

## Second Supplement to Memorandum 2008-12

### 2008 Legislative Program: Status of Bills

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#### AB 250 (DEVORE): REVOCABLE TRANSFER ON DEATH DEED

Assembly Bill 250 (Devore) would implement the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).

The bill has been amended consistent with the changes described in Memorandum 2007-59. One of those amendments needs to be reversed, for reasons described below. In addition, a small number of new amendments have been proposed. Those changes are also discussed below. All of the changes were provided to the Chair for review before being submitted to the author. **The staff recommends that they be ratified.**

#### Reversed Amendment

AB 250 had been amended to add a provision that would require the Judicial Council to provide information about the effect of the revocable TOD deed, on its Self-Help website.

The Judicial Council pointed out that its website is intended to provide information about court proceedings, not about law generally. They asked that the provision be removed. Assembly Member DeVore agreed to make that change. The staff concurred.

#### Changes to Notary Boilerplate

Civil Code Section 1189 provides standard language to be used for the notarization of instruments. That provision was amended last year, to add language about perjury. 2007 Cal. Stat. ch. 399. AB 250 will be amended to conform the proposed statutory deed and revocation forms to the new requirements of Section 1189.

## Department of Health Care Services

The Department of Health Care Services (“DHCS”) is responsible for seeking the reimbursement of Medi-Cal benefits from the estates of deceased recipients. An important step in that process is a notice of the recipient’s death, which must be given pursuant to Probate Code Section 215. DHCS asked that the advisory language, on the back of the statutory deed forms, be amended slightly to make clearer that the beneficiary of a revocable TOD deed is required to give notice under Section 215. **The staff has no objection to making those minor clarifying changes.** Amendment language was prepared to do so.

DHCS was also concerned that the statute of limitations for action under proposed Section 5676 might interfere with the state’s ability to bring actions for reimbursement of Medi-Cal benefits.

Section 5676 is a special creditor protection provision, which would allow a personal representative to retrieve property transferred by revocable TOD deed, in order to pay creditor claims. It only applies if there is a personal representative and a pending proceeding for administration of the decedent’s estate. In those cases, DHCS would file a creditor claim to be paid in the course of administration.

Section 5676 does not preclude a creditor (like DHCS) from filing a separate action against the beneficiary, if there is no pending estate administration. The timing rule in Section 5676 only limits action by the personal representative. It has no effect on the time in which DHCS may file a reimbursement claim directly against a beneficiary.

However, DHCS feels strongly that this issue needs to be addressed in the statute. It proposed language stating that Section 5676 has no effect on its remedies. **The staff has no substantive objection to the proposed language, which is probably necessary to avoid opposition to the bill by DHCS.** The language proposed by DHCS, which was modified slightly by the Legislative Counsel for clarity, is as follows:

Nothing in this subdivision affects the requirements of Section 215, any law which may toll the limitations period for the commencement of a Medi-Cal estate recovery action, or the time for commencement of an action by the Department of Health Care Services under Section 14009.5 of the Welfare and Institutions Code.

## **Report Date Extended to Preserve Intended Reporting Period**

The Assembly Committee on Judiciary had requested that AB 250 be amended to add a requirement that the Commission study the effectiveness of the revocable TOD deed and issue a report by January 1, 2012. At the time of that amendment, it was assumed that the bill would be enacted in 2007 and take effect on January 1, 2008. The provision would have required a report within four years after the bill took effect.

Because the bill was delayed and became a two-year bill, the deadline for the Commission report needs to be extended by one year. Otherwise, the report period would be shortened to three years. An amendment to extend the deadline to January 1, 2013, has been prepared.

### AB 1921 (SALDAÑA): RECODIFICATION OF CID LAW

In addition to the changes to AB 1921 discussed in the First Supplement to Memorandum 2008-12, the staff has provisionally agreed to a Comment revision to address a concern raised by the California Association of Community Managers.

The concern involves the verification of voter information on ballots cast in a member election. Existing Civil Code Section 1363.03(f) expressly provides that verification can take place *prior* to the meeting at which ballots are tabulated.

Proposed Civil Code Section 4650 is consistent with that rule, but doesn't state it directly. Subdivision (b) states that verification takes place "[prior] to opening and counting" the ballots. Subdivision (c) then requires that ballots be opened and counted at a board or member meeting. Nothing in Section 4650 requires that the verification take place at that meeting.

