

Memorandum 2020-5

**Stock Cooperatives and Uniform TOD Security Registration Act
(Introduction of Study)**

In 2006, the Commission¹ recommended that the Legislature authorize the use of a revocable transfer on death deed (“RTODD”) as a means of transferring real property on death, outside of probate.² In 2015, the Legislature adopted the Commission’s recommendation in part, authorizing the use of an RTODD to transfer some but not all kinds of real property interests.³

In 2016, the Legislature directed the Commission to study, among other things, whether the law should permit use of the RTODD to transfer an interest in a “stock cooperative.”⁴ As explained further below, in a stock cooperative the entire development is owned by a corporation. Persons who own a share of that corporation’s stock have a right of exclusive occupancy of a unit in the development.

In 2019, the Commission recommended that the RTODD not be made applicable to stock cooperatives. The RTODD is a poor fit for that kind of property, because the interest of the owner is a share of stock, which is not evidenced or conveyed through the use of a deed.⁵ Instead, the Commission decided to separately study whether a nonprobate transfer of an interest in a stock cooperative could be achieved through other means, perhaps by adapting an existing statute that permits the nonprobate transfer of securities (the Uniform TOD Security Registration Act).⁶

This memorandum begins that study.

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 *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm’n Reports 103 (2006).

3. See 2015 Cal. Stat. ch. 293.

4. See 2016 Cal. Stat. ch. 179.

5. See *Revocable Transfer on Death Deed: Follow-Up Study* (Nov. 2019), pp. 13-14.

6. *Id.* at p. 14.

BACKGROUND

Stock Cooperatives

A stock cooperative is a real property development in which title to the development is held by a corporation. Ownership of a share of that corporation entitles the shareholder to exclusively occupy a unit within the development.⁷ The purchase of a share is generally implemented through a sales contract,⁸ with ownership evidenced by a memorandum of lease or membership document.⁹

There are estimated to be around 30,000 stock cooperative housing units in California.¹⁰ The two primary types of stock cooperatives are the “market rate” cooperative, in which a share is bought and sold for market price, and the limited equity housing cooperative (LEHC),¹¹ in which the sales price of the share is artificially restricted in order to provide for long-term affordable housing. LEHCs are typically income-restricted, and many stock cooperatives are age-restricted.¹²

In a stock cooperative, the ability to transfer a share can be significantly restricted. The staff has reviewed bylaws of several stock cooperatives that give the corporation an option to buy back an owner’s share back on the owner’s death (with the proceeds of the sale passing to the owner’s estate).

In addition, a stock cooperative can require the corporation’s approval of any person who will occupy a unit. The staff has not yet determined whether that operates as a restriction on the transfer of *ownership* of a share or merely as a restriction on the owner’s *use* of the associated unit.

Uniform TOD Security Registration Act

The Uniform TOD Security Registration Act (hereafter, “Act”)¹³ was adopted in 1998, on the Commission’s recommendation.¹⁴ It has been adopted by every state except Texas and Louisiana.¹⁵

7. See Civ. Code § 4190.

8. See <<https://www.nolo.com/legal-encyclopedia/co-op-purchase-contracts-what-watch-out-for.html>>. In California a standard residential purchase agreement may also be required. See C.A.R. Form RPA-CA, Section 13 D.

9. See 2018 Community Association Fact Book (<https://foundation.caionline.org/wp-content/uploads/2019/07/FB_Narrative_2018.pdf>).

10. See <<http://www.coophousing.org/pdf/Type-of-Housing-Cooperatives-in-CA.pdf>>.

11. See Civ. Code § 817.

12. See <<https://cccd.coop/co-op-info/co-op-types/housing-co-ops>>.

13. Prob. Code §§ 5500-5512.

14. *Uniform TOD Security Registration Act*, 28 Cal. L. Revision Comm’n Reports 577 (1998).

15. See <<https://www.uniformlaws.org/committees/community-home?CommunityKey=>

The Act allows a person who acquires a security¹⁶ to request that the issuer of the security register it in beneficiary form, meaning that the registration of the security would include the designation of a transfer on death beneficiary.¹⁷ On the death of the owner of the share, ownership would pass to the beneficiary without probate administration.¹⁸ The situation is more complicated if the share is owned jointly. Those complications will be addressed later.

