

Memorandum 2018-59

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

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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added a “sunset” provision, which will repeal the RTODD statute on January 1, 2021 (unless the sunset is extended or repealed before it operates).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>

In 2016, the Legislature elaborated on the specific issues that the Commission should address in its follow-up study, requiring that the study address:

Whether it is feasible and appropriate to expand the revocable transfer on death deed to include the following:

- (A) The transfer of stock cooperatives or other common interest developments.
- (B) Transfers to a trust or other legal entity.<sup>6</sup>

After some initial consideration of those questions,<sup>7</sup> the Commission concluded that it would be helpful to receive further expert comment on those issues. Memorandum 2018-44 posed the following questions:

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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.

6. 2016 Cal. Stat. ch. 179.

7. See Memorandum 2018-33.

- (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?
- (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?
- (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?
- (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?<sup>8</sup>

This memorandum presents and discusses the responses that the Commission has received to date.

**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.

#### PUBLIC COMMENT GENERALLY

In response to its inquiries, the Commission has received comments from the Executive Committee of the Trusts and Estates Section of the California Lawyers Association (“TEXCOM”) and Kelly G. Richardson, an attorney with expertise in common interest development law. Their submissions are attached as an Exhibit. The staff greatly appreciates the useful information that they provided.

The comments were structured as responses to the specific questions posed in Memorandum 2018-44. They are discussed below in the same order.

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8. Memorandum 2018-44.

## STOCK COOPERATIVE

When legislation to enact the RTODD statute was pending in the Legislature, it was amended to significantly narrow the definition of “real property” that can be conveyed by RTODD. As enacted, Section 5610 provides:

5610. “Real property” means any of the following:

- (a) Real property improved with not less than one nor more than four residential dwelling units.
- (b) A condominium unit, including the limited common elements allocated to the exclusive use thereof that form an integral part of the condominium unit.
- (c) A single tract of agricultural real estate consisting of 40 acres or less that is improved with a single-family residence.

Subdivision (b) of that section provides that real property includes a condominium. It does not expressly include any other kind of common interest development (i.e., a stock cooperative, community apartment project, or planned development). The implication is that those other kinds of common interest development cannot be transferred by RTODD.

One of the questions that the Commission posed was whether it would be legally or practically problematic to use an RTODD to convey an interest in a stock cooperative.<sup>9</sup>

### Use of Deed as Transferring Instrument

Both TEXCOM and Mr. Richardson point out a legal obstacle to the use of an RTODD to convey an interest in a stock cooperative.

In a stock cooperative, a corporate entity owns the entirety of the real property. The separate interest in a stock cooperative is a share of that corporation. Ownership of the share entitles the owner to the exclusive use of one of the units in the development.

The transfer of ownership of a share of the stock cooperative’s corporation does not involve the use of a deed. Consequently, it would be inconsistent with existing law to permit the use of a deed to convey a separate interest in a stock cooperative.

As Mr. Richardson suggests, it might be possible to draft around that problem.<sup>10</sup> Language could perhaps be crafted that would expressly authorize a

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9. 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.

simple method to convey a stock cooperative share at death, outside of probate. He suggests the possibility of addressing the matter in the Corporations Code. But there may be a ready-made vehicle for such a reform in the Probate Code.

California has already enacted the Uniform TOD Security Registration Act (on the Commission's recommendation).<sup>11</sup> That act allows the owner of a security to register it in TOD form, by naming a person who will own the property after the current owner's death. Unlike the RTODD statute, which relies on title records to effectuate a transfer, the Uniform Act depends on the "registering entity" to transfer ownership to a TOD beneficiary on proof of the original owner's death, by re-registering the security in the beneficiary's name.

It is possible that the existing language of the Uniform Act is broad enough that it could be applied to a share of ownership in a stock cooperative.<sup>12</sup> If not, the language could be revised to make the point expressly. It is important to understand that this approach would not involve the use of an RTODD to convey the ownership share. Instead, the existing TOD registration process would be used.

One problem with that approach is that the Uniform Act is a fairly bare-bones statute. It enables TOD registration without a lot of regulation of the process. For example, there are no rules on revocation or creditor claim liability, and execution formalities are mostly left up to each registering entity. The Uniform Act also allows for a level of complexity that the Legislature rejected in the RTODD statute (i.e., naming alternative beneficiaries).

