

Admin.

September 9, 2002

First Supplement to Memorandum 2002-38

New Topics and Priorities

MEDI-CAL LIEN ON PROPERTY PASSING BY JOINT TENANCY

Richard Haeussler, of Newport Beach, writes to suggest that recordation of an affidavit of death of a joint tenant should trigger a process whereby the Department of Health Services (DHS) receives notice and is required to file any Medi-Cal lien claims. Exhibit p. 1.

Under the proposed scheme:

- (1) The surviving joint tenant would pay a fee to cover recording the affidavit of death, notification of DHS, and recording any liens asserted.
- (2) The recorder would have the duty to notify DHS of the death of the joint tenant.
- (3) DHS would have 90 days to record its notice of lien.
- (4) A DHS lien would not be collectible until the death of the second joint tenant.

The reason for this proposal is that “Many people are now going IN PRO PER and these notices are not being filed.”

While such a scheme might make sense, the staff believes the Commission has too many other projects on its platter at the moment. **We would forward Mr. Haeussler’s suggestion to DHS, which may well want to pursue the concept.**

PROTECTION OF PERSONAL INFORMATION

Background

Memorandum 2002-38 notes that Assembly Member Papan’s ACR 125 directs the Commission to study, report on, and prepare recommended legislation concerning the protection of personal information relating to or arising out of financial transactions. The memorandum also notes that the study is contingent on funding in the 2002-03 budget, but that the budget bill no longer includes funding. “Unless there is a change at the time the budget is enacted, the funding precondition is not satisfied, and a study by the Commission is not authorized.”

It now appears such a change did occur. At the same time the Legislature adopted the budget, it also adopted a trailer bill — AB 1768 — which includes the following provision:

SEC. 22. Notwithstanding any other provision of law, the amount appropriated in Item 8830-001-0001 of Section 2.00 of the Budget Act of 2002 is \$630,000, and the amount appropriated in Schedule (1) of that item is \$645,000.

The effect of this provision would be to augment the Commission's budget by \$75,000. The Governor has not yet acted on AB 1768.

Earlier in the budget process, the Assembly Budget Subcommittee asked us for an estimate of the cost to do this project. We provided them an estimate of \$150,000 over a two-year period — \$75,000 in the '02-'03 fiscal year and \$75,000 in the '03-'04 fiscal year. The Assembly augmented the Commission's '02-'03 budget by \$75,000 and the budget Conference Committee did the same, but subsequently deleted the augmentation from the budget bill. The augmentation has now resurfaced in the trailer bill.

ACR 125 (Papan) — Protection of Personal Information

The text of ACR 125 as adopted by the Legislature is set out below.

WHEREAS, The Financial Services Modernization Act, commonly know as the Gramm-Leach-Bliley Act, became law in 1999, and reformed the laws that define and regulate the structure of the financial services industry; and

WHEREAS, The Gramm-Leach-Bliley Act greatly liberalized the ways that financial institutions were permitted to share nonpublic personal information, and has, in turn, highlighted the extent to which various entities buy, sell, and use nonpublic personal information; and

WHEREAS, The Gramm-Leach-Bliley Act does not provide a comprehensive framework by which citizens may control access to their nonpublic personal information, but instead explicitly permits the states to enact laws that provide for greater protection of the privacy of nonpublic personal information; and

WHEREAS, The citizens of California have indicated their great concern with this issue, and have made clear their overwhelming desire to have control over the disclosure of their nonpublic personal information; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation by January 1, 2005, if funding is provided

in the 2002-03 Budget Act specifically for this purpose, concerning the protection of personal information relating to, or arising out of, financial transactions, and that this legislation shall accomplish the following objectives:

(a) Provide consumers with notice and the opportunity to protect and control the dissemination of their personal information by, and between, companies and their affiliates and non-affiliated third parties;

