

**SAN FRANCISCO PARALEGAL ASSOCIATION  
PROBATE AND ESTATE PLANNING SECTION**

**RECENT DEVELOPMENTS**

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**CALIFORNIA DEVELOPMENTS**

**I. NEW OR UPDATED CALIFORNIA JUDICIAL COUNCIL FORMS (eff. 1/1/16)**

**Decedent's Estates**

-- None

**Conservators and Guardianships** (all are revisions to existing forms, rather than new forms)

- GC-340 Order Appointing Probate Conservator (*eff. 1/15/16*)
- GC-224.S Special Immigrant Juvenile Findings (Spanish)
- GC-362 Conservatorship Registrant's Acknowledgement of Receipt of Handbook for Conservators
- GC-361 Notice of Intent to Register Conservatorship
- GC-360 Conservatorship Registration Cover Sheet and Attestation of Conservatee's Non-Residence in California
- GC-224 Special Immigrant Juvenile Findings
- GC-330 Order Appointing Court Investigator
- GC-331 Order Appointing Court Investigator (Review and Successor Conservator Investigations)
- GC-310 Petition for Appointment of Probate Conservator
- GC-320 Citation for Conservatorship
- GC-220 S Petition for Special Immigrant Juvenile Findings (Spanish)
- GC-220 Petition for Special Immigrant Juvenile Findings

**II. CALIFORNIA LEGISLATION (highlights only)**

**A. Health and Medical Related.**

- 1. AB 637 (Campos) (Stats. 2015, Ch. 217). POLSTs.**

Amends Probate Code 4780 to allow a nurse practitioner or a physician assistant to create a valid POLST form, in addition to a doctor. (For more info on POLST forms, see [www.calpolst.org](http://www.calpolst.org), which describes POLSTs as follows: "A POLST (Physician Orders for Life Sustaining Treatment) is a form that gives seriously-ill patients more control over their end-of-life care, including medical treatment, extraordinary measures (such as a ventilator or feeding tube) and CPR. Printed on bright pink paper, and signed by both a doctor and patient, POLST can prevent unwanted or ineffective treatments, reduce patient and family suffering, and ensure that a patient's wishes are honored". SEE POLST FORM ATTACHED.

**2. SB 19 (Wolk) (Stats 2015, Ch. 504). POLST Registry.**

Adds Section 4788 to the Probate Code, creating a POLST registry to be operated by the Health and Human Services Agency (it will collect POLST forms received from health care providers, who are required to submit POLST forms to the registry unless the patient objects).

**3. AB x2 15 (Eggman). (Stats. 2015, Extraordinary Session Ch. 1). End of Life Option Act.**

Enacts the "End of Life Option Act" allowing a competent adult with a terminal illness to obtain a prescription drug for the purpose of ending his/her life.

Restrictive and procedurally complex, and sunsets in 10 years:

1. Must be over 18 years of age.
2. Must be a California resident
3. Must have capacity to make a medical decision. (Patients with Alzheimer's or any form of dementia cannot take advantage of the new law).
4. Must have been diagnosed with a terminal disease by attending physician: a terminal disease is incurable and irreversible, and one that will result in death within six months.
5. Must voluntarily express a wish to receive a prescription for a drug which will cause death; request must be made solely by the individual (and not by an agent under a durable power of attorney).
6. Must have the physical and mental ability to take the drugs himself or herself. (i.e., if person cannot move his or her arms or cannot swallow, he or she cannot take advantage of this law).
7. Requires two oral requests to attending physician, a minimum of 15 days apart, followed by a written request in a form prescribed by the statute. The written request must be witnessed by two adults, one of whom may be a family member. The witnesses must attest to the individual's capacity to make medical

decisions, that the person is acting voluntarily and not is not being coerced to sign.

8. The attending physician has a significant role in this process. The attending physician must:

- Determine whether the individual has capacity to make medical decisions (if not, requires referral to a psychiatrist)
- Determine if disease is terminal
- Determine whether request is voluntary and confirm that the request was not coerced.
- Confirm that patient is making an informed decision by discussing the diagnosis and prognosis, potential risks and results of ingesting the life-ending drugs, the possibility that while the individual may request and receive the life-ending drugs, he or she does not have to take them, feasible alternatives or treatment options (comfort care, hospice care, palliative care, pain control).
- Confirm that all requirements are satisfied before writing a prescription for the life-ending drugs. The attending physician will have a checklist and forms to file with the State Department of Public Health.
- Provide the patient with a statutorily required form that is to be filled out by the patient within 48 hours prior to the individual administering the life-ending drugs.

