

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 717 (Villapudua)
Version: March 23, 2023
Hearing Date: June 20, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Trusts: information

DIGEST

This bill authorizes each court to additionally include information on its website regarding revocable living trusts and revocable transfer on death deeds (RTODDs). The bill requires the California Housing Finance Agency to provide information on revocable living trusts and RTODDs to any home buyer participating in the home purchase assistance program, and requires the Agency's borrower's education program to include information on revocable living trusts and RTODDs.

EXECUTIVE SUMMARY

According to the author, recent studies have shown that many people, particularly from low- and moderate-income communities, lack access and the financial means to establish a living trust. This can leave their families with little to no alternative but to go through probate when a family member passes away. This bill seeks to address this issue by using existing state educational resources to provide information to low- and moderate-income persons about revocable living trusts and RTODDs as estate planning tools.

The bill is sponsored by the California Association of Realtors and is supported by several regional, ethnic, and LGBTQ+ associations of realtors. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes, until January 1, 2032, the use of an RTODD to transfer real property with four or fewer residential dwelling units, a condominium unit, or a single tract

of agricultural real estate consisting of 40 acres or less with a single-family residence. (Prob. Code §§ 5600(c) & 5610.¹)

- 2) Defines an RTODD as an instrument that does all of the following:
 - a) makes a donative transfer of real property to a named beneficiary;
 - b) operates on the transferor's death; and
 - c) remains revocable until the transferor's death. (§ 5614(a).)
- 3) Provides that an owner who has the capacity to contract may make an RTODD, which must identify the beneficiary by name, be signed by the transferor, and duly notarized. (§§ 5620, 5622 & 5624.)
- 4) Sets forth requirements for execution, revocation, implementation, and challenging the validity of RTODD. (§§ 5620, 5630, 5650, 5690.)
- 5) Governs the distribution of income, interest and principal under a revocable living trust, and the allocation of distributions to beneficiaries by a trustee or of payments received by a trust under the Uniform Principal and Income Act (UPIA). (§ 16320 et. seq.)
- 6) Provides that a trustee has a duty to administer the trust solely in the interest of the beneficiaries. If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them and must act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries. (§ 16002, 16003.)
- 7) Authorizes each court establish and operate an interactive computer system to, among other things, provide information to users, including, but not limited to, information regarding calculations for child and spousal support payments, court procedures, rights and responsibilities of landlords and tenants, and alternative dispute resolution. (Code of Civ. Proc. § 1062.20(b).)
- 8) Requires the California Housing Finance Agency (Agency) to administer a home purchase assistance program for the purpose of assisting low- and moderate-income home buyers to qualify for the purchase of owner-occupied homes, as specified. (Health & Saf. Code § 50900, §§ 51341-51349.)
- 9) Establishes the California Dream for All Program to provide shared appreciation loans to low- and moderate-income first-time home buyers, and requires the Agency to develop a borrower education program and disclosure statement designed to provide a borrower with sufficient information to understand the terms of a shared

¹ All further references are to the Probate Code unless specified otherwise.

appreciation loan provided pursuant to the program. (Health & Saf. Code § 51520-51527.)

This bill:

- 1) Authorizes each court to additionally include information on its website regarding revocable living trusts and RTODDs.
- 2) Requires the California Housing Finance Agency (Agency) to provide information on revocable living trusts and RTODDs to any home buyer participating in the home purchase assistance program, and requires the Agency's borrower's education program to include information on revocable living trusts and RTODDs.
 - a) Authorizes this information to be provided as part of any Agency mandated home buyer education or counseling course, by referring the home buyer to a website operated and maintained by the Agency, the Judicial Council, or the superior court, or by providing a written disclosure to the home buyer.
- 3) Makes findings and declarations noting that the home remains the largest asset of low and moderate-income households; that low and moderate-income households are less likely to have an estate plan that preserves assets for heirs; that the probate process is a complex and expensive process that reduces the value of assets passed on to heirs; that revocable living trusts and transfer on death deeds help avoid the expense of probate; and that the state has an interest in ensuring that low and moderate-income households have information necessary to best preserve household wealth.

COMMENTS

1. Stated need for the bill

The author writes:

Some homeowners, particularly from low- and moderate-income communities, often lack the access and financial means to establish a living trust, leaving their families with little to no other alternative but to undergo the probate process, which is time intensive and expensive. AB 717 would facilitate the development of state educational resources that explain the value of establishing a living trust. This will be the first step to ensuring the preservation of generational wealth for first time or first-generation homeowners and their heirs.

2. Estate planning

a. Probate administration

When a person dies, their assets (referred to as the decedent) are generally distributed through a will or by intestate succession and are usually subject to probate administration. Probate administration involves a court proceeding to administer the decedent's estate by: deciding if a will exists, and if so, if it is valid; who are the decedent's heirs or beneficiaries; how much the decedent's estate is worth; taking care of the decedent's unresolved debts; and transferring the decedent's property to the heirs or beneficiaries.² Existing law provides for various ways to transfer property outside of formal probate administration, such as trusts, payable on death accounts, revocable transfer on death deeds (RTODDs), joint tenancy, and small estates. Probate fees in California are based on the gross value of the estate and are set in statute as follows 4% on the first \$100,000; 3% on the next \$100,000; 2% on the next \$800,000; 1% on the next \$9,000,000; 0.5% on the next \$15,000,000. (§ 10810.)

