

Memorandum 2021-23

**Stock Cooperatives and Uniform TOD Security Registration Act:
(Draft of Tentative Recommendation)**

In this study, the Commission¹ is developing a proposed law to provide a relatively simple means of making a nonprobate transfer on death of a decedent's ownership interest in a stock cooperative.

This memorandum presents a draft tentative recommendation for the Commission's consideration. The Commission has already seen the proposed legislation, in Memorandum 2021-15. The only new content in the attached draft is the narrative explanation that precedes the proposed legislation.

The Commission needs to decide whether to approve the attached draft for release as a tentative recommendation, with or without changes.

Respectfully submitted,

Brian Hebert
Executive Director

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

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

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Transfer on Death Registration of Interest in Stock Cooperative

April 2021

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 JULY 1, 2021.

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.

California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

This tentative recommendation proposes a new statute to provide a simple method to make a nonprobate transfer on death of an interest in a stock cooperative.

The proposed law would closely parallel the existing revocable transfer on death deed statute (with improvements that were recommended by the Commission in its 2019 follow-up study of that statute).

The proposed law would deviate from the revocable transfer on death deed statute as necessary to conform to the special character of ownership of an interest in a stock cooperative.

This recommendation was prepared pursuant to Resolution Chapter 46 of the Statutes of 2020.

1 TRANSFER ON DEATH REGISTRATION OF
2 INTEREST IN STOCK COOPERATIVE

3 In 2005, the Law Revision Commission was assigned the task of evaluating whether
4 California should authorize the use of a “beneficiary deed” to transfer real property on
5 death, outside of the probate process.¹ In 2006, the Commission completed its study,
6 recommending that California authorize the use of such an instrument (now known as a
7 revocable transfer on death deed, or RTODD). The recommendation included draft
8 legislation to accomplish that result.²

9 The Commission’s recommendation was enacted into law in 2015, with some
10 significant changes to the recommended legislation.³

11 For present purposes, the most important of those changes are as follows:

- 12 • A “sunset” provision was added, which would repeal the statute by
13 operation of law on January 1, 2021 (unless the provision were amended or
14 repealed before then).⁴
- 15 • The Commission was assigned a new “follow-up” study of the RTODD, to
16 be completed by January 1, 2020. Among other things, the Commission was
17 charged with making a recommendation on whether the sunset date should
18 be extended or removed.⁵
- 19 • The statutory definition of real property was revised to significantly narrow
20 the types of property that can be conveyed by RTODD. Condominiums
21 were included in the definition, but other kinds of common interest
22 developments, including stock cooperatives, were not.⁶

23 In 2016, the scope of the Commission’s assigned follow-up study was expanded
24 slightly. Among other things, the Commission was specifically directed to consider
25 whether the RTODD should be able to transfer an interest in a stock cooperative.⁷

26 The Commission completed its study of that issue and released a final recommendation
27 in 2019.⁸ In that report, the Commission recommended against authorizing the use of an
28 RTODD to transfer an interest in a stock cooperative. As the Commission explained:

1. 2005 Cal. Stat. ch. 422.
2. *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm’n Reports 103 (2006).
3. 2015 Cal. Stat. ch. 293.
4. Prob. Code § 5600(c). In 2020, the sunset date was extended by one year, to January 1, 2022. 2020 Cal. Stat. ch. 238.
5. 2015 Cal. Stat. ch. 293, § 21.
6. Prob. Code § 5610.
7. 2016 Cal. Stat. ch. 179.
8. See *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135 (2019).

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

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

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

15 That approach would deny owners in stock cooperatives the benefits of using
16 an RTODD. However, it is possible that a share of ownership in a stock
17 cooperative could be transferred on death, outside of probate, under the existing
18 Uniform TOD Security Registration Act. The Commission plans to conduct a
19 separate study of that possibility, under its general authority to study the Probate
20 Code.⁹

21 The Commission has since been conducting a study to develop a relatively simple
22 method to make a nonprobate transfer on death of an interest in stock cooperative. This
23 tentative recommendation is the product of that study.

24 While it may be that the existing Uniform TOD Security Registration Act could be
25 used to transfer a share of ownership in a stock cooperative, the Commission does not
26 recommend relying on that approach.

27 Instead, the Commission recommends the enactment of an entirely new statute that is
28 designed specifically to provide a relatively simple way to make a nonprobate transfer on
29 death of an interest in a stock cooperative. The proposed statute draws heavily on the
30 RTODD statute and on the improvements to that statute that the Commission
31 recommended in its 2019 follow-up study.¹⁰ Some important adjustments were made to
32 accommodate the special character of ownership of an interest in a stock cooperative.

33 The main elements of the proposed law are summarized below.

34 EXECUTION AND REVOCATION

35 Under the proposed law, an owner of an interest in a stock cooperative could “register”
36 that interest in transfer-on-death (“TOD”) form by completing a specified statutory
37 form.¹¹ However, a stock cooperative would not be required to accept a TOD registration.

9. *Id.* at 157 (footnotes omitted).

10. Those recommendations are currently before the Legislature in Senate Bill 315 (Roth). The Legislature’s decisions regarding those proposed reforms might prompt changes to the parallel provisions in this tentative recommendation.

11. See proposed Prob. Code § 5850 *infra*.

1 The stock cooperative’s participation under the proposed law would be optional.¹² That
2 approach is similar to the treatment of “registering entities” under the Uniform TOD
3 Security Registration Act.¹³ Those entities have the option of whether to accept TOD
4 registration of securities.

5 The registration form would need to be signed by both the transferor and an agent of
6 the stock cooperative.¹⁴ Both signatures would need to be acknowledged before a notary
7 public.¹⁵ To be legally effective, the registration form would need to be recorded within
8 60 days of execution.¹⁶ The transferor would need to have the capacity to execute a
9 contract.¹⁷

10 A TOD registration would be freely revocable during the transferor’s life.¹⁸ It could be
11 revoked by executing and recording a statutory revocation form,¹⁹ or by executing and
12 recording a new TOD registration.²⁰

13 EFFECT OF TOD REGISTRATION

14 During the transferor’s life, a TOD registration would have no legal or practical
15 effect.²¹ It would not create any right in the beneficiary or expose the property to the
16 beneficiary’s creditors.

17 On the transferor’s death, the TOD registration would transfer the transferor’s interest
18 in the stock cooperative to the named beneficiary,²² subject to any limitations on the
19 transferor’s ownership that are recorded within 120 days of the transferor’s death.²³

20 Many stock cooperatives impose limitations on the use or transfer of an owner’s
21 interest. For example, the stock cooperative’s governing documents may reserve a right
22 to approve any occupant or to buy back an interest on the owner’s death. The proposed
23 law would preserve the effect of such reserved rights, while guaranteeing that the
24 beneficiary receives the pecuniary value of the transferred property:

- 25 (a) Property that is transferred pursuant to a TOD registration remains subject
26 to any limitation on the transferor’s interest that was enforceable against the
27 property pursuant to the stock cooperative’s governing documents or an

12. See proposed Prob. Code § 5802 *infra*.

13. See Prob. Code § 5508(a)-(b).

14. See proposed Prob. Code § 5834 *infra*.

15. *Id.*

16. See proposed Prob. Code § 5836 *infra*.

17. See proposed Prob. Code § 5830 *infra*.

18. See proposed Prob. Code § 5822(c) *infra*.

19. See proposed Prob. Code § 5852 *infra*. See also proposed Prob. Code §§ 5840 (capacity to revoke),
5842(a) (execution formalities) *infra*.