9. If all conditions satisfied, physician may arrange for delivery of life-ending drugs (the method of delivery is described in significant detail, including identifying acceptable mail delivery services).

10. There are detailed reporting requirements for all physicians involved.

11. Anyone present when the individual administers the life-ending drugs has no civil or criminal liability, nor is there liability if the person assists in preparing the life-ending drugs. However, the person may not assist the individual in ingesting the drugs.

## **B. Taxation**

### **1. AB 571 (Brown) (Stats. 2015, Ch. 501) Change in Ownership Statements**

Amends Sections 463 and 483 of the Revenue and Taxation Code to allow the assessment appeals board to abate a penalty for failure to file a change in ownership statement where it is established that the failure to file was due to reasonable cause and circumstances beyond the taxpayer's control.

## **2. AB 154 (Ting) (Stats 2015, Chapter 359). Federal conformity**

Amends various provisions of the Revenue and Taxation Code so that they conform to federal tax law.

### **C. Transfer of Death Deeds.**

#### **1. AB 139 (Gatto) (Stats 2015, Chapter 293). Revocable Transfer on Death Deeds..**

Adds Probate Code Section 5600 *et seq.* to create revocable “Transfer on Death Deeds” (and makes other conforming changes in the Probate Code and the Family Code). California joins 13 other states who have similar statutes. But the legislation is not permanent: it lasts five years, until January 1, 2021, and the California Law Revision Commission is charged with studying their use until then and making a recommendation to the Legislature by January 1, 2020.

These deeds are akin to “pay-on-death” accounts which pass at the death of the grantor but give the beneficiary no rights before then (unlike joint tenancy, another probate-avoidance form of ownership, which results in an immediate gift and which gives the grantee significant co-owner rights before death).

They are revocable

Statutory form required (SEE ATTACHED SAMPLES).

Good for simple situations and there are limitations and other considerations:

- Can only be used for building with one-four residences, a condominium or agricultural land of 40 acres or less
- It only affects what a person owns (if I own 50% of a building, the Transfer on Death deed only governs my 50%).
- Naming more than one beneficiary means they all share equally (cannot provide for the property to pass in unequal shares at death).
- Cannot say “beneficiary is X but if X has not survived me, to Y”: if the beneficiary has died, the transfer on death deed is void and the asset needs to be probated
- Although not clear, it appears that you cannot designate a trust as the beneficiary (PC 5622 requires that the “transferor shall identify the beneficiary by name” and the office of trusteeship is a moving target).

Many groups were opposed (e.g., California Advocates for Nursing Home Reform (CANHR), the Trusts and Estates Section of the State Bar of California, the Judges Association) on the basis that (unlike other states that have adopted this), California’s real estate is valuable and real estate transactions and consequences are complex... this can give a false sense of “it’s easy”.

#### **D. Conservatorships and Guardianships**

**1. AB 900 (Levine) (Stats. 2015, Ch. 694)**

Amends Probate Code 1490, 1600 and 1601 and adds Section 1510.1 to deal with juveniles (result of influx of immigration cases).

**2. AB 1085 (Gatto) (Stats. 2015, Ch. 92).**

Amends Section 2351 and adds Section 2361 and 4691 to the Probate Code to address the “Casey Kasem” situation: his new wife, as conservator, did not allow his children to visit and interfered with their calls and letters to their father; she also did not notify them when he died.

**3. SB 590 (Block) (Stats. 2015, Ch. 418)**

Amends and adds provisions to ensure conservatee's right to vote.

#### **E. Probate**

**1. AB 548 (Cristina Garcia) (Stats. 2015, Ch. 54)**

Court can appoint an administrator who is nominated by a person who is not a United States resident. Deletes the January 1, 2016 date of repeal of PC 8465 so this is now permanently permitted.

#### **F. Miscellaneous**

**1. AB 506 (Maienschein) Limited Liability Companies (Stats. 2015, Ch. 755)**

Be aware that Corporations Code Sections 15902.01 and parts of 17701-17713 have been amended in several respects regarding operation of an LLC (including the death of a member).