In the interest of avoiding any misunderstanding on that point, the staff suggested adding language to the Comment to proposed Section 4650, along the following lines:

The requirement that ballots be opened and counted at a meeting does not preclude verification under subdivision (b) before the meeting takes place. This continues part of the substance of former Section 1363.03(f).

This language should address CACM's concern, and is consistent with the intention to preserve existing law on that issue. **The staff recommends that the change be made.**

## SB 1691 (LOWENTHAL): RECODIFICATION OF CID LAW

Senate Bill 1691 (Lowenthal) would implement the Commission's recommendation on *Mechanics Lien Law* (Feb. 2008). The bill has been approved by the Senate and will be heard by the Assembly Committee on Judiciary on June 10, 2008.

New developments may require further amendment of the bill.

### **Objection to Substantive Change Relating to Subcontractor Discipline**

Due to the length and complexity of the bill, the Commission and the bill's author have generally agreed to reverse any substantive change that the bill would make to existing law, if that change proves controversial.

On May 8, 2008, the Commission received a comment objecting to a substantive change the bill would make relating to subcontractor discipline.

Under existing law (for both private and public work) a subcontractor who is to receive more than \$400 on a particular job must give preliminary notice, or face disciplinary action. See Civ. Code §§ 3097(h), 3098(b).

Those provisions were not continued in the proposed law. It was not clear that they served a useful purpose, because a subcontractor who does not give a preliminary notice faces other consequences — the loss of lien and stop payment notice rights. If a subcontractor cannot pursue those remedies, why require the preliminary notice?

However, we received a comment from a company that prepares preliminary notices for subcontractors. That company argued that the discipline provisions are necessary to *protect* a subcontractor.

The commenter notes that preliminary notices on a job (and the lien claims and stop payment notices that follow) can be major headaches for both the general contractor and the owner. If the discipline provisions are not continued, it would be much easier for a general contractor to pressure subcontractors not to give preliminary notices (and let it be known that those who do will not be hired). As long as the provisions remain in the law, however, a subcontractor can resist this pressure by responding that the subcontractor is *required* to give preliminary notice.

Given that we received a plausible policy objection to the proposed elimination of the discipline provisions, those provisions should be restored to SB 1691, consistent with our general practice on this bill.

To that end, the staff drafted amendment language and submitted it to the Chair for review. There was no objection, and the language was submitted to the bill author for the preparation of amendments.

**The staff recommends that the Commission ratify the following statute and Comment language, which would add the existing discipline procedures to SB 1691:**

**§ 8216. Subcontractor discipline**

8216. If the contract of a subcontractor on a particular work of improvement provides for payment to the subcontractor of more than four hundred dollars (\$400), the failure of that subcontractor, licensed under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this chapter, constitutes grounds for disciplinary action under the Contractors' State License Law.

**Comment.** Section 8216 continues the first paragraph of former Section 3097(h) without substantive change. See also Sections 8008 ("contract"), 8034 ("preliminary notice"), 8046 ("subcontractor"), 8050 ("work of improvement").

**§ 43060. Subcontractor discipline**

43060. If the contract of a subcontractor on a particular work of improvement provides for payment to the subcontractor of more than four hundred dollars (\$400), the failure of that subcontractor, licensed under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this chapter, constitutes grounds for disciplinary action under the Contractors' State License Law.

**Comment.** Section 43060 continues former Section 3098(b) without substantive change. See also Sections 41100 ("preliminary notice"), 41150 ("subcontractor"), 41170 ("work of improvement").

**Chaptering Conflict with SB 1449 (Calderon)**

Senate Bill 1449 (Calderon), which is presently pending in the Assembly, would add a new notice requirement for lien claimants.

Because the Commission's recodification of the existing mechanics lien statute would repeal the title in which the new provision would appear, there appears to be a conflict between the two bills.

SB 1691 should be amended to add coordinating language (which would preserve the substance of Senator Calderon's reform, within the framework of the Commission's proposed recodification, if Senator Calderon's bill is enacted).

However, there is a terminological issue that will need to be worked out with Senator Calderon before specific amendment language can be prepared.

**The staff requests that the Commission authorize the staff to develop appropriate language to make a coordinating amendment to SB 1691, to avoid a conflict with SB 1449.** The staff will provide that language to the Chair for review before any amendment is made.

Respectfully submitted,

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Executive Secretary