

MEMORANDUM

TO: Drafting Committee for Uniform TOD for Real Property Act

FROM: Thomas P. Gallanis

DATE: February 26, 2007

RE: New Memorandum from California Law Revision Commission

On February 23, the California Law Revision Commission published a memorandum (Memorandum 2007-06) amending its earlier report and proposal on TOD deeds. The full text of the memorandum is available at <http://www.clrc.ca.gov/pub/2007/MM07-06.pdf>.

The memorandum addresses two issues:

1. *The proposed statutory form.* The Commission's original proposal contained a statutory form (reproduced on pages 60-61 of my February 14 memorandum). The Commission has now revised the form. The gist of the revision is that the parts of the form to be filled in are separate from the parts containing advisory language. The revised form is attached.

2. *Effect of a will on the TOD deed.* The Commission has clarified its analysis of what happens under the proposed California statute if there is a recorded TOD deed and a will purporting to dispose of the same property (page 11 of my February 14 memorandum). The Commission had earlier concluded that the TOD deed would govern. The Commission now reports that this is true except in the "extremely unlikely" event that the testator's will is executed after the TOD deed and is recorded before the testator's death. (The Commission states that California law does not prohibit the recording of a will before the testator's death.) In the rare event that the transferor's will is recorded before the transferor's death, then the effect of the instruments would be governed by §5660 of the proposed California statute, which provides that the later executed of two recorded documents governs; if the later executed document is the will, not the TOD deed, then the will would trump the TOD deed.

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 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 will determine the ownership of the described property after your death. This deed may have unintended effects and may not be appropriate for your needs. YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER SIDE OF THIS FORM AND CONSULT AN ATTORNEY BEFORE USING THIS DEED. Provide only the information requested on the form. DO NOT INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form MUST be recorded before your death or it will not be effective.

IDENTIFYING INFORMATION

Owner(s) of Property Who Join in this Deed:

Address or Other Description of Property:

Name(s) of Beneficiary(ies):

TRANSFER ON DEATH

I transfer all of my interest in the described property to the named beneficiary(ies) on my death. This revocable TOD deed revokes any previous revocable TOD deed I have made for the described property. This deed is revocable at any time before my death.

Signature(s) of Owner(s) Who Join in this Deed:

_____ Date _____

OPTIONAL LIFE ESTATE IN SURVIVING SPOUSE

If I sign here, I choose to make the beneficiary's right to the described property subject to a life estate in my surviving spouse. DO NOT SIGN HERE IF YOU DO NOT WANT TO CREATE A LIFE ESTATE IN YOUR SURVIVING SPOUSE. Signature(s) of owner(s) who make this choice:

ACKNOWLEDGMENT OF NOTARY

State of California)
County of _____)

On [date], before me, [name of notary], a notary public in and for said County and State, personally appeared [name of signer], personally known to me, or 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 he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Signature of Notary _____

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

WHAT DOES THE TOD DEED DO? At the time of your death, the TOD deed transfers your share of the property described in the deed to the beneficiary named in the deed, without probate administration. The TOD deed has no effect until your death and can be revoked at any time before your death.

HOW DO I USE THE TOD DEED? Complete the TOD deed. Have it notarized. Record the deed in the county where the property is located. The deed **MUST** be recorded before your death or it has no effect.

CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND? Yes. You are free to revoke the TOD deed at any time before your death. 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 TOD deed: (1) Complete, notarize, and **RECORD** a revocation form or other document that specifically states that it revokes the deed. (2) Create and **RECORD** a new TOD deed, trust, or other estate planning document that disposes of the same property and is signed and dated after the TOD deed that you wish to revoke. (3) Sell or give away the property before your death and **RECORD** the deed. A TOD deed only affects property that you own.

IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY, DOES THAT REVOKE A RECORDED TOD DEED? Not necessarily. If you want to revoke a TOD deed, the new estate planning document must be **RECORDED**, and must be signed and dated later than the deed that you wish to revoke. A simpler and more certain way to revoke a TOD deed is to **RECORD** a properly completed and notarized revocation form.

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

WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your beneficiary will need to record evidence of your death (under Probate Code Section 210) to complete the change in ownership. Your beneficiary must file the change in ownership notice required by Revenue and Taxation Code Section 480. Your beneficiary may be required (under Probate Code Section 215) to notify the Department of Health Care Services.

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. You **MUST** name your beneficiaries individually. You **MAY NOT** use general terms to describe beneficiaries, such as "my children."

WHAT IF A BENEFICIARY DIES BEFORE I DO? If the beneficiary is a relative, the property will pass to your beneficiary's descendants. Otherwise, the property will become part of your general estate. If you have an estate planning document that disposes of your general estate, then that document would control. Otherwise, the property would pass by the general rules of intestacy.

HOW DOES A TOD DEED AFFECT PROPERTY THAT I OWN IN JOINT TENANCY OR AS COMMUNITY PROPERTY WITH A RIGHT OF SURVIVORSHIP? This deed will end the right of survivorship of your joint tenant, spouse, or domestic partner. If you want a different result, you should not use this form.

HOW DOES A TOD DEED AFFECT COMMUNITY PROPERTY? This deed will dispose of your share of the community property described in the deed. If you wish to dispose of the entire community property asset, your spouse or domestic partner should join in signing the deed or execute and record a written consent to the transfer.

WHAT IS THE "OPTIONAL LIFE ESTATE IN SURVIVING SPOUSE?" You may choose to use the TOD deed to pass your property to your surviving spouse for the duration of your surviving spouse's life (a "life estate"). Your surviving spouse's ability to transfer or borrow against the property will be limited. When your surviving spouse dies, the property would then transfer to your named beneficiary. To choose this option you **MUST** sign where indicated on the form.

CAN I IMPOSE OTHER CONDITIONS ON THIS TOD DEED? No. This form may not be used to impose other conditions.

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. If you wish to avoid gift and estate tax you should consult a tax professional for advice.

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.

AFTER MY DEATH, WILL MY HOME BE LIABLE FOR REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES? If your estate is subject to reimbursement, any property transferred by a TOD deed will also be subject to reimbursement.