

## Memorandum 2007-9

**Legislative Program: Status of Bills**

This memorandum outlines the status of the Commission's 2007 legislative program. See attached table. The staff will update this report orally at the meeting.

Documents relating to AB 250 (DeVore) (revocable TOD deed) are attached in the exhibit as follows:

	<i>Exhibit p.</i>
• Bob Sheppard (3/20/07 & 4/9/07) .....	1
• Larry Doyle, Trusts & Estates Section of the State Bar (4/11/07) .....	7
• David Mandel, Senior Legal Hotline (4/17/07) .....	9
• AB 250 (DeVore) (as amended 3/22/07) .....	13

Matters that are especially noteworthy or that require Commission action are discussed below.

#### AB 250 (DEVORE) — REVOCABLE TOD DEED

AB 250 was approved, with amendments, by the Assembly Committee on the Judiciary ("the Committee") on March 27, 2006. The amendments were requested by the Committee's staff to address concerns about the operation of the bill.

Fortunately, the amendments requested by the Committee also addressed most of the objections that had been raised by the Trusts and Estates Section of the State Bar ("the Section") in a letter opposing the bill. The Section still has one concern (the life estate option) and is opposing the bill on that basis. See Exhibit p. 7.

David Mandel, of the Senior Legal Hotline, has concerns about some of the amendments and wrote to the Chair of the Committee urging that those changes be reconsidered and reversed. He has provided a revised version of his letter for the Commission's consideration. See Exhibit p. 9.

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

Pursuant to our usual practice, the staff consulted with the Commission Chair about the amendments before they were made. The Chair and staff agreed that the changes were not incompatible with the general spirit of the proposed law, and that it would be better to accept the amendments than to lose the bill. With the amendments, the bill was approved unanimously.

Most of the amendments are shown in the March 22, 2007, version of the bill that is attached at Exhibit page 13. One significant change was not shown in that version of the bill — an uncodified provision that would require the Commission to conduct a follow-up study of the revocable TOD deed by January 1, 2012. The text of that provision is set out and discussed below.

If the Commission accepts the amendments that have been made to AB 250, it should approve the conforming changes to the Comment language that are set out below.

Finally, we received two emails from Bob Sheppard, about the application of the proposed law to housing cooperatives. See Exhibit p. 1. His concerns are also discussed below.

### **Right of Survivorship**

The Committee disagrees with the Commission as to what most transferors would expect when making a revocable TOD deed for property that is titled as joint tenancy. The Committee believes most transferors would not want the deed to sever the joint tenancy; most joint tenants will be acting in concert to effectuate a joint estate plan, which is expected to operate after the death of all joint tenants.

Proposed Sections 5642, 5664, and 5668 were amended to that effect. A revocable TOD deed would not sever a joint tenancy. Only the deed of the last to die would operate.

**The staff recommends the following conforming revisions to Commission Comments:**

#### **§ 5664. Survivorship**

**Comment.** Section 5664 addresses the conflict between a revocable TOD deed and ~~an earlier joint tenancy in the property. In the case of a later joint tenancy in the property, the joint tenancy prevails. See Section 5660 (conflicting dispositive instruments) a~~ right of survivorship that exists as a result of the property being held in joint tenancy or as community property with right of survivorship. The right of survivorship governs.

~~Because a revocable TOD deed is revocable until the transferor's death, execution and recordation of a revocable TOD deed does not~~

~~sever a joint tenancy; severance only occurs when the transferor dies with the revocable TOD deed still in effect. If another joint tenant who has not made a revocable TOD deed predeceases the transferor, the transferor takes the other joint tenant's interest by right of survivorship, and the combined interest passes pursuant to the transferor's revocable TOD deed. See Section 5652(a) (transferor's entire interest in property passes at death).~~

In the case of simultaneous death, Section 223 (joint tenants) controls. The proportionate interest of each joint tenant passes under the revocable TOD deed or other dispositive instrument of that joint tenant.

~~Section 5665 provides a default rule; joint tenants may provide a different result in the deed. For example, the deed may provide that on the death of a joint tenant, the property passes to the surviving joint tenant and, on the death of the surviving joint tenant, to the TOD beneficiary. In that circumstance, the TOD deed would remain revocable by the surviving joint tenant. See Sections 5630 (revocability), 5632 (revocation of deed).~~

## § 5668. CPWROS

**Comment.** Section 5668 addresses the effect of a revocable TOD deed on community property with right of survivorship. See Civ. Code § 682.1 (CPWROS).

A revocable TOD deed of the property is subject to the rules governing a nonprobate transfer of community property. Subdivision (a).

~~Subdivision (b) is consistent with Civil Code Section 682.1(a) (termination of survivorship right pursuant to same procedures by which joint tenancy may be terminated). In the case of simultaneous death, Section 223 (joint tenants) controls; the one-half interest of each spouse passes under the revocable TOD deed or other dispositive instrument of that spouse.~~

~~Subdivision (b) provides a default rule; the spouses may provide a different result in the deed. For example, the deed may provide that on the death of the spouse, the property passes to the surviving spouse and, on the death of the surviving spouse, to the TOD beneficiary. In that circumstance, the TOD deed would remain revocable by the surviving spouse. See Sections 5630 (revocability), 5632 (revocation of deed).~~

Comparable principles apply to the property of registered domestic partners under Family Code Section 297.5.

## Mandatory Form

The Committee was concerned that the proposed revocable TOD deed would be used primarily by non-lawyers acting without the advice of counsel. Given

the complexity of estate planning and real property law, the Committee sees a significant risk of user misunderstanding and mistake.

To minimize that risk, the Committee suggested that the form deed be made mandatory. A mandatory form precludes user-drafted variants, which would greatly reduce the scope for error and unintended consequences.

That approach achieves a narrowed risk of error, but also narrows the utility of the deed. There will be some users who do not want the “off-the-shelf” package of options offered by the form. Such users will either need to compromise on their wishes or forego the use of the new deed. That is the principal concern raised by David Mandel, who opposes the amendment. See Exhibit p. 9.

Proposed Sections 5622, 5640, 5642, 5644, and 5652 were amended to make the form mandatory.

**The staff recommends the following conforming revisions to Commission Comments:**

#### **§ 5614. “Revocable transfer on death deed” defined**

**Comment.** Section 5614 adopts revocable TOD deed terminology, rather than “beneficiary deed” terminology used in some jurisdictions that have enacted comparable legislation.

A revocable TOD deed may be made for real property or any interest in real property. See Section 5610 (“real property” defined).

The beneficiary must be identified by name in a revocable TOD deed. See Section 5622 (beneficiary).

A revocable TOD deed creates no rights in the beneficiary until the death of the transferor, and is revocable until that time. See Sections 5630 (revocability) and 5650 (effect during transferor’s life).

~~For a revocable TOD deed statutory form see A revocable transfer on death deed must be in the form provided in Section 5642. For construction of a revocable TOD deed see Part 1 (commencing with Section 21101) of Division 11 (rules for interpretation of instruments).~~

#### **§ 5622. Beneficiary**

**Comment.** Subdivision (a) of Section 5622 makes explicit the requirement that a beneficiary be identified by name in the instrument. A class gift is not permissible.

~~Subdivision (b) makes explicit the right of a transferor to name an alternate beneficiary. The transferor may name more than one alternate beneficiary. Subdivision (c); see also Section 10 (singular includes plural).~~

~~Subdivision (c) makes explicit the right of a transferor to name multiple beneficiaries. A beneficiary must survive the transferor in order to take an interest under this section. Section 21109. For the consequence of a named beneficiary's failure to survive the decedent, see Section 21110 (antilapse).~~

~~Subdivision (d) (c) makes clear that the beneficiary under a revocable TOD deed may be a trustee and need not be the trust beneficiary. If a trust named as beneficiary is revoked before the transferor's death, general rules of construction applicable to such a gift would govern. See Section 21111 (failure of transfer).~~

~~A transferor may condition the beneficiary's right to the property on an intervening life estate. See Section 5652 (effect at death).~~

### **§ 5640. Statutory forms permissive**

~~**Comment.** Section 5640 makes clear that use of the statutory forms provided in this article are permissive and are not mandatory. The statutory forms are sufficient to create or revoke a revocable TOD deed.~~

### **§ 5642. Statutory form**

~~**Comment.** Section 5642 prescribes the form for creation of a revocable TOD deed. Use of the form is not mandatory. See Section 5640 (statutory forms permissive).~~

~~The form provided in this section enables the transferor to condition passage of the property to the beneficiary on a life estate in the transferor's surviving spouse a person named in the form. Comparable principles apply to a surviving registered domestic partner under Family Code Section 297.5. ~~The option provided in this form should not be read to preclude a transferor from making a revocable TOD deed subject to a life estate in a person other than the surviving spouse, or from imposing conditions on the life estate. See Sections 5640 (statutory forms permissive), 5652 (effect at death).~~~~

### **§ 5644. Statutory form revocation of revocable TOD deed**

~~**Comment.** Section 5644 prescribes a form for revocation of a revocable TOD deed. Use of the form is not mandatory, since other recorded instruments may revoke a TOD deed. See Sections 5628 (multiple deeds), 5640 (statutory forms permissive), 5660 (conflicting dispositive instruments).~~

### **§ 5652. Effect at death**

~~**Comment.** Under subdivision (a) of Section 5652, whatever interest the transferor owned at death in the property passes to the beneficiary. It should be noted, however, that this provision is not~~

limited to the fee interest. If the transferor's ownership interest is a less than fee interest, the transferor's entire less than fee ownership interest passes to the beneficiary on the transferor's death.

Under subdivision (c), a beneficiary takes only what the transferor has at death. This is a specific application of the general rule that recordation of a revocable TOD deed does not affect the transferor's ownership rights or ability to deal with the property until death. See Section 5650 (effect during transferor's life). Likewise, if an obligation of the beneficiary attaches to the property as a result of the doctrine of after-acquired title, that obligation is subordinate to any limitations on the transferor's interest in the property, and a transfer by the beneficiary financed by a purchase money mortgage is subject to the priority of a recorded encumbrance on the transferor's interest notwithstanding Civil Code Section 2898 (priority of purchase money encumbrance).

Subdivision (d) emphasizes the point that a revocable TOD deed is basically a quitclaim, passing whatever interest the transferor had at death to the beneficiary. ~~A covenant or warranty of title included by the transferor in the deed has no effect.~~

### **Single-User Instrument**

Another change made to simplify use of the form and make its operation more understandable was to recast the form as single-user instrument. That should avoid confusion that could arise under a jointly executed instrument (e.g., must both transferors join in a revocation?).

This amendment was implemented by amending Sections 5642 and 5644, and by deleting proposed Section 5622, which specified rules governing the effect of a jointly executed deed. No conforming Comment revisions are required.

### **Non-Spousal Life Estate**

The Committee felt that the life estate option should not be limited to a spouse of the transferor. A transferor might wish to create a life estate in a non-spouse (e.g., an elderly or disabled sibling).

This change was implemented by amending the statutory form language in Section 5642. No Comment revision is required.

### **Follow-Up Study**

Even with the requested amendments, the Committee still had concerns that the deed might increase the risk of fraud or have some other unintended effect. To address that possibility, the bill was amended by the Committee to add a provision requiring a follow-up study by the Commission:

(a) The California Law Revision Commission shall study the effect of California's revocable transfer on death deed set forth in Probate Code Section 5600 et seq. The commission shall report all of its findings to the Legislature on or before January 1, 2012.

(b) The commission shall address all of the following in the study described in subdivision (a):

(1) Whether the revocable transfer on death deed is working effectively. Whether the revocable transfer on death deed should be continued. Whether the deed is subject to misuse or misunderstanding. Whether changes need to be made to the deed or process to improve its effectiveness. If so, how the process can be changed to minimize misuse or misunderstanding, or to improve its effectiveness.

(2) Whether the revocable transfer on death deed has been used to perpetuate financial abuse on property owners. If so, how the process can be changed to minimize any such abuse.

Note that this change caused the bill to have a fiscal impact on the state. Consequently, it will need to be approved by the appropriations committees of each house.

### **Application of Proposed Law to Interest in Housing Cooperative**

Bob Sheppard is concerned that the special form of ownership interest in a stock cooperative would preclude the use of the revocable TOD deed to pass a transferor's interest in a stock cooperative. Mr. Sheppard explains:

In a stock cooperative, a homeowner's interest consists of two linked instruments. The first is the ownership of a membership interest in the corporation that owns or leases the project. The membership interest is generally evidenced by a share or membership certificate. This gives the homeowner the right to participate in the governance of the cooperative and to enter into a proprietary lease to occupy their unit. The second instrument is a proprietary lease that grants the right of occupancy to the member owning the membership interest. The lease imposes restrictions on the use of the unit and has other obligations. It also grants the owner the right to use the common areas. These two documents are generally not severable or transferable unless permitted by the cop. The share may be appurtenant to the lease, or vice versa. There is also a set of house rules that interpret the restrictions in the lease.

