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SB-315 Revocable transfer on death deeds. (2021-2022)

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Senate Bill No. 315

CHAPTER 215

An act to amend Section 27281 of the Government Code, and to amend Sections 5600, 5608, 5624, 5626, 5632, 5642, 5644, 5652, 5660, 5674, 5682, 5690, and 5694 of, to add Sections 5605, 5615, 5618, 5625, 5658, 5659, 5677, 5678, 5681, and 5698 to, to repeal Section 5676 of, and to repeal and add Section 5610 of, the Probate Code, relating to revocable transfer on death deeds.

[Approved by Governor September 22, 2021. Filed with Secretary of State September 22, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 315, Roth. Revocable transfer on death deeds.

Existing law governs the execution, revocation, and effectiveness of a revocable transfer on death (TOD) deed, defined as an instrument that makes a donative transfer of property to a named beneficiary, as defined, that operates on the transferor's death, and remains revocable until the transferor's death. Existing law establishes statutory forms for executing and revoking a revocable TOD deed that include provisions and instructions for the forms to be notarized by the transferor and recorded with the county recorder. Existing law requires that subsequent pages of the form to execute a revocable TOD deed include statutory "common questions" regarding the use of that form. Existing law requires that, in order to be effective, a revocable TOD deed be recorded on or before 60 days after the date it was executed. Existing law makes these provisions inoperative on January 1, 2022.

This bill would revise and recast those provisions, and instead make them operative until January 1, 2032. Among other things, the bill would redefine and newly define terms for these purposes, including, but not limited to, "beneficiary," "real property," "subscribing witness," and "unsecured debts." The bill would make changes to how and when a revocable TOD deed becomes effective or revoked, and would instead require the deed or revocation to be signed by the transferor, acknowledged by the transferor before a notary public, dated, and signed by 2 witnesses, as specified. The bill would add additional provisions to the statutory forms for executing and revoking a revocable TOD deed to conform to these changes, and would add additional information to the statutory "common questions" pages. The bill would require, after the death of a transferor, that the beneficiary serve notice on the transferor's heirs, and would create a new statutory notice form for these purposes.

Under specified circumstances, the bill would authorize a court in which a transferor's estate is being administered to apply the doctrine of cy pres to reform a revocable TOD deed that was made by the transferor for a charitable purpose. The bill would also provide that an error or ambiguity in describing property or designating a beneficiary would not invalidate a revocable TOD deed if the transferor's intention can be determined by a court. The bill would establish new processes for, and add provisions relating to, among other things, the enforceability of unrecorded interests, the personal liability of a beneficiary, calculating a beneficiary's share of liability, the return of property to an estate by a beneficiary, and contesting the validity of a transfer or revocation, as specified. The bill would specify that the provisions relating to contesting a TOD deed do not limit the application of other law that

imposes a penalty or provides a remedy for the creation of a revocable TOD deed by means of fraud, undue influence, menace, or duress.

The bill would specify that these changes do not apply to TOD deeds or revocation forms that were signed before January 1, 2022.

The bill would require the California Law Revision Commission to study the effect of these provisions, as specified, and report its findings and recommendations to the Legislature on or before January 1, 2031.

Existing law prohibits a deed or grant conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes from being accepted for recordation without the consent of the grantee evidenced by a certificate or resolution of acceptance attached to or printed on the deed or grant pursuant to a specified form.

This bill would make these provisions inapplicable to a revocable TOD deed, and instead specify that title does not transfer under a revocable TOD deed until the political corporation or governmental agency records a resolution of acceptance or certificate of consent in a form substantially similar to the form described above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27281 of the Government Code is amended to read:

27281. (a) Deeds or grants conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes shall not be accepted for recordation without the consent of the grantee evidenced by its certificate or resolution of acceptance attached to or printed on the deed or grant. If a certificate of acceptance is used, it shall be in substantially the following form:

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from _____ to _____, a political corporation and/or governmental agency is hereby accepted by order of the _____ (legislative body) _____ on _____ (date) _____, (or by the undersigned officer or agent on behalf of the _____ (legislative body) _____ pursuant to authority conferred by resolution of the _____ (legislative body) _____ adopted on _____ (date) _____,) and the grantee consents to recordation thereof by its duly authorized officer.
Dated _____ By _____

(b) A political corporation or governmental agency, by a general resolution, may authorize one or more officers or agents to accept and consent to a deed or grant described in subdivision (a).