20. See proposed Prob. Code § 5838 *infra*.

21. See proposed Prob. Code § 5860 *infra*.

22. See proposed Prob. Code § 5862(a) *infra*.

23. See proposed Prob. Code § 5862(b) *infra*.

1 agreement between the transferor and the stock cooperative, including, but not
2 limited to, a restriction on occupancy, an option to purchase the property on the
3 transferor's death, or a limitation on the transfer value in a limited equity housing
4 cooperative. The holder of those rights may enforce them against the property
5 notwithstanding its transfer pursuant to a TOD registration.

6 (b) Except as provided in subdivision (c), property may be transferred by TOD
7 registration even if the beneficiary is not eligible, under the governing documents
8 of the stock cooperative, to occupy the transferred property.

9 (c) If the stock cooperative exercises an option to purchase property transferred
10 by TOD registration on the owner's death, the result is as follows:

11 (1) The property is transferred to the stock cooperative rather than the
12 beneficiary.

13 (2) The purchase price is paid to the beneficiary. Unless the law or the
14 governing documents of the stock cooperative provide otherwise, the purchase
15 price is the fair market value of the property, less the amount of any liens or
16 encumbrances on the property at the time of the owner's death and less any
17 amount that the decedent owed the stock cooperative.²⁴

18 The proposed law would also provide guidance on how a TOD registration would
19 affect property taxes,²⁵ Medi-Cal eligibility and recovery,²⁶ and conflicting instruments or
20 forms of ownership.²⁷

21 EFFECTUATION OF TRANSFER

22 On the transferor's death, the beneficiary of a TOD registration would provide a copy
23 of the transferor's death certificate to the stock cooperative. The stock cooperative would
24 then reregister ownership of the transferor's interest in the name of the beneficiary.²⁸

25 A stock cooperative that transfers ownership of an interest in good faith reliance on a
26 TOD registration, proof of the transferor's death, and the requirements of the proposed
27 law would not be liable for any claim to the property by the transferor's estate, creditors,
28 heirs, or devisees.²⁹ That protection would not exist if the stock cooperative transferred
29 ownership after receiving written notice from an interested person alleging that the TOD
30 registration should not be given effect.³⁰ Such notice would include the service of a *lis*
31 *pendens* notifying the stock cooperative of a pending contest.

24. See proposed Prob. Code § 5864 *infra*.

25. See proposed Prob. Code § 5868 *infra*.

26. See proposed Prob. Code § 5866 *infra*.

27. See proposed Prob. Code §§ 5880, 5882 *infra*.

28. See proposed Prob. Code § 5950 *infra*.

29. See proposed Prob. Code § 5980(a) *infra*.

30. See proposed Prob. Code § 5980(b)-(c) *infra*.

1 The limitation on the liability of a stock cooperative, described above, would not affect
2 the rights of interested persons in disputes between themselves as to the ownership of
3 property that was governed by a TOD registration.³¹

4 If a TOD registration contains a material error or ambiguity, an interested person could
5 seek judicial construction and reformation of the instrument, under the general law of
6 contracts.³²

7 If a TOD registration names a public entity or nonprofit entity as beneficiary, and the
8 beneficiary does not exist or disclaims the gift when the transferor dies, a court may
9 apply the doctrine of *cy pres* to effectuate the transferor's charitable intent.³³ The
10 proposed law would also make a minor change to existing law to facilitate the use of
11 TOD registration to make a charitable gift to a public entity.³⁴

12 LIABILITY FOR TRANSFEROR'S DEBTS

13 The beneficiary of a TOD registration would have the same liability for the decedent's
14 unsecured debts that exists for the beneficiary of a revocable transfer on death deed (as
15 that law would be modified by the Commission's follow-up recommendations).³⁵
16 Specifically:

- 17 • The beneficiary would be personally liable for the transferor's unsecured
18 debts, up to the value of the transferred property.³⁶
- 19 • If the transferor's estate is being administered, the beneficiary would be
20 liable to the estate for a share of the decedent's debts.³⁷ The share would be
21 calculated under the general abatement rules, as if the property transferred
22 by TOD registration had instead been included in the probate estate as a
23 specific gift. This liability would be in lieu of personal liability to the
24 transferor's creditors.
- 25 • If the transferor's estate is being administered, the beneficiary would have
26 the option of returning the property to the estate for probate
27 administration.³⁸ In that event, the property would be treated as if it had
28 been specifically devised to the beneficiary in the transferor's will. This may
29 be the best course in situations where the beneficiary does not have
30 sufficient funds to pay a share of the transferor's debts and does not want
31 the burden of selling the property.

31. See proposed Prob. Code § 5980(d) *infra*.

32. See proposed Prob. Code § 5872 *infra*.

33. See proposed Prob. Code § 5870 *infra*.

34. See proposed amendment of Gov't Code § 27281 *infra*.

35. See *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm'n Reports 135, 171-76 (2019); SB 315 (Roth) (2021).

36. See proposed Prob. Code §§ 5892, 5894 *infra*.

37. See proposed Prob. Code § 5896 *infra*.

38. See proposed Prob. Code § 5898 *infra*.

1

CONTEST

2 A TOD registration (or an instrument revoking a TOD registration) could be contested
3 on any of the usual grounds for contesting a testamentary instrument (e.g., fraud, undue
4 influence, lack of capacity, breach of execution formalities).³⁹

5 A contest could not be commenced during the transferor's life.⁴⁰ The applicable
6 limitations period for a contest would accrue on the transferor's death.⁴¹

7 If a contest is commenced and a *lis pendens* is recorded within 120 days of the
8 transferor's death, a successful contest would void the TOD registration.⁴² In effect, there
9 would be no protection of a bona fide purchaser or encumbrancer of the property in that
10 situation. If the contest is not commenced and a *lis pendens* is not recorded within 120
11 days, a successful contest could not defeat the interest of a bona fide purchaser or
12 encumbrancer who acquired the property before the recordation of a *lis pendens*.⁴³

13

REQUEST FOR PUBLIC COMMENT

14 The Commission invites public comment on this tentative recommendation. It would
15 be helpful to receive comments on the overall merit of establishing a statute along the
16 lines proposed, as well comments addressing any technical issues with the proposed
17 legislation. **Comments should be sent to bhebert@clrc.ca.gov by July 1, 2021.**

39. See proposed Prob. Code §§ 5970, 5976 *infra*.

40. See proposed Prob. Code § 5972(a) *infra*.

41. See proposed Prob. Code § 5972(b) *infra*. The applicable period would depend on the grounds alleged. See, e.g., Code Civ. Proc. 338(d) (three-year period for fraud or mistake).

