

NEW CALIFORNIA TRANSFER ON DEATH DEED (RTD)

Also known as: TOD - Assembly Bill 139

On January 1, 2016, a new California law took effect that allows the use of transfer on death (RTD) deeds for real property. A RTD deed is a revocable beneficiary deed, involving the gift of an individual's residence, which does not become a completed transfer until the death of the transferor. It is limited to multi-unit properties with one to four dwelling units, condominiums and single family residences (with fewer than 40 acres of agriculture land).

In a nutshell, the deed allows an individual to transfer their property to a beneficiary without the use of a revocable trust or the need for probate court. The RTD is a simpler and less expensive option for individuals who do not have significant assets subject to probate and who wish to leave their residence to named individuals. It can be a straightforward way to accomplish one's simple estate planning objectives.

Executing a RTD deed involves the use of a statutory form titled "Simple Revocable Transfer on Death (RTD) Deed", signed, dated and notarized, and recorded within 60 days with the county in which the real property is situated. The form, which is governed by the California Probate Code Section 5642, includes a detailed and informative question and answer attachment which addresses several common concerns and different scenarios which may arise. The RTD deed transfers property by operation of law, like joint tenancy or community property with right of survivorship, but can only be used in those situations where joint tenancy or

reserved life estate irrevocable deeds are not desirable approaches. The transferor remains the sole owner during his or her lifetime, and he or she can revoke the RTD deed at any time. The recording of a RTD deed does not in any way change the tax benefits of owning a home, and it does not have any effect on property taxes.

As stated above, however, the RTD deed is designed for simple, uncomplicated situations, and certainly does have its limitations. As an example, leaving the property to multiple beneficiaries might create administrative difficulties, as all the named beneficiaries become owners of undivided interests in the property. In this and other situations, the benefits of having one's residence, along with all other significant assets, pass through a revocable trust, would allow a single trustee to handle all the assets and distribute them according to the wishes of the transferor.

A RTD deed, while useful in some situations, will not replace the need for a revocable trust in the estate plans of many individuals. A revocable trust remains the preferred approach to estate planning in the State of California.

DISCLAIMER: Because of the general nature of this article, the information provided herein may not be applicable in all situations, and should not be acted upon without specific legal advice based upon particular situations.



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