

Most people do not wake up excited to talk about probate, transfer-on-death deeds, or trusts. They start thinking about these tools after something uncomfortable happens: a parent's estate drags through court for 18 months, a sibling fight erupts over a house, or a nursing home bill arrives that looks like a phone number.

The question, "Is a transfer-on-death deed better than a trust?" usually comes from a good place: you want to keep things simple, avoid court, and not spend a fortune on lawyers. As an estate planning attorney, I hear some version of it weekly.

The honest answer is that a transfer-on-death (TOD) deed can be excellent in the right situation, and a serious problem in the wrong one. A trust is not always necessary, but when it is, there is usually no substitute.

Let us walk through the real tradeoffs, not the sales pitches.

What a transfer-on-death deed actually does

A transfer-on-death deed, sometimes called a beneficiary deed, is a document you sign and record with the county land records. It says, in effect, "When I die, this property belongs to X." Until your death, you still own the property, can sell it, refinance it, or revoke the TOD deed.

For a straightforward situation, it can be powerful:

- You own a house.
- You want it to go to one or two people.
- Everyone gets along.
- Nobody has special needs or serious creditor issues.
- You are not worried about long-term care planning or complex tax planning.

In that kind of case, a TOD deed usually keeps the house out of probate, which is the main reason people praise it.

A TOD deed does not manage anything during your lifetime. It does not help if you become incapacitated, it does not coordinate with other assets, and it does not provide instructions for what happens if your **Comprehensive Estate Planning Attorney Near Me** beneficiary dies before you, gets divorced, or is deep in debt.

Those gaps are where trusts tend to earn their keep.

What a trust is, in practical terms

At its simplest, a revocable living trust is a contract you make with yourself. You are usually the creator (grantor), the manager (trustee), and the primary beneficiary during your lifetime. You retitle certain assets, like your house and non-retirement investment accounts, into the trust.

While you are alive and competent, almost nothing feels different. You still pay your own bills, file your own taxes, and control everything. The key difference comes when something goes wrong: death or incapacity.

The trust says, in writing, who steps in to manage things if you cannot, who inherits what when you die, on what terms, and with what protections. Courts are mostly on the sidelines, at least for those assets properly titled to the trust.

Irrevocable trusts are a different animal. You usually give up some control in exchange for something significant, such as asset protection, Medicaid planning, or tax benefits. The phrase "What are the only three reasons you

should have an irrevocable trust?” gets tossed around; in practice, I see three consistent drivers:

1. Long-term care / Medicaid planning.
2. Asset protection from lawsuits or creditors.
3. Advanced tax planning for large estates or specific assets.

In many middle class estates, a revocable trust is enough, and an irrevocable trust is used sparingly and only with clear purpose.

The probate problem: what you are really trying to avoid

Most people look at a TOD deed or a trust because they want to avoid probate. That is smart, but it helps to understand what probate actually is.

Probate is the court process of:

- Proving a will is valid, appointing a personal representative, and giving them authority to act.
- Making sure creditors have a chance to file claims.
- Ensuring the proper heirs receive what is left, under the will or state law.

In a simple estate, probate might take 6 to 12 months and cost a few thousand dollars in legal fees and court costs. In a contested or messy estate, it can take years and absorb a painful percentage of what you hoped to leave your family.

Certain assets already avoid probate, with or without a TOD deed or trust. If you are wondering which bank accounts avoid probate, you are usually looking at:

- Accounts with a payable-on-death (POD) or transfer-on-death (TOD) designation.
- Accounts held jointly with right of survivorship.
- Retirement accounts and life insurance with valid, current beneficiary designations.

These beneficiary-driven assets move by contract, not under your will. That leads to one of the most common inheritance mistakes I see: people assume their will or trust controls everything, but the beneficiary forms and title on assets say something completely different.

A transfer-on-death deed is simply the real estate version of a POD designation. A trust is a more comprehensive way to wrap title and instructions around multiple assets.

