

Memorandum 2019-28

**Revocable Transfer on Death Deed: Follow-Up Study
(Draft Tentative Recommendation)**

At its April meeting, the Commission¹ concluded the process of considering the issues that have been raised regarding the revocable transfer on death deed (“RTODD”).

The attached staff draft tentative recommendation reflects all of the Commission’s decisions on those issues. It also asks the threshold question of whether the RTODD should continue in effect beyond its statutory sunset date of January 1, 2021.

There are two new substantive issues that the Commission should consider in connection with the draft tentative recommendation. They are discussed below.

The Commission needs to decide whether to approve the attached draft as a tentative recommendation, with or without changes. If approved, it will be circulated for public comment, with a proposed deadline of August 15, 2019. That date should provide sufficient time for organizations to submit comment for the Commission’s consideration at its September 26, 2019, meeting.

Unless otherwise indicated, all statutory references in this memorandum are to the Probate Code.

POSSIBLE ADDITIONAL REFORM

The staff has learned of a rule in the trust law that might serve as a model for a useful reform of the RTODD statute. It is explained below.

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.

Notice to Heirs of Trustor

Under Section 16061.7, a trustee must serve notice when specified events occur. One of those events is the trust becoming irrevocable due to the death of a settlor.² Such notice must be served on all beneficiaries of the trust *and also on the decedent's heirs*.³

It seems obvious why notice to trust beneficiaries is required. Their interests in the trust may have vested and they need to pay attention to ensure that the trust is administered correctly and they receive whatever property they are due.

Why would the law also require notice to the deceased trustor's heirs? Presumably, the purpose is to alert the heirs that the trust exists and will operate to dispose of the deceased trustor's property. If the trust is invalid, it is possible that the property that is purported to be governed by the trust would instead fall into the decedent's probate estate, where it might be distributed to heirs through intestate succession.

This means that heirs have an interest in the trust that might justify bringing an action to contest the validity of the trust. That provides an important check on fraud, which might not exist if only the beneficiaries of the trust were notified that it had become irrevocable. If the beneficiaries are satisfied with their gifts under the trust, they might have little incentive to bring an action contesting the trust, even if there is evidence of misconduct in its formation.

Require Notice to Heirs of RTODD Beneficiary?

The same policy considerations would seem to argue in favor of giving notice to a deceased transferor's heirs when a decedent dies and an RTODD operates. If an RTODD is successfully contested, the property that the RTODD purports to transfer would instead remain in the decedent's probate estate. It might then be transferred to the heirs through intestate succession. Thus, the heirs would have an interest in the RTODD property sufficient to provide an incentive to contest an RTODD that appears to be invalid. The beneficiary would not have the same incentive.

Such notice would also be valuable because of the short time provided for bringing a fully effective contest. Under the existing statute, a contest must be

2. Section 16061.7(a)(1).

3. Section 44 (“Heir” means any person, including the surviving spouse, who is entitled to take property of the decedent by intestate succession under this code.”). Heirs may include a person's surviving children, parents, siblings, grandparents, aunts and uncles, or specified relations of a predeceased spouse. Section 6402.

filed and a lis pendens recorded within 120 days of the transferor's death or the remedies available on a successful contest will be limited; the court will not be able to take any remedial action that would defeat the rights of a bona fide purchaser or encumbrancer.⁴

Requiring notice to heirs when an RTODD operates would provide some additional protection against fraud and undue influence. It would allow those with a potential interest in the property to evaluate the validity of the transfer and take prompt action to contest if the RTODD is believed to be invalid.

The only disadvantage of the requirement would be the slight additional hassle and cost associated with giving the required notice. Presumably, that would be the duty of the beneficiary and could be built into the existing process for effecting the transfer of title pursuant to an RTODD. Thus:

§ 5682. Effectuating transfer

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

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

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

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

(e)(1) The beneficiary shall serve notice on the transferor's heirs.

(2) The notice shall consist of a copy of the revocable transfer on death deed and a copy of the transferor's death certificate.

(3) The beneficiary shall, for purposes of this subdivision, rely on any final judicial determination of heirship, known to the beneficiary, but the beneficiary shall have discretion to make a good faith determination by any reasonable means of the heirs of the transferor in the absence of a final judicial determination of heirship known to the beneficiary.

(4) The beneficiary need not provide a copy of the notice to an heir who is (1) known to the beneficiary but who cannot be located

4. Section 5694.

by the beneficiary after reasonable diligence, or (2) unknown to the beneficiary.

(5) The notice shall be served by any of the methods described in Section 1215 to the last known address.

Comment. Section 5680(e) is added to require that a beneficiary of a revocable transfer on death deed provide notice to heirs when the transferor has died.

Paragraphs (3) through (5) of subdivision (e) are drawn from Section 16061.7(c)-(e).

As noted in the Comment, the last three paragraphs are drawn nearly verbatim from similar rules in existing Section 16016.7.

It occurs to the staff that some laypeople would have a difficult time determining who are the deceased transferor's "heirs." That determination would require a close reading of the fairly complicated rules of intestate succession. A simpler alternative would be to replace "heirs" with a list of close relatives who are the most likely to be heirs (e.g., surviving spouse, children, parents, grandparents, siblings, nieces, nephews, and first cousins). That list could be shortened (perhaps to remove cousins, nieces, and nephews) or extended (to include children, parents, siblings of predeceased spouses).

It might also be helpful to provide an incentive for compliance with the notice requirement. That could perhaps be achieved by adjusting an existing provision that conditions the protection of purchasers or encumbrancers of RTODD property on the beneficiary taking certain steps. Thus:

§ 5682. Protection of third parties

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

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

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

(c) An affidavit affirming compliance with subdivision (e) of Section 5680 was recorded for the property.

Comment. Section 5682 is amended to condition the protections afforded by the section on recordation of an affidavit affirming compliance with the notice requirement in Section 5680(e).

Under that provision, failure to record the specified affidavit would make it difficult or impossible to sell or encumber the property.

Importantly, the proposed rule would be conditioned on recording an affidavit affirming that notices were served, rather than on actual service of the notices. This would ensure that the effect of the rule could be determined based on title records, without the need to research any off-record information. That approach creates some space for misconduct (recording of a false affidavit) but is required for marketability.

The Commission should consider whether it is interested in including such a reform, with or without changes, in the tentative recommendation. If the Commission decides to do so, the staff could add the necessary provisions and narrative explanation to the attached draft and provide it to the Commission's Chair for approval, before the tentative recommendation is released. The alternative would be to bring a revised draft of the tentative recommendation to the August meeting for the Commission's approval. Given the January 1, 2019 deadline for completion of this study, **the staff recommends against postponing approval of the tentative recommendation to address this issue further.** It could always be revisited when the Commission considers comment on the tentative recommendation.

LIABILITY FOR TRANSFEROR'S UNSECURED DEBTS

In preparing the draft legislation, the staff spotted what seems to be a problem with the proposed law's treatment of the beneficiary's liability for the transferor's unsecured debts. It is discussed below.

Existing Law

Under existing law, an RTODD beneficiary is personally liable for the transferor's unsecured debts, up to the value of the property received.⁵

However, if a proceeding to administer the deceased transferor's estate is commenced, the beneficiary is liable to the estate for restitution of the property received, for the purpose of paying the transferor's unsecured debts.⁶ In prior memoranda, the provision on restitution liability has been referred to as the

5. Section 5672.

6. Section 5676(d), (f).

“property return provision.” That term will be used in the remainder of this memorandum.

If the property return provision is enforced, the transferor is no longer personally liable for the deceased transferor’s unsecured debts.

That approach is binary. The beneficiary will either be liable to the decedent’s creditors or to the estate. One way or another, the beneficiary will be liable.

Proposed Law

At a prior meeting, the Commission decided to repeal the property return provision.⁷ In its place, the Commission approved the addition of two new provisions:

- The first would authorize a beneficiary to petition the deceased transferor’s personal representative for a determination of the beneficiary’s share of liability for the transferor’s unsecured debts.⁸ That liability would be determined by applying the general abatement rules, as if the property received by the beneficiary had instead been included in the transferor’s probate estate.⁹ On payment of the share of liability determined by the personal representative, the beneficiary would have no further personal liability to the decedent’s creditors.¹⁰
- The second new provision would authorize a beneficiary to return property received by RTODD to the estate for administration.¹¹ For that purpose, the RTODD would be treated as if it were a specific gift in the beneficiary’s will.¹² On return of the property under this provision, the beneficiary would have no further personal liability to the decedent’s creditors.¹³

Both of the new procedures would be optional.

Liability to the Estate

As noted above, under existing law, a beneficiary of an RTODD will either be personally liable to the transferor’s unsecured creditors or, if administration of the transferor’s estate is commenced, will be liable to the estate for restitution of the property received pursuant to the RTODD.

7. Minutes (Aug. 2018), p. 13.

8. Minutes (Dec. 2018), p. 7.

9. See proposed Section 5676 *infra*.

10. See proposed Section 5674(a) *infra*.

11. Minutes (Dec. 2018), p. 7.

12. See proposed Section 5678 *infra*.

13. See proposed Section 5674(a) *infra*.

Under the proposed law, a beneficiary would still be liable to the transferor's creditors. However, *the beneficiary's liability to the estate would be elective, at the option of the beneficiary.* There would be no way for the estate to compel the beneficiary to pay the estate a share of the liability for the decedent's unsecured debts.

That would be a significant substantive change from existing law. It could allow a beneficiary to avoid liability entirely, if the transferor's creditors all choose to seek payment from the estate, rather than enforcing the transferor's debts against the beneficiary personally.

Recall that the main purpose of repealing the property return provision was to eliminate a potential cloud on title.¹⁴ During the three-year period in which the estate could require the return of RTODD property, some title insurers might be unwilling to insure that the beneficiary has clear title.

When the Commission considered the possible repeal of the property return provision, there was no discussion of limiting the beneficiary's liability to the transferor's estate. The staff believes that possible consequence was overlooked and recommends that the proposed law be revised to address the oversight.

That could be achieved relatively simply. Rather than creating an *optional* procedure that could be used by a beneficiary to request a determination of the beneficiary's share of liability for the transferor's unsecured debts, the new procedure could be made mandatory, whenever there is an open probate.¹⁵

Under that approach, the general structure of existing law would be preserved: The beneficiary would either be liable to the transferor's creditors (when there is no open probate) or liable to the transferor's estate (if probate has commenced).

That approach would still accomplish the reform's main purpose. The beneficiary's liability to the estate would be personal and would therefore not create any cloud on the title of property transferred by the RTODD. As revised, the reform would achieve that goal without also limiting the beneficiary's liability.

The staff recommends that a change along those lines be made. That is the approach taken in the attached draft. If the Commission agrees with the staff recommendation, no change needs to be made to the draft. If the Commission

14. See Memorandum 2018-33, pp. 15-23.

15. See proposed Section 5676 *infra*.

disagrees, the staff will revise the draft consistent with the Commission's decision.

CONCLUSION

After considering the issues discussed above, the Commission needs to decide whether to approve the attached draft, with or without changes, for distribution as a tentative recommendation.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Revocable Transfer on Death Deed: Follow-Up Study

May 2019

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN August 15, 2019.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In 2015, legislation was enacted to authorize the use of a revocable transfer on death deed to transfer real property on death, without probate (Probate Code Sections 5600-5696). That statute will be repealed by its own terms on January 1, 2021, unless that date is extended or repealed.

The same legislation directed the Law Revision Commission to study the effect of the revocable transfer on death deed and make recommendations for the reform of the law based on its findings.