See Exhibit p. 6.

The Commission understands that there are real property interests that are unconventional with respect to the form and incidents of ownership. With that in mind, the Commission decided that the proposed law should apply as broadly as is practicable. The proposed law provides that a revocable TOD deed can be used

to transfer any interest in real property that is both *recordable* and *transferable on death*. Proposed Prob. Code § 5610(c).

Unfortunately, it appears that an ownership interest in a stock cooperative could fail one or both of those tests. There may be no recorded instrument evidencing ownership, and the governing documents of the cooperative may expressly restrict or prohibit the transfer of the interest to a third party. Either of those facts would be enough to prevent the use of the revocable TOD deed to transfer an interest in a stock cooperative.

That problem cannot be solved simply by stating broader application for the proposed law. The proposed law depends on recordation as the nonjudicial mechanism for ensuring the validity of title transferred by a revocable TOD deed. The proposed law simply wouldn't work if applied to a form of property where ownership is not evidenced by recording.

Nor could a nonprobate transfer be applied to an interest that cannot be transferred on death.

Not all cooperatives will have those problems. The revocable TOD deed should provide a useful tool for some cooperative owners. But Mr. Sheppard would like to see the law adjusted to provide a nonprobate transfer mechanism that will work for all cooperatives.

The staff does not believe that this problem can be adequately addressed in the context of AB 250. It is too complex. A separate study of the issue should be conducted. **The staff recommends that the matter be considered as a potential new study topic**, when the Commission considers all proposed new topics and sets its agenda for work in 2008. Alternatively, the matter could be deferred and included within the follow-up study that AB 250 would assign to the Commission.

At a minimum, Mr. Sheppard has asked that the Commission inform Assembly Member DeVore about this deficiency in the proposed law. The staff will do so.

#### COMMON INTEREST DEVELOPMENT BUREAU

Assembly Bill 567 (Saldaña) has been amended to include language drawn from the Commission's tentative recommendation on *State Assistance to Common Interest Developments* (September 2004). That proposal would have created a state bureau with authority to enforce CID laws. The Commission ultimately

recommended a different proposal: the creation of a state CID Ombudsperson, without law enforcement powers. See *Common Interest Development Ombudsperson*, 35 Cal. L. Revision Comm'n Reports 123 (2005).

The Commission has not yet been asked for assistance with the bill. If assistance is requested, **the staff recommends that it be provided, with the clear caveat that the bill is only based in part on the Commission's recommendation.** That was the Commission's position when SB 551 (Lowenthal) was amended to provide the proposed Ombudsperson with law enforcement powers.

Respectfully submitted,

Brian Hebert  
Executive Secretary

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Exhibit

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**EMAIL FROM BOB SHEPPARD  
(MARCH 20, 2007)**

I appreciate the Commission's valuable work developing proposed TOD deed (transfer on death deed) legislation. My concern is that the current TOD deed draft legislation might prevent owners of units in stock co-operatives from taking advantage of this option.

My involvement with housing cooperatives extends back to the late 1970s. I was instrumental in organizing a conversion from rental housing to a limited-equity cooperative in the midwest. This included developing governing documents, creating a business plan, arranging for financing, developing and delivering training for the prospective members, etc. I advocated for the creation of the National Consumer Cooperative Bank (now the NCB) and negotiated one of the first cooperative housing loans with them. I served on the board of directors of a housing cooperative in California and have served on numerous committees in both cooperatives. I have owned and lived in housing cooperative units for over twenty-five years.

Since the purpose of a TOD deed is to allow limited-income homeowners to transfer their home to designated beneficiaries, it should apply to all homeowners, including owners of co-operative housing units, without the need to incur legal expenses. I don't think it would be clear to such owners (especially limited-equity housing co-op owners), how they should proceed under the Commission's current draft, or even if it's possible to use it.

In a stock cooperative, a homeowner's interest consists of two linked instruments. The first is the ownership of a membership interest in the corporation that owns or leases the project. The membership interest is generally evidenced by a share or membership certificate. This gives the homeowner the right to participate in the governance of the cooperative and to enter into a proprietary lease to occupy their unit. The second instrument is a proprietary lease that grants the right of occupancy to the member owning the membership interest. The lease imposes restrictions on the use of the unit and has other obligations. It also grants the owner the right to use the common areas. These two documents are generally not severable or transferable unless permitted by the co-op. The share may be

appurtenant to the lease, or vice versa. There is also a set of house rules that interpret the restrictions in the lease.

There are “market-rate” cooperatives in which the unit owners may sell their units for whatever price they can obtain. There are also “limited-equity” housing cooperatives (LEHC) that meet the requirements of section 33007.5 of the Health and Safety Code. The resale price of the unit is limited by this code section to the “transfer value” defined in it.

Other relevant characteristics of stock co-ops include the following:

- Leases or memoranda of lease are often recorded in market-rate co-ops. However, there are cases where they are not.
- I know of no cases (there may be a few) where such instruments are recorded in limited-equity co-ops. I’d speculate that directors of such co-ops might lack knowledge of such matters (as often is the case of the existence or applicability of the Davis-Stirling act).
- Cooperatives that do not currently record might be resistant to starting the practice due to legal expense, ignorance, politics, etc.
- The sale of a unit in a market-rate co-op is generally handled by the unit owner, which might involve a broker. The co-op must approve of a buyer, but this is often a formality.
- When an owner of a unit in a limited-equity co-op wishes to sell the unit, the co-op generally buys the unit back at the transfer value (see Section 33007.5) and the co-op markets and sells the unit to the subsequent unit owner. The approval of a new member is generally not a formality and often includes a formal selection process.
- The initial financing of a cooperative generally involves the co-op carrying a blanket mortgage. This mortgage is superior to the unit owner’s interest. The initial member buys a membership interest that is their proportionate share of the difference between the acquisition/development cost of the project and the amount of the blanket mortgage.
- Some newer limited-equity cooperatives created by land trusts hold a leasehold interest in their property.

Because of these, the procedure for the transfer on death for a co-op unit is significantly different than in other CIDs:

Market-rate co-ops:

- In most--but not all--cases, a memorandum of lease would have been recorded when the deceased member originally purchased the unit. The member would also have had to purchase shares or a membership in the cooperative.
- Depending on the language in the proprietary lease and bylaws, the

right to occupy the unit may terminate on the death of the member. The shares and possibly the lease become part of the member's estate. The estate is responsible for paying monthly assessments until the unit is sold or inherited. In other words, the obligations of the proprietary lease will continue to be enforced on the member's estate until satisfied.

- If permitted by the co-op's governing documents, the shares and the right to occupy the unit can be inherited by the beneficiary. Otherwise, the beneficiary may need to be interviewed and qualified by the co-op's board. If accepted by the co-op the beneficiary would become the owner of the unit. Otherwise, the estate would sell the unit to a buyer that would need to be approved by the co-op. This could range from a formality to a political process (e.g. Richard Nixon).
- If the Board approves of the beneficiary, the estate signs over the shares/membership to the beneficiary and signs a document canceling the lease. The lease cancellation is recorded if a memorandum of lease had been previously recorded.
- The Board enters into a new lease with the beneficiary and transfers the shares/membership to the beneficiary. Depending on the co-op's practices, a new memorandum of lease may be recorded.

#### Limited-equity housing co-ops:

- Generally nothing would have been recorded when the deceased member purchased the unit. The member would also have had to purchase shares or a membership in the cooperative.
- The right to occupy the unit and membership rights terminate upon the member's death. However, the obligations in the proprietary lease will continue to be enforced on the member's estate until satisfied.
- The right to receive the proceeds from the sale of the shares become part of the member's estate.
- There is generally a requirement that the co-op be given advanced notice of a member's intention to vacate the unit (e.g. 60 days). Thus, the member's estate is responsible for monthly assessment for this period.
- Since the shares and right to occupy the unit must generally be transferred only to the co-op, the co-op markets the unit at its expense.
- At the end of the notice period, the estate removes or abandons the contents of the unit and signs over the shares to the co-op.
- The co-op pays the estate for the shares at the transfer value, executes a new lease with the new member and issues a new share certificate to the new member, who has purchased the unit for the transfer value. The estate's obligations under the proprietary lease end.

Since the deceased member's estate might only acquire the value of the shares, I believe the CLRC's draft should permit a beneficiary to acquire the funds from the sale of the unit outside of probate or a trust. Also, the draft should apply in cases where there is no original recordation of a lease or memorandum of lease.

I believe that a TOD deed law should allow members to designate beneficiary(s) of the sale of the shares and should require co-op boards to comply with the member's wishes.

Since the draft requires the recordation of a TOD deed, it's hard to see how an owner of a unit in an LEHC could use the TOD deed document, since transfers of leases are generally not permitted by such cooperatives and there is no provision in the draft for a TOD deed that would include a share or membership.

I urge the Commission to make sure that the TOD deed draft does not disenfranchise homeowners in a stock cooperative developments. If the Commission believes that the draft already applies to such owners, I urge you to insert clarifying language so that such a lay person can use this instrument. One possible modification to the name of the instrument would be a "revocable transfer on death instrument".

On another matter, I see the TOD deed as a substitute for a revocable living trust or a pay-on-death arrangement. Therefore, I don't think a beneficiary should have to bear any greater burdens than such arrangements would impose with respect to (i) limits on how soon after death the property may be transferred to the beneficiary, (ii) how long after death the arrangement may be challenged and (iii) statute of limitations issues.

If you have any questions about my comments, please feel free to contact me.

Yours truly,

Bob Sheppard

**EMAIL FROM BOB SHEPPARD**  
**(APRIL 9, 2007)**

Brian and Commissioners:

Per my recently submitted comments, I believe that the current TOD deed legislation (AB 250) would not be usable by homeowners of stock cooperative units whose proprietary leases (or memoranda thereof) had not been recorded and are not recordable. Please refer to the background material in my previous comments.

According to the bill analysis for AB 12:

“COMMENTS : According to the author, a home represents the most significant asset for most families. This bill, as originally drafted, would have established a new but untested mechanism to allow families a more affordable non-probate means of transferring a home to succeeding generations. Under current law, the principal way that parents can pass a home on to their children or other designees, without going through probate, is through the creation of a trust. However the author notes that creating a trust may be costly and inefficient, especially for a small estate containing only a single family home. The author states that requiring the home to pass into probate may necessitate selling the home against the family’s wishes.”

Typically, homeowners of stock cooperative units with unrecordable leases fall within the scope of the comments above, perhaps more than most other types of homeowners. Yet, they would be unable to benefit from the legislation. In order for a co-op homeowner to benefit, the cooperative would need to agree to record the proprietary lease (or a memorandum). This would involve both regulatory and legal expenses and might have other unforeseen consequences to either the cooperative or the homeowner.

The legislation, as it is currently written, would require both the homeowner and the cooperative to jump over a much higher bar than other homeowners. The co-op homeowner would need the co-op to create and execute a recordable instrument. Other homeowners would need the approval of no other parties in order to benefit from the TOD deed legislation, while the cooperative homeowner mentioned above would need to involve the cooperative in their personal estate planning business.

One suggestion for a possible solution were sections 5000 et seq and 5500 et seq of the Probate Code. Unfortunately, this falls short because it again would require the involvement of the cooperative. The cooperative would need to set up a special program to implement this, which would require legal expenses and the political approval of the cooperative.

Either a modification of the Probate Code allowing a cooperative homeowner to designate a beneficiary without the involvement or consent of the cooperative, or a modification to the current legislation to fit the legal environment of unrecorded proprietary leases would provide a solution.

Since many cooperatives have restrictions over transferability, inheritability, etc., such solution would be subject to such restriction and would only apply to the extent that a transfer on death did not violate those restrictions. In some cases, this would mean that only the proceeds from the sale of the homeowners share would be paid to the beneficiary, rather than to the heirs and that the right of occupancy would not be transferable to the beneficiary.

The background material on the Commission's website indicates that the Commission's work is held in high esteem by both the legislature and the courts. Thus, I would encourage the Commission to find a solution to the above issue and communicate it to those carrying AB 250. If this is not possible, I would encourage the Commission to advise the sponsors of the bill that homeowners of units in stock cooperatives with non-recordable leases would be excluded from the benefits of the legislation.

If you or the Commission have questions or need more information, please feel free to contact me at your convenience.

