

CALIFORNIA'S REVOCABLE TRANSFER UPON DEATH DEED (SB-139)

After previous legislative rejections, California is the latest state to adopt a transfer upon death deed, effective January 1, 2016. Although very similar to the model act currently adopted by almost half of the U.S. states, California's version emphasizes the revocability of the deed and officially refers to it as the Revocable Transfer Upon Death Deed (RTDD). California Assembly Bill 139 modifies portions of the existing Family Code and creates a new section of the Probate Code beginning with Section 5600, et seq. The statute is slated to expire on January 1, 2021.

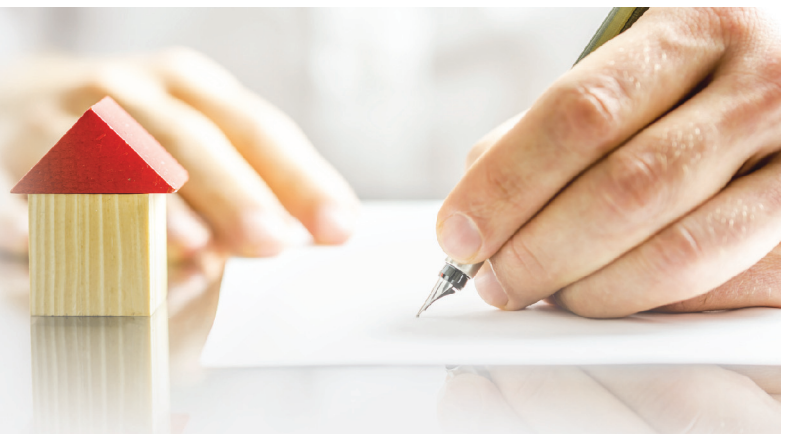
The effect of the deed is to pass the property directly to the beneficiary (named grantee) without probate upon the death of the owner. Its main purpose is to provide an affordable alternative, particularly for seniors, to traditional probate and estate planning. The RTDD does not affect any ownership rights during the lifetime of the transferor and does not convey any immediate rights to the transferee beneficiary.

The RTDD is effective only where the transferor dies on or after January 1, 2016, even if the RTDD was executed and recorded before the effective date. No RTDD may be executed or recorded after January 1, 2021.

The RTDD only affects residential properties. By definition, this includes real property improved with one-to-four residential dwelling units, a residential condominium unit, or a single tract of agricultural real estate consisting of 40 or less acres improved with a single family residence.

The RTDD must substantially comply with the statutory form set forth in Probate Code Section 5642, which includes a list of common questions and answers about the use of the form. The RTDD must be signed and dated by the record owner and acknowledged before a notary public. It must be recorded on or within 60 days of execution. The deed is ineffective if not recorded within that time frame.

The RTDD may be revoked at any time before the transferor's death. It may be revoked by recording the statutory form under Probate Code Section 5644, which must be signed and



notarized and recorded before the transferor's death. Recording a new RTDD or selling or transferring the property prior to death of the transferor will also revoke the RTDD. If the property is held by multiple owners, the RTDD only affects the transferor's interest. If the property is held in joint tenancy or as community property with right of survivorship at the time of the transferor's death, the RTDD is void and the property passes pursuant to the right of survivorship. Probate Code Section 5664.

Upon the death of the owner, evidence of the death pursuant to Probate Code Section 210 must be recorded by way of affidavit or declaration of death. The evidence of death must include the name of the decedent, date and place, a description of the real property being transferred, and certified copy of the death certificate.

Any recorded RTDD, Revocation or Evidence of Death should be shown as an exception in any preliminary report or policy issued.

The RTDD does not alter the current record title of the transferor. When insuring a lender, there is no need to obtain any release or quitclaim from the beneficiary under the RTDD. The RTDD beneficiary has no interest in the property prior to the death of the transferor. The above exception should be shown in Schedule B, Part II. If the lender has concerns about the exception, a modified CLTA 110.7 endorsement may be offered.

Given the numerous concerns, such as capacity, undue influence, fraud and competing heirs' interests, the passing of title through an RTDD after the death of a transferor requires prior approval by a California underwriting counsel.