**2. SB 161 (Vidaki) (Stats. 2015, Ch. 44), Fraudulent Transfer Act**

The Uniform Fraudulent Transfer Act is now the Uniform Voidable Transfer Act (found in the Civil Code at 3439 *et seq.*) and various provisions were changed to reflect this change in focus.

**3. SB 196 (Hancock) (Stats. 2015, Ch. 285)**

Effective July 1, 2016, a county adult protective services agency is authorized to file a protective order petition on behalf of an elder or dependent adult if he/she has suffered abuse but is unable to understand the circumstances that put him/her at risk. (This is in addition to a conservator, trustee, attorney in fact or guardian ad litem).

#### **G. Possible Future Legislation?**

The Executive Committee of the State Bar's Trust and Estate Section "wish list" (i.e., hoping to work with the legislature on the following):

1. Heggstad Judicial Council form (Trustee Petition to Collect Property Without Administration). Petition similar to Spousal Petition.
2. Marital Deduction Savings Language update to Probate Code 21524
3. Amendment to Probate Code 16500 et seq. (trust notice of proposed action) to remove the prohibition of using procedure for distributions; revising notice timeframe to 30 days from 45.
4. Uniform Fiduciary Access to Digital Assets (UFADA). Adoption in California. Act would confirm that a fiduciary (personal rep., trustee, conservator, agent) has authority to deal with digital assets.
5. Work with DMV to improve the transfer-without-probate form and published information.

### **III. CALIFORNIA REAL PROPERTY TAX: Letters to Assessors (LTA)**

#### **A. LTA 2015/025 (May 6, 2015)**

Changes to rules on valuing time shares for property tax purposes.  
<http://www.boe.ca.gov/proptaxes/pdf/lta15025.pdf>

#### **B. LTA 2015/033 (July 2, 2015), LTA 2015/045 (July 27, 2015) and LTA 2015/063 (December 31, 2015)**

Ongoing attempts at revising change-of-ownership rules for joint tenancies (still in draft form)

<http://www.boe.ca.gov/proptaxes/pdf/lta15033.pdf>  
<http://www.boe.ca.gov/proptaxes/pdf/lta15045.pdf>  
<http://www.boe.ca.gov/proptaxes/pdf/lta15063.pdf>

C. LTA 2015/056

Summary of 2015 Property Tax Legislation  
<http://www.boe.ca.gov/proptaxes/pdf/lta15056.pdf>

**IV. SELECTED CALIFORNIA CASE LAW**

**A. Elder Law**

*Stern v. Bank of America* (2015) Nov. 7, 204 Cal App Unpublished (check Lexis)

Unpublished opinion: The son of a disabled woman tried to open a bank account in mother's name as her agent under power of attorney. National bank has policy of requiring personal appearance, to comply with federal regulations regarding customer identification. Held, state law could not require the bank to violate its policy grounded in federal regulations.

**B. Estate Planning Malpractice**

*Paul v. Patton* (2015) 235 CA4th 1088

Decedent's children could use drafting attorney for "clerical error" that resulted in stepmother receiving unintended equal share with children.

Case has complicated procedural background but is good summary of case law on duty owed to non-clients.

**C. Trust Reformation, Extrinsic Evidence**

*In re Estate of Duke* (2015) 61 Cal. 4th 871

There is long-standing case law in California that if a document is unambiguous, you cannot resort to extrinsic evidence as to a decedent's intent. This case changes that: the Supreme Court ruled that an unambiguous will can be reformed to match the testator's intent if clear and convincing evidence shows that the will contains a mistake in the testator's expression of intent.

Here, Decedent's holographic will provided that his estate would pass to his wife if she survived him and if they died together, to charity. He did not include a provision for what happened if he survived his wife – which is what happened. His heirs (remote relatives) urged that the estate pass by intestacy but the named charities argued that extrinsic evidence should be introduced to show decedent's intent.

#### **D. Post-Mortem Trust Administration, Assets Not Transferred to Revocable Trust**

*Ukkestad v. RBS Asset Financial, Inc.* (2015) 235 CA4th 156

This case involved a “Heggstad” petition for real property that had not been deeded to the Trustee of a revocable trust during lifetime, and which was NOT specifically identified with a legal description in the trust document. There was a general assignment in the trust document, however, which transferred “all my interest in all my property, real or personal....”.

Court held this was sufficient for purposes of the statute of frauds. Fact that you could check the Recorder Office and see that decedent had owned the property was enough.

