

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY MARCH 5, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 139**

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**Introduced by Assembly Member Gatto**

*(Coauthors: Assembly Members Chávez, Mayes, and Waldron)*

January 9, 2015

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An act to amend Sections 2337 and 2040 of the Family Code, to amend Sections 250, 267, 279, 2580, 5000, 5302, 13111, 13206, and 13562 of, to amend and renumber Sections 5600, 5601, 5602, 5603, and 5604 of, to add Section 69 to, to add the heading of Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of, to add and repeal Part 4 (commencing with Section 5600) of Division 5 of, and to repeal the heading of Part 4 (commencing with Section 5600) of Division 5 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 139, as amended, Gatto. Nonprobate transfers: revocable transfer upon death deeds.

(1) Existing law provides that a person may pass real property to a beneficiary at death by various methods including by will, intestate succession, trust, and titling the property in joint tenancy, among others.

This bill would, until January 1, 2021, create the revocable transfer on death deed (revocable TOD deed), as defined, which would transfer real property on the death of its owner without a probate ~~proceeding~~ *proceeding, according to specified rules*. The bill would require that a person have ~~testamentary~~ *the capacity to contract in order* to make or revoke the deed and would require that the deed be in a statutory form

provided for this purpose. The *bill would require that a* revocable TOD deed ~~must~~ be signed, dated, acknowledged, and recorded, as specified, to be effective. The bill would provide, among other things, that the deed, during the owner's life, does not affect his or her ownership rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal eligibility and reimbursement. The bill would void a revocable TOD deed if, at the time of the owner's death, the property is titled in joint tenancy or as community property with right of survivorship. The bill would establish priorities for creditor claims against the owner and the beneficiary of the deed in connection with the property transferred and limits on the liability of the beneficiary. The bill would establish a process for contesting the transfer of real property by a revocable TOD deed. The bill would ~~also~~ make *other* conforming and technical changes. The bill would require the California Law Revision Commission to study and make recommendations regarding the revocable TOD deed to the Legislature by January 1, 2020.

(2) Existing law provides that a person who feloniously and intentionally kills a decedent is not entitled to specified property, interests, or benefits, including any gifts of personal property made in view of impending death.

This bill would specify that a person who feloniously and intentionally kills a decedent is not entitled generally to property and interests that are transferred outside of probate, including real property transferred by a revocable TOD deed.

(3) Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$150,000, including authorizing the successor of the decedent to collect and distribute property due the decedent without letters of administration or awaiting probate of a will. Existing law provides that a beneficiary who receives real or personal property under these circumstances, as specified, may be liable to the estate if probate proceedings are subsequently commenced. Existing law provides, in this context, that a spouse has liability for the debts of a deceased spouse if the decedent's property is in the control of the surviving spouse. Existing law permits a court judgment to enforce liability in these instances only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

This bill would delete the reference to court judgment and provide instead that the personal representative of the estate is permitted to enforce liability only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

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

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

1 SECTION 1. Section 2337 of the Family Code is amended to  
2 read:

3 2337. (a) In a proceeding for dissolution of marriage, the court,  
4 upon noticed motion, may sever and grant an early and separate  
5 trial on the issue of the dissolution of the status of the marriage  
6 apart from other issues.

7 (b) A preliminary declaration of disclosure with a completed  
8 schedule of assets and debts shall be served on the nonmoving  
9 party with the noticed motion unless it has been served previously,  
10 or unless the parties stipulate in writing to defer service of the  
11 preliminary declaration of disclosure until a later time.

12 (c) The court may impose upon a party any of the following  
13 conditions on granting a severance of the issue of the dissolution  
14 of the status of the marriage, and in case of that party's death, an  
15 order of any of the following conditions continues to be binding  
16 upon that party's estate:

17 (1) The party shall indemnify and hold the other party harmless  
18 from any taxes, reassessments, interest, and penalties payable by  
19 the other party in connection with the division of the community  
20 estate that would not have been payable if the parties were still  
21 married at the time the division was made.

22 (2) Until judgment has been entered on all remaining issues and  
23 has become final, the party shall maintain all existing health and  
24 medical insurance coverage for the other party and any minor  
25 children as named dependents, so long as the party is eligible to  
26 do so. If at any time during this period the party is not eligible to  
27 maintain that coverage, the party shall, at the party's sole expense,  
28 provide and maintain health and medical insurance coverage that  
29 is comparable to the existing health and medical insurance coverage  
30 to the extent it is available. To the extent that coverage is not  
31 available, the party shall be responsible to pay, and shall  
32 demonstrate to the court's satisfaction the ability to pay, for the  
33 health and medical care for the other party and the minor children,  
34 to the extent that care would have been covered by the existing  
35 insurance coverage but for the dissolution of marital status, and

1 shall otherwise indemnify and hold the other party harmless from  
2 any adverse consequences resulting from the loss or reduction of  
3 the existing coverage. For purposes of this subdivision, “health  
4 and medical insurance coverage” includes any coverage for which  
5 the parties are eligible under any group or individual health or  
6 other medical plan, fund, policy, or program.

7 (3) Until judgment has been entered on all remaining issues and  
8 has become final, the party shall indemnify and hold the other  
9 party harmless from any adverse consequences to the other party  
10 if the bifurcation results in a termination of the other party’s right  
11 to a probate homestead in the residence in which the other party  
12 resides at the time the severance is granted.

13 (4) Until judgment has been entered on all remaining issues and  
14 has become final, the party shall indemnify and hold the other  
15 party harmless from any adverse consequences to the other party  
16 if the bifurcation results in the loss of the rights of the other party  
17 to a probate family allowance as the surviving spouse of the party.

18 (5) Until judgment has been entered on all remaining issues and  
19 has become final, the party shall indemnify and hold the other  
20 party harmless from any adverse consequences to the other party  
21 if the bifurcation results in the loss of the other party’s rights with  
22 respect to any retirement, survivor, or deferred compensation  
23 benefits under any plan, fund, or arrangement, or to any elections  
24 or options associated therewith, to the extent that the other party  
25 would have been entitled to those benefits or elections as the spouse  
26 or surviving spouse of the party.

27 (6) The party shall indemnify and hold the other party harmless  
28 from any adverse consequences if the bifurcation results in the  
29 loss of rights to social security benefits or elections to the extent  
30 the other party would have been entitled to those benefits or  
31 elections as the surviving spouse of the party.

32 (7) (A) The court may make an order pursuant to paragraph (3)  
33 of subdivision (b) of Section 5040 of the Probate Code, if  
34 appropriate, that a party maintain a beneficiary designation for a  
35 nonprobate transfer, as described in Section 5000 of the Probate  
36 Code, for a spouse or domestic partner for up to one-half of or,  
37 upon a showing of good cause, for all of a nonprobate transfer  
38 asset until judgment has been entered with respect to the  
39 community ownership of that asset, and until the other party’s  
40 interest therein has been distributed to him or her.

1 (B) Except upon a showing of good cause, this paragraph does  
2 not apply to any of the following:

3 (i) A nonprobate transfer described in Section 5000 of the  
4 Probate Code that was not created by either party or that was  
5 acquired by either party by gift, descent, or devise.

6 (ii) An irrevocable trust.

7 (iii) A trust of which neither party is the grantor.

8 (iv) Powers of appointment under a trust instrument that was  
9 not created by either party or of which neither party is a grantor.

10 (v) The execution and filing of a disclaimer pursuant to Part 8  
11 (commencing with Section 260) of Division 2 of the Probate Code.

12 (vi) The appointment of a party as a trustee.

13 (8) In order to preserve the ability of the party to defer the  
14 distribution of the Individual Retirement Account or annuity (IRA)  
15 established under Section 408 or 408A of the Internal Revenue  
16 Code of 1986, as amended, (IRC) upon the death of the other party,  
17 the court may require that one-half, or all upon a showing of good  
18 cause, of the community interest in any IRA, by or for the benefit  
19 of the party, be assigned and transferred to the other party pursuant  
20 to Section 408(d)(6) of the Internal Revenue Code. This paragraph  
21 does not limit the power granted pursuant to subdivision (g).

