

AMENDED IN ASSEMBLY MARCH 28, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 873

Introduced by Assembly Member Harman

February 22, 2001

An act to amend ~~Section 2024~~ *Sections 2024 and 2040* of the Family Code, to amend Sections 5003, 5302, and 21111 of, to add Part 4 (commencing with Section 5600) to Division 5 of, and to repeal Section 6202 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as amended, Harman. Nonprobate transfers: former spouses.

Existing law provides for the transfer of property upon death by various means, including wills, trusts, joint tenancies, insurance policies, and retirement death benefits, among others. Existing law permits a trustee with a power of appointment to distribute property to beneficiaries according to the terms of the trust. Existing law permits the structuring of certain financial accounts so that they will be payable to one person upon the death of another. Existing law permits vehicles to be owned in joint tenancy and, upon death of one of the parties, that ownership may pass to another joint tenant. Existing law provides that dissolution of a marriage revokes a bequest of property made in a will to a former spouse, and revokes a beneficiary designation to a former spouse under the Public Employees' Retirement System, as specified. Existing law provides that dissolution of marriage prohibits a former spouse from receiving the spouse's share under intestate succession.

This bill would provide that specified property transfers to a transferor's spouse upon death would fail if, at the time of death, that person is *no* longer the transferor's surviving spouse, as defined, except where the transfer is not subject to revocation at time of death, or where there is clear and convincing evidence that the transfers intended to preserve the transfer to the former spouse. ~~This~~ *The* bill would provide that a joint tenancy created between a decedent and the decedent's former spouse is severed if it was created before or during marriage and, at the time of death, the former spouse is not the decedent's surviving spouse, except as specified. ~~This~~ *The* bill would also provide for the property rights of a person who subsequently purchases or encumbrances property in good faith, and would provide that a specified affidavit or declaration in this regard may be recorded. By increasing the duties of local officials processing these documents, this bill would create a state-mandated local program. ~~This~~ *The* bill would provide that holders of certain property may transfer the property in accordance with provisions of specified instruments despite possible inconsistencies with the rights of a person named as a beneficiary except as specified. ~~This~~ *The* bill would permit a court to award damages and fees when a notice of a person claiming an interest certain property is determined to have been filed in bad faith. ~~This~~ *The* bill would delete the definition of spouse from the California Statutory Will. ~~This~~ *The* bill would also make related *and conforming* changes. ~~This~~ *The* bill would be operative on January 1, 2002, but would provide that specified provisions do not apply if the decedent making the nonprobate transfer or creating the joint tenancy dies, or if the dissolution of a marriage terminating the status of a beneficiary occurs, before that date.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Section 2024 of the Family Code is amended to
2 read:

3 2024. (a) A petition for dissolution of marriage, nullity of
4 marriage, or legal separation of the parties, or a joint petition for
5 summary dissolution of marriage, shall contain the following
6 notice:

7 ~~“Dissolution or annulment of your marriage may automatically~~
8 ~~affect the rights of your former spouse regarding such things as~~
9 ~~your will, life insurance proceeds, trust benefits, retirement death~~
10 ~~benefits, power of attorney designation, pay on death bank~~
11 ~~accounts, transfer on death vehicle registration, and joint tenancy~~
12 ~~survivorship. You should review these matters, as well as any~~
13 ~~credit cards, other credit accounts, and credit reports to determine~~
14 ~~whether they should be changed or reaffirmed in view of the~~
15 ~~dissolution or annulment of your marriage, or your legal~~
16 ~~separation. However, some changes may require the agreement of~~
17 ~~your spouse or a court order (see Part 3 (commencing with Section~~
18 ~~231) of Division 2 of the Family Code).”~~ *“Dissolution or*
19 *annulment of your marriage may automatically change your*
20 *spouse’s right to such things as your will, life insurance proceeds,*
21 *trust benefits, retirement death benefits, power of attorney*
22 *designation, pay on death bank accounts, transfer on death vehicle*
23 *registration, and survivorship rights to any property taken in joint*
24 *tenancy. If you do not want the dissolution or annulment of your*
25 *marriage to interfere with the named beneficiary on these things,*
26 *you must make that intention clear. Your rights to such things as*
27 *your spouse’s will, life insurance proceeds, trust benefits,*
28 *retirement death benefits, power of attorney designation, pay on*
29 *death bank accounts, transfer on death vehicle registration, and*
30 *survivorship rights to any property taken in joint tenancy may also*
31 *be automatically changed upon dissolution or annulment of your*
32 *marriage. You should review these matters, as well as any credit*
33 *cards, other credit accounts, insurance policies, retirement benefit*
34 *plans, and credit reports to determine whether they should be*
35 *changed or whether you should take any other actions in view of*
36 *the dissolution or annulment of your marriage, or your legal*
37 *separation. However, some changes may require the agreement of*



