

Memorandum 2021-55

**Stock Cooperatives and Revocable Transfer on Death Deeds:
(Staff Draft Recommendation)**

In this study, the Commission¹ is developing a proposed law to provide a relatively simple means of making a nonprobate transfer on death of a decedent's ownership interest in a stock cooperative. The proposed law would supplement the existing law on Revocable Transfer on Death Deeds ("RTODD").

In October, the Commission directed the staff to prepare a draft of a final recommendation, to implement the proposals described in Memorandum 2021-51 (consistent with the draft of proposed legislation attached to that memorandum). The requested draft is attached to this memorandum. **The Commission needs to decide whether to approve that draft as a final recommendation, for delivery to the Governor and Legislature, with or without changes.**

The Commission also directed staff to consider whether a provision should be added to the existing RTODD statute to make clear that an RTODD makes a "specific gift" for the purposes of Probate Code Section 21134. That issue is discussed below.

Unless otherwise indicated, all statutory citations in this memorandum are to the Probate Code.

"SPECIFIC GIFTS" AND SECTION 21134

At the October meeting, the Commission considered input from the Trusts and Estates Section Executive Committee of the California Lawyers Association (hereafter "TEXCOM"), asking whether an RTODD is governed by Section 21134. Section 21134 provides a special rule for the treatment of a specific gift of property that is later encumbered or sold or otherwise lost, while the transferor lacks

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

capacity and is under the protection of a conservator, agent acting pursuant to a durable power of attorney, or trustee. In broad brush, the specific gift fails and the beneficiary of the failed gift instead has a “right to a general pecuniary gift” equal to the value of the failed gift.²

In Memorandum 2021-51, the staff concluded that Section 21134 *would* apply to an RTODD, based on a textual analysis of key terms and the rule of application in Section 21101. However, at the October meeting, TEXCOM explained that the staff had missed an important point. By its terms, Section 21134 only governs a specific gift. So, even if the section applies to an RTODD, there could still be a problem if it is unclear whether an RTODD makes a specific gift.

The Commission directed the staff to consider that point and bring the matter back for discussion at the November meeting.

After the October meeting, the staff received further input from John Anderson, TEXCOM’s liaison to the Commission. Mr. Anderson pointed out another potential complication. Even if it were clear that Section 21134 applies to an RTODD, it would not be clear how that section would operate in that context. Specifically, if the section were to operate to establish a substitute pecuniary gift for a beneficiary of an RTODD, what would be the source of that gift? Could the beneficiary make a claim against the decedent’s probate estate? The decedent’s trust? Section 21134 does not answer that question.

However, the staff believes that the same problem could arise with a will or trust. Suppose that a person creates a revocable intervivos trust solely for the purpose of transferring her house on death. Later, while suffering a lack of decision making capacity, the trustor’s conservator sells the house. The proceeds of sale fall into the person’s general probate estate. Under Section 21134, the beneficiary of the trust has “a right to a general pecuniary gift” equal to the value of the house.

Section 21134 is equally silent as to the result in that situation. Would the gift be satisfied out of the probate estate? That would seem proper, but the statute does not expressly authorize it. Nor did the staff find relevant guidance in the case law that construes Section 21134.

Unless the staff is missing something, the complication noted by Mr. Anderson should be addressed on a broader basis, beyond just making an adjustment to the RTODD statute. If there is ambiguity as to whether the alternative pecuniary gift

2. The rules in Section 21134 are more complicated than that, but the simplified description is sufficient for present purposes.

can be drawn from a source other than the instrument that made the specific gift, that ambiguity may exist across the board. If so, the Commission should perhaps conduct a separate study of that general issue. **How would the Commission like to proceed on this point?**

Respectfully submitted,

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Executive Director

#L-3032.5, H-850

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Stock Cooperatives and
Revocable Transfer on Death Deeds

November 2021

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

In 2019, the Commission recommended that the revocable transfer on death deed statute not be made applicable to an interest in a stock cooperative (a type of common interest development where all of the real property is owned by a corporation and the separate interests consist of a share of stock in the corporation that creates an exclusive right to occupy a particular unit). The reason for that recommendation was purely technical. The Commission was unsure about the implications of using a deed to transfer a share of stock. Further study was required to determine whether a simple process could be created to transfer an interest in a stock cooperative on the owner's death, without probate administration.