22 (9) Upon a showing that circumstances exist that would place  
23 a substantial burden of enforcement upon either party's community  
24 property rights or would eliminate the ability of the surviving party  
25 to enforce his or her community property rights if the other party  
26 died before the division and distribution or compliance with any  
27 court-ordered payment of any community property interest therein,  
28 including, but not limited to, a situation in which preemption under  
29 federal law applies to an asset of a party, or purchase by a bona  
30 fide purchaser has occurred, the court may order a specific security  
31 interest designed to reduce or eliminate the likelihood that a  
32 postmortem enforcement proceeding would be ineffective or  
33 unduly burdensome to the surviving party. For this purpose, those  
34 orders may include, but are not limited to, any of the following:

35 (A) An order that the party provide an undertaking.

36 (B) An order to provide a security interest by Qualified Domestic  
37 Relations Order from that party's share of a retirement plan or  
38 plans.

39 (C) An order for the creation of a trust as defined in paragraph  
40 (2) of subdivision (a) of Section 82 of the Probate Code.

1 (D) An order for other arrangements as may be reasonably  
2 necessary and feasible to provide appropriate security in the event  
3 of the party’s death before judgment has been entered with respect  
4 to the community ownership of that asset, and until the other  
5 party’s interest therein has been distributed to him or her.

6 (E) If a retirement plan is not subject to an enforceable court  
7 order for the payment of spousal survivor benefits to the other  
8 party, an interim order requiring the party to pay or cause to be  
9 paid, and to post adequate security for the payment of, any survivor  
10 benefit that would have been payable to the other party on the  
11 death of the party but for the judgment granting a dissolution of  
12 the status of the marriage, pending entry of judgment on all  
13 remaining issues.

14 (10) Any other condition the court determines is just and  
15 equitable.

16 (d) Prior to, or simultaneously with, entry of judgment granting  
17 dissolution of the status of the marriage, all of the following shall  
18 occur:

19 (1) The party’s retirement or pension plan shall be joined as a  
20 party to the proceeding for dissolution, unless joinder is precluded  
21 or made unnecessary by Title 1 of the federal Employee Retirement  
22 Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), as  
23 amended (ERISA), or any other applicable law.

24 (2) To preserve the claims of each spouse in all retirement plan  
25 benefits upon entry of judgment granting a dissolution of the status  
26 of the marriage, the court shall enter one of the following in  
27 connection with the judgment for each retirement plan in which  
28 either party is a participant:

29 (A) An order pursuant to Section 2610 disposing of each party’s  
30 interest in retirement plan benefits, including survivor and death  
31 benefits.

32 (B) An interim order preserving the nonemployee party’s right  
33 to retirement plan benefits, including survivor and death benefits,  
34 pending entry of judgment on all remaining issues.

35 (C) An attachment to the judgment granting a dissolution of the  
36 status of the marriage, as follows:

37  
38 EACH PARTY (insert names and addresses) IS  
39 PROVISIONALLY AWARDED WITHOUT PREJUDICE  
40 AND SUBJECT TO ADJUSTMENT BY A SUBSEQUENT

1 DOMESTIC RELATIONS ORDER, A SEPARATE  
2 INTEREST EQUAL TO ONE-HALF OF ALL BENEFITS  
3 ACCRUED OR TO BE ACCRUED UNDER THE PLAN  
4 (name each plan individually) AS A RESULT OF  
5 EMPLOYMENT OF THE OTHER PARTY DURING THE  
6 MARRIAGE OR DOMESTIC PARTNERSHIP AND PRIOR  
7 TO THE DATE OF SEPARATION. IN ADDITION,  
8 PENDING FURTHER NOTICE, THE PLAN SHALL, AS  
9 ALLOWED BY LAW, OR IN THE CASE OF A  
10 GOVERNMENTAL PLAN, AS ALLOWED BY THE  
11 TERMS OF THE PLAN, CONTINUE TO TREAT THE  
12 PARTIES AS MARRIED OR DOMESTIC PARTNERS FOR  
13 PURPOSES OF ANY SURVIVOR RIGHTS OR BENEFITS  
14 AVAILABLE UNDER THE PLAN TO THE EXTENT  
15 NECESSARY TO PROVIDE FOR PAYMENT OF AN  
16 AMOUNT EQUAL TO THAT SEPARATE INTEREST OR  
17 FOR ALL OF THE SURVIVOR BENEFIT IF AT THE TIME  
18 OF THE DEATH OF THE PARTICIPANT, THERE IS NO  
19 OTHER ELIGIBLE RECIPIENT OF THE SURVIVOR  
20 BENEFIT.

21  
22 (e) The moving party shall promptly serve a copy of any order,  
23 interim order, or attachment entered pursuant to paragraph (2) of  
24 subdivision (d), and a copy of the judgment granting a dissolution  
25 of the status of the marriage, on the retirement or pension plan  
26 administrator.

27 (f) A judgment granting a dissolution of the status of the  
28 marriage shall expressly reserve jurisdiction for later determination  
29 of all other pending issues.

30 (g) If the party dies after the entry of judgment granting a  
31 dissolution of marriage, any obligation imposed by this section  
32 shall be enforceable against any asset, including the proceeds  
33 thereof, against which these obligations would have been  
34 enforceable prior to the person's death.

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

36 2040. (a) In addition to the contents required by Section 412.20  
37 of the Code of Civil Procedure, the summons shall contain a  
38 temporary restraining order:

39 (1) Restraining both parties from removing the minor child or  
40 children of the parties, if any, from the state, or from applying for

1 a new or replacement passport for the minor child or children,  
2 without the prior written consent of the other party or an order of  
3 the court.

4 (2) Restraining both parties from transferring, encumbering,  
5 hypothecating, concealing, or in any way disposing of any property,  
6 real or personal, whether community, quasi-community, or  
7 separate, without the written consent of the other party or an order  
8 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  
17 to 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 property  
23 of the other party to pay his or her attorney's retainer for fees and  
24 costs under this provision shall account to the other party for the  
25 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 transfer  
32 or modifying a nonprobate transfer in a manner that affects the  
33 disposition of property subject to the transfer, without the written  
34 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 change  
39 is filed and served on the other party before the change 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 summons  
8 shall contain the following notice:

9  
10 “WARNING: California law provides that, for purposes of  
11 division of property upon dissolution of marriage or legal  
12 separation, property acquired by the parties during marriage in  
13 joint form is presumed to be community property. If either party  
14 to this action should die before the jointly held community property  
15 is divided, the language of how title is held in the deed (i.e., joint  
16 tenancy, tenants in common, or community property) will be  
17 controlling and not the community property presumption. You  
18 should consult your attorney if you want the community property  
19 presumption to be written into the recorded title to the property.”  
20

21 (d) For the purposes of this section:

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

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

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

36 SEC. 3. Section 69 is added to the Probate Code, to read:

37 69. “Revocable transfer on death deed” or “revocable TOD  
38 deed” means a revocable transfer on death deed as described in  
39 Section 5614.

40 SEC. 4. Section 250 of the Probate Code is amended to read:

1 250. (a) A person who feloniously and intentionally kills the  
2 decedent is not entitled to any of the following:

3 (1) Any property, interest, or benefit under a will of the  
4 decedent, or a trust created by or for the benefit of the decedent  
5 or in which the decedent has an interest, including any general or  
6 special power of appointment conferred by the will or trust on the  
7 killer and any nomination of the killer as executor, trustee,  
8 guardian, or conservator or custodian made by the will or trust.

9 (2) Any property of the decedent by intestate succession.

10 (3) Any of the decedent's quasi-community property the killer  
11 would otherwise acquire under Section 101 or 102 upon the death  
12 of the decedent.

13 (4) Any property of the decedent under Division 5 (commencing  
14 with Section 5000).

15 (5) Any property of the decedent under Part 3 (commencing  
16 with Section 6500) of Division 6.

17 (b) In the cases covered by subdivision (a):

18 (1) The property interest or benefit referred to in paragraph (1)  
19 of subdivision (a) passes as if the killer had predeceased the  
20 decedent and Section 21110 does not apply.

21 (2) Any property interest or benefit referred to in paragraph (1)  
22 of subdivision (a) which passes under a power of appointment and  
23 by reason of the death of the decedent passes as if the killer had  
24 predeceased the decedent, and Section 673 does not apply.

25 (3) Any nomination in a will or trust of the killer as executor,  
26 trustee, guardian, conservator, or custodian which becomes  
27 effective as a result of the death of the decedent shall be interpreted  
28 as if the killer had predeceased the decedent.

29 SEC. 5. Section 267 of the Probate Code is amended to read:

30 267. (a) "Interest" includes the whole of any property, real or  
31 personal, legal or equitable, or any fractional part, share, or  
32 particular portion or specific assets thereof, or any estate in any  
33 such property, or any power to appoint, consume, apply, or expend  
34 property, or any other right, power, privilege, or immunity relating  
35 to property.

