

MARY PAT TOUPS

EMERITUS ATTORNEY

3467B Bahia Blanca West
Laguna Woods, California
92637

Te.l. (949) 707-5861

Fax (949) 457-9233

Email toupsmp@fea.net

www.TRANSFER-ON-DEATH-DEEDS.COM

Date: February 28, 2006
To: David W. Wilder, Triple A Council of California
From: Mary Pat Toups, Emeritus Attorney *Mary Pat Toups*
Re: Report on the Revocable Transfer-on-Death Beneficiary Deed

Thank you for your phone call of February 27, 2006. I will be staying at the Vagabond Inn, 909 Third Street, Sacramento (phone 916-446-1481) on Wednesday, March 15 and Thursday, March 16, departing on Friday, March 17, 2006. I look forward to reporting to the Triple A Council of California at 9:15am on Thursday, March 16, 2006.

A brief outline of what I will cover follows:

1. Revocable Transfer-on-Death Beneficiary Deed -- what is it & why it is needed in California --- to avoid expenses of a Trust, and of Probate, and Capital Gains Taxes.
2. Opposition --- the Trust & Probate lawyers, (who I believe are guarding their wallets), with the experienced lobbyist of The State Bar of California.
3. Progress of the California Law Revision Commission, who are studying this subject, to make recommendations to the Legislature, in November or December of 2006. (Most Statutes drafted by the Commission have been passed by the Legislature, and signed by the Governor.)
4. Why letters and/or signatures to the Petition of the REVOCABLE TRANSFER-ON-DEATH BENEFICIARY DEED are important. They are sent to the California Law Revision Commission. Each letter and Petition is copied to distribute to the entire Commission, and to the public, and remains a part of the Legislative History of this Deed.
5. Will TACC Members take this message home with them to educate the Seniors in their Areas?
6. Necessary actions to be taken after the Commission has recommended a Statute to the California Legislature. Letters to Legislators asking support, and asking every Legislator to Co-Sponsor the bills that will be filed by Assemblyman Chuck DeVore in the Assembly, and by a Senator in the Senate.

Enclosures (6)

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Date: February 25, 2006
To: Sandra Fitzpatrick, Executive Director, CA Commission on Aging
Hav Staggs, President, Triple A Council of California
From: Mary Pat Toups, Emeritus Attorney *Mary Pat Toups*
Re: Revocable Transfer-on-Death Beneficiary Deed - needed legislation

The California Legislature has mandated that the California Law Revision Commission (CLRC) study statutes in other states that establish beneficiary deeds as a means of conveying real property through nonprobate transfers, and to determine whether legislation establishing beneficiary deeds should be enacted in California, and, if recommended, the content of the proposed statute, before January 1, 2007.

This Deed would allow the homeowner to avoid the expenses of a Trust, and would spare their loved ones the time and costs of Probate. Upon sale of the home NO Capital Gains Taxes would be paid.

The opponents, the Trust and Probate lawyers, are protecting their own wallets, to the detriment of their clients, many of whom are Cash Poor, but House Rich. The CLRC welcomes Citizens input.

I include a copy of a Petition that many Seniors have signed and sent to the CLRC, and a copy of my FACT SHEET. I am a self-funded, unpaid, lobbyist. My only agenda is to help the Cash Poor - House Rich homeowners.

May I appear before a meeting of the TAAC to report on this Deed?

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FACT SHEET

REVOCABLE TRANSFER-ON-DEATH BENEFICIARY DEED

Since 1995 seven states have passed new laws which allow the homeowner to avoid Probate, and avoid the expenses of a Trust, providing the homeowner with a method of leaving real estate to their heirs by use of an inexpensive Revocable Transfer-on-Death Beneficiary Deed. The seven states are: Arizona, Colorado, Kansas, Missouri, Nevada, New Mexico, and Ohio. More states will undoubtedly pass such laws in 2005 and after. Take a look at www.nonprobate.com

When the homeowner dies, title to the real estate passes to the beneficiary or beneficiaries, named in the Transfer-on-Death Deed, similarly to how title passes in a Joint Tenancy Deed. No Probate is needed. This Deed avoids Capital Gains Taxes.

