

**Memorandum 97-76****Effect of Dissolution of Marriage on Nonprobate Transfers:  
Staff Draft**

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At its October 1997 meeting, the Commission decided to consolidate the proposed laws governing the effect of dissolution of marriage on joint tenancy and on nonprobate transfers into a single legislative package. Under this consolidated proposal, a person's death will sever a joint tenancy between the decedent and the decedent's former spouse and will cause a nonprobate transfer to the former spouse to fail. This memorandum discusses specific issues that must be addressed before the consolidated proposal can be distributed as a tentative recommendation. A staff draft of the proposed legislation is attached.

Unless otherwise specified, statutory references in this memorandum are to the Probate Code.

**APPLICATION OF THE PROPOSED LAW****Impairment of Contracts**

As discussed in Memorandum 97-70, there is some authority suggesting that application of the proposed law to contracts in existence at the time of the law's enactment would unconstitutionally impair the obligations of those contracts. However, considering the uncertainty of this conclusion, the Commission decided not to preclude such retroactive application of the proposed law, relying on the Probate Code's general severability provision to preserve application of the law where not unconstitutional.

The staff was instructed to study whether applicable statutory rules of construction might limit the scope of any possible Contracts Clause problem with the proposed law. For example, Code of Civil Procedure Section 703.060(b) provides:

(b) All contracts shall be deemed to have been made and all liens on property shall be deemed to have been created in recognition of the power of the state to repeal, alter, and add to statutes providing for liens and exemptions from the enforcement of money judgments.

Such a provision puts the public on notice that any contracts executed after the enactment of the provision are subject to later legislative changes. Unfortunately, the staff could not find a statute of this kind that would apply to a contract making a nonprobate transfer or to changes in the Probate Code.

### **Grace Period**

The staff has added a transitional provision to implement the Commission's decision that the proposed law should not disturb a transfer that has been completed on a death occurring prior to the operative date of the new law. See proposed Section 5502. This section also provides a two year grace period for those who wish to preserve a spousal disposition.

### **EXCEPTIONS TO OPERATION OF THE PROPOSED LAW**

The Commission asked the staff to clarify the nature of a court order or agreement of the parties sufficient to preclude operation of the proposed law. The staff can only see two cases in which a court order or agreement should preclude operation of the proposed law:

(1) Where the order or agreement renders the nonprobate transfer or joint tenancy irrevocable by the decedent — for example, where a court orders a spousal support obligor to maintain an existing life insurance policy for the benefit of a former spouse. In such a case, the decedent lacks the power to revoke a spousal disposition, so the intent of the decedent is irrelevant.

(2) Where an agreement constitutes clear and convincing evidence that the decedent's failure to revoke a nonprobate transfer or sever a joint tenancy was intentional. For example, if prior to divorce, H and W sign an agreement providing that their divorce will not automatically sever their joint tenancy, this could be clear and convincing evidence that H's subsequent failure to sever the joint tenancy was intentional. In such a case the proposed law's assumption as to the likely intentions of H is rebutted and the law should not sever the joint tenancy.

The attached staff draft addresses these two situations in more general terms. For example, proposed Section 5500(b) provides:

(b) Subdivision (a) does not cause a nonprobate transfer to fail in either of the following cases:

(1) The nonprobate transfer is irrevocable at the time of the decedent's death.

(2) There is clear and convincing evidence that the decedent's failure to revoke the nonprobate transfer was intentional.

**Comment. ...**

Paragraph (1) of subdivision (b) provides that a nonprobate transfer to a former spouse does not fail by operation of subdivision (a) if, at the time of the decedent's death, the nonprobate transfer is irrevocable by the decedent. This precludes operation of subdivision (a) where a nonprobate transfer is irrevocable on execution, or later becomes irrevocable for reasons other than the decedent's death. For example, a court may order a spousal support obligor to maintain life insurance on behalf of a former spouse. See Family Code § 4360. If a person dies while subject to such an order, subdivision (a) would not affect the rights of the decedent's former spouse under the policy.

