

Memorandum 2015-27

2015 Legislative Program (Status Report)

The attached table summarizes the status of the Commission's¹ 2015 legislative program. The staff will supplement that information orally, if necessary, at the upcoming meeting.

Issues relating to AB 139 (Gatto) are discussed below.

AB 139 (GATTO). REVOCABLE TRANSFER ON DEATH DEED

Status of Bill

Assembly Bill 139 (Gatto) would implement the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006). The bill would authorize the use of a revocable deed to transfer title to real property on death, outside of probate.

The bill would be repealed by operation of law on January 1, 2021, unless that sunset provision is repealed or extended before that date.² The bill would require the Law Revision Commission to study the operation of the TOD deed and make reform recommendations by January 1, 2020.³

Memorandum 2015-9 described differences between AB 139 and the legislation proposed by the Commission. The Commission assented to those changes from its recommendation and approved conforming revisions to its Comments.⁴

Assembly Member Gatto has since amended AB 139 twice. The first set of amendments, made on June 29, 2015, addressed issues raised by groups that had concerns about the bill (California Land Title Association, California Escrow

¹. 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). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

². Proposed Prob. Code § 5600(c).

³. AB 139, § 21.

⁴. See Minutes (April 2015), p. 4.

Association, Executive Committee of the Trusts and Estates Section of the State Bar (hereafter "Texcom"), California Assessors' Association). Those amendments are shown in the version of the bill that is attached to this amendment (hereafter "Attached Bill").

The second set of amendments were made on July 7, 2015, when the bill was heard by the Senate Committee on Judiciary. Those amendments were made to address concerns that had been raised by the committee. With those amendments, the committee approved the bill with a vote of 6-0. Because those amendments are not yet in print, they are not attached to this memorandum. Instead, they will be described below.

The bill is now pending before the Senate Committee on Appropriations.

Review of Amendments

It is always the author's prerogative to amend a Commission-recommended bill. When substantive amendments are proposed, our practice is for the Commission's staff to present the amendments to the Commission for consideration, at the earliest opportunity. If the amendments would affect the policy of the Commission's recommendation and it is not possible for the full Commission to consider them before they are made, the staff will consult with the Chair by email or telephone.⁵

In this instance, it was not possible to present the amendments to the full Commission before they were made. Instead, the staff consulted with the Chair by email.

The Commission now needs to decide whether to assent to the amendments described in this memorandum. They are described below.

5. See CLRC Handbook of Practices and Procedures 3.3 ("The legislator carrying a Commission bill and the Executive Director are authorized to amend the bill prior to or at the time of the hearing on the bill where the amendment is a technical or nonpolicy amendment or where the failure to make the amendment would jeopardize the enactment of the bill. If possible, the staff should submit the amendments to the members of the Commission in advance of making the amendments, either at a meeting or by distribution of a draft of the amendments to each member of the Commission. If this is not possible, the amendments made to the bill should be presented to the Commission, at the first opportunity, for review and approval or for revision. In addition, whenever possible, an amendment that involves a policy decision of the Commission should be discussed with the Chairperson by telephone or email before being made. The authority of the legislator to amend a bill the member is carrying for the Commission is not limited, but any amendments so made should be submitted to the members of the Commission using the procedure described above.").

Residential Property Limitation

On July 7, 2015, the bill was amended to limit the scope of the property that can be conveyed by use of a TOD deed. This was done by changing the statute's definition of "real property" to read:

5610. "Real property" means real property improved with not less than one nor more than four residential dwelling units, units in residential cooperatives; or, condominium units, including the limited common elements allocated to the exclusive use thereof that form an integral part of the condominium unit; or a single tract of agriculture real estate consisting of 40 acres or less which is improved with a single family residence.

While the Commission recommended broader use of the TOD deed, the practical effect of the amendment would probably not be too great. It seems likely that most people would use a TOD deed to convey a single residential dwelling, which would still be permitted.

Despite that narrowing revision, the staff believes that AB 139 would still be compatible with the general thrust of the Commission's recommendation. If the bill is enacted, the Commission could revisit the limitation when it studies the operation of the TOD deed in 2019.

Capacity Standard

In the Commission's recommendation, testamentary capacity⁶ would be required to create or revoke a TOD deed.

The bill was amended to instead require the capacity to contract,⁷ which requires a slightly higher level of understanding of the nature and consequences of the action at issue.⁸

There are good arguments for either standard. A TOD deed would be a hybrid instrument, sharing some characteristics of wills (which require testamentary capacity) and deeds (which require the capacity to contract).

6. See Prob. Code § 6100.5 (requiring "sufficient mental capacity to be able to (A) understand the nature of the testamentary act, (B) understand and recollect the nature and situation of the individual's property, or (C) remember and understand the individual's relations to living descendants, spouse, and parents, and those whose interests are affected by the will.").

7. See Prob. Code § 812 (requiring ability to communicate and understand "(a) The rights, duties, and responsibilities created by, or affected by the decision. (b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision. (c) The significant risks, benefits, and reasonable alternatives involved in the decision."). See generally Prob. Code §§ 811-815 (determination of incapacity).

8. See amendments to proposed Section 5620 (Attached Bill p. 21, lines 5-6) and proposed Section 5630 (Attached Bill p. 21, lines 34-35).

In the staff's view, the change in required capacity would not be incompatible with the main thrust of the Commission's recommendation.

Silence Regarding the Limitations Period for Contesting TOD Deed

The Commission's recommendation would specify a limitations period for filing a contest of a TOD deed (the shorter of three years after the transferor's death or one year after an affidavit of the transferor's death has been recorded). The bill was amended to remove the specified *period*; a rule on when the limitations period commences was preserved.⁹

This amendment was requested by Texcom, to avoid potential complications for litigators who are familiar with the existing limitation periods that apply to various causes of action (e.g., the three-year limitations period for an action grounded on fraud or mistake¹⁰).

The staff sees little reason to second-guess the judgment of expert practitioners regarding such practice-oriented details. This change would not seem to be incompatible with the main thrust of the Commission's recommendation.

Medi-Cal Reimbursement Claims

The Commission's recommendation included a provision that was intended to clarify how Medi-Cal reimbursement liability would apply to property transferred by TOD deed (i.e., the property would be subject to reimbursement liability, like other real property transferred on death).¹¹ That provision was not intended to establish a new substantive rule. It was added only to state the existing law on the issue, for clarity and completeness.

The proposed law's statement of the existing rule could be inconsistent with the effect of another pending bill, Senate Bill 33 (Hernandez). That bill would create new limitations on Medi-Cal reimbursement liability.

To avoid any conflict with Senate Bill 33, Assembly Bill 139 was amended to remove the statement about Medi-Cal reimbursement.¹² The issue would then be governed by the controlling law, whether that law is amended by SB 33 or not.

That change would not affect the substance of the proposed law, which was always intended to be neutral on the Medi-Cal reimbursement issue.

9. See amendment to proposed Section 5692(b) (Attached Bill p. 35, lines 17-24).

10. Code Civ. Proc. § 338(d).

11. Proposed Section 5654(b).

12. See amendment to proposed Section 5654(b) (Attached Bill p. 30, lines 9-16).

Lapsed Gifts

Under the Commission's recommendation, if a beneficiary of a TOD deed dies before the transferor, the Probate Code's default "anti-lapse" provision would operate to save the gift (transferring the deceased beneficiary's share to that person's issue, if any).¹³

Texcom believes that the default anti-lapse rule would be contrary to most people's wishes. They argued that a gift to a TOD deed beneficiary who predeceases the transferor should fail. The bill was amended to that effect.¹⁴

As with any default rule, there are reasonable arguments for choosing different default positions. Choosing a different default rule should not make the bill incompatible with the main thrust of the Commission's recommendation.

Technical Amendments

The remainder of the amendments to the bill are technical, without any significant effect on the substance of the bill.

Two of the technical amendments were made in the committee hearing on July 7, 2015:

- **Disclaimer.** The bill was amended to acknowledge that a beneficiary has a right to disclaim a transfer of property by a TOD deed.¹⁵ That would not change the effect of the bill.
- **Presumption of undue influence or fraud.** The bill was amended to acknowledge that a TOD deed is subject to the statutory presumption of undue influence or fraud that applies when a gift is made to certain suspect beneficiaries.¹⁶ That would not change the effect of the bill.

Because those amendments would have no substantive effect, they should be compatible with the Commission's recommendation.

The remainder of the technical amendments are shown in the Attached Bill. They are summarized below:

- **Eliminate a perceived inconsistency between proposed Sections 5602(b) and 5660(a).** Section 5602(b) was included in the

13. See Prob. Code § 21110(a).

14. See amendment to proposed Section 5652 (Attached Bill p. 29, lines 13-29).

15. In the Attached Bill, on page 29, line 18, "Except as provided in paragraph (2)" was replaced with "Subject to the beneficiary's right to disclaim the transfer."

16. In the Attached Bill, on page 35, lines 1-6, proposed Section 5690 was amended to add "An action for disqualification of a beneficiary under Part 3.7 (commencing with Section 21360) of Division 11 may be brought to contest the validity of a transfer of property by a revocable transfer on death deed."

Commission's recommendation to make clear that the recordation requirement governing a TOD deed would have no effect on *other* types of deeds: "This part does not invalidate a deed of real property, otherwise effective to convey title to the property, that is not recorded until after the death of the owner." That language struck some as inconsistent with Section 5660(a), which provides that a recorded TOD deed would trump an unrecorded instrument. To avoid that misunderstanding, the bill was amended to delete Section 5602(b).¹⁷ That would not have a substantive effect on the bill. Section 5602(b) was added for clarity only.

- **Eliminate reference to trustee as beneficiary.** The Commission's recommendation includes a provision on naming a trustee of a trust as beneficiary. That language is outdated, because AB 139 would only allow a natural person to be named as a beneficiary. The bill was amended to remove the obsolete language.¹⁸ That would have no substantive effect.
- **Adjustments to statutory forms.** A number of amendments were made to the statutory forms provided in the bill, to provide more precise instructions, update language relating to notarization, and provide additional guidance in the "commonly asked questions" section.¹⁹ These changes were nonsubstantive.
- **Obsolete reference to life estate.** The Commission's recommendation referred to the possibility of using the TOD deed to convey a life estate to one beneficiary, with the remainder to another. That language is obsolete, because AB 139 does not permit that use of a TOD deed. The bill was amended to delete the obsolete language.²⁰ That would have no substantive effect.
- **Beneficiary rights in creditor claim process.** The bill was amended to acknowledge that property transferred by a TOD deed is a "specific gift" for the purposes of the order in which property is used to satisfy creditor claims, and to make clear that the beneficiary is entitled to any value left over after property transferred by a TOD deed has been sold to satisfy claims by the transferor's creditors.²¹ That would not change the effect of the bill.
- **Drafting error corrected.** In an earlier bill that served as the model for the language in AB 139, an error was made in amending one provision. The error blended two provisions in a confusing way. AB 139 was amended to separate the two provisions.²² This would restore language recommended by the Commission and correct the language added to the prior bill.