Earlier in this study, the Commission identified an urgent problem with the operation of the statute and recommended a narrow legislative fix. Implementing legislation was enacted in 2018 (Chapter 65 of the Statutes of 2018).

This tentative recommendation proposes a number of further improvements to existing law. The Commission requests public comment on each of those proposed reforms.

The tentative recommendation also requests general comment on the threshold question of whether the revocable transfer on death deed statute should continue in effect beyond January 1, 2021. The Commission has not yet taken a position on that question.

This tentative recommendation was prepared pursuant to Chapter 179 of the Statutes of 2016 and Section 21 of Chapter 293 of the Statutes of 2015.

REVOCABLE TRANSFER ON DEATH DEED: FOLLOW-UP STUDY

1 In 2015, legislation was enacted to authorize the use of a revocable transfer on
2 death deed (“RTODD”) to transfer real property on death, without probate.¹ By its
3 terms, that statute will repeal on January 1, 2021, unless the sunset date is
4 extended or repealed before it operates.

5 The legislation also directed the Law Revision Commission to study the
6 RTODD statute and address all of the following matters:

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

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

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

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

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

17 (6) Whether it is feasible and appropriate to expand the revocable transfer on
18 death deed to include the following:

19 (A) The transfer of stock cooperatives or other common interest developments.

20 (B) Transfers to a trust or other legal entity.²

21 This tentative recommendation presents the Commission’s preliminary findings
22 on those issues, along with proposed legislation to improve the effectiveness of the
23 RTODD statute.³ The Commission requests public comment on the legislation
24 proposed in this tentative recommendation.

25 The Commission has not yet reached any conclusion about whether the RTODD
26 statute should continue in effect after January 1, 2021. The Commission
27 specifically requests comment on that important issue.

28 OVERVIEW OF STUDY

29 As a first step in this study, the Commission contacted the major stakeholder
30 groups that are likely to have had practical experience with the effect of RTODDs
31 in California. The Commission included groups that are involved in the

1. Prob. Code § 5600-5690; 2015 Cal. Stat. ch. 293.

2. 2016 Cal. Stat. ch. 179; 2015 Cal. Stat. ch. 293, § 21.

3. Earlier in this study, the Commission identified an urgent problem with the operation of the statute and recommended a narrow legislative fix. Implementing legislation was enacted, on an urgency basis, in 2018. See *Revocable Transfer on Death Deed: Recordation*, 45 Cal. L. Revision Comm’n Reports 1 (2018); 2018 Cal. Stat. ch. 65.

1 administration of estates⁴ and real property transfers,⁵ as well as groups that focus
2 on prosecuting financial crimes⁶ and protecting seniors.⁷ All of those groups were
3 notified of the Commission’s study and requested to gather information about
4 practical experience under the law and share it with the Commission. Materials
5 relating to the study were also distributed to the Commission’s existing mailing
6 list for persons interested in the Commission’s work on estate planning matters
7 generally.⁸

8 As a next step, the Commission reviewed the appellate case law in those states
9 that have authorized the use of RTODDs for the longest time.⁹ The goal of that
10 review was to look for evidence of problems with the use of RTODDs in those
11 states, which might also pose problems in California.

12 Finally, the Commission reviewed input from interested groups and individuals.
13 The Commission greatly appreciates that input, which helped the Commission to
14 identify and develop a number of reforms that would improve the operation of the
15 RTODD statute.

16 SUMMARY OF FINDINGS AND RECOMMENDATIONS

17 As discussed above, the legislation that directed the Commission to conduct this
18 study posed a series of questions.¹⁰ Those questions, and the Commission’s
19 preliminary answers, are summarized briefly below and explained in greater detail
20 in the later sections of this report.

21 **Is the RTODD working effectively?**

22 Early in this study, the Commission learned of a problem that was interfering
23 with the operation of the RTODD. There was uncertainty about whether the law
24 required recordation of the “Common Questions” part of the statutory form. This
25 was leading some title insurers to decline to issue policies where that document
26 had not been recorded. The Commission recommended legislation to make clear

4. These included the California State Bar, California Lawyers Association, the Conference of California Bar Associations, the California Judges Association, the Administrative Office of the Courts, and the California State Association of Public Administrators, Public Guardians, and Public Conservators.

5. These included the California Land Title Association, the California Escrow Association, and the County Records Association of California.

6. These included the California District Attorneys Association, the Los Angeles County District Attorney’s Office, the California Police Chiefs Association, the California State Sheriff’s Association, and the California Attorney General’s Bureau of Medi-Cal Fraud and Elder Abuse.

7. These included the Congress of California Seniors, the California Alliance for Retired Americans, and Bet Tzedek.

8. At this time, the mailing list includes 240 groups and individuals.

9. The Commission did not find any California appellate decisions discussing the RTODD statute.

10. 2016 Cal. Stat. ch. 179; 2015 Cal. Stat. ch. 293, § 21.

1 that recordation of that document is not required.¹¹ That legislation was enacted in
2 2018.¹²

3 The Commission later learned that some title insurers view Probate Code
4 Section 5676 as creating a cloud on title. Under that section, an RTODD
5 beneficiary might be required to return RTODD property to the decedent's estate
6 to pay the decedent's unsecured debts. Reportedly, some title insurers have
7 declined to issue policies during the three-year period in which such restitution
8 may be required. To cure that problem, the Commission recommends that Section
9 5676 be repealed and replaced with other mechanisms for enforcing a
10 beneficiary's liability for a deceased transferor's debts. The proposed mechanisms
11 would not directly burden the transferred real property and so would not create
12 any cloud on title.

13 The Commission found no other problems with the effective operation of the
14 RTODD.

15 **Should the RTODD be continued?**

16 The Commission is reserving judgment on this question until after it has
17 received public comment on this tentative recommendation.

18 **Is the RTODD subject to misuse or misunderstanding?**

19 The Commission does not believe that an RTODD is any more prone to misuse
20 or misunderstanding than any other instrument that can be used to transfer title to
21 property. To the contrary, the RTODD is probably less prone to misunderstanding
22 than other common property transfer instruments (e.g., a grant deed) because the
23 statutory form is accompanied by an extensive "Common Questions" guidance
24 document. In addition, the RTODD is limited by the mandatory statutory form to
25 one simple application: the transfer of an owner's entire interest in specified
26 property to named beneficiaries in equal shares. The form does not permit
27 contingencies or alternative beneficiaries. This enforced simplicity should help to
28 avoid ambiguities and mistakes that can arise when laypeople draft their own
29 instruments.

30 **What changes should be made to the RTODD or the law associated with the deed to**
31 **improve its effectiveness and to avoid misuse or misunderstanding?**

32 The proposed law includes a number of recommended reforms to improve the
33 effectiveness of the RTODD and avoid misuse and misunderstanding:

- 34 • Clarify the types of property that can be transferred by RTODD.
35 • Clarify how to name a trust as beneficiary.

11. See *Revocable Transfer on Death Deed: Recordation*, *supra* note 3.

12. 2018 Cal. Stat. ch. 65.

- 1 • Resolve a technical problem that could arise when naming a public entity as
2 beneficiary.
- 3 • Clarify the execution formalities for an RTODD.
- 4 • Make a technical, terminological correction in the provision that determines
5 the effect of conflicting instruments.
- 6 • Extend the time to record and thereby preserve the effect of third party
7 interests in property transferred by an RTODD.
- 8 • Add guidance to the “Common Questions” document to address the effect of
9 an RTODD on a mobilehome.
- 10 • Repeal the provision that governs return of property to the transferor’s estate
11 for use in paying the transferor’s unsecured debts; replace that provision
12 with alternative provisions for payment of the beneficiary’s share of those
13 debts.
- 14 • Make technical improvements to the provision that determines the scope of
15 a beneficiary’s personal liability for the transferor’s unsecured debts.
- 16 • Make clear that the beneficiary of a revoked RTODD has standing to contest
17 the validity of the revocation, but only after the transferor’s death.

18 **Has the RTODD been used to perpetrate financial abuse on property owners and, if so, how**
19 **should the law associated with the deed be changed to minimize this abuse?**

20 The Commission’s research suggests that an RTODD is no more prone to
21 financial abuse than any other instrument that can be used to transfer title to real
22 property.

23 The Commission recommends one change to help protect against financial
24 abuse. If an RTODD is revoked under existing law, the beneficiary may be the
25 only person interested in contesting the revocation, but might not have standing to
26 do so. As a result, there might be no effective way to prove that the revocation was
27 procured through fraud or undue influence. To eliminate this problem, the statute
28 should be revised to make clear that the beneficiary of a revoked RTODD can
29 contest the validity of the revocation.

30 **Is it feasible and appropriate to expand the RTODD to include the transfer of stock**
31 **cooperatives or other common interest developments?**

32 The Commission recommends that stock cooperatives be excluded from the
33 effect of an RTODD. Ownership of an interest in a stock cooperative is evidenced
34 by a share of corporate stock, not a deed. For that reason, the RTODD would not
35 be an appropriate instrument to convey ownership of an interest in a stock
36 cooperative.

37 Other types of common interest developments (community apartment projects,
38 condominium projects, planned developments) do not have the same problem.
39 Ownership of interests in those developments are evidenced by and can be

1 conveyed by deed. The Commission recommends that those other types of
2 common interest developments be subject to transfer by RTODD.

3 **Is it feasible and appropriate to expand the RTODD to include transfers to a trust or other**
4 **legal entity?**

5 The Commission found good reasons to allow use of an RTODD to transfer
6 property to a trust. The only apparent disadvantage is the possibility that the
7 transferor will not name the trust with sufficient clarity and certainty, especially if
8 the transferor is a layperson. The Commission recommends (1) that the law be
9 revised to expressly permit a transferor to name a trust as a beneficiary of an
10 RTODD, and (2) that the statutory form and “Common Questions” document be
11 revised to provide guidance on how to do so.

12 The Commission also recommends that the law be revised to expressly permit
13 the RTODD to name other legal entities as beneficiaries. This would facilitate
14 charitable giving to public entities and nonprofits. The proposed law would make
15 two related reforms, which would: (1) allow a court to apply the doctrine of *cy*
16 *pres* if an RTODD transferring property for a charitable purpose fails because the
17 gift is disclaimed or the beneficiary no longer exists, and (2) make technical
18 adjustments to an existing provision that governs recordation of a deed that
19 transfers property to a public entity.

20 EXPERIENCE IN OTHER STATES

21 The Commission reviewed the appellate case law in the nine states that had
22 authorized the use of an RTODD¹³ for at least 10 years.¹⁴ Those states are listed
23 below (with the dates of authorization noted in parentheses):

- 24 Missouri (1989)¹⁵
25 Kansas (1997)¹⁶
26 Ohio (2000)¹⁷
27 Arizona (2001)¹⁸
28 New Mexico (2001)¹⁹
29 Nevada (2003)²⁰
30 Colorado (2004)²¹

13. Those states use their own terminology to describe a revocable transfer on death deed. This tentative recommendation uses “RTODD” as a convenient aggregate shorthand for referring to the similar instruments in the other states.

14. See generally CLRC Staff Memoranda 2016-36 and 2019-18.

15. Mo. Rev. Stat. § 461.025.

16. Kan. Stat. Ann. § 59-3501.

17. Ohio Rev. Code Ann. § 5302.22.

18. Ariz. Rev. Stat. § 33-405.

19. N.M. Stat. Ann. § 45-6-401.

20. Nev. Rev. Stat. § 111.109.

1 Arkansas (2005)²²
2 Wisconsin (2005)²³

3 The Commission reviewed every case that mentioned a “transfer on death deed”
4 or “beneficiary deed,” or that included a citation to one of the statutes that
5 authorize and govern such deeds. There were well over a hundred such cases.