The Commission has completed that study and recommends minor changes to the revocable transfer on death deed statute to make it applicable to an interest in a stock cooperative.

The Commission also recommends a substantive improvement to the revocable transfer on death deed statute generally, relating to the rules for resolving the effect of a conflicting dispositive instrument.

This recommendation was prepared pursuant to Resolution Chapter 108 of the Statutes of 2021.

1 STOCK COOPERATIVES AND REVOCABLE
2 TRANSFER ON DEATH DEEDS

3 In 2019, the Commission recommended against authorizing the use of a revocable
4 transfer on death deed (“RTODD”) to transfer an interest in a stock cooperative. That
5 recommendation was based on technical concerns rather than substantive policy. The
6 Commission sees no policy reason to deny the owners of interests in stock cooperatives a
7 simple way to transfer their property on death, without probate administration. The
8 question addressed in this study is whether and how that result could be achieved.

9 As the Commission explained:

10 A stock cooperative is a kind of common interest development where the
11 entirety of the development is owned by a corporation formed for that purpose.
12 The owners of separate interests hold shares in the corporation, which entitle them
13 to the exclusive right to occupy a specified apartment. Owners do not hold title to
14 any part of the development.

15 As a result, ownership of a separate interest in a stock cooperative is not
16 evidenced or conveyed by deed. Instead, it is conveyed by the sale of a share of
17 stock. For that reason, a deed would not be an appropriate instrument to use to
18 transfer ownership of a separate interest in a stock cooperative. A deed conveys
19 title to real property, not the ownership of a share of stock.

20 To avoid any confusion or legal problems that would result from the mismatch
21 between the use of a deed and the form of ownership in a stock cooperative, the
22 Commission recommends that stock cooperatives continue to be excluded from
23 the definition of “real property” that is used in the RTODD statute.

24 That approach would deny owners in stock cooperatives the benefits of using
25 an RTODD. However, it is possible that a share of ownership in a stock
26 cooperative could be transferred on death, outside of probate, under the existing
27 Uniform TOD Security Registration Act. The Commission plans to conduct a
28 separate study of that possibility, under its general authority to study the Probate
29 Code.¹

30 Having completed that study, the Commission decided against adapting the Uniform
31 TOD Security Registration Act for use in transferring a share of ownership in a stock
32 cooperative. There are significant substantive differences between the transfer of a
33 security generally and the transfer of a security that conveys an appurtenant interest in
34 real property. Properly accounting for those differences would have required adding
35 numerous provisions to the Uniform Act, which would have undermined its value as a
36 uniform statute.

37 Instead, the Commission concluded that the best way to address the substantive issues
38 that are involved in the transfer of an interest of real property would be to use the existing
39 RTODD statute, which already has the necessary provisions. After examining that
40 possibility, the Commission found that only a few adjustments to the existing statute

1. See *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135, 157 (2019) (footnotes omitted).

1 would be required. This recommendation proposes those changes. They are explained
2 below.

3 In the course of its study, the Commission also discovered a way to simplify and
4 improve the existing RTODD statute’s treatment of conflicting dispositive instruments (a
5 will, trust, or other instrument that purports to dispose of property that is governed by an
6 RTODD). That general reform is also recommended and explained below.