17. See amendment to proposed Section 5602 (Attached Bill p. 19, lines 29-31).

18. See amendment to proposed Section 5622(c) (Attached Bill p. 21, lines 13-14).

19. See generally amendments to proposed Sections 5642-5644 (Attached Bill pp. 22-27).

20. See amendment to proposed Section 5652(b) (Attached Bill p. 29, lines 15-17).

21. See amendment to proposed Section 5676 (Attached Bill p. 34, lines 5-8).

22. See amendment to proposed Section 5696 (Attached Bill p. 35, lines 38-40, p. 36, lines 1-9).

The staff recommends that the Commission assent to the amendments described above. While some would change substantive elements of the Commission’s recommendation, all appear to be compatible with the main purpose and effect of the proposed law.

Comment Revisions

A draft of proposed Comment revisions is attached. It includes the revised Comments that the Commission approved in connection with Memorandum 2015-9, as well as new revisions that could be made to conform to the amendments described in this memorandum. The sections that have new revisions have “(REVISED)” in the section header, as a temporary signal. (That language will be removed from the report before it is provided to the Governor.²³ The new revisions are shown in ~~strikeout~~ and underscore.

The purpose of revising Comments to conform to amendments is to avoid confusion in the historical record. It would be problematic for a Commission Comment to be substantively at odds with the law as enacted. The revisions are not intended to indicate Commission endorsement of changes made by the Legislature. **If the Commission would like to make that point expressly, the following could be added to the end of the introduction of the revised Comment report:**

The revisions shown in this report should not be read as an endorsement of a change made by the Legislature.

The staff recommends that the Commission approve the new Comment revisions set out in the attached report.

Respectfully submitted,

Brian Hebert
Executive Director

23. See revisions to Comments for proposed Sections 5604, 5610, 5614, 5620, 5622, 5630, 5642, 5652, 5676, 5692, 5696.

Status of 2015 Commission Legislative Program

As of July 9, 2015

		AB 139	AB 1527									
Introduced Last Amended		1/9/15	3/18/15									
		7/7/15	—									
First House	Policy Committee	3/17/15	4/28/15									
	Second Committee	3/25/15	5/6/15									
	Passed House	4/9/15	5/14/15									
Second House	Policy Committee	7/7/15	6/23/15									
	Second Committee		7/6/15									
	Passed House											
Concurrence												
Governor	Received Approved											
Secretary of State	Date Chapter #											

Bill List: AB 139 (Gatto): Revocable Transfer on Death Deed
 AB 1527 (Committee on Water, Parks, and Wildlife): Fish and Wildlife

Also of Interest:

SB 690 (Stone): Electronic Tracking Device

KEY

Italics: Future or speculative

“—”: Not applicable

*: Double referral, not fiscal

[date]: Deadline

DRAFT REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON ASSEMBLY BILL 139

Revocable Transfer on Death (TOD) deed

Assembly Bill 139 was introduced by Assembly Member Mike Gatto. The measure would implement the Commission's recommendations on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006). The revised Comments set out below supersede the comparable Comments in the recommendation.

Prob. Code § 5602. Effect on other forms of transfer

Comment. Section 5602 recognizes the possibility of other devices that may achieve an effect similar to the revocable TOD deed, such as a revocable deed under *Tennant v. John Tennant Memorial Home*, 167 Cal. 570, 140 P. 242 (1914), or another instrument under Section 5000 (nonprobate transfer).

Prob. Code § 5604 (REVISED). Effect of other law

Comment. Section 5604 makes clear that the revocable TOD deed law is supplemented by general statutory provisions governing a nonprobate transfer. The specific cross-references in this section are illustrative and not exclusive. General provisions referenced in this section include effect of death on community property, establishing and reporting fact of death, simultaneous death, effect of homicide or abuse, disclaimer, provisions relating to effect of death, nonprobate transfers of community property, nonprobate transfer to former spouse, proration of taxes, rules for interpretation of instruments, and limitations on transfers to drafters.

This part may in some instances limit the effect of a provision otherwise applicable to a nonprobate transfer on death. ~~See, e.g., Section 5620 & Comment (capacity to make deed).~~

Prob. Code § 5610 (REVISED). "Real property" defined

Comment. Section 5610 supplements the definition of real property found in Section 68 ("real property" includes leasehold). ~~Any interest in real property may be the subject of a revocable TOD deed.~~

~~Under subdivision (b), an interest in a CID includes a community apartment project, a condominium project, a planned development, and a stock cooperative. The provision makes clear that these forms of tenure are real property for the purpose of a revocable TOD~~

~~deed, regardless of whether elements of the interest are contractual in nature.~~

~~Subdivision (c) would apply to such an interest as a use or occupancy permit or an extraction or removal right (e.g., oil and gas, minerals, timber, or grazing). A property interest under subdivision (c) may relate to private land as well as to public land (whether state or federal). If the interest is both recordable and transferable at death, by will or otherwise, the interest may be the subject of a revocable TOD deed.~~

Prob. Code § 5614 (REVISED). Revocable transfer on death deed

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 of the types described in 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 Section 5642. For construction of a revocable TOD deed, see Part 1 (commencing with Section 21101) of Division 11 (rules for interpretation of instruments).~~

Prob. Code § 5620 (REVISED). Capacity to make deed

Comment. ~~Section 5620 provides that testamentary, rather than contractual, specifies the capacity that is required for execution of a revocable transfer on death deed. The standard of testamentary capacity is prescribed in Section 6100.5. This is an exception to the general rule of Section 812 (capacity to make a decision, other than health care or will). This section is consistent with case law that to make a gift deed, the transferor need only have testamentary capacity, not contractual capacity. Goldman v. Goldman, 116 Cal. App. 2d 227, 253 P. 2d 474 (1953).~~

Prob. Code § 5622 (REVISED). 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 multiple beneficiaries.~~

~~A beneficiary must survive the transferor in order to take an interest under this section. Section 21109 5652(b)(2). For the~~

~~consequence of a named beneficiary's failure to survive the decedent, see Section 21110 (antilapse).~~

~~Subdivision (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).~~

~~Subdivision (d) 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).~~

Prob. Code § 5624. Execution

Comment. Section 5624 prescribes execution requirements. A revocable TOD deed is not invalid because it does not comply with the requirements for execution of a will. See Section 5000(a) (provision for nonprobate transfer on death in written instrument).

A properly executed revocable TOD deed is ineffective unless recorded within 60 days after it is executed. See Section 5626 (recordation, delivery, and acceptance).

Prob. Code § 5626. Recordation, delivery, and acceptance

Comment. Subdivision (a) of Section 5626 requires recordation of the revocable TOD deed, but does not require recordation by the transferor — an agent or other person authorized by the transferor may record the instrument. The deed is considered recorded for purposes of this section when it is deposited for record with the county recorder. See Section 5612 ("record" defined).

Subdivision (b) makes clear that delivery of a revocable TOD deed is not necessary, notwithstanding a Law Revision Commission Comment to Section 5000 to the effect that Section 5000 does not relieve against the delivery requirement of the law of deeds. The recordation requirement for a revocable TOD deed makes delivery unnecessary. Consideration is not required for a revocable TOD deed. See Civ. Code § 1040.

Subdivision (c) states the rule that, unlike an inter vivos deed, a revocable TOD deed does not require acceptance. Acceptance of a donative transfer is presumed. Disclaimer procedures are available to a beneficiary. See Sections 267, 279 (disclaimer).

A revocable TOD deed has no effect, and confers no rights on the beneficiary, until the transferor's death. See Section 5650 (effect during transferor's life).

Prob. Code § 5630 (REVISED). Revocability

Comment. Section 5630 states the rule that a transfer on death deed is revocable. The transferor's right of revocation may be subject to a contractual or court ordered limitation.

A TOD deed may be revocable in some circumstances even though the transferor lacks ~~testamentary~~ capacity. The transferor's agent under a durable power of attorney may not revoke a TOD deed unless expressly authorized. See Section 4264(f) (power of attorney). If the transferor's conservator seeks to revoke a TOD deed, the transferor's estate plan must be taken into account under general principles of substituted judgment, and notice must be given to the beneficiary. See Sections 2580-2586 (guardianship and conservatorship).

Prob. Code § 5640. Statutory forms mandatory

Comment. Section 5640 makes clear that use of the statutory form provided in this article is mandatory.

Prob. Code § 5642 (REVISED). Revocation form

Comment. Section 5644 provides 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).

Prob. Code § 5652 (REVISED). 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.

Subdivision (b) conditions a transfer to a beneficiary on the beneficiary surviving the transferor.

Under subdivision ~~(e)~~ (b), 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)~~ (c) emphasizes the point that a revocable TOD deed is basically a quitclaim, passing whatever interest the transferor had at death to the beneficiary.

Prob. Code § 5664. Joint tenancy or community property with right of survivorship

Comment. Section 5664 addresses the effect of a revocable TOD deed that purports to transfer property held, at the time of the transferor's death, in joint tenancy or community property with a right of survivorship.

Prob. Code § 5666. Community property

Comment. Subdivision (a) of Section 5666 incorporates the general statutes governing the rights of spouses in a nonprobate transfer of community property. This is a specific application of the rule that general provisions of Part 1 of this division governing a nonprobate transfer apply to a revocable TOD deed. Section 5604(a)(2) (effect of other law).

Under the rules governing a nonprobate transfer of community property, a person has the power of disposition at death of the person's interest in community property without the joinder of the person's spouse.

Subdivision (b) makes clear that the general statute governing the rights of spouses in a nonprobate transfer of community property is qualified by the recording requirement in the case of a revocable TOD deed of community property. This is a specific application of the rule that general provisions of Part 1 of this division governing a nonprobate transfer are subject to a contrary rule in the revocable TOD deed law. See Section 5604(b); see also Section 5011(b) (rights of parties subject to "contrary state statute specifically applicable to instrument under which nonprobate transfer is made").

A third party that acts in reliance on apparent spousal rights under a revocable TOD deed is protected in that reliance. Section 5682 (bona fide purchaser protection).

