

## Memorandum 2018-44

**Revocable Transfer on Death Deed: Follow-Up Study  
(Public Inquiry)**

In 2006, the Commission<sup>1</sup> recommended that California authorize the use of a revocable transfer on death deed (“RTODD”) to transfer real property on death, outside of probate.<sup>2</sup>

In 2015, Assembly Bill 139 (Gatto) was enacted to implement the Commission’s recommendation (with some significant changes).<sup>3</sup> Among other things, the Legislature added a “sunset” provision, which will repeal the RTODD statute on January 1, 2021 (unless the sunset is extended or repealed before it operates).<sup>4</sup> In addition, the law requires the Commission to conduct a follow-up study of the efficacy of the RTODD statute, and make recommendations for the improvement or repeal of that law.<sup>5</sup>

Memorandum 2018-33 discussed various issues regarding the existing RTODD statute. After considering that memorandum, the Commission directed the staff to seek further public comment on certain points, to better inform its decisionmaking. This memorandum is intended to serve as a prompt for such comment.

**Note:** In conducting this study, the Commission will examine a number of specific ways in which the law might be improved. The fact that the Commission is considering those specific issues does not mean that the Commission has reached a decision on the general question of whether the RTODD statute should be repealed or continue in effect. It has not done so.

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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](http://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. *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm’n Reports 103 (2006).

3. AB 139 (Gatto), 2015 Cal. Stat. ch. 293; Prob. Code §§ 5600-5696.

4. Prob. Code § 5600(c).

5. 2015 Cal. Stat. ch. 293, § 21.

PROMPTS FOR PUBLIC COMMENT

**The Commission would appreciate receiving public comment on any of the issues listed below.**

- (1) Are there practical or legal reasons why it would be problematic to allow the use of an RTODD to transfer the ownership of a share in a stock cooperative?<sup>6</sup>
- (2) Are there practical or legal reasons why it would be problematic to allow the use of an RTODD to transfer an ownership interest in a community apartment project?<sup>7</sup>
- (3) Are there practical or legal reasons why it would be problematic to allow the use of an RTODD to transfer an ownership interest in a planned development?<sup>8</sup>
- (4) Are there practical or legal reasons why it would be problematic to allow the use of an RTODD to transfer property in an age-restricted community?
- (5) In general, are there practical or legal reasons why it would be problematic to name a trust as beneficiary of an RTODD?
- (6) Are there practical or legal reasons why it would be problematic to name a *specific type* of trust as beneficiary of an RTODD?
- (7) Are there practical or legal reasons why it would be problematic to name a public entity as a beneficiary of an RTODD?
- (8) Are there practical or legal reasons why it would be problematic to name a nonprofit corporation as a beneficiary of an RTODD?

Respectfully submitted,

Brian Hebert  
Executive Director

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6. A stock cooperative is a kind of common interest development where all of the real property is owned by a corporation. A person who owns a share of that corporation has the right to lease and occupy a unit. See Civ. Code § 4190.

7. A community apartment project is a form of common interest development in which the members own the entire development (including the separate units) jointly and each has the right to lease and occupy a unit. Civ. Code § 4105.

8. A planned development is a kind of common interest development where members own a separate lot or parcel with an appurtenant interest in common area that is either owned by an association or by the members jointly. Civ. Code § 4175.