6 The results of the Commission’s research are summarized below, by subject
7 matter.

8 **Financial Abuse**

9 The Commission found 17 cases in which an RTODD was contested on grounds
10 of fraud, undue influence, or transferor incapacity. The allegations were proven in
11 only 6 of the cases.

12 The facts in those cases did not identify or suggest that an RTODD has any
13 greater or special vulnerability to abuse, as compared to other instruments that can
14 be used to transfer property on death.

15 An RTODD operates outside of court review and can be executed without the
16 involvement of counsel. Those circumstances might increase the risk of abuse.
17 However, the same is true of other instruments that can be used to transfer title to
18 real property (e.g., an intervivos trust or grant deed). The Commission found
19 nothing to suggest that an RTODD was more likely to be the instrument of
20 financial abuse than those other common instruments.

21 The Commission did find one interesting trend in the cases that it reviewed.
22 Non-family caregivers were the perpetrators in half of the cases of confirmed
23 financial abuse. This supports the notion that elderly people are particularly
24 vulnerable to financial abuse by their caregivers.

25 Existing California law already provides protection against such abuse. In
26 addition to criminal penalties,²⁴ there is a statutory presumption that a gift to a
27 non-family caregiver was the product of fraud or undue influence.²⁵ Unless the
28 caregiver can rebut that presumption by clear and convincing evidence, the gift to
29 the caregiver will fail. The California RTODD statute expressly provides that a
30 beneficiary of an RTODD can be challenged under the existing presumption of
31 fraud or undue influence.²⁶

21. Colo. Rev. Stat. § 15-15-401.

22. Ark. Code Ann. § 18-12-608.

23. Wisc. Stat. § 705.15.

24. See Penal Code § 368(e).

25. Prob. Code § 21380(a)(3).

26. Prob. Code § 5690(a)(1).

1 The California RTODD statute also provides a general remedy that can be used
2 to invalidate an RTODD that was the product of fraud, undue influence, or
3 mistake.²⁷

4 In summary, while there are a handful of cases in other states in which the
5 RTODD was used to perpetrate financial abuse, the Commission did not find any
6 evidence to suggest that the instrument has any special vulnerability to such abuse.

7 **Mistake**

8 A number of the cases the Commission found involved a mistake by the
9 transferor that affected the validity of an RTODD or its effect. The nature of those
10 errors and the features of existing California law designed to minimize them are
11 discussed below.

12 *Complicated Instruments*

13 Some of the mistakes that occurred in other states were the result of errors in the
14 drafting of complicated instruments. For example, in one case the transferor tried
15 to make the operation of the RTODD contingent on the beneficiary paying all
16 property taxes during the transferor's life. Such a condition was not permissible
17 under the authorizing statute.²⁸

18 Such errors should not be possible in California, because California's statute
19 does not permit user-drafted instruments. An RTODD must be executed using a
20 fixed statutory form.²⁹

21 Furthermore, California's RTODD form only provides for a single simple type
22 of transfer — the RTODD conveys a single owner's entire interest in described
23 property on the owner's death, to be divided equally between named beneficiaries.

24 There is no option for execution by joint owners,³⁰ no option for any limitation
25 on the interest conveyed (e.g., the reservation of a life estate),³¹ no option for
26 unequal beneficiary shares,³² and no option for *per stirpes* distribution of a
27 deceased beneficiary's share.

28 That enforced simplicity should prevent errors that could arise if laypeople were
29 permitted to draft their own instruments.

30 *Misunderstanding*

31 The case law also included errors that arose from simple misunderstanding of
32 the process used to execute an RTODD or the legal effect of an RTODD. These

27. Prob. Code §§ 5690(a)(2), 5696(a).

28. *Bolz v. Hatfield*, 42 S.W.3d 566 (Missouri 2001).

29. Prob. Code § 5642.

30. Prob. Code § 5652.

31. *Id.*

32. Prob. Code § 5652(a)(3).

1 cases involved execution errors, misdescribed property, and use of the wrong type
2 of form.³³ Those kinds of errors can arise in any context and cannot be entirely
3 eliminated.

4 However, the California RTODD statute is designed to minimize the problem.
5 As noted above, California law requires the use of a statutory form, which permits
6 only a single simple type of property transfer on death. Furthermore, the form
7 itself provides instructions and there is an extensive “Common Questions”
8 document that provides guidance on the legal effect of an RTODD and the
9 procedure for executing or revoking one.³⁴

10 **Creditor Liability**

11 Some of the cases from other states involved uncertainty about the liability of an
12 RTODD beneficiary for the debts of the transferor.³⁵

13 That kind of problem should not arise in California. This state’s RTODD statute
14 provides detailed and comprehensive rules on a beneficiary’s liability for the
15 decedent’s debts.³⁶

16 **Conclusion**

17 The case law from other RTODD states confirms that an RTODD, like any other
18 kind of instrument that transfers real property, can be used to perpetrate financial
19 abuse. However, the Commission did not find any evidence to suggest that an
20 RTODD is more susceptible to such abuse than any other instrument that transfers
21 real property.

22 The case law also confirmed that those who execute RTODDs sometimes make
23 mistakes. Again, the Commission did not find any evidence that an RTODD is any
24 more likely to produce mistakes than any other kind of legal instrument. To the
25 contrary, the California statute includes features that should significantly minimize
26 the risk of error (i.e., the mandatory use of a statutory form with instructions;
27 restriction to a single simple type of transfer; and the inclusion of an extensive
28 “Common Questions” guidance document).

29 In short, the Commission’s review of the appellate cases of other RTODD states
30 did not reveal any problem with the use of RTODDs that does not also exist when
31 other kinds of instruments are used to transfer real property outside of probate and
32 without the assistance of counsel.

33. See, generally, CLRC Staff Memoranda 2016-36, pp. 5-8.

34. Prob. Code § 5642(b).

35. See, generally, CLRC Staff Memoranda 2016-36, pp. 8-9.

36. See Prob. Code §§ 5670-5676.

1 PROPERTY THAT CAN BE TRANSFERRED BY RTODD

2 In assigning this study, the Legislature specifically directed the Commission to
3 consider

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

6 (A) The transfer of stock cooperatives or other common interest
7 developments.³⁷

8 That question arises because the existing RTODD statute limits the kinds of real
9 property that can be transferred by RTODD. It does so by providing a special
10 limited definition of the term “real property.”

11 “Real property” means any of the following:

12 (a) Real property improved with not less than one nor more than four residential
13 dwelling units.

14 (b) A condominium unit, including the limited common elements allocated to
15 the exclusive use thereof that form an integral part of the condominium unit.

16 (c) A single tract of agricultural real estate consisting of 40 acres or less that is
17 improved with a single-family residence.³⁸

18 The limitations imposed by that definition and the Commission’s recommended
19 adjustments to them are discussed below.

20 **Residential Property Limitation Generally**

21 The general purpose of the definition of “real property” appears to be to
22 preclude the use of an RTODD to transfer commercial property.

23 The Commission did not recommend that limitation. Nor did the Commission
24 find any legislative history that explains the policy served by the limitation. The
25 limitation may have been based on an assumption that the transfer of commercial
26 real property would typically be more complicated, and therefore more likely to
27 result in errors, than a transfer of residential real property.

28 The Commission does not recommend any change to the existing rule that an
29 RTODD cannot be used to transfer commercial real property. Such a rule may be
30 beneficial in reducing the complexity and risk of error involved in executing an
31 RTODD. Furthermore, the Commission generally defers to clear legislative policy
32 decisions, especially when they are recent.

33 However, the Commission found two technical problems with the expression of
34 the residential property limitation. Those problems are discussed below.

37. 2016 Cal. Stat. ch. 179; 2015 Cal. Stat. ch. 293, § 21.

38. Prob. Code § 5610.

1 *Commercial Condominiums*

2 Existing law includes a condominium unit in the definition of real property, but
3 does not expressly preclude the use of an RTODD to transfer a commercial or
4 industrial condominium unit. This appears to have been a drafting oversight, rather
5 than a policy choice. For that reason, the Commission recommends that existing
6 law be revised to provide that an RTODD can only be used to transfer a residential
7 condominium unit.³⁹

8 *Timing*

9 Under existing law, it is not clear when the limitation established by the special
10 definition of real property is to be evaluated: When the RTODD is executed or
11 when it operates on the transferor’s death? The use of property can change over
12 time, so the timing could make a difference.

13 As noted above, the residential property limitation was likely intended to reduce
14 the risk of execution errors, on the assumption that a transfer of business property
15 is typically more complicated than a transfer of residential property. If that is
16 correct, then the residential property limitation should be evaluated at the time of
17 execution of the RTODD. That is when any execution errors would occur and the
18 simplification created by the residential property limitation would have a
19 beneficial effect.

20 The Commission did not find any policy rationale for imposing the residential
21 property limitation at the time of the transferor’s death.

22 For those reasons, the Commission recommends that the law be revised to make
23 clear that the residential property limitation should be evaluated as of the time of
24 execution of the RTODD.⁴⁰

25 **Common Interest Developments**

26 A common interest development is a real property development where
27 ownership of a separate interest (a lot, unit, or apartment) is coupled with a shared
28 interest in common area property.⁴¹ There are four kinds of common interest
29 developments, each with different distinguishing features: a community apartment
30 project, a condominium project, a planned development, and a stock cooperative.⁴²

31 The existing definition of “real property” includes only a condominium unit.⁴³
32 The Commission was directed to consider whether the other types of common
33 interest development should also be included.

39. See proposed Prob. Code § 5610(a)(2) *infra*.

40. See proposed Prob. Code § 5610(c) *infra*.

41. See Civ. Code §§ 4095 (“common area”), 4100 (“common interest development”), 4185 (“separate interest”).

42. See Civ. Code §§ 4105 (community apartment project), 4125 (condominium project), 4175 (planned development), 4190 (stock cooperative).

43. Prob. Code § 5610(b).

1 *Stock Cooperatives*

2 A stock cooperative is a kind of common interest development where the
3 entirety of the development is owned by a corporation formed for that purpose.⁴⁴
4 The owners of separate interests hold shares in the corporation, which entitle them
5 to the exclusive right to occupy a specified apartment. Owners do not hold title to
6 any part of the development.⁴⁵

7 As a result, ownership of a separate interest in a stock cooperative is not
8 evidenced or conveyed by deed. Instead, it is conveyed by the sale of a share of
9 stock. For that reason, a deed would not be an appropriate instrument to use to
10 transfer ownership of a separate interest in a stock cooperative. A deed conveys
11 title to real property, not the ownership of a share of stock.

12 To avoid any confusion or legal problems that would result from the mismatch
13 between the use of a deed and the form of ownership in a stock cooperative, the
14 Commission recommends that stock cooperatives continue to be excluded from
15 the definition of “real property” that is used in the RTODD statute.