This Revocable Transfer-on-Death Beneficiary Deed, can be revoked. This avoids the problems that exist when the homeowner now adds her son, her daughter, or her grandson to her deed. If son's wife sues for divorce, the home becomes a part of the divorce. If daughter's creditors cannot collect from daughter, the creditors lien the home. If grandson files for bankruptcy the home is part of the bankruptcy. If the homeowner changes her mind and asks her loved ones to give the home back to her, they can refuse, and frequently do refuse. Although the Beneficiaries are named in a Revocable Transfer-on-Death Beneficiary Deed, they have NO ownership rights to the home until after the death of the homeowner.

The real estate can be refused by the Beneficiary through a Disclaimer of Interest form. The rights of creditors, as well as debtors, are protected by this deed.

This transfer of real estate is similar to Transfer-on-Death (TOD) statutes previously enacted by state legislatures relating to other types of assets (i.e. Security Accounts, Bank Accounts, Cars, Boats, Mobile Homes, and Retirement Accounts).

Assembly Bill "AB12 Beneficiary Deeds" was drafted to create a Revocable Transfer-on-Death Beneficiary Deed for Californians. "AB 12" mandates that the California Law Revision Commission study this concept and make detailed recommendations to the California Legislature. The Commission welcomes Citizens' input. Please write a letter to the California Law Revision Commission, 4000 Middlefield Road, Room D-1, Palo Alto, CA 94303-4739. If you want California to have a Revocable Transfer-on-Death Beneficiary Deed, please tell them so, now.

Take a look at my website at www.TRANSFER-ON-DEATH-DEEDS.COM

REVOCABLE TRANSFER-ON-DEATH BENEFICIARY DEED

This Petition will be mailed to the CALIFORNIA LAW REVISION COMMISSION, 4000 Midlefield Road, Room D-1, Palo Alto, CA 94303-4739.

Signers of this Petition request that the Commission recommend to the California Legislature the enactment of a new law that would allow Californians to transfer real estate to a beneficiary on the death of the property owner without probate. Several states have such a non-probate real estate transfer law.

This REVOCABLE TRANSFER-ON-DEATH BENEFICIARY DEED would allow the homeowner to avoid the expenses of Probate, a Trust, and Capital Gains Taxes.

The first name is to be used as an example.

NAME:

ADDRESS

1. Mary Pat Toups 3467B - Bahia Blanca West
Mary Pat Toups Laguna Woods, CA, 92637

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Date: November, 2005
To: Senior Citizen's Legal Advocacy Programs, Older Americans Act
From: Mary Pat Touns, Emeritus Attorney
Re: Help for the Cash Poor Homeowners Who Need a Beneficiary Deed

As a Legal Services lawyer I have repeatedly wanted to help Cash Poor Homeowners who come in saying they cannot afford a Trust, and yet they do not want their loved ones to have to pay the costs of probate. I am sure you have also.

I used to tell them that 7 states: Arizona, Colorado, Kansas, Missouri, Nevada, New Mexico, and Ohio have Revocable Transfer-on-Death Beneficiary Deed statutes that allow the homeowner to hold their property in their own name until they die, while listing on the Deed the named Beneficiary who takes the property at death, with no probate. Recently Arkansas passed such a statute.

But I had to tell my clients that California has no such statute. And my office does not draft Trusts. Finally I decided I must pursue such legislation through the California Legislature, although I knew of the powerful opposition of the Trust/Probate lawyers of California.

My Assemblyman Chuck DeVore, 70th District, Orange County, understood the problem, and filed AB12 Beneficiary Deeds the day he was sworn in, 12/6/04.

As expected the Trust/Probate lawyers, with the state bar professional lobbyist fought bitterly, so we modified AB12 to mandate that the subject be studied by the California Law Revision Commission to report to the Legislature January, 2007.

I am aware that the Trust/Probate lawyers will try to persuade the Commission that the Beneficiary Deed is a bad idea. I have attended all the Commission meetings, since July 14, 2005, and will continue to do so during 2006.

