

**Resolution 12-06-2009**

Nonprobate Transfers: Revocable Transfer Upon Death Deeds

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the legislature add Probate Code sections 5600 through 5696 to read as follows:

1 §5600

2 (a) This part applies to a revocable transfer on death deed made by a transferor who  
3 dies on or after January 1, 2009, whether the deed was executed or recorded before, on, or  
4 after January 1, 2009.

5 (b) Nothing in this part invalidates an otherwise valid transfer under Section 5602.  
6

7 §5602

8 (a) This part does not preclude use of any other method of conveying real property  
9 that is permitted by law and that has the effect of postponing enjoyment of the property until  
10 the death of the owner.

11 (b) This part does not invalidate a deed of real property, otherwise effective to  
12 convey title to the property, that is not recorded until after the death of the owner.  
13

14 §5604

15 (a) Nothing in this part affects the application to a revocable transfer on death deed  
16 of any other statute governing a nonprobate transfer on death, including but not limited to  
17 any of the following provisions that by its terms or intent would apply to a nonprobate  
18 transfer on death:

19 (1) Division 2 (commencing with Section 100) (general provisions).

20 (2) Part 1 (commencing with Section 5000) of this division (provisions relating to  
21 effect of death).

22 (3) Division 10 (commencing with 20100) (proration of taxes).

23 (4) Division 11 (commencing with Section 21101) (construction of wills, trusts, and  
24 other instruments).

25 (b) Notwithstanding subdivision (a), a provision of another statute governing a  
26 nonprobate transfer on death does not apply to a revocable transfer on death deed to the  
27 extent this part provides a contrary rule.  
28

29 §5606

30 Unless the provision or context otherwise requires, the definitions in this article  
31 govern the construction of this part.  
32

33 §5608

34 “Beneficiary” means a person named in a revocable transfer on death deed as  
35 transferee of the property.  
36

37 §5610

38 “Real property” means the fee or an interest in real property. The term includes but is  
39 not limited to any of the following interests in real property:

40 (a) A leasehold.

41 (b) An interest in a common interest development within the meaning of Section 1351  
42 of the Civil Code.

43 (c) An easement, license, permit, or other right in property to the extent the right is  
44 both (1) a recordable interest in property and (2) transferable on death of the owner of the  
45 right.

46  
47 §5612

48 “Record” has the meaning provided in Section 1170 of the Civil Code.

49  
50 §5614

51 (a) “Revocable transfer on death deed” means an instrument that makes a donative  
52 transfer of real property effective on the death of the transferor under this part.

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

55  
56 §5616

57 “Transferor” means an owner of real property who makes a revocable transfer on  
58 death deed of the property.

59  
60 §5620

61 An owner of real property who has testamentary capacity may make a revocable  
62 transfer on death deed of the property.

63  
64 §5622

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

67 (b) The transferor may name an alternate beneficiary to take property if a named  
68 beneficiary fails to survive the transferor.

69 (c) The transferor may name more than one beneficiary or alternate beneficiary.  
70 Unless the instrument otherwise provides, beneficiaries take the property as tenants in  
71 common.

72 (d) The transferor may name as beneficiary the trustee of a trust even if the trust is  
73 revocable.

74  
75 §5624

76 (a) Except as provided in subdivision (b), a revocable TOD deed is not effective  
77 unless the transferor signs and dates the deed and acknowledges the deed before a notary  
78 public.

79 (b) A revocable transfer on death deed may be signed and dated in the transferor’s  
80 name by a person other than the transferor at the transferor’s direction and in the transferor’s  
81 presence but shall be acknowledged by the transferor.

82

83 §5626

84 (a) A revocable transfer on death deed is not effective unless the deed is recorded  
85 before the transferor's death.

86 (b) The transferor need not deliver a revocable transfer on death deed to the  
87 beneficiary during the transferor's life.

88 (c) The beneficiary need not accept a revocable transfer on death deed from the  
89 transferor during the transferor's life.

90

91 §5628

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

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

97

98 §5630

99 (a) A transferor who has testamentary capacity may revoke a revocable transfer on  
100 death deed at any time.