(c) In cases where the county tax collector files purchaser's deeds with respect to a sale for defaulted taxes, the information contained in those documents shall be deemed to constitute compliance with this section.

(d) The requirements of this section shall not apply to a deed of trust or other security or regulatory document recorded by or on behalf of a state agency pursuant to a program or activity of the agency authorized by statute or regulation.

(e) Subdivision (a) does not apply to a revocable transfer on death deed.

(f) A revocable transfer on death deed that names a political corporation or governmental agency as a beneficiary does not transfer title to that political corporation or governmental agency unless and until the political corporation or governmental agency records a resolution of acceptance or a certificate of consent in a form substantially similar to the form prescribed in subdivision (a).

SEC. 2. Section 5600 of the Probate Code is amended to read:

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

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

(c) This part shall remain in effect only until January 1, 2032, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2032, deletes or extends that date. The repeal of this part pursuant to this subdivision shall not affect the validity or effect of a revocable transfer on death deed that is executed before January 1, 2032, and shall not affect the

authority of the transferor to revoke a transfer on death deed by recording a signed and notarized instrument that is substantially in the form specified in Section 5644.

(d) The revisions made by the act that added this subdivision do not apply to a revocable transfer on death deed or revocation form that was signed before January 1, 2022.

SEC. 3. Section 5605 is added to the Probate Code, to read:

5605. (a) The California Law Revision Commission shall study the effect of California's revocable transfer on death deed and make recommendations for improvement of this part. The commission shall report all of its findings and recommendations to the Legislature on or before January 1, 2031.

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

- (1) Whether the revocable transfer on death deed is working effectively.
- (2) Whether the revocable transfer on death deed should be continued.
- (3) Whether the revocable transfer on death deed is subject to misuse or misunderstanding.
- (4) What changes should be made to the revocable transfer on death deed or the law associated with the deed to improve its effectiveness and to avoid misuse or misunderstanding.
- (5) Whether the revocable transfer on death deed has been used to perpetuate financial abuse on property owners and, if so, how the law associated with the deed should be changed to minimize this abuse.
- (6) Whether there should be any change to the types of property that can be transferred by revocable transfer on death deed.
- (7) Whether there should be any change to the types of persons or entities that can be named as the beneficiary of a revocable transfer on death deed.

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

SEC. 4. Section 5608 of the Probate Code is amended to read:

5608. "Beneficiary" means a person named in a revocable transfer on death deed as transferee of the property. A natural person, trust, or legal entity may be named as a beneficiary.

SEC. 5. Section 5610 of the Probate Code is repealed.

SEC. 6. Section 5610 is added to the Probate Code, to read:

5610. (a) Except as provided in subdivision (b), "real property" means either of the following:

- (1) A parcel of land that is improved with one to four residential dwelling units.
- (2) A residential separate interest and its appurtenant common area in a common interest development, regardless of the number of separate interests in the common interest development.

(b) "Real property" does not include either of the following:

- (1) A separate interest in a stock cooperative.
- (2) A parcel of agricultural land that is greater than 40 acres in size. For the purposes of this paragraph, "agricultural land" means land that is designated for agricultural use by law or by a document that is recorded in the county in which the land is located.

(c) The definition of "real property" shall be construed pursuant to the circumstances that existed on the execution date shown on the revocable transfer on death deed.

SEC. 7. Section 5615 is added to the Probate Code, to read:

5615. "Subscribing witness" means a person who signs a revocable transfer on death deed as a witness, as provided in Section 5624.

SEC. 8. Section 5618 is added to the Probate Code, to read:

5618. "Unsecured debts" includes, but is not limited to, a transferor's funeral expenses, expenses of a transferor's last illness, and wage claims.

SEC. 9. Section 5624 of the Probate Code is amended to read:

5624. A revocable transfer on death deed is not effective unless all of the following conditions are satisfied:

(a) The deed is signed by the transferor and dated.

(b) The deed is signed by two witnesses who were present at the same time and who witnessed either the signing of the deed or the transferor's acknowledgment that the transferor had signed the deed.

(c) The deed is acknowledged before a notary public.

SEC. 10. Section 5625 is added to the Probate Code, to read:

5625. (a) Any person generally competent to be a witness may act as a witness to a revocable transfer on death deed.

(b) A revocable transfer on death deed is not invalid because it is signed by an interested witness.