Paragraph (2) of subdivision (b) provides that a nonprobate transfer to a former spouse does not fail on the decedent's death if there is clear and convincing evidence that the decedent's failure to revoke the nonprobate transfer was intentional. For example, if after divorcing, the decedent modified the beneficiary terms of a life insurance policy without changing the designation of the former spouse as primary beneficiary, this could be sufficiently clear and convincing evidence of the decedent's intent to preserve the nonprobate transfer to the former spouse so as to prevent the operation of subdivision (a).

This language gets to the essence of the exception while avoiding the intricacies of determining, for each conceivable type of nonprobate transfer, what form of court order or agreement can permissibly be used to render that nonprobate transfer irrevocable. It also allows consideration of agreements for their probative value in determining whether a decedent's failure to revoke a spousal disposition was intentional, without regard for whether the agreement is enforceable.

#### WARNING REGARDING EFFECT OF DISSOLUTION OF MARRIAGE

The Commission instructed the staff to revise the proposed amendments to Family Code Section 2024, which provides a warning to divorcing parties suggesting that they examine certain documents that they may wish to change in light of their divorce, or that may automatically be affected by divorce. Considering the likelihood that the proposed law will be preempted as applied to federally-regulated employer-provided benefits, the warning should be drafted to avoid giving the impression that divorce will always revoke a nonprobate transfer

to a spouse. The staff proposes the following amendments to Family Code Section 2024:

2024. (a) A petition for dissolution of marriage, nullity of marriage, or legal separation of the parties, or a joint petition for summary dissolution of marriage, shall contain the following notice:

“Dissolution or annulment of your marriage may or may not affect the rights of your former spouse regarding such things as your will, power of attorney designation, life insurance proceeds, inter-vivos trust benefits, pay on death bank accounts, transfer on death vehicle registration, joint tenancy survivorship, etc. Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change or reaffirm in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Part 3 (commencing with Section 231) of Division 2 of the Family Code). ~~Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse.~~”

(b) A judgment for dissolution of marriage, for nullity of marriage, or for legal separation of the parties shall contain the following notice:

“Dissolution or annulment of your marriage may or may not affect the rights of your former spouse regarding such things as your will, power of attorney designation, life insurance proceeds, inter-vivos trust benefits, pay on death bank accounts, transfer on death vehicle registration, joint tenancy survivorship, etc. Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change or reaffirm in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Part 3 (commencing with Section 231) of Division 2 of the Family Code). ~~Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse.~~”

**Comment.** Section 2024 is amended to refer to the effect of dissolution or annulment of marriage on the designation of a former spouse as attorney-in-fact, nonprobate transfers to a former spouse, and joint tenancy survivorship as between former spouses. See Prob. Code §§ 3722, 4154, 4727(e) (power of attorney), 5502 (nonprobate transfer), 5503 (joint tenancy).

## PROPERTY HOLDER PROTECTION

At the October 1997 meeting, the Commission approved the general idea that a property holder should not be held liable for transferring property according to the terms of an instrument making a nonprobate transfer if the property holder lacks adequate notice of a failure of the nonprobate transfer under the proposed law. The current staff draft implements this idea by amending existing Section 5003, which offers similar protection to property holders who lack notice of a failure of spousal consent to a nonprobate transfer of community property. Adapting an existing section to apply in both contexts avoids the potential for inconsistent and overlapping protections that could arise if a separate section were created, especially considering the already broad language of Section 5003.

It is worth noting how Subdivision (b) of Section 5003 will operate if the section is adapted to apply in the context of the proposed law. This subdivision provides that the property holder's protection from liability does not apply if the property holder is served with (1) a contrary court order or (2) written notice of a person claiming an adverse interest in the property. Exception (2) is further qualified — it does not apply where the property in question is a periodic payment pursuant to a pension plan. The exception in paragraph (b)(2) was apparently added in response to concerns raised by the State Teachers' Retirement System (STRS), who felt that the property holder's safe harbor should only be defeated by a contrary court order when dealing with periodic retirement payments. This makes some sense. Monthly retirement payments are sufficiently important to a person's livelihood that they should not be disrupted lightly. Requiring a court order, rather than a mere adverse claim, before a property holder loses its safe harbor, provides a greater degree of security to such payments. Consequently, it may make sense to preserve this exception when adapting Section 5003 to apply in the context of the proposed law. What's more, as a practical matter, we may expect STRS to object if we try to draft a property holder protection provision that does not include similar language.

