

First Supplement to Memorandum 90-141

Subject: Study L-3025 - TOD Registration of Vehicles and Vessels
(Redraft of Statutory Provisions)

Redrafted Statutory Provisions

Attached is Exhibit 21, which was inadvertently omitted from the basic memo. Exhibit 21 has revisions to the statutory provisions in the Tentative Recommendation attached to the basic memo. These are the revisions suggested by commentators that the staff thinks should be made.

Death Certificate "If Required by the Department"?

The basic memo discusses the State Bar's point that a death certificate should be required in all cases where a TOD beneficiary wants title after death of the owner, and not merely if the death certificate is "required by the department" as the TR provides. Neither the Department of Housing and Community Development nor the Department of Motor Vehicles now requires a death certificate for transfer of title by affidavit.

The staff reported that the Department of Housing and Community Development has experienced no abuses of that system, and that the staff had asked the same question of the Department of Motor Vehicles and was waiting for a response. Since then, the staff has talked to Marilyn Schaff, Chief Counsel for the Department of Motor Vehicles. She reports that her department has had no problems from not requiring a death certificate. She said that, in most cases, the person claiming the vehicle by affidavit is the decedent's surviving spouse.

Accordingly, the redraft in Exhibit 21 still allows the respective departments not to require a death certificate.

Respectfully submitted,

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Health & Safety Code § 18080.2 (added). Ownership of manufactured home, mobilehome, commercial coach, truck camper, or floating home in beneficiary form

18080.2. (a) Ownership registration and title to a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration may be held in beneficiary form that includes a direction to transfer ownership of the manufactured home, mobilehome, commercial coach, truck camper, or floating home to ~~one or more~~ a designated ~~beneficiaries~~ beneficiary on death of the sole owner or last surviving coowner. ~~A certificate of~~ Ownership registration and title issued in beneficiary form shall include, after the name of the owner or names of the coowners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries.

(b) During the lifetime of a sole owner or of any coowner, the signature or consent of a beneficiary is not required for any transaction relating to the manufactured home, mobilehome, commercial coach, truck camper, or floating home for which ~~a certificate of~~ ownership registration and title in beneficiary form has been issued.

Comment. Section 18080.2 is new and is drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). The language of Section 18080.2 is conformed to the usage in this article. See, e.g., Health & Safety Code § 18080.

See also Health & Safety Code § 18102.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

Health & Safety Code § 18102.2 (added). Transfer of manufactured home, mobilehome, commercial coach, truck camper, or floating home owned in beneficiary form

18102.2. (a) On death of a sole owner or the last surviving coowner of a manufactured home, mobilehome, commercial coach, truck camper, or floating home owned in beneficiary form, the manufactured home, mobilehome, commercial coach, truck camper, or floating home belongs to the surviving beneficiary ~~or beneficiaries~~, if any. If there is no surviving beneficiary, the manufactured home, mobilehome, commercial coach, truck camper, or floating home belongs to the estate of the deceased owner or of the last coowner to die.

(b) A surviving beneficiary who becomes owner of a manufactured

home, mobilehome, commercial coach, truck camper, or floating home under subdivision (a) is not liable for imputed negligence as owner until record ownership of the manufactured home, mobilehome, commercial coach, truck camper, or floating home is transferred to the beneficiary.

~~(b) A certificate of title~~ (c) Ownership registration and title issued in beneficiary form may be revoked or the beneficiary changed at any time before the death of a sole owner or of the last surviving coowner by either of the following methods:

(1) By sale of the manufactured home, mobilehome, commercial coach, truck camper, or floating home, with proper assignment and delivery of the ~~certificate of~~ ownership registration and title to another person.

(2) By application for a new ~~certificate of~~ ownership registration and title without designation of a beneficiary or with the designation of a different beneficiary ~~or beneficiaries.~~

~~(e)~~ (d) Except as provided in subdivision ~~(b)~~ (c), designation of a beneficiary in a ~~certificate of~~ ownership registration and title issued in beneficiary form may not be changed or revoked by will, by any other instrument, by a change of circumstances, or otherwise.

~~(d)~~ (e) The beneficiary's interest in the manufactured home, mobilehome, commercial coach, truck camper, or floating home at death of the owner or last surviving coowner is subject to any contract of sale, assignment, or security interest to which the owner or coowners were subject during their lifetimes.