(b) Authorize and direct affected regulators to prepare regulations that will recognize the inviolability and confidentiality of a consumer's personal information and the legitimate needs of entities that lawfully use the information to engage in commerce at the behest of consumers or for their benefit;

(c) Assure that regulated entities will be treated in a manner so that, regardless of size, an individual business, holding company, or affiliate will not enjoy any greater advantage or suffer any burden that is greater than any other regulated entity;

(d) Be compatible with, and withstand any preemption by, the Gramm-Leach-Bliley Act or the federal Fair Credit Reporting Act;

(e) Provide for civil remedies and administrative and civil penalties for a violation of the recommended legislation, including, but not limited to, attorney's fees, costs, actual and compensatory damages, and exemplary damages, including, but not limited to, relief as provided pursuant to Article 3 (commencing with Section 3294) of Chapter 1 of Title 2 of Part 1 of Division 4 of the Civil Code, and as provided in unfair business practices actions brought under Article 1 (commencing with Section 17000) of Chapter 4 of Part 2 of Division 7 of the Business and Professions Code; and be it further

Resolved, That it is not the intent of the Legislature that enactment of this measure restrict the introduction, passage, or operation of legislation relating to the financial service industry or related privacy issues; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the California Law Revision Commission and to the author for appropriate distribution.

The subject of ACR 125 — protection of personal information relating to or arising out of financial transactions — has been one of the most highly contentious and highly publicized matters in the Legislature during the past two years.

Law Revision Commission's Authority

The Commission may not study a topic unless the study has been authorized by the Legislature. Has the Legislature actually authorized this one? The

concurrent resolution assigns the study to the Commission only “if funding is provided in the 2002-03 Budget Act specifically for this purpose.”

AB 1768 does not appear to provide funding “specifically for [the] purpose” of the study. The staff understands it was the intention of AB 1768 to provide funding for the study. But is that enough, given the express language of ACR 125?

In other circumstances, we might well conclude that the Legislature intended the study to be done, and get on with it. But in this case, given the highly contentious politics surrounding not only the underlying issues, but even the adoption of ACR 125 itself, the staff would not want to see the Commission’s efforts undermined by arguments over the Commission’s jurisdiction.

The staff plans to take steps to ensure that there is documentation in the record of the specific purpose of the AB 1768 augmentation (assuming that the Governor signs the bill). Meanwhile, the staff would begin to do some background work on the study. We will need to give this a priority — the resolution calls for our report by January 1, 2005.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

Date: Sun, 8 Sep 2002 11:37:16 -0700
To: nsterling@clrc.ca.gov
From: "Richard L. Haeussler" <haeu@ix.netcom.com>
Subject: Notices of Death for Medi-Cal Aff. of Death of Joint Tenant

RICHARD HAEUSSLER
P. O. Box 10757
Newport Beach, CA 92585-5007
714-641-9110; FAX 714-641-5016
haeu@ix.netcom.com

Calif Probate Code 215, 19202 and others provides that a notice of death be provided to the Dept of Health Services on the death of the Medi-Cal receiptant. Many people are now going IN PRO PER and these notices are not being filed.

I believe that a special requirement on county recorders be imposed when an affidavit of death of a Joint Tenant or death of a Husband and Wife with rights of survivorship form is filed. The County Recorder would be required to receive an original and one copy of the ADJT and the copy would be mailed by the County Recorder to the DHS.

The DHS would then have 90 days to file a Notice of Lien for the amount spent or a Notice of Lien Clearance if there is no sum owed with the county Recorder as against the property with a copy going to the surviving Joint Tenant.

The Recorder would collect at the time of acceptance of the ADJT the cost of mailing the Aff. of Death JT to the DHS and of recording the Notice of DHS Lien or of Lien Clearance when it was returned by the DHS.

In the case of the first to die, the lien would not yet be collectable until the second to die. It would put the heirs on notice by the title company and avoid any Probate Code 19203 problems.

Richard Haeussler