before recording a new TODD.
- An instrument of revocation expressly revoking the previously recorded TODD.
- An *inter vivos* deed transferring an interest in the property of the TODD to the extent of the grantor's interest in the property transferred by the TODD (the grantor may revoke a TODD by selling or otherwise disposing of the property during the property grantor's lifetime).

(Or. Rev. Stat. § 93.965(1).)

The most recent TODD or instrument affecting the TODD property recorded before the grantor's death controls the disposition of the property, except:

- If the grantor divorces or the grantor's marriage is annulled, any bequests to the surviving spouse, including as a beneficiary of a TODD, are revoked, unless:
 - the grantor re-records the TODD;
 - the grantor evidences a different intent in the TODD; or
 - the dissolution judgment entered in the Court states or orders otherwise.
- When the TODD property is conveyed to a parent who deserted or neglected the grantor, the property passes as if the parent predeceased the grantor in certain circumstances (see Forfeiture by Parent Deserting or Neglecting Grantor).

(Or. Rev. Stat. §§ 93.981, 93.983, 93.985, and see Revocation on Divorce and Annulment.)

Oregon provides an optional statutory form of an instrument revoking a TODD (Or. Rev. Stat. § 93.977). A TODD or an instrument revoking a TODD is void if the TODD or instrument revoking the TODD is procured by fraud, duress, or undue influence (Or. Rev. Stat. § 93.959(2)).

No Revocation by Revocatory Act

After the property owner records a TODD, the owner may not revoke the deed by a revocatory act on the deed. For example, the owner cannot revoke the TODD by tearing up the deed, writing "cancel" on it, or telling people the owner wants to revoke the TODD (Or. Rev. Stat. § 93.965(4)).

Revocation by Agent

A designated agent of the grantor may revoke the TODD only if a property owner expressly grants the agent this authority on the TODD instrument (Or. Rev. Stat. § 93.965(2)). A power of attorney that explicitly grants the agent authority to revoke a TODD (or to make changes to the principal's estate plan and estate planning documents) is likely sufficient to revoke the TODD if that power of attorney is recorded in the records of the county where the real property is located. (Or. Rev. Stat. § 93.670). However, this is not the recommended method for granting authority sufficient to revoke a TODD. If a grantor wants to give the grantor's agent the authority to revoke a TODD, counsel should include express language stating so, in both the power of attorney and the TODD, to minimize the opportunity to successfully contest either the TODD or the revocation of TODD.

For more information on powers of attorney in Oregon, see [Standard Document, Power of Attorney \(OR\)](#).

Revocation by Joint Owner

If more than one property owner executes a TODD, each grantor may revoke the TODD as to that grantor's separate ownership interest in the property. A non-revoking grantor's interest in the TODD property still transfers under the TODD and is not affected by the revocations of the other grantor. (Or. Rev. Stat. § 93.965(3).) However, if the grantor is a joint owner and is survived by one

or more joint owners with rights of survivorship, the property subject to the TODD belongs to the surviving joint owners. If the grantor is the last surviving joint owner, the last recorded TODD is effective. (Or. Rev. Stat. § 93.969(3).)

Revocation on Divorce and Annulment

In Oregon, on divorce or annulment, the former spouses are considered to have predeceased one another for estate planning purposes. Any provisions made for the former spouse in each spouse's estate plan are generally considered revoked from the date the divorce or annulment judgment is signed by the court. (Or. Rev. Stat. § 112.315.) This also applies to a TODD in favor of a former spouse, unless the TODD states a different intent by the grantor (Or. Rev. Stat. § 93.981).

Divorced individuals should always meet with an estate planning attorney to execute a new estate plan or reaffirm an existing plan, especially if a divorced property owner intends to name a former spouse as a beneficiary or devisee of the owner's estate plan after the divorce or annulment. This helps minimize:

- Confusion or doubt about the property owner's intent.
- Disputes among former spouses, domestic partners, heirs, trust beneficiaries, devisees of a will or trust, beneficiaries receiving property or other assets by operation of law, and the TODD beneficiaries, especially when the same individuals are not entitled to the same amounts, shares, or property, consistently throughout the property owner's estate plan.