7 USE OF RTODD TO TRANSFER
8 INTEREST IN STOCK COOPERATIVE

9 One potential problem with use of the RTODD statute to transfer an interest in a stock
10 cooperative is the apparent mismatch between the use of a “deed” to transfer an interest
11 that is not ordinarily evidenced or conveyed by a deed. As explained, an interest in a
12 stock cooperative is grounded in ownership of a share of the stock of the cooperative.
13 Having considered that problem, the Commission concluded that it could be solved by
14 adding language to affirmatively address the issue. The proposed law would revise the
15 definition of “revocable transfer on death deed” to expressly state:

16 A revocable transfer on death deed may be used to transfer real property even if
17 ownership of the property is not typically evidenced or transferred by use of a
18 deed.²

19 The Commission’s Comment to that provision would specifically state its application
20 to a stock cooperative.³ In addition, the “Common Questions” text on the statutory
21 RTODD form would be revised to explain the use of the form to transfer property in a
22 stock cooperative.⁴ Those changes should provide sufficient guidance to avoid any
23 problematic uncertainty on this fundamental point.

24 Another issue that must be addressed is the treatment of property use restrictions.
25 Many stock cooperatives place significant restrictions on the use of their separate
26 interests. Most notably, cooperatives may do one or more of the following:

- 27 • Require board approval of any new occupant.
28 • Reserve a right to repurchase a separate interest on the owner’s death.
29 • Restrict the purchase and sale price in order to provide affordable housing.⁵
30 • Restrict the development to providing housing for seniors.⁶

31 The existing RTODD statute already provides that property transferred by RTODD
32 remains subject to any burdens or restrictions that are recorded within 120 days after the

2. See proposed Prob. Code § 5614 *infra*.

3. *Id.*

4. See proposed Prob. Code § 5642 *infra*.

5. See Civ. Code § 817 (limited equity housing development).

6. See Civ. Code § 51.3 (senior housing).

1 beneficiary gives notice to heirs that the RTODD exists and is about to operate.⁷ This
2 should be legally sufficient to protect the kinds of use restrictions that are common in
3 stock cooperatives. Nonetheless, the Commission recommends three reforms to improve
4 the effectiveness of that provision:

- 5 (1) The law should be revised to add nonexclusive examples of the kinds of
6 restrictions that are governed by the existing rule, to illustrate its application
7 to the kinds of restrictions that are common in stock cooperatives.⁸
- 8 (2) Language should be added to explain how the RTODD would affect a
9 reserved right to repurchase a transferred interest.⁹
- 10 (3) The rule requiring notice to a transferor’s heirs before an RTODD will
11 operate should be revised to also require notice to a stock cooperative (if
12 any). This will ensure that the stock cooperative has time to record any
13 restrictions in order to preserve their application.¹⁰

14 With those changes, the use of an RTODD to transfer an interest in a stock cooperative
15 should not unduly interfere with any use restrictions imposed by a stock cooperative.

16 The Commission recommends all of the changes described above. Importantly, it also
17 recommends that the existing RTODD statute’s definition of “real property” be revised so
18 that it would include stock cooperatives.¹¹ Taken together, those reforms would ensure
19 that the RTODD statute would apply to stock cooperatives without causing any new
20 operational problems.

21 TREATMENT OF CONFLICTING DISPOSITIVE INSTRUMENTS

22 Existing Probate Code Section 5660 provides rules for determining the effect of an
23 RTODD when another instrument purports to dispose of the same property.¹² That
24 section establishes the following priorities:

- 25 (1) If the other instrument is not recorded within 120 days after the beneficiary
26 gives notice of the RTODD, the other instrument does not operate.
- 27 (2) If the other instrument is recorded within 120 days after the beneficiary
28 gives notice, and the other instrument is irrevocable, the other instrument
29 operates and the RTODD does not.

7. See Prob. Code § 5652(b) (as amended by 2021 Cal. Stat. ch. 215). Notice to heirs is a statutory precondition to the operation of the RTODD. See Prob. Code § 5681 (as added by 2021 Cal. Stat. ch. 215).

8. See proposed Prob. Code § 5652(b) *infra*.

9. See proposed Prob. Code § 5652(c) *infra*.

10. See proposed Prob. Code 5681 *infra*. Such notice is not required in other types of property developments, because in general a title restriction must be recorded in order to be enforceable. See Civ. Code § 1468(d) (instrument creating covenant that runs with the land must be recorded). See also Civ. Code §§ 4200 (recordation of declaration required in common interest development), 4250 (enforceable equitable servitudes must be expressed in declaration).