~~(e)~~ (f) The surviving beneficiary ~~or beneficiaries~~ may secure a transfer of ownership for the manufactured home, mobilehome, commercial coach, truck camper, or floating home upon presenting to the department all of the following:

(1) The appropriate certificate of title and registration card, if available.

(2) A certificate under penalty of perjury stating the date and place of the decedent's death and that the declarant is entitled to the manufactured home, mobilehome, commercial coach, truck camper, or floating home as the designated beneficiary.

(3) If required by the department, a certificate of the death of the decedent.

(g) After the death of the owner or last surviving coowner, the surviving beneficiary may transfer his or her interest in the manufactured home, mobilehome, commercial coach, truck camper, or floating home without securing transfer of ownership into his or her own name by appropriately signing the ownership registration and title for the manufactured home, mobilehome, commercial coach, truck camper, or floating home, and forwarding these documents to the department with appropriate fees.

~~(f)~~ (h) A transfer at death pursuant to this section is effective by reason of this section, and shall not be deemed to be a testamentary disposition of property. The right of the designated beneficiary to the manufactured home, mobilehome, commercial coach, truck camper, or floating home shall not be denied, abridged, or affected on the grounds that the right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

(i) A transfer at death pursuant to this section is subject to Section 9653 of the Probate Code.

~~(g)~~ (j) If there is no surviving beneficiary or coowner, the person or persons described in Section 18102 may secure transfer of the manufactured home, mobilehome, commercial coach, truck camper, or floating home as provided in that section.

~~(h)~~ (k) The department may prescribe forms for use pursuant to this section.

Comment. Section 18102.2 is new. Subdivisions (a) and (c) through (e) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (f) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (g) is drawn from Health and Safety Code Section 18100.5(a)(4). Subdivision (h) is drawn from Probate Code Section 5304. Subdivision (i) is comparable to Probate Code Section 5705 (gift in view of death), and Vehicle Code Sections 5910.5(i) and 9916.5(i). Subdivision (k) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code § 18080.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

Health & Safety Code § 18102.3 (added). Transfer as discharge of department

18102.3. (a) If the department makes a transfer at death pursuant to Section 18102.2, the department is discharged from all liability,

whether or not the transfer is consistent with the beneficial ownership of the manufactured home, mobilehome, commercial coach, truck camper, or floating home transferred.

(b) The protection provided by subdivision (a) does not extend to a transfer made after the department has been served with a court order restraining the transfer. No other notice or information shown to have been available to the department shall affect its right to the protection afforded by subdivision (a).

(c) The protection provided by this section has no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of the manufactured home, mobilehome, commercial coach, truck camper, or floating home and is in addition to, and not exclusive of, any other protection provided to the department by any other provision of law.

Comment. Section 18102.3 is drawn from Probate Code Section 5405 (Multiple-Party Accounts Law).

Vehicle Code § 4150.7 (added). Ownership of vehicle in beneficiary form

4150.7. (a) Ownership of title to a vehicle subject to registration may be held in beneficiary form that includes a direction to transfer ownership of the vehicle to ~~one--or--more~~ a designated ~~beneficiaries~~ beneficiary on death of the sole owner or last surviving coowner. A certificate of ownership issued in beneficiary form shall include, after the name of the owner or names of the coowners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary ~~or-beneficiaries~~.

(b) During the lifetime of a sole owner or of any coowner, the signature or consent of a beneficiary is not required for any transaction relating to the vehicle for which a certificate of ownership in beneficiary form has been issued.

Comment. Section 4150.7 is new and is drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 5910.5, 9852.7, 9916.5.

Vehicle Code § 5910.5 (added). Transfer of vehicle owned in beneficiary form

5910.5. (a) On death of a sole owner or the last surviving coowner of a vehicle owned in beneficiary form, the vehicle belongs to

the surviving beneficiary ~~or-beneficiaries~~, if any. If there is no surviving beneficiary, the vehicle belongs to the estate of the deceased owner or of the last coowner to die.

(b) A surviving beneficiary who becomes owner of a vehicle under subdivision (a) is not liable under Section 17150 until record ownership of the vehicle is transferred to the beneficiary.

(c) A certificate of ownership in beneficiary form may be revoked or the beneficiary changed at any time before the death of a sole owner or of the last surviving coowner by either of the following methods:

(1) By sale of the vehicle with proper assignment and delivery of the certificate of ownership to another person.

(2) By application for a new certificate of ownership without designation of a beneficiary or with the designation of a different beneficiary ~~or-beneficiaries~~.