Challenging a TODD

Claimants wanting to challenge the validity of an Oregon TODD can assert a claim to have the TODD set aside. There are also certain circumstances in which a TODD (or revocation of a TODD) is ineffective or void as a matter of law. In these cases, the person contesting the TODD (the petitioner) has 18 months after the grantor's death to file a petition in a probate proceeding (Or. Rev. Stat. §§ 93.959 and 93.973).

TODDs or Revocations Procured by Fraud, Duress, or Undue Influence Are Void

To successfully contest the grantor's capacity or determine whether a TODD or an instrument revoking a TODD is void because it was obtained by fraud, duress, or undue influence, the petitioner has the burden of proving the facts alleged in the petition by clear and convincing evidence within 18 months after the grantor's death'. (Or. Rev. Stat. §§ 93.959 and 93.985).

Forfeiture by Parent Deserting or Neglecting Grantor

When the TODD property would pass by TODD from the deceased grantor to a parent of the deceased grantor either willfully deserting the grantor or failing to provide proper care and maintenance to the grantor for:

- One year immediately before the date when grantor became an adult, and the grantor was an adult when the grantor died, the property passes as if the parent predeceased the grantor, if the person benefitting from forfeiture is grantor's child or sibling, provided:
 - certain other requirements are met;
 - a court order is entered after the filing of the forfeiture petition required by Or. Rev. Stat. § 93.985; and
 - the claim is substantiated by a preponderance of evidence.

(Or. Rev. Stat. §§ 93.983(1) and 93.985(3).)

- Three years immediately before the date when the grantor became an adult, the property passes as if the parent predeceased the grantor, if the person benefitting from forfeiture is **not** grantor's child or sibling, and the grantor was an adult at death, provided:
 - certain other requirements are met;
 - a court order is entered after the filing of the forfeiture petition required by Or. Rev. Stat. § 93.985; and

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- the claim is substantiated by clear and convincing evidence.

(Or. Rev. Stat. §§ 93.983(2) and 93.985(3).)

When the grantor is a minor at death and the TODD property would pass to a parent of the grantor willfully deserting the grantor, neglecting the grantor without just and sufficient cause, or failing to provide proper care and maintenance to the grantor, for the life of the grantor, or for the:

- One year immediately before the grantor's death, the property passes as if the parent predeceased the grantor, if the person benefitting from forfeiture is a child or sibling of the grantor, provided:

- certain other requirements are met;
- a court order is entered after the filing of the forfeiture petition required by Or. Rev. Stat. § 93.985; and
- the claim is substantiated by a preponderance of evidence.

(Or. Rev. Stat. §§ 93.983(3) and 93.985(3).)

- Three years immediately before the grantor's death, the property passes as if the parent predeceased the grantor, if the person benefitting from forfeiture is **not** grantor's child or sibling, provided:

- certain other requirements are met;
- a court order is entered after the filing of the forfeiture petition required by Or. Rev. Stat. § 93.985; and
- the claim is substantiated by clear and convincing evidence.

(Or. Rev. Stat. §§ 93.983(4) and 93.985(3).)

A petition for forfeiture of a share passing to a deserting or neglecting parent of a deceased grantor under Or. Rev. Stat. § 93.983 must be timely filed only by a person benefitting from forfeiture of the parent's share (Or. Rev. Stat. § 93.985).

A petition filed under Or. Rev. Stat. § 113.035 (a petition for appointment of personal representative and probate of will) may not request the forfeiture of a TODD transfer of a

parent of a deceased grantor under Or. Rev. Stat. § 93.983 (Or. Rev. Stat. § 93.983(7)).

Transfers to Slayers and Abusers of Property Owner

Property passing by intestate succession, TODD, or through a will, trust, or otherwise to a slayer or physical or financial abuser of the property owner generally passes and vests as if the slayer or abuser had predeceased the grantor, except in certain limited cases. To qualify as a slayer or abuser, the grantor must die within five years after the abuser is convicted of a felony from conduct constituting physical or financial abuse of the grantor. (Or. Rev. Stat. §§ 112.455(1), 112.457, 112.475, 112.495, and 112.505.)