42. See proposed Prob. Code § 5974(a) *infra*.

43. See proposed Prob. Code § 5974(b) *infra*.

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PROPOSED LEGISLATION

Prob. Code §§ 5800-5980 (added). TOD Registration of Property in Stock Cooperative

SEC. ____ . Part 5 (commencing with Section 5800) is added to Division 2 of the Probate Code, to read:

PART 5. TOD REGISTRATION OF PROPERTY IN
STOCK COOPERATIVE

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. PRELIMINARY PROVISIONS

§ 5800. Dates of application

5800. (a) This part applies to a TOD registration made by a transferor who dies on or after January 1, 2022, whether the TOD registration was executed or recorded before, on, or after January 1, 2022.

(b) Nothing in this part invalidates an otherwise valid transfer under Section 5804.

Comment. Section 5800 is new. For a similar provision see Section 5600 (revocable transfer on death deed).

Note. This tentative recommendation does not include a sunset date. The Commission is waiting to see the final effect of SB 315 (Roth) on the sunset date in the revocable transfer on death deed statute before deciding whether to include a sunset date in this proposal.

§ 5802. Participation of stock cooperative is optional

5802. (a) A stock cooperative is not required to offer or to accept requests for TOD registration.

(b) If TOD registration is offered by a stock cooperative, the transferor requesting TOD registration assents to the protections given to the stock cooperative by this part.

(c) By accepting a request for TOD registration, the stock cooperative agrees that the TOD registration will be implemented as provided in this part.

Comment. Section 5802 is new. For a similar provision see Section 5508(a)-(b) (TOD registration of securities).

§ 5804. Other forms of transfer-on-death not precluded

5804. This part does not preclude use of any other method of conveying real property that is permitted by law and that has the effect of postponing enjoyment of the property until the death of the owner.

Comment. Section 5804 is new. For a similar provision see Section 5602 (revocable transfer on death deed).

1 **§ 5806. Application of other law**

2 5806. (a) Except as provided in subdivision (b), nothing in this part affects the
3 application of any other statute governing a nonprobate transfer on death, including, but
4 not limited to, any of the following provisions that by its terms or intent would apply to a
5 nonprobate transfer on death:

- 6 (1) Division 2 (commencing with Section 100).
- 7 (2) Part 1 (commencing with Section 5000) of this division.
- 8 (3) Division 10 (commencing with Section 20100).
- 9 (4) Division 11 (commencing with Section 21101).

10 (b) Notwithstanding subdivision (a), a provision of another statute governing a
11 nonprobate transfer on death does not apply to a TOD registration to the extent this part
12 provides a contrary rule.

13 **Comment.** Section 5806 is new. For a similar provision see Section 5604 (revocable transfer
14 on death deed).

15 **ARTICLE 2. DEFINITIONS**

16 **§ 5810. Application of article**

17 5810. Unless the provision or context otherwise requires, the definitions in this article
18 govern the construction of this part.

19 **Comment.** Section 5810 is new. For a similar provision see Section 5606 (revocable transfer
20 on death deed).

21 **§ 5812. “Beneficiary” defined**

22 5812. “Beneficiary” means a person named in a TOD registration as transferee of
23 property. A natural person, trust, or legal entity may be named as a beneficiary.

24 **Comment.** Section 5812 is new. For a similar provision see Section 5608 (revocable transfer
25 on death deed).

26 **Note.** The second sentence of proposed Section 5812 is drawn from a provision recommended by
27 the Commission in its follow-up study of the revocable transfer on death deed statute. See
28 generally *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n
29 Reports 135 (2019). That provision would be implemented by pending bill SB 315 (Roth).

30 **§ 5814. “Property” defined**

31 5814. “Property” means a separate interest in a stock cooperative, as defined in
32 paragraph (4) of subdivision (a) of Section 4185 of the Civil Code, along with any
33 ancillary interest in the common area, as defined in Section 4095 of the Civil Code.

34 **Comment.** Section 5804 is new. It is added for drafting convenience.

35 **§ 5816. “Recorded” defined**

36 5816. “Recorded” has the meaning provided in Section 1170 of the Civil Code.

37 **Comment.** Section 5816 is new. For a similar provision see Section 5612 (revocable transfer
38 on death deed).

1 **§ 5820. “Stock cooperative” defined**

2 5820. “Stock cooperative” has the meaning provided in Section 4190 of the Civil Code.

3 **Comment.** Section 5820 is new. It is added for drafting convenience.

4 **§ 5822. “Transfer on death registration,” “TOD registration” defined**

5 5822. “Transfer on death registration” or “TOD registration” means an instrument
6 created pursuant to this part that does all of the following:

7 (a) Makes a donative transfer of property in a stock cooperative to a named beneficiary.

8 (b) Operates on the transferor’s death.

9 (c) Remains revocable until the transferor’s death.

10 **Comment.** Section 5822 is new. For a similar provision see Section 5614 (revocable transfer
11 on death deed).

12 **§ 5824 “Transferor” defined**

13 5824. “Transferor” means an owner of property in a stock cooperative who makes a
14 TOD registration for that property.

15 **Comment.** Section 5824 is new. For a similar provision see Section 5616 (revocable transfer
16 on death deed).

17 **§ 5826 “Unsecured debt” defined**

18 5824. “Unsecured debts” includes, but is not limited to, a transferor’s funeral expenses,
19 expenses of a transferor’s last illness, and wage claims.

20 **Comment.** Section 5826 is new.

21 **Note.** Section 5826 is drawn from a provision recommended by the Commission in its follow-up
22 study of the revocable transfer on death deed statute. See generally *Revocable Transfer on Death*
23 *Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135 (2019). That provision would
24 be implemented by pending bill SB 315 (Roth).

25 CHAPTER 2. EXECUTION AND REVOCATION

26 ARTICLE 1. EXECUTION

27 **§ 5830. Required capacity**

28 5830. An owner of property who has the capacity to contract may make a TOD
29 registration for the property.

30 **Comment.** Section 5830 is new. For a similar provision see Section 5620 (revocable transfer
31 on death deed).

32 **§ 5832. Identification of beneficiary**

33 5832. The transferor shall identify the beneficiary by name in a TOD registration.

34 **Comment.** Section 5832 is new. For a similar provision see Section 5622 (revocable transfer
35 on death deed).

1 **§ 5834. Signature and acknowledgment**

2 5834. A TOD registration is not effective unless it is signed by both the transferor and
3 an agent of the stock cooperative, dated, and acknowledged by both the transferor and the
4 agent before a notary public.

5 **Comment.** Section 5834 is new. For a similar provision see Section 5624 (revocable transfer
6 on death deed).

7 **§ 5836. Recordation, delivery, acceptance**

8 5836. (a) A TOD registration is not effective unless the TOD registration is recorded
9 on or before 60 days after the date it was executed.

10 (b) The transferor is not required to deliver a TOD registration to the beneficiary during
11 the transferor’s life.

12 (c) The beneficiary is not required to accept a TOD registration from the transferor
13 during the transferor’s life.

14 (d) Subdivision (a) does not require the recordation of the “Common Questions”
15 language that is specified in subdivision (b) of Section 5850. The failure to record that
16 part of the statutory form has no effect on the effectiveness of a TOD registration.

17 **Comment.** Section 5836 is new. For a similar provision see Section 5626 (revocable transfer
18 on death deed).

19 **§ 5838. Effect of TOD registration on prior TOD registration**

20 5838. (a) If a TOD registration is recorded for the same property for which another
21 TOD registration is recorded, the later executed TOD registration is the operative
22 instrument and its recordation revokes the earlier executed TOD registration.