(d) Except as provided in subdivision (c), designation of a beneficiary in a certificate of ownership issued in beneficiary form may not be changed or revoked by will, by any other instrument, by a change of circumstances, or otherwise.

(e) The beneficiary's interest in the vehicle at death of the owner or last surviving coowner is subject to any contract of sale, assignment, or security interest to which the owner or coowners were subject during their lifetimes.

(f) The surviving beneficiary ~~or--beneficiaries~~ may secure a transfer of ownership for the vehicle upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and registration card, if available.

(2) A certificate under penalty of perjury stating the date and place of the decedent's death and that the declarant is entitled to the vehicle as the designated beneficiary.

(3) If required by the department, a certificate of the death of the decedent.

(g) After the death of the owner or last surviving coowner, the surviving beneficiary may transfer his or her interest in the vehicle without securing transfer of ownership into his or her own name by appropriately signing the ownership registration and title for the

vehicle and forwarding these documents to the department with appropriate fees.

~~(g)~~ (h) A transfer at death pursuant to this section is effective by reason of this section, and shall not be deemed to be a testamentary disposition of property. The right of the designated beneficiary to the vehicle shall not be denied, abridged, or affected on the grounds that the right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

(i) A transfer at death pursuant to this section is subject to Section 9653 of the Probate Code.

~~(h)~~ (j) If there is no surviving beneficiary or coowner, the person or persons described in Section 5910 may secure transfer of the vehicle as provided in that section.

~~(i)~~ (k) The department may prescribe forms for use pursuant to this section.

Comment. Section 5910.5 is new. Subdivisions (a) and (c) through (e) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (b) codifies case law. See Bunch v. Kin, 2 Cal. App. 2d 81, 85, 37 P.2d 744 (1934). Subdivision (f) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (h) is drawn from Probate Code Section 5304. Subdivision (i) is comparable to Health and Safety Code Section 18102.2(i), Probate Code Section 5705 (gift in view of death), and Vehicle Code Section 9916.5(i). Subdivision (k) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 9852.7, 9916.5.

Vehicle Code § 5910.7 (added). Transfer as discharge of department

5910.7. (a) If the department makes a transfer at death pursuant to Section 5910.5, the department is discharged from all liability, whether or not the transfer is consistent with the beneficial ownership of the vehicle transferred.

(b) The protection provided by subdivision (a) does not extend to a transfer made after the department has been served with a court order restraining the transfer. No other notice or information shown to have been available to the department shall affect its right to the protection afforded by subdivision (a).

(c) The protection provided by this section has no bearing on the rights of parties in disputes between themselves or their successors

concerning the beneficial ownership of the vehicle and is in addition to, and not exclusive of, any other protection provided to the department by any other provision of law.

Comment. Section 5910.7 is drawn from Probate Code Section 5405 (Multiple-Party Accounts Law). See also Health & Safety Code § 18102.3; Veh. Code 9916.7.

Vehicle Code § 9852.7 (added). Ownership of vessel in beneficiary form

9852.7. (a) Ownership of an undocumented vessel subject to registration may be held in beneficiary form that includes a direction to transfer ownership of the vessel to ~~one--or--more~~ a designated ~~beneficiaries~~ beneficiary on death of the sole owner or last surviving coowner. A certificate of ownership issued in beneficiary form shall include, after the name of the owner or names of the coowners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary ~~or-beneficiaries~~.

(b) During the lifetime of a sole owner or of any coowner, the signature or consent of a beneficiary is not required for any transaction relating to the vessel for which a certificate of ownership in beneficiary form has been issued.

Comment. Section 9852.7 is new and is drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 5910.5, 9916.5.

Vehicle Code § 9916.5 (added). Transfer of vessel owned in beneficiary form

9916.5. (a) On death of a sole owner or the last surviving coowner of a vessel numbered under this division and owned in beneficiary form, the vessel belongs to the surviving beneficiary ~~or beneficiaries~~, if any. If there is no surviving beneficiary, the vessel belongs to the estate of the deceased owner or of the last coowner to die.

(b) A surviving beneficiary who becomes owner of a vessel under subdivision (a) is not liable under Section 661 of the Harbors and Navigation Code until record ownership of the vessel is transferred to the beneficiary.

(b) (c) A certificate of ownership in beneficiary form may be revoked or the beneficiary changed at any time before the death of a

sole owner or of the last surviving coowner by either of the following methods:

(1) By sale of the vessel with proper assignment and delivery of the certificate of ownership to another person.

