San Francisco Chronicle 

# Californians have a new way to keep homes out of probate

By Kathleen Pender | November 9, 2015 | Updated: November 9, 2015 4:19pm



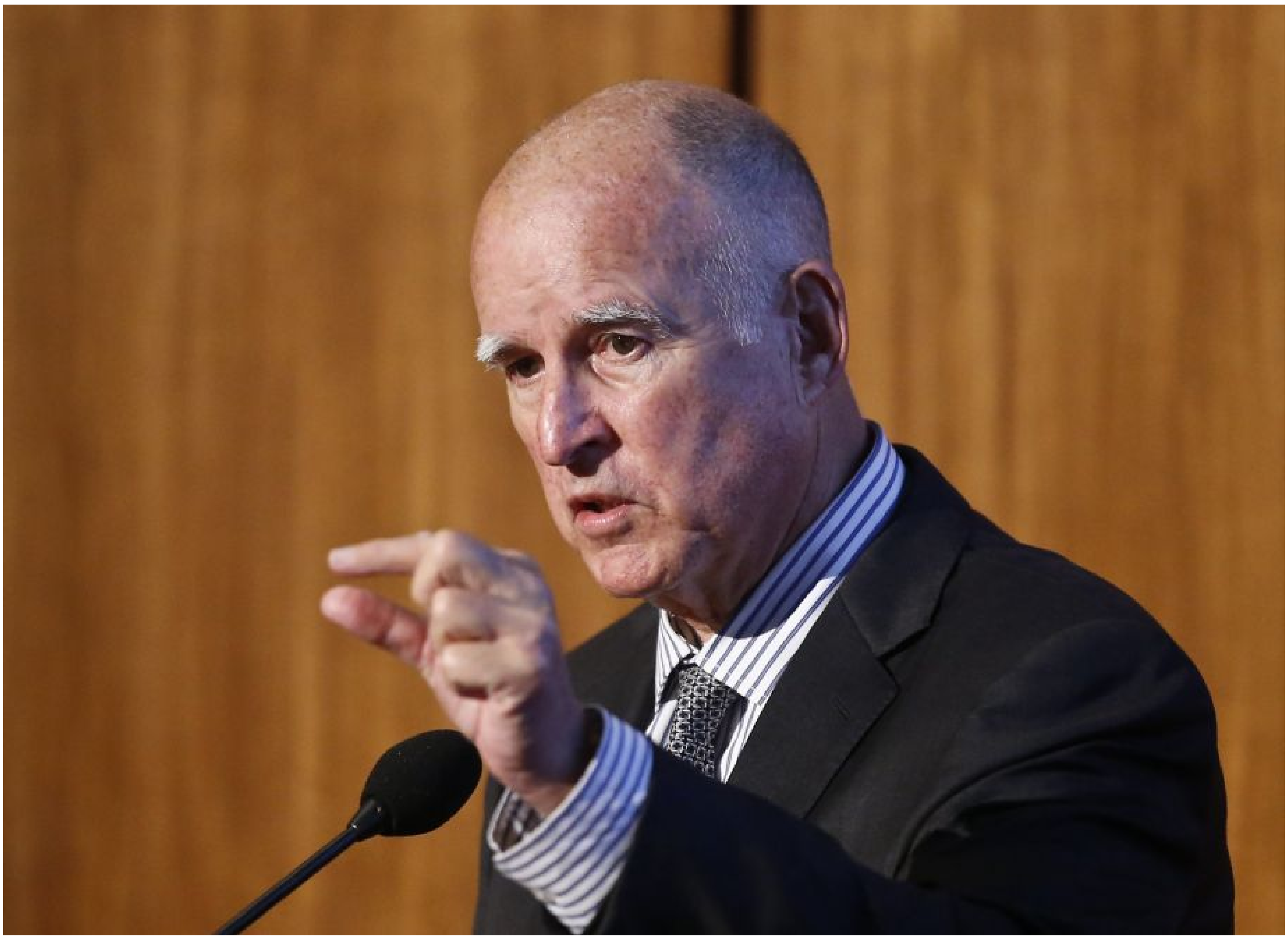

Photo: Lenny Ignelzi, Associated Press

In September, Gov. Jerry Brown signed AB139, which allows "poor man's trusts" in California starting Jan. 1.

Starting next year, California homeowners will have a simple, inexpensive way to leave property to their heirs without it going through probate, which can be costly and time consuming.

It's called a revocable transfer on death deed and it's similar to payable on death accounts offered by banks and other financial institutions. These accounts have been nicknamed "poor man's trusts" because they avoid the need to set up expensive trusts to keep assets out of probate.



More than half of the states already have this option for real estate. In September, Gov. Brown signed AB139, which allows it in California starting Jan. 1. At least five previous attempts to pass similar legislation failed.

"We were able to build a coalition, articulate why it's a good bill for consumers," said Assemblyman Mike Gatto, D-Glendale, who authored AB139.

The new option will be most useful for single people, including widows and widowers. Married people in California already have a simple way to avoid probate by holding title to their home or other assets as community property with right of survivorship or joint tenants with right of survivorship. That lets the surviving spouse inherit the deceased spouse's ownership in the home without it going through probate, said Steve Hartnett, associate director of education with the American Academy of Estate Planning Attorneys.

The only way single people could avoid having their home avoid probate — without adding someone the title while they're still alive — is by setting up a trust, which could cost $2,000 to $6,000 if an attorney is hired, Gatto said. Going through probate, he said,

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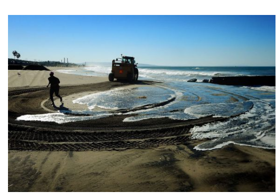

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has an average cost of $26,000.

Starting next year, homeowners who want to use the new option will simply sign an instrument called a Simple Revocable Transfer on Death Deed, naming who will receive the property. They must have it notarized and record it with their county within 60 days. If they change their mind, they can revoke the deed at any time.

Some opponents feared the new deed could make it easy for predators to persuade an elderly person to transfer a home to them upon death. “That was addressed with provisions for how people can go to court and seek a remedy if that occurs,” said Marc Hankin, an elder law attorney who supported the bill.

“If within 120 days of mom’s death you find out she transferred the property to Harvey Flybynight, you file a complaint with the court, record a notice of lis pendens (which means a lawsuit has been filed) and send a copy to Harvey Flybynight,” Hankin said.

If Flybynight tries to sell the property within 120 days of mom’s death, “no title company will give title insurance” to the buyer, he added.

This also could make it more burdensome for legitimate heirs to sell a home they inherit within 120 days, he added.

The new law expires Jan. 1, 2021, to allow time to study its effects. Transfer on death deeds that are executed between now and then would not be impacted; they would still be in effect and could be revoked at any time. But no new ones can be executed after that date unless the law is extended. The law requires the California Law Revision Commission to study and make recommendations regarding the new deed to the Legislature by January 1, 2020.


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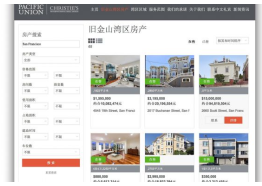

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Supporters of the measure included the Howard Jarvis Taxpayers Association and AARP.

"It is a fairly easy, straightforward and relatively inexpensive way for California residents to transfer their real property, which by and large is people's most valuable asset," said Blanca Castro, AARP's advocacy director in California.

Hartnett said he is not opposed to the new deed as a way to avoid probate, but there are other reasons to put assets into a trust, especially if you have a very large estate or young heirs. A trust can also help with "lifetime incapacity planning" and can help protect assets from your heir's creditors or ex-spouses.

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