National Consumer Law Center
Fighting Together for Economic Justice

Protecting the Family Home: Preventing Heirs Property Challenges Through Transfer on Death Deeds (TODDs)

August 2026

The Challenge of Affordable Estate Planning

The ability to pass down a home is key to building generational wealth. For most U.S. homeowners, their home is their primary asset. Although there are a range of legal options to transfer assets when a person dies, many homeowners do not have access to legal resources to evaluate all of these options. Most owners of inherited homes are older adults, and protecting the home is crucial to maintaining housing stability.

If a homeowner dies without an estate plan or will, the property passes to "heirs at law," typically a surviving spouse, child, or other family member designated by the state's default rules of inheritance. This can lead to property becoming highly fractured, with ownership divided among many people. If a person prepares a will before they die, their heirs will have to file a probate case so that the court can determine if the will was valid. This process can be lengthy and expensive.

With or without a will, the heirs who inherit a home will have to take steps to make it clear in the property records that they are the new owners. When heirs are unable to complete those steps, the ownership remains both clouded (unclear) and fractured (divided), creating "**heirs property**." Owning property this way restricts the ability to manage and use the home or land. Heirs property owners also face a heightened risk of complications and potential property loss. Fortunately, **transfer on death deeds** offer a preventive tool that can make it much easier for a homeowner or landowner to pass their wealth to heirs without creating heirs property.

Why Does It Matter?

Economic Challenges

- Because heirs property owners lack clear proof of ownership, heirs face difficulty qualifying for property tax exemptions, obtaining home repair assistance, or obtaining disaster relief after a natural disaster. Heirs may end up in property tax foreclosure or facing code violations as a home deteriorates.
- Owners of heirs property cannot sell or take out a mortgage on the property without unanimous agreement of all the heirs. Mortgage servicers also may refuse to approve a loan modification for more affordable payment terms without all of the heirs participating.
- There is also a risk that investors may purchase a partial ownership interest in the property and force a partition sale of the home.

Vulnerability of Specific Populations

- Older adults and communities of color are especially vulnerable to heirs property challenges.
- Due to decades of historical exclusion and lack of access to government and legal institutions, Black Americans are significantly less likely than their white counterparts to have a will. It is estimated that one-third of Southern Black-owned land is held as heirs' property.
- Most heirs are over 50 years old when they inherit property, and a quarter are over 60 years old.
- Older heirs property owners are especially vulnerable to elder abuse by relatives who want to exploit their financial circumstances for their own gain.

What Is a TODD?

A Transfer on Death Deed (TODD) is a solution to challenges with heirs property. TODDs allow homeowners to draft a deed that transfers **real property** to a specified heir or heirs **effective upon the owner's death**. TODDs are simple documents that are inexpensive to execute. They do not require a probate court process to validate the estate, which can be lengthy and expensive. In a TODD, the homeowner retains full control over the property, including the right to sell, mortgage, or change the beneficiary, until their death.

A TODD cannot be substituted for legacy planning. If the homeowner becomes incapacitated, the designated beneficiary of a TODD has no legal authority to manage, sell, or refinance the property prior to the grantor's death. Similarly, if the beneficiary passes away before the property owner, and there is no alternative plan, the property may still end up passing to the default heirs at law. Consulting with an attorney to create a comprehensive end of life plan is highly recommended.

How Do TODDs Compare to Other Options?

TODDs vs. Wills

Immediately upon the death of the borrower, a TODD transfers the property directly to the designated beneficiary without the need to go to court. On the other hand, a will is a legal document that authorizes a court-supervised process, sometimes lengthy and costly, where all of the owner's assets are distributed upon their death. All states have statutes that allow wills, but only some states have enacted a TODD statute.

TODD vs. Adding Someone to the Title Now

Adding a co-owner to the deed now is among the riskiest estate planning options, and in states where TODDs are not an option, many low-income homeowners resort to it. A TODD transfers ownership only when the owner passes away, and designated heirs possess no property rights during the owner's lifetime. Conversely, adding an individual to the title immediately through a quit claim deed conveys ownership interests now, making them a joint owner. Co-owners share legal rights, financial responsibilities, and decision-making power over an asset. Putting a child or other intended heir on title requires the current owner to relinquish certain ownership rights immediately. The co-owner cannot be removed from the deed later without their explicit consent.

TODDs vs. Trusts

Both TODDs and trusts bypass the probate court process. However, TODDs and trusts vary in complexity. A trust is a legal arrangement that allows a third party (a “trustee”) to hold and manage assets on behalf of one or multiple beneficiaries. Unlike a TODD, which is meant to be a simple estate planning tool, a trust can hold multiple types of assets, providing detailed and long-term rules. However, trusts are generally more expensive to create and maintain, and therefore not affordable to most low-income homeowners.