23 (b) Revocation of a TOD registration does not revive an instrument earlier revoked by
24 recordation of that TOD registration.

25 **Comment.** Section 5838 is new. For a similar provision see Section 5628 (revocable transfer
26 on death deed).

27 **ARTICLE 2. REVOCATION**

28 **§ 5840. Required capacity**

29 5840. A transferor who has the capacity to contract may revoke a TOD registration at
30 any time.

31 **Comment.** Section 5840 is new. For a similar provision see Section 5630 (revocable transfer
32 on death deed).

33 **§ 5842. Execution**

34 5842. (a) An instrument revoking a TOD registration shall be executed and recorded in
35 the same manner as execution and recordation of a TOD registration.

36 (b) Joinder, consent, or agreement of, or notice to, the beneficiary is not required for
37 revocation of a TOD registration.

1 **Comment.** Section 5842 is new. For a similar provision see Section 5632 (revocable transfer
2 on death deed).

3 **ARTICLE 3. STATUTORY FORMS**

4 **§ 5850. Mandatory TOD registration form**

5 5850. A TOD registration shall be substantially in the following form.

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

7 **TRANSFER ON DEATH (TOD) REGISTRATION**
8 **OF PROPERTY IN STOCK COOPERATIVE**
9 **(California Probate Code Section 5850)**

10
11 Recording Requested By:
12 When Recorded Mail This Document To
13 Name:
14 Address:
15 Assessor's Parcel Number:

16
17 Space Above For Recorder's Use
18

19 This document is exempt from documentary transfer tax under Rev. & Tax. Code §
20 11930. This document is exempt from preliminary change of ownership report under
21 Rev. & Tax. Code § 480.3.

22
23 **IMPORTANT NOTICE: THIS TOD REGISTRATION MUST BE RECORDED ON**
24 **OR BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND NOTARIZED**

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

32
33 **PROPERTY DESCRIPTION**

34 Print the legal description of the property in a stock cooperative that is affected by this
35 TOD registration:
36

37
38
39 **BENEFICIARY(IES)**

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

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

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

8 IF YOU ARE NAMING A PRIVATE OR PUBLIC ENTITY, state the name of the
9 entity as precisely as you can.

10
11
12
13

TRANSFER ON DEATH

14 I transfer all of my interest in the described property in a stock cooperative to the
15 named beneficiary(ies) on my death. I may revoke this TOD registration. When recorded,
16 this TOD registration revokes any prior TOD registration that I made before signing this
17 TOD registration.

18 Sign and print your name below (your name should exactly match the name shown on
19 your ownership documents):

20
21
22

Date

23
24 NOTE: This TOD registration only transfers MY ownership share of the described
25 property in the stock cooperative. The TOD registration does NOT transfer the share of
26 any co-owner of the described property. Any co-owner who wants to name a TOD
27 beneficiary must execute and RECORD a SEPARATE TOD registration.

28
29
30

SIGNATURE OF STOCK COOPERATIVE’S AGENT

31
32 To be valid, this TOD registration must be signed and dated by an authorized agent of
33 the stock cooperative.

34
35
36

Date

37
38
39
40

ACKNOWLEDGMENT OF NOTARY PUBLIC

41
42
43

1
2 To be valid, the signatures of the transferor and the agent of the stock cooperative must
3 be acknowledged before a notary public. The certificate of the notary public may be
4 included in this form or attached to it. IF THE NOTARY'S CERTIFICATE IS A
5 SEPARATE DOCUMENT, IT MUST BE RECORDED ALONG WITH THIS FORM.
6

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

9 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

14 WHAT DOES THE TOD REGISTRATION DO? When you die, the identified
15 property in a stock cooperative will transfer to your named beneficiary without probate.
16 The TOD registration has no effect until you die. You can revoke it at any time.

17 HOW DO I USE THE TOD REGISTRATION? Complete this form, including having
18 it signed by an agent of the stock cooperative. Have your signature and the agent's
19 signature notarized. RECORD the form in the county where the property is located. The
20 form MUST be recorded on or before 60 days after the date you sign it or the TOD
21 registration will have no effect. If the notary's certificate is a separate document, it must
22 also be recorded along with this form.

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

27 IS THE "LEGAL DESCRIPTION" OF THE PROPERTY NECESSARY? Yes.

28 HOW DO I FIND THE "LEGAL DESCRIPTION" OF THE PROPERTY? This
29 information may be on the documents you received when you became an owner of the
30 property. This information may also be available from an agent of the stock cooperative
31 or in the office of the county recorder for the county where the property is located. If you
32 are not absolutely sure, consult an attorney.

33 HOW DO I "RECORD" THE FORM? Take the completed and notarized form to the
34 county recorder for the county in which the property is located. Follow the instructions
35 given by the county recorder to make the form part of the official property records. If the
36 notary's certificate is a separate page, it must be recorded too.

37 WHAT IF I SHARE OWNERSHIP OF THE PROPERTY IN A STOCK
38 COOPERATIVE? This form only transfers YOUR share of the property. If a co-owner
39 also wants to name a TOD beneficiary, that co-owner must complete and RECORD a
40 separate TOD registration form.

1 CAN I REVOKE THE TOD REGISTRATION IF I CHANGE MY MIND? Yes. You
2 may revoke the TOD registration at any time. No one, including your beneficiary, can
3 prevent you from revoking the TOD registration.

4 HOW DO I REVOKE THE TOD REGISTRATION? There are three ways to revoke a
5 recorded TOD registration: (1) Complete, have notarized, and RECORD a revocation
6 form. (2) Create, have notarized, and RECORD a new TOD registration that affects the
7 same property. (3) Sell or give away the property, or transfer it to a trust, before your
8 death and RECORD the document that transferred your property to the trust. A TOD
9 registration can only affect property that you own when you die. A TOD registration
10 cannot be revoked by a will.

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

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

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

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

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

35 HOW DO I NAME BENEFICIARIES? (1) If the beneficiary is a person, you MUST
36 state the person's FULL name. You MAY NOT use general terms to describe
37 beneficiaries, such as "my children." You may also briefly state that person's relationship
38 to you (for example, my spouse, my son, my daughter, my friend, etc.), but this is not
39 required. (2) If the beneficiary is a trust, you MUST name the trust, name the trustee(s),
40 and state the date shown on the trust's signature page. (3) If the beneficiary is a public or
41 private entity, name the entity as precisely as you can.

42 WHAT IF A BENEFICIARY DIES BEFORE I DO? If all beneficiaries die before you,
43 the TOD registration has no effect. If a beneficiary dies before you, but other

1 beneficiaries survive you, the share of the deceased beneficiary will be divided equally
2 between the surviving beneficiaries. If that is not the result you want, you should not use
3 TOD registration.

4 WHAT IS THE EFFECT OF A TOD REGISTRATION ON PROPERTY THAT I
5 OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT OF
6 SURVIVORSHIP? If you are the first joint tenant or spouse to die, the TOD registration
7 is VOID and has no effect. The property transfers to your joint tenant or surviving spouse
8 and not according to the TOD registration. If you are the last joint tenant or spouse to die,
9 the TOD registration takes effect and controls the ownership of your property in the stock
10 cooperative when you die. If you do not want these results, do not use TOD registration.
11 TOD registration does NOT transfer the share of a co-owner of the property. Any co-
12 owner who wants to name a TOD beneficiary must complete and RECORD a
13 SEPARATE TOD registration.