However, a grantor may intentionally name a slayer or abuser as the beneficiary of the grantor's property or estate, including property passing by TODD. For example, where the grantor is in the hospital, names the TODD beneficiary, but ultimately dies from the injury, the grantor must expressly acknowledge the grantor's intent to name the known slayer or abuser within the will, trust, or TODD as a beneficiary, knowing the slayer or abuser would not otherwise be entitled to receive a share of the property or estate on the grantor's death. (Or. Rev. Stat. §§ 112.465 to 112.555.)

Advantages and Disadvantages of TODDs

Advantages of TODDs

The advantages of a TODD include the following.

- **Avoiding probate.** The main benefit of using a TODD is avoiding the probate process for transferring the real property at the owner's death. A transfer of real property by a TODD is a non-probate transfer. If the TODD real property is the estate's only asset or if there are other assets that are held by non-probate means (such as in a revocable living trust, with a beneficiary designation, or in joint tenancy with a survivorship right), a TODD can help avoid probate. For smaller estates, the ability to avoid a probate can be important when deciding

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whether to use a TODD as part of a person's overall estate plan. For more information on probate in Oregon, see [State Q&A, Probate: Oregon](#).

- **Disposing of property at death while maintaining control during lifetime of property owner.** A property owner that executes and properly records a TODD retains all the owner's rights in the property while the owner is alive and only on the grantor's death is the beneficiary entitled to a share of the property (Or. Rev. Stat. § 93.967).
- **No present interest of beneficiary of a TODD.** Naming a beneficiary on a TODD creates no current real property interest in the beneficiary, so the property is not subject to the beneficiary's creditors, any divorce proceedings, or other financial or legal issues that the beneficiary may be experiencing before the property owner's death and the vesting of the beneficiary's interest (Or. Rev. Stat. § 93.967). The property owner can also change one or more of the primary and contingent beneficiaries named in the TODD at any time while the owner is living and has capacity. A TODD is revocable even if the TODD or another instrument contains a contrary provision. (Or. Rev. Stat. §§ 93.955, 93.965(5), and 93.967).
- **Capital Gains Taxes.** At the property owner's death, the TODD controls the transfer of the subject property to the TODD beneficiary. Because no present interest is transferred before the property owner's death, the property receives a stepped-up or adjusted tax basis for capital gains tax purposes if the fair market value of the property at the owner's death is greater than the owner's tax basis in the property. This can reduce or eliminate any capital gains taxes that would otherwise be owing if the beneficiary received the property by gift during the property owner's life or if the beneficiary sells the property soon after the property owner's death. This result is unlike a lifetime gift to an irrevocable trust or directly to a beneficiary where the trust or beneficiary receives the property owner's tax basis in the real property for capital gains tax purposes without an adjustment of the property owner's tax basis. (26 U.S.C. § 1014 and Or. Rev. Stat. §§ 118.010, 118.270, and 316.716.)

- **Federal and Oregon gift tax consequences.**

The designation of a beneficiary on a TODD is not a completed gift for federal gift tax purposes (26 C.F.R. § 25.2511-2(c)). Therefore, the property owner incurs no gift tax and has no gift tax return filing requirements after executing or revoking a TODD, nor does the execution of a TODD reduce the owner's Federal estate tax exemption during the owner's lifetime (also known as the "unified credit"). Oregon does not impose a gift tax on transfers during the property owner's lifetime, so the gifting benefits are typically less appealing to Oregon residents who do not have federally taxable estates. For more information on federal gift tax, see [Practice Note, Federal Gift Tax](#).

Disadvantages of TODDs

Potential Frustration of Estate Plan

A TODD may conflict with a will or revocable trust instrument that identifies the same property. For example, a valid TODD may transfer the property to a property owner's sister, while the property owner's will may devise that same property to the grantor's daughter. Here, the property generally passes to the sister because a validly recorded and unrevoked TODD controls the disposition of the property. The property owner's will has no effect on the decedent's non-probate assets, including the property controlled by the TODD, except if the decedent's probate assets are insufficient to pay creditor claims. (Or. Rev. Stat. §§ 93.190, 93.953, 93.957, and 93.973, and see [Payment of Grantor's Debts and Liens on Death](#).)