Prob. Code § 5668. Community property with right of survivorship

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

Prob. Code § 5676 (REVISED). Return of property to estate for benefit of creditors

Comment. Section 5676 is drawn from Section 13206, relating to restoration of property to the estate by a decedent's successor who takes real property of small value under the affidavit procedure. ~~The beneficiary of revocable TOD deeded property that is restored~~

~~to the transferor's estate under this section is the beneficiary of a specific gift for purposes of abatement under Section 21402.~~

Subdivision (d) makes clear that liability for restitution of property to the estate under this section is limited to satisfaction of creditor claims, regardless of whether restitution under this section is made voluntarily or pursuant to a court proceeding. Any surplus belongs to the beneficiary.

Subdivision (f) makes clear that the beneficiary of revocable TOD-deeded property that is restored to the transferor's estate under this section is the beneficiary of a specific gift for purposes of abatement under Section 21402.

Prob. Code § 5692 (REVISED). Time for contest

Comment. Subdivision (a) of Section 5692 limits the contest of a revocable TOD deed to a post-death challenge. A challenge before the transferor's death would be premature since a revocable TOD deed may be revoked at any time before the transfer occurs by reason of the transferor's death. However, the transferor's conservator may seek to revoke a revocable TOD deed pursuant to substituted judgment principles. See Section 5630 (revocability) & Comment and Section 5696(b); see also Sections 2580-2586 (substituted judgment).

Subdivision (b) provides that the limitations period for contesting a TOD deed commences on the transferor's death.

Prob. Code § 5694. Remedies

Comment. The 120 day period under Section 5694 represents a balance between the 40 day period applicable to disposition of an estate without administration under Sections 13100 (affidavit procedure for collection or transfer of personal property) and 13151 (court order determining succession to property), and the six month period applicable to the affidavit procedure for real property of small value under Section 13200.

Prob. Code § 5696 (REVISED). Fraud, undue influence, duress, mistake, or other invalidating cause

Comment. Subdivision (a) of Section 5696 is drawn from Section 5015 (nonprobate transfer of community property).

Subdivision (b) is new.

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY MARCH 5, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 139

Introduced by Assembly Member Gatto
(Coauthors: Assembly Members Chávez, Mayes, and Waldron)

January 9, 2015

An act to amend Sections 2337 and 2040 of the Family Code, to amend Sections 250, 267, 279, 2580, 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 and repeal Part 4 (commencing with Section 5600) of 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 139, as amended, Gatto. 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, until January 1, 2021, 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~~ *proceeding, according to specified rules*. The bill would require that a person have ~~testamentary~~ *the capacity to contract in order* to make or revoke the deed and would require that the deed be in a statutory form

provided for this purpose. The *bill would require that a* revocable TOD deed ~~must~~ be signed, dated, acknowledged, and recorded, as specified, to be effective. The bill would provide, among other things, that the deed, during the owner's life, does not 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 the 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 *other* conforming and technical changes. The bill would require the California Law Revision Commission to study and make recommendations regarding the revocable TOD deed to the Legislature by January 1, 2020.

(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 \$150,000, including authorizing the successor of the decedent to collect and distribute property due 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: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 2337 of the Family Code is amended to
2 read:

3 2337. (a) In a proceeding for dissolution of marriage, the court,
4 upon noticed motion, may sever and grant an early and separate
5 trial on the issue of the dissolution of the status of the marriage
6 apart from other issues.

7 (b) A preliminary declaration of disclosure with a completed
8 schedule of assets and debts shall be served on the nonmoving
9 party with the noticed motion unless it has been served previously,
10 or unless the parties stipulate in writing to defer service of the
11 preliminary declaration of disclosure until a later time.

12 (c) The court may impose upon a party any of the following
13 conditions on granting a severance of the issue of the dissolution
14 of the status of the marriage, and in case of that party's death, an
15 order of any of the following conditions continues to be binding
16 upon that party's estate:

17 (1) The party shall indemnify and hold the other party harmless
18 from any taxes, reassessments, interest, and penalties payable by
19 the other party in connection with the division of the community
20 estate that would not have been payable if the parties were still
21 married at the time the division was made.

22 (2) Until judgment has been entered on all remaining issues and
23 has become final, the party shall maintain all existing health and
24 medical insurance coverage for the other party and any minor
25 children as named dependents, so long as the party is eligible to
26 do so. If at any time during this period the party is not eligible to
27 maintain that coverage, the party shall, at the party's sole expense,
28 provide and maintain health and medical insurance coverage that
29 is comparable to the existing health and medical insurance coverage
30 to the extent it is available. To the extent that coverage is not
31 available, the party shall be responsible to pay, and shall
32 demonstrate to the court's satisfaction the ability to pay, for the
33 health and medical care for the other party and the minor children,
34 to the extent that care would have been covered by the existing
35 insurance coverage but for the dissolution of marital status, and

1 shall otherwise indemnify and hold the other party harmless from
 2 any adverse consequences resulting from the loss or reduction of
 3 the existing coverage. For purposes of this subdivision, “health
 4 and medical insurance coverage” includes any coverage for which
 5 the parties are eligible under any group or individual health or
 6 other medical plan, fund, policy, or program.

7 (3) Until judgment has been entered on all remaining issues and
 8 has become final, the party shall indemnify and hold the other
 9 party harmless from any adverse consequences to the other party
 10 if the bifurcation results in a termination of the other party’s right
 11 to a probate homestead in the residence in which the other party
 12 resides at the time the severance is granted.

13 (4) Until judgment has been entered on all remaining issues and
 14 has become final, the party shall indemnify and hold the other
 15 party harmless from any adverse consequences to the other party
 16 if the bifurcation results in the loss of the rights of the other party
 17 to a probate family allowance as the surviving spouse of the party.

18 (5) Until judgment has been entered on all remaining issues and
 19 has become final, the party shall indemnify and hold the other
 20 party harmless from any adverse consequences to the other party
 21 if the bifurcation results in the loss of the other party’s rights with
 22 respect to any retirement, survivor, or deferred compensation
 23 benefits under any plan, fund, or arrangement, or to any elections
 24 or options associated therewith, to the extent that the other party
 25 would have been entitled to those benefits or elections as the spouse
 26 or surviving spouse of the party.

27 (6) The party shall indemnify and hold the other party harmless
 28 from any adverse consequences if the bifurcation results in the
 29 loss of rights to social security benefits or elections to the extent
 30 the other party would have been entitled to those benefits or
 31 elections as the surviving spouse of the party.

32 (7) (A) The court may make an order pursuant to paragraph (3)
 33 of subdivision (b) of Section 5040 of the Probate Code, if
 34 appropriate, that a party maintain a beneficiary designation for a
 35 nonprobate transfer, as described in Section 5000 of the Probate
 36 Code, for a spouse or domestic partner for up to one-half of or,
 37 upon a showing of good cause, for all of a nonprobate transfer
 38 asset until judgment has been entered with respect to the
 39 community ownership of that asset, and until the other party’s
 40 interest therein has been distributed to him or her.

1 (B) Except upon a showing of good cause, this paragraph does
2 not apply to any of the following:

3 (i) A nonprobate transfer described in Section 5000 of the
4 Probate Code that was not created by either party or that was
5 acquired by either party by gift, descent, or devise.

6 (ii) An irrevocable trust.

7 (iii) A trust of which neither party is the grantor.

8 (iv) Powers of appointment under a trust instrument that was
9 not created by either party or of which neither party is a grantor.

10 (v) The execution and filing of a disclaimer pursuant to Part 8
11 (commencing with Section 260) of Division 2 of the Probate Code.

12 (vi) The appointment of a party as a trustee.

13 (8) In order to preserve the ability of the party to defer the
14 distribution of the Individual Retirement Account or annuity (IRA)
15 established under Section 408 or 408A of the Internal Revenue
16 Code of 1986, as amended, (IRC) upon the death of the other party,
17 the court may require that one-half, or all upon a showing of good
18 cause, of the community interest in any IRA, by or for the benefit
19 of the party, be assigned and transferred to the other party pursuant
20 to Section 408(d)(6) of the Internal Revenue Code. This paragraph
21 does not limit the power granted pursuant to subdivision (g).

22 (9) Upon a showing that circumstances exist that would place
23 a substantial burden of enforcement upon either party's community
24 property rights or would eliminate the ability of the surviving party
25 to enforce his or her community property rights if the other party
26 died before the division and distribution or compliance with any
27 court-ordered payment of any community property interest therein,
28 including, but not limited to, a situation in which preemption under
29 federal law applies to an asset of a party, or purchase by a bona
30 fide purchaser has occurred, the court may order a specific security
31 interest designed to reduce or eliminate the likelihood that a
32 postmortem enforcement proceeding would be ineffective or
33 unduly burdensome to the surviving party. For this purpose, those
34 orders may include, but are not limited to, any of the following:

35 (A) An order that the party provide an undertaking.

36 (B) An order to provide a security interest by Qualified Domestic
37 Relations Order from that party's share of a retirement plan or
38 plans.

39 (C) An order for the creation of a trust as defined in paragraph
40 (2) of subdivision (a) of Section 82 of the Probate Code.

1 (D) An order for other arrangements as may be reasonably
2 necessary and feasible to provide appropriate security in the event
3 of the party’s death before judgment has been entered with respect
4 to the community ownership of that asset, and until the other
5 party’s interest therein has been distributed to him or her.

6 (E) If a retirement plan is not subject to an enforceable court
7 order for the payment of spousal survivor benefits to the other
8 party, an interim order requiring the party to pay or cause to be
9 paid, and to post adequate security for the payment of, any survivor
10 benefit that would have been payable to the other party on the
11 death of the party but for the judgment granting a dissolution of
12 the status of the marriage, pending entry of judgment on all
13 remaining issues.

14 (10) Any other condition the court determines is just and
15 equitable.

16 (d) Prior to, or simultaneously with, entry of judgment granting
17 dissolution of the status of the marriage, all of the following shall
18 occur:

19 (1) The party’s retirement or pension plan shall be joined as a
20 party to the proceeding for dissolution, unless joinder is precluded
21 or made unnecessary by Title 1 of the federal Employee Retirement
22 Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), as
23 amended (ERISA), or any other applicable law.

24 (2) To preserve the claims of each spouse in all retirement plan
25 benefits upon entry of judgment granting a dissolution of the status
26 of the marriage, the court shall enter one of the following in
27 connection with the judgment for each retirement plan in which
28 either party is a participant:

29 (A) An order pursuant to Section 2610 disposing of each party’s
30 interest in retirement plan benefits, including survivor and death
31 benefits.

