

**ASSEMBLY BILL**

**No. 12**

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**Introduced by Assembly Member DeVore**

December 6, 2004

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An act to amend Section 5000 of, and to add Part 6 (commencing with Section 5800) to Division 5 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as introduced, DeVore. Nonprobate transfers: property conveyances upon death.

Existing law authorizes certain types of property to be transferred by a property holder to another person without that property being subject to probate proceedings upon the death of the property holder. Existing law permits, among other types of nonprobate transfers, transfers on death of an insurance policy, bond, pension plan, specified trust and other financial accounts, and property held in joint tenancy.

This bill would establish a method for conveying real property through a nonprobate transfer, by means of a new form of deed, known as a beneficiary deed. The bill would specify that, in addition to any method allowed by law, title to an interest in real property may be transferred to a grantee beneficiary on the death of the owner by recording, prior to the owner's death, a beneficiary deed signed by the owner of the property interest designating a grantee beneficiary of the interest.

The bill would define beneficiary deed and other terms, for purposes of those provisions, and would specify the requirements for recording and revoking a beneficiary deed. The bill would authorize a property owner to execute a beneficiary deed designating multiple grantee beneficiaries and successor grantee beneficiaries. The bill would also

specify the conditions by which real property subject to a beneficiary deed and owned as joint tenants or as community property passes by law upon the death of the property owner. The bill would also make conforming changes to existing law regarding nonprobate transfers.

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

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

1 SECTION 1. Section 5000 of the Probate Code is amended to  
2 read:

3 5000. (a) A provision for a nonprobate transfer on death in an  
4 insurance policy, contract of employment, bond, mortgage,  
5 promissory note, certificated or uncertificated security, account  
6 agreement, custodial agreement, deposit agreement,  
7 compensation plan, pension plan, individual retirement plan,  
8 employee benefit plan, trust, conveyance, deed of gift,  
9 *beneficiary deed*, marital property agreement, or other written  
10 instrument of a similar nature is not invalid because the  
11 instrument does not comply with the requirements for execution  
12 of a will, and this code does not invalidate the instrument.

13 (b) Included within subdivision (a) are the following:

14 (1) A written provision that money or other benefits due to,  
15 controlled by, or owned by a decedent before death shall be paid  
16 after the decedent's death to a person whom the decedent  
17 designates either in the instrument or in a separate writing,  
18 including a will, executed either before or at the same time as the  
19 instrument, or later.

20 (2) A written provision that money due or to become due  
21 under the instrument shall cease to be payable in event of the  
22 death of the promisee or the promisor before payment or demand.

23 (3) A written provision that any property controlled by or  
24 owned by the decedent before death that is the subject of the  
25 instrument shall pass to a person whom the decedent designates  
26 either in the instrument or in a separate writing, including a will,  
27 executed either before or at the same time as the instrument, or  
28 later.

29 (c) Nothing in this section limits the rights of creditors under  
30 any other law.

1 SEC. 2. Part 6 (commencing with Section 5800) is added to  
2 Division 5 of the Probate Code, to read:

3  
4 PART 6. BENEFICIARY DEEDS  
5

6 5800. As used in this part:

7 (a) “Beneficiary deed” means a deed that conveys an interest  
8 in real property, including any debt secured by a lien on real  
9 property, to a grantee beneficiary designated by the owner and  
10 that expressly states that the deed is effective on the death of the  
11 owner, transfers all interest to the designated grantee beneficiary  
12 subject to all assignments, contracts, mortgages, deeds of trust,  
13 liens, security pledges, and other encumbrances to which the  
14 owner was subject during the owner’s lifetime.

15 (b) “Deed” means any instrument of conveyance of real  
16 property.

17 (c) “Grantee beneficiary” means one or more persons or  
18 entities capable of holding title to real property designated in a  
19 beneficiary deed to receive an interest in real property upon the  
20 death of the owner. “Grantee beneficiary” includes, but is not  
21 limited to, a successor grantee beneficiary.

22 (d) “Owner” means the grantor of a beneficiary deed.

23 (e) “Successor grantee beneficiary” means the person or entity  
24 designated in a beneficiary deed to receive an interest in the  
25 property if the primary grantee beneficiary does not survive the  
26 owner.

27 5801. (a) In addition to any method allowed by law, title to an  
28 interest in real property may be transferred on the death of the  
29 owner by recording, prior to the owner’s death, a beneficiary  
30 deed signed by the owner of the property interest, as grantor,  
31 designating a grantee beneficiary of the interest. The grantee  
32 beneficiary shall take title to the owner’s interest subject to all  
33 conveyances, encumbrances, assignments, contracts, mortgages,  
34 liens, and other interests affecting title to the property, whether  
35 created before or after the recording of the beneficiary deed, and  
36 to which the owner was subject to during the owner's lifetime.

37 (b) The transfer by a beneficiary deed shall be effective only  
38 upon the death of the owner, at which time title to the property  
39 interest shall vest in the designated grantee beneficiary. A  
40 beneficiary deed does not need to be supported by consideration.