16 That approach would deny owners in stock cooperatives the benefits of using an
17 RTODD. However, it is possible that a share of ownership in a stock cooperative
18 could be transferred on death, outside of probate, under the existing Uniform TOD
19 Security Registration Act.⁴⁶ The Commission plans to conduct a separate study of
20 that possibility, under its general authority to study the Probate Code.⁴⁷

21 *Community Apartment Projects and Planned Developments*

22 The Commission did not find any good policy reason to exclude community
23 apartment projects or planned developments from the definition of “real property.”
24 They are similar to condominiums in that all of those types of property are made
25 up of separate interests (with appurtenant interests in common area) that can be
26 transferred by deed. There do not appear to be any distinctions between those
27 types of property that would present an obstacle to transfer by RTODD. The
28 proposed legislation would revise the definition of “real property to include
29 community apartment projects and planned developments.⁴⁸

30 *Irregular Language*

31 The language used in the existing RTODD statute to refer to a condominium
32 unit is not consistent with the language used in common interest development law.

44. Civ. Code § 4190.

45. *Id.*

46. Prob. Code §§ 5500-5512.

47. 2018 Cal. Stat. res. ch. 158.

48. See proposed Prob. Code § 5610(a)(2) *infra*.

1 This irregularity could cause confusion. The proposed law would revise the law to
2 use established terms of art to refer to common interest developments.⁴⁹

3 *Occupancy Restrictions*

4 In some common interest developments, the owners of separate interests are not
5 entirely free to choose who will occupy the property. The governing documents of
6 the development may require that the board approve new occupants or impose an
7 enforceable age restriction.

8 The Commission considered whether that possibility should preclude the use of
9 an RTODD to transfer title in such a common interest development. The
10 Commission concluded that it should not, for three reasons:

- 11 (1) The issue is not limited to common interest developments. Any subdivision
12 can have enforceable covenants that restrict occupation (e.g., an age
13 restriction).
- 14 (2) The issue is not limited to property transferred by RTODD. It would also
15 apply to property transferred by will, trust, or an intervivos conveyance.
- 16 (3) It seems unlikely that such restrictions would affect the ability to transfer
17 title. For example, when a senior living in an age-restricted community dies,
18 someone is going to inherit the property. In many cases the recipient will not
19 meet the age restriction for occupation. Presumably, if title is transferred to
20 a person who is not eligible to occupy the property, the new owner could
21 sell or lease the property to someone who is eligible to occupy. This would
22 allow the new owner to realize the value of the property, notwithstanding
23 the restriction on occupation.

24 The Commission intends to conduct a separate study of this issue, as it applies to
25 all at-death transfers of real property.

26 **Agricultural Land**

27 Existing law only permits the use of an RTODD to transfer agricultural land if
28 that land consists of “a single tract of agricultural real estate consisting of 40 acres
29 or less that is improved with a single-family residence”⁵⁰ The term “agricultural
30 real estate” is not defined. Nor is there any other use of that term in the California
31 Codes. This reliance on an undefined term could cause confusion.

32 *Definition by Reference to Use Restrictions*

33 The proposed law would define the term as “land that is limited to agricultural
34 use by law or by any recorded agreement or title restriction.”⁵¹ Importantly, that
35 language would depend on use restrictions that are part of the public record. No
36 off-record information would bear on whether a tract is “agricultural.”

49. See proposed Prob. Code § 5610(a)(2), (b)(1) *infra*.

50. Prob. Code § 5610(c).

51. See proposed Prob. Code § 5610(b)(2) *infra*.

1 *Number of Dwelling Units*

2 The meaning of the reference to property that is “improved by a single-family
3 residence” is not entirely clear. It could mean property that is improved with only
4 one single-family residence. Or it could mean property that is improved with at
5 least one single-family residence.

6 The latter interpretation seems more likely. Under existing Probate Code Section
7 5610(a), the definition of “real property” includes real property that is “improved
8 with not less than one nor more than four residential dwelling units.”⁵² The
9 Legislature thus chose to allow use of the RTODD to transfer as many as four
10 dwelling units on a single parcel of land. There is no clear reason why the same
11 rule should not also apply to agricultural land.

12 The proposed law would revise existing law to provide that “real property”
13 includes agricultural land that is improved with one to four dwelling units.⁵³

14 **Coordination of Provisions**

15 As currently drafted, Probate Code Section 5610(a) defines real property as
16 “[r]eal property improved with not less than one nor more than four residential
17 dwelling units.” That broadly stated rule could be read as swallowing the narrower
18 rules in subdivisions (b) and (c).

19 The proposed legislation would revise the structure of Section 5610 to eliminate
20 any conflict between its different provisions.⁵⁴

21 **PERMISSIBLE BENEFICIARIES**

22 The Commission was also specifically directed to consider

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

25 ...
26 (B) Transfers to a trust or other legal entity.⁵⁵

27 That question arises because language used in the existing RTODD form,
28 including the “Common Questions” guidance document, could be read as limiting
29 beneficiaries to natural persons.

30 **Existing Law**

31 The RTODD statute’s definition of “beneficiary” simply refers to a “person.”⁵⁶
32 The Probate Code’s general definition of “person” includes legal entities.⁵⁷ Read

52. Prob. Code § 5610(a).

53. See proposed Prob. Code § 5610(a)(1), (b)(2) *infra*.

54. See proposed Prob. Code § 5610 *infra*.

55. 2016 Cal. Stat. ch. 179; 2015 Cal. Stat. ch. 293, § 21.

56. Prob. Code § 5608.

1 together, those provisions would seem to affirm that a legal entity can be the
2 beneficiary of an RTODD.

3 However, that reading was cast into doubt when the Legislature made the
4 statutory form mandatory and added the “Common Questions” page to the form.
5 The statutory form instructs that a beneficiary is to be named in the following
6 manner:

7 Print the FULL NAME(S) of the person(s) who will receive the property on
8 your death (DO NOT use general terms like “my children”) and state the
9 RELATIONSHIP that each named person has to you (spouse, son, daughter,
10 friend, etc.)...⁵⁸

11 That instruction is reaffirmed in the “Common Questions” page:

12 HOW DO I NAME BENEFICIARIES? You MUST name your beneficiaries
13 individually, using each beneficiary’s FULL name. You MAY NOT use general
14 terms to describe beneficiaries, such as “my children.” For each beneficiary that
15 you name, you should briefly state that person’s relationship to you (for example,
16 my spouse, my son, my daughter, my friend, etc.).⁵⁹

17 The reference to the beneficiary’s “full name” and the examples of the types of
18 relationships that must be stated (“spouse, son, daughter, friend, etc.”) suggest that
19 the beneficiary must be a natural person. There was enough uncertainty on this
20 point that the Legislature added the issue to the Commission’s study.⁶⁰

21 **Trust as Beneficiary**

22 The Commission received input from estate planning attorneys who have
23 encountered situations where it would be helpful to use an RTODD to transfer
24 property to a trust. For example:

- 25 • A person may wish to transfer property to an irrevocable special needs trust
26 on their death, while maintaining ownership and control of the property
27 during life.⁶¹
- 28 • Some lenders require that property be transferred out of an inter vivos
29 revocable trust when the property is refinanced. If the owner forgets to
30 convey the property back into the trust after the refinance is completed,
31 there could be problems with the operation of the trust on death. The use of
32 an RTODD to transfer property into the trust on death provides a backstop
33 to avoid such problems. Even if the owner forgets to reconvey the property
34 to the trust, the RTODD would effect the transfer on the owner’s death.⁶²

57. Prob. Code § 56.

58. Prob. Code § 5642(a).

59. Prob. Code § 5642(b).

60. 2016 Cal. Stat. ch. 179.

61. See letter from Angela Petrusha, attached to CLRC Staff Memorandum 2019-4, Exhibit p. 11.

62. See letters from Nina Whitehurst, attached to CLRC Staff Memorandum 2019-4, Exhibit p. 24.

1 The only apparent reason to prevent the use of an RTODD to transfer property
2 to a trust is that it would complicate the execution of an RTODD in a way that
3 could make mistakes more likely.

4 The most likely error would be imprecision in naming the trust. For example,
5 the transferor might name the trust without any other identifying information. That
6 could result in ambiguity where the trust has a very common name (e.g., “Jones
7 Family Trust”). Or the transferor might name the trustee of the trust without
8 making clear that the person is being named in that person’s capacity as trustee.

9 Those kinds of problems could be minimized by adding instructions to the
10 RTODD form and “Common Questions” to require that the transferor state the
11 name of the trustee, the name of the trust, and the date of execution of the trust.
12 That should provide sufficient specificity to avoid any ambiguity about the
13 identity of the trust that is being named as beneficiary.

14 The Commission recommends that the law be revised to expressly allow a trust
15 to be named as the beneficiary of an RTODD and to add advisory language along
16 the lines described above.⁶³

17 **Charitable Gifts to Legal Entities**

18 The Commission recommends that the RTODD statute be revised to permit and
19 facilitate the use of an RTODD to transfer real property to a government or private
20 nonprofit entity. Some people will wish to make a charitable donation of their
21 home to such entities. This seems especially likely for those who have no
22 surviving family or close friends.

23 The only apparent reasons against allowing such use of an RTODD are
24 technical. Those technical issues and the Commission’s recommended solutions to
25 them are discussed below.

26 *Gift to Government*

27 Under existing Government Code Section 27281, “[d]eeds or grants conveying
28 any interest in or easement upon real estate to a political corporation or
29 governmental agency for public purposes shall not be accepted for recordation
30 without the consent of the grantee....” The consent of the grantee must be
31 evidenced by the grantee’s “certificate or resolution of acceptance attached to or
32 printed on the deed or grant.”⁶⁴

33 In general, that rule makes sense as a way of ensuring that government entities
34 are not saddled with undesirable properties, without their knowledge or consent.

35 However, that rule is not needed when recording an RTODD, because
36 recordation alone does not effect a transfer of title.⁶⁵ The RTODD does not operate

63. See proposed revision of Prob. Code § 5642 *infra*.

64. Gov’t Code § 27281.

65. See Prob. Code § 5650(c).

1 until the transferor's death. Even then, the public entity named as beneficiary can
2 disclaim the gift if it is not wanted.⁶⁶

3 The proposed legislation would make existing Section 27281 inapplicable to an
4 RTODD.⁶⁷ This would allow an RTODD that names a government entity as
5 beneficiary to be recorded without the prior assent of that entity. To preserve the
6 beneficial effect of Section 27281, the proposed law would add language
7 providing that an RTODD that names a government entity as beneficiary does not
8 operate unless and until that entity records a certificate or resolution of
9 acceptance.⁶⁸

10 *Cy Pres*

11 There are certain risks associated with naming a nonprofit entity as beneficiary
12 of an RTODD. The entity's articles, bylaws, or other governing policy might
13 preclude acceptance of the gift; the entity might choose to disclaim the gift; or the
14 entity might not exist when the RTODD operates (because it dissolved or was
15 merged into another entity prior to the transferor's death). In those situations, the
16 gift will fail.

17 If such a problem were to arise under a will or trust, a court could apply the
18 equitable doctrine of *cy pres* in an attempt to effect the transferor's intentions to
19 the greatest extent possible.⁶⁹

20 The Commission recommends that the same remedy be available if a charitable
21 gift made by RTODD fails.⁷⁰

22 EXECUTION FORMALITIES

23 While the execution of an RTODD should be relatively straightforward, there
24 will always be some risk of error. A failure to properly execute an RTODD could
25 be an obstacle to obtaining title insurance if the property is later sold or
26 encumbered by the beneficiary. In the best case, this would require legal action to
27 confirm the beneficiary's ownership. In the worst case, a court might hold that the
28 error was so severe as to invalidate the RTODD.