32 (B) An interim order preserving the nonemployee party’s right
33 to retirement plan benefits, including survivor and death benefits,
34 pending entry of judgment on all remaining issues.

35 (C) An attachment to the judgment granting a dissolution of the
36 status of the marriage, as follows:

37
38 EACH PARTY (insert names and addresses) IS
39 PROVISIONALLY AWARDED WITHOUT PREJUDICE
40 AND SUBJECT TO ADJUSTMENT BY A SUBSEQUENT

1 DOMESTIC RELATIONS ORDER, A SEPARATE
2 INTEREST EQUAL TO ONE-HALF OF ALL BENEFITS
3 ACCRUED OR TO BE ACCRUED UNDER THE PLAN
4 (name each plan individually) AS A RESULT OF
5 EMPLOYMENT OF THE OTHER PARTY DURING THE
6 MARRIAGE OR DOMESTIC PARTNERSHIP AND PRIOR
7 TO THE DATE OF SEPARATION. IN ADDITION,
8 PENDING FURTHER NOTICE, THE PLAN SHALL, AS
9 ALLOWED BY LAW, OR IN THE CASE OF A
10 GOVERNMENTAL PLAN, AS ALLOWED BY THE
11 TERMS OF THE PLAN, CONTINUE TO TREAT THE
12 PARTIES AS MARRIED OR DOMESTIC PARTNERS FOR
13 PURPOSES OF ANY SURVIVOR RIGHTS OR BENEFITS
14 AVAILABLE UNDER THE PLAN TO THE EXTENT
15 NECESSARY TO PROVIDE FOR PAYMENT OF AN
16 AMOUNT EQUAL TO THAT SEPARATE INTEREST OR
17 FOR ALL OF THE SURVIVOR BENEFIT IF AT THE TIME
18 OF THE DEATH OF THE PARTICIPANT, THERE IS NO
19 OTHER ELIGIBLE RECIPIENT OF THE SURVIVOR
20 BENEFIT.

21
22 (e) The moving party shall promptly serve a copy of any order,
23 interim order, or attachment entered pursuant to paragraph (2) of
24 subdivision (d), and a copy of the judgment granting a dissolution
25 of the status of the marriage, on the retirement or pension plan
26 administrator.

27 (f) A judgment granting a dissolution of the status of the
28 marriage shall expressly reserve jurisdiction for later determination
29 of all other pending issues.

30 (g) If the party dies after the entry of judgment granting a
31 dissolution of marriage, any obligation imposed by this section
32 shall be enforceable against any asset, including the proceeds
33 thereof, against which these obligations would have been
34 enforceable prior to the person's death.

35 SEC. 2. Section 2040 of the Family Code is amended to read:

36 2040. (a) In addition to the contents required by Section 412.20
37 of the Code of Civil Procedure, the summons shall contain a
38 temporary restraining order:

39 (1) Restraining both parties from removing the minor child or
40 children of the parties, if any, from the state, or from applying for

1 a new or replacement passport for the minor child or children,
2 without the prior written consent of the other party or an order of
3 the court.

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

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

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

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

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

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

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

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

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

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

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

9
10 “WARNING: California law provides that, for purposes of
11 division of property upon dissolution of marriage or legal
12 separation, property acquired by the parties during marriage in
13 joint form is presumed to be community property. If either party
14 to this action should die before the jointly held community property
15 is divided, the language of how title is held in the deed (i.e., joint
16 tenancy, tenants in common, or community property) will be
17 controlling and not the community property presumption. You
18 should consult your attorney if you want the community property
19 presumption to be written into the recorded title to the property.”

20
21 (d) For the purposes of this section:

22 (1) “Nonprobate transfer” means an instrument, other than a
23 will, that makes a transfer of property on death, including a
24 revocable trust, pay on death account in a financial institution,
25 Totten trust, transfer on death registration of personal property,
26 revocable transfer on death deed, or other instrument of a type
27 described in Section 5000 of the Probate Code.

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

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

36 SEC. 3. Section 69 is added to the Probate Code, to read:

37 69. “Revocable transfer on death deed” or “revocable TOD
38 deed” means a revocable transfer on death deed as described in
39 Section 5614.

40 SEC. 4. Section 250 of the Probate Code is amended to read:

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

3 (1) Any property, interest, or benefit under a will of the
4 decedent, or a trust created by or for the benefit of the decedent
5 or in which the decedent has an interest, including any general or
6 special power of appointment conferred by the will or trust on the
7 killer and any nomination of the killer as executor, trustee,
8 guardian, or conservator or custodian made by the will or trust.

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

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

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

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

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

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

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

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

29 SEC. 5. Section 267 of the Probate Code is amended to read:

30 267. (a) “Interest” includes the whole of any property, real or
31 personal, legal or equitable, or any fractional part, share, or
32 particular portion or specific assets thereof, or any estate in any
33 such property, or any power to appoint, consume, apply, or expend
34 property, or any other right, power, privilege, or immunity relating
35 to property.

36 (b) “Interest” includes, but is not limited to, an interest created
37 in any of the following manners:

38 (1) By intestate succession.

39 (2) Under a will.

40 (3) Under a trust.

- 1 (4) By succession to a disclaimed interest.
 - 2 (5) By virtue of an election to take against a will.
 - 3 (6) By creation of a power of appointment.
 - 4 (7) By exercise or nonexercise of a power of appointment.
 - 5 (8) By an inter vivos gift, whether outright or in trust.
 - 6 (9) By surviving the death of a depositor of a Totten trust
 - 7 account or P.O.D. account.
 - 8 (10) Under an insurance or annuity contract.
 - 9 (11) By surviving the death of another joint tenant.
 - 10 (12) Under an employee benefit plan.
 - 11 (13) Under an individual retirement account, annuity, or bond.
 - 12 (14) Under a transfer on death beneficiary designation in a deed
 - 13 or other instrument.
 - 14 (15) Any other interest created by a testamentary or inter vivos
 - 15 instrument or by operation of law.
- 16 SEC. 6. Section 279 of the Probate Code is amended to read:
- 17 279. (a) A disclaimer to be effective shall be filed within a
- 18 reasonable time after the person able to disclaim acquires
- 19 knowledge of the interest.
- 20 (b) In the case of any of the following interests, a disclaimer is
- 21 conclusively presumed to have been filed within a reasonable time
- 22 if it is filed within nine months after the death of the creator of the
- 23 interest or within nine months after the interest becomes
- 24 indefeasibly vested, whichever occurs later:
- 25 (1) An interest created under a will.
 - 26 (2) An interest created by intestate succession.
 - 27 (3) An interest created pursuant to the exercise or nonexercise
 - 28 of a testamentary power of appointment.
 - 29 (4) An interest created by surviving the death of a depositor of
 - 30 a Totten trust account or P.O.D. account.
 - 31 (5) An interest created under a life insurance or annuity contract.
 - 32 (6) An interest created by surviving the death of another joint
 - 33 tenant.
 - 34 (7) An interest created under an employee benefit plan.
 - 35 (8) An interest created under an individual retirement account,
 - 36 annuity, or bond.
 - 37 (9) An interest created under a transfer on death beneficiary
 - 38 designation in a deed or other instrument.
 - 39 (c) In the case of an interest created by a living trust, an interest
 - 40 created by the exercise of a presently exercisable power of

1 appointment, an outright inter vivos gift, a power of appointment,
2 or an interest created or increased by succession to a disclaimed
3 interest, a disclaimer is conclusively presumed to have been filed
4 within a reasonable time if it is filed within nine months after
5 whichever of the following times occurs latest:

6 (1) The time of the creation of the trust, the exercise of the power
7 of appointment, the making of the gift, the creation of the power
8 of appointment, or the disclaimer of the disclaimed property.

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

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

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

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

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

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

22 (1) Nine months after the time the interest becomes an estate in
23 possession.

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

26 (f) If the disclaimer is not filed within the time provided in
27 subdivision (b), (c), (d), or (e), the disclaimant has the burden of
28 establishing that the disclaimer was filed within a reasonable time
29 after the disclaimant acquired knowledge of the interest.

30 SEC. 7. Section 2580 of the Probate Code is amended to read:

31 2580. (a) The conservator or other interested person may file
32 a petition under this article for an order of the court authorizing
33 or requiring the conservator to take a proposed action for any one
34 or more of the following purposes:

35 (1) Benefiting the conservatee or the estate.

36 (2) Minimizing current or prospective taxes or expenses of
37 administration of the conservatorship estate or of the estate upon
38 the death of the conservatee.

39 (3) Providing gifts for any purposes, and to any charities,
40 relatives (including the other spouse or domestic partner), friends,

1 or other objects of bounty, as would be likely beneficiaries of gifts
2 from the conservatee.

3 (b) The action proposed in the petition may include, but is not
4 limited to, the following:

5 (1) Making gifts of principal or income, or both, of the estate,
6 outright or in trust.

7 (2) Conveying or releasing the conservatee's contingent and
8 expectant interests in property, including marital property rights
9 and any right of survivorship incident to joint tenancy or tenancy
10 by the entirety.

11 (3) Exercising or releasing the conservatee's powers as donee
12 of a power of appointment.

13 (4) Entering into contracts.

14 (5) Creating for the benefit of the conservatee or others,
15 revocable or irrevocable trusts of the property of the estate, which
16 trusts may extend beyond the conservatee's disability or life. A
17 special needs trust for money paid pursuant to a compromise or
18 judgment for a conservatee may be established only under Chapter
19 4 (commencing with Section 3600) of Part 8, and not under this
20 article.

21 (6) Transferring to a trust created by the conservator or
22 conservatee any property unintentionally omitted from the trust.

23 (7) Exercising options of the conservatee to purchase or
24 exchange securities or other property.

25 (8) Exercising the rights of the conservatee to elect benefit or
26 payment options, to terminate, to change beneficiaries or
27 ownership, to assign rights, to borrow, or to receive cash value in
28 return for a surrender of rights under any of the following:

29 (A) Life insurance policies, plans, or benefits.

30 (B) Annuity policies, plans, or benefits.

31 (C) Mutual fund and other dividend investment plans.

32 (D) Retirement, profit sharing, and employee welfare plans and
33 benefits.

34 (9) Exercising the right of the conservatee to elect to take under
35 or against a will.

36 (10) Exercising the right of the conservatee to disclaim any
37 interest that may be disclaimed under Part 8 (commencing with
38 Section 260) of Division 2.