36 (b) "Interest" includes, but is not limited to, an interest created  
37 in any of the following manners:

38 (1) By intestate succession.

39 (2) Under a will.

40 (3) Under a trust.

- 1 (4) By succession to a disclaimed interest.
- 2 (5) By virtue of an election to take against a will.
- 3 (6) By creation of a power of appointment.
- 4 (7) By exercise or nonexercise of a power of appointment.
- 5 (8) By an inter vivos gift, whether outright or in trust.
- 6 (9) By surviving the death of a depositor of a Totten trust
- 7 account or P.O.D. account.
- 8 (10) Under an insurance or annuity contract.
- 9 (11) By surviving the death of another joint tenant.
- 10 (12) Under an employee benefit plan.
- 11 (13) Under an individual retirement account, annuity, or bond.
- 12 (14) Under a transfer on death beneficiary designation in a deed
- 13 or other instrument.
- 14 (15) Any other interest created by a testamentary or inter vivos
- 15 instrument or by operation of law.
- 16 SEC. 6. Section 279 of the Probate Code is amended to read:
- 17 279. (a) A disclaimer to be effective shall be filed within a
- 18 reasonable time after the person able to disclaim acquires
- 19 knowledge of the interest.
- 20 (b) In the case of any of the following interests, a disclaimer is
- 21 conclusively presumed to have been filed within a reasonable time
- 22 if it is filed within nine months after the death of the creator of the
- 23 interest or within nine months after the interest becomes
- 24 indefeasibly vested, whichever occurs later:
- 25 (1) An interest created under a will.
- 26 (2) An interest created by intestate succession.
- 27 (3) An interest created pursuant to the exercise or nonexercise
- 28 of a testamentary power of appointment.
- 29 (4) An interest created by surviving the death of a depositor of
- 30 a Totten trust account or P.O.D. account.
- 31 (5) An interest created under a life insurance or annuity contract.
- 32 (6) An interest created by surviving the death of another joint
- 33 tenant.
- 34 (7) An interest created under an employee benefit plan.
- 35 (8) An interest created under an individual retirement account,
- 36 annuity, or bond.
- 37 (9) An interest created under a transfer on death beneficiary
- 38 designation in a deed or other instrument.
- 39 (c) In the case of an interest created by a living trust, an interest
- 40 created by the exercise of a presently exercisable power of

1 appointment, an outright inter vivos gift, a power of appointment,  
 2 or an interest created or increased by succession to a disclaimed  
 3 interest, a disclaimer is conclusively presumed to have been filed  
 4 within a reasonable time if it is filed within nine months after  
 5 whichever of the following times occurs latest:

6 (1) The time of the creation of the trust, the exercise of the power  
 7 of appointment, the making of the gift, the creation of the power  
 8 of appointment, or the disclaimer of the disclaimed property.

9 (2) The time the first knowledge of the interest is acquired by  
 10 the person able to disclaim.

11 (3) The time the interest becomes indefeasibly vested.

12 (d) In case of an interest not described in subdivision (b) or (c),  
 13 a disclaimer is conclusively presumed to have been filed within a  
 14 reasonable time if it is filed within nine months after whichever  
 15 of the following times occurs later:

16 (1) The time the first knowledge of the interest is acquired by  
 17 the person able to disclaim.

18 (2) The time the interest becomes indefeasibly vested.

19 (e) In the case of a future estate, a disclaimer is conclusively  
 20 presumed to have been filed within a reasonable time if it is filed  
 21 within whichever of the following times occurs later:

22 (1) Nine months after the time the interest becomes an estate in  
 23 possession.

24 (2) The time specified in subdivision (b), (c), or (d), whichever  
 25 is applicable.

26 (f) If the disclaimer is not filed within the time provided in  
 27 subdivision (b), (c), (d), or (e), the disclaimant has the burden of  
 28 establishing that the disclaimer was filed within a reasonable time  
 29 after the disclaimant acquired knowledge of the interest.

30 SEC. 7. Section 2580 of the Probate Code is amended to read:

31 2580. (a) The conservator or other interested person may file  
 32 a petition under this article for an order of the court authorizing  
 33 or requiring the conservator to take a proposed action for any one  
 34 or more of the following purposes:

35 (1) Benefiting the conservatee or the estate.

36 (2) Minimizing current or prospective taxes or expenses of  
 37 administration of the conservatorship estate or of the estate upon  
 38 the death of the conservatee.

39 (3) Providing gifts for any purposes, and to any charities,  
 40 relatives (including the other spouse or domestic partner), friends,

1 or other objects of bounty, as would be likely beneficiaries of gifts  
2 from the conservatee.

3 (b) The action proposed in the petition may include, but is not  
4 limited to, the following:

5 (1) Making gifts of principal or income, or both, of the estate,  
6 outright or in trust.

7 (2) Conveying or releasing the conservatee’s contingent and  
8 expectant interests in property, including marital property rights  
9 and any right of survivorship incident to joint tenancy or tenancy  
10 by the entirety.

11 (3) Exercising or releasing the conservatee’s powers as donee  
12 of a power of appointment.

13 (4) Entering into contracts.

14 (5) Creating for the benefit of the conservatee or others,  
15 revocable or irrevocable trusts of the property of the estate, which  
16 trusts may extend beyond the conservatee’s disability or life. A  
17 special needs trust for money paid pursuant to a compromise or  
18 judgment for a conservatee may be established only under Chapter  
19 4 (commencing with Section 3600) of Part 8, and not under this  
20 article.

21 (6) Transferring to a trust created by the conservator or  
22 conservatee any property unintentionally omitted from the trust.

23 (7) Exercising options of the conservatee to purchase or  
24 exchange securities or other property.

25 (8) Exercising the rights of the conservatee to elect benefit or  
26 payment options, to terminate, to change beneficiaries or  
27 ownership, to assign rights, to borrow, or to receive cash value in  
28 return for a surrender of rights under any of the following:

29 (A) Life insurance policies, plans, or benefits.

30 (B) Annuity policies, plans, or benefits.

31 (C) Mutual fund and other dividend investment plans.

32 (D) Retirement, profit sharing, and employee welfare plans and  
33 benefits.

34 (9) Exercising the right of the conservatee to elect to take under  
35 or against a will.

36 (10) Exercising the right of the conservatee to disclaim any  
37 interest that may be disclaimed under Part 8 (commencing with  
38 Section 260) of Division 2.

39 (11) Exercising the right of the conservatee (A) to revoke or  
40 modify a revocable trust or (B) to surrender the right to revoke or

1 modify a revocable trust, but the court shall not authorize or require  
 2 the conservator to exercise the right to revoke or modify a  
 3 revocable trust if the instrument governing the trust (A) evidences  
 4 an intent to reserve the right of revocation or modification  
 5 exclusively to the conservatee, (B) provides expressly that a  
 6 conservator may not revoke or modify the trust, or (C) otherwise  
 7 evidences an intent that would be inconsistent with authorizing or  
 8 requiring the conservator to exercise the right to revoke or modify  
 9 the trust.

10 (12) Making an election referred to in Section 13502 or an  
 11 election and agreement referred to in Section 13503.

12 (13) Making a will.

13 (14) Making or revoking a revocable transfer on death deed.

14 SEC. 8. Section 5000 of the Probate Code is amended to read:

15 5000. (a) A provision for a nonprobate transfer on death in an  
 16 insurance policy, contract of employment, bond, mortgage,  
 17 promissory note, certificated or uncertificated security, account  
 18 agreement, custodial agreement, deposit agreement, compensation  
 19 plan, pension plan, individual retirement plan, employee benefit  
 20 plan, trust, conveyance, deed of gift, revocable transfer on death  
 21 deed, marital property agreement, or other written instrument of  
 22 a similar nature is not invalid because the instrument does not  
 23 comply with the requirements for execution of a will, and this code  
 24 does not invalidate the instrument.

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

26 (1) A written provision that moneys or other benefits due to,  
 27 controlled by, or owned by a decedent before death shall be paid  
 28 after the decedent's death to a person whom the decedent  
 29 designates either in the instrument or in a separate writing,  
 30 including a will, executed either before or at the same time as the  
 31 instrument, or later.

32 (2) A written provision that moneys due or to become due under  
 33 the instrument shall cease to be payable in the event of the death  
 34 of the promisee or the promisor before payment or demand.