Registration in beneficiary form has no effect on the present ownership of the security, and can be changed or revoked at any time until the death of the registered owner.¹⁹ Nor does registration in beneficiary form alter the community character of community property or community rights in community property,²⁰ or limit the rights of a surviving spouse under any other applicable law.²¹

A registering entity, who acts in good faith and compliance with the law, is discharged from all claims to the security by the deceased owner's estate, creditors, heirs, or devisees, if the registration is done in good faith.²²

The Act does not affirmatively address liability for the deceased transferor's debts. However, the Act expressly provides that registration in beneficiary form does not affect any rights that creditors have under any other applicable law.²³

The Act does not prescribe a statutory form for registering a security in beneficiary form, providing only that registration in beneficiary form may be shown by the words or abbreviations "transfer on death," "TOD," "pay on death," or "POD," appearing after the name of the registered owner, and before the name of the beneficiary.²⁴

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16. A "security," for purposes of the Act is "a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account." Prob. Code § 5501(d). A share in a stock cooperative would seem to be a security under that definition.

17. See Prob. Code § 5501(a). In general, securities are issued in one of two forms: registered and bearer. When a security is issued in registered form, the name and address of the owner appears on a certificate, and is maintained in the records of the issuer of the security. A security in bearer form is traded without any records, and physical possession of the security is generally the sole evidence of ownership. See <<https://www.investopedia.com/investing/ways-to-buy-and-sell-securities>>.

18. See Prob. Code § 5507.

19. See Prob. Code § 5506.

20. See Prob. Code § 5511.

21. See Prob. Code § 5509(b).

22. See Prob. Code § 5508(c).

23. See Prob. Code §§ 5508(d), 5509(b).

24. See Prob. Code § 5505.

Finally, it is important to note that registering entities are not required to offer registration in beneficiary form to their customers. It is optional at the discretion of the registering entity.²⁵

PROPOSED METHODOLOGY

As a first step in this study, the staff will examine the law of the other states that have adopted the Act. The staff will investigate whether any state has amended its version of the Act to make it applicable to shares of stock cooperatives or whether any court has construed the Act as applicable to stock cooperatives by its terms. If so, the staff will analyze any associated statutory changes and will look for commentary on the state's experience applying the Act to stock cooperatives.

Next, the staff will identify any parts of the Act that may need to be adjusted to make the Act applicable to California stock cooperatives. The Commission will need to work steadily through the resolution of those issues. Some issues that the staff already foresees are discussed briefly below.

STAKEHOLDER OUTREACH

The staff intends to send materials related to this study to two of the Commission's existing notice lists:

- The Estate Planning list, which includes persons interested in the Commission's work on the Probate Code.
- The Common Interest Development list, which includes persons interested in the Commission's work on CIDs (including stock cooperatives).

In addition, the staff will reach out to stock cooperative boards, stock cooperative owners, groups that provide legal services for seniors, and relevant sections of the California Lawyers Association. **The staff invites comment from Commissioners and the public on other groups that should be invited to participate in this study.**

25. Prob. Code § 5508(a).

PROBABLE ISSUES

Based on our current understanding, the staff sees the following issues that will probably need to be addressed in this study:

- **Optional v. mandatory.** The Act is currently optional. Registering entities are not required to accept registration in beneficiary form. The Commission should consider whether that rule would be appropriate for stock cooperatives.
- **Restrictions on transfer.** Some stock cooperatives have an option to repurchase shares on the owners' deaths. Some may impose other restrictions on transfer. The Commission will need to consider how the Act could be reconciled with such restrictions.
- **Restriction on occupancy.** Aside from restricting *transfer*, some stock cooperatives may restrict *use*, by requiring board approval of any occupant. Again, the Act may need to be adjusted to address such restrictions.
- **Creditor liability.** The Act imposes no liability on a beneficiary for the debts of a deceased transferor. The RTODD statute does impose such liability. The Commission should consider whether to create a creditor liability rule for a beneficiary of a stock cooperative share under the Act.
- **Fraud and mistake.** One of the key concerns that has driven opposition to the RTODD is concern about use of the device to perpetrate elder financial abuse. There have also been strong concerns about the risk of mistake involved if one-page form can be used to transfer real property on death, without the involvement of counsel or the courts. The RTODD statute currently has features that are expressly designed to minimize those risks. In its follow-up study, the Commission is recommending several new protections. The Commission should consider adding such protections if the Act is made applicable to stock cooperatives.
- **Joint ownership.** There may be complications if the Act were applied to a jointly-owned shares. That issue would need to be examined.
- **Limited Equity Housing Cooperative.** The Commission will need to consider whether the law that governs LEHCs presents any complications.

CONCLUSION

Does the Commission have any concerns or suggestions about the approach described above?

Respectfully submitted,

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