39 (11) Exercising the right of the conservatee (A) to revoke or
40 modify a revocable trust or (B) to surrender the right to revoke or

1 modify a revocable trust, but the court shall not authorize or require
2 the conservator to exercise the right to revoke or modify a
3 revocable trust if the instrument governing the trust (A) evidences
4 an intent to reserve the right of revocation or modification
5 exclusively to the conservatee, (B) provides expressly that a
6 conservator may not revoke or modify the trust, or (C) otherwise
7 evidences an intent that would be inconsistent with authorizing or
8 requiring the conservator to exercise the right to revoke or modify
9 the trust.

10 (12) Making an election referred to in Section 13502 or an
11 election and agreement referred to in Section 13503.

12 (13) Making a will.

13 (14) Making or revoking a revocable transfer on death deed.

14 SEC. 8. Section 5000 of the Probate Code is amended to read:

15 5000. (a) A provision for a nonprobate transfer on death in an
16 insurance policy, contract of employment, bond, mortgage,
17 promissory note, certificated or uncertificated security, account
18 agreement, custodial agreement, deposit agreement, compensation
19 plan, pension plan, individual retirement plan, employee benefit
20 plan, trust, conveyance, deed of gift, revocable transfer on death
21 deed, marital property agreement, or other written instrument of
22 a similar nature is not invalid because the instrument does not
23 comply with the requirements for execution of a will, and this code
24 does not invalidate the instrument.

25 (b) Included within subdivision (a) are the following:

26 (1) A written provision that moneys or other benefits due to,
27 controlled by, or owned by a decedent before death shall be paid
28 after the decedent's death to a person whom the decedent
29 designates either in the instrument or in a separate writing,
30 including a will, executed either before or at the same time as the
31 instrument, or later.

32 (2) A written provision that moneys due or to become due under
33 the instrument shall cease to be payable in the event of the death
34 of the promisee or the promisor before payment or demand.

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

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

3 SEC. 9. Section 5302 of the Probate Code is amended to read:
4 5302. Subject to Section 5040:

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

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

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

18 (2) On death of the sole party or of the survivor of two or more
19 parties, (A) any sums remaining on deposit belong to the P.O.D.
20 payee or payees if surviving, or to the survivor of them if one or
21 more die before the party, (B) if two or more P.O.D. payees
22 survive, any sums remaining on deposit belong to them in equal
23 and undivided shares unless the terms of the account or deposit
24 agreement expressly provide for different shares, and (C) if two
25 or more P.O.D. payees survive, there is no right of survivorship
26 in the event of death of a P.O.D. payee thereafter unless the terms
27 of the account or deposit agreement expressly provide for
28 survivorship between them.

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

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

32 (2) On death of the sole trustee or the survivor of two or more
33 trustees, (A) any sums remaining on deposit belong to the person
34 or persons named as beneficiaries, if surviving, or to the survivor
35 of them if one or more die before the trustee, unless there is clear
36 and convincing evidence of a different intent, (B) if two or more
37 beneficiaries survive, any sums remaining on deposit belong to
38 them in equal and undivided shares unless the terms of the account
39 or deposit agreement expressly provide for different shares, and
40 (C) if two or more beneficiaries survive, there is no right of

1 survivorship in event of death of any beneficiary thereafter unless
2 the terms of the account or deposit agreement expressly provide
3 for survivorship between them.

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

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

11 SEC. 10. The heading of Part 4 (commencing with Section
12 5600) of Division 5 of the Probate Code is repealed.

13 SEC. 11. A heading is added as Chapter 3 (commencing with
14 Section 5040) to Part 1 of Division 5 of the Probate Code,
15 immediately preceding Section 5040, to read:

16
17 CHAPTER 3. NONPROBATE TRANSFER TO FORMER SPOUSE
18

19 SEC. 12. Section 5600 of the Probate Code is amended and
20 renumbered to read:

21 5040. (a) Except as provided in subdivision (b), a nonprobate
22 transfer to the transferor’s former spouse, in an instrument executed
23 by the transferor before or during the marriage, fails if, at the time
24 of the transferor’s death, the former spouse is not the transferor’s
25 surviving spouse as defined in Section 78, as a result of the
26 dissolution or annulment of the marriage. A judgment of legal
27 separation that does not terminate the status of husband and wife
28 is not a dissolution for purposes of this section.

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

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

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

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

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

1 (d) Nothing in this section affects the rights of a subsequent
2 purchaser or encumbrancer for value in good faith who relies on
3 the apparent failure of a nonprobate transfer under this section or
4 who lacks knowledge of the failure of a nonprobate transfer under
5 this section.

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

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

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

12 SEC. 13. Section 5601 of the Probate Code is amended and
13 renumbered to read:

14 5042. (a) Except as provided in subdivision (b), a joint tenancy
15 between the decedent and the decedent’s former spouse, created
16 before or during the marriage, is severed as to the decedent’s
17 interest if, at the time of the decedent’s death, the former spouse
18 is not the decedent’s surviving spouse as defined in Section 78, as
19 a result of the dissolution or annulment of the marriage. A judgment
20 of legal separation that does not terminate the status of husband
21 and wife is not a dissolution for purposes of this section.

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

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

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

28 (c) Nothing in this section affects the rights of a subsequent
29 purchaser or encumbrancer for value in good faith who relies on
30 an apparent severance under this section or who lacks knowledge
31 of a severance under this section.

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

35 SEC. 14. Section 5602 of the Probate Code is amended and
36 renumbered to read:

37 5044. (a) Nothing in this chapter affects the rights of a
38 purchaser or encumbrancer of real property for value who in good
39 faith relies on an affidavit or a declaration under penalty of perjury
40 under the laws of this state that states all of the following:

1 (1) The name of the decedent.

2 (2) The date and place of the decedent’s death.

3 (3) A description of the real property transferred to the affiant
4 or declarant by an instrument making a nonprobate transfer or by
5 operation of joint tenancy survivorship.

6 (4) Either of the following, as appropriate:

7 (A) The affiant or declarant is the surviving spouse of the
8 decedent.

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

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

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

17 SEC. 15. Section 5603 of the Probate Code is amended and
18 renumbered to read:

19 5046. Nothing in this chapter is intended to limit the court’s
20 authority to order a party to a dissolution or annulment of marriage
21 to maintain the former spouse as a beneficiary on any nonprobate
22 transfer described in this chapter, or to preserve a joint tenancy in
23 favor of the former spouse.

24 SEC. 16. Section 5604 of the Probate Code is amended and
25 renumbered to read:

26 5048. (a) This chapter, formerly Part 4 (commencing with
27 Section 5600), is operative on January 1, 2002.

28 (b) Except as provided in subdivision (c), this chapter applies
29 to an instrument making a nonprobate transfer or creating a joint
30 tenancy whether executed before, on, or after the operative date
31 of this chapter.

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

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

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

1 SEC. 17. Part 4 (commencing with Section 5600) is added to
2 Division 5 of the Probate Code, to read:

3
4 PART 4. REVOCABLE TRANSFER ON DEATH DEED

5
6 CHAPTER 1. GENERAL PROVISIONS

7
8 Article 1. Preliminary Provisions

9
10 5600. (a) This part applies to a revocable transfer on death
11 deed made by a transferor who dies on or after January 1, 2016,
12 whether the deed was executed or recorded before, on, or after
13 January 1, 2016.

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

16 (c) This part shall remain in effect only until January 1, 2021,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2021, deletes or extends that date. The
19 repeal of this part pursuant to this subdivision shall not affect the
20 validity or effect of a revocable transfer on death deed that is
21 executed before January 1, 2021, and shall not affect the authority
22 of the transferor to revoke a transfer on death deed by recording
23 a signed and notarized instrument that is substantially in the form
24 specified in Section 5644.

25 5602. ~~(a) This part does not preclude use of any other method~~
26 ~~of conveying real property that is permitted by law and that has~~
27 ~~the effect of postponing enjoyment of the property until the death~~
28 ~~of the owner.~~

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

32 5604. (a) Except as provided in subdivision (b), nothing in
33 this part affects the application to a revocable transfer on death
34 deed of any other statute governing a nonprobate transfer on death,
35 including, but not limited to, any of the following provisions that
36 by its terms or intent would apply to a nonprobate transfer on death:

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

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

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

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

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

5
 6
 7

Article 2. Definitions

8 5606. Unless the provision or context otherwise requires, the
 9 definitions in this article govern the construction of this part.

10 5608. “Beneficiary” means a person named in a revocable
 11 transfer on death deed as transferee of the property.

12 5610. “Real property” means the fee or an interest in real
 13 property. The term includes, but is not limited to, any of the
 14 following interests in real property:

- 15 (a) A leasehold.
- 16 (b) An interest in a common interest development within the
 17 meaning of Section 6534 of the Civil Code.
- 18 (c) An easement, license, permit, or other right in property, to
 19 the extent the right is both of the following:

 - 20 (1) A recordable interest in property.
 - 21 (2) Transferable on death of the owner of the right.

22 5612. “Recorded” has the meaning provided in Section 1170
 23 of the Civil Code.

24 5614. (a) “Revocable transfer on death deed” means an
 25 instrument created pursuant to this part that does all of the
 26 following:

- 27 (1) Makes a donative transfer of real property to a named
 28 beneficiary.
- 29 (2) Operates on the transferor’s death.
- 30 (3) Remains revocable until the transferor’s death.

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

33 5616. “Transferor” means an owner of real property who makes
 34 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~~ *the*
6 capacity *to contract* may make a revocable transfer on death deed
7 of the property.

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

10 ~~(b)~~ The transferor may name more than one beneficiary. If there
11 is more than one beneficiary, they take the property as tenants in
12 common, in equal shares.

13 ~~(c)~~ The transferor may name as beneficiary the trustee of a trust
14 even if the trust is revocable.

15 5624. A revocable transfer on death deed is not effective unless
16 the transferor signs and dates the deed and acknowledges the deed
17 before a notary public.

18 5626. (a) A revocable transfer on death deed is not effective
19 unless the deed is recorded on or before 60 days after the date it
20 was executed.

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

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

25 5628. (a) If a revocable transfer on death deed is recorded for
26 the same property for which another revocable transfer on death
27 deed is recorded, the later executed deed is the operative instrument
28 and its recordation revokes the earlier executed deed.

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

31
32 Article 2. Revocation

33
34 5630. A transferor who has ~~testamentary~~ *the* capacity *to*
35 *contract* may revoke a revocable transfer on death deed at any
36 time.

