

First Supplement to Memorandum 2007-9

Legislative Program: Status of Bills

This supplement discusses further developments regarding AB 250 (DeVore) (revocable TOD deed) and SB 649 (Committee on the Judiciary) (trial court restructuring). A letter of opposition to AB 250 (DeVore) is attached as an exhibit.

AB 250 (DEVORE) — REVOCABLE TOD DEED

AB 250 (DeVore) is opposed by the California Association of Public Administrators, Public Guardians, and Public Conservators (the "Public Administrators"). See Exhibit p. 1.

Under existing law, if a person dies intestate and without anyone to serve as personal representative, the public administrator (a county employee) acts as the decedent's personal representative. The public administrator will make arrangements for disposal of remains, take possession of the decedent's property, and administer the estate. See generally Probate Code Sections 7600 to 7666.

The public administrator is entitled to compensation. The fee is the greater of \$1,000 or the amount that a private personal representative would receive (under Probate Code Section 10800). The county counsel is entitled to the same compensation for services relating to administration of the estate. See Probate Code Section 7666.

The Public Administrators are concerned that there will be cases in which the only significant asset available to pay the costs of administration is the decedent's house. If the house is part of the decedent's estate, it can be sold during administration of the estate, with the proceeds used to pay the costs of administration. The proceeds of sale may also be used to pay other creditor claims (most importantly for our present purposes, a Medi-Cal reimbursement claim).

If, however, the house has been transferred by revocable TOD deed, it will not be part of the estate being administered. The Public Administrators believe

they would need to initiate a separate civil proceeding against the beneficiary of the revocable TOD deed, at county expense, in order to collect fees and satisfy creditors:

While AB 250 dictates that the beneficiary of a TOD is still responsible for any debts associated with the estate, there is no mechanism, outside of civil action, for collecting outstanding debt. PA offices [and counties cannot] afford to pay for a civil proceeding to collect debt that would have otherwise been awarded in the probate process.

See Exhibit p. 1.

It is not clear whether the Public Administrators' opposition takes proposed Section 5676 into account. That section would provide for an action by a personal representative (which would include a public administrator) to compel the restitution to the estate of the property transferred by a revocable TOD deed (or its value) to the extent necessary to pay creditors.

The staff contacted the Public Administrators to point out the collection mechanism provided in Section 5676 and to inquire whether that mechanism would adequately address their concerns. We have not yet received a response.

AB 250 is scheduled to be heard by the Assembly Appropriations committee on April 25, 2007. The concern raised by the Public Administrators, especially as it bears on the collection of Medi-Cal reimbursement (a source of revenue to the state) will probably be considered at that hearing. The staff will report orally on the status of the bill at the Commission's April meeting.

SB 649 (COMMITTEE ON JUDICIARY) — STATUTES MADE OBSOLETE BY TRIAL
COURT RESTRUCTURING: PART 3

Senate Bill 649 (Committee on Judiciary) would implement the Commission's recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Dec. 2006). Among the reforms included in that recommendation is an amendment of Government Code Section 71601, which defines various terms for purposes of the Trial Court Employment Protection and Governance Act. The proposed amendment would make the following technical corrections:

- (1) Delete an obsolete municipal court reference in the definition of "trial court."
- (2) Revise the definition of "subordinate judicial officer" to refer to three types of subordinate judicial officers not currently enumerated (a child support commissioner, a traffic trial

commissioner, and a juvenile hearing officer). For consistency with Article VI, Section 21 of the California Constitution, the amendment would also replace the reference to a “judge pro tempore” with the phrase “temporary judge.”

While SB 649 was pending in the Senate Committee on Judiciary, the Judicial Council raised concern about replacing the reference to a “judge pro tempore” with the phrase “temporary judge.” The Council took the position that Section 71601 should never have included a “judge pro tempore” within the definition of a “subordinate judicial officer.” The Council requested that the reference to “judge pro tempore” be deleted without being replaced.

Such a reform would have gone beyond the scope of the Commission’s study. The Commission just recommended technical corrections to the existing definition of a “subordinate judicial officer;” it did not study whether Section 71601 should have included a “judge pro tempore” (aka “temporary judge”) within that definition in the first place.