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

16 IS PROPERTY TRANSFERRED BY THE TOD REGISTRATION SUBJECT TO
17 MY DEBTS? Yes.

18 DOES THE TOD REGISTRATION HELP ME TO AVOID GIFT AND ESTATE
19 TAXES? No.

20 HOW DOES THE TOD REGISTRATION AFFECT PROPERTY TAXES? The TOD
21 registration has no effect on your property taxes until your death. At that time, property
22 tax law applies as it would to any other change of ownership.

23 DOES THE TOD REGISTRATION AFFECT MY ELIGIBILITY FOR MEDI-CAL?
24 No.

25 **Comment.** Section 5850 is new. For a similar provision see Section 5642 (revocable transfer
26 on death deed).

27 **§ 5852. Mandatory revocation form**

28 5852. A transferor may revoke a TOD registration by an instrument in substantially the
29 following form:

30 REVOCATION OF TRANSFER ON DEATH (TOD) REGISTRATION
31 OF A PROPERTY IN A STOCK COOPERATIVE
32 (California Probate Code Section 5852)

33
34 Recording Requested By:

35
36 When Recorded Mail This Document To

37 Name:

38 Address:

39 Assessor's Parcel Number:

40
41 Space Above For Recorder's Use

1 This TOD registration revocation is exempt from documentary transfer tax under Rev.
2 & Tax. Code §11930. This TOD registration revocation is exempt from preliminary
3 change of ownership report under Rev. & Tax. Code § 480.3.

4
5 **IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE EFFECTIVE**

6
7 This revocation form **MUST** be **RECORDED** within 60 days or it will not be effective.
8 This revocation form only affects a TOD registration that **YOU** made. A TOD
9 registration made by a co-owner of your property is not affected by this revocation form.
10 A co-owner who wants to revoke a TOD registration that the co-owner made must
11 complete and **RECORD** a **SEPARATE** revocation form.

12
13 **PROPERTY DESCRIPTION**

14
15 Print the legal description of the property affected by this revocation:
16
17

18
19 **REVOCATION**

20
21 I revoke any TOD registration to transfer the described property in a stock cooperative
22 that I executed before executing this form.

23
24 **SIGNATURE AND DATE**

25
26 Sign and print your name below (your name should exactly match the name shown on
27 your title documents):
28

29 Date

30
31 **SIGNATURE OF STOCK COOPERATIVE'S AGENT**

32
33 To be valid, this TOD registration must be signed and dated by an authorized agent of
34 the stock cooperative.

35
36 Date

37
38
39 **ACKNOWLEDGMENT OF NOTARY PUBLIC**

40
41 To be valid, the signatures of the transferor and the agent of the stock cooperative must
42 be acknowledged before a notary public. The certificate of the notary public may be

1 included in this form or attached to it. IF THE NOTARY'S CERTIFICATE IS A
2 SEPARATE DOCUMENT, IT MUST BE RECORDED ALONG WITH THIS FORM.

3 **Comment.** Section 5852 is new. For a similar provision see Section 5644 (revocable transfer
4 on death deed).

5 CHAPTER 3. EFFECT

6 ARTICLE 1. GENERAL PROVISIONS

7 § 5860. Effect during transferor's life

8 5860. During the transferor's life, execution and recordation of a TOD registration:

9 (a) Does not affect the ownership rights of the transferor, and the transferor or the
10 transferor's agent or other fiduciary may convey, assign, contract, encumber, or
11 otherwise deal with the property, and the property is subject to process of the transferor's
12 creditors, as if no TOD registration were executed or recorded.

13 (b) Does not create any legal or equitable right in the beneficiary, and the property is
14 not subject to process of the beneficiary's creditors.

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

16 **Comment.** Section 5860 is new. For a similar provision see Section 5650 (revocable transfer
17 on death deed).

18 § 5862. Effect on the transferor's death

19 5862. (a) A TOD registration transfers all of the transferor's interest in the property on
20 the transferor's death according to the following rules:

21 (1) Subject to the beneficiary's right to disclaim the transfer, the interest in the property
22 is transferred to the beneficiary in accordance with the TOD registration.

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

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

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

30 (b) Property is transferred by a TOD registration subject to any limitation on the
31 transferor's interest that is of record at the time of the transferor's death or that is
32 recorded no later than 120 days after the transferor's death, including, but not limited to,
33 a lien, encumbrance, easement, lease, or other instrument affecting the transferor's
34 interest, whether recorded before or after recordation of the TOD registration. The holder
35 of rights under that instrument may enforce those rights against the property
36 notwithstanding its transfer by the TOD registration. An enforceable restriction on the
37 use of the transferred property does not affect the transfer of title to the property by a
38 TOD registration.

39 (c) A TOD registration transfers the property without covenant or warranty of title.

1 **Comment.** Section 5862 is new. For a similar provision see Section 5652 (revocable transfer
2 on death deed).

3 **Notes.** (1) Parts of Section 5862(b) are drawn from a provision recommended by the Commission
4 in its follow-up study of the revocable transfer on death deed statute. See generally *Revocable*
5 *Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm'n Reports 135 (2019).
6 That provision would be implemented by pending bill SB 315 (Roth).

7 (2) The Commission invites public comment on whether subdivision (c), disclaiming any
8 implied covenant or warranty of title, is necessary in the context of a stock cooperative.

9 **§ 5864. Restriction on transferred property**

10 5864. (a) Property that is transferred pursuant to a TOD registration remains subject to
11 any limitation on the transferor's interest that was enforceable against the property
12 pursuant to the stock cooperative's governing documents or an agreement between the
13 transferor and the stock cooperative, including, but not limited to, a restriction on
14 occupancy, an option to purchase the property on the transferor's death, or a limitation on
15 the transfer value in a limited equity housing cooperative. The holder of those rights may
16 enforce them against the property notwithstanding its transfer pursuant to a TOD
17 registration.

18 (b) Except as provided in subdivision (c), property may be transferred by TOD
19 registration even if the beneficiary is not eligible, under the governing documents of the
20 stock cooperative, to occupy the transferred property.

21 (c) If the stock cooperative exercises an option to purchase property transferred by
22 TOD registration on the owner's death, the result is as follows:

23 (1) The property is transferred to the stock cooperative rather than the beneficiary.

24 (2) The purchase price is paid to the beneficiary. Unless the law or the governing
25 documents of the stock cooperative provide otherwise, the purchase price is the fair
26 market value of the property, less the amount of any liens or encumbrances on the
27 property at the time of the owner's death and less any amount that the decedent owed the
28 stock cooperative.

29 **Comment.** Section 5864 is new.

30 Subdivision (a) provides that property that is transferred pursuant to a TOD registration
31 remains subject to any interests or limitations provided under the stock cooperative's governing
32 documents or an agreement between the transferor and the stock cooperative (e.g., an occupancy
33 agreement).