Another concern is that the "registering entities" who maintain the records of a TOD designation are private entities. In the case of stock cooperatives, it would presumably be the stock cooperative's governing corporation. The quality of administration provided by private entities will undoubtedly vary. Some may do a poor job of safeguarding an owner's TOD registration paperwork (especially as compared to the rigor of a County Recorder's process). That could cause an intended transfer to fail or wind up in court.

**Would the Commission be interested in exploring this possibility further? Or would it be better to continue the rule that disallows the use of an**

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10. See Exhibit p. 5.

11. See Sections 5500-5512.

12. The critical term "security" includes "a share, participation, or other interest in property." Section 5501(d). The term "registering entity" includes "a person who originates or transfers a security title by registration." Section 5501(c).

## **RTODD to transfer an interest in a stock cooperative, leaving that gap unfilled?**

### COMMUNITY APARTMENT PROJECTS

The existing definition of "real property" also impliedly excludes an ownership interest in a community apartment project.<sup>13</sup> The Commission asked whether there would be any problem allowing an RTODD to be used to convey such property.

#### **Use of Deed as Transferring Instrument**

Because the owners in a community apartment project share ownership of the entire development as tenants in common, there would seem to be no problem with the use of the deed to convey such an interest. It is clearly an interest in real property.<sup>14</sup>

For that reason, Mr. Richardson believes that the governing definition of "real property" should be revised to include a separate interest in a community apartment project.<sup>15</sup>

#### **Restriction on Transfer or Use**

TEXCOM raises another concern — the possibility that a separate interest in a community apartment project might be burdened by restrictions on the transfer or use of the property. Specifically, the property restrictions that burden the property might require association approval of any transfer of the property or any new occupant.

[I]t is likely that the community apartment project would have restrictions on transfers and/or require approval before allowing an ownership transfer. It may also have restrictions or require approval regarding the occupancy of a unit. If so, the attempted transfer via the RTODD could be void or ultimately not approved.<sup>16</sup>

Such a restraint on alienation can be lawful, so long as it is reasonable (and does not violate other law, such as the Unruh Civil Rights Act). As the court explained in *Laguna Royale Owners Assn. v. Darger*:

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13. 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.

14. See Exhibit pp. 2, 5.

15. See Exhibit p. 5.

16. See Exhibit p. 2.

"[Inherent] in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property."<sup>17</sup>

The exercise of discretion in enforcing such a restraint must also be reasonable:

The criteria for testing the reasonableness of an exercise of such a power by an owners' association are (1) whether the reason for withholding approval is rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing instruments and (2) whether the power was exercised in a fair and nondiscriminatory manner.<sup>18</sup>

Given that, what would be the result if a person used an RTODD to convey an ownership interest in a community property project that requires association approval of any transfer? It is not clear. The staff reviewed real property and estate planning treatises and only found advice that planners be mindful of the issue. The staff found no authority discussing the result of such a conflict.

As TEXCOM notes, this problem is not limited to RTODDs. The same issue could arise with a will or trust.<sup>19</sup> Moreover, the problem is not limited to community apartment projects. Presumably, any type of subdivision could have enforceable restrictions on the transfer or occupancy of individual lots or units. In fact, the case quoted above (*Laguna Royale Owners Assn v. Darger*) involved a restriction on the transfer of a *condominium*, the type of common interest development property that is currently allowed to be transferred by RTODD.

Thus, the problem noted by TEXCOM — an at-death transfer of real property that is subject to a restraint on transfer or use — would seem to be a general problem in estate planning as a whole, for any kind of property that is subject to such a restriction.

One possible solution to the problem would be to allow the title transfer to go forward, but not allow the beneficiary to occupy the property unless the association approves. If the association does not approve, the beneficiary would still hold title and could then sell the property to someone who would be

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17. 119 Cal. App. 3d 670, 681-82 (1981) (citation omitted).

18. *Id.* at 683-84.

19. See Exhibit p. 2.

acceptable to the association. Thus, the transfer would not be frustrated, the beneficiary would receive the value of the gift, and the controlling property restrictions would ultimately be enforced.