1 *your spouse or a court order (see Part 3 (commencing with Section*
 2 *231) of Division 2 of the Family Code).*”

3 (b) A judgment for dissolution of marriage, for nullity of
 4 marriage, or for legal separation of the parties shall contain the
 5 following notice:

6
 7 ~~“Dissolution or annulment of your marriage may automatically~~
 8 ~~affect the rights of your former spouse regarding such things as~~
 9 ~~your will, life insurance proceeds, trust benefits, retirement death~~
 10 ~~benefits, power of attorney designation, pay on death bank~~
 11 ~~accounts, transfer on death vehicle registration, and joint tenancy~~
 12 ~~survivorship. You should review these matters, as well as any~~
 13 ~~credit cards, other credit accounts, and credit reports to determine~~
 14 ~~whether they should be changed or reaffirmed in view of the~~
 15 ~~dissolution or annulment of your marriage, or your legal~~
 16 ~~separation.”~~ *“Dissolution or annulment of your marriage may*
 17 *automatically change your spouse’s right to such things as your*
 18 *will, life insurance proceeds, trust benefits, retirement death*
 19 *benefits, power of attorney designation, pay on death bank*
 20 *accounts, transfer on death vehicle registration, and survivorship*
 21 *rights to any property taken in joint tenancy. If you do not want the*
 22 *dissolution or annulment of your marriage to interfere with the*
 23 *named beneficiary on these things, you must make that intention*
 24 *clear. Your rights to such things as your spouse’s will, life*
 25 *insurance proceeds, trust benefits, retirement death benefits,*
 26 *power of attorney designation, pay on death bank accounts,*
 27 *transfer on death vehicle registration, and survivorship rights to*
 28 *any property taken in joint tenancy may also be automatically*
 29 *changed upon dissolution or annulment of your marriage. You*
 30 *should review these matters, as well as any credit cards, other*
 31 *credit accounts, insurance policies, retirement benefit plans, and*
 32 *credit reports to determine whether they should be changed or*
 33 *whether you should take any other actions in view of the*
 34 *dissolution or annulment of your marriage, or your legal*
 35 *separation.”*

36
 37 SEC. 2. *Section 2040 of the Family Code is amended to read:*
 38 2040. (a) In addition to the contents required by Section
 39 412.20 of the Code of Civil Procedure, the summons shall contain
 40 a temporary restraining order:



1 (1) Restraining both parties from removing the minor child or
2 children of the parties, if any, from the state without the prior
3 written consent of the other party or an order of the court.

4 (2) Restraining both parties from transferring, encumbering,
5 hypothecating, concealing, or in any way disposing of any
6 property, real or personal, whether community, quasi-community,
7 or separate, without the written consent of the other party or an
8 order of the court, except in the usual course of business or for the
9 necessities of life, and requiring each party to notify the other party
10 of any proposed extraordinary expenditures at least five business
11 days before incurring those expenditures and to account to the
12 court for all extraordinary expenditures made after service of the
13 summons on that party.

14 Notwithstanding the foregoing, nothing in the restraining order
15 shall preclude a party from using community property,
16 quasi-community property, or the party's own separate property to
17 pay reasonable attorney's fees and costs in order to retain legal
18 counsel in the proceeding. A party who uses community property
19 or quasi-community property to pay his or her attorney's retainer
20 for fees and costs under this provision shall account to the
21 community for the use of the property. A party who uses other
22 property that is subsequently determined to be the separate
23 property of the other party to pay his or her attorney's retainer for
24 fees and costs under this provision shall account to the other party
25 for the use of the property.

26 (3) Restraining both parties from cashing, borrowing against,
27 canceling, transferring, disposing of, or changing the beneficiaries
28 of any insurance or other coverage, including life, health,
29 automobile, and disability, held for the benefit of the parties and
30 their child or children for whom support may be ordered.