When a transfer-on-death deed works well

I have recommended TOD deeds in many real cases. They tend to work well when the picture looks like this:

You own your home outright or with a spouse, have one or two adult children who get along reasonably well, no one has a disability or serious addiction, and your main concern is avoiding a simple probate. Your state has clear TOD deed statutes and your family lives nearby. You keep your paperwork somewhat organized and you are not doing Medicaid planning, tax planning, or sophisticated asset protection.

In those scenarios, a TOD deed for the house, updated beneficiaries on bank accounts and retirement plans, plus a solid will and powers of attorney can be enough. That package does not solve everything, but it usually avoids the worst of probate and keeps costs reasonable.

You should not assume, though, that a TOD deed saves you from all legal work. The beneficiary still has to record the death certificate, may need a lawyer to clear title, and must deal with any mortgage or liens. It is “lighter” than a full probate, but it is not zero work.

Where a transfer-on-death deed tends to cause problems

The more complicated your family or finances, the more a TOD deed starts to creak.

The advertisement is a rectangular graphic with a blue border. In the top left corner is the Parker Law Offices logo, featuring a scales of justice icon and the text "PARKER LAW OFFICES". Below the logo, the text "ORANGE COUNTY ESTATE PLANNING ATTORNEY" is written in large, bold, black capital letters. To the right of this text is a photograph of a person in a suit holding a sign that says "ASSETS". Below the main text, the "Parker Law Offices" name is repeated in a blue serif font. Underneath that, the address "28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677", phone number "949 385-3130", and website "https://www.estateandtrustlawyer.com/orange-county-estate-planning-attorney/" are listed in a smaller black font. In the bottom right corner is a QR code. The background of the ad has a pattern of small yellow dots.

PARKER
LAW OFFICES

**ORANGE COUNTY
ESTATE PLANNING
ATTORNEY**

Parker Law Offices

28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677
949 385-3130
<https://www.estateandtrustlawyer.com/orange-county-estate-planning-attorney/>

ASSETS

Here are situations where I see TOD deeds create more problems than they solve:

First, blended families. If you are in a second marriage and want to provide for your spouse but ultimately leave the house to your children from a prior relationship, a simple TOD deed rarely matches your goals. The deed passes the house outright. Your spouse or child can sell it, leave it to someone else, or lose it to creditors. A properly drafted trust can give a surviving spouse the right to live in the house for life, then pass it to your children after that.

Second, minor or vulnerable beneficiaries. A TOD deed that gives a house [Comprehensive Estate Planning Attorney Near Me](#) directly to a 19-year-old or to an adult child with serious mental health or addiction issues is an invitation to hardship. Courts often have to step in to appoint guardians or conservators. A trust can hold the house, give a trusted adult control, and gradually hand over responsibility or funds as the beneficiary matures or stabilizes.

Third, divorce and creditors. A beneficiary who is in the middle of a divorce, has tax liens, or is drowning in debt can lose an inherited house quickly. A TOD deed offers essentially no protection. Certain trusts, used properly, can give beneficiaries significant protection from their own life storms.

Fourth, incapacity planning. A TOD deed does nothing if you suffer a stroke, develop dementia, or are in a serious accident. Your house is still in your name. Someone needs authority to manage or sell it for your care. Without a trust, that usually means a good, detailed power of attorney plus, in some cases, a guardianship proceeding. With a trust and a successor trustee, the transition is often smoother.

Fifth, Medicaid and long-term care planning. A TOD deed does not remove the house from your countable assets for Medicaid purposes. For clients asking how to avoid the Medicaid 5 year lookback or what the Medicaid loophole is, TOD deeds by themselves are not the answer. In Medicaid planning, irrevocable trusts or carefully timed transfers sometimes play a role, not simple beneficiary deeds.

Trusts and long-term care: the 5 year and 7 year rules

Two “rules” cause constant confusion: the Medicaid 5 year lookback and the 7 year rule for trusts.

The Medicaid 5-year rule for irrevocable trusts, in most states, says that transfers made to such a trust within 5 years before applying for long-term care Medicaid can trigger a period of ineligibility. The idea is to prevent people from giving everything away on Monday and asking taxpayers to pay the nursing home on Friday.

