

MEMORANDUM

TO: Drafting Committee for Uniform TOD for Real Property Act
FROM: Thomas P. Gallanis
DATE: March 26, 2007
RE: Updated California Statutory Forms

It was great to see you in Chicago!

Attached are the updated California statutory forms (from the March 22 version of the legislation). Note that there are two forms: one for execution, one for revocation.

Please send any thoughts on the forms to me by e-mail at <gallanist@wlu.edu>.

Many thanks in advance!

5642. A revocable transfer on death deed shall be in the form provided in this section.

(a) The face of the form shall be in substantially the following form:

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 Space Above For Recorder's Use
Number

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

This deed will transfer ownership of the property described below when you die. YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER SIDE OF THIS FORM. You may wish to consult an attorney before using this deed. It may have results that you don't want. Provide only the information asked for in the form. DO NOT INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form MUST be RECORDED before your death or it will not be effective.

PROPERTY DESCRIPTION

Print the address or other legal description of the property affected by this deed.

BENEFICIARY

Print the NAME(S) of beneficiary(ies) who will receive the property on your death (do NOT use general terms like "my children").

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. NOTE: This deed only transfers YOUR ownership share of the property. The deed does NOT transfer the share of a co-owner of the property (if any). Any co-owner who wants to name a TOD beneficiary must complete and RECORD a SEPARATE deed.

Sign and print your name below

Date _____

OPTIONAL LIFE ESTATE IN SURVIVING SPOUSE

See the other side of this form for a description of the life estate option. DO NOT SIGN BELOW IF YOU DO NOT WANT TO CREATE A LIFE ESTATE IN YOUR SURVIVING SPOUSE.

By signing below, I create a life estate in my surviving spouse (or registered domestic partner). After my surviving spouse (or registered domestic partner) dies, ownership of the property will transfer to my named beneficiary(ies).

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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. WITNESS my hand and official seal.

Signature of Notary _____

1 **(b)** *The reverse side of the form shall be in substantially the*
2 *following form:*

3
4 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

5
6 **WHAT DOES THE TOD DEED DO?** *When you die, your beneficiary will*
7 *become owner of the property described in the TOD deed. Probate is not*
8 *required. The TOD deed has no effect until you die. You can revoke it at any*
9 *time.*

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

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

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

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

23 **HOW DO I REVOKE THE TOD DEED?** *There are three ways to revoke*
24 *a recorded TOD deed: (1) Complete, notarize, and RECORD a revocation*
25 *form. (2) Create and RECORD a new TOD deed, trust, or other estate planning*
26 *document that disposes of the same property. (3) Sell or give away the property*
27 *before your death and RECORD the deed. A TOD deed can only affect property*
28 *that you own when you die.*

29 **IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE**
30 **PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY,**
31 **DOES THAT AUTOMATICALLY REVOKE A RECORDED TOD DEED?**
32 *No. If you want the new document to revoke a recorded TOD deed, the new*
33 *document MUST be signed and dated after the deed you wish to revoke and*
34 *it must be RECORDED. To avoid any doubt about whether the deed is revoked,*
35 *you can also complete and RECORD a revocation form.*

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

1 **DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?**

2 *No. But, secrecy can cause later complications and might make it easier for*
3 *others to commit fraud*

4 **WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE?** *Your*

5 *beneficiary must RECORD evidence of your death (Prob. Code § 210), and*

6 *file a change in ownership notice (Rev. & Tax. Code § 480). If you received*

7 *Medi-Cal benefits, your beneficiary may also be required to notify the State*

8 *Department of Health Care Services (Prob. Code § 215).*

9 **WHAT IF I NAME MORE THAN ONE BENEFICIARY?** *Your*

10 *beneficiaries will become co-owners in equal shares. If you want a different*

11 *result, you should not use this form. You MUST name your beneficiaries*

12 *individually. You MAY NOT use general terms to describe beneficiaries, such*

13 *as "my children."*

14 **WHAT IF A BENEFICIARY DIES BEFORE I DO?** *You should probably*

15 *create and RECORD a new deed. Otherwise, the property will transfer*

16 *according to the general rules on failed gifts, which may not meet your needs.*

17 *See Prob. Code §§ 21110-21111.*

18 **WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I**

19 **OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT**

20 **OF SURVIVORSHIP?** *If you are the first joint tenant or spouse to die, the*

21 *deed is VOID and has no effect. The property transfers to your joint tenant or*

22 *surviving spouse and not according to his deed. If you are the last joint tenant*

23 *or spouse to die, the deed takes effect and controls the ownership of your*

24 *property when you die. If you do not want these results, do not use this form.*

25 **CAN I ADD OTHER CONDITIONS ON THE FORM?** *No. If you do,*

26 *your beneficiary may need to go to court to clear title.*

27 **IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO**

28 **MY DEBTS?** *Yes.*

29 **DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE**

30 **TAXES?** *No. If you wish to avoid gift and estate tax you should consult a tax*

31 *professional for advice.*

32 **HOW DOES THE TOD DEED AFFECT PROPERTY TAXES?** *The TOD*

33 *deed has no effect on your property taxes until your death. At that time,*

34 *property tax law applies as it would to any other change of ownership.*

35 **DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?**

36 *No.*

37 **AFTER MY DEATH, WILL MY HOME BE LIABLE FOR**

38 **REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?**

39 *If your estate is subject to reimbursement, any property transferred by a TOD*

40 *deed will also be subject to reimbursement.*

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

~~—Notice to Owner: This revocation MUST be recorded before you die in order to be effective. This revocation is effective only as to the interests of owners who join in this revocation.~~

IDENTIFYING INFORMATION

~~—Owner(s) of Property Who Join in this Revocation:~~ - _____ -

~~—Address or Other Description of Property:~~ - _____ -

~~—Recording Information for Revocable TOD Deed:~~

County: - _____ -

Date of Recordation: - _____ -

Book and Page or Series Number: _____

REVOCATION

~~I revoke the described revocable TOD deed.~~

SIGNATURE AND DATE

Signature(s) of Owner(s) Who Join in this Revocation: _____

Date: _____

ACKNOWLEDGMENT

State of California)

County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, 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 by his/her/their signature(s) on the instrument the person(s) executed the instrument.

—WITNESS my hand and official seal.

Signature _____ (Seal)

IMPORTANT NOTICE: THIS FORM MUST BE RECORDED

This revocation form MUST be RECORDED before your death 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 he/she made must complete and RECORD a SEPARATE revocation form.

PROPERTY DESCRIPTION

Print the address or other legal description of the property affected by this revocation

1 **RECORDING INFORMATION FOR DEED REVOKED BY THIS FORM:**

2
3 County _____

4 Date of Recordation _____

5 Book and Page or Series Number _____

6
7 **REVOCATION**

8
9 *I revoke the described revocable TOD deed*

10
11 **SIGNATURE AND DATE**

12
13 *Print and sign your name:* _____

14 *Date:* _____

15
16 **ACKNOWLEDGMENT OF NOTARY**

17
18 State of California)

19 County of _____)

20
21 *On [date], before me, [name of notary], a notary public in and for said*
22 *County and State, personally appeared [name of signer], personally known*
23 *to me, or proved to me on the basis of satisfactory evidence, to be the person*
24 *whose name is subscribed to the within instrument and acknowledged to me*
25 *that he/she executed the same in his/her authorized capacity, and that by his/her*
26 *signature on the instrument the person, or the entity upon behalf of which the*
27 *person acted, executed the instrument.*

28
29 *Witness my hand and official seal*

30 *Signature* _____ *(Seal)*

31