COMMENT: We now have three cases dealing with assets not in a revocable trust at time of death:

-- *Estate of Heggstad* (1993) 16 Cal. App. 4th 946 (real property: legal description of real property on schedule of Declaration of Trust sufficient to make it trust property)

-- *Kucker v. Kucker* (2011) 192 Cal.App.4th 90 (tangible personal property [stock]: self-standing General Assignment that assigned “all my assets” even though it did not specifically mention the stock was sufficient to make it trust property)

-- *Ukkestad v. RBS Asset Financial, Inc.* (2015) 235 CA4th 156 (real property: General assignment of all my property, real or personal, etc. even where property not specifically identified was sufficient)

*include a copy of the recorded document.*

#### **E. Trust Contest, Attorney Fees**

*Doolittle v. Exchange Bank* (2015) 241 CA4th 529

Held, the Trustee could use trust funds to defend against a trust challenge on an ongoing basis, no need to wait until resolution of dispute. Specific facts were important to the ruling

#### **F. Medi-Cal Reimbursement At Death of Beneficiary of Special Needs Trust.**

*Hertig v. California Department of Health Care Services* (2015) 235 CA 4th 607

Department of Health Care Services entitled to reimbursement at death of 23-year old where the Special Needs Trust had been funded with tort damages.



### **G. Intestacy; Determination of Parent-Child Relationship**

*Estate of Britel* (2015) 236 CA4th 127

This case centered on the requirement of “openly held out” in Probate Code 6453 (determination of parent-child relationship for the purpose of intestacy). Court held that it requires an affirmative representation of paternity that is unconcealed and made in open view.

### **H. Abatement**

*Siegel v. Fife* (2015) 234 A4th 988

This involved a typical revocable trust except that settlor made it irrevocable because of concerns that she would be prey to a neighbor. Trust provided for her care and then specifically bequeathed a house to a beneficiary. When the settlor’s conservator sought confirmation of sale of the house because her expenses of care far exceeded her cash flow, the beneficiary objected.

The court held that the interests of remainder beneficiaries are secondary to those of the settlor when the sale of trust assets becomes necessary during a settlor’s lifetime. And that the issue was the *sale* of the house and not abatement, finding that the sale was proper and that “the probate court retains the authority to fix the amount that [the beneficiary] will receive if Settlor passes away and funds remain in her estate”.

### **K. Incapacity in Revocable Trust Context**

*Sterling v. Sterling* (2015) 242 CA4th 185

Trustee was properly removed for incompetence. Probate court properly instructed the co-trustee to complete the sale of trust property pending appeal.

This case is notable for the players and the amounts involved: Rochelle and Donald Sterling, owners of the Los Angeles Clippers basketball team and approximately \$2 billion of other assets, held in their revocable trust.

When the NBA threatened to sell the team at auction, Donald agreed to sell his interest in the team to a private party who offered to pay \$2 billion (at a time when the team had otherwise been appraised at \$1-1.5 billion). But Donald reneged, Rochelle removed Husband as Trustee by obtaining the certifications of two physicians that he was incapacitated, and she petitioned the court to confirm the sale. Held, sale was proper because the trust was likely to lose money on the sale if the “in-hand” buyer did not proceed or, in the words of the appeal court: “the evidence overwhelmingly supported

the probate court's conclusion that exigent circumstances warranted the sale of the Clippers to prevent extraordinary loss to the trust".

#### **L. Family Law: Separation**

*Marriage of Davis* (2015) 61 C4th 846

Under Family Code 771(a), the earnings and accumulations of a spouse "while living separate and apart from the other spouse" are separate property. The Supreme Court ruled that this requires separate residences and the accompanying demonstrated intent to end the marital relationship, relying on a 1870 predecessor statute.

In this case, the parties had determined their date of "separation" but economics had forced them to continue sharing the same house for several years (in separate bedrooms for most of that time) before the wife could move out. (The wife had been employed in a good-paying job while she thought they were "separated" but because of this ruling, her income was community).

#### **V. MARRIAGE EQUALITY (California and beyond)**

Amazing: two years ago at this time I listed 18 states which had true marriage equality for same sex spouses and last year it was 39 states. Fast forward to 2015 and the Supreme Court's historic ruling in June: Because of the decision in *Obergefell v. Hodges* (2015) 576 U.S. \_\_\_, no government body or official in any state or territory may deny a same-sex couple a marriage license or refuse to treat their marriage equally in any respect.