29 The Commission recommends minor changes to the RTODD statute to reduce
30 the risk of execution error. Specifically, the law would be revised to make two
31 points clearer:

66. Prob. Code § 5652(a)(1).

67. See proposed revision of Gov't Code § 27281 *infra*.

68. *Id.*

69. See Prob. Code § 11603(c). See also 13 B. Witkin, Summary of California Law *Trusts* § 339, at 916 (11th ed. 2017) ("Where the settlor with a general charitable intent gives property in trust for a specific purpose, and for some reason that purpose cannot be carried out, a court of equity will, under the rule of *cy pres*, direct the disposition of the property to some related charitable purpose, in order to carry out the settlor's intention as nearly as possible.").

70. See proposed Prob. Code § 5658 *infra*.

- 1 (1) There are no requirements as to how an RTODD is dated, or by whom.
2 (2) Consistent with general law on acknowledgement, an RTODD does not
3 need to be signed in the presence of a notary public.⁷¹

4 The proposed law would also include an official Comment noting that any
5 inconsistency between the statutory form and general law on acknowledgment
6 does not affect the validity of the statutory form.⁷²

7 Finally, the proposed law would add language to the “Common Questions”
8 guidance document, cautioning of a potential risk that exists if a beneficiary with a
9 disability has another person sign the RTODD for the beneficiary.⁷³ Under existing
10 law, that practice is generally permitted.⁷⁴ However, if the person who signs a
11 document on behalf of another has a beneficial interest in the document, there is a
12 possibility that the document will be deemed invalid.⁷⁵ The advisory language
13 suggests that a beneficiary consult an attorney in that situation.

14 CONFLICTING INSTRUMENTS

15 Existing Probate Code Section 5660 addresses the effect of an RTODD when
16 another instrument purports to transfer the same property on the transferor’s death.
17 Under that provision, the result depends in part on whether the other instrument is
18 “revocable.”

19 The use of the term “revocable” in that context is imprecise. Because Section
20 5660 would only be applied after the transferor has died, it is not technically
21 correct to refer to any at-death transfer instrument executed by the deceased
22 transferor as “revocable.” On the death of the transferor, such instruments become
23 irrevocable.

24 The proposed law would revise Section 5660 to address that technical issue.⁷⁶

25 EFFECT OF RTODD ON UNRECORDED INTERESTS

26 Under existing law, an RTODD transfers property “subject to any limitation on
27 the transferor’s interest that is of record at the transferor’s death...”⁷⁷

28 Conversely, property transferred by RTODD is not subject to limitations on the
29 transferor’s interest that are unrecorded at the time of the transferor’s death. For

71. See proposed revision of Prob. Code § 5624 *infra*.

72. See Comment accompanying proposed revision of Prob. Code § 5624 *infra*.

73. See proposed revision of Prob. Code § 5642 *infra*.

74. See Estate of Stephens, 28 Cal. 4th 665 (2002).

75. *Id.*

76. See proposed revision of Prob. Code § 5660 *infra*.

77. Prob. Code § 5652(b).

1 example, property transferred by RTODD would not be subject to a mechanics
2 lien claim or lease if those interests were not recorded when the transferor died.

3 That rule could have unfortunate results, because it effectively cuts off the
4 enforceability of unrecorded interests on the transferor's death. However, the rule
5 is necessary in order to ensure that an RTODD transfers marketable title. It
6 guarantees that every enforceable claim against the property will be evidenced in
7 the title records. If unrecorded interests could be enforced against property
8 transferred by RTODD, an RTODD beneficiary would have difficulty obtaining
9 title insurance. Legal action to establish title might be required before the
10 beneficiary could sell or encumber the property.

11 Colorado strikes a slightly different balance in addressing that issue. It provides
12 that property transferred by an RTODD is subject to any limitation that is recorded
13 at the time of the transferor's death or in the four months after the transferor's
14 death.⁷⁸ Under that approach, a person who has an unrecorded interest in property
15 transferred by RTODD has four months in which to record it, thereby preserving
16 the ability to enforce the interest against the property.

17 The disadvantage of the Colorado approach is that it creates a four-month period
18 of uncertainty. At any point during that period, an interest in the property could be
19 recorded, establishing a new limitation on the beneficiary's title. Until that four-
20 month period has ended, title insurers will not be able to rely on title records as
21 evidence of the scope of any claims against the property. This would likely make
22 it difficult to obtain title insurance, impairing the marketability of the property
23 during the four-months after the transferor's death.

24 That should not be a significant problem in California, because California's
25 RTODD statute already creates a roughly four-month period of impaired
26 marketability after the transferor's death.

27 That is because the existing statute provides a 120-day period during which a *lis*
28 *pendens* can be filed as evidence of a pending contest. If the *lis pendens* is
29 recorded within 120 days after the transferor's death and the contest is eventually
30 successful, the court may void the transfer, without any protection for a bona fide
31 purchaser or encumbrancer.⁷⁹ This means that there is a 120-day period during
32 which a beneficiary's title to property transferred by RTODD is vulnerable to
33 complete invalidation. It is only after that 120-day period has run, without the
34 recording of a *lis pendens*, that a purchaser or encumbrancer can be confident that
35 the beneficiary has good title.

36 Because California RTODD beneficiaries are already subject to a 120-day
37 period of impaired marketability, enactment of the Colorado rule in California
38 would not create a significant new burden. This means that there is no clear
39 justification for cutting off the enforceability of unrecorded interests on the
40 transferor's death. The Colorado approach would give those who hold unrecorded

78. Colo. Rev. Stat. § 15-15-407(2)-(3)

79. Prob. Code § 5694.

1 interests 120 days after the transferor’s death to record them, thereby preserving
2 their effect. The Commission recommends that the law be revised to adopt that
3 approach.⁸⁰

4 MOBILEHOMES

5 The Commission sees scope for potential misunderstanding and mistake with
6 regard to the effect of an RTODD on a mobilehome.

7 The effect of an RTODD on a mobilehome depends on whether the mobilehome
8 is personal property or a fixture.

9 As a general matter, personal property is not appurtenant to real property, even
10 if it is physically attached to the real property. An item of personal property “may
11 be conveyed, encumbered, or leased separate from the real property.”⁸¹

12 However, if the item attached to real property is a “fixture,” then it is treated as
13 an appurtenance of the real property. “On a conveyance of the real property, the
14 fixtures are transferred to the grantee even though not expressly mentioned in the
15 contract or deed.”⁸²

16 Thus, a mobilehome that is personal property will not be transferred by an
17 RTODD that conveys the real property on which the mobile home is located. A
18 mobilehome that is a fixture will be transferred along with the real property to
19 which it is affixed.

20 There is existing statutory law that determines whether a mobilehome is
21 personal property or a fixture.⁸³ To be considered a fixture under that law, the
22 mobilehome must be attached to a specified type of foundation and certain
23 procedural steps must be followed (including recordation of a specified declaration
24 by the regulating governmental entity).

25 The Commission concluded that existing law regarding the effect of a transfer of
26 real property on a mobilehome is sufficiently clear to avoid any legal problems.
27 However, the law is somewhat obscure and technical; a person executing an
28 RTODD without advice of counsel could be unclear on the governing law and its
29 effect.

30 To help mitigate that problem, the proposed law would add guidance on the
31 matter in the “Common Questions” part of the statutory form.⁸⁴

80. See proposed revision of Prob. Code § 5652(b) *infra*.

81. Miller & Starr, California Real Estate, *Transferable Property Interests; Fixtures* § 9:41, at 170-71 (4th ed. 2015) (citations omitted).

82. *Id.* at 170.

83. Health & Safety Code § 18551.

84. See proposed revision of Section 5642(b) (“Will an RTODD affect my mobilehome?”) *infra*.

1 CREDITOR CLAIMS

2 The existing RTODD statute provides that a beneficiary is personally liable for
3 the unsecured debts of the transferor, up to the value of the property received at
4 the time of the transferor’s death.⁸⁵

5 In addition to that personal liability, there is a period of three years after the
6 transferor’s death during which the transferor’s personal representative can require
7 that the beneficiary return the property to the transferor’s estate for use in paying
8 creditors.⁸⁶

9 Those liability rules were modeled after long-standing law that establishes a
10 beneficiary’s liability for a decedent’s debt when taking property under certain
11 statutory procedures that permit the disposition of a decedent’s estate outside of
12 probate.⁸⁷

13 Most of the input that the Commission received from estate planning attorneys
14 focused on the creditor liability provisions.⁸⁸ The Commission examined those
15 provisions closely and recommends a number of reforms to improve their
16 operation and fairness.⁸⁹ The proposed reforms are discussed below.

17 **Scope of Liability**

18 Under existing law, an RTODD beneficiary is personally liable for the
19 transferor’s unsecured debts up to the full value of the property received. In many
20 cases, that liability will be much greater than it would have been if the property
21 had instead passed to the beneficiary through probate.

22 In probate, not all gifts are treated equally with respect to their liability for
23 payment of the decedent’s debts.⁹⁰ Unless the decedent’s will specifies otherwise,
24 a “general gift”⁹¹ will be liable for debts (will “abate”) before a specific gift.⁹²
25 Within those categories, a gift to a non-relative will abate before a gift to a
26 relative.⁹³ Finally, gifts that are in the same abatement class will abate pro rata.⁹⁴

85. Prob. Code §§ 5672, 5674. This rule is subject to some minor adjustments. See discussion of “Scope of Personal Liability” *infra*.

86. Prob. Code § 5676.

87. See Prob. Code §§ 13109-13111 (disposition of personal property of small value without administration), 13204-13206 (disposition of real property of small value without administration), and 13561-13562 (passage of property to surviving spouse without administration).

88. See letter from Mark S. Poochigian, Trusts and Estates Section Executive Committee, State Bar of California, attached to CLRC Staff Memorandum 2019-4, Exhibit p. 1.

89. The Commission is conducting a separate study of the same issues in the existing statutory probate avoidance procedures. See generally CLRC Study L-4130.

90. Prob. Code § 21402 (order of abatement).

91. Prob. Code § 21117(b) (“A general gift is a transfer from the general assets of the transferor that does not give specific property.”).

92. Prob. Code § 21117(a) (“A specific gift is a transfer of specifically identifiable property.”).

93. Prob. Code § 21402.

1 A transfer of a specified interest in real property is a specific gift. Thus, in
2 probate, all general gifts would be used to pay creditor claims before a specific gift
3 of real property would be reached. If the general gifts were sufficient to pay all
4 creditor claims, the real property would have no liability at all.

5 By contrast, if a person takes property by RTODD that person is personally
6 liable up to the full value of the property, without regard for whether there are
7 assets in the probate estate that would abate earlier.

8 The proposed law includes three reforms that would help an RTODD
9 beneficiary to avoid disproportionate personal liability for the transferor's
10 unsecured debts. They are described below.

11 *Personal Liability to Estate*

12 The proposed law would provide a new rule for the liability of a beneficiary for
13 a transferor's unsecured debts.⁹⁵ The new rule would only apply if the transferor's
14 estate is being administered.