(c) If a beneficiary of a revocable transfer on death deed is also a subscribing witness, there is a presumption that the witness procured the revocable transfer on death deed by duress, menace, fraud, or undue influence. This presumption is a presumption affecting the burden of proof. This presumption does not apply where the witness is named as beneficiary solely in a fiduciary capacity.

SEC. 11. Section 5626 of the Probate Code is amended to read:

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 acknowledged before a notary.

(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.

(d) (1) Subdivision (a) does not require the recordation of the "Common Questions" language that is specified in subdivision (b) of Section 5642. The failure to record that part of the statutory form has no effect on the effectiveness of a revocable transfer on death deed.

(2) (A) This subdivision applies to a revocable transfer on death deed executed on or after July 9, 2018.

(B) This subdivision applies to a revocable transfer on death deed executed before July 9, 2018, only if the transferor was alive on July 9, 2018.

SEC. 12. Section 5632 of the Probate Code is amended to read:

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

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

SEC. 13. Section 5642 of the Probate Code is amended to read:

5642. A revocable transfer on death deed shall be substantially in the following form.

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

REVOCABLE TRANSFER ON DEATH (TOD) DEED
(California Probate Code Section 5642)

Recording Requested By:

When Recorded Mail This Deed To

Name:

Address:

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

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

IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR BEFORE 60 DAYS AFTER THE DATE IT IS NOTARIZED

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

PROPERTY DESCRIPTION

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

BENEFICIARY(IES)

Name the person(s) or entity(ies) who will receive the described property on your death.

IF YOU ARE NAMING A PERSON, state the person's FULL NAME (DO NOT use general terms like "my children"). You may also wish to state the RELATIONSHIP that the person has to you (spouse, son, daughter, friend, etc.), but this is not required.

IF YOU ARE NAMING A TRUST, state the full name of the trust, the name of the trustee(s), and the date shown on the signature page of the trust.

IF YOU ARE NAMING A PRIVATE OR PUBLIC ENTITY, state the name of the entity as precisely as you can.

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.

WITNESSES

To be valid, this deed must be signed by two persons, both present at the same time, who witness your signing of the deed or your acknowledgment that it is your deed. The signatures of the witnesses do not need to be acknowledged by a notary public.

Witness #1 Witness #2

Print and sign your name: Print and sign your name:

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 they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

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

CAN I USE THIS DEED TO TRANSFER NONRESIDENTIAL PROPERTY? No. This deed can only be used to transfer residential property. Also, the deed cannot be used to transfer a unit in a stock cooperative or a parcel of agricultural land that is over 40 acres in size.

CAN I USE THIS DEED TO TRANSFER A MOBILEHOME? The deed can only be used to transfer a mobilehome if it is a "fixture" or improvement under Section 18551 of the Health and Safety Code. If you are unsure whether your mobilehome is a fixture, you may wish to consult an attorney. An error on this point could cause the transfer of your mobilehome to fail.

HOW DO I USE THE TOD DEED? Complete this form. Have it signed by two persons who are both present at the same time and who witness you either signing the form or acknowledging the form. Then NOTARIZE your signature (witness signatures do not need to be notarized). RECORD the form in the county where the property is located. The form MUST be recorded on or before 60 days after the date you notarize it or the deed has no effect.

IF I AM UNABLE TO SIGN THE DEED, MAY I ASK SOMEONE ELSE TO SIGN MY NAME FOR ME? Yes. However, if the person who signs for you would benefit from the transfer of your property, there is a chance that the transfer under this deed will fail. You may wish to consult an attorney before taking that step.

CAN A PERSON WHO SIGNS THE DEED AS A WITNESS ALSO BE A BENEFICIARY? Yes, but this can cause serious legal problems, including the possible invalidation of the deed. You should avoid using a beneficiary as a witness.

IS THE "LEGAL DESCRIPTION" OF THE PROPERTY NECESSARY? Yes.

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

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

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

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

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

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

IF I SELL OR GIVE AWAY THE PROPERTY DESCRIBED IN A TOD DEED, WHAT HAPPENS WHEN I DIE? If the deed or other document used to transfer your property is RECORDED within 120 days after the TOD deed would otherwise operate, the TOD deed will have no effect. If the transfer document is not RECORDED within that time period, the TOD deed will take effect.