When the Judicial Council made this request, three other bills to amend Government Code Section 71601 were also pending: AB 299 (Tran), AB 163 (Mendoza), and AB 276 (Solorio). Like SB 649, each of those bills proposed to delete the obsolete municipal court reference. At least one of those bills — the Maintenance of the Codes bill drafted by Legislative Counsel and authored by Assembly Member Tran — is likely to be enacted.

Thus, the technical corrections relating to the definition of “subordinate judicial officer” are the only unique aspect of the Commission’s proposed amendment of Section 71601. Given the issue raised by the Judicial Council, and the prospect of a four-way bill conflict necessitating complicated amendments to coordinate the bills, it did not appear worthwhile to proceed with that amendment this year. The amount of effort required to make the technical corrections in the definition of “subordinate judicial officer” would be disproportionate to the potential benefits of implementing those corrections.

Consequently, SB 649 was amended with the approval of the Commission Chair to delete the proposed amendment of Government Code Section 71601. The bill was then passed by the Senate Committee on Judiciary on the consent calendar. It has since been passed by the Senate, also on the consent calendar, and is now pending in the Assembly.

In light of these circumstances, the Commission should **ratify the decision to delete the amendment of Government Code Section 71601 from SB 649.** The

Commission is continuing to work on trial court restructuring, and might have another bill on the subject next year. That might be a more opportune time to seek enactment of the Commission's proposed technical corrections to the definition of "subordinate judicial officer."

Respectfully submitted,

Brian Hebert
Executive Secretary

Edelstein and Gilbert

April 18, 2007

*Alan L. Edelstein**Donald B. Gilbert**Michael R. Robson**Trent E. Smith***TO:** Honorable Members of the Assembly Appropriations Committee**FROM:** Alan Edelstein, Don Gilbert, Mike Robson, and Trent Smith**RE:** **AB 250 (DeVore) -- OPPOSED**

Our client, the California Association of Public Administrators, Public Guardians, and Public Conservators, opposes AB 250 by Assemblyman DeVore. This bill would create a revocable transfer on death deed (TOD), which would transfer real property on the death of its owner without a probate proceeding. By eliminating the probate process this bill will jeopardize a Public Administrator's (PA's) ability to recover its costs for administering the estate of the deceased. This would have a significant negative financial impact on counties. In addition, this measure will likely threaten the ability of creditors, not the least of which is the California Department of Health Care Services (DHCS), from collecting debts associated with the estate.

PA's are county employees that investigate and may administer the estate of a person who dies without a will or without an appropriate person willing or able to act as administrator. PA's are charged with protecting a decedent's property from waste, loss or theft, making appropriate burial arrangements, paying a decedent's bills and taxes, and locating any assets and people who may be entitled to receive inheritance. Under current law, PA's are allowed to collect statutorily prescribed fees from the estate to cover the cost of these services. While these fees rarely cover the actual costs of the service, they are vital to supporting the program.

Currently, a PA is assured of payment from the estate through the probate process. A TOD as outlined in AB 250 removes the probate process. While AB 250 dictates that the beneficiary of a TOD is still responsible for any debts associated with the estate, there is no mechanism, outside of civil action, for collecting outstanding debt. PA offices, nor counties, can afford to pay for a civil proceeding to collect debt that would have otherwise been awarded in the probate process.

In addition to counties, the state will likely lose a substantial amount of revenue in TOD cases without a probate process. PA's often administrate estates of people who for several years received MediCal services. MediCal recipients are allowed to receive services based on income eligibility standards that do not account for assets such as a home. This eligibility process allows a MediCal recipient to keep and live in his or her home. However, once the homeowner dies DHCS collects from the estate the costs of the MediCal services provided. PA's are required to notify and collect the money for DHCS through the probate process. However, under AB 250, the probate process is eliminated in TOD situations, requiring either the PA or DHCS to file a costly civil suit to collect from an uncooperative TOD beneficiary. Short of civil action, DHCS, and therefore the State, will lose revenue it is otherwise entitled to.

For the aforementioned reasons, our client, the California Association of Public Administrators, Public Guardians, and Public Conservators, respectfully requests your "NO" vote on AB 250.

cc: ✓ Honorable Chuck DeVore
Consultant, Assembly Appropriations Committee
Consultant, Assembly Republican Caucus