34 Subdivision (b) provides that a property may be transferred to a beneficiary who is not eligible
35 to occupy the property (e.g., the beneficiary is too young to reside in an age-restricted
36 community). Such ineligibility does not affect the beneficiary's ability to transfer the property to
37 another person.

38 Subdivision (c) addresses the effect of TOD registration when a stock cooperative exercises an
39 option to purchase the registered property on the owner's death. Paragraph (2) of that subdivision
40 makes clear that the price paid to purchase property in a stock cooperative may be limited by law
41 or the governing documents of the stock cooperative. For example, in a limited equity housing
42 cooperative, the amount paid will be based on a specified transfer value, rather than fair market
43 value. See Civ. Code § 817.

1 **§ 5866. Effect on Medi-Cal**

2 5866. (a) For the purpose of determination of eligibility for health care under Chapter 7
3 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of
4 Part 3 of Division 9 of the Welfare and Institutions Code, execution and recordation of a
5 TOD registration is not a lifetime transfer of the property.

6 (b) Property transferred by a TOD registration is subject to claims of the State
7 Department of Health Care Services to the extent authorized by law.

8 **Comment.** Section 5866 is new. For a similar provision see Section 5654 (revocable transfer
9 on death deed).

10 **§ 5868. Effect on taxation**

11 5868. For the purpose of application of the property taxation and documentary transfer
12 tax provisions of the Revenue and Taxation Code:

13 (a) Execution and recordation of, or revocation of, a TOD registration of property is not
14 a change in ownership of the property and does not require declaration or payment of a
15 documentary transfer tax or filing of a preliminary change of ownership report.

16 (b) Transfer of real property on the death of the transferor by a TOD registration is a
17 change in ownership of the property.

18 **Comment.** Section 5868 is new. For a similar provision see Section 5656 (revocable transfer
19 on death deed).

20 **§ 5870. Application of *cy pres***

21 5870. A court in which the transferor's estate is being administered may, on the
22 petition of the personal representative or interested person, or on its own motion, apply
23 the doctrine of *cy pres* to reform a TOD registration that was made by the transferor for a
24 charitable purpose, in either of the following circumstances:

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

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

28 **Comment.** Section 5870 is new.

29 **Note.** Proposed Section 5870 is drawn from a provision recommended by the Commission in its
30 follow-up study of the revocable transfer on death deed statute. See generally *Revocable Transfer*
31 *on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm'n Reports 135 (2019). That
32 provision would be implemented by pending bill SB 315 (Roth).

33 **§ 5872. Effect of error or ambiguity**

34 5872. An error or ambiguity in describing property or designating a beneficiary does
35 not invalidate a TOD registration if the transferor's intention can be determined by a
36 court. The general law that governs judicial construction or reformation of a contract
37 applies to a revocable transfer on death deed.

38 **Comment.** Section 5872 is new.

39 **Note.** Proposed Section 5872 is drawn from a provision recommended by the Commission in its
40 follow-up study of the revocable transfer on death deed statute. See generally *Revocable Transfer*

1 *on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm'n Reports 135 (2019). That
2 provision would be implemented by pending bill SB 315 (Roth).

3 ARTICLE 2. OTHER INSTRUMENTS AND
4 FORMS OF TENURE

5 **§ 5880. Contrary instrument**

6 5880. If a TOD registration recorded on or before 60 days after the date it was executed
7 and another instrument both purport to dispose of the same property:

8 (a) If the other instrument is not recorded within 120 days after the transferor's death,
9 the TOD registration is the operative instrument.

10 (b) If the other instrument is recorded within 120 days after the transferor's death and
11 makes a revocable disposition of the property, the later executed of the TOD registration
12 or the other instrument is the operative instrument.

13 (c) If the other instrument is recorded within 120 days after the transferor's death and
14 makes an irrevocable disposition of the property, the other instrument, and not the TOD
15 registration, is the operative instrument.

16 **Comment.** Section 5880 is new. For a similar provision see Section 5660 (revocable transfer
17 on death deed).

18 **§ 5882. Right of survivorship**

19 5882. If, at the time of the transferor's death, title to the property described in the TOD
20 registration is held in joint tenancy or as community property with right of survivorship,
21 the TOD registration is void. The transferor's interest in the property is governed by the
22 right of survivorship and not by the TOD registration.

23 **Comment.** Section 5882 is new. For a similar provision see Section 5664 (revocable transfer
24 on death deed).

25 **§ 5884. Spousal consent to transfer of community property**

26 5884. (a) Chapter 2 (commencing with Section 5010) of Part 1 applies to a TOD
27 registration of community property.

28 (b) For the purpose of application of Chapter 2 (commencing with Section 5010) of
29 Part 1 to a TOD registration of community property, written consent to the TOD
30 registration, revocation of written consent to the TOD registration, or modification of the
31 TOD registration, is ineffective unless recorded within the time required by that chapter
32 for execution or service of the written consent, revocation, or modification.

33 **Comment.** Section 5884 is new. For a similar provision see Section 5666 (revocable transfer
34 on death deed).

35 **§ 5886. Community property with right of survivorship**

36 5886. A TOD registration of community property with right of survivorship is subject
37 to Section 5884, relating to a TOD registration of community property.

1 **Comment.** Section 5886 is new. For a similar provision see Section 5668 (revocable transfer
2 on death deed).

3 **ARTICLE 3. CREDITORS**

4 **§ 5890. Secured debt**

5 5890. Notwithstanding any other statute governing priorities among creditors, a
6 creditor of the transferor whose right is evidenced at the time of the transferor’s death by
7 an encumbrance or lien of record on property transferred by a TOD registration has
8 priority against the property over a creditor of the beneficiary, regardless of whether the
9 beneficiary’s obligation was created before or after the transferor’s death and regardless
10 of whether the obligation is secured or unsecured, voluntary or involuntary, recorded or
11 unrecorded.

12 **Comment.** Section 5890 is new. For a similar provision see Section 5670 (revocable transfer
13 on death deed).

14 **Note.** The staff invites public comment on whether the time provided in 5980 should be extended
15 to 120 days after the transferor’s death.

16 **§ 5892. Personal liability of beneficiary**

17 5892. Each beneficiary is personally liable to the extent provided in Section 5894 for
18 the unsecured debts of the transferor. That debt may be enforced against the beneficiary
19 in the same manner as it could have been enforced against the transferor if the transferor
20 had not died. In any action based on the debt, the beneficiary may assert any defense,
21 cross-complaint, or setoff that would have been available to the transferor if the transferor
22 had not died. Nothing in this section permits enforcement of a claim that is barred under
23 Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil
24 Procedure applies in an action under this section.

25 **Comment.** Section 5892 is new. For a similar provision see Section 5672 (revocable transfer
26 on death deed).

27 **§ 5894. Scope of personal liability**

28 5894. (a) A beneficiary is not liable under Section 5892 if proceedings for the
29 administration of the transferor’s estate are commenced and the beneficiary satisfies the
30 requirements of Section 5896 or 5898.

31 (b) The personal liability of a beneficiary under Section 5892 shall not exceed the fair
32 market value at the time of the transferor’s death or the specified transfer value in a
33 limited equity housing cooperative, of the property received by the beneficiary pursuant
34 to the TOD registration, less the amount of any liens and encumbrances on the property at
35 that time.