Very truly yours,

Bob Sheppard



## TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

April 11, 2007

The Honorable Chuck DeVore  
Member of the Assembly, 70<sup>th</sup> District  
State Capitol, Room 4102  
Sacramento, CA 95814

**AB 250, as amended 4/10/07 – OPPOSE UNLESS AMENDED**  
**Trusts & Estates Section**

Dear Assembly Member DeVore:

The Executive Committee of the Trusts & Estates Section of the State Bar (T&ExComm) regrets that it must oppose your AB 250 unless it is amended to change the statutory form so it does not provide for life estates.

**If you have any questions concerning this position, please contact T&ExComm Member Charlotte Ito, at the address below, or me at (916) 442-8018.**

Charlotte K. Ito  
Luce, Forward, Hamilton & Scripps LLP  
Rincon Center II  
121 Spear Street, Suite 200  
San Francisco, CA 94105  
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The following explains in greater detail T&ExComm's concern with the bill.

Life estate: Under California Civil Code §§731-749 and 761-784, a transferor may create a legal life estate and a remainder estate through a deed or a testamentary bequest. Because fractionation of interests is available under existing law, T&ExComm finds no reason to prohibit its application to the Revocable TOD Deed. T&ExComm, however, believes that most users of the form will not understand the legal consequences of checking a box to create a life estate, and the potential conflict between the life and remainder interests which could result in a lawsuit between the life tenant and remainder person. Thus, while the statute need not prohibit the creation of a life estate, it should not encourage it by providing a box to check on the statutory form that would create such life estate. An individual who desires to create a life estate in a Revocable TOD Deed instead of a trust should have it professionally drafted to address the issues that could arise under it.

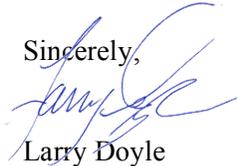
T&ExComm is concerned that without this amendment, the Revocable TOD Deed would produce unintended consequences, which would not only limit its utility as an estate planning tool but could in many instances result in increased litigation.

**This position is only that of the TRUSTS & ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.**

**Membership in the TRUSTS & ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.**

Thank you.

Sincerely,



Larry Doyle  
Chief Legislative Counsel, State Bar of  
California

cc: Charlotte Ito, Member, Trusts & Estates Section Executive Committee  
John Hartog, Chair, Trusts & Estates Section  
Peter Stern, Vice Chair, Trusts & Estates Section  
Sil Reggiardo, Legislative Chair, Trusts & Estates Section  
Ed Corey, Legislative Vice Chair, Trusts & Estates Section  
Susan Orloff, Section Administrator  
Eric Csizmar, Deputy Legislative Secretary, Office of the Governor  
Ruthe Ashley, Chair, Board Committee on Stakeholder Relations  
Rick Zanassi, Office of General Counsel, State Bar of California  
Anthony Williams, Director of Governmental Affairs, State Bar of California  
Saul Bercovitch, Office of Governmental Affairs, State Bar of California

**EMAIL FROM DAVID MANDEL**  
**(APRIL 17, 2007)**

I began advocating for this idea before AB 12 was introduced two years ago and was glad to see it referred then to the CLRC, as it needed better analysis and more work. I also followed the commission's progress closely, attended all its meetings that were in Sacramento and submitted numerous comments and suggestions, most of which were incorporated into its recommendation.

I'm thrilled to see the bill moving forward and even more gratified that my final warning about the one thing I believe the commission got wrong -- the default for joint owners with right of survivorship -- was heeded. But a new detour has now arisen, and I feel strongly enough about the problems it will cause that I'm writing this memo to the commission's attention and for anyone else who might be interested.

After considerable research and discussion, the CLRC recommended an "enabling statute," in which the deed form to be included would be a bare-bones minimum that could have other provisions added as long as they were not in contradiction with the statute. Numerous provisions in the recommendation were written to govern such additional provisions that many users would typically want.

This arrangement is consistent with the approach of the other states that have statutory transfer on death deed statutes. Several of these states have had them in operation for well over a decade, and they all report no major problems.

The recommendation for an enabling statute was also consistent with the pattern set by several other statutory model forms in the Calif. Probate Code: the durable power of attorney for finances and advance health care directive, for instance. Users are free to amend the forms as they wish, as long as nothing contradicts the governing statutes.

The "California statutory will" form in the code is a little different: if the wording is varied, it cannot be called a "statutory will," but the same body of law that governs the subject in general still pertains to other types of wills, in which people are free to add what they want as long as it's not contrary to the statute in any way.

AB 250, however, as currently amended, is much more harsh, to an absurd extreme: A deed that varies at all (with the exception of typos) from the one in the proposed statute would not be governed by it at all. Apparently, committee members and/or staff, in an abundance of caution, decided to make the bare-bones model deed strictly mandatory to prevent users from making inadvertent errors or opening doors to possible abuse. While I'm sure this was well-intentioned, if AB 250 becomes law with this provision, it will create far more serious problems than the potential minors ones it is meant to solve. It will prevent use of the TOD deed

by large numbers of people for whom it was mostly intended, and it will defeat the clear wishes of many unsuspecting users.

A TOD deed that a user executes and records after innocently adding one or more of numerous provisions that would be commonly desired -- and were anticipated by the CLRC in light of its study of TOD deeds in other states -- would be thrown into a twilight zone of unknown validity, likely uninsurable by title companies and therefore quite possibly requiring expensive and complex quiet title litigation by someone who wants to rely on it, even in the absence of any contest from someone with a competing testamentary instrument. When such a contest does occur, the situation would become even worse.

Most pernicious of all, a disappointed potential heir could deliberately mislead a homeowner into thinking a purported TOD deed was valid, then step up to challenge it after the grantor's death, when it is too late to amend.

More mundanely, here are a few of the everyday provisions of TOD deeds very commonly used in other states and incorporated into the CLRC's proposal that would now be disallowed:

- Naming of an alternate beneficiary, to receive the property if the primary beneficiary predeceases the grantor.

- Naming multiple beneficiaries to receive the property in any form but as tenants in common in equal shares.

- Naming a trustee to manage the property when one or more beneficiaries may be a minor at the time of the grantor's death.

- Allowing spouses or others who hold the property as joint tenants or community property with right of survivorship to execute a TOD deed jointly; with the bill now amended, thankfully, to default the TOD deed's continued revocability until the death of the last joint tenant, this usage will be an extremely common and logical wish for longtime couples, who are much more likely to get confused and make errors if required, as the bill now stands, to each execute a deed separately.

- Allowing joint tenants who do want to reverse the default to do so, effecting a severance of the joint tenancy upon the death of the first.

- Allowing users of the life estate provision -- the one option that now remains in the deed form -- to specify who, between the life tenant and the remainder beneficiary, will be responsible for what (e.g. maintenance, taxes, mortgage payments, etc.)

I could go on, but these are the most common variances, permitted and employed without difficulty virtually everywhere else TOD deeds are used, incorporated into the CLRC's proposal -- but forbidden under AB 250 as amended.

Just after the committee hearing, I attended a conference in Denver and had occasion to speak with colleagues from several other states where they have had

TOD deed statutes for several years or more. They all have a model, not a mandatory form (or in some cases, not even a model) in their statutes. They all allow alternate beneficiaries, distributions in unequal proportions and the other variations people commonly use. Sure, I was told, there are occasional mistakes, but the vast majority of users do just fine. The concepts are clear and understandable. And they were all aghast at the thought that a deed not exactly as it appears in the statute would then not be covered by the law at all.

Here's a typical excerpt regarding multiple and alternate beneficiaries from the Nevada statute. I discussed it at the conference with a senior legal services attorney from Reno, who said that it is widely used and rarely causes any problems.

2. The owner of an interest in real property who creates a deed pursuant to subsection 1 may designate in the deed:

(a) Multiple grantees who will take title to the property upon his death as joint tenants with right of survivorship, tenants in common, husband and wife as community property, community property with right of survivorship or any other tenancy that is recognized in this state.

(b) A successor in interest to the grantee. If a successor in interest is designated, the deed must include a provision stating the condition precedent for the interest of the successor to vest.

Ironically, I initially favored making the statutory deed forms mandatory when I wrote a draft bill two years ago, at the start of the AB 12 debate. But the forms I included (one for a single user, one for joint owners, which I still think would be the best way to go) included all these common options, so they would not have limited the instrument's usefulness for 99 percent of potential users. The commission considered the idea and recommended instead a single, simple form that could be amended and appended as desired, within the bounds of the inclusive TOD deed definition. I saw the advantages of this approach and readily accepted it as a rational alternative, especially attractive due to its consistency with the experience of other states.

Clearly however, there were two logical alternatives on the matter -- a mandatory deed with checkoffs for a number of common alternatives to make it useful for the intended beneficiaries of the legislation, or a simple, bare-bones model deed that could be embellished as part of an enabling statute. The place where AB 250 now stands -- a bare-bones but mandatory deed that is therefore rendered useless to huge numbers of the people we're trying to help -- makes no sense at all.

I really hope a way can be found to get the legislation off this detour and back on track for the purpose it was originally meant to serve. It would be a shame to have to wait five years from now for the CLRC to re-examine it, when it already put so much research and thought into the issue and came to the correct conclusion. A lot of damage will be caused in the meantime if it takes that long to fix.

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AMENDED IN ASSEMBLY MARCH 22, 2007

AMENDED IN ASSEMBLY MARCH 19, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 250**

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**Introduced by Assembly Member DeVore**  
**(Coauthors: Assembly Members Anderson, Benoit, Cook, Gaines,**  
**Garrick, Horton, Jeffries, La Malfa, Maze, Silva, Tran, and**  
**Walters)**

(Coauthor: Senator Ackerman)

February 1, 2007

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An act to amend Section 2040 of the Family Code, to amend Sections 250, 267, 279, ~~4264~~, 5000, 5302, 13111, 13206, and 13562 of, to amend and renumber Sections 5600, 5601, 5602, 5603, and 5604 of, *to add Section 69 to*, to add the heading of Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of, to add Part 4 (commencing with Section 5600) to Division 5 of, and to repeal the heading of Part 4 (commencing with Section 5600) of Division 5 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 250, as amended, DeVore. Nonprobate transfers: revocable transfer upon death deeds.

(1) Existing law provides that a person may pass real property to a beneficiary at death by various methods including by will, intestate succession, trust, and titling the property in joint tenancy, among others.

This bill would create the revocable transfer on death deed (revocable TOD deed), *as defined*, which would transfer real property on the death of its owner without a probate proceeding. The bill would require that

a person have testamentary capacity to make or revoke the deed and would ~~provide~~ *require that the deed be in a statutory form* ~~forms form provided~~ for this purpose. The revocable TOD deed must be signed, dated, and acknowledged, as specified, and recorded to be effective. The bill would provide, among other things, that the deed, during the owner's life, does not ~~effect~~ *affect* his or her ownership rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal eligibility and reimbursement. *The bill would void a revocable TOD deed if, at the time of owner's death, the property is titled in joint tenancy or as community property with right of survivorship.* The bill would establish priorities for creditor claims against the owner and the beneficiary of the deed in connection with the property transferred and limits on the liability of the beneficiary. The bill would establish a process for contesting the transfer of real property by a revocable TOD deed. The bill would also make conforming and technical changes.

(2) Existing law provides that a person who feloniously and intentionally kills a decedent is not entitled to specified property, interests, or benefits, including any gifts of personal property made in view of impending death.

This bill would specify that a person who feloniously and intentionally kills a decedent is not entitled generally to property and interests that are transferred outside of probate, including real property transferred by a revocable TOD deed.

(3) Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$100,000, including authorizing the successor of the decedent to collect and distribute property due to the decedent without letters of administration or awaiting probate of a will. Existing law provides that a beneficiary who receives real or personal property under these circumstances, as specified, may be liable to the estate if probate proceedings are subsequently commenced. Existing law provides, in this context, that a spouse has liability for the debts of a deceased spouse if the decedent's property is in the control of the surviving spouse. Existing law permits a court judgment to enforce liability in these instances only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

This bill would delete the reference to court judgment and provide instead that the personal representative of the estate is permitted to enforce liability only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2040 of the Family Code is amended to  
2 read:

3 2040. (a) In addition to the contents required by Section 412.20  
4 of the Code of Civil Procedure, the summons shall contain a  
5 temporary restraining order:

6 (1) Restraining both parties from removing the minor child or  
7 children of the parties, if any, from the state without the prior  
8 written consent of the other party or an order of the court.

9 (2) Restraining both parties from transferring, encumbering,  
10 hypothecating, concealing, or in any way disposing of any property,  
11 real or personal, whether community, quasi-community, or  
12 separate, without the written consent of the other party or an order  
13 of the court, except in the usual course of business or for the  
14 necessities of life, and requiring each party to notify the other party  
15 of any proposed extraordinary expenditures at least five business  
16 days before incurring those expenditures and to account to the  
17 court for all extraordinary expenditures made after service of the  
18 summons on that party.