35 (3) A written provision that any property controlled by or owned  
 36 by the decedent before death that is the subject of the instrument  
 37 shall pass to a person whom the decedent designates either in the  
 38 instrument or in a separate writing, including a will, executed either  
 39 before or at the same time as the instrument, or later.

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

3 SEC. 9. Section 5302 of the Probate Code is amended to read:

4 5302. Subject to Section 5040:

5 (a) Sums remaining on deposit at the death of a party to a joint  
6 account belong to the surviving party or parties as against the estate  
7 of the decedent unless there is clear and convincing evidence of a  
8 different intent. If there are two or more surviving parties, their  
9 respective ownerships during lifetime are in proportion to their  
10 previous ownership interests under Section 5301 augmented by  
11 an equal share for each survivor of any interest the decedent may  
12 have owned in the account immediately before the decedent's  
13 death; and the right of survivorship continues between the surviving  
14 parties.

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

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

18 (2) On death of the sole party or of the survivor of two or more  
19 parties, (A) any sums remaining on deposit belong to the P.O.D.  
20 payee or payees if surviving, or to the survivor of them if one or  
21 more die before the party, (B) if two or more P.O.D. payees  
22 survive, any sums remaining on deposit belong to them in equal  
23 and undivided shares unless the terms of the account or deposit  
24 agreement expressly provide for different shares, and (C) if two  
25 or more P.O.D. payees survive, there is no right of survivorship  
26 in the event of death of a P.O.D. payee thereafter unless the terms  
27 of the account or deposit agreement expressly provide for  
28 survivorship between them.

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

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

32 (2) On death of the sole trustee or the survivor of two or more  
33 trustees, (A) any sums remaining on deposit belong to the person  
34 or persons named as beneficiaries, if surviving, or to the survivor  
35 of them if one or more die before the trustee, unless there is clear  
36 and convincing evidence of a different intent, (B) if two or more  
37 beneficiaries survive, any sums remaining on deposit belong to  
38 them in equal and undivided shares unless the terms of the account  
39 or deposit agreement expressly provide for different shares, and  
40 (C) if two or more beneficiaries survive, there is no right of

1 survivorship in event of death of any beneficiary thereafter unless  
2 the terms of the account or deposit agreement expressly provide  
3 for survivorship between them.

4 (d) In other cases, the death of any party to a multiparty account  
5 has no effect on beneficial ownership of the account other than to  
6 transfer the rights of the decedent as part of the decedent's estate.

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

11 SEC. 10. The heading of Part 4 (commencing with Section  
12 5600) of Division 5 of the Probate Code is repealed.

13 SEC. 11. A heading is added as Chapter 3 (commencing with  
14 Section 5040) to Part 1 of Division 5 of the Probate Code,  
15 immediately preceding Section 5040, to read:

16  
17 CHAPTER 3. NONPROBATE TRANSFER TO FORMER SPOUSE  
18

19 SEC. 12. Section 5600 of the Probate Code is amended and  
20 renumbered to read:

21 5040. (a) Except as provided in subdivision (b), a nonprobate  
22 transfer to the transferor's former spouse, in an instrument executed  
23 by the transferor before or during the marriage, fails if, at the time  
24 of the transferor's death, the former spouse is not the transferor's  
25 surviving spouse as defined in Section 78, as a result of the  
26 dissolution or annulment of the marriage. A judgment of legal  
27 separation that does not terminate the status of husband and wife  
28 is not a dissolution for purposes of this section.

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

31 (1) The nonprobate transfer is not subject to revocation by the  
32 transferor at the time of the transferor's death.

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

35 (3) A court order that the nonprobate transfer be maintained on  
36 behalf of the former spouse is in effect at the time of the  
37 transferor's death.

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

1 (d) Nothing in this section affects the rights of a subsequent  
2 purchaser or encumbrancer for value in good faith who relies on  
3 the apparent failure of a nonprobate transfer under this section or  
4 who lacks knowledge of the failure of a nonprobate transfer under  
5 this section.

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

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

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

12 SEC. 13. Section 5601 of the Probate Code is amended and  
13 renumbered to read:

14 5042. (a) Except as provided in subdivision (b), a joint tenancy  
15 between the decedent and the decedent’s former spouse, created  
16 before or during the marriage, is severed as to the decedent’s  
17 interest if, at the time of the decedent’s death, the former spouse  
18 is not the decedent’s surviving spouse as defined in Section 78, as  
19 a result of the dissolution or annulment of the marriage. A judgment  
20 of legal separation that does not terminate the status of husband  
21 and wife is not a dissolution for purposes of this section.

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

24 (1) The joint tenancy is not subject to severance by the decedent  
25 at the time of the decedent’s death.

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

28 (c) Nothing in this section affects the rights of a subsequent  
29 purchaser or encumbrancer for value in good faith who relies on  
30 an apparent severance under this section or who lacks knowledge  
31 of a severance under this section.

32 (d) For purposes of this section, property held in “joint tenancy”  
33 includes property held as community property with right of  
34 survivorship, as described in Section 682.1 of the Civil Code.

35 SEC. 14. Section 5602 of the Probate Code is amended and  
36 renumbered to read:

37 5044. (a) Nothing in this chapter affects the rights of a  
38 purchaser or encumbrancer of real property for value who in good  
39 faith relies on an affidavit or a declaration under penalty of perjury  
40 under the laws of this state that states all of the following:

- 1 (1) The name of the decedent.
- 2 (2) The date and place of the decedent’s death.
- 3 (3) A description of the real property transferred to the affiant
- 4 or declarant by an instrument making a nonprobate transfer or by
- 5 operation of joint tenancy survivorship.
- 6 (4) Either of the following, as appropriate:
- 7 (A) The affiant or declarant is the surviving spouse of the
- 8 decedent.
- 9 (B) The affiant or declarant is not the surviving spouse of the
- 10 decedent, but the rights of the affiant or declarant to the described
- 11 property are not affected by Section 5040 or 5042.
- 12 (b) A person relying on an affidavit or declaration made pursuant
- 13 to subdivision (a) has no duty to inquire into the truth of the matters
- 14 stated in the affidavit or declaration.
- 15 (c) An affidavit or declaration made pursuant to subdivision (a)
- 16 may be recorded.
- 17 SEC. 15. Section 5603 of the Probate Code is amended and
- 18 renumbered to read:
- 19 5046. Nothing in this chapter is intended to limit the court’s
- 20 authority to order a party to a dissolution or annulment of marriage
- 21 to maintain the former spouse as a beneficiary on any nonprobate
- 22 transfer described in this chapter, or to preserve a joint tenancy in
- 23 favor of the former spouse.
- 24 SEC. 16. Section 5604 of the Probate Code is amended and
- 25 renumbered to read:
- 26 5048. (a) This chapter, formerly Part 4 (commencing with
- 27 Section 5600), is operative on January 1, 2002.
- 28 (b) Except as provided in subdivision (c), this chapter applies
- 29 to an instrument making a nonprobate transfer or creating a joint
- 30 tenancy whether executed before, on, or after the operative date
- 31 of this chapter.
- 32 (c) Sections 5040 and 5042 do not apply, and the applicable
- 33 law in effect before the operative date of this chapter applies, to
- 34 an instrument making a nonprobate transfer or creating a joint
- 35 tenancy in either of the following circumstances:
- 36 (1) The person making the nonprobate transfer or creating the
- 37 joint tenancy dies before the operative date of this chapter.
- 38 (2) The dissolution of marriage or other event that terminates
- 39 the status of the nonprobate transfer beneficiary or joint tenant as
- 40 a surviving spouse occurs before the operative date of this chapter.

1 SEC. 17. Part 4 (commencing with Section 5600) is added to  
2 Division 5 of the Probate Code, to read:

3  
4 PART 4. REVOCABLE TRANSFER ON DEATH DEED

5  
6 CHAPTER 1. GENERAL PROVISIONS

7  
8 Article 1. Preliminary Provisions

9  
10 5600. (a) This part applies to a revocable transfer on death  
11 deed made by a transferor who dies on or after January 1, 2016,  
12 whether the deed was executed or recorded before, on, or after  
13 January 1, 2016.

14 (b) Nothing in this part invalidates an otherwise valid transfer  
15 under Section 5602.

