

# **TRANSFERABLE-ON-DEATH DEEDS**

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## **What is a transferable-on-death (“TOD”) deed?**

O.C.G.A. § 44-17-2 provides interests in real estate (i.e., any interest in, over or under, including surface, minerals, structures, fixtures, and easements) may be titled in a TOD form by recording a deed signed by the record owner, designating a grantee beneficiary or beneficiaries of the interest.

## **What is required of the Beneficiary/Beneficiaries to effectuate a transferable-on-death (“TOD”) deed?**

Neither the signature, consent, agreement, nor notice from a transfer-on-death deed's Beneficiary is required during the record owner's lifetime. O.C.G.A. § 44-17-2(b).

## **How is the real estate accepted upon the owner’s death?**

To accept real estate pursuant to a transfer-on-death deed, a designated grantee Beneficiary shall execute an affidavit affirming:

- (1) Verification of the record owner’s death;
- (2) Whether the record owner and the designated grantee beneficiary were married at the time of the record owner's death; and
- (3) A legal description of the real estate.

Additionally, the grantee Beneficiary must attach a copy of the record owner’s death certificate to the affidavit, as provided for above. O.C.G.A. § 44-17-2(c)-(d).

## **When and where is the affidavit recorded (filed)?**

Within nine (9) months of the record owner’s death, the designated grantee Beneficiary must record the affidavit and death certificate with the office of the clerk of the superior court of the court where the real estate interest is located.

## **What happens if the affidavit is not filed within nine (9) months?**

If the affidavit and death certificate is not recorded within nine (9) months, the real estate interest reverts to the record owner’s estate (meaning probate will likely be required to either distribute or sell the property). O.C.G.A. § 44-17-2(d).

## **Can the transferable-on-death deed be revoked?**

Yes – a record owner may revoke any designation of the grantee Beneficiary or Beneficiaries at any time during his or her lifetime, by recording a notarized instrument revoking such designation in office of the clerk of superior court of the county where the real estate is located.

If the record owner is revoking because he or she is naming a different designated Beneficiary, such revocation may be included in the subsequent deed.

O.C.G.A. § 44-17-4(a).

HOWEVER, a transfer-on-death deed executed, acknowledged, and recorded in accordance with Georgia law, may NOT be revoked by the provisions of a will. O.C.G.A. § 44-17-4(b).

### **What happens if a designated grantee Beneficiary dies?**

If one or more designated grantee Beneficiaries die before the record owner, their respective shares will lapse and be revoked. However, if the designated grantee beneficiaries are named as joint tenants with right of survivorship, the death of one or more beneficiaries before the record owner's death will not affect the validity of the joint tenancy for the remaining living designated grantee Beneficiaries. O.C.G.A. § 44-17-5(b).

### **Am I still able to utilize a transferable-on-death deed even though I own real estate with my spouse as joint tenants with rights of survivorship?**

Yes – a transferable-on-death deed may be utilized; provided however, that title to the interest will only vest in the designated grantee Beneficiary or Beneficiaries if the record joint owner is the last to die of all the record joint owners of the interest.

A deed in a transferable-on-death form will NOT sever a joint tenancy. O.C.G.A. § 44-17-6.