

[Assembly Bill 1739](#) (Chau)

Date: March 6, 2018 (Amended)

Program: Property Taxes

Sponsor: Author

Probate Code Section 5626

Effective: Upon Enactment

Mark Durham (Chief) 916.319-9220

Glenna Schultz (Analyst) 916.274.3362

Chris Butler (Revenue) 916.445.0840

**Summary:** Provides that the pages with common questions do not have to be recorded with the revocable transfer on death deed.

**Fiscal Impact Summary:** No revenue impact.

**Existing Law:** Until January 1, 2021, current law<sup>1</sup> allows a non-probate method for conveying real property upon death. An interest in certain residential real property may be transferred upon death by recording a Revocable Transfer on Death deed (TOD deed). The first page of a revocable TOD deed must include the name and relationship of the beneficiary, legal description, transferor's signature and date, and notarization. Subsequent pages contain common questions and answers about the use of the form. The TOD deed and its common questions pages must be recorded within 60 days of the date it was signed and notarized, and before the transferor's date of death. A revocable TOD deed does not take effect until it is recorded. Once recorded, the TOD deed remains valid until the transferor dies or revokes the TOD deed.

**Revocable TOD Deed.** The language for the revocable TOD deed is set in statute<sup>2</sup> and includes a number of common questions about the use of the form.

**Real Property.** A revocable TOD deed may be used to transfer residential real property as long as title is not held in joint tenancy or community property with right of survivorship.<sup>3</sup> "Residential real property" includes the following:

- Real property improved with one to four residential dwelling units
- A condominium unit, including the limited common elements allocated to the exclusive use thereof that form an integral part of the condominium unit
- A single tract of agricultural real estate consisting of 40 acres or less that is improved with a single-family residence<sup>4</sup>

This type of deed cannot be used to transfer a multi-family residence that has more than four units, any commercial or industrial real property, or agricultural property greater than 40 acres.

**Property Tax System.** In 1978, voters approved [Proposition 13](#). Under this system, property is reassessed to its current market value only after a change in ownership or new construction. Generally, the property's sales price sets the property's assessed value, and annual increases thereafter are limited to the rate of inflation up to two percent. At the time of the ownership change, the value for property tax purposes is redetermined based on current market value. This established value is described as the

---

<sup>1</sup> Probate Code sections [5600-5696](#).

<sup>2</sup> Probate Code section [5642](#).

<sup>3</sup> Probate Code section [5664](#).

<sup>4</sup> Probate Code section [5610](#).

"base year value." Thereafter, the base year value is subject to annual increases for inflation limited to two percent per year. This value is described as the "factored base year value."<sup>5</sup> The Proposition 13 system can result in substantial property tax savings for long-term property owners.

The execution and recordation of, or revocation of, a revocable TOD deed of real property is not a change in ownership of the property. Rather, execution and recordation of, or revocation of, a revocable TOD deed of real property is not a change in ownership of the property.<sup>6</sup> Thus, during the transferor's life, the recordation of a revocable TOD deed does not affect the ownership rights of the transferor.

Upon date of death, all of the transferor's interest in the property transfers to the beneficiary as long as the beneficiary survives the transferor. If there is more than one beneficiary, the beneficiaries inherit as tenants in common in equal shares.<sup>7</sup> If one beneficiary predeceases the transferor, the remaining beneficiaries inherit in equal shares.

If the beneficiary is the spouse or registered domestic partner of the transferor, the transfer may be excluded under RTC section [63](#) or section [62](#)(p). If the beneficiary is a parent, child or grandchild of the transferor, the transfer may be excluded under the parent-child or grandparent-grandchild exclusion if all the requirements of the particular exclusion are met and a claim is filed with the county assessor. Since a change in ownership resulting from a revocable TOD deed occurs upon date of death, the cotenancy exclusion under RTC section [62.3](#) may apply if the decedent transferor and the beneficiary were co-owners of the real property and all the other requirements of section 62.3 are met.

**Proposed Law:** This bill provides that the common questions pages do not need to be recorded with the revocable TOD deed. This bill is effective upon enactment. These provisions apply to revocable TOD deeds that are executed:

- On or after the effective date of this bill.
- Before the effective date of this bill, but only if the transferor is alive on this bill's effective date.