19 Notwithstanding the foregoing, nothing in the restraining order  
20 shall preclude a party from using community property,  
21 quasi-community property, or the party's own separate property  
22 to pay reasonable attorney's fees and costs in order to retain legal  
23 counsel in the proceeding. A party who uses community property  
24 or quasi-community property to pay his or her attorney's retainer  
25 for fees and costs under this provision shall account to the  
26 community for the use of the property. A party who uses other  
27 property that is subsequently determined to be the separate property  
28 of the other party to pay his or her attorney's retainer for fees and  
29 costs under this provision shall account to the other party for the  
30 use of the property.

31 (3) Restraining both parties from cashing, borrowing against,  
32 canceling, transferring, disposing of, or changing the beneficiaries  
33 of any insurance or other coverage, including life, health,  
34 automobile, and disability, held for the benefit of the parties and  
35 their child or children for whom support may be ordered.

1 (4) Restraining both parties from creating a nonprobate transfer  
2 or modifying a nonprobate transfer in a manner that affects the  
3 disposition of property subject to the transfer, without the written  
4 consent of the other party or an order of the court.

5 (b) Nothing in this section restrains any of the following:

6 (1) Creation, modification, or revocation of a will.

7 (2) Revocation of a nonprobate transfer, including a revocable  
8 trust, pursuant to the instrument, provided that notice of the change  
9 is filed and served on the other party before the change takes effect.

10 (3) Elimination of a right of survivorship to property, provided  
11 that notice of the change is filed and served on the other party  
12 before the change takes effect.

13 (4) Creation of an unfunded revocable or irrevocable trust.

14 (5) Execution and filing of a disclaimer pursuant to Part 8  
15 (commencing with Section 260) of Division 2 of the Probate Code.

16 (c) In all actions filed on and after January 1, 1995, the summons  
17 shall contain the following notice:

18 “WARNING: California law provides that, for purposes of  
19 division of property upon dissolution of marriage or legal  
20 separation, property acquired by the parties during marriage in  
21 joint form is presumed to be community property. If either party  
22 to this action should die before the jointly held community property  
23 is divided, the language of how title is held in the deed (i.e., joint  
24 tenancy, tenants in common, or community property) will be  
25 controlling and not the community property presumption. You  
26 should consult your attorney if you want the community property  
27 presumption to be written into the recorded title to the property.”

28 (d) For the purposes of this section:

29 (1) “Nonprobate transfer” means an instrument, other than a  
30 will, that makes a transfer of property on death, including a  
31 revocable trust, pay on death account in a financial institution,  
32 Totten trust, transfer on death registration of personal property,  
33 revocable transfer on death deed, or other instrument of a type  
34 described in Section 5000 of the Probate Code.

35 (2) “Nonprobate transfer” does not include a provision for the  
36 transfer of property on death in an insurance policy or other  
37 coverage held for the benefit of the parties and their child or  
38 children for whom support may be ordered, to the extent that the  
39 provision is subject to paragraph (3) of subdivision (a).

1 (e) The restraining order included in the summons shall include  
2 descriptions of the notices required by paragraphs (2) and (3) of  
3 subdivision (b).

4 *SEC. 2. Section 69 is added to the Probate Code, to read:*

5 69. “Revocable transfer on death deed” or “revocable TOD  
6 deed” means a revocable transfer on death deed as described in  
7 Section 5614.

8 ~~SEC. 2:~~

9 *SEC. 3. Section 250 of the Probate Code is amended to read:*

10 250. (a) A person who feloniously and intentionally kills the  
11 decedent is not entitled to any of the following:

12 (1) Any property, interest, or benefit under a will of the  
13 decedent, or a trust created by or for the benefit of the decedent  
14 or in which the decedent has an interest, including any general or  
15 special power of appointment conferred by the will or trust on the  
16 killer and any nomination of the killer as executor, trustee,  
17 guardian, or conservator or custodian made by the will or trust.

18 (2) Any property of the decedent by intestate succession.

19 (3) Any of the decedent’s quasi-community property the killer  
20 would otherwise acquire under Section 101 or 102 upon the death  
21 of the decedent.

22 (4) Any property of the decedent under Division 5 (commencing  
23 with Section 5000).

24 (5) Any property of the decedent under Part 3 (commencing  
25 with Section 6500) of Division 6.

26 (b) In the cases covered by subdivision (a):

27 (1) The property interest or benefit referred to in paragraph (1)  
28 of subdivision (a) passes as if the killer had predeceased the  
29 decedent and Section 21110 does not apply.

30 (2) Any property interest or benefit referred to in paragraph (1)  
31 of subdivision (a) which passes under a power of appointment and  
32 by reason of the death of the decedent passes as if the killer had  
33 predeceased the decedent, and Section 673 *does* not apply.

34 (3) Any nomination in a will or trust of the killer as executor,  
35 trustee, guardian, conservator, or custodian which becomes  
36 effective as a result of the death of the decedent shall be interpreted  
37 as if the killer had predeceased the decedent.

38 ~~SEC. 3:~~

39 *SEC. 4. Section 267 of the Probate Code is amended to read:*

1 267. (a) "Interest" includes the whole of any property, real or  
2 personal, legal or equitable, or any fractional part, share, or  
3 particular portion or specific assets thereof, or any estate in any  
4 such property, or any power to appoint, consume, apply, or expend  
5 property, or any other right, power, privilege, or immunity relating  
6 to property.

7 (b) "Interest" includes, but is not limited to, an interest created  
8 in any of the following manners:

- 9 (1) By intestate succession.
- 10 (2) Under a will.
- 11 (3) Under a trust.
- 12 (4) By succession to a disclaimed interest.
- 13 (5) By virtue of an election to take against a will.
- 14 (6) By creation of a power of appointment.
- 15 (7) By exercise or nonexercise of a power of appointment.
- 16 (8) By an inter vivos gift, whether outright or in trust.
- 17 (9) By surviving the death of a depositor of a Totten trust  
18 account or P.O.D. account.
- 19 (10) Under an insurance or annuity contract.
- 20 (11) By surviving the death of another joint tenant.
- 21 (12) Under an employee benefit plan.
- 22 (13) Under an individual retirement account, annuity, or bond.
- 23 (14) Under a transfer on death beneficiary designation in a deed  
24 or other instrument.
- 25 (15) Any other interest created by a testamentary or inter vivos  
26 instrument or by operation of law.

27 ~~SEC. 4.~~

28 *SEC. 5.* Section 279 of the Probate Code is amended to read:

29 279. (a) A disclaimer to be effective shall be filed within a  
30 reasonable time after the person able to disclaim acquires  
31 knowledge of the interest.

32 (b) In the case of any of the following interests, a disclaimer is  
33 conclusively presumed to have been filed within a reasonable time  
34 if it is filed within nine months after the death of the creator of the  
35 interest or within nine months after the interest becomes  
36 indefeasibly vested, whichever occurs later:

- 37 (1) An interest created under a will.
- 38 (2) An interest created by intestate succession.
- 39 (3) An interest created pursuant to the exercise or nonexercise  
40 of a testamentary power of appointment.

1 (4) An interest created by surviving the death of a depositor of  
2 a Totten trust account or P.O.D. account.

3 (5) An interest created under a life insurance or annuity contract.

4 (6) An interest created by surviving the death of another joint  
5 tenant.

6 (7) An interest created under an employee benefit plan.

7 (8) An interest created under an individual retirement account,  
8 annuity, or bond.

9 (9) An interest created under a transfer on death beneficiary  
10 designation in a deed or other instrument.

11 (c) In the case of an interest created by a living trust, an interest  
12 created by the exercise of a presently exercisable power of  
13 appointment, an outright inter vivos gift, a power of appointment,  
14 or an interest created or increased by succession to a disclaimed  
15 interest, a disclaimer is conclusively presumed to have been filed  
16 within a reasonable time if it is filed within nine months after  
17 whichever of the following times occurs latest:

18 (1) The time of the creation of the trust, the exercise of the power  
19 of appointment, the making of the gift, the creation of the power  
20 of appointment, or the disclaimer of the disclaimed property.

21 (2) The time the first knowledge of the interest is acquired by  
22 the person able to disclaim.

23 (3) The time the interest becomes indefeasibly vested.

24 (d) In case of an interest not described in subdivision (b) or (c),  
25 a disclaimer is conclusively presumed to have been filed within a  
26 reasonable time if it is filed within nine months after whichever  
27 of the following times occurs later:

28 (1) The time the first knowledge of the interest is acquired by  
29 the person able to disclaim.

30 (2) The time the interest becomes indefeasibly vested.

31 (e) In the case of a future estate, a disclaimer is conclusively  
32 presumed to have been filed within a reasonable time if it is filed  
33 within whichever of the following times occurs later:

34 (1) Nine months after the time the interest becomes an estate in  
35 possession.

36 (2) The time specified in subdivision (b), (c), or (d), whichever  
37 is applicable.

38 (f) If the disclaimer is not filed within the time provided in  
39 subdivision (b), (c), (d), or (e), the disclaimant has the burden of

1 establishing that the disclaimer was filed within a reasonable time  
2 after the disclaimant acquired knowledge of the interest.

3 ~~SEC. 5. Section 4264 of the Probate Code is amended to read:~~  
4 ~~4264. A power of attorney may not be construed to grant~~  
5 ~~authority to an attorney in fact to perform any of the following~~  
6 ~~acts unless expressly authorized in the power of attorney:~~

- 7 ~~(a) Create, modify, or revoke a trust.~~
- 8 ~~(b) Fund with the principal's property a trust not created by the~~  
9 ~~principal or a person authorized to create a trust on behalf of the~~  
10 ~~principal.~~
- 11 ~~(c) Make or revoke a gift of the principal's property in trust, by~~  
12 ~~revocable transfer on death deed, or otherwise.~~
- 13 ~~(d) Exercise the right to make a disclaimer on behalf of the~~  
14 ~~principal. This subdivision does not limit the attorney in fact's~~  
15 ~~authority to disclaim a detrimental transfer to the principal with~~  
16 ~~the approval of the court.~~
- 17 ~~(e) Create or change survivorship interests in the principal's~~  
18 ~~property or in property in which the principal may have an interest.~~
- 19 ~~(f) Designate or change the designation of beneficiaries to~~  
20 ~~receive any property, benefit, or contract right on the principal's~~  
21 ~~death.~~
- 22 ~~(g) Make a loan to the attorney in fact.~~

23 SEC. 6. Section 5000 of the Probate Code is amended to read:  
24 5000. (a) A provision for a nonprobate transfer on death in an  
25 insurance policy, contract of employment, bond, mortgage,  
26 promissory note, certificated or uncertificated security, account  
27 agreement, custodial agreement, deposit agreement, compensation  
28 plan, pension plan, individual retirement plan, employee benefit  
29 plan, trust, conveyance, deed of gift, revocable transfer on death  
30 deed, marital property agreement, or other written instrument of  
31 a similar nature is not invalid because the instrument does not  
32 comply with the requirements for execution of a will, and this code  
33 does not invalidate the instrument.

- 34 (b) Included within subdivision (a) are the following:
- 35 (1) A written provision that ~~money~~ *moneys* or other benefits  
36 due to, controlled by, or owned by a decedent before death shall  
37 be paid after the decedent's death to a person whom the decedent  
38 designates either in the instrument or in a separate writing,  
39 including a will, executed either before or at the same time as the  
40 instrument, or later.

1 (2) A written provision that ~~money~~ *monneys* due or to become  
2 due under the instrument shall cease to be payable in event of the  
3 death of the promisee or the promisor before payment or demand.

4 (3) A written provision that any property controlled by or owned  
5 by the decedent before death that is the subject of the instrument  
6 shall pass to a person whom the decedent designates either in the  
7 instrument or in a separate writing, including a will, executed either  
8 before or at the same time as the instrument, or later.

9 (c) Nothing in this section limits the rights of creditors under  
10 any other law.

11 SEC. 7. Section 5302 of the Probate Code is amended to read:  
12 5302. Subject to Section 5040:

13 (a) Sums remaining on deposit at the death of a party to a joint  
14 account belong to the surviving party or parties as against the estate  
15 of the decedent unless there is clear and convincing evidence of a  
16 different intent. If there are two or more surviving parties, their  
17 respective ownerships during lifetime are in proportion to their  
18 previous ownership interests under Section 5301 augmented by  
19 an equal share for each survivor of any interest the decedent may  
20 have owned in the account immediately before the decedent's  
21 death; and the right of survivorship continues between the surviving  
22 parties.

23 (b) If the account is a P.O.D. account:

24 (1) On death of one of two or more parties, the rights to any  
25 sums remaining on deposit are governed by subdivision (a).