37 5632. (a) An instrument revoking a revocable transfer on death
38 deed shall be executed and recorded before the transferor's death
39 in the same manner as execution and recordation of a revocable
40 transfer on death deed.

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

4
5 Article 3. Statutory Forms
6

7 5642. A revocable transfer on death deed shall be *substantially*
8 ~~in the form provided in this section.~~ *following form.*

9 (a) ~~The face first page of the form shall be in~~ substantially the
10 ~~following form.~~ *following:*

11
12 **SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED**
13 (California Probate Code Section 5642)
14

15 Recording Requested By:
16 When Recorded Mail This Deed To
17 Name:
18 Address:
19 Assessor’s Parcel Number: Space Above For Recorder’s Use
20

21 This document is exempt from documentary transfer tax under Rev. & Tax.
22 Code § 11930. This document is exempt from preliminary change of ownership
23 report under Rev. & Tax. Code § 480.3.
24

25 **IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR**
26 **BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND NOTARIZED**

27 Use this deed to transfer the property described below directly to your named
28 beneficiaries when you die. YOU SHOULD CAREFULLY READ ALL OF
29 THE INFORMATION ON THE OTHER SIDE OF THIS FORM. You may
30 wish to consult an attorney before using this deed. It may have results that you
31 do not want. Provide only the information asked for in the form. DO NOT
32 INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form
33 MUST be RECORDED on or before 60 days after the date it is signed *and*
34 *notarized* or it will not be effective.
35

36 **PROPERTY DESCRIPTION**

37 Print the ~~address and parcel number (found on your property tax bill)~~ or
38 other legal description of the property affected by this deed:
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BENEFICIARY(IES)

Print the *FULL NAME(S)* of the person(s) who will receive the property on your death (DO NOT use general terms like “my-children”: *children*) and state the *RELATIONSHIP* that each named person has to you (*spouse, son, daughter, friend, etc.*):

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.

Sign and print your name ~~below~~: *below* (*your name should exactly match the name shown on your title documents*):

_____ Date _____

NOTE: This deed only transfers MY ownership share of the property. The deed does NOT transfer the share of any co-owner of the property. Any co-owner who wants to name a TOD beneficiary must ~~complete~~ *execute* and RECORD a SEPARATE deed.

ACKNOWLEDGMENT OF NOTARY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),

1 and that by his/her/their signature(s) on the instrument the person(s), or the
2 entity upon behalf of which the person(s) acted, executed the instrument.

3 I certify under PENALTY OF PERJURY under the laws of the State of
4 California that the foregoing paragraph is true and correct.

5 WITNESS my hand and official seal.

6 Signature _____ (Seal)

7

8 (b) ~~The reverse side~~ *Subsequent pages* of a form executed under
9 this section shall be in substantially the following form:

10

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

12

13 **WHAT DOES THE TOD DEED DO?** When you die, the identified property
14 will transfer to your named beneficiary without probate. The TOD deed has
15 no effect until you die. You can revoke it at any time.

16 **HOW DO I USE THE TOD DEED?** Complete this form. Have it notarized.
17 **RECORD** the form in the county where the property is located. The form
18 **MUST** be recorded on or before 60 days after the date you sign it or the deed
19 has no effect.

20 *IS THE “LEGAL DESCRIPTION” OF THE PROPERTY NECESSARY?*
21 *Yes.*

22 *HOW DO I FIND THE “LEGAL DESCRIPTION” OF THE PROPERTY?*
23 *This information may be on the deed you received when you became an owner*
24 *of the property. This information may also be available in the office of the*
25 *county recorder for the county where the property is located. If you are not*
26 *absolutely sure, consult an attorney.*

27 **HOW DO I “RECORD” THE FORM?** Take the completed and notarized
28 form to the county recorder for the county in which the property is located.
29 Follow the instructions given by the county recorder to make the form part of
30 the official property records.

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

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

37 **HOW DO I REVOKE THE TOD DEED?** There are three ways to revoke
38 a recorded TOD deed: (1) Complete, ~~notarize~~, *have notarized*, and **RECORD**
39 a revocation form. (2) ~~Create~~ *Create*, *have notarized*, and **RECORD** a new
40 TOD deed, trust, or other estate planning document that disposes of the same

1 ~~property. deed.~~ (3) Sell or give away the ~~property~~ *property*, or transfer it to a
2 *trust*, before your death and RECORD the deed. A TOD deed can only affect
3 property that you own when you die. *A TOD deed cannot be revoked by will.*

4 ~~IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE~~
5 ~~PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY,~~
6 ~~DOES THAT AUTOMATICALLY REVOKE A RECORDED TOD DEED?~~

7 ~~No. If you want the new document to revoke a recorded TOD deed, the new~~
8 ~~document MUST be signed and dated after the deed you wish to revoke and~~
9 ~~it MUST be RECORDED. To avoid any doubt you may wish to RECORD a~~
10 ~~TOD deed revocation form before creating the new instrument.~~

11 ~~CAN I REVOKE A TOD DEED BY CREATING A NEW DOCUMENT THAT~~
12 ~~DISPOSES OF THE PROPERTY (FOR EXAMPLE, BY CREATING A NEW~~
13 ~~TOD DEED OR BY ASSIGNING THE PROPERTY TO A TRUST)? Yes, but~~
14 ~~only if the new document is RECORDED. To avoid any doubt, you may wish~~
15 ~~to RECORD a TOD deed revocation form before creating the new instrument.~~
16 ~~A TOD deed cannot be revoked by will, or by purporting to leave the subject~~
17 ~~property to anyone via will.~~

18 ~~IF I SELL OR GIVE AWAY THE PROPERTY DESCRIBED IN A TOD~~
19 ~~DEED, WHAT HAPPENS WHEN I DIE? If the deed or other document used~~
20 ~~to transfer your property is RECORDED before your death, the TOD deed~~
21 ~~will have no effect. If the transfer document is not RECORDED before your~~
22 ~~death, the TOD deed will take effect.~~

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

28 DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?
29 No. ~~But~~, *But* secrecy can cause later complications and might make it easier
30 for others to commit fraud.

31 WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your
32 beneficiary must RECORD evidence of your death (Prob. Code § 210), and
33 file a change in ownership notice (Rev. & Tax. Code § 480). If you received
34 Medi-Cal benefits, your beneficiary must notify the State Department of Health
35 Care Services of your death and provide a copy of your death certificate (Prob.
36 Code § 215).

37 WHAT IF I NAME MORE THAN ONE BENEFICIARY? Your
38 beneficiaries will become co-owners in equal ~~shares~~: *shares as tenants in*
39 *common*. If you want a different result, you should not use this form. ~~You~~

1 ~~MUST name your beneficiaries individually. You MAY NOT use general~~
2 ~~terms to describe beneficiaries, such as “my children.”~~

3 ~~WHAT IF A BENEFICIARY DIES BEFORE I DO? You should probably~~
4 ~~create and RECORD a new deed. Otherwise, the property will transfer~~
5 ~~according to the general rules on failed gifts, which may not meet your needs.~~
6 ~~See Prob. Code §§ 21110–21111.~~

7 *HOW DO I NAME BENEFICIARIES? You MUST name your beneficiaries*
8 *individually, using each beneficiary’s FULL name. You MAY NOT use general*
9 *terms to describe beneficiaries, such as “my children.” For each beneficiary*
10 *that you name, you should briefly state that person’s relationship to you (for*
11 *example, my spouse, my son, my daughter, my friend, etc.).*

12 *WHAT IF A BENEFICIARY DIES BEFORE I DO? If all beneficiaries die*
13 *before you, the TOD deed has no effect. If a beneficiary dies before you, but*
14 *other beneficiaries survive you, the share of the deceased beneficiary will be*
15 *divided equally between the surviving beneficiaries. If that is not the result*
16 *you want, you should not use the TOD deed.*

17 **WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I**
18 **OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT**
19 **OF SURVIVORSHIP? If you are the first joint tenant or spouse to die, the**
20 **deed is VOID and has no effect. The property transfers to your joint tenant or**
21 **surviving spouse and not according to this deed. If you are the last joint tenant**
22 **or spouse to die, the deed takes effect and controls the ownership of your**
23 **property when you die. If you do not want these results, do not use this form.**
24 **The deed does NOT transfer the share of a co-owner of the property. Any**
25 **co-owner who wants to name a TOD beneficiary must complete and RECORD**
26 **a SEPARATE deed.**

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

29 **IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO**
30 **MY DEBTS? Yes.**

31 **DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE**
32 **TAXES? No.**

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

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

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

1 ~~deed will also be subject to reimbursement.~~ *Your home may be liable for*
2 *reimbursement. If you have questions, you should consult an attorney.*

3
4 5644. A transferor may revoke a revocable transfer on death
5 deed by an instrument in substantially the following form:

6
7 **Revocation of**
8 **Revocable Transfer on Death (TOD) Deed**
9 (California Probate Code Section 5600)

10
11 Recording Requested By:

12
13 When Recorded Mail This Deed To

14 Name:

15 Address:

16 Assessor's Parcel Number: Space Above For Recorder's Use

17
18 This deed revocation is exempt from documentary transfer tax under Rev.
19 & Tax. Code §11930. This deed revocation is exempt from preliminary change
20 of ownership report under Rev. & Tax. Code § 480.3.

21
22 **IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE**
23 **EFFECTIVE**

24
25 This revocation form **MUST** be **RECORDED** before your death or it will
26 not be effective. This revocation form only affects a transfer on death deed
27 that **YOU** made. A transfer on death deed made by a co-owner of your property
28 is not affected by this revocation form. A co-owner who wants to revoke a
29 transfer on death deed that he/she made must complete and **RECORD** a
30 **SEPARATE** revocation form.

31
32 **PROPERTY DESCRIPTION**

33
34 Print the ~~address and parcel number (found on your property tax bill)~~ or
35 other legal description of the property affected by this revocation:
36 _____

37
38
39 **REVOCATION**
40

1 I revoke any TOD deed to transfer the described property that I executed
2 before executing this form.

3

4

SIGNATURE AND DATE

5

6

Sign and print your name ~~below~~: *below* (your name should exactly match
7 the name shown on your title documents):

8

9

_____ Date _____

10

11

ACKNOWLEDGMENT OF NOTARY

12

13

*A notary public or other officer completing this certificate verifies only the
14 identity of the individual who signed the document to which this certificate is
15 attached, and not the truthfulness, accuracy, or validity of that document.*

16

17

State of California)

18

County of _____)

19

20

21

22

On _____ before me, (here insert name and title
23 of the officer), personally appeared _____, who
24 proved to me on the basis of satisfactory evidence to be the person(s) whose
25 name(s) is/are subscribed to the within instrument and acknowledged to me
26 that he/she/they executed the same in his/her/their authorized capacity(ies),
27 and that by his/her/their signature(s) on the instrument the person(s), or the
28 entity upon behalf of which the person(s) acted, executed the instrument.

