

First Supplement to Memorandum 2019-28

Revocable Transfer on Death Deed: Follow-Up Study (Draft Tentative Recommendation)

Memorandum 2019-28¹ presented a staff draft tentative recommendation regarding the revocable transfer on death deed (“RTODD”) statute. This supplement discusses two minor issues related to the draft.

VOLUNTARY PROPERTY RETURN

Proposed Probate Code Section 5678 would provide that a beneficiary of an RTODD has the option of returning RTODD property to the estate for administration (hereafter, “voluntary return provision”).

In drafting that provision, the staff omitted language that should perhaps be included. That point is discussed below.

Background

With respect to creditor claim issues, the RTODD study is paralleling a separate study of similar issues in existing procedures for the disposition of a decedent’s estate without administration (hereafter, “disposition without administration” statutes).²

The Commission has provisionally decided to include a voluntary return provision in the disposition without administration statutes.³

In doing so, the Commission also decided to apply an adjustment mechanism. Under that mechanism, a person who returns property to the decedent’s estate will either be reimbursed (for an increase in the property’s value before its return) or assessed an additional charge (for any decrease in the

1. 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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. CLRC Study L-4130.3.

3. See proposed Prob. Code § 13205.5; Memorandum 2019-5; Minutes (Feb. 2019), pp. 8-9.

property's value before its return).⁴ For example, if the person who returns property under the voluntary return provision had already made payments toward a debt that is secured against the property, those payments would be reimbursed by the estate.

If the person is to be reimbursed, that payment would be given the highest payment priority, as compared to other obligations of the estate (i.e., the reimbursement obligation would be treated as an expense of administration; those expenses are paid before other lower priority obligations) (hereafter "reimbursement priority rule").⁵ In the example above, the reimbursement of the payments toward a secured debt would be given priority over the payment of creditor claims (which have a lower statutory priority than expenses of administration).

In the voluntary return provision that is included in the draft tentative recommendation regarding RTODDs (proposed Section 5678), the staff included an adjustment mechanism similar to the one described above. *However, the staff did not include the reimbursement priority rule.* Thus, an RTODD beneficiary who voluntarily returns property for administration would be reimbursed for any payments made toward secured debts before returning the property, but the law would provide no guidance on the priority to be assigned to that reimbursement.

Discussion

The Commission's Minutes make no mention of adding a reimbursement priority rule to the RTODD statute's voluntary return provision. Nor does the staff recall any discussion of that possibility.

In discussing the reimbursement priority rule that was added to the disposition without administration statutes, the staff wrote:

[A]ny reimbursement owed to a successor should be paid with a higher priority than creditor claims or family protections. The value that the successor added to the property before its return to the estate never belonged to the decedent and was never liable for the decedent's obligations. Nor was it a gift from the successor to the decedent's estate.

The staff believes that the same principle would apply equally to an RTODD beneficiary who increases the value of property before voluntarily returning it to

4. See First Supplement to Memorandum 2019-5, pp. 2-3.

5. *Id.* at 4.

the estate. With respect to reimbursement priority, the staff does not see any material distinction between an RTODD beneficiary and a person who takes property under one of the disposition without administration statutes. In either case, the person who increases the value of returned property has added their own property to the estate. That added property should not be used to pay estate obligations.

For those reasons, the staff recommends that the staff draft tentative recommendation be revised to add a reimbursement priority provision to proposed Section 5678, by adding the language shown in underscore below:

5678. (a) If proceedings for the administration of the transferor's estate are commenced, a beneficiary who receives property from the transferor under a revocable transfer on death deed may voluntarily return that property to the transferor's estate for administration.

(b) Property returned to the transferor's estate under this section shall be treated as if it had been specifically devised to the beneficiary by the transferor.

(c) If the beneficiary's action or inaction increased the value of property returned to the estate or decreased the estate's obligations, the estate shall reimburse the beneficiary by the same amount. For the purposes of Section 11420, this reimbursement shall be deemed an expense of administration. Actions or inaction that increase the value of returned property or decrease the estate's obligations include, but are not necessarily limited to, the following actions:

(1) A payment toward an unsecured debt of the decedent.

(2) A payment toward a debt secured against the returned property.

(3) A significant improvement of the returned property that increased the fair market value of the property.

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TYPOGRAPHICAL ERROR

There is a typographical error in the staff draft tentative recommendation. The Comment to proposed new Probate Code Section 5676 erroneously refers to Section 5610. It should have referred to Section 5676. The staff will correct the error before releasing the tentative recommendation.

Respectfully submitted,

Brian Hebert
Executive Director