## ALTERNATIVE DISTRIBUTION OF PROPERTY ON FAILED NONPROBATE TRANSFER

Memorandum 97-70 raised the question of the proper disposition of property that fails to transfer to a former spouse under the proposed law. Subdivision (c) of proposed Section 5500 is added to make clear that such property passes pursuant to Section 21111, which generally governs the disposition of failed probate and

nonprobate transfers. Section 21111 is amended to clarify its operation. As presently written, Section 21111 provides that property which fails to transfer instead passes under the residue of the transferring instrument. This does not take into account transferring instruments that do not contain a residuary provision. The staff proposes the following amendments to Section 21111:

21111. Except as provided in Section 21110:

(a) If a transfer, other than a residuary gift or a transfer of a future interest, fails for any reason, ~~the property transferred becomes a part of the residue transferred under the instrument. the~~ property is transferred as follows:

(1) If the transferring instrument provides for an alternative disposition in the event the transfer fails, the property is transferred according to the terms of the instrument.

(2) If the transferring instrument does not provide for an alternative disposition but does provide for the transfer of a residue, the property becomes a part of the residue transferred under the instrument.

(3) If the transferring instrument does not provide for an alternative disposition and does not provide for the transfer of a residue, the property is transferred to the decedent's estate.

(b) If a residuary gift or a future interest is transferred to two or more persons and the share of a transferee fails for any reason, the share passes to the other transferees in proportion to their other interest in the residuary gift or the future interest.

This amendment makes clear that relevant terms of the governing instrument control. If the governing instrument is silent, the property passes to the decedent's estate.

#### INCONSISTENCY BETWEEN EXISTING WILL REVOCATION SECTIONS

In Memorandum 97-70, the staff noted that the operation of Section 6122 (revocation by divorce of spousal disposition in will) appears to be inconsistent with the operation of Section 6227 (revocation by divorce of spousal disposition in California statutory will). This is because Section 6122 revokes a spousal disposition in a will executed before or during a testator's marriage to a former spouse. See *Reeves v. Reeves*, 233 Cal. App. 3d 651, 284 Cal. Rptr. 650 (1991). Section 6227, on the other hand, is subject to the limited definition of spouse provided in Section 6202:

“Spouse” means the testator’s husband or wife at the time the testator signs a California statutory will.

Thus, Section 6227 would only operate to revoke a spousal disposition in a statutory will if the will was executed while the testator and the former spouse were married. The Commission instructed the staff to draft language rectifying this inconsistency.

The staff recommends repealing Section 6202. This would remove the limitation on the operation of Section 6227, which would then operate to revoke a spousal disposition in a statutory will regardless of whether the will was executed before or during the testator’s marriage to the former spouse.

Repeal of Section 6202 would also remedy another problem that results from the section’s limited definition of “spouse”. Because a person who is not yet married doesn’t have a “spouse” under section 6202, it isn’t clear what happens if a person executes a statutory will in anticipation of marriage. A property disposition to “my spouse” under such a will may well be ineffective despite the testator’s intent to leave property to the testator’s spouse-to-be.

Respectfully submitted,

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## PROPOSED LEGISLATION

### **Prob. Code §§ 5500-5502 (added). Nonprobate Transfer to a Former Spouse**

SECTION 1. Part 3 (commencing with Section 5500) is added to Division 5 of the Probate Code, to read:

#### **PART 3. NONPROBATE TRANSFER TO A FORMER SPOUSE**

##### **§ 5500 Failure of nonprobate transfer to former spouse**

5500. (a) Except as provided in subdivision (b), a nonprobate transfer to the decedent's former spouse, in an instrument executed by the decedent before or during the marriage, fails if, at the time of the decedent's death, the former spouse is not the decedent's surviving spouse.

(b) Subdivision (a) does not cause a nonprobate transfer to fail in either of the following cases:

(1) The nonprobate transfer is irrevocable at the time of the decedent's death.

(2) There is clear and convincing evidence that the decedent intended to preserve the nonprobate transfer to the former spouse.