16 (c) This part shall remain in effect only until January 1, 2021,  
17 and as of that date is repealed, unless a later enacted statute, that  
18 is enacted before January 1, 2021, deletes or extends that date. The  
19 repeal of this part pursuant to this subdivision shall not affect the  
20 validity or effect of a revocable transfer on death deed that is  
21 executed before January 1, 2021, and shall not affect the authority  
22 of the transferor to revoke a transfer on death deed by recording  
23 a signed and notarized instrument that is substantially in the form  
24 specified in Section 5644.

25 5602. ~~(a) This part does not preclude use of any other method~~  
26 ~~of conveying real property that is permitted by law and that has~~  
27 ~~the effect of postponing enjoyment of the property until the death~~  
28 ~~of the owner.~~

29 ~~(b) This part does not invalidate a deed of real property,~~  
30 ~~otherwise effective to convey title to the property, that is not~~  
31 ~~recorded until after the death of the owner.~~

32 5604. (a) Except as provided in subdivision (b), nothing in  
33 this part affects the application to a revocable transfer on death  
34 deed of any other statute governing a nonprobate transfer on death,  
35 including, but not limited to, any of the following provisions that  
36 by its terms or intent would apply to a nonprobate transfer on death:

- 37 (1) Division 2 (commencing with Section 100).  
38 (2) Part 1 (commencing with Section 5000) of this division.  
39 (3) Division 10 (commencing with Section 20100).  
40 (4) Division 11 (commencing with Section 21101).

1 (b) Notwithstanding subdivision (a), a provision of another  
 2 statute governing a nonprobate transfer on death does not apply  
 3 to a revocable transfer on death deed to the extent this part provides  
 4 a contrary rule.

5

6

Article 2. Definitions

7

8 5606. Unless the provision or context otherwise requires, the  
 9 definitions in this article govern the construction of this part.

10 5608. “Beneficiary” means a person named in a revocable  
 11 transfer on death deed as transferee of the property.

12 5610. “Real property” means the fee or an interest in real  
 13 property. The term includes, but is not limited to, any of the  
 14 following interests in real property:

15 (a) A leasehold.

16 (b) An interest in a common interest development within the  
 17 meaning of Section 6534 of the Civil Code.

18 (c) An easement, license, permit, or other right in property, to  
 19 the extent the right is both of the following:

20 (1) A recordable interest in property.

21 (2) Transferable on death of the owner of the right.

22 5612. “Recorded” has the meaning provided in Section 1170  
 23 of the Civil Code.

24 5614. (a) “Revocable transfer on death deed” means an  
 25 instrument created pursuant to this part that does all of the  
 26 following:

27 (1) Makes a donative transfer of real property to a named  
 28 beneficiary.

29 (2) Operates on the transferor’s death.

30 (3) Remains revocable until the transferor’s death.

31 (b) A revocable transfer on death deed may also be known as  
 32 a “revocable TOD deed.”

33 5616. “Transferor” means an owner of real property who makes  
 34 a revocable transfer on death deed of the property.

CHAPTER 2. EXECUTION AND REVOCATION

Article 1. Execution

5620. An owner of real property who has ~~testamentary~~ *the* capacity *to contract* may make a revocable transfer on death deed of the property.

5622. (a) ~~The transferor shall identify the beneficiary by name in a revocable transfer on death deed.~~

(b) ~~The transferor may name more than one beneficiary. If there is more than one beneficiary, they take the property as tenants in common, in equal shares.~~

(c) ~~The transferor may name as beneficiary the trustee of a trust even if the trust is revocable.~~

5624. A revocable transfer on death deed is not effective unless the transferor signs and dates the deed and acknowledges the deed before a notary public.

5626. (a) A revocable transfer on death deed is not effective unless the deed is recorded on or before 60 days after the date it was executed.

(b) The transferor is not required to deliver a revocable transfer on death deed to the beneficiary during the transferor’s life.

(c) The beneficiary is not required to accept a revocable transfer on death deed from the transferor during the transferor’s life.

5628. (a) If a revocable transfer on death deed is recorded for the same property for which another revocable transfer on death deed is recorded, the later executed deed is the operative instrument and its recordation revokes the earlier executed deed.

(b) Revocation of a revocable transfer on death deed does not revive an instrument earlier revoked by recordation of that deed.

Article 2. Revocation

5630. A transferor who has ~~testamentary~~ *the* capacity *to contract* may revoke a revocable transfer on death deed at any time.

5632. (a) An instrument revoking a revocable transfer on death deed shall be executed and recorded before the transferor’s death in the same manner as execution and recordation of a revocable transfer on death deed.

1 (b) Joinder, consent, or agreement of, or notice to, the  
2 beneficiary is not required for revocation of a revocable transfer  
3 on death deed.

4  
5 Article 3. Statutory Forms  
6

7 5642. A revocable transfer on death deed shall be *substantially*  
8 ~~in the form provided in this section.~~ *following form.*

9 (a) ~~The face first page of the form shall be in~~ substantially the  
10 ~~following form.~~ *following:*

11  
12 **SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED**

13 (California Probate Code Section 5642)  
14

15 Recording Requested By:

16 When Recorded Mail This Deed To

17 Name:

18 Address:

19 Assessor’s Parcel Number: Space Above For Recorder’s Use  
20

21 This document is exempt from documentary transfer tax under Rev. & Tax.  
22 Code § 11930. This document is exempt from preliminary change of ownership  
23 report under Rev. & Tax. Code § 480.3.  
24

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

27 Use this deed to transfer the property described below directly to your named  
28 beneficiaries when you die. YOU SHOULD CAREFULLY READ ALL OF  
29 THE INFORMATION ON THE OTHER SIDE OF THIS FORM. You may  
30 wish to consult an attorney before using this deed. It may have results that you  
31 do not want. Provide only the information asked for in the form. DO NOT  
32 INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form  
33 MUST be RECORDED on or before 60 days after the date it is signed *and*  
34 *notarized* or it will not be effective.  
35

36 **PROPERTY DESCRIPTION**

37 Print the ~~address and parcel number (found on your property tax bill) or~~  
38 ~~other~~ legal description of the property affected by this deed:  
39  
40

**BENEFICIARY(IES)**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TRANSFER ON DEATH**

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

Sign and print your name ~~below~~: *below* (*your name should exactly match the name shown on your title documents*):

\_\_\_\_\_ Date \_\_\_\_\_

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

**ACKNOWLEDGMENT OF NOTARY**

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

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),

1 and that by his/her/their signature(s) on the instrument the person(s), or the  
2 entity upon behalf of which the person(s) acted, executed the instrument.

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

5 WITNESS my hand and official seal.

6 Signature \_\_\_\_\_ (Seal)

7

8 (b) ~~The reverse side~~ *Subsequent pages* of a form executed under  
9 this section shall be in substantially the following form:

10

11 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

12

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

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

20 **IS THE “LEGAL DESCRIPTION” OF THE PROPERTY NECESSARY?**  
21 *Yes.*

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

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

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

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

37 **HOW DO I REVOKE THE TOD DEED?** There are three ways to revoke  
38 a recorded TOD deed: (1) Complete, ~~notarize~~, *have notarized*, and **RECORD**  
39 a revocation form. (2) ~~Create~~ *Create*, *have notarized*, and **RECORD** a new  
40 TOD deed, trust, or other estate planning document that disposes of the same

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

4 ~~IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE~~  
5 ~~PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY,~~  
6 ~~DOES THAT AUTOMATICALLY REVOKE A RECORDED TOD DEED?~~

7 ~~No. If you want the new document to revoke a recorded TOD deed, the new~~  
8 ~~document MUST be signed and dated after the deed you wish to revoke and~~  
9 ~~it MUST be RECORDED. To avoid any doubt you may wish to RECORD a~~  
10 ~~TOD deed revocation form before creating the new instrument.~~

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

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

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

28 DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?  
29 No. ~~But~~, *But* secrecy can cause later complications and might make it easier  
30 for others to commit fraud.