If a grantor does not consider the TODD when creating or amending the grantor's estate plan, the TODD can create issues among beneficiaries or result in a disproportionate benefit to a child or beneficiary of the grantor's estate on the grantor's death (Or. Rev. Stat. § 112.135).

Federal and Oregon Estate Tax Consequences

Because the property owner owns the property until death, the value of the TODD real property is included in the property owner's gross estate for federal and state estate tax purposes. The Oregon

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estate tax is imposed on all Oregon estates valued above \$1 million dollars at a graduated rate of between 10% to 16% based on the gross value of the property owner's estate at death. (Or. Rev. Stat. §§ 118.010, 316.716, and [Or. Admin. Rule 150-118-0030](#).)

Counsel and property owners should balance and consider the capital gains tax savings along with any estate tax that might be incurred from using a TODD, among other considerations to determine whether using a TODD is in the property owner's best interest. For more information on federal and Oregon estate tax, see [Practice Note, Federal Estate Tax](#) and [State Q&A, Estate Tax: Oregon](#).

Creditor Claim Period

There is an 18-month creditor claim period for a TODD, during which creditors may enforce liabilities against TODD property, that is different from the general creditor's claim period in an Oregon probate (Or. Rev. Stat. §§ 93.973, 114.540, and see [State Q&A, Probate: Oregon: Considerations for Creditor Claims](#)). This can make it difficult or impossible for the TODD beneficiaries to sell the real property during the creditor claim period. Obtaining title insurance may require an affidavit with indemnity provisions; a signed agreement releasing the rights of the grantor's heirs and waiving all potential known and unknown claims of the heirs and other estate beneficiaries (not just the TODD beneficiaries); a personal security, guarantee, or pledge of the personal property owned by the TODD beneficiaries; and a more costly title insurance premium.

Any title insurance policy will likely exclude coverage for any claims that arise within 18 months of the grantor's death. This can affect new owners and potential purchasers of real property who do not want to assume the liability of potential creditor claims against the property during the 18-month creditor claim period (prior to the discharge of an executor or personal representative administering an estate subject to court oversight or prior to the discharge and release of liability by the relevant taxing authorities for filings and taxes owing and paid by the decedent and decedent's estate, or both).

Foreclosed, Mortgaged, or Liened Property

If the property is subject to a mortgage, a property owner wanting to execute a TODD should consider that most mortgages include a due on sale clause, where the lender may require payment of the loan in full if the property is transferred or sold without providing notice to and obtaining approval from the lender before recording the TODD (unless preemption of due-on-sale prohibitions described in 12 U.S.C. § 1701j-3 applies, such as for a transfer to a child, relative, former spouse, current spouse, or a revocable living trust where the grantor is trust beneficiary (12 U.S.C. § 1701j-3(d)(5) to (8))). Where the beneficiary is not related to the property owner, a due on sale clause is generally triggered unless the lender agrees to waive it or the beneficiary has sufficient collateral, can provide a letter of credit to the lender, or can otherwise qualify as a guarantor of that loan.

If the TODD triggers a due on sale clause at the property owner's death, the beneficiary must pay the mortgage in full, address foreclosure proceedings, or try to sell the property in whatever economic market exists at the time despite the creditor claim 18-month cloud on title. This can be problematic when the property owner's probate or trust property is insufficient to satisfy creditor's claims, when the beneficiaries are unaware of one or more liens or encumbrances on the property, when there are tenants occupying the property under a valid lease agreement, and when the TODD beneficiaries are different from those named in the property owner's will or trust.

Title Insurance Issues

Many title companies will not insure real property, and many banks will not loan or finance real property during the 18-month claim period. This is a significant disadvantage to a TODD where the property is encumbered and subject to a due on sale clause, unless the beneficiaries can wait at least 18 months before selling the property or the grantor had other assets that can be pledged or used to secure the lien. This period is also unlike real property subject to probate, where the creditor claim period is limited to four months from the date of notice or publication of the notice to creditors and potential claimants.

