

First Supplement to Memorandum 89-85

Subject: Study L-828 - TOD Designation for Vehicles and Vessels (State Bar letter)

Attached to this Supplement as Exhibit 1 is a letter from the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section opposing the staff draft attached to the basic memo. The staff draft proposes adoption of the Missouri scheme permitting the owner of a vehicle or vessel to designate in the certificate of ownership the person who is to receive the property on the owner's death. The TOD proposal would be in addition to the existing affidavit procedure for taking title at the owner's death.

The Executive Committee makes four objections to the proposal, discussed in order.

Need for Proposal

The Executive Committee says the proposal is not needed since the existing affidavit procedure is so simple. But the proposal has two advantages over the affidavit procedure:

(1) It permits the owner to designate a TOD beneficiary without having to make a will solely for this purpose. Under the affidavit procedure, the owner has no control over who will get the vehicle or vessel unless the owner makes a will.

(2) Under the proposal, the property passes to the TOD beneficiary at the owner's death without regard to what other property may be in the owner's estate. The affidavit procedure may be used only if the owner has no other property necessitating probate. Health & Safety Code § 18102; Veh. Code §§ 5910, 9916.

Owner's Liability

The Executive Committee is concerned that the proposal does not address the liability problem that may occur when the owner designates a TOD beneficiary without the beneficiary's knowledge, the owner dies, and someone operating the vehicle or vessel has an accident, exposing the beneficiary to owner's liability. Owner's liability is imposed by Section 17150 of the Vehicle Code:

17150. Every owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner.

"Owner" in Section 17150 means "registered owner." See *Bunch v. Kin*, 2 Cal. App. 2d 81, 85, 37 P.2d 744 (1934). So it appears that a TOD beneficiary who is unaware that he or she has an interest in the vehicle cannot be held liable under Section 17150. We will add the following to the Comment to proposed Section 5910.5:

A beneficiary who becomes owner of a vehicle under this section is not subject to liability under Section 17150 until record ownership of the vehicle is transferred to the beneficiary. See *Bunch v. Kin*, 2 Cal. App. 2d 81, 85, 37 P.2d 744 (1934).

Complexity

The Executive Committee says the proposal would add complexity to the law by requiring reregistration of the vehicle or vessel to change the TOD beneficiary. However, reregistration is less complex than requiring the owner to redraft his or her will to change the beneficiary. This is the main benefit if the proposal.

If ownership of the vehicle or vessel is held in joint tenancy form and the owner wants to change the intended beneficiary (joint tenant), the owner must reregister the vehicle to show the new joint tenant. The reregistration required under the TOD proposal is no more onerous than the reregistration now required to change a joint tenant.

Liability of Beneficiary to Decedent's Creditors

The Executive Committee is concerned that the proposal does not deal with the beneficiary's liability to creditors of the decedent. We could add the following language, drawn from the Trust Law, to proposed Health and Safety Code Section 18012.2 and to proposed Vehicle Code Sections 5910.5 and 9916.5:

The [manufactured home, mobilehome, commercial coach, truck camper, floating home, vehicle, or vessel] is subject to the claims of creditors of the decedent's estate and to the expenses of administration of the estate to the extent that the decedent's estate is inadequate to satisfy those claims and expenses.

The Comment would note that this provision is drawn from Section 18201 (revocable inter vivos trusts), and is consistent with the law applicable to general testamentary powers of appointment (Civ. Code § 1390.3(b)).

On the other hand, it is not consistent with the rule of no liability applicable to life insurance (Prob. Code § 160), multiple-party accounts in financial institutions (*id.* § 5302), and joint tenancies in real and personal property (such as securities) (see *Kilfoy v. Fritz*, 125 Cal. App. 2d 291, 294, 270 P.2d 579 (1954) (bank account); *People v. Nogarr*, 164 Cal. App. 2d 591, 330 P.2d 858 (1958) (real property); *Zeigler v. Bonnell*, 52 Cal. App. 2d 217, 220, 126 P.2d 118 (1942) (real property)).

Respectfully submitted,

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REPLY TO:

California Law Revision Commission
4000 Middlefield Road, #D-2
Palo Alto, California 94303-4739

RE: CALIFORNIA LAW REVISION COMMISSION MEMO 89-85 RE
TOD DESIGNATION FOR VEHICLES AND VESSELS

Dear Commissioners:

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California has serious concerns about this proposal and believes it should be opposed.

This proposal is a good example of creating problems when none need to be solved by cluttering the legislative scheme for non-probate transfers with too many alternatives, some of which appear to conflict with each other. There is no need for a new way to transfer vehicles and vessels at death. The current affidavit forms are simple and easy to use. Probate is not needed for small or modest estates. This new proposal does not address how this procedure is to relate, if at all, to the other procedures available.

Perhaps our most serious concern is one of potential liability of the designated beneficiaries. A designated beneficiary does not need to know that his or her name has been added to the registration of a vehicle or vessel. Upon the death of the "owner", the beneficiary automatically becomes the new owner. This is true whether or not the beneficiary ever learns of the ownership or takes possession of the vehicle or vessel. As the new owner, the beneficiary automatically becomes subject to owner's liability. This can be a big problem, which is not addressed at all in this proposed legislation.

Like the TOD Securities law, we believe this proposal will add further complexity to an area of the law that is already complex. It will complicate simple estate plans for modest estates. Registrations under the proposed legislation are not subject to Wills, and presumably are unable to benefit from the benefits of the anti-lapse provisions of the Probate Code. The TOD designation means that any change in beneficiary requires reregistration of the vehicle or vessel.

Finally, we are concerned that this proposal does not attempt to deal with the issue of creditors. Unlike the affidavit procedures adopted previously, there is no option on the part of the beneficiary to seek probate administration in order to deal with and resolve creditors' claims.

In short, the affidavit alternatives to probate administration work well. We see no reason to depart from that method of transferring title to vehicles or vessels at death. On the contrary, this proposed legislation is not well thought out and introduces potential problems to the transfer of vehicles. Thus, we suggest the Commission disapprove of this memorandum.

Sincerely,


Valerie J. Merritt

cc: James V. Quillinan
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