If the Commission wishes to further explore the problem described above, it might warrant a separate study that is not restricted to RTODDs. A separate study would permit the Commission to look for a broad solution to the problem, that would apply to all kinds of at-death transfers. As with the earlier “spin-off” study of issues involving probate avoidance procedures, some of the work could be done by law student externs (e.g., searching other jurisdictions and the Uniform Probate Code to see if the problem has already been addressed elsewhere). **It would be helpful to receive input from TEXCOM and other interested persons and entities on whether the problem described above arises frequently enough to warrant a reform to remedy it.**

Regardless of whether the Commission decides to launch a separate study of the matter, it needs to decide whether the existence of the problem is good reason to exclude community apartment projects from the RTODD statute’s definition of “real property.” **If so, the Commission should consider whether the same issue would justify removing condominiums from the kinds of real property that are subject to transfer by RTODD.**

## PLANNED DEVELOPMENT

### Use of Deed as Transferring Instrument

In a planned development, owners hold separate ownership of a lot or parcel, with an appurtenant interest in common area that is either owned by an association or by the members jointly.<sup>20</sup> The transfer of such property involves the use of a deed. Consequently, there should not be any legal problem, of the type discussed above under the heading “Stock Cooperative,” with the use of an RTODD to transfer such property.

### Restriction on Transfer or Use

TEXCOM suggests that a planned development could involve the kind of conflict that is discussed above under the heading “Community Apartment Project,” between an at-death transfer and a property restriction that requires association approval of any transfer. It strikes the staff as much less likely that

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20. Civ. Code § 4175.

such a restriction would exist in a planned development, which typically consists of detached homes, than in the other kinds of common interest developments, which involve closer living in attached units. Nonetheless, it is possible that planned development property could be subject to a restriction on transfer. **That issue should probably be handled in whatever way the Commission decides to address the matter with regard to a community apartment project.**

### Drafting Problem

Mr. Richardson notes that existing law may already allow the use of an RTODD to transfer an interest in a planned development.<sup>21</sup> Section 5610(a) defines “real property” as including “[r]eal property improved with not less than one nor more than four residential dwelling units.” An interest in a planned development would generally fall within that definition, because the separate interest is typically a separate parcel improved with one dwelling unit.

This is another example of a general drafting problem that was identified by TEXCOM and discussed in an earlier memorandum<sup>22</sup> — the broad scope of Section 5610(a) could swallow the more narrowly drawn rules in (b) and (c). For example, a stock cooperative with only four units would also seem to fall within Section 5610(a).

The Commission has already decided to directly address this drafting problem.<sup>23</sup> **The new point raised by Mr. Richardson reinforces the wisdom of that decision.**

### AGE-RESTRICTED COMMUNITY

It is lawful to restrict the age of those who occupy dwellings in a “senior citizen housing development,” so long as the development meets specified statutory requirements.<sup>24</sup> The Commission asked for comment on whether it would be legally or practically problematic to use an RTODD to convey an ownership interest in an age-restricted community.

TEXCOM notes that there “may be an issue” where an RTODD transfers property in an age-restricted development to a person who is ineligible to reside

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21. See Exhibit p. 5.

22. See Memorandum 2018-33, Exhibit pp. 6-7.

23. Minutes (Aug. 2018), p. 12.

24. Civ. Code § 51.3.

there. However, TEXCOM also points out that this issue could also arise with a will or trust.<sup>25</sup>

Mr. Richardson comments:

It would seem to me that the only issue would be if someone transferred to someone who is not eligible to live in the age-restricted community, but there are other ways to handle that. I work with a number of age-restricted communities, and the age restriction often is only as to residing there, not owning. So someone who was not age-eligible might still own the residence and rent it to someone who was age-eligible.<sup>26</sup>

The approach described by Mr. Richardson is similar to the one suggested by the staff above — an RTODD beneficiary who receives property in a development in which they cannot reside could simply rent or sell the property to someone who can reside there. That solution is more obvious and should be easier to implement when the obstacle is a *use* restriction, rather than a restriction on *transfer*.

**For that reason, there may not be a need to revise the law to address age restrictions. However, if the Commission decides to address the broader issue of conflicts between at-death transfers and transfer restrictions, the staff will make sure that any implementing language also addresses age restrictions.**

#### TRANSFER TO TRUST GENERALLY

The Commission has been specifically charged with considering whether to permit an RTODD to transfer property to a trust. The Commission asked for comment on whether that use of an RTODD would be legally or practically problematic.

In response, TEXCOM writes:

TEXCOM believes that the option of naming a trust as beneficiary invites confusion and has urged the Commission to foreclose the possibility of naming a trust as the beneficiary of an RTODD. (see the letter to the Commission from Mark Poochigian, Esq. dated June 1, 2017).<sup>27</sup>

Mr. Poochigian's letter was attached to and discussed in Memorandum 2018-33.