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Trusts are administered similarly to probate proceedings in this sense, but generally without court oversight, unless the trustee petitions the court to determine the claims of the settlor's creditors under Or. Rev. Stat. § 130.355 and to bar claims of creditors not filing claims within time limitations as provided under Or. Rev. Stat. § 130.360.

For more information on:

- Probate in Oregon, see [State Q&A, Probate: Oregon](#).
- Revocable trusts in Oregon, see [State Q&A, Revocable Trusts: Oregon](#).

Multiple Grantor Issues

If multiple owners own a property jointly with a right of survivorship and the grantor is survived by one or more joint owners, the property subject to the TODD belongs to the surviving joint owners with a right of survivorship. The TODD is effective on the death of the last surviving joint owner, (Or. Rev. Stat. §§ 93.190 and 93.969(3), and see Transfer on Death of TODD Property Owned Jointly with Rights of Survivorship). A surviving joint owner signing a TODD with the grantor may revoke the TODD after the grantor's death. The revocation by one owner may be inconsistent with the deceased grantor's preferences and can create challenges to the TODD and a grantor's estate.

Potential for Fraud and Elder Abuse

There is a risk that an untrustworthy individual could unduly influence a property owner to sign or revoke a TODD to exclude the property owner's intended beneficiaries or in contradiction to the property owner's will or trust. It is easier to exert undue influence on a TODD grantor, where the grantor needs only to sign once on a short deed document, unlike a will (which must be notarized and witnessed by two individuals) or a trust (which is most commonly executed at the same time as a will and other estate planning documents, in an attorney's office), despite the fact that the capacity to execute a TODD, unlike other types of deeds in Oregon, is the same as that for a will.

A TODD or revocation of TODD executed under undue influence is void (Or. Rev. Stat. § 93.959(2)). However, the persons otherwise inheriting the property must bring a court action asserting fraud, duress, elder or financial abuse, or undue influence on the grantor within 18 months of the property owner's death, which can be costly, time-consuming, and impractical. (See TODDs or Revocations Procured by Fraud, Duress, or Undue Influence Are Void.)

Difficulty in Managing the Property and Basic Administration with Multiple TODD Beneficiaries

When there are multiple people named as beneficiaries of real property, there may be different opinions on the management of the property after the owner's death, including how and when to sell or rent the property, and on what terms. These disagreements can create conflict among the beneficiaries. These types of conflicts often require legal advice to resolve and a property owner's will or a trust, to the extent it includes specific provisions regarding the management or disposition of the real property, may be more effective in avoiding these issues.

Assumptions

This Standard Document assumes that:

- The grantor wants to use a TODD for the applicable conveyance of the real property.
- The real property being transferred is a property interest located within a single county in Oregon.
- The TODD is to be recorded with the county recorder of the county where the real property is located.
- The TODD is validly acknowledged in Oregon or by a valid notary in any other state. For more information on acknowledgment, see Acknowledgment.

Bracketed Items

The drafting party should replace bracketed language in ALL CAPS with case-specific facts or other information. Bracketed language in

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sentence case is optional language that the drafting party may include, modify, or delete in its discretion. A forward slash between words or

phrases indicates that the drafting party should include one of the words or phrases contained in the brackets in the document.

Owner:

[OWNER NAME]

[OWNER ADDRESS]

After recording, return to:

[NAME]

[ADDRESS]

Send tax statements to:

[NAME]

[ADDRESS]

TRANSFER ON DEATH DEED

(Or. Rev. Stat. §§ 93.948 to 93.979)

NOTICE TO OWNER

You should carefully read all information on this form. You may want to consult a lawyer before using this form.

This form must be recorded before your death or it will not be effective.

DRAFTING NOTE: DEED HEADER AND TITLE

Name, Return Address, and Other Required Information

The owner (also called the grantor) should include in the heading of the TODD:

- The owner's name and address.
- The name and address to which the county is to return the recorded deed. Though the statutory TODD form includes this language before the execution block of the form, practitioners typically include this language in the TODD heading, where indicated.
- The name and address to which the county is to send future tax statements related to the real property (see Tax Statements Mailing Address).

(See Drafting Note, Content Requirements and Cover Sheet.)