101 (b) Revocation of a revocable transfer on death deed is effective notwithstanding a  
102 provision in the deed that purports to make the deed irrevocable.

103

104 §5632

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

108 (b) The joinder, consent, or agreement of, or notice to, the beneficiary is not required  
109 for revocation of a revocable transfer on death deed.

110

111 §5640

112 (a) A transferor may make or revoke a revocable transfer on death deed by 4 an  
113 instrument in substantially the form provided in this chapter.

114 (b) Nothing in this chapter limits the right of a transferor to make or revoke a  
115 revocable transfer on death deed by an instrument not in substantially the form provided in  
116 this chapter.

117

118 §5642

119 A transferor may make a revocable transfer on death deed by an instrument in  
120 substantially the following form:

121 Revocable Transfer on Death (TOD) Deed

122 [California Probate Code Section 5600]

123 Notice to Owner. This deed may have significant and unintended consequences for  
124 your estate plan; you should consult a professional before using it. This deed MUST be  
125 recorded before you die in order to be effective. You may revoke this deed by recording  
126 another instrument before you die. If you hold this property in joint tenancy or as

127 community property with right of survivorship, this deed will pass your interest in the  
128 property to the beneficiary and not to the surviving joint tenant or spouse.

129 Notice to Beneficiary. This deed does not transfer ownership of the property to you  
130 until the owner dies, and you acquire no rights in the property until then. The owner may  
131 revoke this deed at any time. When the owner dies you should record evidence of death  
132 under Probate Code Section 210 and you must (1) file the change in ownership notice  
133 required by Revenue and Taxation Code Section 480 and (2) notify the Department of  
134 Health Services if required by Probate Code Section 215. If you do not wish to receive the  
135 property, you may disclaim it under Probate Code Section 275.

136

137 IDENTIFYING INFORMATION

138 Name of Owner: \_\_\_\_\_

139 Co-Owners Who Join in this Deed: \_\_\_\_\_

140 Address or Other Description of Property:

141 Name(s) of Beneficiary(ies): \_\_\_\_\_

142

143 Name of Survivor Entitled to Occupancy [optional]: \_\_\_\_\_

144 TRANSFER ON DEATH

145 I transfer all my interest in the described property to the named beneficiary on my  
146 death. If I name more than one beneficiary, the beneficiaries shall take equal shares as  
147 tenants in common. If a named beneficiary dies before me, the share that would otherwise go  
148 to that beneficiary shall pass in accordance with applicable provisions of the California  
149 Probate Code.

150 If I name a survivor entitled to occupancy, property transferred on my death to the  
151 named beneficiary or beneficiaries is subject to the right of the survivor to occupy the  
152 property for life as a life tenant.

153 This revocable TOD deed revokes any previous revocable TOD deed I have made for  
154 the described property. This deed is revocable at any time before my death.

155 SIGNATURE AND DATE

156 Signature of Owner: \_\_\_\_\_

157 Signatures of Co-Owners Who Join in this Deed: \_\_\_\_\_

158 Date:

159 ACKNOWLEDGMENT

160 State of California \_\_\_\_\_)

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

162 On \_\_\_\_\_ before me, (here insert name and title of the officer), personally  
163 appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of  
164 satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within  
165 instrument and acknowledged to me that by his/her/their signature(s) on the instrument the  
166 person(s) executed the instrument.