36 **Comment.** Section 5894 is new. For a similar provision see Section 5674 (revocable transfer
37 on death deed).

1 **§ 5896. Personal liability to estate**

2 5896. (a) If proceedings for the administration of the transferor’s estate are
3 commenced, a beneficiary of a TOD registration is personally liable to the estate for a
4 share of the transferor’s unsecured debts.

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

8 (1) The property that was transferred to the beneficiary by TOD registration shall be
9 treated as if it were a specific gift made by the decedent’s will.

10 (2) The value of the property received by the beneficiary pursuant to the TOD
11 registration shall be deemed to be the fair market value of the property at the time of the
12 transferor’s death or the specified transfer value in a limited equity housing cooperative,
13 less the amount of any liens and encumbrances on the property at that time.

14 (3) Any unsecured debts of the transferor that were paid by the beneficiary pursuant to
15 Section 5892 shall be treated as if they were claims made against the transferor’s estate.

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

18 (d) The beneficiary is personally liable to the estate for the amount specified in the
19 statement of liability. Any amount that the beneficiary paid toward the unsecured debts of
20 the transferor pursuant to Section 5892 shall be credited against the amount that the
21 beneficiary owes the estate under this subdivision. If the amount that the beneficiary paid
22 pursuant to Section 5892 exceeds the amount specified in the written statement of
23 liability, the estate shall reimburse the difference to the beneficiary. For the purposes of
24 Section 11420, this reimbursement shall be deemed an expense of administration.

25 (e) In the event that the beneficiary and the personal representative cannot agree on the
26 reimbursement or liability due under this section, the beneficiary or personal
27 representative may petition the court for an order determining the amount of the
28 reimbursement or liability.

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

32 **Comment.** Section 5896 is new. It provides a process for the determination and satisfaction of
33 a beneficiary’s share of liability for the unsecured debts of the transferor. A beneficiary who pays
34 the indicated amount to the estate has no personal liability under Section 5892. See Section
35 5894(a).

36 **Note.** Proposed Section 5896 is drawn from a provision recommended by the Commission in its
37 follow-up study of the revocable transfer on death deed statute. See generally *Revocable Transfer*
38 *on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135 (2019). That
39 provision would be implemented by pending bill SB 315 (Roth).

40 **§ 5898. Voluntary return of property to estate**

41 5898. (a) If proceedings for the administration of the transferor’s estate are
42 commenced, a beneficiary who receives property from the transferor under a TOD

1 registration may voluntarily return that property to the transferor’s estate for
2 administration.

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

5 (c) If the beneficiary’s action or inaction increased the value of property returned to the
6 estate or decreased the estate’s obligations, the estate shall reimburse the beneficiary by
7 the same amount. Actions or inaction that increase the value of returned property or
8 decrease the estate’s obligations include, but are not necessarily limited to, the following
9 actions:

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

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

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

14 (d) If the beneficiary’s action or inaction decreased the value of property returned to
15 the estate or increased the estate’s obligations, the beneficiary is personally liable to the
16 estate for that amount. Actions or inaction that decrease the value of the returned property
17 or increase the estate’s obligations include, but are not necessarily limited to, an action or
18 inaction that resulted in a lien or encumbrance being recorded against the property.

19 (e) The personal representative shall provide the beneficiary a written statement of any
20 reimbursement or liability under this section, along with a statement of the reasons for the
21 reimbursement or liability. For the purposes of Section 11420, any reimbursement under
22 this section shall be deemed an expense of administration.

23 (f) In the event that the beneficiary and the personal representative cannot agree on the
24 reimbursement or liability due under this section, the beneficiary or personal
25 representative may petition the court for an order determining the amount of the
26 reimbursement or liability. In making a decision under this subdivision, the court should
27 consider the surrounding circumstances, including whether the parties acted in good faith
28 and whether a particular result would impose an unfair burden on the beneficiary or the
29 estate.

30 **Comment.** Section 5898 is new. It provides the beneficiary of a revocable transfer on death
31 deed the option of voluntarily returning property received under the deed to the transferor’s estate
32 for administration. A beneficiary who returns property to the estate under this section has no
33 personal liability under Section 5892. See Section 5894(a).

34 **Note.** Proposed Section 5898 is drawn from a provision recommended by the Commission in its
35 follow-up study of the revocable transfer on death deed statute. See generally *Revocable Transfer*
36 *on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135 (2019). That
37 provision would be implemented by pending bill SB 315 (Roth).

38 CHAPTER 4. EFFECTUATION OF TRANSFER

39 § 5950. Effectuation of transfer

40 5950. (a) On receipt of a copy of the transferor’s death certificate and compliance with
41 any applicable requirements of the stock cooperative, the stock cooperative shall
42 reregister property that is governed by a TOD registration in the name of the beneficiary.

1 (b) For the purposes of this section, the beneficiary is a person empowered by statute to
2 act on behalf of the transferor or the transferor's estate within the meaning of Section
3 103526 of the Health and Safety Code.

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

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

9 (e) The beneficiary is liable to the transferor's estate for prorated estate and generation-
10 skipping transfer taxes to the extent provided in Division 10 (commencing with Section
11 20100).

12 **Comment.** Section 5950 is new. For similar provisions see Sections 5507 (TOD registration of
13 security), 5680 (revocable transfer on death deed).

14 **§ 5952. Bona fide purchaser or encumbrancer**

15 5952. If both of the following conditions are satisfied, a person dealing with a
16 beneficiary of a TOD registration shall have the same rights and protections as the person
17 would have if the beneficiary had been named as a distributee of the property in an order
18 for distribution of the transferor's estate that had become final:

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

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

22 **Comment.** Section 5952 is new. For a similar provision see Section 5682 (revocable transfer
23 on death deed).

24 **CHAPTER 5. CONTEST**

25 **§ 5970. Contest**

26 5970. (a) (1) An action for the disqualification of a beneficiary under Part 3.7
27 (commencing with Section 21360) of Division 11 may be brought to contest the validity
28 of a transfer of property by a TOD registration.

29 (2) An action to contest the validity of a transfer of property by a TOD registration may
30 be filed by the transferor's personal representative or an interested person under Part 19
31 (commencing with Section 850) of Division 2.

32 (3) An action to contest the validity of a revocation of TOD registration may be filed
33 by the transferor's personal representative or a beneficiary of the revoked TOD
34 registration under Part 19 (commencing with Section 850) of Division 2. If the contest is
35 successful, the court shall determine the appropriate remedy, which may include revival
36 of the revoked TOD registration. In deciding the remedy, the court shall attempt to
37 effectuate the intentions of the transferor.

38 (b) The proper county for a contest proceeding is the proper county for proceedings
39 concerning administration of the transferor's estate, whether or not proceedings

1 concerning administration of the transferor’s estate have been commenced at the time of
2 the contest.

3 (c) On commencement of a contest proceeding, the contestant may record a lis pendens
4 in the county in which the TOD registration is recorded.

5 **Comment.** Section 5970 is new. For a similar provision see Section 5690 (revocable transfer
6 on death deed).

7 **Note.** Proposed Section 5970(a)(3) is drawn from a provision recommended by the Commission
8 in its follow-up study of the revocable transfer on death deed statute. See generally *Revocable*
9 *Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135 (2019).
10 That provision would be implemented by pending bill SB 315 (Roth).

