

First Supplement to Memorandum 2017-6

Revocable Transfer on Death Deed: Follow-Up Study

The Commission¹ has received a letter from retired Judge Arnold H. Gold, commenting on Memorandum 2017-6. His letter is attached as an exhibit.

Memorandum 2017-6 discusses a potentially problematic ambiguity in the revocable transfer on death deed (“RTODD”) statute. While the law expressly requires that an RTODD be recorded, it is not entirely clear whether that requirement applies to the “common questions” (hereafter “FAQ”) part of the RTODD form.

In that memorandum, the staff noted a problem that would result if the law were amended to expressly require that the FAQ be recorded — RTODDs that had already been recorded without the FAQ would likely be invalidated.

Judge Gold points out that this problem could be avoided “by having the amendatory legislation state that the amendment is not retroactive — that it does not apply to deeds recorded before [the effective date of the amendment].”²

That is essentially correct. However, simply making the amendment inapplicable to earlier-recorded RTODDs would not be a complete solution. That would preserve the existing ambiguity as to those deeds. If this approach were taken, it would probably be best to expressly provide that recordation of the FAQ is not required for earlier-recorded RTODDs.

The staff appreciates Judge Gold’s input on this point.

Respectfully submitted,

Brian Hebert
Executive Director

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Exhibit.