15 Under the proposed rule, the RTODD beneficiary would be personally liable to
16 the estate for a share of liability for the transferor's unsecured debts. The
17 beneficiary's share of liability would be determined by applying the normal rules
18 of abatement, as if the property transferred by RTODD had instead been a specific
19 gift in the transferor's will.⁹⁶

20 If the beneficiary had already paid any of the transferor's unsecured debts, the
21 amount paid would be credited against the beneficiary's liability under the new
22 rule.⁹⁷

23 Payment of the amount owed to the estate under the new rule would fully
24 satisfy the beneficiary's obligations for payment of the transferor's unsecured
25 debts; the beneficiary would have no further personal liability to the transferor's
26 creditors.⁹⁸

27 The cost of implementing the new rule would be paid by the beneficiary.⁹⁹

28 *Voluntary Return of Property to the Estate*

29 The proposed law would also create a simpler option for a beneficiary who
30 wants to avoid disproportionate personal liability. The beneficiary could
31 voluntarily return the RTODD property to the estate for administration.¹⁰⁰ Such
32 property would be treated as if it were a specific devise to the beneficiary in the

94. Prob. Code § 21403(a).

95. See proposed Prob. Code § 5676 *infra*.

96. See proposed Prob. Code § 5676(b) *infra*.

97. See proposed Prob. Code § 5676(d) *infra*.

98. See proposed revision of Prob. Code § 5674 *infra*.

99. See proposed Prob. Code § 5676(e) *infra*.

100. See proposed Prob. Code § 5678 *infra*.

1 transferor’s will. General abatement rules would then be applied to the decedent’s
2 entire estate, including the RTODD property. Any funds that remain as part of the
3 RTODD beneficiary’s gift would be distributed to the beneficiary under the usual
4 probate process.

5 Although this option could subject the RTODD property to a share of the costs
6 of administration and would delay receipt of the gift, it still might be preferable to
7 a beneficiary who lacks sufficient funds to pay a share of the decedent’s debts out
8 of pocket and does not wish to go to the trouble to sell the property in order to pay
9 that share.

10 *Scope of Personal Liability*

11 As discussed above, existing law provides that an RTODD beneficiary is
12 personally liable for the transferor’s unsecured debts up to the value of the
13 property received at the time of the transferor’s death (less any liens or
14 encumbrances on the property at that time).¹⁰¹ However, that liability can be
15 increased in two ways:

- 16 (1) If the beneficiary derives income from the property, the liability includes the
17 amount of the income.¹⁰²
- 18 (2) If the property was sold by the beneficiary, the liability also includes interest
19 on the proceeds of sale.¹⁰³

20 The Commission recommends that those increases be eliminated.¹⁰⁴ The
21 beneficiary’s liability should be limited to the value of the property at the time of
22 the transferor’s death, because that would be the maximum extent of the
23 beneficiary’s liability had the property been received through probate or by trust.
24 There is no clear policy reason why a beneficiary’s liability should be increased
25 due to events that occur after disposition of the property.

26 **Elimination of Property Return Provision**

27 Under existing Probate Code Section 5676, a beneficiary is liable to the estate
28 for restitution of the property transferred by RTODD, if that property is required
29 for payment of a share of the decedent’s debts. If any proceeds remain from the
30 sale of the property after the payment of that share, they are returned to the
31 beneficiary.¹⁰⁵ This “property return” liability can be enforced for up to three years
32 after the transferor’s death.

33 There are two problems with the operation of the property return provision:

101. Prob. Code § 5674(b)(1).

102. Prob. Code § 5674(b)(2).

103. Prob. Code § 5674(b)(3).

104. See proposed revision of Prob. Code § 5674 *infra*.

105. Prob. Code § 5676(f).

- 1 (1) *Cloud on title.* The possibility that a beneficiary will be required to return
2 RTODD property to the transferor’s estate, for a period of up to three years,
3 could create a cloud on title. The Commission has heard anecdotal reports
4 that some title insurers will not issue policies during this three-year period.
- 5 (2) *Undue disruption.* The existing property return provision does not expressly
6 provide an option that would allow a beneficiary to pay the beneficiary’s
7 share of liability to the estate, in lieu of returning the real property to the
8 estate for liquidation. If Section 5676 is read strictly, it could divest the
9 beneficiary of ownership of real property that the beneficiary would rather
10 retain, even in a situation where the beneficiary has sufficient funds
11 available to pay the beneficiary’s share of the estate’s liability. That
12 approach is unnecessarily inflexible and burdensome.

13 For those reasons, the Commission recommends that Section 5676 be repealed.

14 That reform should not cause any problems for creditors or the decedent’s
15 estate, because the law would still provide ample alternative means for an RTODD
16 beneficiary to pay an appropriate share of decedent’s unsecured debts. As
17 discussed above, the beneficiary is personally liable to creditors for those debts, up
18 to the value of the property received.¹⁰⁶ In addition, the proposed law would add
19 an alternative rule that would apply if a probate is open: The beneficiary would be
20 personally liable to the estate for the beneficiary’s share of the transferor’s
21 unsecured debts.¹⁰⁷ In addition, an RTODD beneficiary would have the option of
22 voluntarily returning the property to the estate for use in paying creditor claims.¹⁰⁸

23 CONTESTS

24 Under the existing RTODD statute, it is not clear that the beneficiary of an
25 RTODD has standing to contest a revocation of the RTODD.¹⁰⁹

26 During the transferor’s life, a beneficiary should not have standing to bring such
27 a contest, because the beneficiary’s interest in the RTODD is a mere expectancy.
28 Appropriately, the existing statute provides that an RTODD can only be contested
29 after the transferor’s death.¹¹⁰

30 On the transferor’s death, however, the RTODD will have operated. If the
31 revocation was invalid (perhaps because it was the product of fraud or undue
32 influence, or the transferor lacked the requisite capacity), the beneficiary could
33 allege an actual and concrete injury of sufficient magnitude to justify bringing a
34 contest.¹¹¹ If the beneficiary does not have standing to contest the revocation, it is

106. Prob. Code § 5672.

107. See “Personal Liability to Estate” *supra*. See also proposed Prob. Code § 5676 *infra*.

108. See proposed Prob. Code § 5678 *infra*.

109. See generally First Supplement to CLRC Staff Memorandum 2019-17.

110. Prob. Code § 5692(a).

111. See 1A Cal. Jur. 3d *Actions* § 40 (“To have standing, a party must be beneficially interested in the controversy, and must have some special interest to be served or some particular right to be preserved or

1 not clear who would. If such contests cannot be brought, there will be no
2 accountability for misconduct that results in an improper revocation.

3 For those reasons, the Commission believes that a beneficiary should have
4 standing to contest a revocation of an RTODD, after the death of the transferor.
5 The proposed law would add language to expressly establish such standing.¹¹²

6 It is not clear that a successful contest of a revocation should always result in
7 revival of the revoked RTODD. Where an RTODD is revoked by execution of a
8 new RTODD, the transferor's intentions may be better effected by a more nuanced
9 result. For that reason, the proposed law would grant a court discretion to fashion
10 an appropriate remedy, consistent with the best understanding of the transferor's
11 intentions, when the revocation of an RTODD is successfully contested.¹¹³

12 REPEAL OF THE RTODD STATUTE

13 The legislation that directed the Commission to conduct this study asked the
14 Commission to consider a threshold question: "Whether the revocable transfer on
15 death deed should be continued."¹¹⁴

16 The Commission has not yet decided how to answer that question. The answer
17 will depend on whether the advantages of the RTODD outweigh its disadvantages.

18 The advantages of the RTODD statute seem self-evident. When properly
19 executed, an RTODD allows a property owner to transfer real property on death
20 outside of probate, without the need to pay for a trust. If a transferor understands
21 the effect of the RTODD and the procedure for executing one, the process is very
22 simple and inexpensive. On the transferor's death, the process of transferring title
23 to the beneficiary is also quick, inexpensive, and straightforward. There is no need
24 for the involvement of attorneys or the courts. In addition, the Commission has
25 learned that some attorneys use the RTODD as a component of a professionally
26 prepared estate plan.

27 The principal alleged disadvantages are: (1) the risk that the RTODD will make
28 fraud more likely to occur, and (2) the risk that laypeople, acting without the
29 advice of counsel, will make mistakes that result in costly problems for
30 beneficiaries or entirely defeat their intentions.

31 In addition, the Commission has heard a number of concerns about practical
32 problems that could arise under the existing statute, mostly relating to execution,

protected, and this interest must be concrete and actual, not conjectural or hypothetical. The issue of whether a party has standing focuses on the plaintiff, not the issues he or she seeks to have determined. As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator.") (footnotes omitted).

112. See proposed Prob. Code § 5690(a)(3) *infra*.

113. *Id.*

114. 2016 Cal. Stat. ch. 179; 2015 Cal. Stat. ch. 293, § 21.

1 revocation, marketability, and the creditor liability process. Those technical
2 problems are addressed by the reforms proposed in this tentative recommendation.

3 While the Commission takes the risk of fraud and mistake very seriously, its
4 research into the case law of other RTODD states did not uncover any reason to
5 believe that an RTODD is more vulnerable to abuse or error than other
6 instruments that can be used to transfer real property on death (including
7 instruments that can be executed by laypeople, without the advice of counsel, such
8 as self-drafted wills, trusts, or grant deeds). It thus seems questionable whether the
9 availability of the RTODD would make fraud or mistakes any more likely to
10 occur.

11 Because of the importance of the issue, the Commission is particularly interested
12 in receiving comments on this matter. Comments explaining why the existence of
13 the RTODD would, or would not, make estate planning fraud or mistakes more
14 severe or more likely to occur would be especially helpful.

15 **REQUEST FOR COMMENTS**

16 The Commission seeks public comment on its tentative recommendation.
17 Comments can be in any format and can be emailed to bhebert@clrc.ca.gov.
18 Comments supporting the proposed reforms are just as important as comments
19 suggesting changes to that approach or expressing other views. Comments from
20 knowledgeable persons are invaluable in the Commission's study process.

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PROPOSED LEGISLATION

1 **Prob. Code § 5608 (amended). “Beneficiary” defined**

2 SEC. ____ . Section 5608 of the Probate Code is amended to read:

3 5608. “Beneficiary” means a person named in a revocable transfer on death deed
4 as transferee of the property. A natural person, trust, or legal entity may be named
5 as a beneficiary.

6 **Comment.** Section 5608 is amended to provide that beneficiaries are not limited to natural
7 persons and may include a trust or legal entity such as a nonprofit corporation or public entity.

8 **Prob. Code § 5610 (amended). “Real property” defined**

9 SEC. ____ . Section 5610 of the Probate Code is amended to read:

10 5610. ~~“Real property” means any of the following:~~

11 ~~(a) Real property improved with not less than one nor more than four residential~~
12 ~~dwelling units.~~

13 ~~(b) A condominium unit, including the limited common elements allocated to~~
14 ~~the exclusive use thereof that form an integral part of the condominium unit.~~

15 ~~(c) A single tract of agricultural real estate consisting of 40 acres or less that is~~
16 ~~improved with a single family residence.~~

17 (a) Except as provided in subdivision (b), “real property” means either of the
18 following:

19 (1) A parcel of land that is improved with one to four residential dwelling units.

20 (2) A residential separate interest and its appurtenant common area in a common
21 interest development, regardless of the number of separate interests in the common
22 interest development.

23 (b) “Real property” does not include either of the following:

24 (1) A separate interest in a stock cooperative.

25 (2) A parcel of agricultural land that is greater than 40 acres in size. For the
26 purposes of this paragraph, “agricultural land” means land that is designated for
27 agricultural use by law or by a document that is recorded in the county in which
28 the land is located.

29 (c) The definition of “real property” shall be construed pursuant to the
30 circumstances that existed on the execution date shown on the revocable transfer
31 on death deed.

32 **Comment.** Section 5610 is amended to make its meaning clearer, eliminate inconsistencies,
33 and make the following substantive changes:

34 (1) Expand the definition of “real property” to include two more types of common interest
35 development (a planned development or community apartment project), not just a condominium.
36 See Civ. Code §§ 4100 (“common interest development”), 4185 (“separate interest”).

