



Transfer on Death Deeds in New York

1. What is a Transfer-on-Death (TOD) Deed in New York?

Under NY Real Property Law § 424, a TOD deed allows an owner of real property to:

- Name a beneficiary who will automatically receive the property at death
- Avoid probate for that asset
- Retain full ownership and control during life

2. Key concepts:

- It is non-testamentary (does not pass through a will)
- It has no effect until death
- Revocable: Can be revoked anytime before death, even if the deed says otherwise
- No present interest
- Beneficiary has zero rights during their lifetime
- Owner can still:
 - Sell,
 - Mortgage,
 - Transfer the property
 - Avoids probate
- Property passes automatically at death: similar to: POD accounts, TOD designation

3. Statutory Requirements (Critical)

To be valid in New York, a TOD deed must be:

- Containing all elements of a recordable deed
- Signed by two witnesses
- Notarized
- Recorded before death in a county clerk's office
 - If not recorded before death → invalid

4. Effect During Lifetime

A TOD deed does NOT:

- Affect ownership rights
- Affect creditors
- Create any legal interest for the beneficiary

If property is joint with right of survivorship:

- Surviving joint owner takes first
- TOD only applies if the transferor is the last survivor



5. Technical Execution Risks:

Can invalidate the deed entirely due to:

- Improper legal description
- Failure to record
- Witness defects

TOD DEED vs. REVOCABLE TRUST (NEW YORK)

TOD DEED	RLT
Avoids probate for that property	Avoids probate for all funded assets
Full control retained	Full control if grantor is trustee
Not a good fit for <ul style="list-style-type: none"> • Blended families • Minor children • Disabled beneficiaries 	Can handle: <ul style="list-style-type: none"> • Staggered distributions • Special needs (Henson-style planning) • Divorce protection
Contingency Planning <ul style="list-style-type: none"> • Often weak • Not suitable if beneficiary predeceases 	<ul style="list-style-type: none"> • Fully customizable: • Backup beneficiaries • Per stirpes provisions
Incapacity Planning No protection if owner becomes incapacitated	Successor Trustee steps in seamlessly
Tax Planning No tax structuring: a transfer mechanism	Can incorporate: <ul style="list-style-type: none"> • Credit shelter planning • Spousal trusts
Medicaid Asset Protection: No	Still countable resource
Cost and Simplicity: cheap and simple	Higher upfront cost
TITLE & LITIGATION RISK Brand new in New York (2024) Potential: <ul style="list-style-type: none"> • Title company scrutiny • Litigation over validity 	Well-established and widely accepted