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## AB-288 Revocable transfer on death deeds. (2023-2024)

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### Assembly Bill No. 288

#### CHAPTER 62

An act to amend Sections 5610, 5614, 5642, 5652, and 5660 of, and to add Section 5614.5 to, the Probate Code, relating to revocable transfer on death deeds.

[ Approved by Governor July 13, 2023. Filed with Secretary of State July 13, 2023. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 288, Maienschein. Revocable transfer on death deeds.

Existing law, until January 1, 2032, governs the execution, revocation, and effectiveness of a revocable transfer on death (TOD) deed, which is an instrument that makes a donative transfer of real property to a named beneficiary that becomes operative on the transferor's death, but remains revocable until the transferor's death. Under existing law, a separate interest in a stock cooperative is not real property that may be transferred by a revocable TOD deed.

This bill would authorize the transfer of real property by revocable TOD deed even if ownership is not typically evidenced or transferred by use of a deed, and would authorize the transfer of an interest in a stock cooperative by revocable TOD deed subject to any limitation on the transferor's interest. If a stock cooperative exercises an option to purchase property transferred by revocable TOD deed on the transferor's death, the bill would specify that the property is transferred to the stock cooperative and the purchase price is paid to the beneficiary. The bill would also make conforming changes.

Existing law, until January 1, 2032, specifies that if a revocable TOD deed and another instrument purporting to dispose of the same property conflict, the revocable TOD deed is the operative instrument if the other instrument is not recorded within 120 days after an affidavit recorded for the property. If the other instrument is revocable and recorded within those 120 days, existing law specifies that the later executed instrument is operative, but if the other instrument is irrevocable and recorded within those 120 days, the other instrument is operative.

This bill would delete the above-described recording requirements, and would instead specify that, if the other instrument is revocable, the later executed instrument is operative, and that the other instrument is operative if it is irrevocable.

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

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

**SECTION 1.** Section 5610 of the Probate Code is amended 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 a parcel of agricultural land that is greater than 40 acres in size. For the purposes of this subdivision, "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. 2.** Section 5614 of the Probate Code is amended to read:

**5614.** (a) "Revocable transfer on death deed" means an instrument created pursuant to this part that does all of the following:

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

(2) Operates on the transferor's death.

(3) Remains revocable until the transferor's death.

(b) A revocable transfer on death deed may also be known as a "revocable TOD deed."

(c) A revocable transfer on death deed may be used to transfer real property even if ownership of the property is not typically evidenced or transferred by use of a deed.

**SEC. 3.** Section 5614.5 is added to the Probate Code, to read:

**5614.5.** "Stock cooperative" has the same meaning as in Section 4190 of the Civil Code.

**SEC. 4.** 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:

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#### 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 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.

**SEC. 5.** 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) Notwithstanding subdivision (b), an interest in a stock cooperative is transferred by a revocable transfer on death deed subject to any limitation on the transferor's interest that is expressed in the governing documents of the stock cooperative or in a written agreement between the stock cooperative and the transferor, without regard for whether or not those instruments are recorded.

(d) If a stock cooperative exercises an option to purchase property transferred by a revocable transfer on death deed on the transferor's death, the result is as follows:

- (1) The property is transferred to the stock cooperative rather than the beneficiary.
- (2) The purchase price is paid to the beneficiary. Unless the law or the governing documents of the stock cooperative provide otherwise, the purchase price is the fair market value of the property, less the amount of any liens or encumbrances on the property at the time of the owner's death and less any amount that the decedent owed to the stock cooperative.

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

**SEC. 6.** Section 5660 of the Probate Code is amended to read:

**5660.** (a) 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:

- (1) If the other instrument 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.
- (2) If the other instrument makes an irrevocable disposition of the property, the other instrument and not the revocable transfer on death deed is the operative instrument.

(b) A claim that a revocable transfer on death deed is inoperative pursuant to this section shall be brought as a contest under Chapter 5 (commencing with Section 5690).