37 (2) Expressly exclude stock cooperatives from the definition of “real property.” See Civ. Code
38 § 4190 (“stock cooperative”).

39 (3) Eliminate the requirement that agricultural land must be improved with a “single family
40 residence” to be included in the definition of “real property.”

1 (4) Define the term “agricultural land,” in terms that depend on information that can be
2 obtained from public records. Laws that designate property for agricultural use might include a
3 zoning ordinance or general plan. Other recorded documents that designate land for agricultural
4 use might include a deed restriction, contract, or trust.

5 (5) Specify the time when the definition is applied. Under subdivision (c), a parcel of land that
6 falls within the definition at the time that a revocable transfer on death deed is executed would be
7 considered real property for the purposes of that deed, even if it no longer falls within the scope
8 of the definition when the transferor dies.

9 **Prob. Code § 5624 (amended). Execution**

10 SEC. ____ . Section 5624 of the Probate Code is amended to read:

11 5624. A revocable transfer on death deed is not effective unless the deed is (a)
12 signed by the transferor ~~signs and dates the deed and acknowledges the deed,~~ (b)
13 dated, and (c) acknowledged before a notary public.

14 **Comment.** Section 5624 is amended to make two points clearer:

15 (1) There are no formal requirements regarding the manner in which a deed is dated. The date
16 of execution may be typed or hand-written, by any person.

17 (2) Only the acknowledgment must occur before a notary public. The deed may be signed and
18 dated prior to presenting it to a notary public for acknowledgment.

19 **Prob. Code § 5642 (amended). Statutory form**

20 SEC. ____ . Section 5642 of the Probate Code is amended to read:

21 5642. A revocable transfer on death deed shall be substantially in the following
22 form.

23 (a) The first page of the form shall be substantially the following:

24 ~~SIMPLE~~ SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED
25 (California Probate Code Section 5642)

26
27 Recording Requested By:
28 When Recorded Mail This Deed To
29 Name:
30 Address:
31 Assessor’s Parcel Number:
32 Space Above For Recorder’s Use
33

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

37
38 **IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR**
39 **BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND NOTARIZED**

1 Use this deed to transfer the residential property described below directly to
2 your named beneficiaries when you die. YOU SHOULD CAREFULLY READ
3 ALL OF THE INFORMATION ON THE OTHER PAGES OF THIS FORM. You
4 may wish to consult an attorney before using this deed. It may have results that
5 you do not want. Provide only the information asked for in the form. DO NOT
6 INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form
7 MUST be RECORDED on or before 60 days after the date it is signed and
8 notarized or it will not be effective.

9
10 **PROPERTY DESCRIPTION**

11 Print the legal description of the residential property affected by this deed:
12
13

14 **BENEFICIARY(IES)**

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

19 Name the person(s) or entity(ies) who will receive the described property on
20 your death.

21 IF YOU ARE NAMING A PERSON, state the person’s FULL NAME (DO
22 NOT use general terms like “my children”). You may also wish to state the
23 RELATIONSHIP that the person has to you (spouse, son, daughter, friend, etc.),
24 but this is not required.

25 IF YOU ARE NAMING A TRUST, state the full name of the trust, the name of
26 the trustee(s), and the date shown on the signature page of the trust.

27 IF YOU ARE NAMING A PRIVATE OR PUBLIC ENTITY, state the name of
28 the entity as precisely as you can.
29
30
31

32 **TRANSFER ON DEATH**

34 I transfer all of my interest in the described property to the named
35 beneficiary(ies) on my death. I may revoke this deed. When recorded, this deed
36 revokes any TOD deed that I made before signing this deed.

37 Sign and print your name below (your name should exactly match the name
38 shown on your title documents):
39
40

41 Date

1
2 NOTE: This deed only transfers MY ownership share of the property. The deed
3 does NOT transfer the share of any co-owner of the property. Any co-owner who
4 wants to name a TOD beneficiary must execute and RECORD a SEPARATE
5 deed.

6
7 ACKNOWLEDGMENT OF NOTARY

8
9 A notary public or other officer completing this certificate verifies only the
10 identity of the individual who signed the document to which this certificate is
11 attached, and not the truthfulness, accuracy, or validity of that document.

12
13 State of California)
14 County of)

15
16
17
18 On _____ before me, (here insert name and title of
19 the officer), personally appeared _____, who proved to
20 me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
21 subscribed to the within instrument and acknowledged to me that he/she/they
22 executed the same in his/her/their authorized capacity(ies), and that by
23 his/her/their signature(s) on the instrument the person(s), or the entity upon behalf
24 of which the person(s) acted, executed the instrument.

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

27 WITNESS my hand and official seal.

28 Signature _____ (Seal)

29 (b) Subsequent pages of a form executed under this section shall be in
30 substantially the following form:

31 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

35 CAN I USE THIS DEED TO TRANSFER ~~BUSINESS~~ NONRESIDENTIAL
36 PROPERTY? ~~This deed can only be used to transfer (1) a parcel of property that~~

1 ~~contains one to four residential dwelling units, (2) a condominium unit, or (3) a~~
2 ~~parcel of agricultural land of 40 acres or less, which contains a single family~~
3 ~~residence. No. This deed can only be used to transfer residential property. Also,~~
4 ~~the deed cannot be used to transfer a unit in a stock cooperative or a parcel of~~
5 ~~agricultural land that is over 40 acres in size.~~

6 CAN I USE THIS DEED TO TRANSFER A MOBILEHOME? The deed can
7 only be used to transfer a mobilehome if it is a “fixture” or improvement under
8 Health and Safety Code Section 18551. If you are unsure whether your
9 mobilehome is a fixture, you may wish to consult an attorney. An error on this
10 point could cause the transfer of your mobilehome to fail.

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

15 IS THE “LEGAL DESCRIPTION” OF THE PROPERTY NECESSARY? Yes.

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

21 IF I AM UNABLE TO SIGN THE DEED, MAY I ASK SOMEONE ELSE TO
22 SIGN MY NAME FOR ME? Yes. However, if the person who signs for you
23 would benefit from the transfer of your property, there is a chance that the transfer
24 under this deed will fail. You may wish to consult an attorney before taking that
25 step.

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

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

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

36 HOW DO I REVOKE THE TOD DEED? There are three ways to revoke a
37 recorded TOD deed: (1) Complete, have notarized, and RECORD a revocation
38 form. (2) Create, have notarized, and RECORD a new TOD deed. (3) Sell or give

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

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

11 IF I SELL OR GIVE AWAY THE PROPERTY DESCRIBED IN A TOD
12 DEED, WHAT HAPPENS WHEN I DIE? If the deed or other document used to
13 transfer your property is RECORDED before your death, the TOD deed will have
14 no effect. If the transfer document is not RECORDED before your death, the TOD
15 deed will take effect.

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

21 DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED? No.
22 But secrecy can cause later complications and might make it easier for others to
23 commit fraud.

24 WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your
25 beneficiary must RECORD evidence of your death (Prob. Code § 210), and file a
26 change in ownership notice (Rev. & Tax. Code § 480). If you received Medi-Cal
27 benefits, your beneficiary must notify the State Department of Health Care
28 Services of your death and provide a copy of your death certificate (Prob. Code §
29 215).

30 WHAT IF I NAME MORE THAN ONE BENEFICIARY? Your beneficiaries
31 will become co-owners in equal shares as tenants in common. If you want a
32 different result, you should not use this form.

33 HOW DO I NAME BENEFICIARIES? ~~You~~ (1) If the beneficiary is a person,
34 you MUST name your beneficiaries individually, using each beneficiary's state
35 the person's FULL name. You MAY NOT use general terms to describe
36 beneficiaries, such as "my children." ~~For each beneficiary that you name, you~~
37 ~~should~~ You may also briefly state that person's relationship to you (for example,
38 my spouse, my son, my daughter, my friend, etc.), but this is not required.

1 (2) If the beneficiary is a trust, you MUST name the trustee(s),
2 and state the date shown on the trust's signature page.

3 (3) If the beneficiary is a public or public entity, name the entity as precisely as
4 you can.

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

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

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

21 IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO MY
22 DEBTS? Yes.

23 DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE TAXES?
24 No.

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

28 DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL? No.

29 ~~AFTER MY DEATH, WILL MY HOME BE LIABLE FOR~~
30 ~~REIMBURSEMENT OF THE STATE FOR MEDICAL EXPENDITURES?~~
31 ~~Your home may be liable for reimbursement. If you have questions, you should~~
32 ~~consult an attorney.~~

33 **Comment.** Section 5642 is amended to conform to other changes made to this part and to
34 make related improvements.

35 Any technical inconsistency between the statutory form provided in this section and the
36 requirements of Civil Code Section 1189 has no effect on the validity of a revocable transfer on
37 death deed that complies with the requirements of this section. The specific requirements of this
38 section control over the general requirements of Section 1189.

1 **Prob. Code § 5652 (amended). Effect of deed**

2 SEC. ____ . Section 5652 of the Probate Code is amended to read:

3 5652. (a) A revocable transfer on death deed transfers all of the transferor's
4 interest in the property on the transferor's death according to the following rules:

5 (1) Subject to the beneficiary's right to disclaim the transfer, the interest in the
6 property is transferred to the beneficiary in accordance with the deed.

7 (2) The interest of a beneficiary is contingent on the beneficiary surviving the
8 transferor. Notwithstanding Section 21110, the interest of a beneficiary that fails
9 to survive the transferor lapses.

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

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

14 (b) Property is transferred by a revocable transfer on death deed subject to any
15 limitation on the transferor's interest that is of record at the transferor's death or is
16 recorded within 120 days of the transferor's death, including, but not limited to, a
17 lien, encumbrance, easement, lease, or other instrument affecting the transferor's
18 interest, whether recorded before or after recordation of the revocable transfer on
19 death deed. The holder of rights under that instrument may enforce those rights
20 against the property notwithstanding its transfer by the revocable transfer on death
21 deed.

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

24 **Comment.** Section 5652 is amended to provide that property transferred by revocable transfer
25 on death deed is burdened by any limitation on the transferor's ownership that is recorded within
26 120 days of the transferor's death.

27 **Prob. Code § 5658 (added). Cy pres**

28 SEC. ____ . Section 5658 is added to the Probate Code, to read:

29 5658. A court in which the transferor's estate is being administered may, on the
30 petition of the personal representative or interested person, or on its own motion,
31 apply the doctrine of cy pres to reform a revocable transfer on death deed that was
32 made by the transferor for a charitable purpose, in either of the following
33 circumstances:

34 (a) The beneficiary does not accept the gift.

35 (b) The beneficiary is a legal entity that dissolved or was merged into another
36 entity before the transferor's death.

37 **Comment.** Section 5658 is amended to grant judicial discretion to apply the doctrine of cy pres
38 to reform a revocable transfer on death deed made for charitable purposes, where the transfer fails
39 because the beneficiary does not accept it or does not exist at the time of the transferor's death.

1 **Prob. Code § 5660 (amended). Conflicting instruments**

2 SEC. ____ . Section 5660 of the Probate Code is amended to read:

3 5660. If a revocable transfer on death deed recorded on or before 60 days after
4 the date it was executed and another instrument both purport to dispose of the
5 same property:

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

8 (b) If the other instrument is recorded before the transferor's death and ~~makes a~~
9 ~~revocable disposition of the property~~ the provision of the other instrument that
10 purports to transfer the property was revocable during the transferor's life, the
11 later executed of the revocable transfer on death deed or the other instrument is the
12 operative instrument.