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25. See Exhibit p. 2.

26. See Exhibit p. 5.

27. See Exhibit p. 2.

As the Commission has not yet heard from other entities on this issue, the staff believes it would be worthwhile to hold off on making a decision on this issue at this time. The staff will bring the matter back to the Commission, along with any further comment that the Commission receives on the point, in a future memorandum. **In the meantime, the staff requests comment on this important question from other interested individuals and groups.**

#### TRANSFER TO SPECIFIC TYPES OF TRUSTS

Memorandum 2018-33 presented and discussed comment from attorney Angela Petrusha. She pointed out that legal and practical issues could be very different if an RTODD is used to transfer property to a “special needs trust,” as opposed to the more typical revocable living trust that is used as a will substitute:

Some have questioned the necessity of naming a trust as beneficiary of an RTODD rather than transferring the subject property to a revocable living trust, which would also avoid probate. While this may be the solution in most cases, sometimes this is not a viable option. For example, consider the homeowner who does not wish to incur the expense of creating a trust for herself, but wishes to name a supplemental needs trust (or “Special Needs Trust”) as beneficiary of her home. A Special Needs Trust is typically created for the benefit of a person with a disability who would encounter negative consequences if he or she received property or money outright. The homeowner has a modest estate that would not otherwise require a formal probate. In keeping with the intent of AB 139, shouldn’t this homeowner be allowed a straightforward, inexpensive, non-probate option for transferring this asset upon death?<sup>28</sup>

In response to this concern, the Commission asked for comment on whether there are different legal or practical issues that arise with respect to different kinds of trusts. Unfortunately, the staff’s framing of that question was not clear enough. The question asked was:

Are there practical or legal reasons why it would be problematic to name a *specific type* of trust as beneficiary of an RTODD?<sup>29</sup>

In response to that question, TEXCOM writes:

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28. Memorandum 2018-33, Exhibit p. 8 (emphasis in original).

29. Memorandum 2018-44, p. 2 (question #6).

It is not clear what the Commission is referring to by a “specific type” of trust, which makes this question too vague to answer.<sup>30</sup>

The staff regrets the confusion. The question would perhaps be better stated as follows:

Are there different legal, practical, or policy concerns that arise if an RTODD is used to transfer property to different kinds of trusts (e.g., a transfer to a special needs trust v. a transfer to a revocable living trust)? If so, how do those considerations differ with respect to the different kinds of trusts?

For example, if the settlor of a revocable living trust wishes to transfer real property to the trust, there would not seem to be any obvious need to do so through an RTODD. The transfer could be effected immediately, simply by deeding title to the trust. That action would not be irrevocable. Thus, in that situation, there may not be a strong enough policy reason to overcome legal or practical problems with using an RTODD to effect the transfer.

By contrast, if there is a need to transfer assets to an *irrevocable* trust, the transferor may wish to delay the transfer until death. That would allow the transferor to adjust the planned transfer based on any changed circumstances that arise before the transferor’s death. If so, there could be a compelling need to permit the use of the RTODD to transfer property to the trust. That might justify whatever complications are associated with such use.

There are many different kinds of trusts. The staff, not having estate planning practice experience, lacks sufficient understanding of their various uses and legal requirements to fully evaluate the consequences of using an RTODD in connection with different kinds of trusts. **It would be helpful to have further input on these matters.**

It might make sense to allow the use of an RTODD to transfer property to some kinds of trusts, but not others. On the other hand, drawing such distinctions increases the likelihood that errors will be made, especially by laypeople who execute RTODDs without the benefit of counsel.

#### TRANSFER TO PUBLIC ENTITY

The RTODD could offer a simple and inexpensive way to transfer real property as a charitable gift to a public entity. The Commission asked for

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30. See Exhibit p. 3.

comment on whether such use of an RTODD would pose legal or practical problems.

TEXCOM writes:

California Government Code Section 27281 prohibits the recordation of any deed conveying an interest in real estate to a political corporation or governmental agency for public purposes without the consent of the grantee evidenced by its certificate or resolution of acceptance attached to or printed on the deed. This would create an issue in the context of RTODD deeds since it appears that the deed could not be recorded without the consent of the public entity.<sup>31</sup>

That is correct. Section 27281 provides in part: "Deeds or grants conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes shall not be accepted for recordation without the consent of the grantee evidenced by its certificate or resolution of acceptance attached to or printed on the deed or grant."