EMSA #111 B  
(Effective 1/1/2016)\*

# Physician Orders for Life-Sustaining Treatment (POLST)

First follow these orders, then contact Physician/NP/PA. A copy of the signed POLST form is a legally valid physician order. Any section not completed implies full treatment for that section. POLST complements an Advance Directive and is not intended to replace that document.

Patient Last Name:	Date Form Prepared:
Patient First Name:	Patient Date of Birth:
Patient Middle Name:	Medical Record #: (optional)

**A**  
Check One

**CARDIOPULMONARY RESUSCITATION (CPR):** *If patient has no pulse and is not breathing. If patient is NOT in cardiopulmonary arrest, follow orders in Sections B and C.*

☐ Attempt Resuscitation/CPR (Selecting CPR in Section A requires selecting Full Treatment in Section B)

☐ Do Not Attempt Resuscitation/DNR (Allow Natural Death)

**B**  
Check One

**MEDICAL INTERVENTIONS:** *If patient is found with a pulse and/or is breathing.*

☐ **Full Treatment** – primary goal of prolonging life by all medically effective means.  
In addition to treatment described in Selective Treatment and Comfort-Focused Treatment, use intubation, advanced airway interventions, mechanical ventilation, and cardioversion as indicated.

☐ **Trial Period of Full Treatment.**

☐ **Selective Treatment** – goal of treating medical conditions while avoiding burdensome measures.  
In addition to treatment described in Comfort-Focused Treatment, use medical treatment, IV antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.

☐ **Request transfer to hospital only if comfort needs cannot be met in current location.**

☐ **Comfort-Focused Treatment** – primary goal of maximizing comfort.  
Relieve pain and suffering with medication by any route as needed; use oxygen, suctioning, and manual treatment of airway obstruction. Do not use treatments listed in Full and Selective Treatment unless consistent with comfort goal. **Request transfer to hospital only if comfort needs cannot be met in current location.**

Additional Orders: \_\_\_\_\_

**C**  
Check One

**ARTIFICIALLY ADMINISTERED NUTRITION:** *Offer food by mouth if feasible and desired.*

☐ Long-term artificial nutrition, including feeding tubes. Additional Orders: \_\_\_\_\_

☐ Trial period of artificial nutrition, including feeding tubes. \_\_\_\_\_

☐ No artificial means of nutrition, including feeding tubes. \_\_\_\_\_

**D**

**INFORMATION AND SIGNATURES:**

Discussed with: ☐ Patient (Patient Has Capacity) ☐ Legally Recognized Decisionmaker

☐ Advance Directive dated \_\_\_\_\_, available and reviewed → Health Care Agent if named in Advance Directive:  
Name: \_\_\_\_\_  
Phone: \_\_\_\_\_

☐ Advance Directive not available

☐ No Advance Directive

**Signature of Physician / Nurse Practitioner / Physician Assistant (Physician/NP/PA)**  
My signature below indicates to the best of my knowledge that these orders are consistent with the patient's medical condition and preferences.

Print Physician/NP/PA Name: \_\_\_\_\_ Physician/NP/PA Phone #: \_\_\_\_\_ Physician/PA License #, NP Cert. #: \_\_\_\_\_

Physician/NP/PA Signature: (required) \_\_\_\_\_ Date: \_\_\_\_\_

**Signature of Patient or Legally Recognized Decisionmaker**  
I am aware that this form is voluntary. By signing this form, the legally recognized decisionmaker acknowledges that this request regarding resuscitative measures is consistent with the known desires of, and with the best interest of, the individual who is the subject of the form.

Print Name: \_\_\_\_\_ Relationship: (write self if patient) \_\_\_\_\_

Signature: (required) \_\_\_\_\_ Date: \_\_\_\_\_

Mailing Address (street/city/state/zip): \_\_\_\_\_ Phone Number: \_\_\_\_\_

**FOR REGISTRY  
USE ONLY**

**SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED**

\*Form versions with effective dates of 1/1/2009, 4/1/2011 or 10/1/2014 are also valid

**HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY****Patient Information**

Name (last, first, middle):

Date of Birth:

Gender:

**M****F****NP/PA's Supervising Physician**

Name:

**Preparer Name (if other than signing Physician/NP/PA)**

Name/Title:

