

CALIFORNIA CREATES 'TRANSFER UPON DEATH' DEED

Written by Bob Hunt on Monday, 12 October 2015

In California there exists a variety of ways by which an owner of real property can direct who shall become the new owner of that property when the current owner dies. Most common among these are: by will; through creation of a trust; or, by owning either in joint tenancy with right of survivorship or as community property with right of survivorship. As of January 1, 2016, there will be another way also.

On September 21 of this year the Governor approved Assembly Bill 139 (Gatto) which had been passed by the Legislature on September 9. AB 139 establishes a method for conveying real property upon death through a revocable transfer upon death deed. Why the need for this new method? The author of AB 139 wrote this:

"The most common form of real property transfer upon death, a will, must pass through probate, a lengthy legal process... The process is often gruelling, can take up to a year, and often results in statutory probate fees in the thousands of dollars. Similarly, establishment of a revocable trust can cost upwards of \$2,000. For seniors and individuals whose estate consists primarily of the home, the money to establish a trust is out of the question.

[The] revocable transfer on death deed (revocable TOD deed) is the most simple and inexpensive transfer mechanism on the market today. Furthermore, it may be the only tool available to unmarried homeowners who wish to leave their property to a lifelong partner, family member, friend, or loved one upon death, but who cannot afford to set up a trust."

AB 139 allows an interest in certain real property to be transferred on death by recording a revocable TOD deed. The deed transfers ownership of that property interest upon the death of the owner. Some of the basic features regarding this deed are:

- Applicable property types are one to four residential dwelling units, condominium units, or not more than 40 acres of agricultural land with a single-family residence.
- A revocable TOD deed is not effective unless the transferor signs and dates the deed before a notary public.
- The deed does not need to be delivered to the beneficiary.
- The deed must be recorded 60 days or less from the time it is signed.
- The deed may be revoked by the transferor at any time.

The form of the deed is prescribed by law. Not only does it contain its own explanation of how it works, it also provides its own frequently-asked-questions section.

For example, it tells the transferor how he or she can revoke the deed. There are 3 ways:

1. A revocation form can be recorded.
2. A new and different TOD deed may be recorded.
3. The property can be transferred to someone else, and that deed recorded, prior to the transferor's death.

Yes, that's right, a person might give out more than one revocable TOD deed. The new law provides that the deed with effect will be that one which has the most recent recording date.

What if the beneficiary -- the person named in the deed -- dies before the person who was giving the property? Then the deed simply has no effect.

Can more than one beneficiary be named in the same deed? Yes. The ownership interests will be divided equally among them.

The list of questions goes on and on.

AB 139 directs the California Law Revision Commission to study the effect of the TOD deed as established by the bill and to report back to the Legislature no later than January 1, 2020. It is specifically to study whether the deed is working effectively, whether it has been used to perpetuate financial abuse, whether it needs changes, and whether it should be continued.

Unless the Legislature acts otherwise, the bill will sunset on January 1, 2021; but that would not invalidate any revocable TOD deed executed before that date.

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