(c) Where a nonprobate transfer fails by operation of this section, the property is instead transferred pursuant to Section 21111.

(d) As used in this section, "nonprobate transfer" means a provision of a type described in Section 5000 for a transfer of property on death.

**Comment.** Subdivision (a) of Section 5500 establishes the general rule that a nonprobate transfer to a former spouse fails if, at the time of the decedent's death, the former spouse is not the decedent's surviving spouse. "Surviving spouse" is defined in Section 78.

Paragraph (1) of subdivision (b) provides that a nonprobate transfer to a former spouse does not fail by operation of subdivision (a) if, at the time of the decedent's death, the nonprobate transfer is irrevocable by the decedent. This precludes operation of subdivision (a) where a nonprobate transfer is irrevocable on execution, or later becomes irrevocable for reasons other than the decedent's death. For example, a court may order a spousal support obligor to maintain life insurance on behalf of a former spouse. See Family Code § 4360. If a person dies while subject to such an order, subdivision (a) would not affect the rights of the decedent's former spouse under the policy.

Paragraph (2) of subdivision (b) provides that a nonprobate transfer to a former spouse does not fail on the decedent's death if there is clear and convincing evidence that the decedent's failure to revoke or modify a provision for a nonprobate transfer to a former spouse was intentional. For example, if after divorcing, the decedent modified the beneficiary terms of a life insurance policy without changing the designation of the former spouse as primary beneficiary, this could be sufficiently clear and convincing evidence of the decedent's intent to preserve the nonprobate transfer to the former spouse so as to prevent the operation of subdivision (a).

Subdivision (c) governs the disposition of property that fails to transfer by operation of subdivision (a). See Section 21111 (failed probate and nonprobate transfers at death).

Note that, in general, Section 5003 protects a property holder from liability for transferring the property according to the terms of the instrument making the nonprobate transfer, even if the nonprobate transfer has failed by operation of subdivision (a).



1   **§ 5501. Severance of joint tenancy between decedent and former spouse**

2       5501. (a) Except as provided in subdivision (b), a joint tenancy between the  
3       decedent and the decedent's former spouse, created before or during the marriage,  
4       is severed as to the decedent's interest if, at the time of the decedent's death, the  
5       former spouse is not the decedent's surviving spouse.

6       (b) Subdivision (a) does not sever a joint tenancy in either of the following cases:

7       (1) The joint tenancy is not severable by the decedent at the time of the  
8       decedent's death.

9       (2) There is clear and convincing evidence that the decedent intended to preserve  
10      the joint tenancy in favor of the former spouse.

11      (c) Nothing in this section affects the rights of a subsequent purchaser or  
12      encumbrancer for value in good faith who relies on an apparently effective  
13      severance by operation of this section or who lacks knowledge of a severance by  
14      operation of this section.

15      (d) This section does not affect survivorship in a multiple party account as  
16      defined in Section 5132.

17      **Comment.** Subdivision (a) of Section 5501 establishes the general rule that a joint tenancy  
18      between a decedent and the decedent's former spouse is severed if, at the time of the decedent's  
19      death, the former spouse is not the decedent's surviving spouse. "Surviving spouse" is defined in  
20      Section 78. This effectively reverses the common law rule that dissolution or annulment of  
21      marriage does not sever a joint tenancy between spouses. See, e.g., Estate of Layton, 44 Cal. App.  
22      4th 1337, 52 Cal. Rptr. 2d 251 (1996).

23      This section does not affect community property. Note that property acquired during marriage in  
24      joint tenancy form is presumed to be community property on dissolution of marriage or legal  
25      separation. See Fam. Code § 2581.

26      This section applies to both real and personal property joint tenancies, and affects property  
27      rights that depend on the law of joint tenancy. See, e.g., Veh. Code §§ 4150.5, 5600.5 (property  
28      passes as though in joint tenancy). This section does not affect United States Savings Bonds,  
29      which are subject to federal regulation. See Conrad v. Conrad, 66 Cal. App. 2d 280, 152 P.2d 221  
30      (1944) (federal regulations controlling). This section does not affect survivorship in a multiple  
31      party account as defined in Section 5132. See subdivision (d).