11. See proposed Prob. Code § 5610 *infra*.

12. The discussion that follows describes Probate Code Section 5660 as amended by 2021 Cal. Stat. ch. 215.

- 1 (3) If the other instrument is recorded within 120 days after the beneficiary
2 gives notice, and the other instrument is revocable, the later executed of the
3 two instruments operates and the earlier-executed instrument does not.

4 Under that provision, recordation is the primary consideration. An RTODD will always
5 prevail over an unrecorded instrument. The primacy of recordation reflects the
6 importance of the recording system and title insurance as the means by which a transfer
7 of property by RTODD will be effectuated. An effective transfer requires title insurance
8 to guarantee that the RTODD is valid, which in turn requires that all information that
9 might affect the validity of an RTODD be in the title records.

10 There is a significant disadvantage to that approach. An unrecorded conflicting
11 instrument will always fail, leaving the beneficiary of the other instrument without a
12 remedy. This is true even if the unrecorded instrument would otherwise have been given
13 effect by a court as the best expression of the transferor's intentions. That is a policy
14 compromise. The need for recordation as an operational matter is given priority over
15 maximizing the likelihood of effectuating the transferor's intentions.

16 The Commission no longer believes that this compromise is necessary. There appears
17 to be a fairly simple alternative approach that would provide sufficient record notice of a
18 conflicting claim, without invalidating all unrecorded conflicting instruments.

19 The alternative would be to treat a claim based on a conflicting instrument in the same
20 way as any other contest of an RTODD (e.g., a contest based on a claim of fraud,
21 mistake, undue influence, or incapacity). Under those existing rules, the relief available
22 for a successful contest will depend on whether the contestant recorded notice of the
23 contest (*a lis pendens*) within the 120-day period specified in Probate Code Section 5694,
24 or failing that, before the property is sold or encumbered. If the *lis pendens* is recorded in
25 time, a successful contest will void the RTODD, without any protection of a bona fide
26 purchaser or encumbrancer. If the *lis pendens* is not recorded in time, the RTODD will
27 operate and the interests of the bona fide purchaser or encumbrancer will be protected.

28 Importantly, a contestant who fails to record a timely *lis pendens* will still have a
29 meaningful alternative remedy — pecuniary recovery from the beneficiary. Even though
30 the contestant cannot obtain title to the property that was transferred by the RTODD, the
31 pecuniary value of the intended gift can still be realized.

32 The existing rules for treatment of a contest provide sufficient record notice of a
33 completing claim. Under those rules, title insurers will know that the validity of an
34 RTODD is uncertain during the time in which a *lis pendens* can be recorded. If no *lis*
35 *pendens* is recorded in that time period, title insurers will know that a bona fide purchaser
36 or encumbrancer will be protected against any subsequent contest that may be filed. That
37 provides the necessary certainty for the issuance of title insurance, once the time for
38 recording an effective *lis pendens* has run.

39 The Commission sees no reason why that system would be any less effective if applied
40 to a contest that is based on a conflicting dispositive instrument.

41 Under existing law, the failure to record a conflicting dispositive instrument in the 120-
42 day period specified in Section 5660 will invalidate the conflicting instrument, leaving
43 the beneficiary of the conflicting instrument without a remedy. If the recording

1 requirements were removed from Section 5660 and a conflicting instrument were treated
2 as just another kind of contest, that harsh result could be avoided. That would be a better
3 result as a matter of policy, as it would more faithfully reflect the transferor's intentions.

4 That change in the treatment of conflicting instruments would not cause any new
5 problems with regard to the availability of title insurance, because it would simply
6 incorporate the treatment of conflicting instruments into the rules that already govern
7 contests generally.