167 WITNESS my hand and official seal.

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

169

170 §5644

171 A transferor may revoke a revocable transfer on death deed by an instrument in  
172 substantially the following form:  
173 Revocation of  
174 Revocable Transfer on Death (TOD) Deed  
175 [California Probate Code Section 5600]  
176 Notice to Owner. This revocation MUST be recorded before you die in order to be  
177 effective. IDENTIFYING INFORMATION  
178 Owner of Property: \_\_\_\_\_  
179 Co-Owners Who Join in this Revocation: \_\_\_\_\_  
180 Address or Other Description of Property: \_\_\_\_\_  
181 Recording Information for Revocable TOD Deed:  
182 County: \_\_\_\_\_  
183 Date of Recordation: \_\_\_\_\_  
184  
185 Book and Page or Series Number: \_\_\_\_\_  
186 REVOCATION  
187 I revoke the described revocable TOD deed.  
188 SIGNATURE AND DATE  
189 Signature of Owner: \_\_\_\_\_  
190 Signatures of Co-Owners Who Join in this Revocation: \_\_\_\_\_  
191 Date: \_\_\_\_\_  
192 ACKNOWLEDGMENT  
193 State of California \_\_\_\_\_ )  
194 County of \_\_\_\_\_ )  
195 On \_\_\_\_\_ before me, (here insert name and title of the officer), personally  
196 appeared \_\_\_\_\_, person ally known to me (or proved to me on the basis of  
197 satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within  
198 instrument and acknowledged to me that by his/her/their signature(s) on the instrument the  
199 person(s) executed the instrument.  
200 WITNESS my hand and official seal.  
201 Signature \_\_\_\_\_ (Seal)  
202  
203 §5650  
204 During the transferor’s life, execution and recordation of a revocable transfer on  
205 death deed:  
206 (a) Does not affect the ownership rights of the transferor, and the transferor or the  
207 transferor’s agent or other fiduciary may convey, assign, contract, encumber, or otherwise  
208 deal with the property, and the property is subject to process of the transferor’s creditors, as  
209 if no revocable transfer on death deed were executed or recorded.  
210 (b) Does not create any legal or equitable right in the beneficiary, and the property is  
211 not subject to process of the beneficiary’s creditors.  
212 (c) Does not transfer or convey any right, title, or interest in the property.  
213  
214 §5652

215 (a) A revocable transfer on death deed transfers all of the transferor's interest in the  
216 property to the beneficiary on the transferor's death. A revocable transfer on death deed that  
217 purports to transfer less than all of the transferor's interest in the property is void, and the  
218 instrument does not transfer the property on the transferor's death.

219 (b) Property is transferred by a revocable transfer on death deed subject to any  
220 limitation on the transferor's interest that is of record at the transferor's death, including but  
221 not limited to a lien, encumbrance, easement, lease, or other instrument affecting the  
222 transferor's interest, whether recorded before or after recordation of the revocable transfer  
223 on death deed. The holder of rights under that instrument may enforce those rights against  
224 the property notwithstanding its transfer by the revocable transfer on death deed.

225 (c) Notwithstanding a contrary provision in the deed, a revocable transfer on death  
226 deed transfers the property without covenant or warranty of title.

227  
228 §5654

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

233 (b) For the purpose of a claim of the Department of Health Services under Section  
234 14009.5 of the Welfare and Institutions Code, property transferred by a revocable transfer on  
235 death deed is a part of the estate of the decedent, and the beneficiary is a recipient of the  
236 property by distribution or survival.

237  
238 §5656

239 For the purpose of application of the property taxation provisions of the Revenue and  
240 Taxation Code:

241 (a) Execution and recordation of a revocable transfer on death deed of real property  
242 is not a change in ownership of the property.

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

245  
246 §5660

247 If a revocable transfer on death deed recorded before the transferor's death and  
248 another instrument both purport to dispose of the same property:

249 (a) If the other instrument is not recorded before the transferor's death, the revocable  
250 TOD deed is the operative instrument.

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

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

257  
258 §5662

259 (a) If co-owners of real property jointly make a revocable transfer on death deed of  
260 the property, the property passes [in a manner to be determined].

261 (b) If fewer than all co-owners join in a revocable transfer on death deed, the  
262 property passes [in a manner to be determined]. This subdivision does not apply to property  
263 held in joint tenancy or as community property.

264

265 §5664

266 If a revocable transfer on death deed is made by an owner of property held in joint  
267 tenancy:

268 (a) The death of the transferor severs the joint tenancy as to the interest of the  
269 transferor.

270 (b) The interest of the transferor passes pursuant to the revocable transfer on death  
271 deed and not by right of survivorship pursuant to the joint tenancy.

272

273 §5666

274 (a) A revocable transfer on death deed of community property made by one spouse  
275 acting alone is effective only as to the transferor's one-half interest in the property. A  
276 revocable transfer on death deed of community property joined in by both spouses is  
277 effective as to the interests of both spouses.