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

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

WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your beneficiary must do all of the following: (1) RECORD evidence of your death (Prob. Code § 210). (2) File a change in ownership notice (Rev. & Tax. Code § 480). (3) Provide notice to your heirs that includes a copy of this deed and your death certificate (Prob. Code § 5681). Determining who is an "heir" can be complicated. Your beneficiary should consider seeking professional advice to make that determination. (4) RECORD an affidavit affirming that notice was sent to your heirs (Prob. Code § 5682(c)). (5) If you received Medi-Cal benefits, your beneficiary must notify the State Department of Health Care Services of your death and provide a copy of your death certificate (Prob. Code § 215). Your beneficiary may wish to consult a professional for assistance with these requirements.

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

HOW DO I NAME BENEFICIARIES? (1) If the beneficiary is a person, you MUST state the person's FULL name. You MAY NOT use general terms to describe beneficiaries, such as "my children." You may also briefly state that person's relationship to you (for example, my spouse, my son, my daughter, my friend, etc.), but this is not required. (2) If the beneficiary is a trust, you MUST name the trust, name the trustee(s), and state the date shown on the trust's signature page. (3) If the beneficiary is a public or private entity, name the entity as precisely as you can.

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

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

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

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

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

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

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

SEC. 14. Section 5644 of the Probate Code is amended to read:

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

Revocation of
Revocable Transfer on Death (TOD) Deed
(California Probate Code Section 5600)

Recording Requested By:

When Recorded Mail This Deed To

Name:

Address:

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

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

IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE EFFECTIVE

This revocation form MUST be RECORDED on or before 60 days after the date it is notarized or it will not be effective. This revocation form only affects a transfer on death deed that YOU made. A transfer on death deed made by a co-owner of your property is not affected by this revocation form. A co-owner who wants to revoke a transfer on death deed that they made must complete and RECORD a SEPARATE revocation form.

PROPERTY DESCRIPTION

Print the legal description of the property affected by this revocation:

REVOCATION

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

SIGNATURE AND DATE

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

Date

WITNESSES

To be valid, this form must be signed by two persons, both present at the same time, who witness your signing of the form or your acknowledgment that it is your form. The signatures of the witnesses do not need to be acknowledged by a notary public.

Witness #1 Witness #2

Print and sign your name: Print and sign your name:

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 they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

SEC. 15. Section 5652 of the Probate Code is amended to read:

5652. (a) A revocable transfer on death deed transfers all of the transferor's interest in the property on the transferor's death according to the following rules:

(1) Subject to the beneficiary's right to disclaim the transfer, the interest in the property is transferred to the beneficiary in accordance with the deed.

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

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

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

(b) Property is transferred by a revocable transfer on death deed subject to any limitation on the transferor's interest that is of record at the transferor's death or that is recorded no later than 120 days after the affidavit required by subdivision (c) of Section 5682 is recorded, including, but not limited to, a lien, encumbrance, easement, lease, or other instrument affecting the transferor's interest, whether recorded before or after recordation of the revocable transfer on death deed. The holder of rights under that instrument may enforce those rights against the property notwithstanding its transfer by the revocable transfer on death deed. An enforceable restriction on the use of the transferred property does not affect the transfer of title to the property by a revocable transfer on death deed.

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

SEC. 16. Section 5658 is added to the Probate Code, to read:

5658. A court in which the transferor's estate is being administered may, on the petition of the personal representative or interested person, or on its own motion, apply the doctrine of cy pres to reform a revocable transfer on death deed that was made by the transferor for a charitable purpose, in either of the following circumstances:

(a) The beneficiary does not accept the gift.

(b) The beneficiary is a legal entity that dissolved or was merged into another entity before the transferor's death.

SEC. 17. Section 5659 is added to the Probate Code, to read:

5659. An error or ambiguity in describing property or designating a beneficiary does not invalidate a revocable transfer on death deed if the transferor's intention can be determined by a court. The general law that governs judicial construction or reformation of an error or ambiguity in a deed applies to a revocable transfer on death deed.

SEC. 18. Section 5660 of the Probate Code is amended to read:

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

(a) If the other instrument is not recorded within 120 days after the affidavit required by subdivision (c) of Section 5682 is recorded, the revocable transfer on death deed is the operative instrument.

(b) If the other instrument is recorded within 120 days after the affidavit required by subdivision (c) of Section 5682 is recorded and makes a revocable disposition of the property, the later executed of the revocable transfer on death deed or the other instrument is the operative instrument.