8 For the reasons discussed above, the Commission recommends that Section 5660 be
9 revised to (1) remove the requirement that a conflicting instrument be recorded in order
10 to be effective and (2) add language clarifying that a claim based on a conflicting
11 instrument should be treated in the same way as any other contest.

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PROPOSED LEGISLATION

Prob. Code § 5610 (amended). “Real property” defined

SECTION 1. Section 5610 of the Probate Code, as amended by 2021 Cal. Stat. ch. 215, is amended to read as follows:

5610. (a) Except as provided in subdivision (b), “real property” means either of the following:

(1) A parcel of land that is improved with one to four residential dwelling units.

(2) A residential separate interest and its appurtenant common area in a common interest development, regardless of the number of separate interests in the common interest development.

(b) “Real property” does not include ~~either of the following:~~

~~(1) A separate interest in a stock cooperative.~~

~~(2) A~~ a parcel of agricultural land that is greater than 40 acres in size. For the purposes of this ~~paragraph~~ subdivision, “agricultural land” means land that is designated for agricultural use by law or by a document that is recorded in the county in which the land is located.

(c) The definition of “real property” shall be construed pursuant to the circumstances that existed on the execution date shown on the revocable transfer on death deed.

Comment. Section 5610 is amended to include an interest in a stock cooperative within the meaning of “real property.”

Prob. Code § 5614 (amended). “Revocable transfer on death deed” defined

SEC. 2. Section 5614 of the Probate Code is amended to read as follows.

(a) “Revocable transfer on death deed” means an instrument created pursuant to this part that does all of the following:

(1) Makes a donative transfer of real property to a named beneficiary.

(2) Operates on the transferor’s death.

(3) Remains revocable until the transferor’s death.

(b) A revocable transfer on death deed may also be known as a “revocable TOD deed.”

(c) A revocable transfer on death deed may be used to transfer real property even if ownership of the property is not typically evidenced or transferred by use of a deed.

Comment. Section 5614 is amended to make clear that a revocable transfer on death deed can be used to transfer real property of a type that is not typically transferred by use of a deed (e.g., an interest in a stock cooperative).

Prob. Code § 5614.5 (added). “Stock cooperative” defined

SEC. 3. Section 5614.5 is added to the Probate Code, to read:

5614.5. “Stock cooperative” has the meaning provided in Section 4190 of the Civil Code.

Comment. Section 5614.5 is new. It is added for drafting convenience.

1 **Prob. Code § 5642 (amended). Excerpt from Frequently Asked Questions**

2 SEC. 4. Section 5642 of the Probate Code, as amended by 2021 Cal. Stat. ch. 215, is
3 amended to read as follows:

4 5642. ...

5 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

6 ...

7 CAN I USE THIS DEED TO TRANSFER NONRESIDENTIAL PROPERTY? No.
8 This deed can only be used to transfer residential property. Also, the deed cannot be used
9 to transfer ~~a unit in a stock cooperative~~ or a parcel of agricultural land that is over 40
10 acres in size.

11 ...

12 WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your beneficiary
13 must do all of the following: (1) RECORD evidence of your death (Prob. Code § 210).
14 (2) File a change in ownership notice (Rev. & Tax. Code § 480). (3) Provide notice to
15 your heirs that includes a copy of this deed and your death certificate (Prob. Code §
16 5681). If the property is in a stock cooperative, the beneficiary must also give notice to
17 the stock cooperative. Determining who is an “heir” can be complicated. Your
18 beneficiary should consider seeking professional advice to make that determination. (4)
19 RECORD an affidavit affirming that notice was sent to your heirs (and, if necessary, to a
20 stock cooperative) (Prob. Code § 5682(c)). (5) If you received Medi-Cal benefits, your
21 beneficiary must notify the State Department of Health Care Services of your death and
22 provide a copy of your death certificate (Prob. Code § 215). Your beneficiary may wish
23 to consult a professional for assistance with these requirements.

24 ...

25 **Comment.** Section 5642 is amended to reflect the fact that the revocable transfer on death deed
26 can be used to transfer an interest in a stock cooperative. See Section 5614.5 (“stock cooperative”
27 defined).

