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No. 2016/006

January 20, 2016

TO COUNTY ASSESSORS:

**REVOCABLE TRANSFER ON DEATH DEED:  
 EFFECT UPON PROPERTY TAX**

Assembly Bill 139 (Stats. 2015, ch. 293) goes into effect on January 1, 2016, and creates a new non-probate method for conveying real property upon death. For a five-year period, until January 1, 2021, an interest in certain residential real property may be transferred upon death by recording a Revocable Transfer on Death deed (TOD deed). Specifically, Assembly Bill 139 adds sections 5600-5696 (Part 4) to the Probate Code to implement the revocable TOD deed provisions.

*Components of a Revocable TOD Deed*

A revocable TOD deed<sup>1</sup> must include the following items:

- Name of beneficiary
- Legal description
- Transferor's signature and date
- Notarization

The TOD deed must be recorded within 60 days of the date it was signed and notarized, and before the transferor's date of death. A revocable TOD deed does not take effect until it is recorded. Once recorded, the TOD deed remains valid until the transferor dies or revokes the TOD deed.

A transferor may revoke a TOD deed at any time. There are three ways to revoke a TOD deed: (1) record a revocation instrument,<sup>2</sup> (2) record a new TOD deed, or (3) record a deed transferring the property to a third party or a trust. A TOD deed cannot be revoked by will. Consent of the beneficiary is not necessary to revoke the deed.

*Real Property*

A revocable TOD deed may be used to transfer residential real property as long as title is not held in joint tenancy or community property with right of survivorship. If, at the time of the transferor's death, title is held in joint tenancy or community property with right of survivorship, the TOD deed is void pursuant to Probate Code section 5664 if the other spouse, registered domestic partner,

<sup>1</sup> Probate Code section 5642 provides the recommended language for the revocable TOD deed.

<sup>2</sup> See Probate Code section 5644 for recommended language.

or joint tenant is still alive. The transferor's interest in the property is governed by the right of survivorship, not by the revocable TOD deed. However, if the transferor decedent is the last joint tenant or spouse to die, the deed takes effect and controls the ownership of the property upon date of death.

A revocable TOD deed does not transfer the share of a co-owner of the property. Any co-owner who wants to name a TOD beneficiary must complete and record a separate deed.

For purposes of the TOD deed, Probate Code section 5610 provides that "residential real property" includes the following:

- Real property improved with one to four residential dwelling units
- A condominium unit, including the limited common elements allocated to the exclusive use thereof that form an integral part of the condominium unit
- A single tract of agricultural real estate consisting of 40 acres or less that is improved with a single-family residence

This type of deed cannot be used to transfer a multi-family residence that has more than four units, any commercial or industrial real property, or agricultural property greater than 40 acres.

#### *Date of Change in Ownership*

For property tax purposes, Probate Code section 5656 provides that the execution and recordation of, or revocation of, a revocable TOD deed of real property is not a change in ownership of the property and does not require declaration or payment of a documentary transfer tax or filing of a preliminary change of ownership report. Further, section 5656 provides that the transfer of real property on the death of the transferor by a revocable TOD deed is a change in ownership of the property.

Thus, during the transferor's life, the recordation of a revocable TOD deed does not affect the ownership rights of the transferor. The recording does not convey any right, title, or interest in the property. The date of change in ownership is the date of the transferor's death. Consequently, pursuant to Revenue and Taxation Code section 480(b), the beneficiary must file a *Change in Ownership Statement* with the county assessor within 150 days of date of death.

Upon date of death, all of the transferor's interest in the property transfers to the beneficiary as long as the beneficiary survives the transferor. If there is more than one beneficiary, the beneficiaries inherit as tenants in common in equal shares.<sup>3</sup> If one beneficiary predeceases the transferor, the remaining beneficiaries inherit in equal shares.

If the beneficiary is the spouse or registered domestic partner of the transferor, the transfer may be excluded under Revenue and Taxation Code section 63 or section 62(p). If the beneficiary is a parent, child or grandchild of the transferor, the transfer may be excluded under the parent-child or grandparent-grandchild exclusion if all the requirements of the particular exclusion are met and a claim is filed with the county assessor.

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<sup>3</sup> Probate Code section 5652(a)(3).

Since a change in ownership resulting from a revocable TOD deed occurs upon date of death, the cotenancy exclusion under Revenue and Taxation Code section 62.3 may apply if the decedent transferor and the beneficiary were co-owners of the real property and all the other requirements of section 62.3 are met.

*Sunset Date*

SB 315 (Stats. 2021, ch. 215) extended sunset date to 1/1/2032.

After January 1, 2021, unless the Probate Code is further amended, any revocable TOD deed that is properly executed during the five-year period will remain valid until the property owner dies or revokes the deed. The expiration of the period to record revocable TOD deeds will not invalidate any properly recorded TOD deed or affect the authority of the transferor to revoke a TOD deed.

For more information on a revocable TOD deed, please see common questions as provided in Probate Code section 5642(b). If you have any questions regarding the property tax consequences of a revocable TOD deed, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee  
Deputy Director  
Property Tax Department

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