If you are thinking, “Can a nursing home take your house if it is in a trust?”, the answer depends entirely on the type of trust and when it was set up. A revocable trust does not shield the house from Medicaid or nursing home claims, because you still control it. An irrevocable trust, properly drafted and funded outside the 5-year window, can sometimes protect the house from being counted or recovered, but you are giving up real control to do that. That is one major downside of putting your house in an irrevocable trust: you typically cannot sell or refinance without the cooperation of your trustee and sometimes other beneficiaries. For some families, that tradeoff is acceptable. For others, it is a nonstarter.

The 7 year rule for trusts comes up more in the context of UK inheritance tax and certain international planning, where gifts fall out of the taxable estate if you survive 7 years. That is different from the Medicaid 5-year rule, but people often mix the two. The common theme is that governments do not want last minute transfers solely to dodge obligations.

If long-term care planning is on your radar, TOD deeds are rarely the central tool. A combination of irrevocable trust planning (when appropriate), long-term care insurance, and realistic cash flow analysis works better.

Tax questions: inheritance limits, gifts, and the 5 by 5 rule

When clients ask how much you can inherit from your parents without paying taxes, in the United States the answer is usually “a lot more than you think.” As of 2024, the federal estate and gift tax exemption is in the multi-million dollar range per person. Many parents can leave substantial assets without triggering federal estate tax. Some states, however, have their own estate or inheritance taxes at lower thresholds, so local advice matters.

For income tax, inherited assets often receive a step-up in basis at death, which can significantly reduce capital gains if the property is sold shortly after death. Whether a house passes by TOD deed, will, or trust, the tax result on basis is generally similar, so long as it is included in the taxable estate.

Gifting strategies create another layer of questions. Clients often ask what is the best way to gift money to an adult child. The gift tax rules allow you to give up to a certain annual amount per person without using up your lifetime exemption. For many families, modest direct gifts are fine. For larger or more sensitive gifts, using a trust to hold funds for a child’s benefit can prevent misuse or loss in divorce. Cash gifts, especially late-in-life ones, can also run headlong into the Medicaid 5 year lookback if nursing home care becomes necessary, so the timing and scale of gifts matter.

The 5 by 5 rule in estate planning tends to show up inside trust documents. It often refers to a “5 percent or \$5,000” withdrawal power that a beneficiary may have each year from a trust without causing certain negative tax consequences. It is a technical tool that gives beneficiaries some access, yet tries to preserve the overall estate plan and tax objectives. You are unlikely to see it mentioned on a TOD deed, because TOD deeds have no built in mechanism for staged or limited access.

Who you name as beneficiary matters as much as the tool

Whether you use a TOD deed, a will, or a trust, the question “Who should I not name as a beneficiary?” deserves real thought.

I caution clients against naming these beneficiaries directly on large or complex assets:

- Very young adults, especially for real estate.
- Individuals receiving needs based government benefits, where an outright inheritance could disqualify them.
- People in unstable marriages or serious creditor trouble.
- Individuals with active addictions.
- Anyone you feel morally obligated to help, but who has a track record of self-destruction with money.

These same red flags should influence who you name as trustee, executor, and agent under a power of attorney. A beneficiary who struggles with money can sometimes make an excellent trustee if they are disciplined and honest, but in many families, the person you love most is not the person you should put in charge of everything.

What should not be included in a will

Clients are often surprised by how much does not belong in a will. Retirement accounts and life insurance with beneficiary designations should not be controlled by the will unless something has gone wrong. Jointly owned property and TOD or POD accounts bypass the will as well.

You should also avoid placing sensitive information in the will that becomes a public record, such as detailed financial account numbers, Social Security numbers, or your full digital password list. Those details belong in separate, private documents, sometimes with your attorney or in a secure vault or password manager.