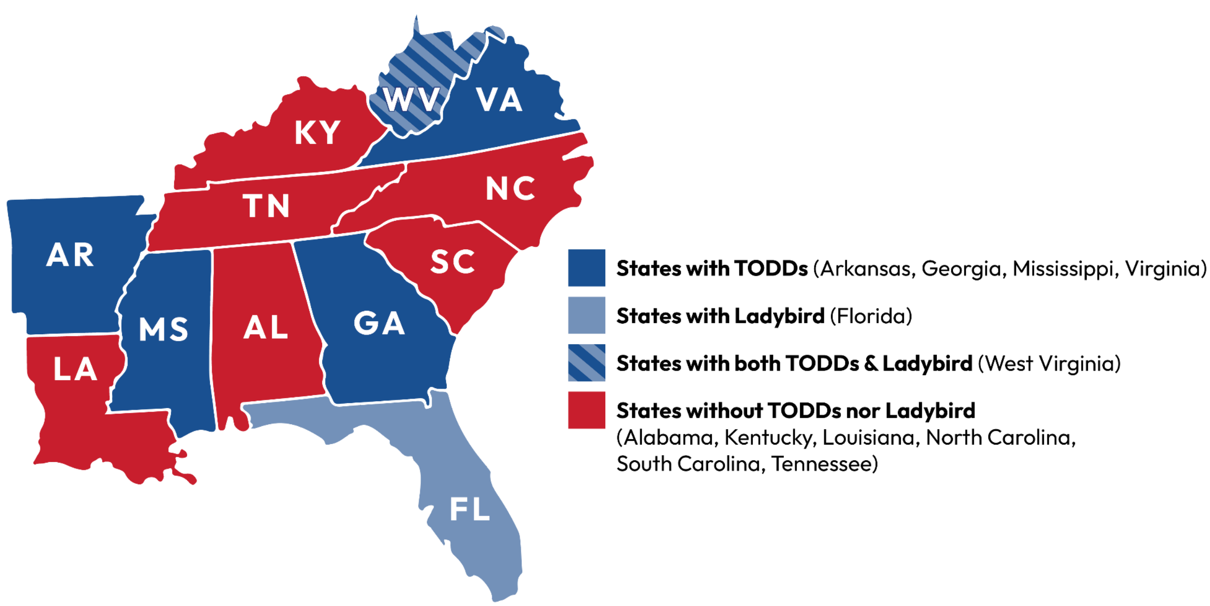
TODDs vs. Ladybird Deeds

In some states, including Florida, Michigan, and Texas, the real estate bar has developed a custom of using a “ladybird deed,” also known as an enhanced life estate deed. Both the TODD and ladybird deed allow a property to transfer ownership without probate. A drawback of the ladybird deed is its lack of a formal statutory authorization. States that have a well-functioning system of using ladybird deeds likely do not need to enact a TODD statute unless some aspect of the ladybird usage is limited or unclear.

Which States Hold the Greatest Opportunity for Impact?

As of 2026, 35 states and the District of Columbia have enacted statutes authorizing the use of TODDs for real property transfers. There are some variations in the statutory text of state laws, but the majority follow the structure created by the Uniform Laws Commission.

However, many states in the Southeastern U.S. have not enacted TODDs, despite the region having the greatest concentration of heirs property. Passing TODD statutes could significantly benefit their residents. Alabama, Louisiana, North Carolina, and South Carolina do not have TODD statutes on the books.



Conclusion

The Transfer on Death Deed is a valuable resource for homeowners to prevent the creation of heirs' property. By enabling efficient property transfer and reducing probate complications, TODDs help families safeguard family assets and preserve homeownership and wealth-building across generations. In any state where TODDs have not yet been enacted, this is an effective policy solution that many stakeholders would likely support. The Uniform Law Commission has created a simple and effective model act, the Uniform Real Property Transfer on Death Act which can be used to help states pass legislation authorizing TODDs.

Comparison Between TODDs and Other Potential Tools

Feature	Will	Adding a Joint Owner	Living Trust	Lady Bird Deed	TODD
Avoids Probate	✗	✓	✓	✓	✓
Transfers Property at Death	✓	✗	✓	✓	✓
May Revoke or Modify During Life	✓	✗	✓	✓	✓
Relatively Low Cost to Create	✓	✓	✗	✓	✓
Statutory Authorization Gives Certainty	✓	✓	✓	✗	✓

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By Courtney Thomas, 2026 Gibbs Fellow at the NCLC, and Sarah Mancini, Managing Director of Advocacy at NCLC

This work is supported by the RRF Foundation for Aging, rrf.org.

Additional Resources

To find out more about heirs property and potential reforms, contact Odette Williamson (owilliamson@nclc.org) or Jerry Battle (jbattle@nclc.org).

For more, see the NCLC report Keeping it in the Family: Legal Strategies to Address the Challenge of Heirs Property and Prevent Home Loss.