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

37 WHAT IF I NAME MORE THAN ONE BENEFICIARY? Your  
38 beneficiaries will become co-owners in equal ~~shares~~: *shares as tenants in*  
39 *common*. If you want a different result, you should not use this form. ~~You~~

1 ~~MUST name your beneficiaries individually. You MAY NOT use general~~  
2 ~~terms to describe beneficiaries, such as “my children.”~~

3 ~~WHAT IF A BENEFICIARY DIES BEFORE I DO? You should probably~~  
4 ~~create and RECORD a new deed. Otherwise, the property will transfer~~  
5 ~~according to the general rules on failed gifts, which may not meet your needs.~~  
6 ~~See Prob. Code §§ 21110–21111.~~

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

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

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

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

29 *IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO*  
30 *MY DEBTS? Yes.*

31 *DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE*  
32 *TAXES? No.*

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

36 *DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?*  
37 *No.*

38 *AFTER MY DEATH, WILL MY HOME BE LIABLE FOR*  
39 *REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?*  
40 *If your estate is subject to reimbursement, any property transferred by a TOD*

1 ~~deed will also be subject to reimbursement. Your home may be liable for~~  
2 ~~reimbursement. If you have questions, you should consult an attorney.~~

3  
4 5644. A transferor may revoke a revocable transfer on death  
5 deed by an instrument in substantially the following form:

6  
7 **Revocation of**  
8 **Revocable Transfer on Death (TOD) Deed**  
9 (California Probate Code Section 5600)

10  
11 Recording Requested By:

12  
13 When Recorded Mail This Deed To

14 Name:

15 Address:

16 Assessor's Parcel Number: Space Above For Recorder's Use

17  
18 This deed revocation is exempt from documentary transfer tax under Rev.  
19 & Tax. Code §11930. This deed revocation is exempt from preliminary change  
20 of ownership report under Rev. & Tax. Code § 480.3.

21  
22 **IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE**  
23 **EFFECTIVE**

24  
25 This revocation form **MUST** be **RECORDED** before your death or it will  
26 not be effective. This revocation form only affects a transfer on death deed  
27 that **YOU** made. A transfer on death deed made by a co-owner of your property  
28 is not affected by this revocation form. A co-owner who wants to revoke a  
29 transfer on death deed that he/she made must complete and **RECORD** a  
30 **SEPARATE** revocation form.

31  
32 **PROPERTY DESCRIPTION**

33  
34 Print the ~~address and parcel number (found on your property tax bill) or~~  
35 ~~other~~ legal description of the property affected by this revocation:

36 \_\_\_\_\_  
37

38  
39 **REVOCATION**  
40

1 I revoke any TOD deed to transfer the described property that I executed  
2 before executing this form.

3

4

**SIGNATURE AND DATE**

5

6 Sign and print your name ~~below~~: below (your name should exactly match  
7 the name shown on your title documents):

8

9

\_\_\_\_\_ Date \_\_\_\_\_

10

11

**ACKNOWLEDGMENT OF NOTARY**

12

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

16

17

State of California )

18

County of \_\_\_\_\_ )

19

20

21

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

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

31

WITNESS my hand and official seal.

32

Signature \_\_\_\_\_ (Seal)

33

34

**CHAPTER 3. EFFECT**

35

36

**Article 1. General Provisions**

37

38 5650. During the transferor’s life, execution and recordation  
39 of a revocable transfer on death deed:

1 (a) Does not affect the ownership rights of the transferor, and  
2 the transferor or the transferor’s agent or other fiduciary may  
3 convey, assign, contract, encumber, or otherwise deal with the  
4 property, and the property is subject to process of the transferor’s  
5 creditors, as if no revocable transfer on death deed were executed  
6 or recorded.

7 (b) Does not create any legal or equitable right in the beneficiary,  
8 and the property is not subject to process of the beneficiary’s  
9 creditors.

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

12 5652. (a) A revocable transfer on death deed transfers all of  
13 the transferor’s interest in the property to the beneficiary on the  
14 transferor’s death. *death according to the following rules:*

15 ~~(b) A revocable transfer on death deed may condition the~~  
16 ~~beneficiary’s right to the property on an intervening life estate, but~~  
17 ~~may not create a future interest in a beneficiary.~~

18 *(1) Except as provided in paragraph (2), the interest in the*  
19 *property is transferred to the beneficiary in accordance with the*  
20 *deed.*

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

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

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

30 ~~(e)~~

31 (b) Property is transferred by a revocable transfer on death deed  
32 subject to any limitation on the transferor’s interest that is of record  
33 at the transferor’s death, including, but not limited to, a lien,  
34 encumbrance, easement, lease, or other instrument affecting the  
35 transferor’s interest, whether recorded before or after recordation  
36 of the revocable transfer on death deed. The holder of rights under  
37 that instrument may enforce those rights against the property  
38 notwithstanding its transfer by the revocable transfer on death  
39 deed.

40 ~~(d)~~

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

3 5654. (a) For the purpose of determination of eligibility for  
4 health care under Chapter 7 (commencing with Section 14000) or  
5 Chapter 8 (commencing with Section 14200) of Part 3 of Division  
6 9 of the Welfare and Institutions Code, execution and recordation  
7 of a revocable transfer on death deed is not a lifetime transfer of  
8 the property.

9 ~~(b) For the purpose of a claim of the State Department of Health  
10 Care Services under Section 14009.5 of the Welfare and Institutions  
11 Code, property transferred by a revocable transfer on death deed  
12 is a part of the estate of the decedent, and the beneficiary is a  
13 recipient of the property by distribution or survival.~~

14 *(b) Property transferred by a revocable transfer on death deed  
15 is subject to claims of the State Department of Health Care Services  
16 to the extent authorized by law.*

17 5656. For the purpose of application of the property taxation  
18 and documentary transfer tax provisions of the Revenue and  
19 Taxation Code:

20 (a) Execution and recordation of, or revocation of, a revocable  
21 transfer on death deed of real property is not a change in ownership  
22 of the property and does not require declaration or payment of a  
23 documentary transfer tax or filing of a preliminary change of  
24 ownership report.

25 (b) Transfer of real property on the death of the transferor by a  
26 revocable transfer on death deed is a change in ownership of the  
27 property.

28

29 Article 2. Other Instruments and Forms of Tenure

30

31 5660. If a revocable transfer on death deed recorded on or  
32 before 60 days after the date it was executed and another instrument  
33 both purport to dispose of the same property:

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

37 (b) If the other instrument is recorded before the transferor's  
38 death and makes a revocable disposition of the property, the later  
39 executed of the revocable transfer on death deed or the other  
40 instrument is the operative instrument.

1 (c) If the other instrument is recorded before the transferor's  
2 death and makes an irrevocable disposition of the property, the  
3 other instrument and not the revocable transfer on death deed is  
4 the operative instrument.

5 5664. If, at the time of the transferor's death, title to the  
6 property described in the revocable transfer on death deed is held  
7 in joint tenancy or as community property with right of  
8 survivorship, the revocable transfer on death deed is void. The  
9 transferor's interest in the property is governed by the right of  
10 survivorship and not by the revocable transfer on death deed.

11 5666. (a) Chapter 2 (commencing with Section 5010) of Part  
12 1 applies to a revocable transfer on death deed of community  
13 property.

14 (b) For the purpose of application of Chapter 2 (commencing  
15 with Section 5010) of Part 1 to a revocable transfer on death deed  
16 of community property, written consent to the deed, revocation of  
17 written consent to the deed, or modification of the deed, is  
18 ineffective unless recorded within the time required by that chapter  
19 for execution or service of the written consent, revocation, or  
20 modification.

21 5668. A revocable transfer on death deed of community  
22 property with right of survivorship is subject to Section 5666,  
23 relating to a revocable transfer on death deed of community  
24 property.

25  
26 Article 3. Creditors  
27

28 5670. Notwithstanding any other statute governing priorities  
29 among creditors, a creditor of the transferor whose right is  
30 evidenced at the time of the transferor's death by an encumbrance  
31 or lien of record on property transferred by a revocable transfer  
32 on death deed has priority against the property over a creditor of  
33 the beneficiary, regardless of whether the beneficiary's obligation  
34 was created before or after the transferor's death and regardless  
35 of whether the obligation is secured or unsecured, voluntary or  
36 involuntary, recorded or unrecorded.

37 5672. Each beneficiary is personally liable to the extent  
38 provided in Section 5674 for the unsecured debts of the transferor.  
39 Any such debt may be enforced against the beneficiary in the same  
40 manner as it could have been enforced against the transferor if the

1 transferor had not died. In any action based on the debt, the  
2 beneficiary may assert any defense, cross-complaint, or setoff that  
3 would have been available to the transferor if the transferor had  
4 not died. Nothing in this section permits enforcement of a claim  
5 that is barred under Part 4 (commencing with Section 9000) of  
6 Division 7. Section 366.2 of the Code of Civil Procedure applies  
7 in an action under this section.