The owner should leave sufficient space at the top of the TODD for the recording sticker (4 inches by 2 inches) the county recorder's office places on the deed on the first page of the document, preferably in the upper right-hand corner (see Drafting Note, Formatting Requirements).

Tax Statements Mailing Address

Every deed conveying fee title to real property must include the name and mailing address for future tax statements on the first page (Or. Rev. Stat. § 93.260). Because there may be a long time between the recording of the TODD and the grantor's death, the grantor should generally include the grantor's mailing address for tax statements and, after the grantor's death, the beneficiaries should inform the county tax

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assessor's office of any change to the mailing address for future tax statements.

Title of Instrument

The location of the TODD title provided in the statutory form is consistent with Oregon recording statutes (Or. Rev. Stat. § 205.236(1)). Counsel

should include the title of the instrument to be recorded immediately below the blank space at the top of the first page reserved for the return address and the recorder's use, as required by the recording statutes.

For more information on the requirements of the TODD deed, see Drafting Note, Requirements to Create a TODD.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name: [OWNER NAME]

Mailing address: [OWNER MAILING ADDRESS]

[Printed name: [CO-OWNER NAME]

Mailing address: [CO-OWNER MAILING ADDRESS]]

Legal description of the property: [[LEGAL DESCRIPTION]/Legal description attached as Exhibit "A" and made a part hereof by this reference.]

DRAFTING NOTE: IDENTIFYING INFORMATION

Counsel should include here the owner's name and address. Counsel may:

- Remove the bracketed lines for co-owner name and address information if there is only one owner of the property.
- Add lines for additional co-owners.

The owner's name must exactly match the name shown on the last recorded instrument by which the owner acquired the specified real property (Or. Rev. Stat. § 205.160). The TODD should explain any difference between the owner's current legal name and that recorded on the previous instrument. For example, if a client, Mary Smith, took title to the property as Mary Smith but subsequently married and changed their legal name to Mary Johnson, counsel should identify the grantor as "Mary Johnson" formerly known as "Mary Smith" by including language such as "All references herein to "Mary Johnson" as grantor, shall refer to "Mary Smith"".

County recorder's offices typically review deeds for correct information and may reject a deed containing an incomplete or incorrect owner name. In certain circumstances, the use of the owner's current name, followed by "formerly known as", "now known as", or "who acquired title as" and the name under which owner acquired title, is acceptable. Sometimes, the recorder may require that additional documentation be executed or recorded before recording the deed. For example, the county may require:

- Certified copies of name changes.
- Certified copies of marriage certificates or divorce judgments.
- Grantor title affidavits.

The property owner's or owners' names and address information must be included on the first page of the TODD. Otherwise, the recorder may reject the instrument sent for recording.

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For more information on the requirements of the TODD deed, see Drafting Note, Requirements to Create a TODD.

Identifying the Property

In Oregon, practitioners typically label and attach the legal description of the real property as an exhibit to the deed rather than in the body of the TODD itself. Practitioners may want to have that exhibit prepared by the title company to conform exactly to the grantor's title insurance policy. However, because a TODD does not convey any present ownership interest at the time it is recorded, a grantee cannot obtain title insurance at that time.

If a title company does not prepare the legal description, counsel should prepare the legal description using the legal description in the current or most recent vesting deed by which the owner obtained the real property specified in the TODD. If the owner does not have a copy of the vesting deed, counsel can usually request a title insurance company obtain a copy of the current vesting deed at no charge or for a nominal fee.

Counsel should include the legal description **exactly** as it appears on the vesting deed. Otherwise, the transfer could create transfer and title problems in the future. If the vesting deed does not reflect title accurately (for example, there is a spelling error or portions of the legal description are missing), counsel should notify

the client and contact an experienced real estate attorney to correct title to the property as soon as possible.

If the grantor transferred the property multiple times, it is generally advisable to review the legal description used for each deed, beginning with the date the grantor first acquired the property, to ensure there are no transcription errors in previous deeds. If easements were granted, counsel should confirm the legal description with the surveyor, county, or title company, before recording the TODD.

