

Memorandum 2007-13

Legislative Program: Status of Bills

This memorandum outlines the status of the Commission's 2007 legislative program. See attached table. The staff will update this report orally at the meeting.

Matters that are especially noteworthy or that require Commission action are discussed below.

AB 250 (DEVORE) — REVOCABLE TOD DEED

AB 250 would create the revocable transfer on death ("TOD") deed for real property. See *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006). It was approved by the Assembly on June 4, with a vote of 79-0. It is now in the Senate and has been referred to the Senate Committee on the Judiciary. The date for the hearing has not yet been set.

The progress of AB 250 in the Senate had been delayed while attempting to address opposition from the Public Administrators ("PA"). After lengthy discussion, Assembly Member DeVore agreed to amendments to address the PA concern. With those amendments, the bill should be set for hearing before the July 13 deadline for policy committee approval of bills.

The PA concerns about the bill, and the amendments to address those concerns, are discussed below.

Public Administrator Concerns

Under the bill, a beneficiary who receives property under a revocable TOD deed is personally liable for the unsecured debts of the deceased transferor. Proposed Prob. Code § 5672. A creditor may enforce that liability in any manner that they could have enforced the debt against the transferor. *Id.*

In addition, proposed Probate Code Section 5676 would authorize a personal representative in a pending estate administration to enforce the liability by restitution of the property (or its value) to the estate.

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 PAs had two concerns about Section 5676:

(1) They are worried that action under Section 5676 would be considered mandatory in all cases where there is an unpaid debt, even if there are no meaningful assets to be administered. The PAs do not believe that the counties should be using scarce public resources solely to act as debt collectors, where there is no other need for administration.

(2) In some cases it might be appropriate for a PA to use Section 5676 in the course of a pending administration. In those cases, the county would bear the cost of that additional procedure, without being compensated.

That isn't the case if the real property passes through probate. The compensation provided to a PA and county counsel for administering a probate estate depends on the overall value of the estate. If the estate includes real property, then the compensation is increased by a percentage of the value of the real property. See Prob. Code §§ 10800 (personal representative), 10810 (counsel). That increase offsets any additional costs involved in handling the property.

If the real property passes outside probate, by revocable TOD deed or otherwise, the property would not be included in the probate estate and would not result in any increase in the compensation received by the county. Any extra work that the county needs to perform to handle the real property would be uncompensated.

Pending Amendments to Address Public Administrator Concerns

Amendments have been submitted to make the following changes to proposed Probate Code Section 5676(d):

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the transferor. Whether or not the personal representative brings an action under this section, the personal representative may enforce the liability only to the extent ~~necessary to protect the interests of creditors of the transferor~~ of the beneficiary's liability under Section 5672. The reasonable cost of proceeding under this section shall be reimbursed as an extraordinary service under Sections 10801 and 10811. Action under this section is optional. A personal representative is never required to act under this section.

The amendments would serve three purposes:

(1) Delete language that might be read to imply a duty to proceed under the section.

- (2) Add language providing for compensation of costs. This would incorporate existing provisions that authorize additional compensation when a personal representative or the personal representative's attorney provides "extraordinary services." Under those provisions, the court can authorize "just and reasonable" compensation. The compensation would be a debt against the estate.
- (3) Add language making clear that the remedy provided in the section is optional. That is consistent with the Commission's intention. The staff sees no harm in stating expressly that the procedure is optional.

With those changes, the PAs would remove their opposition.

Before the amendments were submitted by Assembly Member DeVore, the staff consulted with the Commission's Chair. The Chair was cautious about making any change to the bill, in light of the changes that have already been made and the risk that a significant change might overturn the presently favorable balance struck between the different interested groups. However, he authorized the amendments described above.

The problems described by the PAs are real. Counties are generally cash-strapped and do not want to pay extra litigation costs to collect debts for private creditors. The amendments would allow counties to conserve their resources and recover their costs, without eliminating the benefits of Section 5676 altogether.

The amendments will also include a small number of purely technical amendments that clean up errors introduced in the last round of amendments.

The staff recommends that the Commission ratify the amendments.

AB 310 (SILVA) — TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS

AB 310 would make a variety of technical and minor substantive improvements to the law. *Technical and Minor Substantive Statutory Corrections*, 35 Cal. L. Revision Comm'n Reports 219 (2006). The bill was approved by the Assembly on April 12, on the consent calendar.

In the Senate, the bill has been amended to coordinate the bill with the Commission's bill on trial court restructuring (SB 649 (Committee on the Judiciary)).

The need for coordination relates to Code of Civil Procedure Section 904, which says "An appeal may be taken in a civil action or proceeding as provided in Sections 904.1, 904.2, 904.3, 904.4, and 904.5." Code of Civil Procedure Sections

904.3 and 904.4 were repealed long ago, so AB 310 would amend Section 904 to delete the references to those sections. **But if SB 649 is enacted, there will be a new Section 904.3, which should be referenced in Section 904.** The amendment would ensure that if both AB 310 and SB 649 are enacted, Section 904 will be phrased to include the reference to Section 904.3.

The amendment is entirely technical. **The staff recommends that the Commission ratify it.**

SB 649 (COMMITTEE ON JUDICIARY) — TRIAL COURT RESTRUCTURING

Senate Bill 649 (Committee on Judiciary) would implement the Commission's recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 341 (2006). With permission from the Commission Chair, that bill was recently amended to address a conflict with another pending bill, AB 678 (Gaines). Both bills would amend Penal Code Section 977, but in different ways. The recent amendment of SB 649, coupled with a similar amendment of AB 678, will ensure that if both bills are enacted, the new version of Section 977 will incorporate both the revisions made by SB 649 and the revisions made by AB 678. This amendment had no substantive impact on the Commission's proposal; the two bills affect different parts of Section 977 so they were easy to coordinate without impeding the substance of either bill. **The Commission should ratify the amendment of SB 649.**

With that recent amendment, SB 649 was passed by the Assembly Committee on Judiciary on the consent calendar. The bill has been sent to the Assembly floor, with the recommendation that it be placed on the consent calendar.

Respectfully submitted,

Brian Hebert
Executive Secretary