However, that appears to be a technical problem that could be easily addressed through an amendment. For example, the rule could be that an RTODD may be *recorded* without attaching a public entity beneficiary's certificate or resolution of acceptance, but does not *operate* until such a document is recorded. If the public entity does not wish to receive the property for some reason, it can disclaim the gift (just as any other beneficiary can).

The staff does not yet see a *policy* reason to prevent gifts to public entities.

**How would the Commission like to proceed on this point?**

**TRANSFER TO NONPROFIT CORPORATION**

Finally, the Commission asked whether there would be legal or practical problems if an RTODD were used to transfer property to a nonprofit corporation. It seems likely that many people would like to make charitable gifts to such entities by means of an RTODD.

TEXCOM raises some practical concerns about such use of an RTODD:

Yes, use of an RTODD may be problematic when a nonprofit corporation is the beneficiary designated to receive the property on the death of its current owner.

A nonprofit corporation may not be able to accept real property due to legal constraints (e.g., the lack of corporate authority to

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31. *Id.*

accept or own real property). Furthermore, the charity may have dissolved, changed its name or merged with another entity when the grantor of the RTODD dies, which could make it very difficult or impossible to identify the beneficiary or may result in the transfer failing. These issues would also exist for a transfer by trust or probate, so it is not necessarily specific to an RTODD, but the RTODD is intended to be self-executing, which is significantly different than passage by trust or will, in which a trustee or executor is present to assure that title to the property passes to a new owner and that the new owner is the intended recipient.

Furthermore, when a charitable gift is made in a will or trust and the charitable organization no longer exists, the property may be distributed to a successor organization. If [an] entity has dissolved, a court may salvage the gift by invoking the doctrine of *cy pres* and order that the property be distributed to another charitable organization.<sup>32</sup>

These are all good points. However, there may be a relatively straightforward way to address them. If an RTODD makes a gift to a nonprofit entity and that gift fails for one of the reasons described above, the law could permit the property to fall back into the decedent's probate estate where *cy pres* principles could be applied. The deceased transferor's desire to avoid the cost and delay of probate would be thwarted, but the greater part of the transferor's intentions would be carried out.

The staff believes there would be many details to work out if this approach were taken. Perhaps most significantly, who would initiate the process after the transferor's death? If a deceased transferor has no family to take on the burden of opening the probate, then it might fall to the public guardian. Anything that increases the duties of the public guardian may lead to opposition based on their increased cost and workload burdens.

**How would the Commission like to proceed on this issue?**

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32. See Exhibit p. 3.

## CONCLUSION

Most of the matters discussed in this memorandum will require further development. They will be revisited in future memoranda.

Respectfully submitted,

Brian Hebert  
Executive Director



## TRUSTS AND ESTATES SECTION

CAlawyers.org/Trusts

November 20, 2018

**VIA E-MAIL AND U.S. MAIL**

California Law Review Commission  
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Re: Memorandum 2018-44  
Study L-3032.1 - Revocable Transfer on Death Deed: Follow-Up Study (Public Inquiry)

Dear Commissioners:

This letter contains comments regarding the recordation of a revocable transfer on death deed (“RTODD”) on behalf of the Executive Committee of the Trusts and Estates Section of the California Lawyers Association (“TEXCOM”). Specifically, the comments in this letter are in response to Memorandum 2018-44 in which the California Law Review Commission solicited public comment regarding eight specific issues relating to RTODDs. Each of those issues is listed below, followed by TEXCOM’s comments.

- 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?**

In a stock cooperative, the real property is owned by a corporation. Individuals own shares of the corporation which provides the right to lease and occupy a unit. (Civil Code section 4190).

Since a corporation (not the individual shareholders) owns the real property, it would not be possible for the individuals to effectuate a transfer of the property by a deed, including an RTODD. Any transfer by a shareholder would be a transfer of shares of the corporation, not the real property.

**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?**

In a community apartment project, the members own the entire development jointly and each has the right to lease and occupy a unit. (Civil Code section 4105)

Since the individual owners of the community apartment project collectively own the land (each will typically own a percentage ownership interest in the entire development), their interests in the land could be transferred by a deed, such as a RTODD. However, it is likely that the community apartment project would have restrictions on transfers and/or require approval before allowing an ownership transfer. It may also have restrictions or require approval regarding the occupancy of a unit. If so, the attempted transfer via the RTODD could be void or ultimately not approved.