278 (b) A revocable transfer on death deed of community property with right of  
279 survivorship made by one spouse acting alone is governed by the rules applicable to  
280 property held in joint tenancy under Section 5664.

281

282 §5670

283 Notwithstanding any other statute governing priorities among creditors, a creditor of  
284 the transferor whose right is evidenced at the time of the transferor's death by an  
285 encumbrance or lien of record on property transferred by a revocable transfer on death deed  
286 has priority over a creditor of the beneficiary, regardless of whether the beneficiary's  
287 obligation was created before or after the transferor's death and regardless of whether the  
288 obligation is secured or unsecured, voluntary or involuntary, recorded or unrecorded.

289

290 §5672

291 Each beneficiary is personally liable to the extent provided in Section 5674 for the  
292 unsecured debts of the transferor. Any such debt may be enforced against the beneficiary in  
293 the same manner as it could have been enforced against the transferor if the transferor had  
294 not died. In any action based on the debt, the beneficiary may assert any defense, cross-  
295 complaint, or setoff that would have been available to the transferor if the transferor had not  
296 died. Nothing in this section permits enforcement of a claim that is barred under Part 4  
297 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil  
298 Procedure applies in an action under this section.

299

300 §5674

301 (a) A beneficiary is not liable under Section 5672 if proceedings for the  
302 administration of the transferor's estate are commenced and the beneficiary satisfies the  
303 requirements of Section 5676.

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

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

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

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

314

315 §5676

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

318 (1) The restitution to the transferor's estate of the property the beneficiary received  
319 pursuant to the revocable transfer on death deed if the beneficiary still has the property,  
320 together with (A) the net income the beneficiary received from the property and (B) if the  
321 beneficiary encumbered the property after the transferor's death, the amount necessary to  
322 satisfy the balance of the encumbrance as of the date the property is restored to the  
323 estate.

324 (2) The restitution to the transferor's estate of the fair market value of the property if  
325 the beneficiary no longer has the property, together with (A) the net income the beneficiary  
326 received from the property prior to disposing of it and (B) interest from the date of  
327 disposition at the rate payable on a money judgment on the fair market value of the property.  
328 For the purposes of this paragraph, the "fair market value of the property" is the fair market  
329 value, determined as of the time of the disposition of the property, of the property the  
330 beneficiary received pursuant to the revocable transfer on death deed, less the amount  
331 of any liens and encumbrances on the property at the time of the transferor's death.(b)

332 Subject to subdivision (c), if proceedings for the administration of the transferor's estate are  
333 commenced and a beneficiary made a significant improvement to the property received by  
334 the beneficiary pursuant to the revocable transfer on death deed, the beneficiary is liable for  
335 whichever of the following the transferor's estate elects:

336 (1) The restitution of the property, as improved, to the estate of the transferor upon  
337 the condition that the estate reimburse the beneficiary for (A) the amount by which the  
338 improvement increases the fair market value of the property restored, determined as of the  
339 time of restitution, and (B) the amount paid by the beneficiary for principal and interest on  
340 any liens or encumbrances that were on the property at the time of the transferor's death.

341 (2) The restoration to the transferor's estate of the fair market value of the property,  
342 determined as of the time of the transferor's death, less the amount of any liens and  
343 encumbrances on the property at that time, together with interest on the net amount at the  
344 rate payable on a money judgment running from the time of the transferor's death.

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



348 (d) An action to enforce the liability under this section may be brought only by the  
349 personal representative of the estate of the transferor. In an action to enforce the liability  
350 under this section, the court's judgment may enforce the liability only to the extent  
351 necessary to protect the interests of creditors of the transferor.

352 (e) An action to enforce the liability under this section is forever barred three years  
353 after the transferor's death. The three-year period specified in this subdivision is not tolled  
354 for any reason.

355  
356 §5680

357 (a) The beneficiary may establish the fact of the transferor's death under the  
358 procedure provided in Chapter 2 (commencing with Section 210) of Part 4 of Division 2.