29

I certify under PENALTY OF PERJURY under the laws of the State of
30 California that the foregoing paragraph is true and correct.

31

WITNESS my hand and official seal.

32

Signature _____ (Seal)

33

34

CHAPTER 3. EFFECT

35

36

Article 1. General Provisions

37

38

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

1 (a) Does not affect the ownership rights of the transferor, and
2 the transferor or the transferor’s agent or other fiduciary may
3 convey, assign, contract, encumber, or otherwise deal with the
4 property, and the property is subject to process of the transferor’s
5 creditors, as if no revocable transfer on death deed were executed
6 or recorded.

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

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

12 5652. (a) A revocable transfer on death deed transfers all of
13 the transferor’s interest in the property to the beneficiary on the
14 transferor’s death. *death according to the following rules:*

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

18 *(1) Except as provided in paragraph (2), the interest in the*
19 *property is transferred to the beneficiary in accordance with the*
20 *deed.*

21 *(2) The interest of a beneficiary is contingent on the beneficiary*
22 *surviving the transferor. Notwithstanding Section 21110, the*
23 *interest of a beneficiary that fails to survive the transferor lapses.*

24 *(3) Except as provided in paragraph (4), if there is more than*
25 *one beneficiary, they take the property as tenants in common, in*
26 *equal shares.*

27 *(4) If there is more than one beneficiary, the share of a*
28 *beneficiary that lapses or fails for any reason is transferred to the*
29 *others in equal shares.*

30 ~~(e)~~

31 (b) Property is transferred by a revocable transfer on death deed
32 subject to any limitation on the transferor’s interest that is of record
33 at the transferor’s death, including, but not limited to, a lien,
34 encumbrance, easement, lease, or other instrument affecting the
35 transferor’s interest, whether recorded before or after recordation
36 of the revocable transfer on death deed. The holder of rights under
37 that instrument may enforce those rights against the property
38 notwithstanding its transfer by the revocable transfer on death
39 deed.

40 ~~(d)~~

1 (c) A revocable transfer on death deed transfers the property
2 without covenant or warranty of title.

3 5654. (a) For the purpose of determination of eligibility for
4 health care under Chapter 7 (commencing with Section 14000) or
5 Chapter 8 (commencing with Section 14200) of Part 3 of Division
6 9 of the Welfare and Institutions Code, execution and recordation
7 of a revocable transfer on death deed is not a lifetime transfer of
8 the property.

9 ~~(b) For the purpose of a claim of the State Department of Health
10 Care Services under Section 14009.5 of the Welfare and Institutions
11 Code, property transferred by a revocable transfer on death deed
12 is a part of the estate of the decedent, and the beneficiary is a
13 recipient of the property by distribution or survival.~~

14 *(b) Property transferred by a revocable transfer on death deed
15 is subject to claims of the State Department of Health Care Services
16 to the extent authorized by law.*

17 5656. For the purpose of application of the property taxation
18 and documentary transfer tax provisions of the Revenue and
19 Taxation Code:

20 (a) Execution and recordation of, or revocation of, a revocable
21 transfer on death deed of real property is not a change in ownership
22 of the property and does not require declaration or payment of a
23 documentary transfer tax or filing of a preliminary change of
24 ownership report.

25 (b) Transfer of real property on the death of the transferor by a
26 revocable transfer on death deed is a change in ownership of the
27 property.

28

29 Article 2. Other Instruments and Forms of Tenure

30

31 5660. If a revocable transfer on death deed recorded on or
32 before 60 days after the date it was executed and another instrument
33 both purport to dispose of the same property:

34 (a) If the other instrument is not recorded before the transferor's
35 death, the revocable transfer on death deed is the operative
36 instrument.

37 (b) If the other instrument is recorded before the transferor's
38 death and makes a revocable disposition of the property, the later
39 executed of the revocable transfer on death deed or the other
40 instrument is the operative instrument.

1 (c) If the other instrument is recorded before the transferor's
2 death and makes an irrevocable disposition of the property, the
3 other instrument and not the revocable transfer on death deed is
4 the operative instrument.

5 5664. If, at the time of the transferor's death, title to the
6 property described in the revocable transfer on death deed is held
7 in joint tenancy or as community property with right of
8 survivorship, the revocable transfer on death deed is void. The
9 transferor's interest in the property is governed by the right of
10 survivorship and not by the revocable transfer on death deed.

11 5666. (a) Chapter 2 (commencing with Section 5010) of Part
12 1 applies to a revocable transfer on death deed of community
13 property.

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

21 5668. A revocable transfer on death deed of community
22 property with right of survivorship is subject to Section 5666,
23 relating to a revocable transfer on death deed of community
24 property.

25 26 Article 3. Creditors 27

28 5670. Notwithstanding any other statute governing priorities
29 among creditors, a creditor of the transferor whose right is
30 evidenced at the time of the transferor's death by an encumbrance
31 or lien of record on property transferred by a revocable transfer
32 on death deed has priority against the property over a creditor of
33 the beneficiary, regardless of whether the beneficiary's obligation
34 was created before or after the transferor's death and regardless
35 of whether the obligation is secured or unsecured, voluntary or
36 involuntary, recorded or unrecorded.

37 5672. Each beneficiary is personally liable to the extent
38 provided in Section 5674 for the unsecured debts of the transferor.
39 Any such debt may be enforced against the beneficiary in the same
40 manner as it could have been enforced against the transferor if the

1 transferor had not died. In any action based on the debt, the
2 beneficiary may assert any defense, cross-complaint, or setoff that
3 would have been available to the transferor if the transferor had
4 not died. Nothing in this section permits enforcement of a claim
5 that is barred under Part 4 (commencing with Section 9000) of
6 Division 7. Section 366.2 of the Code of Civil Procedure applies
7 in an action under this section.

8 5674. (a) A beneficiary is not liable under Section 5672 if
9 proceedings for the administration of the transferor’s estate are
10 commenced and the beneficiary satisfies the requirements of
11 Section 5676.

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

14 (1) The fair market value at the time of the transferor’s death
15 of the property received by the beneficiary pursuant to the
16 revocable transfer on death deed, less the amount of any liens and
17 encumbrances on the property at that time.

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

19 (3) If the property has been disposed of, interest on the fair
20 market value of the property from the date of disposition at the
21 rate payable on a money judgment. For the purposes of this
22 paragraph, “fair market value of the property” has the same
23 meaning as defined in paragraph (2) of subdivision (a) of Section
24 5676.

25 5676. (a) Subject to subdivisions (b), (c), and (d), if
26 proceedings for the administration of the transferor’s estate are
27 commenced, each beneficiary is liable for:

28 (1) The restitution to the transferor’s estate of the property the
29 beneficiary received pursuant to the revocable transfer on death
30 deed if the beneficiary still has the property, together with (A) the
31 net income the beneficiary received from the property and (B) if
32 the beneficiary encumbered the property after the transferor’s
33 death, the amount necessary to satisfy the balance of the
34 encumbrance as of the date the property is restored to the estate.

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

1 the “fair market value of the property” is the fair market value,
2 determined as of the time of the disposition of the property, of the
3 property the beneficiary received pursuant to the revocable transfer
4 on death deed, less the amount of any liens and encumbrances on
5 the property at the time of the transferor’s death.

6 (b) Subject to subdivision (c), if proceedings for the
7 administration of the transferor’s estate are commenced and a
8 beneficiary made a significant improvement to the property
9 received by the beneficiary pursuant to the revocable transfer on
10 death deed, the beneficiary is liable for whichever of the following
11 the transferor’s estate elects:

12 (1) The restitution of the property, as improved, to the estate of
13 the transferor upon the condition that the estate reimburse the
14 beneficiary for (A) the amount by which the improvement increases
15 the fair market value of the property restored, determined as of the
16 time of restitution, and (B) the amount paid by the beneficiary for
17 principal and interest on any liens or encumbrances that were on
18 the property at the time of the transferor’s death.

19 (2) The restoration to the transferor’s estate of the fair market
20 value of the property, determined as of the time of the transferor’s
21 death, less the amount of any liens and encumbrances on the
22 property at that time, together with interest on the net amount at
23 the rate payable on a money judgment running from the time of
24 the transferor’s death.

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

28 (d) An action to enforce the liability under this section may be
29 brought only by the personal representative of the estate of the
30 transferor. Whether or not the personal representative brings an
31 action under this section, the personal representative may enforce
32 the liability only to the extent of the beneficiary’s liability under
33 Section 5672. The reasonable cost of proceeding under this section
34 shall be reimbursed as an extraordinary service under Sections
35 10801 and 10811. Action under this section is optional. A personal
36 representative is never required to act under this section.

37 (e) An action to enforce the liability under this section is forever
38 barred three years after the transferor’s death. The three-year period
39 specified in this subdivision is not tolled for any reason. Nothing
40 in this subdivision affects the requirements of Section 215, any

1 law that may toll the limitations period for the commencement of
2 a Medi-Cal estate recovery action, or the time for commencement
3 of an action by the *State* Department of Health Care Services under
4 Section 14009.5 of the Welfare and Institutions Code.

5 *(f) If property is restored to the transferor’s estate under this*
6 *section, that property shall be treated as a specific gift and any*
7 *proceeds remaining from the sale of the property after the payment*
8 *of claims shall be returned to the beneficiary.*
9

10 CHAPTER 4. EFFECTUATION OF TRANSFER

11
12 5680. (a) The beneficiary may establish the fact of the
13 transferor’s death under the procedure provided in Chapter 2
14 (commencing with Section 210) of Part 4 of Division 2. For the
15 purpose of this subdivision, the beneficiary is a person empowered
16 by statute to act on behalf of the transferor or the transferor’s estate
17 within the meaning of Section 103526 of the Health and Safety
18 Code.

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

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

25 (d) The beneficiary is liable to the transferor’s estate for prorated
26 estate and generation-skipping transfer taxes to the extent provided
27 in Division 10 (commencing with Section 20100).