28 **Prob. Code § 5652 (amended). Effect of transfer**

29 SEC. 4. Section 5652 of the Probate Code, as amended by 2021 Cal. Stat. ch. 215, is
30 amended to read as follows:

31 5652. (a) A revocable transfer on death deed transfers all of the transferor’s interest in
32 the property on the transferor’s death according to the following rules:

33 (1) Subject to the beneficiary’s right to disclaim the transfer, the interest in the property
34 is transferred to the beneficiary in accordance with the deed.

35 (2) The interest of a beneficiary is contingent on the beneficiary surviving the
36 transferor. Notwithstanding Section 21110, the interest of a beneficiary that fails to
37 survive the transferor lapses.

38 (3) Except as provided in paragraph (4), if there is more than one beneficiary, they take
39 the property as tenants in common, in equal shares.

40 (4) If there is more than one beneficiary, the share of a beneficiary that lapses or fails
41 for any reason is transferred to the others in equal shares.

1 (b) Property is transferred by a revocable transfer on death deed subject to any
2 limitation on the transferor’s interest that is of record at the transferor’s death or that is
3 recorded no later than 120 days after the affidavit required by subdivision (c) of Section
4 5682 is recorded, ~~including, but~~ . Limitations on the transferor’s interest may include but
5 are not limited to, a lien, encumbrance, easement, lease, restriction on occupancy, option
6 to purchase the property on the transferor’s death, limitation on the transfer value in a
7 limited equity housing cooperative, or other instrument affecting the transferor’s interest,
8 whether recorded before or after recordation of the revocable transfer on death deed. The
9 holder of rights under that instrument may enforce those rights against the property
10 notwithstanding its transfer by the revocable transfer on death deed. An enforceable
11 restriction on the use of the transferred property does not affect the transfer of title to the
12 property by a revocable transfer on death deed.

13 (c) If a stock cooperative exercises an option to purchase property transferred by a
14 revocable transfer on death deed on the transferor’s death, the result is as follows:

15 (1) The property is transferred to the stock cooperative rather than the beneficiary.

16 (2) The purchase price is paid to the beneficiary. Unless the law or the governing
17 documents of the stock cooperative provide otherwise, the purchase price is the fair
18 market value of the property, less the amount of any liens or encumbrances on the
19 property at the time of the owner’s death and less any amount that the decedent owed the
20 stock cooperative.

21 (d) A revocable transfer on death deed transfers the property without covenant or
22 warranty of title.

23 **Comment.** Subdivision (b) of Section 5652 is amended to refer to types of limitations that may
24 exist in a stock cooperative. Such limitations may also exist in other types of developments.

25 Subdivision (c) is added to provide guidance on the steps to be followed when a stock
26 cooperative exercises an option to purchase an interest that was transferred by revocable transfer
27 on death deed. Paragraph (2) makes clear that the price paid to purchase property in a stock
28 cooperative may be limited by law or the governing documents of the stock cooperative. For
29 example, in a limited equity housing cooperative, the amount paid will be based on a specified
30 transfer value, rather than fair market value. See Civ. Code § 817. See also Section 5614.5
31 (“stock cooperative” defined).

32 **Prob. Code § 5660 (amended). Conflicting instruments**

33 SEC. 6. Section 5660 of the Probate Code, as amended by 2021 Cal. Stat. ch. 215, is
34 amended to read as follows:

35 5660. (a) If a revocable transfer on death deed recorded on or before 60 days after the
36 date it was acknowledged before a notary public and another instrument both purport to
37 dispose of the same property:

38 ~~(a) If the other instrument is not recorded within 120 days after the affidavit required~~
39 ~~by subdivision (c) of Section 5682 is recorded, the revocable transfer on death deed is the~~
40 ~~operative instrument.~~

41 ~~(b) If the other instrument is recorded within 120 days after the affidavit required by~~
42 ~~subdivision (c) of Section 5682 is recorded and~~

1 (1) If the other instrument makes a revocable disposition of the property, the later
2 executed of the revocable transfer on death deed or the other instrument is the operative
3 instrument.