26 (2) On death of the sole party or of the survivor of two or more  
27 parties, (A) any sums remaining on deposit belong to the P.O.D.  
28 payee or payees if surviving, or to the survivor of them if one or  
29 more die before the party, (B) if two or more P.O.D. payees  
30 survive, any sums remaining on deposit belong to them in equal  
31 and undivided shares unless the terms of the account or deposit  
32 agreement expressly provide for different shares, and (C) if two  
33 or more P.O.D. payees survive, there is no right of survivorship  
34 in the event of death of a P.O.D. payee thereafter unless the terms  
35 of the account or deposit agreement expressly provide for  
36 survivorship between them.

37 (c) If the account is a Totten trust account:

38 (1) On death of one of two or more trustees, the rights to any  
39 sums remaining on deposit are governed by subdivision (a).

1 (2) On death of the sole trustee or the survivor of two or more  
 2 trustees, (A) any sums remaining on deposit belong to the person  
 3 or persons named as beneficiaries, if surviving, or to the survivor  
 4 of them if one or more die before the trustee, unless there is clear  
 5 and convincing evidence of a different intent, (B) if two or more  
 6 beneficiaries survive, any sums remaining on deposit belong to  
 7 them in equal and undivided shares unless the terms of the account  
 8 or deposit agreement expressly provide for different shares, and  
 9 (C) if two or more beneficiaries survive, there is no right of  
 10 survivorship in event of death of any beneficiary thereafter unless  
 11 the terms of the account or deposit agreement expressly provide  
 12 for survivorship between them.

13 (d) In other cases, the death of any party to a multiparty account  
 14 has no effect on beneficial ownership of the account other than to  
 15 transfer the rights of the decedent as part of the decedent’s estate.

16 (e) A right of survivorship arising from the express terms of the  
 17 account or under this section, a beneficiary designation in a Totten  
 18 trust account, or a P.O.D. payee designation, cannot be changed  
 19 by will.

20 SEC. 8. The heading of Part 4 (commencing with Section 5600)  
 21 of Division 5 of the Probate Code is repealed.

22 SEC. 9. A heading is added as Chapter 3 (commencing with  
 23 Section 5040) to Part 1 of Division 5 of the Probate Code,  
 24 immediately preceding Section 5040, to read:

25  
 26 CHAPTER 3. NONPROBATE TRANSFER TO FORMER SPOUSE

27  
 28 SEC. 10. Section 5600 of the Probate Code is amended and  
 29 renumbered to read:

30 5040. (a) Except as provided in subdivision (b), a nonprobate  
 31 transfer to the transferor’s former spouse, in an instrument executed  
 32 by the transferor before or during the marriage, fails if, at the time  
 33 of the transferor’s death, the former spouse is not the transferor’s  
 34 surviving spouse as defined in Section 78, as a result of the  
 35 dissolution or annulment of the marriage. A judgment of legal  
 36 separation that does not terminate the status of husband and wife  
 37 is not a dissolution for purposes of this section.

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

1 (1) The nonprobate transfer is not subject to revocation by the  
2 transferor at the time of the transferor’s death.

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

5 (3) A court order that the nonprobate transfer be maintained on  
6 behalf of the former spouse is in effect at the time of the  
7 transferor’s death.

8 (c) Where a nonprobate transfer fails by operation of this section,  
9 the instrument making the nonprobate transfer shall be treated as  
10 it would if the former spouse failed to survive the transferor.

11 (d) Nothing in this section affects the rights of a subsequent  
12 purchaser or encumbrancer for value in good faith who relies on  
13 the apparent failure of a nonprobate transfer under this section or  
14 who lacks knowledge of the failure of a nonprobate transfer under  
15 this section.

16 (e) As used in this section, “nonprobate transfer” means a  
17 provision, other than a provision of a life insurance policy, of either  
18 of the following types:

19 (1) A provision of a type described in Section 5000.

20 (2) A provision in an instrument that operates on death, other  
21 than a will, conferring a power of appointment or naming a trustee.

22 SEC. 11. Section 5601 of the Probate Code is amended and  
23 renumbered to read:

24 5042. (a) Except as provided in subdivision (b), a joint tenancy  
25 between the decedent and the decedent’s former spouse, created  
26 before or during the marriage, is severed as to the decedent’s  
27 interest if, at the time of the decedent’s death, the former spouse  
28 is not the decedent’s surviving spouse as defined in Section 78, as  
29 a result of the dissolution or annulment of the marriage. A judgment  
30 of legal separation that does not terminate the status of husband  
31 and wife is not a dissolution for purposes of this section.

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

34 (1) The joint tenancy is not subject to severance by the decedent  
35 at the time of the decedent’s death.

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

38 (c) Nothing in this section affects the rights of a subsequent  
39 purchaser or encumbrancer for value in good faith who relies on

1 an apparent severance under this section or who lacks knowledge  
2 of a severance under this section.

3 (d) For purposes of this section, property held in “joint tenancy”  
4 includes property held as community property with right of  
5 survivorship, as described in Section 682.1 of the Civil Code.

6 SEC. 12. Section 5602 of the Probate Code is amended and  
7 renumbered to read:

8 5044. (a) Nothing in this chapter affects the rights of a  
9 purchaser or encumbrancer of real property for value who in good  
10 faith relies on an affidavit or a declaration under penalty of perjury  
11 under the laws of this state that states all of the following:

- 12 (1) The name of the decedent.
- 13 (2) The date and place of the decedent’s death.
- 14 (3) A description of the real property transferred to the affiant  
15 or declarant by an instrument making a nonprobate transfer or by  
16 operation of joint tenancy survivorship.
- 17 (4) Either of the following, as appropriate:
- 18 (A) The affiant or declarant is the surviving spouse of the  
19 decedent.

20 (B) The affiant or declarant is not the surviving spouse of the  
21 decedent, but the rights of the affiant or declarant to the described  
22 property are not affected by Section 5040 or 5042.

23 (b) A person relying on an affidavit or declaration made pursuant  
24 to subdivision (a) has no duty to inquire into the truth of the matters  
25 stated in the affidavit or declaration.

26 (c) An affidavit or declaration made pursuant to subdivision (a)  
27 may be recorded.

28 SEC. 13. Section 5603 of the Probate Code is amended and  
29 renumbered to read:

30 5046. Nothing in this chapter is intended to limit the court’s  
31 authority to order a party to a dissolution or annulment of marriage  
32 to maintain the former spouse as a beneficiary on any nonprobate  
33 transfer described in this chapter, or to preserve a joint tenancy in  
34 favor of the former spouse.

35 SEC. 14. Section 5604 of the Probate Code is amended and  
36 renumbered to read:

37 5048. (a) This chapter, formerly Part 4 (commencing with  
38 Section 5600), is operative on January 1, 2002.

39 (b) Except as provided in subdivision (c), this chapter applies  
40 to an instrument making a nonprobate transfer or creating a joint

1 tenancy whether executed before, on, or after the operative date  
2 of this chapter.

3 (c) Sections 5040 and 5042 do not apply, and the applicable  
4 law in effect before the operative date of this chapter applies, to  
5 an instrument making a nonprobate transfer or creating a joint  
6 tenancy in either of the following circumstances:

7 (1) The person making the nonprobate transfer or creating the  
8 joint tenancy dies before the operative date of this chapter.

9 (2) The dissolution of marriage or other event that terminates  
10 the status of the nonprobate transfer beneficiary or joint tenant as  
11 a surviving spouse occurs before the operative date of this chapter.

12 SEC. 15. Part 4 (commencing with Section 5600) is added to  
13 Division 5 of the Probate Code, to read:

14

15 PART 4. REVOCABLE TRANSFER ON DEATH DEED

16

17 CHAPTER 1. GENERAL PROVISIONS

18

19 Article 1. Preliminary Provisions

20

21 5600. (a) This part applies to a revocable transfer on death  
22 deed made by a transferor who dies on or after January 1, 2008,  
23 whether the deed was executed or recorded before, on, or after  
24 January 1, 2008.

25 (b) Nothing in this part invalidates an otherwise valid transfer  
26 under Section 5602.

27 5602. (a) This part does not preclude use of any other method  
28 of conveying real property that is permitted by law and that has  
29 the effect of postponing enjoyment of the property until the death  
30 of the owner.

31 (b) This part does not invalidate a deed of real property,  
32 otherwise effective to convey title to the property, that is not  
33 recorded until after the death of the owner.

34 5604. (a) Except as provided in subdivision (b), nothing in  
35 this part affects the application to a revocable transfer on death  
36 deed of any other statute governing a nonprobate transfer on death,  
37 including, but not limited to, any of the following provisions that  
38 by its terms or intent would apply to a nonprobate transfer on death:

39 (1) Division 2 (commencing with Section 100).

40 (2) Part 1 (commencing with Section 5000) of this division.

1 (3) Division 10 (commencing with Section 20100).

2 (4) Division 11 (commencing with Section 21101).

3 (b) Notwithstanding subdivision (a), a provision of another  
4 statute governing a nonprobate transfer on death does not apply  
5 to a revocable transfer on death deed to the extent this part provides  
6 a contrary rule.

7

8

Article 2. Definitions

9

10 5606. Unless the provision or context otherwise requires, the  
11 definitions in this article govern the construction of this part.

12 5608. “Beneficiary” means a person named in a revocable  
13 transfer on death deed as transferee of the property.

14 5610. “Real property” means the fee or an interest in real  
15 property. The term includes, but is not limited to, any of the  
16 following interests in real property:

17 (a) A leasehold.

18 (b) An interest in a common interest development within the  
19 meaning of Section 1351 of the Civil Code.

20 (c) An easement, license, permit, or other right in property to  
21 the extent the right is both (1) a recordable interest in property and  
22 (2) transferable on death of the owner of the right.

23 5612. “Recorded” has the meaning provided in Section 1170  
24 of the Civil Code.

25 5614. (a) “Revocable transfer on death deed” means an  
26 ~~instrument that makes a donative transfer of real property under~~  
27 ~~this part.~~ *instrument created pursuant to this part that does all of*  
28 *the following:*

29 (1) *Makes a donative transfer of real property to a named*  
30 *beneficiary.*

31 (2) *Operates on the transferor’s death.*

32 (3) *Remains revocable until the transferor’s death.*

33 (b) A revocable transfer on death deed may also be known as  
34 a “revocable TOD deed.”

35 5616. “Transferor” means an owner of real property who makes  
36 a revocable transfer on death deed of the property.

1 CHAPTER 2. EXECUTION AND REVOCATION

2  
3 Article 1. Execution  
4

5 5620. An owner of real property who has testamentary capacity  
6 may make a revocable transfer on death deed of the property.

7 5622. (a) The transferor shall identify the beneficiary by name  
8 in a revocable transfer on death deed.

9 ~~(b) The transferor may name an alternate beneficiary to take~~  
10 ~~property if a named beneficiary fails to survive the transferor.~~

11 ~~(e)~~

12 ~~(b) The transferor may name more than one beneficiary or~~  
13 ~~alternate beneficiary. Unless the instrument otherwise provides,~~  
14 ~~beneficiaries. If there is more than one beneficiary, they take the~~  
15 ~~property as tenants in common, in equal shares.~~

16 (d) The transferor may name as beneficiary the trustee of a trust  
17 even if the trust is revocable.

18 5624. (a) Except as provided in subdivision (b), a revocable  
19 transfer on death deed is not effective unless the transferor signs  
20 and dates the deed and acknowledges the deed before a notary  
21 public.

22 (b) A revocable transfer on death deed may be signed and dated  
23 in the transferor's name by a person other than the transferor at  
24 the transferor's direction and in the transferor's presence, but shall  
25 be acknowledged by the transferor.

26 5626. (a) A revocable transfer on death deed is not effective  
27 unless the deed is recorded before the transferor's death.

28 (b) The transferor is not required to deliver a revocable transfer  
29 on death deed to the beneficiary during the transferor's life.

30 (c) The beneficiary is not required to accept a revocable transfer  
31 on death deed from the transferor during the transferor's life.

32 5628. (a) If a revocable transfer on death deed is recorded for  
33 the same property for which another revocable transfer on death  
34 deed is recorded, the later executed deed is the operative instrument  
35 and its recordation revokes the earlier executed deed.

36 (b) Revocation of a revocable transfer on death deed does not  
37 revive an instrument earlier revoked by recordation of that deed.  
38

39 Article 2. Revocation  
40

1 5630. (a) A transferor who has testamentary capacity may  
2 revoke a revocable transfer on death deed at any time.

3 (b) ~~Revocation of a revocable transfer on death deed is effective~~  
4 ~~notwithstanding a provision in the deed that purports to make the~~  
5 ~~deed irrevocable.~~

6 5632. (a) An instrument revoking a revocable transfer on death  
7 deed shall be executed and recorded before the transferor’s death  
8 in the same manner as execution and recordation of a revocable  
9 transfer on death deed.