In any case, owner's counsel should review and approve the legal description exhibit to ensure that:

- Any legal description that is different from that used in the deed by which the owner obtained the property complies with Oregon laws relating to the prohibition of the sale of a lot or parcel before recordation of plat (Or. Rev. Stat. § 92.025). Any attempt to split up a parcel of real property or convey the real property without complying with the laws of recordation of plats, voids the transfer.
- The legal description does not include any property or interest that the owner does not own, that the owner previously conveyed, or that the owner does not want to convey to the beneficiary.
- The legal description does not fail to include all property and interests held by the owner that the owner wants to convey to the beneficiary.

PRIMARY BENEFICIARY

I designate the following [beneficiary/beneficiaries] if the [beneficiary survives/beneficiaries survive] me:

Printed name: [BENEFICIARY NAME]

[Share of Property: [BENEFICIARY SHARE]]

Mailing address, if available: [BENEFICIARY ADDRESS]

[Printed name: [CO-BENEFICIARY NAME]

Share of Property: [CO-BENEFICIARY SHARE]

Mailing address, if available: [CO-BENEFICIARY ADDRESS]]

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ALTERNATE BENEFICIARY

(Optional)

If my primary [beneficiary does/beneficiaries do] not survive me, I designate the following alternate [beneficiary/beneficiaries] if [that beneficiary survives/those beneficiaries survive] me:

Printed name: [ALTERNATE BENEFICIARY NAME]

[Share of Property: [ALTERNATE BENEFICIARY SHARE]]

Mailing address, if available: [ALTERNATE BENEFICIARY ADDRESS]

[Printed name: [ALTERNATE CO-BENEFICIARY NAME]

Share of Property: [ALTERNATE CO-BENEFICIARY SHARE]

Mailing address, if available: [ALTERNATE CO-BENEFICIARY ADDRESS]]

DRAFTING NOTE: IDENTIFYING BENEFICIARIES AND THEIR SHARES

The grantor must name one or multiple primary beneficiaries and alternate beneficiaries to receive the property. If a grantor names multiple TODD beneficiaries, the real property transfers to the beneficiaries in equal shares without rights of survivorship, unless the TODD specifies otherwise. An alternate beneficiary receives the real property only if either:

- The named primary beneficiary or beneficiaries of that share do not survive the property owner.
- A named beneficiary is not a qualified beneficiary. The grantor must identify beneficiaries by their specific names, and not as members of a class, for those beneficiaries to be considered qualified beneficiaries. A grantor is deemed to make a beneficiary designation to a non-qualified beneficiary (and a disposition to that beneficiary or those beneficiaries are void) if, for example, the grantor designates as beneficiaries a class of people, such as the lineal descendants, the unnamed children of a primary beneficiary, or the heirs of a deceased beneficiary, rather than individually naming each beneficiary.

(Or. Rev. Stat. §§ 93.953(2) and 93.961(1)(c), (2).)

To minimize the chances of a beneficiary designation being ineffective because the grantor designated a non-qualified beneficiary, counsel should include the full names of the person or persons receiving the property on the

grantor's death, and the mailing addresses of the named beneficiaries, if available. The TODD must include the names of the primary and alternate beneficiaries on the first page of the TODD, just as any other type of Oregon deed must include the grantee's name (or grantees' names) on the first page of the instrument. Otherwise, the recorder may reject the instrument.

Since a TODD is revocable, even if the deed or another instrument states that the conveyance creates a present interest or includes any other contrary provision, the TODD creates no present interest in the beneficiary, such as a life estate or other vested interest in property until the property owner's death (Or. Rev. Stat. § 93.955 and see Drafting Note, Effect of a TODD During Grantor's Life).

Lapse on Beneficiary's Death

The share of a beneficiary dying before the grantor's death lapses. Unless the TODD directs otherwise, and except as stated under Or. Rev. Stat. § 105.633, the lapsed share transfers to any surviving beneficiary or beneficiaries, in equal shares, as does the share of any beneficiary disclaiming that beneficiary's share (Or. Rev. Stat. § 93.969(1)). The surviving beneficiaries may consist of alternate beneficiaries if the share of a primary beneficiary lapses.