31 (4) *Restraining both parties from creating a nonprobate*
32 *transfer or modifying a nonprobate transfer in a manner that*
33 *affects the disposition of property subject to the transfer, without*
34 *the written consent of the other party or an order of the court.*

35 (b) *Nothing in this section restrains any of the following:*

36 (1) *Creation, modification, or revocation of a will.*

37 (2) *Revocation of a nonprobate transfer, including a revocable*
38 *trust, pursuant to the instrument, provided that notice of the*
39 *change is filed and served on the other party before the change*
40 *takes effect.*



1 (3) *Elimination of a right of survivorship to property, provided*
2 *that notice of the change is filed and served on the other party*
3 *before the change takes effect.*

4 (4) *Creation of an unfunded revocable or irrevocable trust.*

5 (5) *Execution and filing of a disclaimer pursuant to Part 8*
6 *(commencing with Section 260) of Division 2 of the Probate Code.*

7 (c) In all actions filed on and after January 1, 1995, the
8 summons shall contain the following notice:

9 “WARNING: California law provides that, for purposes of
10 division of property upon dissolution of marriage or legal
11 separation, property acquired by the parties during marriage in
12 joint form is presumed to be community property. If either party
13 to this action should die before the jointly held community
14 property is divided, the language of how title is held in the deed
15 (i.e., joint tenancy, tenants in common, or community property)
16 will be controlling and not the community property presumption.
17 You should consult your attorney if you want the community
18 property presumption to be written into the recorded title to the
19 property.”

20 (d) *For the purposes of this section:*

21 (1) “Nonprobate transfer” means an instrument, other than a
22 will, that makes a transfer of property on death, including a
23 revocable trust, pay-on-death account in a financial institution,
24 Totten trust, transfer-on-death registration of personal property,
25 or other instrument of a type described in Section 5000 of the
26 Probate Code.

27 (2) “Nonprobate transfer” does not include a provision for the
28 transfer of property on death in an insurance policy or other
29 coverage held for the benefit of the parties and their child or
30 children for whom support may be ordered, to the extent that the
31 provision is subject to paragraph (3) of subdivision (a).

32 SEC. 3. Section 5003 of the Probate Code is amended to read:

33 5003. (a) A holder of property under an instrument of a type
34 described in Section 5000 may transfer the property in compliance
35 with a provision for a nonprobate transfer on death that satisfies the
36 terms of the instrument, whether or not the transfer is consistent
37 with the beneficial ownership of the property as between the
38 person who executed the provision for transfer of the property and
39 other persons having an interest in the property or their successors,



1 and whether or not the transfer is consistent with the rights of the
2 person named as beneficiary.

3 (b) Except as provided in this subdivision, no notice or other
4 information shown to have been available to the holder of the
5 property affects the right of the holder to the protection provided
6 by subdivision (a). The protection provided by subdivision (a)
7 does not extend to a transfer made after either of the following
8 events:

9 (1) The holder of the property has been served with a contrary
10 court order.

11 (2) The holder of the property has been served with a written
12 notice of a person claiming an adverse interest in the property.
13 However, this paragraph does not apply to a pension plan to the
14 extent the transfer is a periodic payment pursuant to the plan.

15 (c) The protection provided by this section does not affect the
16 rights of the person who executed the provision for transfer of the
17 property and other persons having an interest in the property or
18 their successors in disputes among themselves concerning the
19 beneficial ownership of the property.

20 (d) The protection provided by this section is not exclusive of
21 any protection provided the holder of the property by any other
22 provision of law.

23 (e) A person shall not serve notice under paragraph (2) of
24 subdivision (b) in bad faith. If the court in an action or proceeding
25 relating to the rights of the parties determines that a person has
26 served notice under paragraph (2) of subdivision (b) in bad faith,
27 the court shall award against the person the cost of the action or
28 proceeding, including a reasonable attorney's fee, and the
29 damages caused by the service.

30 ~~SEC. 3.~~

31 *SEC. 4.* Section 5302 of the Probate Code is amended to read:

32 5302. Subject to Section 5600:

33 (a) Sums remaining on deposit at the death of a party to a joint
34 account belong to the surviving party or parties as against the estate
35 of the decedent unless there is clear and convincing evidence of a
36 different intent. If there are two or more surviving parties, their
37 respective ownerships during lifetime are in proportion to their
38 previous ownership interests under Section 5301 augmented by an
39 equal share for each survivor of any interest the decedent may have
40 owned in the account immediately before the decedent's death;



1 and the right of survivorship continues between the surviving
2 parties.