(c) If the other instrument is recorded within 120 days after the affidavit required by subdivision (c) of Section 5682 is recorded and makes an irrevocable disposition of the property, the other instrument and not the revocable transfer on death deed is the operative instrument.

SEC. 19. Section 5674 of the Probate Code is amended to read:

5674. (a) A beneficiary is not liable under Section 5672 if proceedings for the administration of the transferor's estate are commenced and the beneficiary satisfies the requirements of Section 5677 or 5678.

(b) The personal liability of a beneficiary under Section 5672 shall not exceed the fair market value at the time of the transferor's death of the property received by the beneficiary pursuant to the revocable transfer on death deed, less the amount of any liens and encumbrances on the property at that time.

SEC. 20. Section 5676 of the Probate Code is repealed.

SEC. 21. Section 5677 is added to the Probate Code, to read:

5677. (a) If proceedings for the administration of the transferor's estate are commenced, a beneficiary of a revocable transfer on death deed is personally liable to the estate for a share of the transferor's unsecured debts.

(b) In calculating the beneficiary's share of liability under subdivision (a), the abatement rules provided in Part 4 (commencing with Section 21400) of Division 11 shall be applied, using all of the following assumptions:

(1) The property that was transferred to the beneficiary by revocable transfer on death deed shall be treated as if it were a specific gift made by the decedent's will.

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

(3) Any unsecured debts of the transferor that were paid by the beneficiary pursuant to Section 5672 shall be treated as if they were claims made against the transferor's estate.

(c) The personal representative shall provide a written statement of liability to the beneficiary, which specifies the amount that must be paid to the estate.

(d) The beneficiary is personally liable to the estate for the amount specified in the statement of liability. Any amount that the beneficiary paid toward the unsecured debts of the transferor pursuant to Section 5672 shall be credited against the amount that the beneficiary owes the estate under this subdivision. If the amount that the beneficiary paid pursuant to Section 5672 exceeds the amount specified in the written statement of liability, the estate shall reimburse the difference to the beneficiary. For the purposes of Section 11420, this reimbursement shall be deemed an expense of administration.

(e) In the event that the beneficiary and the personal representative cannot agree on the reimbursement or liability due under this section, the beneficiary or personal representative may petition the court for an order determining the amount of the reimbursement or liability.

(f) The reasonable cost of proceeding under this section shall be reimbursed as an extraordinary service under Sections 10801 and 10811. The beneficiary is liable for the payment of that cost, which shall be separately identified in the statement of liability.

SEC. 22. Section 5678 is added to the Probate Code, to read:

5678. (a) If proceedings for the administration of the transferor's estate are commenced, a beneficiary who receives property from the transferor under a revocable transfer on death deed may voluntarily return that property to the transferor's estate for administration.

(b) Property returned to the transferor's estate under this section shall be treated as if it had been specifically devised to the beneficiary by the transferor.

(c) If the beneficiary's action or inaction increased the value of property returned to the estate or decreased the estate's obligations, the estate shall reimburse the beneficiary by the same amount. Actions or inaction that increase the value of returned property or decrease the estate's obligations include, but are not necessarily limited to, the following actions:

(1) A payment toward an unsecured debt of the decedent.

(2) A payment toward a debt secured against the returned property.

(3) A significant improvement of the returned property that increased the fair market value of the property.

(d) If the beneficiary's action or inaction decreased the value of property returned to the estate or increased the estate's obligations, the beneficiary is personally liable to the estate for that amount. Actions or inaction that decrease the value of the returned property or increase the estate's obligations include, but are not necessarily limited to, the following actions or inaction:

(1) An action or inaction that resulted in a lien or encumbrance being recorded against the property.

(2) The receipt of income from the property, if that income would have accrued to the estate had the property not been transferred to the beneficiary.

(e) The personal representative shall provide the beneficiary a written statement of any reimbursement or liability under this section, along with a statement of the reasons for the reimbursement or liability. For the purposes of Section 11420, any reimbursement under this section shall be deemed an expense of administration.

(f) In the event that the beneficiary and the personal representative cannot agree on the reimbursement or liability due under this section, the beneficiary or personal representative may petition the court for an order determining the amount of the reimbursement or liability. In making a decision under this subdivision, the court should consider the surrounding circumstances, including whether the parties acted in good faith and whether a particular result would impose an unfair burden on the beneficiary or the estate.