1 (c) A beneficiary deed may designate multiple grantees who  
2 take title as joint tenants with right of survivorship, tenants in  
3 common, a husband and wife as community property or as  
4 community property with right of survivorship, or any other  
5 tenancy permissible by law.

6 (d) A beneficiary deed may designate a successor grantee  
7 beneficiary. If the beneficiary deed designates a successor  
8 grantee beneficiary, the deed shall state the condition on which  
9 the interest of the successor grantee would vest.

10 5802. (a) If real property is owned as joint tenants with the  
11 right of survivorship or as community property with the right of  
12 survivorship, a beneficiary deed that conveys an interest in the  
13 real property to a grantee beneficiary designated by all of the  
14 then surviving owners and that expressly states that the deed is  
15 effective on the death of the last surviving owner, transfers the  
16 interest to the designated grantee beneficiary effective on the  
17 death of the last surviving owner.

18 (b) If a beneficiary deed is executed by fewer than all of the  
19 owners of real property owned as joint tenants with right of  
20 survivorship or community property with right of survivorship,  
21 the beneficiary deed is valid if the last surviving owner is one of  
22 the persons who executes the beneficiary deed. If the last  
23 surviving owner did not execute the beneficiary deed, the transfer  
24 shall lapse and the deed is void.

25 (c) An estate in joint tenancy with right of survivorship or  
26 community property with right of survivorship is not affected by  
27 the execution of a beneficiary deed that is executed by fewer than  
28 all of the owners of the real property and the rights of a surviving  
29 joint tenant with right of survivorship or a surviving spouse in  
30 community property with right of survivorship shall prevail over  
31 a grantee beneficiary named in a beneficiary deed.

32 5803. (a) A beneficiary deed is valid only if it is executed and  
33 recorded as provided by law in the office of the county recorder  
34 of the county in which the property is located before the death of  
35 the owner or the last surviving owner.

36 (b) A beneficiary deed may be used to transfer an interest in  
37 real property to the trustee of a trust even if the trust is revocable.

38 (c) A beneficiary deed may be revoked at any time by the  
39 owner, or, if there is more than one owner, by any of the owners  
40 who executed the beneficiary deed. To be effective, the

1 revocation must be executed and recorded as provided by law in  
2 the office of the county recorder of the county in which the real  
3 property is located before the death of the owner who executes  
4 the revocation. If the real property is owned as joint tenants with  
5 right of survivorship or community property with right of  
6 survivorship and if the revocation is not executed by all of the  
7 owners, the revocation is not effective unless executed by the last  
8 surviving owner.

9 (d) If an owner executes and records more than one  
10 beneficiary deed concerning the same real property, the last  
11 beneficiary deed that is recorded before the owner's death is the  
12 effective beneficiary deed.

13 (e) A beneficiary deed that is executed and recorded in  
14 accordance with this part is not revoked, altered, or amended by  
15 the provisions of a will of the owner.

16 (f) The signature, consent, or notice to a grantee beneficiary of  
17 a beneficiary deed is not required for any purpose during the  
18 lifetime of the owner.

19 (g) A deed, which is effective by law to convey title to the  
20 interests and estates in the deed and which is not recorded until  
21 after the death of the owner, is not invalidated by this part.

1 5804. (a) A beneficiary deed is sufficient if it complies with  
2 all other applicable laws and if it is in substantially the following  
3 form:

4

5

BENEFICIARY DEED

6

7 I, (We,) \_\_\_\_\_, hereby convey to \_\_\_\_\_  
8 (Owner) (Grantee beneficiary)

9 effective on my (our) death the following described real property:

10

11 (Legal description)

12

13

14 Dated: \_\_\_\_\_

15 (Signature of grantor(s)) \_\_\_\_\_

16

17 \_\_\_\_\_

18

19 (Acknowledgement by notary)

20

21

22 CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH  
23 OF THE GRANTOR IN ORDER TO BE EFFECTIVE. THIS  
24 BENEFICIARY DEED IS REVOCABLE. IT DOES NOT TRANSFER  
25 ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. IT  
26 REVOKES ALL PRIOR BENEFICIARY DEEDS BY THIS GRANTOR  
27 FOR THIS REAL PROPERTY EVEN IF THIS BENEFICIARY DEED  
28 FAILS TO CONVEY ALL OF THE GRANTOR'S INTEREST IN THIS  
29 REAL PROPERTY.

30

31 (b) The instrument of revocation of a beneficiary deed is  
32 sufficient if it complies with all other applicable laws and is in  
33 substantially the following form:

34

REVOCATION OF BENEFICIARY DEED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
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12  
13  
14

The undersigned hereby revokes the beneficiary deed recorded on  
\_\_\_\_\_, in docket or book \_\_\_\_\_, at page \_\_\_\_, or instrument  
(Date)  
number \_\_\_\_\_, records of \_\_\_\_\_ County, California.

Dated: \_\_\_\_\_  
(Signature) \_\_\_\_\_

(Acknowledgement by notary)

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