

## RECORDINGS - TERMINATION OF DECEDENT'S INTEREST

**NOTE:** The new **Termination of Decedent's Interest (TDI)** combined form was approved and implemented on 10/5/2017.

### **Purpose 867.045 and 867.046**

The **TDI** form may be used by persons with an interest in the property of a decedent under 867.045 and /or 867.046 of the Wisconsin Statutes. The form provides notice that the decedent no longer has interest in real estate or personal property. The Register of Deeds has the responsibility to provide the **TDI** form to customers who request it. The **TDI** is most often used by the surviving spouse who can come into the office to get the form, go to the WRDA website to print it off, or they can have their attorney draft it if they wish.

### **Use of the TDI**

An individual may use the **TDI** form if the deed shows the property was owned in joint tenancy, as survivorship marital property or if there was a marital property agreement that states this interest. The form can also be used when the decedent's interest was as a vendor in a land contract, a mortgagee in a mortgage, or a life tenant in a life estate. A 1996 change in the law expands the use of the **TDI** to include an interest in a savings or checking account, or an interest in securities, under 867.046. An AG opinion (OAG 2/98) states that not all the remainderpersons must sign the form - one is enough. Effective August 3, 2009, if owners are described in a deed as domestic partners, or are in fact domestic partners, it is presumed that the property is owned in joint tenancy unless the intent to create a tenancy in common interest is expressed [700.19(2m)].

705.15 pertains to An interest in real property that is solely owned, owned by spouses as survivorship marital property, or owned by 2 or more persons as joint tenants may be transferred without probate to a designated TOD beneficiary as provided in this section on the death of the sole owner or the last to die of the multiple owners. In 2007, the WRDA developed the TOD-110 form for distributing TOD property to beneficiaries.

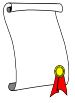
867.046(2m) allows "interested persons" other than the personal representative, decedent's spouse, beneficiary of a marital property agreement or TOD beneficiary (or the attorney for either) to complete a **TDI** if no proceeding under section 863.27 or 865.201 has been commenced within 90 days of the decedent's death.

867.045(1) A revision of probate law in 2006 (2015 Act 216) initiated by the State Bar changed 867.046 to allow "any person interested in the property" to use the **TDI** form without the 90 day waiting period. 867.045 is limited to joint tenants and life tenants interests, vendor's interest in a land contract or mortgagee's interest in a mortgage.

If both parties are deceased, an interested person may sign to terminate the interest of the person who died first. A variety of other documents may be recorded to terminate the interest of the outstanding remainderperson.

***The form only provides constructive notice of the termination of decedent's interest that has already occurred by operation of law upon the person's death. Other instruments must be used to transfer interest to another party who did not already have an interest in the real or personal property prior to the death of the decedent.***

Ultimately, the disclosure at the bottom of the **TDI** form "allows" us to assume the declarant knows the situation and to accept the **TDI** at face value as it states, "**Declaration: To the best of the undersigned's knowledge and belief, the undersigned declares that this document is true, accurate, complete and in conformity with the provisions and limitations of the Wisconsin Statutes.**"



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### Joint Tenants v. Tenants in Common 700.19, 700.18 and 700.20

In instances when only the names of the grantees are identified on the last deed of record without identifying the appropriate ownership interest, the following guidelines were provided to the WRDA (based on the date of the deed) by Attorney John Frank of Madison:

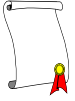
<b>Prior to 1986</b> – If the deed or other document of title states “husband and wife” (or are known to be married) then “joint tenancy” is presumed. If it does not state “husband and wife,” it is considered “tenants in common,” and <b>TDI</b> form cannot be used.
A certified copy of a marriage certificate (dated prior to the title deed) can be accepted as proof that the relationship is one of “joint tenancy” and use of the <b>TDI</b> is allowed. Wisconsin Statutes do not require the ROD to view the marriage certificate. The declarant of the <b>TDI</b> is declaring “...this document...is true, accurate...in conformity with the provisions and limitations of Wisconsin Statutes.”
<b>1986-1988</b> – This is a gap period in the statutes and there is no presumption of either.
<b>1986 and After</b> – If the deed or other document does not state “husband and wife” and it is homestead property, the presumption is “survivorship marital property.” If it is not homestead, the presumption is “joint tenants.”

The **TDI** form cannot be used if title is held as tenants in common because owners do not have right of survivorship. Tenants in common ownership may be mixed with other types of ownership that allow the use of the **TDI** form. When in doubt ask a colleague, your tax lister or your corporation counsel.

Prior to the passing of 2019 ACT 127, the Register of Deeds was required to view a certified copy of the death certificate. This act eliminated that requirement for in-state and out-of-state deaths, further allowing these documents to be eRecorded.

### The following must be supplied by the Customer (with your assistance if necessary):

1. The document that establishes the relationship and/or interest, such as a deed, land contract, transfer on death designation (deed), marital property agreement, etc., should be submitted with the **TDI**. Examine the document to determine that how title was taken is acceptable ownership interest to use the **TDI**. Then record with the **TDI**.  
NOTE: The instructions for completing the **TDI** form indicate that, “...at a minimum attach the 1st page of MPA, page(s) of the MPA identifying to whom the property transferred on the decedent’s death, and the signature page(s) of the MPA.”
2. In the case of real property, the tax bill from the year prior to the decedent’s death, if required in your county. If the decedent died many years ago and there is no hope of getting the tax bill, a current tax bill is acceptable. The required recording of the property tax bill may be waived by an agreement between the register of deeds and the county real property lister.
3. The legal description of the real property. This is usually on the deed, or other instrument that established interest in the property. Per the **TDI** form and its instructions, a current, complete and accurate legal description is required. If part of the land was sold off prior to decedent’s death, it must be excluded from the legal description. If any part of the land is now a Certified Survey Map, the new legal must be included. The **TDI** form has two options to describe the property being transferred 1) as attached document and 2) as exhibit, if different than instrument establishing interest.



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4. A real estate transfer return must be filed at a Register of Deeds office when recording the TDI form per 867.045 and 867.046. It is exempt from transfer fee under state law 77.25(11). For non-probate transfer on death under 705.15 use 77.25(11m).

**Recording Fee:** Refer to “Fees Section” of the WRDA Handbook

**Link to the Form and Directions:** <https://www.wrdaonline.org/forms>