**In General:** For property tax purposes, the recording of a revocable TOD deed does not trigger a reassessable change in ownership. Once a revocable TOD deed is recorded, the date of death of the transferor is the date of reassessment. If the beneficiary is a spouse or registered domestic partner of the transferor, the change in ownership may be excluded from reassessment.<sup>8</sup> If the beneficiary is a parent or child of the transferor, the parent-child exclusion may apply if a claim is filed with the county assessor.<sup>9</sup>

**Background:** [AB 12](#) (DeVore, Stats. 2005, ch. 422) required the California Law Revision Commission to study the effect of non-probate transfer provisions of other states that use beneficiary deeds as means of conveying real property. [AB 139](#) (Gatto, Stats. 2015, ch. 293) established a five-year pilot program allowing owners of real property, until January 1, 2021, to transfer their property upon death, outside the normal probate procedure, through an instrument called a revocable TOD deed.

---

<sup>5</sup> Revenue and Taxation Code (RTC) section [110.1](#).

<sup>6</sup> Probate Code section [5656](#).

<sup>7</sup> Probate Code section [5652](#)(a)(3).

<sup>8</sup> RTC sections [62](#)(p) and [63](#).

<sup>9</sup> RTC section [63.1](#).

Previous attempts to enact a revocable TOD deed include:

- 2007 – [AB 250](#) (DeVore)
- 2010 – [AB 724](#) (DeVore)
- 2011 – [AB 699](#) (Wagner)

**Commentary:** This analysis is being provided as a commentary on problems county assessors have encountered with recorded revocable TOD deeds.

1. **Title Insurance.** A property owner encountered difficulty with the revocable TOD deed her mother recorded. The revocable TOD deed was recorded without the common questions pages. Her mother passed away. The beneficiaries on the revocable TOD deed were four children. The children could not get title insurance on the property due to the revocable TOD deed being recorded without the common questions pages, and were unable to sell the property. The children had to go through probate to clear title. This bill appears to resolve this issue.
2. **Dual Estate Plans.** Probate Code 5664 provides that a revocable TOD deed cannot be used to transfer an interest in real property if the property is held in joint tenancy or community property with right of survivorship at the time of the transferor's death, since the transferor's interest is governed by the right of survivorship and not by the revocable TOD deed. Additionally, Probate Code section [5660\(b\)](#) provides that if two revocable and recorded instruments purport to dispose of the same property, the later executed document is the operative instrument. However, revocable TOD deeds are being recorded on properties that are held in trust. Where a trust document is executed after a revocable TOD deed, but is not recorded before the death of the transferor, the recorded revocable TOD deed would be operative even though the TOD deed was executed *before* the trust instrument.
3. **Real Property Limits.** Revocable TOD deeds can be used only for residential property improved with one to four residential dwelling units. A manufactured home that is not permanently affixed to land is considered personal property, not an improvement to real property.<sup>10</sup> Thus, a revocable TOD deed may not apply to manufactured homes that are not permanently affixed to land.
4. **Legal Description.** Is an assessor's parcel number sufficient as a legal description?
5. **Beneficiary.** Probate Code section [5608](#) defines a beneficiary as a "person" named in a revocable TOD deed as transferee of the property. Probate Code section [5622](#) requires the transferor to identify the beneficiary by name. Probate Code section 5642(a) requires the full name of the beneficiary and their relationship to the transferor be included on the revocable TOD deed. Section 5642(b) clarifies this by stating that the transferor needs to name the beneficiaries individually, using each beneficiary's full name. However, Part 4 of the Probate Code, Revocable Transfer on Death Deed, does not define "person" for revocable TOD deed purposes.

We note that section [56](#) of the Probate Code defines "person" as "an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity." And Probate Code section [20](#) provides

---

<sup>10</sup> Revenue and Taxation Code sections [105](#) and [5801\(b\)](#); Health and Safety Code section [18551\(a\)](#).

that "[u]nless the provision or context otherwise requires, the definitions in this part govern the construction of this code." It may be helpful to define "person" for purposes of Part 4 of the Probate Code, Revocable Transfer on Death Deed, or to clearly adopt the standard already provided by Probate Code sections 56 and 20 so as to clarify whether a trust or legal entity be a beneficiary.

6. **Multiple Beneficiaries.** The "common questions" in section 5642(b) state that if there are multiple beneficiaries, the beneficiaries will become co-owners in equal shares as tenants in common. If the revocable TOD deed specifies beneficiaries with different percentage interests or as joint tenants, this may invalidate the revocable TOD deed.
7. **Related Legislation.** [AB 3004](#) also amends provisions of Part 4 of the Probate Code relating to revocable TOD deeds.

**Costs:** The BOE would incur absorbable costs in advising local county assessors of any law change relevant to property taxes.

**Revenue Impact:** This measure does not have any direct revenue impact.