32      The method provided in this section for severing a joint tenancy is not exclusive. See, e.g., Civ.  
33      Code § 683.2.

34      Where a joint tenancy involves three or more joint tenants, severance by operation of this  
35      section converts the decedent's interest into a tenancy in common, but does not sever the joint  
36      tenancy as between the other joint tenants. For example, husband, wife, and child create a joint  
37      tenancy during husband and wife's marriage to each other. On husband's death, wife is no longer  
38      husband's surviving spouse and the joint tenancy is severed by operation of this section.  
39      Husband's one third interest becomes a tenancy in common and does not pass by survivorship.  
40      The remaining two thirds remain in joint tenancy as between the child and the former wife.

41      Paragraph (1) of subdivision (b) provides that a joint tenancy is not severed by operation of  
42      subdivision (a) if, at the time of the decedent's death, the joint tenancy is not severable by the  
43      decedent for reasons other than the decedent's death. For example, if the decedent is subject at  
44      death to a court order or binding agreement prohibiting severance of the joint tenancy by the  
45      decedent, then the joint tenancy is not severed by operation of subdivision (a).

46      Paragraph (2) of subdivision (b) provides that a joint tenancy is not severed on the donor's death  
47      if there is clear and convincing evidence that the decedent's failure to sever the joint tenancy was  
48      intentional.

1 Subdivision (c) makes clear that nothing in this section affects the rights of a good faith  
2 purchaser or encumbrancer who relies on an apparently effective severance by operation of this  
3 section or who lacks knowledge of a severance by operation of this section. For the purposes of  
4 this subdivision, “knowledge” of a severance of joint tenancy includes both actual knowledge and  
5 constructive knowledge through recordation of a judgment of dissolution or annulment or other  
6 relevant document. See Civ. Code § 1213 (recordation as constructive notice to subsequent  
7 purchasers and mortgagees). The remedy for a joint tenant injured by a transaction with an  
8 innocent purchaser or encumbrancer is against the transacting joint tenant.

9 **§ 5502. Application of part**

10 5502. (a) Except as provided in subdivision (b), this part is operative January 1,  
11 1999 and applies to a nonprobate transfer or joint tenancy created before, on, or  
12 after January 1, 1999.

13 (b) This part does not apply to a nonprobate transfer or joint tenancy created  
14 before January 1, 1999, if the decedent dies before January 1, 2001.

15 **Comment.** Section 5502 governs the application of this part. Subdivision (b) makes clear that  
16 the part does not affect transfers completed on a death before the operative date of the part.  
17 Subdivision (b) also provides a two year grace period during which a preexisting nonprobate  
18 transfer or joint tenancy can be reaffirmed, re-executed, or recreated, so as to prevent its failure or  
19 severance under this part.

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## CONFORMING REVISIONS

**Fam. Code § 2024 (amended). Notice concerning effect of judgment on will, insurance, and other matters**

SEC 2. Section 2024 of the Family Code is amended to read:

2024. (a) A petition for dissolution of marriage, nullity of marriage, or legal separation of the parties, or a joint petition for summary dissolution of marriage, shall contain the following notice:

“Dissolution or annulment of your marriage may or may not affect the rights of your former spouse regarding such things as your will, power of attorney designation, life insurance proceeds, inter-vivos trust benefits, pay on death bank accounts, transfer on death vehicle registration, joint tenancy survivorship, etc. Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change or reaffirm in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Part 3 (commencing with Section 231) of Division 2 of the Family Code). ~~Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse.”~~

(b) A judgment for dissolution of marriage, for nullity of marriage, or for legal separation of the parties shall contain the following notice:

“Dissolution or annulment of your marriage may or may not affect the rights of your former spouse regarding such things as your will, power of attorney designation, life insurance proceeds, inter-vivos trust benefits, pay on death bank accounts, transfer on death vehicle registration, joint tenancy survivorship, etc. Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change or reaffirm in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Part 3 (commencing with Section 231) of Division 2 of the Family Code). ~~Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse.”~~

**Comment.** Section 2024 is amended to refer to the effect of dissolution or annulment of marriage on the designation of a former spouse as attorney-in-fact, nonprobate transfers to a former spouse, and joint tenancy survivorship as between former spouses. See Prob. Code §§ 3722, 4154, 4727(e) (power of attorney), 5500 (nonprobate transfer), 5501 (joint tenancy).