10 (b) Joinder, consent, or agreement of, or notice to, the  
11 beneficiary is not required for revocation of a revocable transfer  
12 on death deed.

13  
14 Article 3. Statutory Forms  
15

16 5640. (a) ~~A transferor may make or revoke a revocable transfer~~  
17 ~~on death deed by an instrument in substantially the form provided~~  
18 ~~in this article.~~

19 (b) ~~Nothing in this chapter limits the right of a transferor to~~  
20 ~~make or revoke a revocable transfer on death deed by an instrument~~  
21 ~~not in substantially the form provided in this article.~~

22 5642. ~~A transferor may make a revocable transfer on death~~  
23 ~~deed by an instrument in substantially the following form:~~  
24

25 **Revocable Transfer on Death (TOD) Deed**

26 {California Probate Code Section 5600}

27  
28 Recording Requested By:

29 -

30 ~~When Recorded Mail This Deed To~~

31 Name:

32 Address:

33  
34 Assessor’s Parcel Number: \_\_\_\_\_ Space Above For Recorder’s Use

35 This deed is exempt from documentary transfer tax under Rev. & Tax. Code  
36 § 11930.

37 This deed is exempt from preliminary change of ownership report under Rev.  
38 & Tax. Code § 480.3.



1 \_\_\_\_\_  
2 \_\_\_\_\_

3  
4 **TRANSFER ON DEATH**

5 —I transfer all my interest in the described property to the named beneficiary  
6 on my death. If I name more than one beneficiary, the beneficiaries shall take  
7 equal shares as tenants in common. If a named beneficiary dies before me, the  
8 share that would otherwise go to that beneficiary shall pass in accordance with  
9 applicable provisions of the California Probate Code.

10 —If I sign here, I choose to make the beneficiary’s right to the described  
11 property subject to a life estate in my surviving spouse. Signature(s) of owner(s)  
12 who make this choice:

13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_

17 —This revocable TOD deed revokes any previous revocable TOD deed I have  
18 made for the described property. This deed is revocable at any time before my  
19 death.

20 **SIGNATURE AND DATE**

21 —Signature(s) of Owner(s) Who Join in this Deed: \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_

25 —Date: \_\_\_\_\_  
26 \_\_\_\_\_

27  
28 **ACKNOWLEDGMENT**

29 State of California )  
30 County of \_\_\_\_\_ )

31 —On \_\_\_\_\_ before me, (here insert name and title of the officer), personally  
32 appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of  
33 satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to  
34 the within instrument and acknowledged to me that by his/her/their signature(s)  
35 on the instrument the person(s) executed the instrument.

36 —WITNESS my hand and official seal:

37 Signature \_\_\_\_\_ (Seal)  
38

1 5642. A revocable transfer on death deed shall be in the form  
2 provided in this section.

3 (a) The face of the form shall be in substantially the following  
4 form:

5

6

**Revocable Transfer on Death (TOD) Deed**  
[California Probate Code Section 5600]

7

8

9

Recording Requested By:

10

When Recorded Mail This Deed To

11

Name:

12

Address:

13

Assessor's Parcel Space Above For Recorder's Use

14

Number:

15

16

This document is exempt from documentary transfer tax under Rev. & Tax.  
Code § 11930. This document is exempt from preliminary change of ownership  
report under Rev. & Tax. Code § 480.3.

17

18

19

20

**IMPORTANT NOTICE: THIS DEED MUST BE RECORDED**

21

22

This deed will transfer ownership of the property described below when you  
die. YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON  
THE OTHER SIDE OF THIS FORM. You may wish to consult an attorney  
before using this deed. It may have results that you don't want. Provide only  
the information asked for in the form. DO NOT INSERT ANY OTHER  
INFORMATION OR INSTRUCTIONS. This form MUST be RECORDED  
before your death or it will not be effective.

23

24

25

26

27

28

29

30

**PROPERTY DESCRIPTION**

31

32

Print the address or other legal description of the property affected by this  
deed:

33

34

35

36

**BENEFICIARY**

37

38

Print the NAME(S) of beneficiary(ies) who will receive the property on your  
death (do NOT use general terms like "my children"):

39

40

1  
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\_\_\_\_\_  
\_\_\_\_\_

**TRANSFER ON DEATH**

*I transfer all of my interest in the described property to the named beneficiary(ies) on my death. I may revoke this deed. When recorded, this deed revokes any TOD deed that I made before signing this deed. NOTE: This deed only transfers YOUR ownership share of the property. The deed does NOT transfer the share of a co-owner of the property (if any). Any co-owner who wants to name a TOD beneficiary must complete and RECORD a SEPARATE deed.*

*Sign and print your name below:*

\_\_\_\_\_ Date \_\_\_\_\_

**OPTIONAL LIFE ESTATE IN SURVIVING SPOUSE**

*See the other side of this form for a description of the life estate option. DO NOT SIGN BELOW IF YOU DO NOT WANT TO CREATE A LIFE ESTATE IN YOUR SURVIVING SPOUSE.*

*By signing below, I create a life estate in my surviving spouse (or registered domestic partner). After my surviving spouse (or registered domestic partner) dies, ownership of the property will transfer to my named beneficiary(ies).*

\_\_\_\_\_

**ACKNOWLEDGMENT OF NOTARY**

State of California )  
County of \_\_\_\_\_ )

*On [date], before me, [name of notary], a notary public in and for said County and State, personally appeared [name of signer], personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. WITNESS my hand and official seal.*

*Signature of Notary* \_\_\_\_\_

1 (b) The reverse side of the form shall be in substantially the  
2 following form:

3  
4  
5

**COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

6 **WHAT DOES THE TOD DEED DO?** When you die, your beneficiary will  
7 become owner of the property described in the TOD deed. Probate is not  
8 required. The TOD deed has no effect until you die. You can revoke it at any  
9 time.

10 **HOW DO I USE THE TOD DEED?** Complete this form. Have it notarized.  
11 RECORD the form in the county where the property is located. The form MUST  
12 be recorded before your death or it has no effect.

13 **HOW DO I “RECORD” THE FORM?** Take the completed and notarized  
14 form to the County Recorder for the county in which the property is located.  
15 Follow the instructions given by the County Recorder to make the form part  
16 of the official property records.

17 **WHAT IF I SHARE OWNERSHIP OF THE PROPERTY?** This form  
18 only affects YOUR share of the property. If a co-owner also wants to name a  
19 TOD beneficiary, that co-owner must complete and RECORD a separate form.

20 **CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND?** Yes. You  
21 may revoke the TOD deed at any time. No one, including your beneficiary,  
22 can prevent you from revoking the deed.

23 **HOW DO I REVOKE THE TOD DEED?** There are three ways to revoke  
24 a recorded TOD deed: (1) Complete, notarize, and RECORD a revocation  
25 form. (2) Create and RECORD a new TOD deed, trust, or other estate planning  
26 document that disposes of the same property. (3) Sell or give away the property  
27 before your death and RECORD the deed. A TOD deed can only affect property  
28 that you own when you die.

29 **IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE**  
30 **PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY,**  
31 **DOES THAT AUTOMATICALLY REVOKE A RECORDED TOD DEED?**  
32 No. If you want the new document to revoke a recorded TOD deed, the new  
33 document MUST be signed and dated after the deed you wish to revoke and  
34 it must be RECORDED. To avoid any doubt about whether the deed is revoked,  
35 you can also complete and RECORD a revocation form.

36 **I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT**  
37 **SHOULD I DO?** Do NOT complete this form unless you freely choose to do  
38 so. If you are being pressured to dispose of your property in a way that you  
39 do not want, you may want to alert a family member, friend, the district  
40 attorney, or a senior service agency.

1 **DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?**

2 *No. But, secrecy can cause later complications and might make it easier for*  
3 *others to commit fraud.*

4 **WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE?** *Your*  
5 *beneficiary must RECORD evidence of your death (Prob. Code § 210), and*  
6 *file a change in ownership notice (Rev. & Tax. Code § 480). If you received*  
7 *Medi-Cal benefits, your beneficiary may also be required to notify the State*  
8 *Department of Health Care Services (Prob. Code § 215).*

9 **WHAT IF I NAME MORE THAN ONE BENEFICIARY?** *Your*  
10 *beneficiaries will become co-owners in equal shares. If you want a different*  
11 *result, you should not use this form. You MUST name your beneficiaries*  
12 *individually. You MAY NOT use general terms to describe beneficiaries, such*  
13 *as “my children.”.*

14 **WHAT IF A BENEFICIARY DIES BEFORE I DO?** *You should probably*  
15 *create and RECORD a new deed. Otherwise, the property will transfer*  
16 *according to the general rules on failed gifts, which may not meet your needs.*  
17 *See Prob. Code §§ 21110-21111.*

18 **WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I**  
19 **OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT**  
20 **OF SURVIVORSHIP?** *If you are the first joint tenant or spouse to die, the*  
21 *deed is VOID and has no effect. The property transfers to your joint tenant or*  
22 *surviving spouse and not according to his deed. If you are the last joint tenant*  
23 *or spouse to die, the deed takes effect and controls the ownership of your*  
24 *property when you die. If you do not want these results, do not use this form.*

25 **CAN I ADD OTHER CONDITIONS ON THE FORM?** *No. If you do,*  
26 *your beneficiary may need to go to court to clear title.*

27 **IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO**  
28 **MY DEBTS?** *Yes.*

29 **DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE**  
30 **TAXES?** *No. If you wish to avoid gift and estate tax you should consult a tax*  
31 *professional for advice.*

32 **HOW DOES THE TOD DEED AFFECT PROPERTY TAXES?** *The TOD*  
33 *deed has no effect on your property taxes until your death. At that time,*  
34 *property tax law applies as it would to any other change of ownership.*

35 **DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?**  
36 *No.*

37 **AFTER MY DEATH, WILL MY HOME BE LIABLE FOR**  
38 **REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?**  
39 *If your estate is subject to reimbursement, any property transferred by a TOD*  
40 *deed will also be subject to reimbursement.*

1 5644. A transferor may revoke a revocable transfer on death  
2 deed by an instrument in substantially the following form:

3  
4 **Revocation of**  
5 **Revocable Transfer on Death (TOD) Deed**  
6 [California Probate Code Section 5600]  
7

8 Recording Requested By:

9  
10 When Recorded Mail This Deed To

11 Name:

12 Address:

13  
14 Assessor’s Parcel Number: Space Above For Recorder’s Use

15 This deed revocation is exempt from documentary transfer tax under Rev. &  
16 Tax. Code § 11930.

17 This deed revocation is exempt from preliminary change of ownership report  
18 under Rev. & Tax. Code § 480.3

19 ~~—Notice to Owner.~~ This revocation ~~MUST~~ be recorded before you die in  
20 order to be effective. This revocation is effective only as to the interests of  
21 owners who join in this revocation.

22  
23 **IDENTIFYING INFORMATION**

24  
25 ~~—Owner(s) of Property Who Join in this Revocation:~~ - \_\_\_\_\_ -  
26 \_\_\_\_\_  
27 - \_\_\_\_\_ -  
28 \_\_\_\_\_

29  
30 ~~—Address or Other Description of Property:~~ - \_\_\_\_\_ -  
31 \_\_\_\_\_  
32 - \_\_\_\_\_ -  
33 \_\_\_\_\_

34 ~~—Recording Information for Revocable TOD Deed:~~  
35 County: - \_\_\_\_\_ -  
36 \_\_\_\_\_  
37 Date of Recordation: - \_\_\_\_\_ -  
38 \_\_\_\_\_

1 Book and Page or Series Number: - \_\_\_\_\_ -  
 2 \_\_\_\_\_  
 3

4 **REVOCATION**

5 —I revoke the described revocable TOD deed.

6 **SIGNATURE AND DATE**

7 **Signature(s) of Owner(s) Who Join in this Revocation:** - \_\_\_\_\_ -  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_

10  
 11 **Date:** - \_\_\_\_\_ -  
 12 \_\_\_\_\_

13  
14 **ACKNOWLEDGMENT**

15 State of California )

16 County of \_\_\_\_\_ )

17 —On \_\_\_\_\_ before me, (here insert name and title of the officer), personally  
 18 appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of  
 19 satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to  
 20 the within instrument and acknowledged to me that by his/her/their signature(s)  
 21 on the instrument the person(s) executed the instrument.

