

ASSEMBLY BILL 139

Effective January 1, 2016

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LEGISLATION CREATING A NON-PROBATE METHOD FOR CONVEYING INTEREST IN REAL PROPERTY UPON DEATH

The new law accomplishes the transfer by means of a revocable transfer upon death deed (RTDD). The RTDD automatically transfers ownership of the property – defined to include 1-4 residential units, a condominium, or agricultural land of 40 acres or less – upon the death of the owner, and must contain a legal description. A RTDD may only be revoked by a recorded document.

Title companies will not be required to rely on RTDDs when underwriting a policy of title insurance under the new law – an especially important detail given that there may be circumstances under which the RTDD may be void or superseded by another document. In cases where the RTDD is void or superseded, a probate proceeding or quitclaims deed may be required.

The new law makes the RTDD effective for any transferor who dies on or after January 1, 2016, regardless of when the RTDD was executed or recorded. No RTDD may be executed on or after January 1, 2021, which is when the new law is scheduled to be repealed (unless extended by the legislature prior to that date). However, any RTDD properly executed before that date remains valid and may also be revoked after that date. To be valid, the deed must be recorded within 60 days of execution. The deed is only effective at death and does not affect any ownership rights during the transferor's lifetime.

The new law contains a statutory form RTDD, and an RTDD must be in that form or a substantially similar form in order to be valid. The statutory form provides information to the transferor, including an explanation of how the RTDD works, how it is effectuated, and some of its consequences. The statute also has a statutory form for revocation of an RTDD. The law also makes provisions for multiple beneficiaries and for what happens if multiple instruments are recorded affecting the same property.

A beneficiary completes the transfer by recording an affidavit of the transferor's death. However, a purported transfer is void if property is held in joint tenancy or as community property with right of survivorship when the transferor dies. A RTDD may also be challenged for various reasons, including lack of capacity to transfer, transfer to disqualified person, fraud, duress, and undue influence.

As of 2015, 23 states have allowed some version of RTDDs, with three additional states considering their implementation this year.