8 5674. (a) A beneficiary is not liable under Section 5672 if  
9 proceedings for the administration of the transferor's estate are  
10 commenced and the beneficiary satisfies the requirements of  
11 Section 5676.

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

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

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

19 (3) If the property has been disposed of, interest on the fair  
20 market value of the property from the date of disposition at the  
21 rate payable on a money judgment. For the purposes of this  
22 paragraph, "fair market value of the property" has the same  
23 meaning as defined in paragraph (2) of subdivision (a) of Section  
24 5676.

25 5676. (a) Subject to subdivisions (b), (c), and (d), if  
26 proceedings for the administration of the transferor's estate are  
27 commenced, each beneficiary is liable for:

28 (1) The restitution to the transferor's estate of the property the  
29 beneficiary received pursuant to the revocable transfer on death  
30 deed if the beneficiary still has the property, together with (A) the  
31 net income the beneficiary received from the property and (B) if  
32 the beneficiary encumbered the property after the transferor's  
33 death, the amount necessary to satisfy the balance of the  
34 encumbrance as of the date the property is restored to the estate.

35 (2) The restitution to the transferor's estate of the fair market  
36 value of the property if the beneficiary no longer has the property,  
37 together with (A) the net income the beneficiary received from the  
38 property prior to disposing of it and (B) interest from the date of  
39 disposition at the rate payable on a money judgment on the fair  
40 market value of the property. For the purposes of this paragraph,

1 the “fair market value of the property” is the fair market value,  
2 determined as of the time of the disposition of the property, of the  
3 property the beneficiary received pursuant to the revocable transfer  
4 on death deed, less the amount of any liens and encumbrances on  
5 the property at the time of the transferor’s death.

6 (b) Subject to subdivision (c), if proceedings for the  
7 administration of the transferor’s estate are commenced and a  
8 beneficiary made a significant improvement to the property  
9 received by the beneficiary pursuant to the revocable transfer on  
10 death deed, the beneficiary is liable for whichever of the following  
11 the transferor’s estate elects:

12 (1) The restitution of the property, as improved, to the estate of  
13 the transferor upon the condition that the estate reimburse the  
14 beneficiary for (A) the amount by which the improvement increases  
15 the fair market value of the property restored, determined as of the  
16 time of restitution, and (B) the amount paid by the beneficiary for  
17 principal and interest on any liens or encumbrances that were on  
18 the property at the time of the transferor’s death.

19 (2) The restoration to the transferor’s estate of the fair market  
20 value of the property, determined as of the time of the transferor’s  
21 death, less the amount of any liens and encumbrances on the  
22 property at that time, together with interest on the net amount at  
23 the rate payable on a money judgment running from the time of  
24 the transferor’s death.

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

28 (d) An action to enforce the liability under this section may be  
29 brought only by the personal representative of the estate of the  
30 transferor. Whether or not the personal representative brings an  
31 action under this section, the personal representative may enforce  
32 the liability only to the extent of the beneficiary’s liability under  
33 Section 5672. The reasonable cost of proceeding under this section  
34 shall be reimbursed as an extraordinary service under Sections  
35 10801 and 10811. Action under this section is optional. A personal  
36 representative is never required to act under this section.

37 (e) An action to enforce the liability under this section is forever  
38 barred three years after the transferor’s death. The three-year period  
39 specified in this subdivision is not tolled for any reason. Nothing  
40 in this subdivision affects the requirements of Section 215, any

1 law that may toll the limitations period for the commencement of  
 2 a Medi-Cal estate recovery action, or the time for commencement  
 3 of an action by the *State* Department of Health Care Services under  
 4 Section 14009.5 of the Welfare and Institutions Code.

5 *(f) If property is restored to the transferor’s estate under this*  
 6 *section, that property shall be treated as a specific gift and any*  
 7 *proceeds remaining from the sale of the property after the payment*  
 8 *of claims shall be returned to the beneficiary.*

9  
 10 CHAPTER 4. EFFECTUATION OF TRANSFER

11  
 12 5680. (a) The beneficiary may establish the fact of the  
 13 transferor’s death under the procedure provided in Chapter 2  
 14 (commencing with Section 210) of Part 4 of Division 2. For the  
 15 purpose of this subdivision, the beneficiary is a person empowered  
 16 by statute to act on behalf of the transferor or the transferor’s estate  
 17 within the meaning of Section 103526 of the Health and Safety  
 18 Code.

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

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

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

28 5682. If both of the following conditions are satisfied, a person  
 29 dealing with a beneficiary of a revocable transfer on death deed  
 30 of real property shall have the same rights and protections as the  
 31 person would have if the beneficiary had been named as a  
 32 distributee of the property in an order for distribution of the  
 33 transferor’s estate that had become final:

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

36 (b) An affidavit of death was recorded for the property under  
 37 Chapter 2 (commencing with Section 210) of Part 4 of Division  
 38 2.

CHAPTER 5. CONTEST

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5690. (a) The transferor’s personal representative or an interested person may, under Part 19 (commencing with Section 850) of Division 2, contest the validity of a transfer of property by a revocable transfer on death deed.

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

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

5692. (a) A contest proceeding pursuant to Section 5690 shall not be commenced before the transferor’s death.

~~(b) A contest proceeding shall be commenced within the earlier of the following times:~~

- ~~(1) Three years after the transferor’s death.~~
- ~~(2) One year after the beneficiary establishes the fact of the transferor’s death under the procedure provided in Chapter 2 (commencing with Section 210) of Part 4 of Division 2.~~

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

5694. If the court in a contest proceeding determines that a transfer of property by a revocable transfer on death deed is invalid, the court shall order the following relief:

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

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

5696. ~~(a) Nothing in this chapter limits the ability of a conservator or guardian of a transferor or prospective transferor, or another interested person, to petition the court for invalidation~~

1 ~~of a revocable transfer on death deed recorded by the transferor~~  
2 ~~or prospective transferor on the basis application of principles of~~  
3 ~~fraud, undue influence, duress, mistake, or other invalidating cause.~~  
4 ~~cause to a transfer of property by a revocable transfer on death~~  
5 ~~deed.~~

6 *(b) Notwithstanding subdivision (a) of Section 5692, the*  
7 *conservator or guardian of a transferor may, before the*  
8 *transferor's death, petition the court for invalidation of a revocable*  
9 *transfer on death deed executed by the transferor.*

10 SEC. 18. Section 13111 of the Probate Code is amended to  
11 read:

12 13111. (a) Subject to the provisions of this section, if  
13 proceedings for the administration of the decedent's estate are  
14 commenced in this state, or if the decedent's personal  
15 representative has consented to the payment, transfer, or delivery  
16 of the decedent's property under this chapter and the personal  
17 representative later requests that the property be restored to the  
18 estate, each person to whom payment, delivery, or transfer of the  
19 decedent's property is made under this chapter is liable for:

20 (1) The restitution of the property to the estate if the person still  
21 has the property, together with (A) the net income the person  
22 received from the property and (B) if the person encumbered the  
23 property after it was delivered or transferred to the person, the  
24 amount necessary to satisfy the balance of the encumbrance as of  
25 the date the property is restored to the estate.

26 (2) The restitution to the estate of the fair market value of the  
27 property if the person no longer has the property, together with  
28 (A) the net income the person received from the property and (B)  
29 interest on the fair market value of the property from the date of  
30 disposition at the rate payable on a money judgment. For the  
31 purposes of this subdivision, the "fair market value of the property"  
32 is the fair market value, determined as of the time of the disposition  
33 of the property, of the property paid, delivered, or transferred to  
34 the person under this chapter, less any liens and encumbrances on  
35 the property at that time.

36 (b) Subject to subdivision (c) and subject to any additional  
37 liability the person has under Sections 13109 to 13112, inclusive,  
38 if the person fraudulently secured the payment, delivery, or transfer  
39 of the decedent's property under this chapter, the person is liable  
40 under this section for restitution to the decedent's estate of three

1 times the fair market value of the property. For the purposes of  
2 this subdivision, the “fair market value of the property” is the fair  
3 market value, determined as of the time the person liable under  
4 this subdivision presents the affidavit or declaration under this  
5 chapter, of the property paid, delivered, or transferred to the person  
6 under this chapter, less the amount of any liens and encumbrances  
7 on the property at that time.

8 (c) The property and amount required to be restored to the estate  
9 under this section shall be reduced by any property or amount paid  
10 by the person to satisfy a liability under Section 13109 or 13110.