The will is your backstop for assets that do not pass by title or beneficiary designation. A trust serves as a separate set of instructions for assets you actually place into it. A TOD deed is a much thinner tool: it is a simple beneficiary designation for real estate.

Is it better to leave a house in a will or trust, or use TOD?

When someone asks, “Is it better to leave a house in a will or trust?”, what they often mean is, “How do I keep this from becoming a headache for my kids?”

Putting a house in a will alone 거의 guarantees probate, unless its value is low enough for a small estate procedure. The house cannot transfer without court authority. That does not mean it is always wrong, but it means delay, cost, and oversight.

Using a TOD deed avoids probate for that house, but gives the recipient full control immediately at your death. There is no built in structure for sale, shared use, or staggered distribution. That might be perfect if you have one child who will live there, but much harder when several people inherit together.

Funding a revocable trust with the house usually combines probate avoidance with flexibility. The trust can say, for example, "My trustee will allow any of my children to live in the house for up to 12 months while they decide whether to keep or sell it, then distribute the sale proceeds in equal shares." Or, "Hold the house until the youngest child reaches age 25, then sell and divide."

So what is the best way to leave your house to your children? In my experience: use a revocable trust when there is more than one child, any risk of conflict, or any desire for staged or protected inheritance. A TOD deed can work where the family is simple, everyone is adult and stable, and the house is the main asset.

The true cost of getting help vs doing it yourself

People are understandably nervous about legal fees and ask, "How much does it cost to have an estate planning attorney?" The answer varies by region and complexity. In many parts of the United States, a basic package of will, powers of attorney, health care directives, and perhaps a simple TOD deed might run from a few hundred to a couple thousand dollars. A comprehensive estate planning package with a revocable trust, funding assistance, and more advanced tax or Medicaid planning may run higher, often in the low to mid four figures for middle class estates.

What is comprehensive estate planning, in that context? It is not just a stack of documents. It is an organized plan that coordinates:

- Your lifetime incapacity planning.
- Who manages what at your death.
- How each major asset passes and in what form.
- Tax implications.
- Long-term care concerns.

The legal fee is usually a fraction of what a messy probate or a preventable family dispute can cost. That said, if your situation is extremely simple and you are disciplined about updating beneficiaries and documents, you can sometimes get by with a more modest plan, and that is where TOD deeds, used correctly, can shine.

Balancing simplicity and protection: how to choose

You do not need to become an expert in all the rules to make a good decision. You just need a clear picture of your goals and your situation.

Here is a straightforward framework you can use in conversation with your attorney or advisor:

- If you own one home, have a small number of adult, financially stable beneficiaries, no blended family issues, and no serious concern about long-term care or asset protection, a TOD deed plus a solid will, powers of attorney, and updated beneficiary designations may be adequate.
- If you have minor children, blended families, beneficiaries with disabilities or addictions, out-of-state real estate, or a strong desire to control timing and conditions of inheritance, a revocable trust funded with your house and key accounts is often the better tool.
- If you are concerned about nursing home costs, want to understand how to avoid Medicaid 5 year lookback issues legally, or are exploring what some call the Medicaid loophole, you are likely stepping into the realm where an irrevocable trust, long-term care insurance, or both deserve consideration, with full awareness of the downside of putting your house in an irrevocable trust.

- If you are facing potentially taxable estates or complex business assets, you are in advanced planning territory where multiple trusts and more technical rules, like the 5 by 5 rule and other tax-driven provisions, may come into play.
- At any level, be sure you understand not only how assets transfer at death, but also who can act for you during illness, and that you avoid the most common inheritance mistake: ignoring how titles and beneficiary forms interact with your will or trust.

The right answer is rarely “TOD deed good, trust bad” or vice versa. The right answer is the simplest plan that actually fits your family, your assets, and your tolerance for risk.

If you keep that focus, the choice between a transfer-on-death deed and a trust becomes less about tools and more about designing a future where your family is cared for, not overwhelmed by the legacy you leave behind.

Parker Law Offices

28202 Cabot Rd 3rd Floor, Laguna Niguel, CA 92677

9493853130