

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Revocable Transfer on Death Deed: Recordation**

**April 2017**

(with revisions approved in April 2018)

California Law Revision Commission  
c/o UC Davis School of Law  
Davis, CA 95616  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

#### NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Revocable Transfer on Death Deed: Recordation*, 45 Cal. L. Revision Comm'n Reports 1 (2017).

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c/o UC Davis School of Law  
Davis, CA 95616

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April 13, 2017

To: The Honorable Edmund G. Brown, Jr.  
*Governor of California*, and  
The Legislature of California

Under existing law, a revocable transfer on death deed (“RTODD”) must be recorded. It is not entirely clear whether that requirement applies to the “Common Questions” instructional page that is part of the statutory RTODD form (the “FAQ”).

Ambiguity on that point is a problem.

At worst, it could lead to the invalidation of an otherwise valid deed, simply because the transferor failed to record the FAQ.

Even if the validity of such a deed is eventually upheld by a court, any uncertainty as to the validity of the RTODD would itself be problematic. If the legal validity of the deed is in question, a beneficiary may be unable to obtain title insurance. A quiet title action may then be required to obtain clear title. That would defeat the purpose of the RTODD as a means of transferring real property on death without the cost and delay of a judicial proceeding.

The Commission recommends that the law be revised to make clear that recordation of the FAQ is not required and that failure to record the FAQ has no effect on the validity of an RTODD. This rule would apply retroactively, if the transferor is still alive when the new law takes effect.

This recommendation was prepared pursuant to Section 21 of Chapter 293 of the Statutes of 2015.

Respectfully submitted,

Susan Duncan Lee

*Chairperson*

## REVOCABLE TRANSFER ON DEATH DEED: RECORDATION

The Commission has been directed to study the law that authorizes the use of a revocable transfer on death deed (“RTODD”) to transfer real property on death, outside of probate.<sup>1</sup> As part of that study, the Commission is to recommend changes to the RTODD statute to make it more effective and avoid misunderstanding.

The deadline for completion of the report is January 1, 2020. However, the Commission has learned of one problem that warrants more immediate action. An ambiguity in the provision that requires recordation of an RTODD could have serious problematic consequences. This recommendation proposes revisions to resolve the ambiguity.

### THE PROBLEM

In order to be legally effective, an RTODD must be recorded, within 60 days of the date that it was executed.<sup>2</sup>

The RTODD must be executed using a specified statutory form.<sup>3</sup> That form has two parts:

- (1) A “deed” page with fillable fields, which must be completed, signed by the transferor, and notarized.<sup>4</sup> This page provides all of the necessary information and authentication required for an effective property conveyance.
- (2) An “FAQ” page that provides answers to common questions about the effect of an RTODD and the

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1. 2015 Cal. Stat. ch. 293, § 21.

2. Prob. Code § 5626(a) (“A revocable transfer on death deed is not effective unless the deed is recorded on or before 60 days after the date it was executed.”).

3. Prob. Code § 5642.

4. Prob. Code § 5642(a).

procedure for executing one.<sup>5</sup> This page is purely instructional.

It is not entirely clear whether the provision that requires recordation of an RTODD only requires recordation of the deed page, or instead requires recordation of both the deed and FAQ pages.

Any uncertainty on that point could cause serious problems. First, if a court construes the statute as requiring recordation of the FAQ, any RTODD that was recorded without the FAQ could be invalidated. The property would then presumably be subject to probate, exactly what the transferor intended to avoid by executing an RTODD. Furthermore, the property could transfer to someone other than the intended beneficiary (by operation of an otherwise inapplicable will or rules of intestate succession).

Even if the failure to record an FAQ does not invalidate an RTODD, it could cast a problematic cloud on the title of property conveyed by an RTODD. If there is any uncertainty as to the validity of such an RTODD, the beneficiary may be unable to obtain title insurance. In that situation, the beneficiary may need to pursue a quiet title action in order to obtain clear title. This judicial proceeding would add cost and delay, which the transferor specifically intended to avoid through execution of an instrument that would transfer the property on death outside of probate.

### RECOMMENDATION

The FAQ page provides beneficial information to persons who are considering executing an RTODD. It explains the legal consequences and limitations of the RTODD, and gives instructions on how to successfully execute one. A person who carefully reads the FAQ will make a more informed choice about whether to proceed and will be less likely to make a procedural mistake.

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5. Prob. Code § 5642(b).

Theoretically, requiring recordation of the FAQ would increase the likelihood that a transferor will see the FAQ and have an opportunity to read it. This could reduce the incidence of error and misuse.

However, that possible benefit seems to be outweighed by the severity of the harm that could result if recordation of the FAQ is required as a precondition for the validity of an RTODD. No matter how prominently the statutory form warns that recordation of the FAQ is required, it seems inevitable that some transferors would erroneously fail to record the FAQ. That technical error, which would not be directly related to the effect of the RTODD or the transferor's intentions, would result in the invalidation of an otherwise valid RTODD. This would defeat the transferor's clearly expressed intentions.

For that reason, the Commission recommends that the law be revised to make clear that recordation of the FAQ is not required. That rule should be made retroactive, to deeds that have not yet operated when the new law takes effect. This would remove any doubt about the validity of an RTODD that was recorded, without the FAQ, before the new law goes into effect.

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## PROPOSED LEGISLATION

### **Prob. Code § 5626 (amended). Recordation, delivery, and acceptance**

SECTION 1. Section 5626 of the Probate Code is amended to read:

5626. (a) A revocable transfer on death deed is not effective unless the deed is recorded on or before 60 days after the date it was executed.

(b) The transferor is not required to deliver a revocable transfer on death deed to the beneficiary during the transferor's life.

(c) The beneficiary is not required to accept a revocable transfer on death deed from the transferor during the transferor's life.

(d)(1) Subdivision (a) does not require the recordation of the "Common Questions" language that is specified in subdivision (b) of Section 5642. The failure to record that part of the statutory form has no effect on the effectiveness of a revocable transfer on death deed.

(2)(A) This subdivision applies to a revocable transfer on death deed executed on or after the effective date of the act that added this subdivision.

(B) This subdivision applies to a revocable transfer on death deed executed before the effective date of the act that added this subdivision only if the transferor was alive on the effective date of the act that added this subdivision.

**Comment.** Section 5626 is amended to expressly provide that recordation of the "Common Questions" portion of the statutory revocable transfer on death deed form is not required. This rule applies retroactively to revocable transfer on death deeds that were recorded before the effective date of the new law, if the transferor is still alive when the new law takes effect.

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