

AMENDED IN SENATE JULY 9, 2001

AMENDED IN ASSEMBLY MAY 10, 2001

AMENDED IN ASSEMBLY APRIL 17, 2001

AMENDED IN ASSEMBLY MARCH 28, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 873**

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**Introduced by Assembly Member Harman**

February 22, 2001

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An act to amend 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, *due to annulment or dissolution of marriage*, 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~~ *transferor* intended to preserve the transfer to the former spouse. This bill would except provisions in life insurance policies from the definition of specified property transfers subject to the provisions described above. 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, *due to annulment or dissolution of marriage*, the former spouse is not the decedent's surviving spouse, except as specified. ~~The~~

*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. ~~The~~

*The* bill would *additionally* 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. The bill would permit a court to award damages and fees when a notice of a person claiming an interest in certain property is determined to have been filed in bad faith. The bill would delete the definition of spouse from the California Statutory Will. The bill would also make related and conforming changes. 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 cancel your spouse’s rights under your will, trust, retirement  
9 benefit plan, power of attorney , pay on death bank account,  
10 transfer on death vehicle registration, survivorship rights to any  
11 property owned in joint tenancy, and any other similar thing. It  
12 does not automatically cancel your spouse’s rights as beneficiary  
13 of your life insurance policy. If these are not the results that you  
14 want, you must change your will, trust, account agreement, or  
15 other similar document to reflect your actual wishes.

16 Dissolution or annulment of your marriage may also  
17 automatically cancel your rights under your spouse’s will, trust ,  
18 retirement benefit plan, power of attorney , pay on death bank  
19 account, transfer on death vehicle registration, and survivorship  
20 rights to any property owned in joint tenancy, and any other similar  
21 thing. It does not automatically cancel your rights as beneficiary  
22 of your spouse’s life insurance policy.

23 You should review these matters, as well as any credit cards,  
24 other credit accounts, insurance policies, retirement benefit plans,  
25 and credit reports to determine whether they should be changed or  
26 whether you should take any other actions in view of the  
27 dissolution or annulment of your marriage, or your legal  
28 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 cancel your spouse’s rights under your will, trust, retirement  
9 benefit plan, power of attorney , pay on death bank account,  
10 transfer on death vehicle registration, survivorship rights to any  
11 property owned in joint tenancy, and any other similar thing. It  
12 does not automatically cancel your spouse’s rights as beneficiary  
13 of your life insurance policy. If these are not the results that you  
14 want, you must change your will, trust, account agreement, or  
15 other similar document to reflect your actual wishes.

16 Dissolution or annulment of your marriage may also  
17 automatically cancel your rights under your spouse’s will, trust ,  
18 retirement benefit plan, power of attorney , pay on death bank  
19 account, transfer on death vehicle registration, survivorship rights  
20 to any property owned in joint tenancy, and any other similar thing.  
21 It does not automatically cancel your rights as beneficiary of your  
22 spouse’s life insurance policy.

23 You should review these matters, as well as any credit cards,  
24 other credit accounts, insurance policies, retirement benefit plans,  
25 and credit reports to determine whether they should be changed or  
26 whether you should take any other actions in view of the  
27 dissolution or annulment of your marriage, or your legal  
28 separation.”

29  
30 SEC. 2. Section 2040 of the Family Code is amended to read:

31 2040. (a) In addition to the contents required by Section  
32 412.20 of the Code of Civil Procedure, the summons shall contain  
33 a temporary restraining order:

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

37 (2) Restraining both parties from transferring, encumbering,  
38 hypothecating, concealing, or in any way disposing of any  
39 property, real or personal, whether community, quasi-community,  
40 or separate, without the written consent of the other party or an



1 order of the court, except in the usual course of business or for the  
2 necessities of life, and requiring each party to notify the other party  
3 of any proposed extraordinary expenditures at least five business  
4 days before incurring those expenditures and to account to the  
5 court for all extraordinary expenditures made after service of the  
6 summons on that party.

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

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

24 (4) Restraining both parties from creating a nonprobate  
25 transfer or modifying a nonprobate transfer in a manner that affects  
26 the disposition of property subject to the transfer, without the  
27 written consent of the other party or an order of the court.

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

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

30 (2) Revocation of a nonprobate transfer, including a revocable  
31 trust, pursuant to the instrument, provided that notice of the change  
32 is filed and served on the other party before the change takes effect.

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

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

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

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



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

12 (d) For the purposes of this section:

13 (1) “Nonprobate transfer” means an instrument, other than a  
 14 will, that makes a transfer of property on death, including a  
 15 revocable trust, pay on death account in a financial institution,  
 16 Totten trust, transfer on death registration of personal property, or  
 17 other instrument of a type described in Section 5000 of the Probate  
 18 Code.