Phone #:

**Additional Contact**☐ None

Name:

Relationship to Patient:

Phone #:

**Directions for Health Care Provider****Completing POLST**

- **Completing a POLST form is voluntary.** California law requires that a POLST form be followed by healthcare providers, and provides immunity to those who comply in good faith. In the hospital setting, a patient will be assessed by a physician, or a nurse practitioner (NP) or a physician assistant (PA) acting under the supervision of the physician, who will issue appropriate orders that are consistent with the patient's preferences.
- **POLST does not replace the Advance Directive.** When available, review the Advance Directive and POLST form to ensure consistency, and update forms appropriately to resolve any conflicts.
- POLST must be completed by a health care provider based on patient preferences and medical indications.
- A legally recognized decisionmaker may include a court-appointed conservator or guardian, agent designated in an Advance Directive, orally designated surrogate, spouse, registered domestic partner, parent of a minor, closest available relative, or person whom the patient's physician/NP/PA believes best knows what is in the patient's best interest and will make decisions in accordance with the patient's expressed wishes and values to the extent known.
- A legally recognized decisionmaker may execute the POLST form only if the patient lacks capacity or has designated that the decisionmaker's authority is effective immediately.
- To be valid a POLST form must be signed by (1) a physician, or by a nurse practitioner or a physician assistant acting under the supervision of a physician and within the scope of practice authorized by law and (2) the patient or decisionmaker. Verbal orders are acceptable with follow-up signature by physician/NP/PA in accordance with facility/community policy.
- If a translated form is used with patient or decisionmaker, attach it to the signed English POLST form.
- Use of original form is strongly encouraged. Photocopies and FAXes of signed POLST forms are legal and valid. A copy should be retained in patient's medical record, on Ultra Pink paper when possible.

**Using POLST**

- Any incomplete section of POLST implies full treatment for that section.

**Section A:**

- If found pulseless and not breathing, no defibrillator (including automated external defibrillators) or chest compressions should be used on a patient who has chosen "Do Not Attempt Resuscitation."

**Section B:**

- When comfort cannot be achieved in the current setting, the patient, including someone with "Comfort-Focused Treatment," should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).
- Non-invasive positive airway pressure includes continuous positive airway pressure (CPAP), bi-level positive airway pressure (BiPAP), and bag valve mask (BVM) assisted respirations.
- IV antibiotics and hydration generally are not "Comfort-Focused Treatment."
- Treatment of dehydration prolongs life. If a patient desires IV fluids, indicate "Selective Treatment" or "Full Treatment."
- Depending on local EMS protocol, "Additional Orders" written in Section B may not be implemented by EMS personnel.

**Reviewing POLST**

It is recommended that POLST be reviewed periodically. Review is recommended when:

- The patient is transferred from one care setting or care level to another, or
- There is a substantial change in the patient's health status, or
- The patient's treatment preferences change.

**Modifying and Voiding POLST**

- A patient with capacity can, at any time, request alternative treatment or revoke a POLST by any means that indicates intent to revoke. It is recommended that revocation be documented by drawing a line through Sections A through D, writing "VOID" in large letters, and signing and dating this line.
- A legally recognized decisionmaker may request to modify the orders, in collaboration with the physician/NP/PA, based on the known desires of the patient or, if unknown, the patient's best interests.

This form is approved by the California Emergency Medical Services Authority in cooperation with the statewide POLST Task Force.  
For more information or a copy of the form, visit [www.caPOLST.org](http://www.caPOLST.org).

**SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED**

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Name:

Address:

City & State:

Zip:

Assessor's Parcel No.:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED**  
(California Probate Code Section 5642)

This document is exempt from documentary transfer tax under Rev. & Tax. Code § 11930. This document is exempt from preliminary change of ownership report under Rev. & Tax. Code § 480.3.

**IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND NOTARIZED**

Use this deed to transfer the residential property described below directly to your named beneficiaries when you die. **YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER PAGES OF THIS FORM.** You may wish to consult an attorney before using this deed. It may have results that you do not want. Provide only the information asked for in the form. **DO NOT INSERT ANY OTHER INFORMATION OR INSTRUCTIONS.** This form **MUST** be RECORDED on or before 60 days after the date it is signed and notarized or it will not be effective.