SEC. 23. Section 5681 is added to the Probate Code, to read:

5681. (a) After the death of the transferor, the beneficiary of a revocable transfer on death deed shall serve notice on the transferor's heirs, along with a copy of the revocable transfer on death deed and a copy of the transferor's death certificate.

(b) The notice required by subdivision (a) shall be in substantially the following form:

"NOTICE OF REVOCABLE TRANSFER ON DEATH DEED

The enclosed revocable transfer on death deed was created by: [name of deceased transferor].

It affects the following property: [description of property used on revocable transfer on death deed].

It names the following beneficiaries: [beneficiary(ies) named on the revocable transfer on death deed].

As a result of the death of [name of deceased transferor], the deed will transfer the described property to the named beneficiaries, without probate administration.

If you believe that the revocable transfer on death deed is invalid and you wish to stop it from taking effect, you have only 120 days from the date of this notice to file a fully effective challenge. You should act promptly and may wish to consult an attorney."

(c) For the purposes of this section, if the beneficiary has actual knowledge of a final judicial determination of heirship for the deceased transferor, the beneficiary shall rely on that determination. Otherwise, the beneficiary shall have discretion to make a good faith determination, by any reasonable means, of the heirs of the transferor.

(d) The beneficiary need not provide a copy of the notice to an heir who is either of the following:

- (1) Known to the beneficiary but who cannot be located by the beneficiary after reasonable diligence.
- (2) Unknown to the beneficiary.

(e) The notice shall be served by any of the methods described in Section 1215 to the last known address.

(f) If a revocable transfer on death deed names more than one beneficiary, only one of the beneficiaries is required to comply with this section.

(g) (1) A beneficiary who fails to serve the notification required by this section on an heir who is not a beneficiary and whose identity is known to the beneficiary shall be responsible for all damages caused to the heir by the failure, unless the beneficiary shows that they made a reasonably diligent effort to comply. For purposes of this subdivision, "reasonably diligent effort" means that the beneficiary has delivered notice pursuant to Section 1215 to the heir at the heir's last address actually known to the beneficiary.

(2) A beneficiary is not liable under this subdivision if that beneficiary reasonably relied, in good faith, on another beneficiary's statement that the other beneficiary would satisfy the requirements of this section.

(3) A beneficiary is not to be held to the same standard as a fiduciary.

SEC. 24. Section 5682 of the Probate Code is amended to read:

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

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

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

(c) (1) An affidavit was recorded for the property, which contains a statement in substantially the following form: "I, [name of beneficiary], served the notice required by Probate Code Section 5681."

(2) If a revocable transfer on death deed names more than one beneficiary, only one beneficiary is required to comply with this subdivision.

SEC. 25. Section 5690 of the Probate Code is amended to read:

5690. (a) (1) An action for the disqualification of a beneficiary under Part 3.7 (commencing with Section 21360) of Division 11 may be brought to contest the validity of a transfer of property by a revocable transfer on death deed.

(2) An action to contest the validity of a transfer of property by a revocable transfer on death deed may be filed by the transferor's personal representative or an interested person under Part 19 (commencing with Section 850) of Division 2.

(3) An action to contest the validity of a revocation of a revocable transfer on death deed may be filed by the transferor's personal representative or a beneficiary of the revoked deed under Part 19 (commencing with Section 850) of Division 2. If the contest is successful, the court shall determine the appropriate remedy, which may include revival of the revoked deed. In deciding the remedy, the court shall attempt to effectuate the intentions of the transferor.

(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.

(d) In a contest proceeding, each subscribing witness of the revocable transfer on death deed shall be produced and examined. If no subscribing witness is available as a witness within the meaning of Section 240 of the Evidence Code, the court may admit the evidence of other witnesses to prove the due execution of the deed.

SEC. 26. Section 5694 of the Probate Code is amended to read:

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 no later than 120 days after the affidavit required by subdivision (c) of Section 5682 was recorded, 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 affidavit required by subdivision (c) of Section 5682 was recorded, 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.

SEC. 27. Section 5698 is added to the Probate Code, to read:

5698. Nothing in this chapter limits the application of other law that imposes a penalty or provides a remedy for the creation of a revocable transfer on death deed by means of fraud, undue influence, menace, or duress, including, but not limited to, Section 368 of the Penal Code and Sections 15656 and 15657.5 of the Welfare and Institutions Code.