3 (b) If the account is a P.O.D. account:

4 (1) On death of one of two or more parties, the rights to any
5 sums remaining on deposit are governed by subdivision (a).

6 (2) On death of the sole party or of the survivor of two or more
7 parties, (A) any sums remaining on deposit belong to the P.O.D.
8 payee or payees if surviving, or to the survivor of them if one or
9 more die before the party, (B) if two or more P.O.D. payees
10 survive, any sums remaining on deposit belong to them in equal
11 and undivided shares unless the terms of the account or deposit
12 agreement expressly provide for different shares, and (C) if two or
13 more P.O.D. payees survive, there is no right of survivorship in the
14 event of death of a P.O.D. payee thereafter unless the terms of the
15 account or deposit agreement expressly provide for survivorship
16 between them.

17 (c) If the account is a Totten trust account:

18 (1) On death of one of two or more trustees, the rights to any
19 sums remaining on deposit are governed by subdivision (a).

20 (2) On death of the sole trustee or the survivor of two or more
21 trustees, (A) any sums remaining on deposit belong to the person
22 or persons named as beneficiaries, if surviving, or to the survivor
23 of them if one or more die before the trustee, unless there is clear
24 and convincing evidence of a different intent, (B) if two or more
25 beneficiaries survive, any sums remaining on deposit belong to
26 them in equal and undivided shares unless the terms of the account
27 or deposit agreement expressly provide for different shares, and
28 (C) if two or more beneficiaries survive, there is no right of
29 survivorship in event of death of any beneficiary thereafter unless
30 the terms of the account or deposit agreement expressly provide
31 for survivorship between them.

32 (d) In other cases, the death of any party to a multiple-party
33 account has no effect on beneficial ownership of the account other
34 than to transfer the rights of the decedent as part of the decedent's
35 estate.

36 (e) A right of survivorship arising from the express terms of the
37 account or under this section, a beneficiary designation in a Totten
38 trust account, or a P.O.D. payee designation, cannot be changed by
39 will.

40 ~~SEC. 4.~~



1 SEC. 5. Part 4 (commencing with Section 5600) is added to
2 Division 5 of the Probate Code, to read:

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4
5
6

PART 4. NONPROBATE TRANSFER TO FORMER
SPOUSE

7 5600. (a) Except as provided in subdivision (b), a nonprobate
8 transfer to the transferor’s former spouse, in an instrument
9 executed by the transferor before or during the marriage, fails if,
10 at the time of the transferor’s death, the former spouse is not the
11 transferor’s surviving spouse as defined in Section 78.

12 (b) Subdivision (a) does not cause a nonprobate transfer to fail
13 in ~~either~~ any of the following cases:

14 (1) The nonprobate transfer is not subject to revocation by the
15 transferor at the time of the transferor’s death.

16 (2) There is clear and convincing evidence that the transferor
17 intended to preserve the nonprobate transfer to the former spouse.

18 (3) *A court order that the nonprobate transfer be maintained on*
19 *behalf of the former spouse is in effect at the time of the transferor’s*
20 *death.*

21 ~~(e)~~

22 (c) Where a nonprobate transfer fails by operation of this
23 section, the instrument making the nonprobate transfer shall be
24 treated as it would if the former spouse failed to survive the
25 transferor.

26 (d) Nothing in this section affects the rights of a subsequent
27 purchaser or encumbrancer for value in good faith who relies on
28 the apparent failure of a nonprobate transfer under this section or
29 who lacks knowledge of the failure of a nonprobate transfer under
30 this section.

31 (e) As used in this section, “nonprobate transfer” means a
32 provision of either of the following types:

33 (1) A provision of a type described in Section 5000.

34 (2) A provision in an instrument that operates on death, other
35 than a will, conferring a power of appointment or naming a trustee.

36 5601. (a) Except as provided in subdivision (b), a joint
37 tenancy between the decedent and the decedent’s former spouse,
38 created before or during the marriage, is severed as to the
39 decedent’s interest if, at the time of the decedent’s death, the



1 former spouse is not the decedent's surviving spouse as defined in
2 Section 78.

