

ASSEMBLY BILL

No. 1779

Introduced by Assembly Member Gatto

February 3, 2016

An act to amend Sections 5608 and 5642 of, and to add Section 5629 to, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1779, as introduced, Gatto. Nonprobate transfers: revocable transfer on death deed.

Existing law, until January 1, 2021, creates the revocable transfer on death deed (revocable TOD deed), as defined, which allows an owner of real property to transfer that property, upon death, to a beneficiary without a probate proceeding, according to specified rules. Existing law sets forth the statutory forms that must be used by a transferor in the execution of a revocable TOD deed.

This bill would clarify that a beneficiary of a revocable TOD deed may include an entity, such as a trust. The bill would further provide that a revocable TOD deed may be held in trust for a beneficiary under specified circumstances. The bill would make conforming changes to related provisions.

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

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

1 SECTION 1. Section 5608 of the Probate Code is amended to
2 read:

1 5608. “Beneficiary” means a person named in a revocable
2 transfer on death deed as transferee of the property. A “beneficiary”
3 may include a legal entity, such as a trust.

4 SEC. 2. Section 5629 is added to the Probate Code, to read:
5 5629. A transferor may specify that any property interest that
6 is transferred to a beneficiary by deed under these provisions may
7 be held in trust on behalf of the beneficiary by any other person
8 designated by the transferor, subject to specified conditions
9 established by the transferor, if any.

10 SEC. 3. Section 5642 of the Probate Code is amended to read:
11 5642. A revocable transfer on death deed shall be substantially
12 in the following form.

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

15
16 **SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED**
17 (California Probate Code Section 5642)
18
19 Recording Requested By:
20 When Recorded Mail This Deed To
21 Name:
22 Address:
23 Assessor’s Parcel Number: Space Above For Recorder’s Use
24

25 This document is exempt from documentary transfer tax under Rev. & Tax.
26 Code § 11930. This document is exempt from preliminary change of ownership
27 report under Rev. & Tax. Code § 480.3.

28
29 **IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR**
30 **BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND**
31 **NOTARIZED**

32 Use this deed to transfer the residential property described below directly
33 to your named beneficiaries when you die. YOU SHOULD CAREFULLY
34 READ ALL OF THE INFORMATION ON THE OTHER PAGES OF THIS
35 FORM. You may wish to consult an attorney before using this deed. It may
36 have results that you do not want. Provide only the information asked for in
37 the form. DO NOT INSERT ANY OTHER INFORMATION OR
38 INSTRUCTIONS. This form MUST be RECORDED on or before 60 days
39 after the date it is signed and notarized or it will not be effective.
40

PROPERTY DESCRIPTION

Print the legal description of the residential property affected by this deed:

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”) and state the RELATIONSHIP that each named person *or entity* has to you (spouse, son, daughter, friend, etc.): *trust, etc.) and, if the property will be held in trust for that beneficiary or beneficiaries, the circumstances under which the property will be held in trust:*

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 (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 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 _____)

1 On _____ before me, (here insert name and title
 2 of the officer), personally appeared _____, who
 3 proved to me on the basis of satisfactory evidence to be the person(s) whose
 4 name(s) is/are subscribed to the within instrument and acknowledged to me
 5 that he/she/they executed the same in his/her/their authorized capacity(ies),
 6 and that by his/her/their signature(s) on the instrument the person(s), or the
 7 entity upon behalf of which the person(s) acted, executed the instrument.

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

10 WITNESS my hand and official seal.

11 Signature _____ (Seal)
 12

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

15
 16 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**
 17

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

21 **CAN I USE THIS DEED TO TRANSFER BUSINESS PROPERTY?** This
 22 deed can only be used to transfer (1) a parcel of property that contains one to
 23 four residential dwelling units, (2) a condominium unit, or (3) a parcel of
 24 agricultural land of 40 acres or less, which contains a single-family residence.

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

29 **IS THE “LEGAL DESCRIPTION” OF THE PROPERTY NECESSARY?**
 30 Yes.

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

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

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

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

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

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

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

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

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

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

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

4 HOW DO I NAME BENEFICIARIES? You MUST name your beneficiaries
5 individually, using each beneficiary's FULL ~~name~~: *name or name of the entity*.
6 You MAY NOT use general terms to describe beneficiaries, such as "my
7 children." For each beneficiary that you name, you should briefly state that
8 person's relationship to you (for example, my spouse, my son, my daughter,
9 my friend, *my trust*, etc.).

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

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

25 CAN I ADD OTHER CONDITIONS ON THE FORM? No. If you do, your
26 beneficiary may need to go to court to clear title. *However, you may indicate*
27 *whether you will be transferring your property to a beneficiary to be held in*
28 *trust for that person pursuant to Section 5629 of the Probate Code.*

29 IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO MY
30 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, property
35 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?

1 Your home may be liable for reimbursement. If you have questions, you should
2 consult an attorney.
3

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