22 —WITNESS my hand and official seal:

23 Signature \_\_\_\_\_ (Seal)  
24

25 **IMPORTANT NOTICE: THIS FORM MUST BE RECORDED**

26  
 27 *This revocation form MUST be RECORDED before your death or it will*  
 28 *not be effective. This revocation form only affects a transfer on death deed*  
 29 *that YOU made. A transfer on death deed made by a co-owner of your property*  
 30 *is not affected by this revocation form. A co-owner who wants to revoke a*  
 31 *transfer on death deed that he/she made must complete and RECORD a*  
 32 *SEPARATE revocation form.*  
 33

34 **PROPERTY DESCRIPTION**

35  
 36 *Print the address or other legal description of the property affected by this*  
 37 *revocation:*  
 38 \_\_\_\_\_  
 39

1 **RECORDING INFORMATION FOR DEED REVOKED BY THIS FORM:**

2  
3  
4  
5  
6

County: \_\_\_\_\_

Date of Recordation: \_\_\_\_\_

Book and Page or Series Number: \_\_\_\_\_

7  
8  
9

**REVOCATION**

*I revoke the described revocable TOD deed.*

10  
11  
12

**SIGNATURE AND DATE**

*Print and sign your name:* \_\_\_\_\_

*Date:* \_\_\_\_\_

13  
14  
15

**ACKNOWLEDGMENT OF NOTARY**

16  
17  
18  
19

State of California )

County of \_\_\_\_\_ )

20  
21  
22  
23  
24  
25  
26  
27

*On [date], before me, [name of notary], a notary public in and for said County and State, personally appeared [name of signer], personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.*

28  
29

*Witness my hand and official seal.*

Signature \_\_\_\_\_ (Seal)

30  
31  
32

**CHAPTER 3. EFFECT**

33  
34  
35

**Article 1. General Provisions**

36  
37

5650. During the transferor’s life, execution and recordation of a revocable transfer on death deed:

38  
39  
40

(a) Does not affect the ownership rights of the transferor, and the transferor or the transferor’s agent or other fiduciary may convey, assign, contract, encumber, or otherwise deal with the

1 property, and the property is subject to process of the transferor’s  
2 creditors, as if no revocable transfer on death deed were executed  
3 or recorded.

4 (b) Does not create any legal or equitable right in the beneficiary,  
5 and the property is not subject to process of the beneficiary’s  
6 creditors.

7 (c) Does not transfer or convey any right, title, or interest in the  
8 property.

9 5652. (a) A revocable transfer on death deed transfers all of  
10 the transferor’s interest in the property to the beneficiary on the  
11 transferor’s death. ~~A revocable transfer on death deed that purports~~  
12 ~~to transfer less than all of the transferor’s interest in the property~~  
13 ~~is void, and the instrument does not transfer the property on the~~  
14 ~~transferor’s death.~~

15 (b) A revocable transfer on death deed may condition the  
16 beneficiary’s right to the property on an intervening life estate *in*  
17 *the surviving spouse of the transferor*, but may not otherwise create  
18 a future interest in a beneficiary.

19 (c) Property is transferred by a revocable transfer on death deed  
20 subject to any limitation on the transferor’s interest that is of record  
21 at the transferor’s death including, but not limited to, a lien,  
22 encumbrance, easement, lease, or other instrument affecting the  
23 transferor’s interest, whether recorded before or after recordation  
24 of the revocable transfer on death deed. The holder of rights under  
25 that instrument may enforce those rights against the property  
26 notwithstanding its transfer by the revocable transfer on death  
27 deed.

28 (d) ~~Notwithstanding a contrary provision in the deed, a~~  
29 ~~revocable transfer on death deed transfers the property without~~  
30 ~~covenant or warranty of title.~~

31 5654. (a) For the purpose of determination of eligibility for  
32 health care under Chapter 7 (commencing with Section 14000) or  
33 Chapter 8 (commencing with Section 14200) of Part 3 of Division  
34 9 of the Welfare and Institutions Code, execution and recordation  
35 of a revocable transfer on death deed is not a lifetime transfer of  
36 the property.

37 (b) For the purpose of a claim of the State Department of Health  
38 Care Services under Section 14009.5 of the Welfare and Institutions  
39 Code, property transferred by a revocable transfer on death deed

1 is a part of the estate of the decedent, and the beneficiary is a  
2 recipient of the property by distribution or survival.

3 5656. For the purpose of application of the property taxation  
4 and documentary transfer tax provisions of the Revenue and  
5 Taxation Code:

6 (a) Execution and recordation of, or revocation of, a revocable  
7 transfer on death deed of real property is not a change in ownership  
8 of the property and does not require declaration or payment of a  
9 documentary transfer tax or filing of a preliminary change of  
10 ownership report.

11 (b) Transfer of real property on the death of the transferor by a  
12 revocable transfer on death deed is a change in ownership of the  
13 property.

14  
15 Article 2. Other Instruments and Forms of Tenure

16  
17 5660. If a revocable transfer on death deed recorded before the  
18 transferor's death and another instrument both purport to dispose  
19 of the same property:

20 (a) If the other instrument is not recorded before the transferor's  
21 death, the revocable transfer on death deed is the operative  
22 instrument.

23 (b) If the other instrument is recorded before the transferor's  
24 death and makes a revocable disposition of the property, the later  
25 executed of the revocable transfer on death deed or the other  
26 instrument is the operative instrument.

27 (c) If the other instrument is recorded before the transferor's  
28 death and makes an irrevocable disposition of the property, the  
29 other instrument and not the revocable transfer on death deed is  
30 the operative instrument.

31 ~~5662. Except as otherwise provided in this part, if coowners~~  
32 ~~of property join in a revocable transfer on death deed of the~~  
33 ~~property:~~

34 ~~(a) The property interest of a coowner passes to the beneficiary~~  
35 ~~on the death of that coowner.~~

36 ~~(b) A coowner may revoke the transfer on death deed as to the~~  
37 ~~interest of that coowner. The revocation does not affect the transfer~~  
38 ~~on death deed as to the interest of another coowner.~~

1     ~~5664. Unless the deed otherwise provides, if an owner of~~  
2 ~~property held in joint tenancy makes a revocable transfer on death~~  
3 ~~deed of the property:~~

4     ~~(a) The death of the transferor severs the joint tenancy as to the~~  
5 ~~interest of the transferor.~~

6     ~~(b) The interest of the transferor passes pursuant to the revocable~~  
7 ~~transfer on death deed and not by right of survivorship pursuant~~  
8 ~~to the joint tenancy.~~

9     *5664. If, at the time of the transferor’s death, title to the*  
10 *property described in the revocable transfer on death deed is held*  
11 *in joint tenancy or as community property with right of*  
12 *survivorship, the revocable transfer on death deed is void. The*  
13 *transferor’s interest in the property is governed by the right of*  
14 *survivorship and not by the revocable transfer on death deed.*

15     5666. (a) Chapter 2 (commencing with Section 5010) of Part  
16 1 applies to a revocable transfer on death deed of community  
17 property.

18     (b) For the purpose of application of Chapter 2 (commencing  
19 with Section 5010) of Part 1 to a revocable transfer on death deed  
20 of community property, written consent to the deed, revocation of  
21 written consent to the deed, or modification of the deed, is  
22 ineffective unless recorded within the time required by that chapter  
23 for execution or service of the written consent, revocation, or  
24 modification.

25     5668. ~~(a) A revocable transfer on death deed of community~~  
26 ~~property with right of survivorship is subject to Section 5666,~~  
27 ~~relating to a revocable transfer on death deed of community~~  
28 ~~property.~~

29     ~~(b) Unless the deed otherwise provides, if an owner of~~  
30 ~~community property with right of survivorship makes a revocable~~  
31 ~~transfer on death deed of the property:~~

32     ~~(1) The death of the transferor terminates the right of~~  
33 ~~survivorship in the same manner as severance of a joint tenancy~~  
34 ~~under Section 5664.~~

35     ~~(2) The interest of the transferor passes pursuant to the revocable~~  
36 ~~transfer on death deed and not by right of survivorship pursuant~~  
37 ~~to the community property with right of survivorship.~~

1 Article 3. Creditors

2  
3 5670. Notwithstanding any other statute governing priorities  
4 among creditors, a creditor of the transferor whose right is  
5 evidenced at the time of the transferor's death by an encumbrance  
6 or lien of record on property transferred by a revocable transfer  
7 on death deed has priority against the property over a creditor of  
8 the beneficiary, regardless of whether the beneficiary's obligation  
9 was created before or after the transferor's death and regardless  
10 of whether the obligation is secured or unsecured, voluntary or  
11 involuntary, recorded or unrecorded.

12 5672. Each beneficiary is personally liable to the extent  
13 provided in Section 5674 for the unsecured debts of the transferor.  
14 Any such debt may be enforced against the beneficiary in the same  
15 manner as it could have been enforced against the transferor if the  
16 transferor had not died. In any action based on the debt, the  
17 beneficiary may assert any defense, cross-complaint, or setoff that  
18 would have been available to the transferor if the transferor had  
19 not died. Nothing in this section permits enforcement of a claim  
20 that is barred under Part 4 (commencing with Section 9000) of  
21 Division 7. Section 366.2 of the Code of Civil Procedure applies  
22 in an action under this section.

23 5674. (a) A beneficiary is not liable under Section 5672 if  
24 proceedings for the administration of the transferor's estate are  
25 commenced and the beneficiary satisfies the requirements of  
26 Section 5676.

27 (b) The aggregate of the personal liability of a beneficiary under  
28 Section 5672 shall not exceed the sum of the following:

29 (1) The fair market value at the time of the transferor's death  
30 of the property received by the beneficiary pursuant to the  
31 revocable transfer on death deed, less the amount of any liens and  
32 encumbrances on the property at that time.

33 (2) The net income the beneficiary received from the property.

34 (3) If the property has been disposed of, interest on the fair  
35 market value of the property from the date of disposition at the  
36 rate payable on a money judgment. For the purposes of this  
37 paragraph, "fair market value of the property" has the same  
38 meaning as defined in paragraph (2) of subdivision (a) of Section  
39 5676.

1 5676. (a) Subject to subdivisions (b), (c), and (d), if  
2 proceedings for the administration of the transferor’s estate are  
3 commenced, each beneficiary is liable for:

4 (1) The restitution to the transferor’s estate of the property the  
5 beneficiary received pursuant to the revocable transfer on death  
6 deed if the beneficiary still has the property, together with (A) the  
7 net income the beneficiary received from the property and (B) if  
8 the beneficiary encumbered the property after the transferor’s  
9 death, the amount necessary to satisfy the balance of the  
10 encumbrance as of the date the property is restored to the estate.

11 (2) The restitution to the transferor’s estate of the fair market  
12 value of the property if the beneficiary no longer has the property,  
13 together with (A) the net income the beneficiary received from the  
14 property prior to disposing of it and (B) interest from the date of  
15 disposition at the rate payable on a money judgment on the fair  
16 market value of the property. For the purposes of this paragraph,  
17 the “fair market value of the property” is the fair market value,  
18 determined as of the time of the disposition of the property, of the  
19 property the beneficiary received pursuant to the revocable transfer  
20 on death deed, less the amount of any liens and encumbrances on  
21 the property at the time of the transferor’s death.

22 (b) Subject to subdivision (c), if proceedings for the  
23 administration of the transferor’s estate are commenced and a  
24 beneficiary made a significant improvement to the property  
25 received by the beneficiary pursuant to the revocable transfer on  
26 death deed, the beneficiary is liable for whichever of the following  
27 the transferor’s estate elects:

28 (1) The restitution of the property, as improved, to the estate of  
29 the transferor upon the condition that the estate reimburse the  
30 beneficiary for (A) the amount by which the improvement increases  
31 the fair market value of the property restored, determined as of the  
32 time of restitution, and (B) the amount paid by the beneficiary for  
33 principal and interest on any liens or encumbrances that were on  
34 the property at the time of the transferor’s death.

35 (2) The restoration to the transferor’s estate of the fair market  
36 value of the property, determined as of the time of the transferor’s  
37 death, less the amount of any liens and encumbrances on the  
38 property at that time, together with interest on the net amount at  
39 the rate payable on a money judgment running from the time of  
40 the transferor’s death.

1 (c) The property and amount required to be restored to the estate  
2 under this section shall be reduced by any property or amount paid  
3 by the beneficiary to satisfy a liability under Section 5672.

4 (d) An action to enforce the liability under this section may be  
5 brought only by the personal representative of the estate of the  
6 transferor. Whether or not the personal representative brings an  
7 action under this section, the personal representative may enforce  
8 the liability only to the extent necessary to protect the interests of  
9 creditors of the transferor.

10 (e) An action to enforce the liability under this section is forever  
11 barred three years after the transferor's death. The three-year period  
12 specified in this subdivision is not tolled for any reason.

13  
14 CHAPTER 4. EFFECTUATION OF TRANSFER

15  
16 5680. (a) The beneficiary may establish the fact of the  
17 transferor's death under the procedure provided in Chapter 2  
18 (commencing with Section 210) of Part 4 of Division 2. For the  
19 purpose of this subdivision, the beneficiary is a person empowered  
20 by statute to act on behalf of the transferor or the transferor's estate  
21 within the meaning of Section 103526 of the Health and Safety  
22 Code.