3 (b) Subdivision (a) does not sever a joint tenancy in either of
4 the following cases:

5 (1) The joint tenancy is not subject to severance by the decedent
6 at the time of the decedent's death.

7 (2) There is clear and convincing evidence that the decedent
8 intended to preserve the joint tenancy in favor of the former
9 spouse.

10 (c) Nothing in this section affects the rights of a subsequent
11 purchaser or encumbrancer for value in good faith who relies on
12 an apparent severance under this section or who lacks knowledge
13 of a severance under this section.

14 5602. (a) Nothing in this part affects the rights of a purchaser
15 or encumbrancer of real property for value who in good faith relies
16 on an affidavit or a declaration under penalty of perjury under the
17 laws of this state that states all of the following:

18 (1) The name of the decedent.

19 (2) The date and place of the decedent's death.

20 (3) A description of the real property transferred to the affiant
21 or declarant by an instrument making a nonprobate transfer or by
22 operation of joint tenancy survivorship.

23 (4) Either of the following, as appropriate:

24 (A) The affiant or declarant is the surviving spouse of the
25 decedent.

26 (B) The affiant or declarant is not the surviving spouse of the
27 decedent, but the rights of the affiant or declarant to the described
28 property are not affected by Section 5600 or 5601.

29 (b) A person relying on an affidavit or declaration made
30 pursuant to subdivision (a) has no duty to inquire into the truth of
31 the matters stated in the affidavit or declaration.

32 (c) An affidavit or declaration made pursuant to subdivision (a)
33 may be recorded.

34 5603. *Nothing in this part is intended to limit the court's*
35 *authority to order a party to a dissolution or annulment of*
36 *marriage to maintain the former spouse as a beneficiary on any*
37 *nonprobate transfer described in this part, or to preserve a joint*
38 *tenancy in favor of the former spouse.*

39 5604. (a) This part is operative on January 1, 2002.



1 (b) Except as provided in subdivision (c), this part applies to an
2 instrument making a nonprobate transfer or creating a joint
3 tenancy whether executed before, on, or after the operative date of
4 this part.

5 (c) Sections 5600 and 5601 do not apply, and the applicable law
6 in effect before the operative date of this part applies, to an
7 instrument making a nonprobate transfer or creating a joint
8 tenancy in either of the following circumstances:

9 (1) The person making the nonprobate transfer or creating the
10 joint tenancy dies before the operative date of this part.

11 (2) The dissolution of marriage or other event that terminates
12 the status of the nonprobate transfer beneficiary or joint tenant as
13 a surviving spouse occurs before the operative date of this part.

14 ~~SEC. 5.~~

15 *SEC. 6.* Section 6202 of the Probate Code is repealed.

16 ~~SEC. 6.~~

17 *SEC. 7.* Section 21111 of the Probate Code is amended to read:
18 21111. Except as provided in Section 21110:

19 (a) If a transfer, other than a residuary gift or a transfer of a
20 future interest, fails for any reason, the property is transferred as
21 follows:

22 (1) If the transferring instrument provides for an alternative
23 disposition in the event the transfer fails, the property is transferred
24 according to the terms of the instrument.

25 (2) If the transferring instrument does not provide for an
26 alternative disposition but does provide for the transfer of a
27 residue, the property becomes a part of the residue transferred
28 under the instrument.

29 (3) If the transferring instrument does not provide for an
30 alternative disposition and does not provide for the transfer of a
31 residue, the property is transferred to the decedent's estate.

32 (b) If a residuary gift or a future interest is transferred to two
33 or more persons and the share of a transferee fails for any reason,
34 the share passes to the other transferees in proportion to their other
35 interest in the residuary gift or the future interest.

36 ~~SEC. 7.~~

37 *SEC. 8.* Notwithstanding Section 17610 of the Government
38 Code, if the Commission on State Mandates determines that this
39 act contains costs mandated by the state, reimbursement to local
40 agencies and school districts for those costs shall be made pursuant



1 to Part 7 (commencing with Section 17500) of Division 4 of Title
2 2 of the Government Code. If the statewide cost of the claim for
3 reimbursement does not exceed one million dollars (\$1,000,000),
4 reimbursement shall be made from the State Mandates Claims
5 Fund.

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