

Admin.

April 1, 2010

Memorandum 2010-12

New Topics and Priorities

In Memorandum 2009-38, the Commission considered new topics and priorities for its work in 2010. That memorandum noted the following possible topic of study:

Creditor's Rights Against Nonprobate Assets

A nonprobate transfer passes property outside the probate system. As the use of nonprobate transfers in estate planning has increased, the proper treatment of a decedent's creditors has emerged as a major concern.

The Commission recently examined such issues in the context of a revocable transfer on death deed. See *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103, 185-91 (2006). The Commission has not addressed the treatment of a decedent's creditors in the context of other types of nonprobate transfers, such as a revocable trust.

In October 2007, the Commission accepted an offer from the Commission's former Executive Secretary, Nathaniel Sterling, to prepare a background study on this topic. Mr. Sterling has been making progress on his report and expects to complete it by next spring. **The Commission should begin work on this topic soon after he finalizes his report**, so that the report does not become stale before the Commission considers it.

Application of Family Protection Provisions to Nonprobate Transfers

Should the various family protections applicable to an estate in probate, such as the share of an omitted spouse or the probate homestead, be applied to nonprobate assets? This is another important area that the Commission is well-suited to study. Again, the Commission recently considered such issues in the context of a revocable transfer on death deed. See *TOD Deed, supra*, 36 Cal. L. Revision Comm'n Reports at 182-85. However, the Commission determined at that time that "the problem should be addressed globally, not in the context of an individual type of nonprobate transfer instrument." *Id.* at 185.

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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

The background study Mr. Sterling is preparing will also address this topic.

Memorandum 2009-38, p. 8 (emphasis in original).

That memorandum was considered at the Commission's October 2009 meeting. The Minutes for that meeting report the following Commission decision:

After Nathaniel Sterling completes his background study, commence work on creditors' rights against nonprobate assets and application of family protection provisions to nonprobate transfers.

Minutes (Oct. 2010), p. 4.

The staff spoke with Mr. Sterling recently. He expects that the background study will be finished and submitted to the Commission soon, perhaps before the end of April.

Consistent with the Commission's decision on this matter, the staff intends to commence work on this study as soon as we receive the background study. The first step would be to put the background study into standard form and present it to the Commission as an attachment to an introductory memorandum.

Respectfully submitted,

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Executive Secretary