11 (d) An action to enforce the liability under this section may be  
12 brought only by the personal representative of the estate of the  
13 decedent. Whether or not the personal representative brings an  
14 action under this section, the personal representative may enforce  
15 the liability only to the extent necessary to protect the interests of  
16 the heirs, devisees, and creditors of the decedent.

17 (e) An action to enforce the liability under this section is forever  
18 barred three years after presentation of the affidavit or declaration  
19 under this chapter to the holder of the decedent’s property, or three  
20 years after the discovery of the fraud, whichever is later. The  
21 three-year period specified in this subdivision is not tolled for any  
22 reason.

23 (f) In the case of a nondomiciliary decedent, restitution under  
24 this section shall be made to the estate in an ancillary  
25 administration proceeding.

26 SEC. 19. Section 13206 of the Probate Code is amended to  
27 read:

28 13206. (a) Subject to subdivisions (b), (c), (d), and (e), if  
29 proceedings for the administration of the decedent’s estate are  
30 commenced, or if the decedent’s personal representative has  
31 consented to use of the procedure provided by this chapter and the  
32 personal representative later requests that the property be restored  
33 to the estate, each person who is designated as a successor of the  
34 decedent in a certified copy of an affidavit issued under Section  
35 13202 is liable for:

36 (1) The restitution to the decedent’s estate of the property the  
37 person took under the certified copy of the affidavit if the person  
38 still has the property, together with (A) the net income the person  
39 received from the property and (B) if the person encumbered the  
40 property after the certified copy of the affidavit was issued, the

1 amount necessary to satisfy the balance of the encumbrance as of  
2 the date the property is restored to the estate.

3 (2) The restitution to the decedent's estate of the fair market  
4 value of the property if the person no longer has the property,  
5 together with (A) the net income the person received from the  
6 property prior to disposing of it and (B) interest from the date of  
7 disposition at the rate payable on a money judgment on the fair  
8 market value of the property. For the purposes of this paragraph,  
9 the "fair market value of the property" is the fair market value,  
10 determined as of the time of the disposition of the property, of the  
11 property the person took under the certified copy of the affidavit,  
12 less the amount of any liens and encumbrances on the property at  
13 the time the certified copy of the affidavit was issued.

14 (b) Subject to subdivision (d), if the person fraudulently executed  
15 or filed the affidavit under this chapter, the person is liable under  
16 this section for restitution to the decedent's estate of three times  
17 the fair market value of the property. For the purposes of this  
18 subdivision, the "fair market value of the property" is the fair  
19 market value, determined as of the time the certified copy of the  
20 affidavit was issued, of the property the person took under the  
21 certified copy of the affidavit, less the amount of any liens and  
22 encumbrances on the property at that time.

23 (c) Subject to subdivision (d), if proceedings for the  
24 administration of the decedent's estate are commenced and a person  
25 designated as a successor of the decedent in a certified copy of an  
26 affidavit issued under Section 13202 made a significant  
27 improvement to the property taken by the person under the certified  
28 copy of the affidavit in the good faith belief that the person was  
29 the successor of the decedent to that property, the person is liable  
30 for whichever of the following the decedent's estate elects:

31 (1) The restitution of the property, as improved, to the estate of  
32 the decedent upon the condition that the estate reimburse the person  
33 making restitution for (A) the amount by which the improvement  
34 increases the fair market value of the property restored, determined  
35 as of the time of restitution, and (B) the amount paid by the person  
36 for principal and interest on any liens or encumbrances that were  
37 on the property at the time the certified copy of the affidavit was  
38 issued.

39 (2) The restoration to the decedent's estate of the fair market  
40 value of the property, determined as of the time of the issuance of

1 the certified copy of the affidavit under Section 13202, less the  
2 amount of any liens and encumbrances on the property at that time,  
3 together with interest on the net amount at the rate payable on a  
4 money judgment running from the date of the issuance of the  
5 certified copy of the affidavit.

6 (d) The property and amount required to be restored to the estate  
7 under this section shall be reduced by any property or amount paid  
8 by the person to satisfy a liability under Section 13204 or 13205.

9 (e) An action to enforce the liability under this section may be  
10 brought only by the personal representative of the estate of the  
11 decedent. Whether or not the personal representative brings an  
12 action under this section, the personal representative may enforce  
13 the liability only to the extent necessary to protect the interests of  
14 the heirs, devisees, and creditors of the decedent.

15 (f) An action to enforce the liability under this section is forever  
16 barred three years after the certified copy of the affidavit is issued  
17 under Section 13202, or three years after the discovery of the fraud,  
18 whichever is later. The three-year period specified in this  
19 subdivision is not tolled for any reason.

20 SEC. 20. Section 13562 of the Probate Code is amended to  
21 read:

22 13562. (a) Subject to subdivisions (b), (c), and (d), if  
23 proceedings for the administration of the decedent's estate are  
24 commenced, the surviving spouse is liable for:

25 (1) The restitution to the decedent's estate of the decedent's  
26 property if the surviving spouse still has the decedent's property,  
27 together with (A) the net income the surviving spouse received  
28 from the decedent's property and (B) if the surviving spouse  
29 encumbered the decedent's property after the date of death, the  
30 amount necessary to satisfy the balance of the encumbrance as of  
31 the date the decedent's property is restored to the estate.

32 (2) The restitution to the decedent's estate of the fair market  
33 value of the decedent's property if the surviving spouse no longer  
34 has the decedent's property, together with (A) the net income the  
35 surviving spouse received from the decedent's property prior to  
36 disposing of it and (B) interest from the date of disposition at the  
37 rate payable on a money judgment on the fair market value of the  
38 decedent's property. For the purposes of this paragraph, the "fair  
39 market value of the decedent's property" is the fair market value  
40 of the decedent's property, determined as of the time of the

1 disposition of the decedent’s property, less the amount of any liens  
 2 and encumbrances on the decedent’s property at the time of the  
 3 decedent’s death.

4 (b) Subject to subdivision (c), if proceedings for the  
 5 administration of the decedent’s estate are commenced and the  
 6 surviving spouse made a significant improvement to the decedent’s  
 7 property in the good faith belief that the surviving spouse was the  
 8 successor of the decedent to the decedent’s property, the surviving  
 9 spouse is liable for whichever of the following the decedent’s  
 10 estate elects:

11 (1) The restitution of the decedent’s property, as improved, to  
 12 the estate of the decedent upon the condition that the estate  
 13 reimburse the surviving spouse for (A) the amount by which the  
 14 improvement increases the fair market value of the decedent’s  
 15 property restored, valued as of the time of restitution, and (B) the  
 16 amount paid by the surviving spouse for principal and interest on  
 17 any liens or encumbrances that were on the decedent’s property  
 18 at the time of the decedent’s death.

19 (2) The restoration to the decedent’s estate of the fair market  
 20 value of the decedent’s property, valued as of the time of the  
 21 decedent’s death, excluding the amount of any liens and  
 22 encumbrances on the decedent’s property at that time, together  
 23 with interest on the net amount at the rate payable on a money  
 24 judgment running from the date of the decedent’s death.

25 (c) The property and amount required to be restored to the estate  
 26 under this section shall be reduced by any property or amount paid  
 27 by the surviving spouse to satisfy a liability under Chapter 3  
 28 (commencing with Section 13550).

29 (d) An action to enforce the liability under this section may be  
 30 brought only by the personal representative of the estate of the  
 31 decedent. Whether or not the personal representative brings an  
 32 action under this section, the personal representative may enforce  
 33 the liability only to the extent necessary to protect the interests of  
 34 the heirs, devisees, and creditors of the decedent.

35 (e) An action to enforce the liability under this section is forever  
 36 barred three years after the death of the decedent. The three-year  
 37 period specified in this subdivision is not tolled for any reason.

38 SEC. 21. (a) The California Law Revision Commission shall  
 39 study the effect of California’s revocable transfer on death deed  
 40 set forth in Part 4 (commencing with Section 5600) of Division 5

1 of the Probate Code and make recommendations in this regard.  
2 The commission shall report all of its findings to the Legislature  
3 on or before January 1, 2020.

4 (b) In the study required by subdivision (a), the commission  
5 shall address all of the following:

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

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

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

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

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

19 (c) (1) The report required by subdivision (a) shall comply with  
20 Section 9795 of the Government Code.

21 (2) Pursuant to Section 10231.5 of the Government Code, this  
22 section is repealed on January 1, 2024.