

Second Supplement to Memorandum 2006-38

Topic (Material Received at Meeting)

The following material was received by the Commission at the meeting on October 27, 2006, in connection with Study L-3032 on beneficiary deeds, and is attached as an Exhibit:

- Exhibit p.*
- Sarah Shena, Kings/Tulare Area Agency on Aging (10/24/06)1
- David Mandel, Senior Legal Hotline (10/25/06)3

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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.

Exhibit

COMMENTS OF SARAH SHENA

From: SShena@tularehhsa.org
Subject: Revocable Transfer on Death Deed
Date: October 24, 2006
To: sterling@clrc.ca.gov

Dear Mr. Sterling:

As I wrote in an earlier letter, I am the only attorney at the Kings/Tulare Area Agency on Aging. With no staff I offer free legal services to 65,000 seniors in Tulare and Kings Counties. Now that the baby boomers are turning 60, my client base is growing rapidly.

I agree with David Mandel's October 22, 2006 letter.

In particular, though, I would like the Commission to know that some of the most difficult (and sad) cases I have seen have involved house transactions of some type (e.g., trusts or deeds) that have unintended consequences.

In most of those cases a surviving spouse was either unable to remain in the home, or was forced to get along with a new co-owner, when the decedent had actually intended that the surviving spouse be able to remain in the home, unencumbered by the wishes of a new joint owner.

As stated by Mr. Mandel, I believe the Commission has worked hard to balance the realities of any new forms with the needs of many of California's low-income homeowners. I appreciate all of your efforts.

I agree with Mr. Mandel, also, that rewriting Section 5662 as he recommends, and having a second model deed (for use by joint owners) will better serve needy Californians than the plan currently recommended by the Commission.

Thanks to you and everyone who has been working on this project. When I tell clients that you are working on it, as I often do, they are grateful. They are somewhat amazed to know that someone is crafting laws meant to benefit them.

Sincerely,

Sarah Shena, Esq.

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COMMENTS OF DAVID MANDEL

From: dmandel@lsnc.net
Subject: RE: Estate Planning Message
Date: October 25, 2006
To: sterling@clrc.ca.gov

Nat:

Thanks for getting right to it, digesting and commenting. We'll agree to respectfully disagree on the conclusion, and I'll just add one factual quibble to your characterizations of the CJA and ExCom opinions on the subject:

I don't recall that either of them expressed a belief contrary to mine, which is that most joint owners of property in survivorship form would want it to pass fully to the other joint owner and not to a jointly named beneficiary via a TOD deed. In fact I'm quite confident they would agree with me on this. Their different conclusions stemmed, I surmise, from

- 1) wanting to avoid the rather severe consequences that could result in a case where this typical wish is not true and where the default I suggest seemed to have been accepted inadvertently or there is ambiguity in the instrument. This would be an example of the CJA reference that a "common source of litigation is the attempt of a surviving spouse to change a disposition made by a deceased spouse."

- 2) not wanting to make the model deed form more complicated.

The CJA's proposed solution is to disallow or at least discourage use by joint owners. I think that would do a great disservice to a very large segment of the public for whom this is meant in the first place.

ExCom would allow a choice. I agree, adding (aside from all the explanatory verbiage) only that the best way to do it is with a second deed form.

David