13 (c) If the other instrument is recorded before the transferor's death and ~~makes an~~
14 ~~irrevocable disposition of the property~~ the provision of the other instrument that
15 purports to transfer the property was not revocable during the transferor's life, the
16 other instrument and not the revocable transfer on death deed is the operative
17 instrument.

18 **Comment.** Section 5660 is amended to make clear that subdivisions (b) and (c) depend on the
19 revocability of a dispositive provision during the transferor's life. The possibility that a provision
20 may become irrevocable on the transferor's death is not relevant to the operation of the section.

21 **Prob. Code § 5674 (amended). Scope of personal liability**

22 SEC. ____ . Section 5674 of the Probate Code is amended to read:

23 (a) A beneficiary is not liable under Section 5672 if proceedings for the
24 administration of the transferor's estate are commenced and the beneficiary
25 satisfies the requirements of Section 5676 or 5678.

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

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

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

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

36 **Comment.** Section 5674 is amended to reflect the repeal of Section 5676 and the addition of
37 Sections 5676 and 5678, and to remove net income and interest from the calculation of a
38 beneficiary's total personal liability for a transferor's unsecured debts.

1 **Prob. Code § 5676 (repealed). Property return**

2 SEC. ____ . Section 5676 of the Probate Code is repealed.

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

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

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

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

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

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

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

40 ~~(d) An action to enforce the liability under this section may be brought only by~~
41 ~~the personal representative of the estate of the transferor. Whether or not the~~
42 ~~personal representative brings an action under this section, the personal~~
43 ~~representative may enforce the liability only to the extent of the beneficiary's~~

1 ~~liability under Section 5672. The reasonable cost of proceeding under this section~~
2 ~~shall be reimbursed as an extraordinary service under Sections 10801 and 10811.~~
3 ~~Action under this section is optional. A personal representative is never required to~~
4 ~~act under this section.~~

5 ~~(e) An action to enforce the liability under this section is forever barred three~~
6 ~~years after the transferor's death. The three year period specified in this~~
7 ~~subdivision is not tolled for any reason. Nothing in this subdivision affects the~~
8 ~~requirements of Section 215, any law that may toll the limitations period for the~~
9 ~~commencement of a Medi Cal estate recovery action, or the time for~~
10 ~~commencement of an action by the State Department of Health Care Services~~
11 ~~under Section 14009.5 of the Welfare and Institutions Code.~~

12 ~~(f) If property is restored to the transferor's estate under this section, that~~
13 ~~property shall be treated as a specific gift and any proceeds remaining from the~~
14 ~~sale of the property after the payment of claims shall be returned to the~~
15 ~~beneficiary.~~

16 **Comment.** Section 5676 is repealed. This repeal does not affect a beneficiary's right to
17 voluntarily return property to the transferor's estate under Section 5678.

18 **Note.** The Commission recommends existing Section 5676 be repealed and replaced with the
19 more flexible options provided in proposed Sections 5676 and 5678. The Commission
20 specifically invites comment on whether those changes would cause any problems.

21 **Prob. Code § 5676 (added). Personal liability to the estate**

22 SEC. ____ . Section 5676 is added to the Probate Code, to read:

23 5676. (a) If proceedings for the administration of the transferor's estate are
24 commenced, a beneficiary of a revocable transfer on death deed is personally
25 liable to the estate for a share of the transferor's unsecured debts.

26 (b) In calculating the beneficiary's share of liability under subdivision (a), the
27 abatement rules provided in Part 4 (commencing with Section 21400) of Division
28 11 shall be applied, using all of the following assumptions:

29 (1) The property that was transferred to the beneficiary by revocable transfer on
30 death deed shall be treated as if it were a specific gift made by the decedent's will.

31 (2) The value of the property received by the beneficiary pursuant to the
32 revocable transfer on death deed shall be deemed to be the fair market value of the
33 property at the time of the transferor's death, less the amount of any liens and
34 encumbrances on the property at that time.

35 (3) Any unsecured debts of the transferor that were paid by the beneficiary
36 pursuant to Section 5672 shall be treated as if they were claims made against the
37 transferor's estate.

38 (c) The personal representative shall provide a written statement of liability to
39 the beneficiary, which specifies the amount that must be paid to the estate.

40 (d) The beneficiary is personally liable to the estate for the amount specified in
41 the statement of liability. Any amount that the beneficiary paid toward the
42 unsecured debts of the transferor pursuant to Section 5672 shall be credited against

1 the amount that the beneficiary owes the estate under this subdivision. If the
2 amount that the beneficiary paid pursuant to Section 5672 exceeds the amount
3 specified in the written statement of liability, the estate shall reimburse the
4 difference to the beneficiary. For the purposes of Section 11420, this
5 reimbursement shall be deemed an expense of administration.

6 (e) The reasonable cost of proceeding under this section shall be reimbursed as
7 an extraordinary service under Sections 10801 and 10811. The beneficiary is liable
8 for the payment of that cost, which shall be separately identified in the statement
9 of liability.

10 **Comment.** Section 5610 is new. It provides a process for the determination and satisfaction of
11 a beneficiary's share of liability for the unsecured debts of the transferor. A beneficiary who pays
12 the indicated amount to the estate has no personal liability under Section 5672. See Section
13 5674(a).

14 **Prob. Code § 5678 (added). Voluntary return of property to the estate**

15 SEC. ____ . Section 5678 is added to the Probate Code, to read:

16 5678. (a) If proceedings for the administration of the transferor's estate are
17 commenced, a beneficiary who receives property from the transferor under a
18 revocable transfer on death deed may voluntarily return that property to the
19 transferor's estate for administration.

20 (b) Property returned to the transferor's estate under this section shall be treated
21 as if it had been specifically devised to the beneficiary by the transferor.

22 (c) If the beneficiary's action or inaction increased the value of property
23 returned to the estate or decreased the estate's obligations, the estate shall
24 reimburse the beneficiary by the same amount. Actions or inaction that increase
25 the value of returned property or decrease the estate's obligations include, but are
26 not necessarily limited to, the following actions:

27 (1) A payment toward an unsecured debt of the decedent.

28 (2) A payment toward a debt secured against the returned property.

29 (3) A significant improvement of the returned property that increased the fair
30 market value of the property.

31 (d) If the beneficiary's action or inaction decreased the value of property
32 returned to the estate or increased the estate's obligations, the beneficiary is
33 personally liable to the estate for that amount. Actions or inaction that decrease the
34 value of the returned property or increase the estate's obligations include, but are
35 not necessarily limited to, the following actions or inaction:

36 (1) An action or inaction that resulted in a lien or encumbrance being recorded
37 against the property.

38 (2) The receipt of income from the property, if that income would have accrued
39 to the estate had the property not been transferred to the beneficiary.

40 (e) The personal representative shall provide the beneficiary a written statement
41 of any reimbursement or liability under this section, along with a statement of the
42 reasons for the reimbursement or liability.

1 (f) In the event that the beneficiary and the personal representative cannot agree
2 on the reimbursement or liability due under this section, the beneficiary or
3 personal representative may petition the court for an order determining the amount
4 of the reimbursement or liability. In making a decision under this subdivision, the
5 court should consider the surrounding circumstances, including whether the parties
6 acted in good faith and whether a particular result would impose an unfair burden
7 on the beneficiary or the estate.

8 **Comment.** Section 5678 is new. It provides the beneficiary of a revocable transfer on death
9 deed the option of voluntarily returning property received under the deed to the transferor's estate
10 for administration. A beneficiary who returns property to the estate under this section has no
11 personal liability under Section 5672. See Section 5674(a).

12 **Note.** The Commission requests comment on whether any existing law could be used to achieve
13 the results that would be achieved under proposed Section 5678.

14 **Prob. Code § 5690 (amended). Contest**

15 SEC. _____. Section 5690 of the Probate Code is amended to read:

16 5690. (a)(1) An action for the disqualification of a beneficiary under Part 3.7
17 (commencing with Section 21360) of Division 11 may be brought to contest the
18 validity of a transfer of property by a revocable transfer on death deed.

19 (2) An action to contest the validity of a transfer of property by a revocable
20 transfer on death deed may be filed by the transferor's personal representative or
21 an interested person under Part 19 (commencing with Section 850) of Division 2.

22 (3) An action to contest the validity of a revocation of a revocable transfer on
23 death deed may be filed by the transferor's personal representative or a beneficiary
24 of the revoked deed under Part 19 (commencing with Section 850) of Division 2.
25 If the contest is successful, the court shall determine the appropriate remedy,
26 which may include revival of the revoked deed. In deciding the remedy, the court
27 shall attempt to effect the intentions of the transferor.

28 (b) The proper county for a contest proceeding is the proper county for
29 proceedings concerning administration of the transferor's estate, whether or not
30 proceedings concerning administration of the transferor's estate have been
31 commenced at the time of the contest.

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

34 **Comment.** Section 5690 is amended to make clear that the beneficiary of a revoked deed has
35 standing to contest the purported revocation. Note, however, that such a contest cannot be filed
36 until after the transferor's death. Section 5692(a). If the contest is successful, the court has
37 discretion to fashion a remedy that would best effectuate the transferor's intentions.

CONFORMING REVISION

1 **Gov't Code § 27281 (amended). Public entity acceptance of conveyance**

2 SEC. ____ . Section 27281 of the Government Code is amended to read:

3 27281. (a) Deeds or grants conveying any interest in or easement upon real
4 estate to a political corporation or governmental agency for public purposes shall
5 not be accepted for recordation without the consent of the grantee evidenced by its
6 certificate or resolution of acceptance attached to or printed on the deed or grant.
7 If a certificate of acceptance is used, it shall be in substantially the following form:

8 This is to certify that the interest in real property conveyed by the deed or grant
9 dated _____ from _____ to _____ , a political corporation and/or
10 governmental agency is hereby accepted by order of the
11 _____ (legislative body) _____ on _____ (date) _____ ,
12 (or by the undersigned officer or agent on behalf of
13 the _____ (legislative body) _____
14 pursuant to authority conferred by resolution of the
15 _____ (legislative body) _____ adopted on _____ (date) _____ ,)
16 and the grantee consents to recordation thereof by its duly authorized officer.
17 Dated _____ By _____

18 (b) A political corporation or governmental agency, by a general resolution, may
19 authorize one or more officers or agents to accept and consent to ~~such deeds or~~
20 ~~grants~~ a deed or grant described in subdivision (a).

21 (c) In cases where the county tax collector files purchaser's deeds with respect
22 to a sale for defaulted taxes, the information contained in those documents shall be
23 deemed to constitute compliance with this section.

24 (d) The requirements of this section shall not apply to a deed of trust or other
25 security or regulatory document recorded by or on behalf of a state agency
26 pursuant to a program or activity of the agency authorized by statute or regulation.

27 (e) Subdivision (a) does not apply to a revocable transfer on death deed.

28 (f) Notwithstanding subdivision (a), a revocable transfer on death deed that
29 names a political corporation or governmental agency as a beneficiary does not
30 transfer title to that political corporation or governmental agency unless and until
31 the political corporation or governmental agency records a resolution of
32 acceptance or a certificate of consent in a form substantially similar to the form
33 prescribed in subdivision (a).

34 **Comment.** Section 5610(e) is added to exempt a revocable transfer on death deed from
35 subdivision (a). Such a deed can be recorded without the prior consent of a political corporation

1 or governmental entity named as beneficiary. However, the deed will not operate to transfer title
2 to the political corporation or governmental entity until that entity records evidence of its consent
3 under subdivision (f).