359 (b) For the purpose of filing the change in ownership statement required by Section  
360 480 of the Revenue and Taxation Code, the beneficiary is a transferee of real property by  
361 reason of death.

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

364 (d) The beneficiary is liable to the transferor's estate for prorated estate and  
365 generation skipping transfer taxes to the extent provided in Division 10 (commencing with  
366 Section 20100).

367  
368 §5682

369 A person acting in good faith and for a valuable consideration with the beneficiary of  
370 a revocable transfer on death deed of real property for which an affidavit of death is  
371 recorded under the procedure provided in Chapter 2 (commencing with Section 210) of Part  
372 4 of Division 2 has the same rights and protections as the person would have if the  
373 beneficiary had been named as a distributee of the property in an order for distribution of the  
374 transferor's estate that had become final.

375  
376 §5690

377 (a) The transferor's personal representative or an interested person may, under Part  
378 19 (commencing with Section 850) of Division 2, contest the validity of a transfer of  
379 property by a revocable transfer on death deed.

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

382  
383 §5692

384 (a) A contest proceeding may not be commenced before the transferor's death.

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

387 (1) Three years after the transferor's death.

388 (2) One year after the beneficiary establishes the fact of the transferor's death under  
389 the procedure provided in Chapter 2 (commencing with Section 210) of Part 4 of Division 2.

390  
391 §5694

392 If the court in a contest proceeding determines that a transfer of property by a  
393 revocable transfer on death deed is invalid, the court shall order the following relief:  
394 (a) If the proceeding was commenced and a lis pendens recorded within 40 days after  
395 the transferor's death, the court shall void the deed and order transfer of the property to the  
396 person entitled to it.  
397 (b) If the proceeding was commenced more than 40 days after the transferor's death,  
398 the court shall grant appropriate relief but the court order shall not affect the rights in the  
399 property of a purchaser or encumbrancer for value and in good faith acquired before  
400 commencement of the proceeding and recordation of a lis pendens.  
401  
402 §5696  
403 Nothing in this chapter limits the application of principles of fraud, undue influence,  
404 duress, mistake, or other invalidating cause to a transfer of property by a revocable transfer  
405 on death deed.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of San Francisco

**STATEMENT OF REASONS:**

Existing Law: 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 Resolution. This resolution would create a revocable transfer on death deed (Revocable TOD Deed) which would transfer real property on the death of its owner without a probate proceeding. A person will be required to have testamentary capacity to make or revoke the deed. A statutory form is provided. The Revocable TOD Deed must be signed, dated, acknowledged, and recorded to be effective. The resolution provides, among other things that the deed does not affect the property owner's rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal eligibility and reimbursement. A Revocable TOD Deed would be void 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 resolution 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 resolution would establish a process for contesting the transfer of real property by a revocable TOD deed.

This Resolution embodies the California Law Revision Commission's tentative recommendation issued in August 2006 entitled Revocable Transfer on Death (TOD) Deed to provide the ability of California residents to transfer real property to a designated beneficiary or beneficiaries without the need to create a trust to avoid the probate court process.

The Problem: Presently many Californians, especially senior citizens, find that they have no affordable options available to transfer their family home to their logical beneficiaries. A

Statutory Will is often available at low or no cost for those who qualify but that option does not avoid the statutory probate (i.e. attorney) fee. A revocable trust can cost from \$1000 to \$3000 from a reputable attorney and many who can't afford that fee are frequently preyed upon by scam artists of one sort or other who provide a printed and bound revocable trust and related documents with an eye toward finding out ways to part the victims from their assets. Even with the drop in home prices, there are thousands of elderly people throughout the state who purchased a home forty or more years ago for under \$50,000 which are now worth upwards of \$500,000, in many cases, who are barely subsisting on social security. These people can't afford minimal attorneys fees and this resolution offers them an affordable way to transfer their property safely and easily with a simple beneficiary designation.

**IMPACT STATEMENT:**

Conforming amendments will be needed in Family Code section 2040 and Probate Code sections 250, 267, 279, 4264, and 5000, and existing Probate Code sections 5600-5608 will have to be renumbered.

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**RESPONSIBLE FLOOR DELEGATE:** Gerald T. Richards