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

24 (e) The restraining order included in the summons shall include  
 25 descriptions of the notices required by paragraphs (2) and (3) of  
 26 subdivision (b).

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

28 5003. (a) A holder of property under an instrument of a type  
 29 described in Section 5000 may transfer the property in compliance  
 30 with a provision for a nonprobate transfer on death that satisfies the  
 31 terms of the instrument, whether or not the transfer is consistent  
 32 with the beneficial ownership of the property as between the  
 33 person who executed the provision for transfer of the property and  
 34 other persons having an interest in the property or their successors,  
 35 and whether or not the transfer is consistent with the rights of the  
 36 person named as beneficiary.

37 (b) Except as provided in this subdivision, no notice or other  
 38 information shown to have been available to the holder of the  
 39 property affects the right of the holder to the protection provided  
 40 by subdivision (a). The protection provided by subdivision (a)



1 does not extend to a transfer made after either of the following  
2 events:

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

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

9 (c) The protection provided by this section does not affect the  
10 rights of the person who executed the provision for transfer of the  
11 property and other persons having an interest in the property or  
12 their successors in disputes among themselves concerning the  
13 beneficial ownership of the property.

14 (d) The protection provided by this section is not exclusive of  
15 any protection provided the holder of the property by any other  
16 provision of law.

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

24 SEC. 4. Section 5302 of the Probate Code is amended to read:  
25 5302. Subject to Section 5600:

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

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

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

39 (2) On death of the sole party or of the survivor of two or more  
40 parties, (A) any sums remaining on deposit belong to the P.O.D.



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

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

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

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

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

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

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

35

36 PART 4. NONPROBATE TRANSFER TO FORMER  
 37 SPOUSE

38

39 5600. (a) Except as provided in subdivision (b), a nonprobate  
 40 transfer to the transferor's former spouse, in an instrument





1 executed by the transferor before or during the marriage, fails if,  
2 at the time of the transferor’s death, the former spouse is not the  
3 transferor’s surviving spouse as defined in Section 78, *as a result*  
4 *of the dissolution or annulment of the marriage. A judgment of*  
5 *legal separation that does not terminate the status of husband and*  
6 *wife is not a dissolution for purposes of this section.*

7 (b) Subdivision (a) does not cause a nonprobate transfer to fail  
8 in any of the following cases:

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

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

13 (3) A court order that the nonprobate transfer be maintained on  
14 behalf of the former spouse is in effect at the time of the  
15 transferor’s death.

16 (c) Where a nonprobate transfer fails by operation of this  
17 section, the instrument making the nonprobate transfer shall be  
18 treated as it would if the former spouse failed to survive the  
19 transferor.

20 (d) Nothing in this section affects the rights of a subsequent  
21 purchaser or encumbrancer for value in good faith who relies on  
22 the apparent failure of a nonprobate transfer under this section or  
23 who lacks knowledge of the failure of a nonprobate transfer under  
24 this section.

25 (e) As used in this section, “nonprobate transfer” means a  
26 provision, other than a provision of a life insurance policy, of  
27 either of the following types:

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

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

31 5601. (a) Except as provided in subdivision (b), a joint  
32 tenancy between the decedent and the decedent’s former spouse,  
33 created before or during the marriage, is severed as to the  
34 decedent’s interest if, at the time of the decedent’s death, the  
35 former spouse is not the decedent’s surviving spouse as defined in  
36 Section 78, *as a result of the dissolution or annulment of the*  
37 *marriage. A judgment of legal separation that does not terminate*  
38 *the status of husband and wife is not a dissolution for purposes of*  
39 *this section.*



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

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

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

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

12 (d) *For purposes of this section, property held in "joint*  
13 *tenancy" includes property held as community property with right*  
14 *of survivorship, as described in Section 682.1 of the Civil Code.*

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

19 (1) The name of the decedent.

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

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

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

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

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

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

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

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

40 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. 6. Section 6202 of the Probate Code is repealed.

15 SEC. 7. Section 21111 of the Probate Code is amended to  
16 read:

17 21111. Except as provided in Section 21110:

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

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

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

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

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

35 SEC. 8. Notwithstanding Section 17610 of the Government  
36 Code, if the Commission on State Mandates determines that this  
37 act contains costs mandated by the state, reimbursement to local  
38 agencies and school districts for those costs shall be made pursuant  
39 to Part 7 (commencing with Section 17500) of Division 4 of Title  
40 2 of the Government Code. If the statewide cost of the claim for



- 1 reimbursement does not exceed one million dollars (\$1,000,000),
- 2 reimbursement shall be made from the State Mandates Claims
- 3 Fund.

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