

# Daily Journal

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## NEW CALIFORNIA LAWS

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### AB 139: Allowing revocable TOD deeds

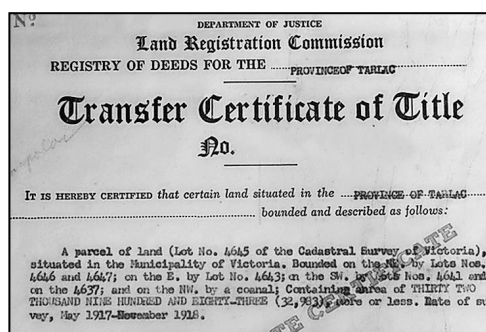
By Stefanie J. Lipson

Assembly Bill 139, signed into law Sept. 21, 2015, provides a new method to pass ownership of certain residential real property at death without a probate proceeding, right of survivorship or use of a trust.

A revocable transfer on death deed (revocable TOD deed), Probate Code Sections 5600 et seq., allows the property owner to designate one or more persons to succeed to the owner's interest in the real property following the owner's death. The transfer occurs outside of the probate court and trust administration process, similar to designating a beneficiary for life insurance, retirement accounts, or pay-on-death or transfer-on-death designations on bank and securities accounts.

The revocable TOD deed can only be used with the following real property: (a) real property improved with one to four residential dwelling units; (b) a condominium unit; and (c) a single tract of agricultural real estate of 40 acres or less improved with a single-family residence.

The statute's language suggests the beneficiaries must be identified by name in the deed, and not by class (such as "to all my children"). If multiple beneficiaries are named, they will become equal co-owners of the property. The revocable TOD deed does not give the beneficiary named in the



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TOD deed any current interest in the property during the owner's lifetime and may be revoked at any time prior to the owner's death. The revocable TOD deed is only effective if recorded within 60 days of being signed. If the property is held in joint tenancy or as community property with rights of survivorship, a revocable TOD deed is void and the right of survivorship governs the disposition of the property.

There is no documentary transfer tax and no preliminary change of ownership report is required, and the revocable TOD deed is not a change in ownership for property tax reassessment purposes until the owner's death. The property is transferred to the beneficiary without covenant or warranty of title.

A revocable TOD deed may be revoked by recording a revocation, recording a new TOD deed or by a sale or transfer of the property that is recorded, including a transfer to a trust. A revocable TOD deed

cannot be revoked by will.

The owner of the property executing or revoking the TOD deed must possess the capacity to contract, a higher level of capacity than testamentary capacity. A conservator may petition the court for authorization to create or revoke a revocable TOD deed for the conservatee.

The statute addresses rights of the owner/decedent's creditors to the extent the property has a lien or encumbrance securing the owner's debt. Like with certain other non-probate transfers, a beneficiary who receives the property can be liable for the owner unsecured debts following the owner's death (to the extent of the property received, its income and, if sold, its proceeds plus interest), or could be required to restore the property, or its proceeds, to the estate in the event of a probate proceeding.

The use of a revocable TOD deed is effective for deaths occurring after Jan. 1. The law is not permanent (effective through Jan. 1, 2021) and its effects will be studied with a recommendation to the Law Revision Commission by Jan. 1, 2020. A sample revocable TOD deed and revocation are included in the statute.

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