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The TODD statutes do not provide for alternate beneficiaries for each primary beneficiary (which alternate takes if the primary beneficiary dies, even if the other primary beneficiary or beneficiaries are still alive). However, if the document is clearly and carefully written, naming specific alternate beneficiaries for specific primary beneficiaries may be acceptable, provided the alternate or contingent beneficiaries record the death certificates of each primary beneficiary in the county in which the TODD is recorded.

If all beneficiaries, including any designated alternate beneficiaries, predecease the grantor or disclaim their shares, the TODD has no effect.

No Delivery or Permission Required

The grantor is not required to notify or deliver the TODD to the beneficiaries, and the beneficiaries are not required to know of or accept the TODD during the grantor's life (Or. Rev. Stat. § 93.963). The grantor is not required to request or obtain permission from the named TODD beneficiary before revoking the TODD, changing the TODD beneficiary, or selling or mortgaging the property (Or. Rev. Stat. § 93.955).

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the [beneficiary/beneficiaries] as designated above.

Before my death, I have the right to revoke this deed.

SPECIAL TERMS

(Optional)

[SPECIAL TERMS]

DRAFTING NOTE: TRANSFER ON DEATH

This Standard Document satisfies the TODD requirements that the TODD include:

- A statement that the transfer to the designated beneficiary should occur at the property owner's death.
- Express language permitting revocation.

(Or. Rev. Stat. § 93.961 and see Drafting Note, Requirements to Create a TODD.) Counsel should not revise this statutory language.

For more information on revoking a TODD, see Drafting Note, Revocation of a TODD.

Special Terms

There is no specific statutory direction regarding the special terms section in a TODD, though the

statutory form includes that section. Special terms may include the property owner's:

- Intent that the TODD remain in effect or be effective notwithstanding the property owner's impending marriage, divorce, annulment, pregnancy, or anticipated death of an individual.
- Reasons for executing the TODD or for naming one beneficiary, such as a child, over the others. The grantor should be careful not to include reasons or information that are against public policy or subjective, which may make the terms unenforceable.
- Intent or request that the real property be sold or kept in the family as part of a legacy or for another purpose.

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- Acknowledgement that the beneficiary is or was an abuser or slayer of the property owner or property owner's spouse (see Drafting Note, Transfers to Slayers and Abusers of Property Owner).
- Acknowledgement that the owner's intent is for the property to pass subject to the property owner's will or trust (such as for drafting and including advancement clauses in the grantor's other estate planning documents).
- Acknowledgement that the TODD beneficiaries are purposefully different from the beneficiaries

or the devisees included in the property owner's estate plan.

The owner should not include special terms in this section unless there is a specific reason to include them. If the owner thinks a person may contest or dispute the TODD, counsel and the owner should consider whether including special terms may increase the likelihood of a person disputing the facts related to or issues triggering the inclusion of the special terms. If the owner does not include special terms the owner should generally include the word "None" in the space provided for special terms.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

[OWNER NAME], Owner

Date:_____

[_____
[CO-OWNER NAME], Owner

Date:_____]

STATE OF OREGON)
COUNTY OF [COUNTY NAME]) ss.
)

This instrument was acknowledged before me on the [DATE] day of [MONTH], [YEAR], by [OWNER NAME/ OWNERS NAMES].

NOTARY PUBLIC FOR OREGON

DRAFTING NOTE: NOTARIAL ACKNOWLEDGEMENT

The grantor or grantors must sign the TODD and acknowledge their signatures before a notary public or other authorized individual:

- To make the TODD effective (Or. Rev. Stat. § 93.410).

- To allow the TODD to be recorded (Or. Rev. Stat § 93.961(1)(d) and see Drafting Note, Recording Requirements in Oregon).

Counsel or the notary should fill in, where indicated:

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- The county where the grantor executes the TODD.
- The date the grantor executes the TODD.
- The grantor's name.

Counsel should consult with the notary or other officer before completing the notary's name and

title or leave a blank line for the notary or other officer to fill in when the notary or officer signs and seals the acknowledgment. Alternatively, counsel can remove the acknowledgment language and have the notary attach the notary's own certification form.

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