(2) By application for a new certificate of ownership without designation of a beneficiary or with the designation of a different beneficiary ~~or-beneficiaries~~.

~~(e)~~ (d) Except as provided in subdivision ~~(b)~~ (c), designation of a beneficiary in a certificate of ownership issued in beneficiary form may not be changed or revoked by will, by any other instrument, by a change of circumstances, or otherwise.

~~(d)~~ (e) The beneficiary's interest in the vessel at death of the owner or last surviving coowner is subject to any contract of sale, assignment, or security interest to which the owner or coowners were subject during their lifetimes.

~~(e)~~ (f) The surviving beneficiary ~~or-beneficiaries~~ may secure a transfer of ownership for the vessel upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and certificate of number, if available.

(2) A certificate under penalty of perjury stating the date and place of the decedent's death and that the declarant is entitled to the vessel as the designated beneficiary.

(3) If required by the department, a certificate of the death of the decedent.

(g) After the death of the owner or last surviving coowner, the surviving beneficiary may transfer his or her interest in the vessel without securing transfer of ownership into his or her own name by appropriately signing the ownership registration and title for the vessel and forwarding these documents to the department with appropriate fees.

~~(f)~~ (h) A transfer at death pursuant to this section is effective by reason of this section, and shall not be deemed to be a testamentary disposition of property. The right of the designated beneficiary to the vessel shall not be denied, abridged, or affected on the grounds that the right has not been created by a writing executed in accordance

with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

(i) A transfer at death pursuant to this section is subject to Section 9653 of the Probate Code.

~~(g)~~ (j) If there is no surviving beneficiary or coowner, the person or persons described in Section 9916 may secure transfer of the vessel as provided in that section.

~~(h)~~ (k) The department may prescribe forms for use pursuant to this section.

Comment. Section 9916.5 is new. Subdivisions (a) and (c) through (e) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (f) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (h) is drawn from Probate Code Section 5304. Subdivision (i) is comparable to Health and Safety Code Section 18102.2(i), Probate Code Section 5705 (gift in view of death), and Vehicle Code Section 5910.5(i). Subdivision (k) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

Vehicle Code § 9916.7 (added). Transfer as discharge of department

9916.7. (a) If the department makes a transfer at death pursuant to Section 9916.5, the department is discharged from all liability, whether or not the transfer is consistent with the beneficial ownership of the vessel transferred.

(b) The protection provided by subdivision (a) does not extend to a transfer made after the department has been served with a court order restraining the transfer. No other notice or information shown to have been available to the department shall affect its right to the protection afforded by subdivision (a).

(c) The protection provided by this section has no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of the vessel and is in addition to, and not exclusive of, any other protection provided to the department by any other provision of law.

Comment. Section 9916.7 is drawn from Probate Code Section 5405 (Multiple-Party Accounts Law). See also Health & Safety Code § 18102.3; Veh. Code 5910.7.

CONFORMING REVISION

Probate Code § 9653 (amended). Duty to recover property transferred in fraud of creditors

9653. (a) On application of a creditor of the decedent or the estate, the personal representative shall commence and prosecute an action for the recovery of real or personal property of the decedent for the benefit of creditors if the personal representative has insufficient assets to pay creditors and the decedent during lifetime did ~~either~~ any of the following:

(1) Made a conveyance of the property, or any right or interest in the property, that is fraudulent as to creditors under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

(2) Made a gift of the property in view of death.

(3) Made a direction to transfer a vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, truck camper, or floating home to a designated beneficiary on the decedent's death pursuant to Section 18102.2 of the Health and Safety Code, or Section 5910.5 or 9916.5 of the Vehicle Code, and the property has been transferred as directed.

(b) A creditor making application under this section shall pay such part of the costs and expenses of the suit and attorney's fees, or give an undertaking to the personal representative for that purpose, as the personal representative and the creditor agree, or, absent an agreement, as the court or judge orders.

(c) The property recovered under this section shall be sold for the payment of debts in the same manner as if the decedent had died seised or possessed of the property. The proceeds of the sale shall be applied first to payment of the costs and expenses of suit, including attorney's fees, and then to payment of the debts of the decedent in the same manner as other property in possession of the personal representative. After all the debts of the decedent have been paid, the remainder of the proceeds shall be paid to the person from whom the property was recovered. The property may be sold in its entirety or in such portion as necessary to pay the debts.

Comment. Section 9653 is amended to add paragraph (3) to subdivision (a).