These issues would also exist for a transfer by trust or probate, so they are not necessarily specific to an RTODD.

**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?**

In a planned development, members own a separate lot or parcel with an interest in a common area that is either owned by an association or the members jointly. (Civil Code section 4175)

A planned development may have restrictions on transfers and require approval of new owners. Accordingly, an attempted transfer via an RTODD would raise issues similar to those described above relating to an interest in a community apartment project.

**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?**

Using an RTODD to transfer property in an age-restricted community may create an issue if the beneficiary would not qualify for occupancy due to their age. This issue would also exist for a transfer by trust or probate, so it is not necessarily specific to an RTODD.

**5. In general, are there practical or legal reasons why it would be problematic to name a trust as beneficiary of an RTODD?**

TEXCOM believes that the option of naming a trust as beneficiary invites confusion and has urged the Commission to foreclose the possibility of naming a trust as the beneficiary of an RTODD. (see the letter to the Commission from Mark Poochigian, Esq. dated June 1, 2017)

**6. Are there practical or legal reasons why it would be problematic to name a *specific type* of trust as beneficiary of an RTODD?**

It is not clear what the Commission is referring to by a “specific type” of trust, which makes this question too vague to answer.

**7. Are there practical or legal reasons why it would be problematic to name a public entity as beneficiary of an RTODD?**

California Government Code section 27281 prohibits the recordation of any deed conveying an interest in real estate to a political corporation or governmental agency for public purposes without the consent of the grantee evidenced by its certificate or resolution of acceptance attached to or printed on the deed. This would create an issue in the context of RTODD deeds since it appears that the deed could not be recorded without the consent of the public entity.

**8. Are there practical or legal reasons why it would be problematic to name a nonprofit corporation as a beneficiary of an RTODD?**

Yes, use of an RTODD may be problematic when a nonprofit corporation is the beneficiary designated to receive the property on the death of its current owner.

A nonprofit corporation may not be able to accept real property due to legal constraints (e.g., the lack of corporate authority to accept or own real property). Furthermore, the charity may have dissolved, changed its name or merged with another entity when the grantor of the RTODD dies, which could make it very difficult or impossible to identify the beneficiary or may result in the transfer failing. These issues would also exist for a transfer by trust or probate, so it is not necessarily specific to an RTODD, but the RTODD is intended to be self-executing, which is significantly different than passage by trust or will, in which a trustee or executor is present to assure that title to the property passes to a new owner and that the new owner is the intended recipient.

Furthermore, when a charitable gift is made in a will or trust and the charitable organization no longer exists, the property may be distributed to a successor organization. If entity has dissolved, a court may salvage the gift by invoking the doctrine of *cy pres* and order that the property be distributed to another charitable organization.

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Thank you for your continued consideration of TEXCOM's comments regarding RTODDs. If you have any questions, or if I may provide any clarity regarding the comments described above, please do not hesitate to contact me.

Respectfully submitted,



Mason L. Brawley  
Trusts and Estates Section Executive Committee  
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**EMAIL FROM KELLY G. RICHARDSON  
(JUNE 6, 2018)**

Hi Brian, here are the questions and my responses to 1-4:

**(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?**

Yes. In a stock cooperative there is no real estate interest owned. So there is no deed. Only a share of stock changes ownership when a new owner comes in. Perhaps the RTODD Act could be amended with the necessary Corporations Code amendments to allow cooperative shares to be covered by the Act?

**(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?**

No. Probate 5610 should be expanded to include the tenant in common interest of a community apartment owner. The owner in a community apartment receives a deed, but it is purely a tenant in common deed, with shared ownership in the entire property. The deed is normally coupled with a license or easement to occupy a given residence in the community apartment project. Community apartment projects are almost always very old CIDs, but they are still around. Realtors often call them “own-your-owns”.

**(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?**

It appears that Probate Code 5610(a) already covers that. Normally in a planned development the owner has a separate lot, and that would seem to be already covered by the statute.

**(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?**

It would seem to me that the only issue would be if someone transferred to someone who is not eligible to live in the age-restricted community, but there are other ways to handle that. I work with a number of age-restricted communities, and the age restriction often is only as to residing there, not owning. So someone who was not age-eligible might still own the residence and rent it to someone who was age-eligible.

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