



## Fall 2016 Bulletin

### NEW WAY TO AVOID PROBATE ON REAL PROPERTY

Probate avoidance is a primary consideration for estate planners and their clients. A revocable trust is usually the vehicle of choice for making nonprobate transfers, but alternatives have always existed for personal property such as cash in the bank, retirement plan benefits, and brokerage accounts. For real property, no such vehicle existed until January 1, 2016.

For personal property assets, a beneficiary designation may be used to transfer the property automatically at death outside of the decedent's probate estate. Personal property up to \$150,000 may also be collected by affidavit. Prob C §13100. By contrast, real property valued at more than \$50,000 can't be collected by an affidavit, except by a surviving spouse until now. Prob C §§13200, 13500.

The California legislature has created a new way to avoid probate on real property transfer by: a revocable transfer on death (TOD) deed for real property. Prob C §§5600–5694.

The objective of the legislation is to permit the transfer of real estate at death in a way similar to a pay on death (POD) account under the California Multiple-Party Accounts Law (Prob C §§5100–5407) or a transfer on death (TOD) securities account under the Uniform TOD Security Registration Act (Prob C §§5500–5512), except that there's no third-party holder of the property.

The new law may also be seen as permitting a nonprobate transfer of real property that's similar to a transfer by joint tenancy, except that the initial conveyance is revocable, and the transferee or beneficiary acquires no ownership

rights, not even future interest rights, in the property before the transferor's death.

The form required for a revocable TOD deed is located at Prob C §5642 and reads as follows:

"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."

The deed must be recorded under Prob C §5626(a) within 60 days after it's signed and notarized under Prob C §5624.

A revocable TOD deed is void with respect to the survivor's interest in joint tenancy property and community property with right of survivorship. Prob C §5664, but it remains effective to transfer the property at the survivor's death, if the transferor was the surviving joint tenant or surviving spouse.

A revocable TOD deed shares the disadvantage of joint tenancy in that benefits can't be divided unequally and contingent beneficiaries can't be named. The surviving beneficiaries take the property in equal shares as tenants in common. And the beneficiaries are liable for the transferor's debts, unlike surviving joint tenants.

The new law is a 5-year trial set to expire on January 1, 2021. Prob C §5600(c).

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