

Second Supplement to Memorandum 2018-59

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

The Commission¹ has received a letter from the California Land Title Association, responding to specific questions asked in a recent memorandum in this study.² A copy of the letter is attached as an Exhibit. The staff greatly appreciates this input.

Respectfully submitted,

Brian Hebert
Executive Director

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. See Memorandum 2018-44, p. 2.



December 6, 2018

Mr. Brian Hebert
California Law Revision Commission
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

RE: Comments from CLTA on CLRC Study L-3032.1 Memorandum 2018-44
(Revocable Transfer on Death Deed: Follow-Up Study, Sep. 4, 2018)

Dear Mr. Hebert:

The California Land Title Association ("CLTA") is writing in response to a solicitation by the California Law Revision Commission ("CLRC") seeking public comment on specific aspects of a revocable transfer on death deed ("RTODD"), as detailed in eight questions contained within the CLRC's Memorandum 2018-44, dated Sep. 4, 2018. Those questions, along with our responses, are contained 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?

The interest in a stock cooperative is based on an individual owning a share in a corporation, which provides the right to lease and/or occupy a unit. As such, a transfer by a shareholder in a stock cooperative would equate to a transfer of shares of the corporation as opposed to the real property, prohibiting transfer of the property via deed, including a RTODD.

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?

A community apartment project is owned jointly by the individual members, each of whom has the right to lease and/or occupy a unit. While the individual owners could technically transfer their interest in the land via a RTODD, the typical restrictions and requirements associated with transferring the interest in a community apartment project are potentially problematic.

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?

A planned development is comprised of membership, each of whom owns a separate lot or parcel, with a common area that is either jointly owned or owned by an association. Accordingly, we anticipate that a transfer via RTODD would encounter similar issues with regard to potential restrictions and approval

requirements as a community apartment project. The more parties involved, the more likely a title conflict or dispute arises.

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?

We do not see a legal problem with using a RTODD to transfer property in an age-restricted community, though a practical problem is that the beneficiary may not be able to occupy the property due to their age if prohibited by the community.

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

We continue to hold the view that allowing a RTODD to be conveyed into a form of trust would be problematic. For instance, we are concerned that a transfer into a trust by the settlor of that trust can't take place upon the death of the settlor. The RTODD has no effect on title until the grantor dies, and at that point it is too late to convey the property into a trust, even if the trust agreement has been previously created.

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

We advocate against allowing a RTODD to be allowed to convey into any form of trust. If the grantor under a RTODD would like the protections and tax benefits afforded by placing the property in a trust, said party should transfer the property into a trust while still alive and competent to make a conscious decision.

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

Under California law, public entities are required to consent to conveyance of an interest in real property prior to recordation of the deed conveying said interest. Due to this requirement, the status of title to real property conveyed to a public entity via RTODD could become unclear.

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

While we do not see a legal issue with naming a nonprofit as a beneficiary of a RTODD, there are a number of practical problems that could arise if the nonprofit has been dissolved, or otherwise does not want the property to which it has been named beneficiary.

Thank you for your consideration of our comments on this matter. Please do not hesitate to contact us should you wish to discuss this issue further.

Respectfully,

A handwritten signature in black ink, appearing to be 'C. Page', written in a cursive style.

Craig C. Page
Executive Vice President
and Counsel



December 6, 2018

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California Law Revision Commission
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Craig C. Page
Executive Vice President
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