**PROPERTY DESCRIPTION**

Print the legal description of the residential property affected by this deed:

**BENEFICIARY(IES)**

Print the **FULL NAME(S)** of the person(s) who will receive the property on your death (**DO NOT** use general terms like "my children") and state the **RELATIONSHIP** that each named person has to you (spouse, son, daughter, friend, etc.):

**TRANSFER ON DEATH**

I transfer all of my interest in the described property to the named beneficiary(ies) on my death. I may revoke this deed. When recorded, this deed revokes any TOD deed that I made before signing this deed.

Sign and print your name below (your name should exactly match the name shown on your title documents):

PRINTED NAME

SIGNATURE

DATE:

**NOTE:** This deed only transfers MY ownership share of the property. The deed does **NOT** transfer the share of any co-owner of the property. Any co-owner who wants to name a TOD beneficiary must execute and **RECORD** a **SEPARATE** deed.

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of )

On before me,

(HERE INSERT NAME AND TITLE OF THE OFFICER)

personally appeared  
who proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),  
or the entity upon behalf of which the person(s) acted, executed the instrument.  
I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[SEAL]

#### **WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE?**

Your beneficiary must RECORD evidence of your death (Prob. Code § 210), and file a change in ownership notice (Rev. & Tax. Code § 480). If you received Medi-Cal benefits, your beneficiary must notify the State Department of Health Care Services of your death and provide a copy of your death certificate (Prob. Code § 215).

#### **WHAT IF I NAME MORE THAN ONE BENEFICIARY?**

Your beneficiaries will become co-owners in equal shares as tenants in common. If you want a different result, you should not use this form.

#### **HOW DO I NAME BENEFICIARIES?**

You MUST name your beneficiaries individually, using each beneficiary's FULL name. You MAY NOT use general terms to describe beneficiaries, such as "my children." For each beneficiary that you name, you should briefly state that person's relationship to you (for example, my spouse, my son, my daughter, my friend, etc.).

#### **WHAT IF A BENEFICIARY DIES BEFORE I DO?**

If all beneficiaries die before you, the TOD deed has no effect. If a beneficiary dies before you, but other beneficiaries survive you, the share of the deceased beneficiary will be divided equally between the surviving beneficiaries. If that is not the result you want, you should not use the TOD deed.

#### **WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP?**

If you are the first joint tenant or spouse to die, the deed is VOID and has no effect. The property transfers to your joint tenant or surviving spouse and not according to this deed. If you are the last joint tenant or spouse to die, the deed takes effect and controls the ownership of your property when you die. If you do not want these results, do not use this form. The 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.

#### **CAN I ADD OTHER CONDITIONS ON THE FORM?**

No. If you do, your beneficiary may need to go to court to clear title.

#### **IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO MY DEBTS?**

Yes.

#### **DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE TAXES?**

No.

#### **HOW DOES THE TOD DEED AFFECT PROPERTY TAXES?**

The TOD deed has no effect on your property taxes until your death. At that time, property tax law applies as it would to any other change of ownership.

#### **DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?**

No.

#### **AFTER MY DEATH, WILL MY HOME BE LIABLE FOR REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?**

Your home may be liable for reimbursement. If you have questions, you should consult an attorney.

## COMMON QUESTIONS ABOUT THE USE OF THIS FORM

### WHAT DOES THE TOD DEED DO?

When you die, the identified property will transfer to your named beneficiary without probate. The TOD deed has no effect until you die. You can revoke it at any time.

### CAN I USE THIS DEED TO TRANSFER BUSINESS PROPERTY?

This deed can only be used to transfer (1) a parcel of property that contains one to four residential dwelling units, (2) a condominium unit, or (3) a parcel of agricultural land of 40 acres or less, which contains a single-family residence.

### HOW DO I USE THE TOD DEED?

Complete this form. Have it notarized. RECORD the form in the county where the property is located. The form MUST be recorded on or before 60 days after the date you sign it or the deed has no effect.

### IS THE "LEGAL DESCRIPTION" OF THE PROPERTY NECESSARY?

Yes.

### HOW DO I FIND THE "LEGAL DESCRIPTION" OF THE PROPERTY?

This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county recorder for the county where the property is located. If you are not absolutely sure, consult an attorney.

### HOW DO I "RECORD" THE FORM?

Take the completed and notarized form to the county recorder for the county in which the property is located. Follow the instructions given by the county recorder to make the form part of the official property records.