The Commission welcomes public participation in its process. I hope you will write a letter to the California Law Revision Commission, 4000 Middlefield Road, Room D-1, Palo Alto, CA 94303-4739, since I know the Trust/Probate lawyers will be writing. We lawyers who serve limited means clients understand how important this will be to the elderly, and also to their Baby Boomer Beneficiaries.

Enclosed is a letter from Assemblyman DeVore asking you to support this concept through the legislative process, as required by the Older Americans Act. Also enclosed is Bill Number: AB 12 Chaptered 422, on September 30, 2005.

Assembly California Legislature



CHUCK DE VORE
ASSEMBLYMEMBER, SEVENTIETH DISTRICT

November 2, 2005

Senior Citizen's Legal Advocacy Programs

Dear Senior Legal Advocate:

I am writing to request that the Senior Citizen's Legal Advocacy Program under the Older Americans Act support legislation to provide Californians with a revocable transfer-on-death beneficiary deed.

The Governor recently signed Assembly Bill 12 calling for a study to be conducted by the California Law Revision Commission to test the viability of a beneficiary deed in California.

I believe real property should be able to pass free of probate. Our probate system is a highly complicated and expensive process that can take years to complete. A beneficiary deed would help simplify the process by allowing a home owner to transfer their home without forcing their heirs to go through a costly and time consuming process.

A revocable transfer-on-death deed would be especially helpful to the elderly who are often house rich but cash poor. Enabling California's elderly the ability to transfer real property in a deed without the time and expense of creating a trust or using some other non-revocable instrument will provide them greater flexibility and freedom over their property.

I ask that your advocacy group write a letter of support to the California Law Revision Commission (www.clrc.ca.gov) discussing the merits of a beneficiary deed in California. The Legislature has a long history of listening to the CLRC's recommendations, and I would like our elderly to have a say in what the Commission decides on this important issue. The letter may be mailed to:

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Thank you for your help on this important matter.

All the best,

A handwritten signature in black ink that reads "Chuck DeVore".

Chuck DeVore
Assemblyman, Seventieth District

BILL NUMBER: AB 12 CHAPTERED
BILL TEXT

CHAPTER 422
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2005
APPROVED BY GOVERNOR SEPTEMBER 30, 2005
PASSED THE ASSEMBLY AUGUST 29, 2005
PASSED THE SENATE AUGUST 22, 2005
AMENDED IN SENATE JULY 1, 2005
AMENDED IN ASSEMBLY MAY 4, 2005
AMENDED IN ASSEMBLY APRIL 26, 2005
AMENDED IN ASSEMBLY MARCH 16, 2005

INTRODUCED BY Assembly Member DeVore

DECEMBER 6, 2004

An act relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, DeVore Nonprobate transfers: property conveyances upon death.

Existing law authorizes certain types of property to be transferred by a property holder to another person without that property being subject to probate proceedings upon the death of the property holder. Existing law permits, among other types of nonprobate transfers, transfers on death of an insurance policy, bond, pension plan, specified trust and other financial accounts, and property held in joint tenancy. Existing law also requires the California Law Revision Commission to study topics approved by the Legislature.

This bill would require the California Law Revision Commission to study the effect of California's nonprobate transfer provisions and to study statutes in other states that establish beneficiary deeds as a means of conveying real property through nonprobate transfers. The objective of the study would be to determine whether legislation establishing beneficiary deeds should be enacted in California. The bill would require the commission to report its findings to the Legislature on or before January 1, 2007. The bill would also require the commission, if it recommends that the Legislature adopt a statutory scheme establishing beneficiary deeds, to also recommend the content of the proposed statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The California Law Revision Commission shall study the effect of California's nonprobate transfer provisions and shall study statutes in other states that establish beneficiary deeds as a means of conveying real property through nonprobate transfers. The objective of the study shall be to determine whether legislation establishing beneficiary deeds should be enacted in California. The commission shall report all of its findings to the Legislature on or before January 1, 2007. If the commission recommends that the