28 5682. If both of the following conditions are satisfied, a person
29 dealing with a beneficiary of a revocable transfer on death deed
30 of real property shall have the same rights and protections as the
31 person would have if the beneficiary had been named as a
32 distributee of the property in an order for distribution of the
33 transferor’s estate that had become final:

34 (a) The person acted in good faith and for a valuable
35 consideration.

36 (b) An affidavit of death was recorded for the property under
37 Chapter 2 (commencing with Section 210) of Part 4 of Division
38 2.

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 pursuant to Section 5690 shall
16 not be commenced before 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 *(b) For the purposes of the applicable limitations period, a*
24 *contest proceeding accrues on the date of the transferor's death.*

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

28 (a) If the proceeding was commenced and a lis pendens was
29 recorded within 120 days after the transferor's death, the court
30 shall void the deed and order transfer of the property to the person
31 entitled to it.

32 (b) If the proceeding was not commenced and a lis pendens was
33 not recorded within 120 days after the transferor's death, the court
34 shall grant appropriate relief but the court order shall not affect
35 the rights in the property of a purchaser or encumbrancer for value
36 and in good faith acquired before commencement of the proceeding
37 and recordation of a lis pendens.

38 5696. ~~(a) Nothing in this chapter limits the ability of a~~
39 ~~conservator or guardian of a transferor or prospective transferor,~~
40 ~~or another interested person, to petition the court for invalidation~~

1 ~~of a revocable transfer on death deed recorded by the transferor~~
 2 ~~or prospective transferor on the basis application of principles of~~
 3 ~~fraud, undue influence, duress, mistake, or other invalidating cause.~~
 4 ~~cause to a transfer of property by a revocable transfer on death~~
 5 ~~deed.~~

6 *(b) Notwithstanding subdivision (a) of Section 5692, the*
 7 *conservator or guardian of a transferor may, before the*
 8 *transferor’s death, petition the court for invalidation of a revocable*
 9 *transfer on death deed executed by the transferor.*

10 SEC. 18. Section 13111 of the Probate Code is amended to
 11 read:

12 13111. (a) Subject to the provisions of this section, if
 13 proceedings for the administration of the decedent’s estate are
 14 commenced in this state, or if the decedent’s personal
 15 representative has consented to the payment, transfer, or delivery
 16 of the decedent’s property under this chapter and the personal
 17 representative later requests that the property be restored to the
 18 estate, each person to whom payment, delivery, or transfer of the
 19 decedent’s property is made under this chapter is liable for:

20 (1) The restitution of the property to the estate if the person still
 21 has the property, together with (A) the net income the person
 22 received from the property and (B) if the person encumbered the
 23 property after it was delivered or transferred to the person, the
 24 amount necessary to satisfy the balance of the encumbrance as of
 25 the date the property is restored to the estate.

26 (2) The restitution to the estate of the fair market value of the
 27 property if the person no longer has the property, together with
 28 (A) the net income the person received from the property and (B)
 29 interest on the fair market value of the property from the date of
 30 disposition at the rate payable on a money judgment. For the
 31 purposes of this subdivision, the “fair market value of the property”
 32 is the fair market value, determined as of the time of the disposition
 33 of the property, of the property paid, delivered, or transferred to
 34 the person under this chapter, less any liens and encumbrances on
 35 the property at that time.

36 (b) Subject to subdivision (c) and subject to any additional
 37 liability the person has under Sections 13109 to 13112, inclusive,
 38 if the person fraudulently secured the payment, delivery, or transfer
 39 of the decedent’s property under this chapter, the person is liable
 40 under this section for restitution to the decedent’s estate of three

1 times the fair market value of the property. For the purposes of
2 this subdivision, the “fair market value of the property” is the fair
3 market value, determined as of the time the person liable under
4 this subdivision presents the affidavit or declaration under this
5 chapter, of the property paid, delivered, or transferred to the person
6 under this chapter, less the amount of any liens and encumbrances
7 on the property at that time.

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

11 (d) An action to enforce the liability under this section may be
12 brought only by the personal representative of the estate of the
13 decedent. Whether or not the personal representative brings an
14 action under this section, the personal representative may enforce
15 the liability only to the extent necessary to protect the interests of
16 the heirs, devisees, and creditors of the decedent.

17 (e) An action to enforce the liability under this section is forever
18 barred three years after presentation of the affidavit or declaration
19 under this chapter to the holder of the decedent’s property, or three
20 years after the discovery of the fraud, whichever is later. The
21 three-year period specified in this subdivision is not tolled for any
22 reason.

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

26 SEC. 19. Section 13206 of the Probate Code is amended to
27 read:

28 13206. (a) Subject to subdivisions (b), (c), (d), and (e), if
29 proceedings for the administration of the decedent’s estate are
30 commenced, or if the decedent’s personal representative has
31 consented to use of the procedure provided by this chapter and the
32 personal representative later requests that the property be restored
33 to the estate, each person who is designated as a successor of the
34 decedent in a certified copy of an affidavit issued under Section
35 13202 is liable for:

36 (1) The restitution to the decedent’s estate of the property the
37 person took under the certified copy of the affidavit if the person
38 still has the property, together with (A) the net income the person
39 received from the property and (B) if the person encumbered the
40 property after the certified copy of the affidavit was issued, the

1 amount necessary to satisfy the balance of the encumbrance as of
2 the date the property is restored to the estate.

3 (2) The restitution to the decedent’s estate of the fair market
4 value of the property if the person no longer has the property,
5 together with (A) the net income the person received from the
6 property prior to disposing of it and (B) interest from the date of
7 disposition at the rate payable on a money judgment on the fair
8 market value of the property. For the purposes of this paragraph,
9 the “fair market value of the property” is the fair market value,
10 determined as of the time of the disposition of the property, of the
11 property the person took under the certified copy of the affidavit,
12 less the amount of any liens and encumbrances on the property at
13 the time the certified copy of the affidavit was issued.

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

23 (c) Subject to subdivision (d), if proceedings for the
24 administration of the decedent’s estate are commenced and a person
25 designated as a successor of the decedent in a certified copy of an
26 affidavit issued under Section 13202 made a significant
27 improvement to the property taken by the person under the certified
28 copy of the affidavit in the good faith belief that the person was
29 the successor of the decedent to that property, the person is liable
30 for whichever of the following the decedent’s estate elects:

31 (1) The restitution of the property, as improved, to the estate of
32 the decedent upon the condition that the estate reimburse the person
33 making restitution for (A) the amount by which the improvement
34 increases the fair market value of the property restored, determined
35 as of the time of restitution, and (B) the amount paid by the person
36 for principal and interest on any liens or encumbrances that were
37 on the property at the time the certified copy of the affidavit was
38 issued.

39 (2) The restoration to the decedent’s estate of the fair market
40 value of the property, determined as of the time of the issuance of

1 the certified copy of the affidavit under Section 13202, less the
2 amount of any liens and encumbrances on the property at that time,
3 together with interest on the net amount at the rate payable on a
4 money judgment running from the date of the issuance of the
5 certified copy of the affidavit.

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

9 (e) An action to enforce the liability under this section may be
10 brought only by the personal representative of the estate of the
11 decedent. Whether or not the personal representative brings an
12 action under this section, the personal representative may enforce
13 the liability only to the extent necessary to protect the interests of
14 the heirs, devisees, and creditors of the decedent.

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

20 SEC. 20. Section 13562 of the Probate Code is amended to
21 read:

22 13562. (a) Subject to subdivisions (b), (c), and (d), if
23 proceedings for the administration of the decedent's estate are
24 commenced, the surviving spouse is liable for:

25 (1) The restitution to the decedent's estate of the decedent's
26 property if the surviving spouse still has the decedent's property,
27 together with (A) the net income the surviving spouse received
28 from the decedent's property and (B) if the surviving spouse
29 encumbered the decedent's property after the date of death, the
30 amount necessary to satisfy the balance of the encumbrance as of
31 the date the decedent's property is restored to the estate.

32 (2) The restitution to the decedent's estate of the fair market
33 value of the decedent's property if the surviving spouse no longer
34 has the decedent's property, together with (A) the net income the
35 surviving spouse received from the decedent's property prior to
36 disposing of it and (B) interest from the date of disposition at the
37 rate payable on a money judgment on the fair market value of the
38 decedent's property. For the purposes of this paragraph, the "fair
39 market value of the decedent's property" is the fair market value
40 of the decedent's property, determined as of the time of the

1 disposition of the decedent’s property, less the amount of any liens
2 and encumbrances on the decedent’s property at the time of the
3 decedent’s death.

4 (b) Subject to subdivision (c), if proceedings for the
5 administration of the decedent’s estate are commenced and the
6 surviving spouse made a significant improvement to the decedent’s
7 property in the good faith belief that the surviving spouse was the
8 successor of the decedent to the decedent’s property, the surviving
9 spouse is liable for whichever of the following the decedent’s
10 estate elects:

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

19 (2) The restoration to the decedent’s estate of the fair market
20 value of the decedent’s property, valued as of the time of the
21 decedent’s death, excluding the amount of any liens and
22 encumbrances on the decedent’s property at that time, together
23 with interest on the net amount at the rate payable on a money
24 judgment running from the date of the decedent’s death.

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

29 (d) An action to enforce the liability under this section may be
30 brought only by the personal representative of the estate of the
31 decedent. Whether or not the personal representative brings an
32 action under this section, the personal representative may enforce
33 the liability only to the extent necessary to protect the interests of
34 the heirs, devisees, and creditors of the decedent.

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

38 SEC. 21. (a) The California Law Revision Commission shall
39 study the effect of California’s revocable transfer on death deed
40 set forth in Part 4 (commencing with Section 5600) of Division 5

1 of the Probate Code and make recommendations in this regard.
2 The commission shall report all of its findings to the Legislature
3 on or before January 1, 2020.

4 (b) In the study required by subdivision (a), the commission
5 shall address all of the following:

6 (1) Whether the revocable transfer on death deed is working
7 effectively.

8 (2) Whether the revocable transfer on death deed should be
9 continued.

10 (3) Whether the revocable transfer on death deed is subject to
11 misuse or misunderstanding.

12 (4) What changes should be made to the revocable transfer on
13 death deed or the law associated with the deed to improve its
14 effectiveness and to avoid misuse or misunderstanding.

15 (5) Whether the revocable transfer on death deed has been used
16 to perpetuate financial abuse on property owners and, if so, how
17 the law associated with the deed should be changed to minimize
18 this abuse.

19 (c) (1) The report required by subdivision (a) shall comply with
20 Section 9795 of the Government Code.

21 (2) Pursuant to Section 10231.5 of the Government Code, this
22 section is repealed on January 1, 2024.