11 **§ 5972. Timing of contest**

12 5972. (a) A contest proceeding pursuant to Section 5970 shall not be commenced
13 before the transferor’s death.

14 (b) For the purposes of the applicable limitations period, a contest proceeding accrues
15 on the date of the transferor’s death.

16 **Comment.** Section 5972 is new. For a similar provision see Section 5692 (revocable transfer
17 on death deed).

18 **§ 5974. Available relief**

19 5974. If the court in a contest proceeding determines that a transfer of property by a
20 TOD registration is invalid, the court shall order the following relief:

21 (a) If the proceeding was commenced and a lis pendens was recorded within 120 days
22 after the transferor’s death, the court shall void the TOD registration and order transfer of
23 the property to the person entitled to it.

24 (b) If the proceeding was not commenced and a lis pendens was not recorded within
25 120 days after the transferor’s death, the court shall grant appropriate relief but the court
26 order shall not affect the rights in the property of a purchaser or encumbrancer for value
27 and in good faith acquired before commencement of the proceeding and recordation of a
28 lis pendens.

29 **Comment.** Section 5974 is new. For a similar provision see Section 5694 (revocable transfer
30 on death deed).

31 **§ 5976. Effect on existing grounds for contest**

32 5976. Nothing in this chapter limits the application of principles of fraud, undue
33 influence, duress, mistake, or other invalidating cause to a transfer of property by a TOD
34 registration.

35 **Comment.** Section 5976 is new. For a similar provision see Section 5696(a) (revocable
36 transfer on death deed).

37 **§ 5978. Action by conservator or guardian**

38 5978. Notwithstanding subdivision (a) of Section 5972, the conservator or guardian of
39 a transferor may, before the transferor’s death, petition the court for invalidation of a
40 TOD registration executed by the transferor.

1 **Comment.** Section 5978 is new. For a similar provision see Section 5696(b) (revocable
2 transfer on death deed).

3 **§ 5980. Liability of stock cooperative**

4 5980. (a) A stock cooperative is discharged from all claims to property in the stock
5 cooperative by the estate, creditors, heirs, or devisees of a deceased owner if it registers a
6 transfer of the property in accordance with Section 5950 and does so in good faith
7 reliance on (1) the TOD registration, (2) this part, and (3) proof of the transferor's death.

8 (b) The protections of this part do not extend to a transfer of property by TOD
9 registration after the stock cooperative has received written notice from an interested
10 person alleging that the TOD registration should not be given effect. The service of a lis
11 pendens on the stock cooperative, giving notice of a pending contest, is sufficient for this
12 purpose.

13 (c) No other notice or information available to the stock cooperative shall affect its
14 right to protection under this part.

15 (d) The protection provided by this part to the stock cooperative does not affect the
16 rights of interested persons in disputes between themselves regarding the validity of the
17 TOD registration and ownership of the property.

18 **Comment.** Section 5980 is new. For a similar provision see Section 5508(c) (TOD registration
19 of security).

20 **CONFORMING REVISIONS**

21 **Gov't Code § 27281 (amended). Public entity as beneficiary**

22 SEC. _____. Government Code Section 27281 would be amended to read as follows:

23 27281. (a) Deeds or grants conveying any interest in or easement upon real estate to a
24 political corporation or governmental agency for public purposes shall not be accepted
25 for recordation without the consent of the grantee evidenced by its certificate or
26 resolution of acceptance attached to or printed on the deed or grant. If a certificate of
27 acceptance is used, it shall be in substantially the following form:

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from
_____ to _____, a political corporation and/or governmental agency is hereby accepted by order
of the

_____ (legislative body) _____ on _____ (date) _____,

(or by the undersigned officer or agent on behalf of

the _____ (legislative body) _____

pursuant to authority conferred by resolution of the

_____ (legislative body) _____ adopted on _____ (date) _____,)

and the grantee consents to recordation thereof by its duly authorized officer.

Dated _____ By

28 A

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

4 ~~In~~

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

8 ~~The~~

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

12 **(e)** Subdivision (a) does not apply to a TOD registration of an interest in a stock
13 cooperative.

14 **(f)** A TOD registration of property in a stock cooperative that names a political
15 corporation or governmental agency as a beneficiary does not transfer title to that
16 political corporation or governmental agency unless and until the political corporation or
17 governmental agency records a resolution of acceptance or a certificate of consent in a
18 form substantially similar to the form prescribed in subdivision (a).

19 **Comment.** Section 27281(e) is added to exempt a TOD registration of property in a stock
20 cooperative from subdivision (a). Such an instrument can be recorded without the prior consent of
21 a political corporation or governmental entity named as beneficiary. However, the TOD
22 registration will not operate to transfer ownership to the political corporation or governmental
23 entity until that entity records evidence of its consent under subdivision (f).

24 **Note.** The proposed amendment of Section 27281 is drawn from a revision recommended by the
25 Commission in its follow-up study of the revocable transfer on death deed statute. See generally
26 *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135
27 (2019). That provision would be implemented by pending bill SB 315 (Roth).

28 **Prob. Code §§ 900-925 (added). Gift in view of impending death**

29 SEC. _____. Part 22 (commencing with Section 900) is added to Division 2 of the
30 Probate Code, to read:

31 **PART 22. GIFT IN VIEW OF IMPENDING DEATH**

32 900. As used in this part, “gift” means a transfer of personal property made voluntarily
33 and without consideration.

34 905. (a) A gift in view of impending death is one which is made in contemplation, fear,
35 or peril of impending death, whether from illness or other cause, and with intent that it
36 shall be revoked if the giver recovers from the illness or escapes from the peril.

37 (b) A reference in a statute to a gift in view of death means a gift in view of impending
38 death.

1 910. A gift made during the last illness of the giver, or under circumstances which
2 would naturally impress the giver with an expectation of speedy death, is presumed to be
3 a gift in view of impending death.

4 915. (a) A gift in view of impending death is revoked by:

5 (1) The giver's recovery from the illness, or escape from the peril, under the presence
6 of which it was made.

7 (2) The death of the donee before the death of the giver.

8 (b) A gift in view of impending death may be revoked by:

9 (1) The giver at any time.

10 (2) The giver's will if the will expresses an intention to revoke the gift.

11 (c) A gift in view of impending death is not affected by a previous will of the giver.

12 (d) Notwithstanding subdivisions (a) and (b), when the gift has been delivered to the
13 donee, the rights of a purchaser or encumbrancer, acting before the revocation in good
14 faith, for a valuable consideration, and without knowledge of the conditional nature of the
15 gift, are not affected by the revocation.

16 920. A gift in view of impending death is subject to Section 9653.

17 925. Except as provided in this part, a gift in view of impending death is subject to the
18 general law relating to gifts of personal property.

19 **Comment.** Part 22 continues former Part 5 (commencing with Section 5700) of Division 5
20 without change.

21 **Prob. Code §§ 5700-5705 (repealed). Gift in view of impending death**

22 SEC. ____ . Part 5 (commencing with Section 5700) of Division 5 of the Probate Code is
23 repealed.

24 **Comment.** Former Part 5 is continued without change in Part 22 (commencing with Section
25 900) of Division 2.