### WHAT IF I SHARE OWNERSHIP OF THE PROPERTY?

This form only transfers YOUR share of the property. If a co-owner also wants to name a TOD beneficiary, that co-owner must complete and RECORD a separate form.

### CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND?

Yes. You may revoke the TOD deed at any time. No one, including your beneficiary, can prevent you from revoking the deed.

### HOW DO I REVOKE THE TOD DEED?

There are three ways to revoke a recorded TOD deed: (1) Complete, have notarized, and RECORD a revocation form. (2) Create, have notarized, and RECORD a new TOD deed. (3) Sell or give away the property, or transfer it to a trust, before your death and RECORD the deed. A TOD deed can only affect property that you own when you die. A TOD deed cannot be revoked by will.

### CAN I REVOKE A TOD DEED BY CREATING A NEW DOCUMENT THAT DISPOSES OF THE PROPERTY (FOR EXAMPLE, BY CREATING A NEW TOD DEED OR BY ASSIGNING THE PROPERTY TO A TRUST)?

Yes, but only if the new document is RECORDED. To avoid any doubt, you may wish to RECORD a TOD deed revocation form before creating the new instrument. A TOD deed cannot be revoked by will, or by purporting to leave the subject property to anyone via will.

### IF I SELL OR GIVE AWAY THE PROPERTY DESCRIBED IN A TOD DEED, WHAT HAPPENS WHEN I DIE?

If the deed or other document used to transfer your property is RECORDED before your death, the TOD deed will have no effect. If the transfer document is not RECORDED before your death, the TOD deed will take effect.

### I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT SHOULD I DO?

Do NOT complete this form unless you freely choose to do so. If you are being pressured to dispose of your property in a way that you do not want, you may want to alert a family member, friend, the district attorney, or a senior service agency.

### DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?

No. But secrecy can cause later complications and might make it easier for others to commit fraud.

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Name:

Address:

City & State:

Zip:

Assessor's Parcel No.:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Revocation of Revocable Transfer on Death (TOD) Deed**  
(California Probate Code Section 5600)

This deed revocation is exempt from documentary transfer tax under Rev. & Tax. Code §11930. This deed revocation is exempt from preliminary change of ownership report under Rev. & Tax. Code § 480.3.

**IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE EFFECTIVE**

This revocation form **MUST** be RECORDED before your death or it will not be effective. This revocation form only affects a transfer on death deed that **YOU** made. A transfer on death deed made by a co-owner of your property is not affected by this revocation form. A co-owner who wants to revoke a transfer on death deed that he/she made must complete and RECORD a SEPARATE revocation form.

**PROPERTY DESCRIPTION**

Print the legal description of the property affected by this revocation:

**REVOCATION**

I revoke any TOD deed to transfer the described property that I executed before executing this form.

**SIGNATURE AND DATE**

Sign and print your name below (your name should exactly match the name shown on your title documents):

PRINTED NAME

SIGNATURE

DATE:

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF )

On

before me,

(HERE INSERT NAME AND TITLE OF THE OFFICER)

personally appeared  
who proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),  
or the entity upon behalf of which the person(s) acted, executed the instrument.  
I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[SEAL]



Recording requested by (name):

And when recorded, mail this deed and tax  
statements to (name and address):

For recorder's use

## **AFFIDAVIT – DEATH OF TRANSFEROR (REVOCABLE TOD DEED)**

Assessor's Parcel Number (APN): \_\_\_\_\_

\_\_\_\_\_, of legal age, being first duly  
sworn, deposes and says:

\_\_\_\_\_, the decedent mentioned  
in the attached certified copy of Certificate of Death, is the same person as

\_\_\_\_\_, the transferor under the  
Revocable Transfer on Death Deed dated \_\_\_\_\_ and recorded on

\_\_\_\_\_ as Instrument No. \_\_\_\_\_ in Book/Reel \_\_\_\_\_,

Page/Image \_\_\_\_\_, of the Official Records of \_\_\_\_\_

County, California, which named as beneficiary(ies) \_\_\_\_\_

and which transferred the following described property in \_\_\_\_\_

County, California: (insert legal description)

Dated \_\_\_\_\_

\_\_\_\_\_  
(Signature of declarant)

\_\_\_\_\_  
(Type or print name of declarant)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_)

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_,  
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before  
me..

Signature \_\_\_\_\_ (Seal)