23 (b) For the purpose of filing the change in ownership statement  
24 required by Section 480 of the Revenue and Taxation Code, the  
25 beneficiary is a transferee of real property by reason of death.

26 (c) For the purpose of giving the notice to the Director of Health  
27 Care Services provided for in Section 215, the beneficiary is a  
28 beneficiary of the transferor.

29 (d) The beneficiary is liable to the transferor's estate for prorated  
30 estate and generation-skipping transfer taxes to the extent provided  
31 in Division 10 (commencing with Section 20100).

32 5682. ~~A~~ *Except as provided in Section 5694*, a person acting  
33 in good faith and for a valuable consideration with the beneficiary  
34 of a revocable transfer on death deed of real property for which  
35 an affidavit of death is recorded under the procedure provided in  
36 Chapter 2 (commencing with Section 210) of Part 4 of Division 2  
37 has the same rights and protections as the person would have if  
38 the beneficiary had been named as a distributee of the property in  
39 an order for distribution of the transferor's estate that had become  
40 final.

CHAPTER 5. CONTEST

1

2

3 5690. (a) The transferor’s personal representative or an  
4 interested person may, under Part 19 (commencing with Section  
5 850) of Division 2, contest the validity of a transfer of property  
6 by a revocable transfer on death deed.

7 (b) The proper county for a contest proceeding is the proper  
8 county for proceedings concerning administration of the  
9 transferor’s estate, whether or not proceedings concerning  
10 administration of the transferor’s estate have been commenced at  
11 the time of the contest.

12 (c) On commencement of a contest proceeding, the contestant  
13 may record a lis pendens in the county in which the revocable  
14 transfer on death deed is recorded.

15 5692. (a) A contest proceeding may not be commenced before  
16 the transferor’s death.

17 (b) A contest proceeding shall be commenced within the earlier  
18 of the following times:

19 (1) Three years after the transferor’s death.

20 (2) One year after the beneficiary establishes the fact of the  
21 transferor’s death under the procedure provided in Chapter 2  
22 (commencing with Section 210) of Part 4 of Division 2.

23 5694. If the court in a contest proceeding determines that a  
24 transfer of property by a revocable transfer on death deed is invalid,  
25 the court shall order the following relief:

26 (a) If the proceeding was commenced and a lis pendens was  
27 recorded within 90 days after the transferor’s death, the court shall  
28 void the deed and order transfer of the property to the person  
29 entitled to it.

30 (b) If the proceeding was not commenced and a lis pendens was  
31 not recorded within 90 days after the transferor’s death, the court  
32 shall grant appropriate relief but the court order shall not affect  
33 the rights in the property of a purchaser or encumbrancer for value  
34 and in good faith acquired before commencement of the proceeding  
35 and recordation of a lis pendens.

36 5696. Nothing in this chapter limits the application of principles  
37 of fraud, undue influence, duress, mistake, or other invalidating  
38 cause to a transfer of property by a revocable transfer on death  
39 deed.

1 SEC. 16. Section 13111 of the Probate Code is amended to  
2 read:

3 13111. (a) Subject to the provisions of this section, if  
4 proceedings for the administration of the decedent's estate are  
5 commenced in this state, or if the decedent's personal  
6 representative has consented to the payment, transfer, or delivery  
7 of the decedent's property under this chapter and the personal  
8 representative later requests that the property be restored to the  
9 estate, each person to whom payment, delivery, or transfer of the  
10 decedent's property is made under this chapter is liable for:

11 (1) The restitution of the property to the estate if the person still  
12 has the property, together with (A) the net income the person  
13 received from the property and (B) if the person encumbered the  
14 property after it was delivered or transferred to the person, the  
15 amount necessary to satisfy the balance of the encumbrance as of  
16 the date the property is restored to the estate.

17 (2) The restitution to the estate of the fair market value of the  
18 property if the person no longer has the property, together with  
19 (A) the net income the person received from the property and (B)  
20 interest on the fair market value of the property from the date of  
21 disposition at the rate payable on a money judgment. For the  
22 purposes of this subdivision, the "fair market value of the property"  
23 is the fair market value, determined as of the time of the disposition  
24 of the property, of the property paid, delivered, or transferred to  
25 the person under this chapter, less any liens and encumbrances on  
26 the property at that time.

27 (b) Subject to subdivision (c) and subject to any additional  
28 liability the person has under Sections 13109 to 13112, inclusive,  
29 if the person fraudulently secured the payment, delivery, or transfer  
30 of the decedent's property under this chapter, the person is liable  
31 under this section for restitution to the decedent's estate of three  
32 times the fair market value of the property. For the purposes of  
33 this subdivision, the "fair market value of the property" is the fair  
34 market value, determined as of the time the person liable under  
35 this subdivision presents the affidavit or declaration under this  
36 chapter, of the property paid, delivered, or transferred to the person  
37 under this chapter, less the amount of any liens and encumbrances  
38 on the property at that time.

1 (c) The property and amount required to be restored to the estate  
2 under this section shall be reduced by any property or amount paid  
3 by the person to satisfy a liability under Section 13109 or 13110.

4 (d) An action to enforce the liability under this section may be  
5 brought only by the personal representative of the estate of the  
6 decedent. Whether or not the personal representative brings an  
7 action under this section, the personal representative may enforce  
8 the liability only to the extent necessary to protect the interests of  
9 the heirs, devisees, and creditors of the decedent.

10 (e) An action to enforce the liability under this section is forever  
11 barred three years after presentation of the affidavit or declaration  
12 under this chapter to the holder of the decedent’s property, or three  
13 years after the discovery of the fraud, whichever is later. The  
14 three-year period specified in this subdivision is not tolled for any  
15 reason.

16 (f) In the case of a nondomiciliary decedent, restitution under  
17 this section shall be made to the estate in an ancillary  
18 administration proceeding.

19 SEC. 17. Section 13206 of the Probate Code is amended to  
20 read:

21 13206. (a) Subject to subdivisions (b), (c), (d), and (e), if  
22 proceedings for the administration of the decedent’s estate are  
23 commenced, or if the decedent’s personal representative has  
24 consented to use of the procedure provided by this chapter and the  
25 personal representative later requests that the property be restored  
26 to the estate, each person who is designated as a successor of the  
27 decedent in a certified copy of an affidavit issued under Section  
28 13202 is liable for:

29 (1) The restitution to the decedent’s estate of the property the  
30 person took under the certified copy of the affidavit if the person  
31 still has the property, together with (A) the net income the person  
32 received from the property and (B) if the person encumbered the  
33 property after the certified copy of the affidavit was issued, the  
34 amount necessary to satisfy the balance of the encumbrance as of  
35 the date the property is restored to the estate.

36 (2) The restitution to the decedent’s estate of the fair market  
37 value of the property if the person no longer has the property,  
38 together with (A) the net income the person received from the  
39 property prior to disposing of it and (B) interest from the date of  
40 disposition at the rate payable on a money judgment on the fair

1 market value of the property. For the purposes of this paragraph,  
2 the “fair market value of the property” is the fair market value,  
3 determined as of the time of the disposition of the property, of the  
4 property the person took under the certified copy of the affidavit,  
5 less the amount of any liens and encumbrances on the property at  
6 the time the certified copy of the affidavit was issued.

7 (b) Subject to subdivision (d), if the person fraudulently executed  
8 or filed the affidavit under this chapter, the person is liable under  
9 this section for restitution to the decedent’s estate of three times  
10 the fair market value of the property. For the purposes of this  
11 subdivision, the “fair market value of the property” is the fair  
12 market value, determined as of the time the certified copy of the  
13 affidavit was issued, of the property the person took under the  
14 certified copy of the affidavit, less the amount of any liens and  
15 encumbrances on the property at that time.

16 (c) Subject to subdivision (d), if proceedings for the  
17 administration of the decedent’s estate are commenced and a person  
18 designated as a successor of the decedent in a certified copy of an  
19 affidavit issued under Section 13202 made a significant  
20 improvement to the property taken by the person under the certified  
21 copy of the affidavit in the good faith belief that the person was  
22 the successor of the decedent to that property, the person is liable  
23 for whichever of the following the decedent’s estate elects:

24 (1) The restitution of the property, as improved, to the estate of  
25 the decedent upon the condition that the estate reimburse the person  
26 making restitution for (A) the amount by which the improvement  
27 increases the fair market value of the property restored, determined  
28 as of the time of restitution, and (B) the amount paid by the person  
29 for principal and interest on any liens or encumbrances that were  
30 on the property at the time the certified copy of the affidavit was  
31 issued.

32 (2) The restoration to the decedent’s estate of the fair market  
33 value of the property, determined as of the time of the issuance of  
34 the certified copy of the affidavit under Section 13202, less the  
35 amount of any liens and encumbrances on the property at that time,  
36 together with interest on the net amount at the rate payable on a  
37 money judgment running from the date of the issuance of the  
38 certified copy of the affidavit.

1 (d) The property and amount required to be restored to the estate  
2 under this section shall be reduced by any property or amount paid  
3 by the person to satisfy a liability under Section 13204 or 13205.

4 (e) An action to enforce the liability under this section may be  
5 brought only by the personal representative of the estate of the  
6 decedent. Whether or not the personal representative brings an  
7 action under this section, the personal representative may enforce  
8 the liability only to the extent necessary to protect the interests of  
9 the heirs, devisees, and creditors of the decedent.

10 (f) An action to enforce the liability under this section is forever  
11 barred three years after the certified copy of the affidavit is issued  
12 under Section 13202, or three years after the discovery of the fraud,  
13 whichever is later. The three-year period specified in this  
14 subdivision is not tolled for any reason.

15 SEC. 18. Section 13562 of the Probate Code is amended to  
16 read:

17 13562. (a) Subject to subdivisions (b), (c), and (d), if  
18 proceedings for the administration of the decedent’s estate are  
19 commenced, the surviving spouse is liable for:

20 (1) The restitution to the decedent’s estate of the decedent’s  
21 property if the surviving spouse still has the decedent’s property,  
22 together with (A) the net income the surviving spouse received  
23 from the decedent’s property and (B) if the surviving spouse  
24 encumbered the decedent’s property after the date of death, the  
25 amount necessary to satisfy the balance of the encumbrance as of  
26 the date the decedent’s property is restored to the estate.

27 (2) The restitution to the decedent’s estate of the fair market  
28 value of the decedent’s property if the surviving spouse no longer  
29 has the decedent’s property, together with (A) the net income the  
30 surviving spouse received from the decedent’s property prior to  
31 disposing of it and (B) interest from the date of disposition at the  
32 rate payable on a money judgment on the fair market value of the  
33 decedent’s property. For the purposes of this paragraph, the “fair  
34 market value of the decedent’s property” is the fair market value  
35 of the decedent’s property, determined as of the time of the  
36 disposition of the decedent’s property, less the amount of any liens  
37 and encumbrances on the decedent’s property at the time of the  
38 decedent’s death.

39 (b) Subject to subdivision (c), if proceedings for the  
40 administration of the decedent’s estate are commenced and the

1 surviving spouse made a significant improvement to the decedent's  
2 property in the good faith belief that the surviving spouse was the  
3 successor of the decedent to the decedent's property, the surviving  
4 spouse is liable for whichever of the following the decedent's  
5 estate elects:

6 (1) The restitution of the decedent's property, as improved, to  
7 the estate of the decedent upon the condition that the estate  
8 reimburse the surviving spouse for (A) the amount by which the  
9 improvement increases the fair market value of the decedent's  
10 property restored, valued as of the time of restitution, and (B) the  
11 amount paid by the surviving spouse for principal and interest on  
12 any liens or encumbrances that were on the decedent's property  
13 at the time of the decedent's death.

14 (2) The restoration to the decedent's estate of the fair market  
15 value of the decedent's property, valued as of the time of the  
16 decedent's death, excluding the amount of any liens and  
17 encumbrances on the decedent's property at that time, together  
18 with interest on the net amount at the rate payable on a money  
19 judgment running from the date of the decedent's death.

20 (c) The property and amount required to be restored to the estate  
21 under this section shall be reduced by any property or amount paid  
22 by the surviving spouse to satisfy a liability under Chapter 3  
23 (commencing with Section 13550).

24 (d) An action to enforce the liability under this section may be  
25 brought only by the personal representative of the estate of the  
26 decedent. Whether or not the personal representative brings an  
27 action under this section, the personal representative may enforce  
28 the liability only to the extent necessary to protect the interests of  
29 the heirs, devisees, and creditors of the decedent.

30 (e) An action to enforce the liability under this section is forever  
31 barred three years after the death of the decedent. The three-year  
32 period specified in this subdivision is not tolled for any reason.

O