**Prob. Code § 5003 (amended). Protection of property holders**

SEC 3. Section 5003 of the Probate Code is amended to read:

5003. (a) A holder of property under an instrument of a type described in Section 5000 may transfer the property in compliance with a provision for a nonprobate

1 transfer on death that satisfies the terms of the instrument, whether or not the  
2 transfer is consistent with the beneficial ownership of the property as between the  
3 person who executed the provision for transfer of the property and other persons  
4 having an interest in the property or their successors, and whether or not the  
5 transfer has failed by operation of section 5500.

6 (b) Except as provided in this subdivision, no notice or other information shown  
7 to have been available to the holder of the property affects the right of the holder to  
8 the protection provided by subdivision (a). The protection provided by subdivision  
9 (a) does not extend to a transfer made after either of the following events:

10 (1) The holder of the property has been served with a contrary court order.

11 (2) The holder of the property has been served with a written notice of a person  
12 claiming an adverse interest in the property. However, this paragraph does not  
13 apply to a pension plan to the extent the transfer is a periodic payment pursuant to  
14 the plan.

15 (c) The protection provided by this section does not affect the rights of the person  
16 who executed the provision for transfer of the property and other persons having an  
17 interest in the property or their successors in disputes among themselves  
18 concerning the beneficial ownership of the property.

19 (d) The protection provided by this section is not exclusive of any protection  
20 provided the holder of the property by any other provision of law.

21 **Comment.** Section 5003 is amended to make clear that the section applies where a nonprobate  
22 transfer has been caused to fail by operation of Section 5500.

23 **Prob. Code § 6202 (repealed). Spouse**

24 SEC 4. Section 6202 of the Probate Code is repealed.

25 ~~6202. “Spouse” means the testator’s husband or wife at the time the testator signs~~  
26 ~~a California statutory will.~~

27 **Comment.** Section 6202 is repealed. Section 6202 excludes from the definition of “spouse” a  
28 person who marries the testator after the testator signs a California statutory will. This would  
29 defeat the likely intentions of a testator who signs a California statutory will in anticipation of  
30 marriage. This definition may also yield inconsistent results in the operation of Section 6122  
31 (revocation by dissolution or annulment of marriage of spousal disposition in will) and Section  
32 6227 (revocation by dissolution or annulment of marriage of spousal disposition in California  
33 statutory will). This is because Section 6122 revokes a spousal disposition in a will executed  
34 before or during a testator’s marriage to a former spouse. See *Reeves v. Reeves*, 233 Cal. App. 3d  
35 651, 284 Cal. Rptr. 650 (1991).

36 **Prob. Code § 21111 (amended). Failed transfer**

37 SEC. 5. Section 21111 of the Probate Code is amended to read:

38 21111. Except as provided in Section 21110:

39 (a) If a transfer, other than a residuary gift or a transfer of a future interest, fails  
40 for any reason, ~~the property transferred becomes a part of the residue transferred~~  
41 ~~under the instrument.~~ the property is transferred as follows:

1     (1) If the transferring instrument provides for an alternative disposition in the  
2 event the transfer fails, the property is transferred according to the terms of the  
3 instrument.

4     (2) If the transferring instrument does not provide for an alternative disposition  
5 but does provide for the transfer of a residue, the property becomes a part of the  
6 residue transferred under the instrument.

7     (3) If the transferring instrument does not provide for an alternative disposition  
8 and does not provide for the transfer of a residue, the property is transferred to the  
9 decedent's estate.

10    (b) If a residuary gift or a future interest is transferred to two or more persons and  
11 the share of a transferee fails for any reason, the share passes to the other  
12 transferees in proportion to their other interest in the residuary gift or the future  
13 interest.

14    **Comment.** Section 21111 is amended to clarify the treatment of a failed transfer by will, trust,  
15 life insurance policy, or other instrument transferring property at death, where the transferring  
16 instrument does not provide for the transfer of a residue.