4 ~~(c) If the other instrument is recorded within 120 days after the affidavit required by~~
5 ~~subdivision (c) of Section 5682 is recorded and~~

6 (2) If the other instrument makes an irrevocable disposition of the property, the other
7 instrument and not the revocable transfer on death deed is the operative instrument.

8 (b) A claim that a revocable transfer on death deed is inoperative pursuant to this
9 section is grounds for a contest under Chapter 5 (commencing with Section 5970).

10 **Comment.** Section 5660 is amended to remove the requirement that a conflicting instrument
11 be recorded in order to be effective and to make clear that a claim that a revocable transfer on
12 death deed is invalid pursuant to this section is grounds for a contest.

13 **Prob. Code § 5681 (amended). Required notice**

14 SEC. 6. Section 5681 of the Probate Code, as added by 2021 Cal. Stat. ch. 215, is
15 amended to read as follows:

16 5681. (a) After the death of the transferor, the beneficiary of a revocable transfer on
17 death deed shall serve notice on the transferor’s heirs, along with a copy of the revocable
18 transfer on death deed and a copy of the transferor’s death certificate. If the property
19 governed by the revocable transfer on death deed is an interest in a stock cooperative, the
20 beneficiary shall also serve those documents on the stock cooperative.

21 (b) The notice required by subdivision (a) shall be in substantially the following form:

22 “NOTICE OF REVOCABLE TRANSFER ON DEATH DEED

23 The enclosed revocable transfer on death deed was created by: [name of deceased
24 transferor].

25 It affects the following property: [description of property used on revocable transfer on
26 death deed].

27 It names the following beneficiaries: [beneficiary(ies) named on the revocable transfer
28 on death deed].

29 As a result of the death of [name of deceased transferor], the deed will transfer the
30 described property to the named beneficiaries, without probate administration.

31 If you believe that the revocable transfer on death deed is invalid and you wish to stop
32 it from taking effect, you have only 120 days from the date of this notice to file a fully
33 effective challenge. You should act promptly and may wish to consult an attorney.”

34 (c) For the purposes of this section, if the beneficiary has actual knowledge of a final
35 judicial determination of heirship for the deceased transferor, the beneficiary shall rely on
36 that determination. Otherwise, the beneficiary shall have discretion to make a good faith
37 determination, by any reasonable means, of the heirs of the transferor.

38 (d) The beneficiary need not provide a copy of the notice to an heir who is either of the
39 following:

40 (1) Known to the beneficiary but who cannot be located by the beneficiary after
41 reasonable diligence.

42 (2) Unknown to the beneficiary.

1 (e) The notice shall be served by any of the methods described in Section 1215 to the
2 last known address.

3 (f) If a revocable transfer on death deed names more than one beneficiary, only one of
4 the beneficiaries is required to comply with this section.

5 (g) (1) A beneficiary who fails to serve the notification required by this section on an
6 heir who is not a beneficiary and whose identity is known to the beneficiary shall be
7 responsible for all damages caused to the heir by the failure, unless the beneficiary shows
8 that they made a reasonably diligent effort to comply. For purposes of this subdivision,
9 “reasonably diligent effort” means that the beneficiary has delivered notice pursuant to
10 Section 1215 to the heir at the heir’s last address actually known to the beneficiary.

11 (2) A beneficiary is not liable under this subdivision if that beneficiary reasonably
12 relied, in good faith, on another beneficiary’s statement that the other beneficiary would
13 satisfy the requirements of this section.

14 (3) A beneficiary is not to be held to the same standard as a fiduciary.

15 **Comment.** Section 5681 is amended to require that notice be given to a stock cooperative
16 when an interest in the stock cooperative would be transferred by a revocable transfer on death
17 deed. See Section 5614.5 (“stock cooperative” defined).