b. Revocable living trusts

A trust is a means for property to be managed on behalf of, and distributed to, specified beneficiaries in accordance with the wishes of the trust's creator, or "settlor" without going through probate. The settlor typically transfers property into the trust, designates beneficiaries, and establishes guidelines for the management and distribution of the trust assets by a trustee, who has a legal obligation to implement the settlor's intent and make reasonable decisions with regard to the trust property. A revocable trust may be revoked or changed without the consent of the beneficiaries or a court, whereas an irrevocable trust prohibits the settlor from revoking or changing the trust without the consent of the beneficiaries of the trust and/or the court. Revocable trusts become irrevocable when the settlor dies, or when the trust instrument itself states when it is to become irrevocable.

c. RTODDs

In 2005, AB 12 (DeVore, Ch. 422, Stats. 2005) was introduced as a bill to create the instrument that has come to be known as an RTODD, but was subsequently amended to instead direct the Commission to study this type of deed and determine whether California should create it as a new nonprobate transfer instrument that becomes effective only upon the death of the transferor. The Commission was directed to address a non-exclusive list of issues in its study, including, for example, whether and when a beneficiary deed would be the most appropriate nonprobate transfer mechanism to use, if a beneficiary deed should be recorded or held by the grantor or

² Cal. Courts, *Wills, Estates, and Probate* (2022), available at <https://www.courts.ca.gov/8865.htm?rdeLocaleAttr=en>.

grantee until the time of death, and, if not recorded, whether a potential for fraud is created and what effect the recordation of an RTODD would have on the transferor's property rights after recordation. In October 2006, the Commission issued its recommendation to adopt legislation enabling the use of RTODDs in California.³ At the time, nine other states statutorily recognized these instruments for conveying real property without using a trust or going through a probate proceeding. The Commission found that, while these instruments were relatively novel and data on their effectiveness was scant, practitioners generally responded positively to these instruments. The Commission concluded that the benefits of a low-cost, efficient method of conveying real property outweighed concerns about the potential for fraud and abuse.⁴

In the ensuing decade, a number of legislators tried to create a simplified process to transfer real property outside of probate and without the use of a trust. (AB 250 (DeVore, 2007), AB 724 (DeVore, 2009), AB 699 (Wagner, 2011).) All of those efforts were unsuccessful until AB 139 (Gatto, Ch. 293, Stats. 2015) was enacted, which finally established a five-year pilot program that allows owners of real property, until January 1, 2021, to transfer their property upon death, outside the normal probate procedure, through an RTODD. Given concerns about misuse of the RTODD, the Legislature directed the Commission to study the RTODD pilot program and to report back to the Legislature by January 1, 2020 on how the program was operating. The Commission issued its report on the RTODD in November 2019,⁵ recommending that a number of changes be made to the RTODD process, but that overall the RTODD should be extended for another 10 years and that the Commission do a further study prior to that 10-year sunset. Due to the COVID-19 pandemic, the RTODD statute was extended one year to January 1, 2022 by SB 1305 (Roth, Ch. 238, Stats. 2020). The RTODD statute was extended by 10 years to January 1, 2032 by SB 315 (Roth, Ch. 215, Stats. 2021).

d. Many people do not have an estate plan and lack the knowledge on where to begin the process

The author notes that a 2022 survey of 10,000 employed adults in the U.S. by Wealth, an estate planning platform, found that 75% of respondents indicated that they want to pass their estate to their loved ones but only 53% of respondents actually had a current estate plan, with only 32% having a will in place.⁶ The survey concluded that the responses "indicate[] an accessibility gap for estate planning services" noting that 63%

³ *Recommendation: Revocable Transfer On Death (TOD) Deed* (Oct. 2006) 36 Cal. L. Rev. Comm'n Repts 103, 105, <http://www.clrc.ca.gov/pub/Printed-Reports/Pub226.pdf>.

⁴ *Id.* at 211-212.

⁵ *Revocable Transfer on Death Deed: Follow-Up Study* (Nov. 2019) 46 Cal. L. Rev. Comm'n Repts. 135, <http://clrc.ca.gov/pub/Printed-Reports/Pub241-L3032.1.pdf>.

⁶ *New Study Reveals Lack of Preparedness Around Estate Planning*, Cision PR Newswire (Mar. 29, 2022), available at <https://www.prnewswire.com/news-releases/new-study-reveals-lack-of-preparedness-around-estate-planning-301512295.html>.

of respondents stated they considered creating an estate plan in the past, but 46% of those respondents did not know how to begin the process.⁷ Persons of color in particular seemed to face barriers to accessing estate planning as they were 14% less likely to have an estate plan in place than non-persons of color who responded to the survey.⁸

To address this issue, this bill seeks to provide information to moderate- and low-income individuals about two existing estate planning tools that exist to transfer property outside of the probate process – revocable living trusts and RTODDs. The bill requires three already existing state educational resources to also include information about revocable living trusts and RTODDs. The bill authorizes each court to additionally include information on its website regarding revocable living trusts and RTODDs. The bill also requires the California Housing Finance Agency to provide information on revocable living trusts and RTODDs to any home buyer participating in the home purchase assistance program, and requires the Agency’s borrower education program to include this information.

3. Statements in support

The California Association of Realtors, sponsor of the bill, writes in support stating:

Homeownership is the primary way that Americans build wealth. According to the 2022 State of Housing in Black America report commissioned by the National Association of Real Estate Brokers, “[h]omeownership represents the main vehicle for the accumulation of wealth for the typical American household and particularly for people of color” since people of color are less likely to have significant investments in other assets when compared to whites. Many families with moderate or lower incomes are not familiar with revocable living trusts, which would allow them to avoid the expense and time commitment necessitated by fulfilling the probate process.[...]

Low- and moderate- income households tend to not have estate plans to protect their assets. The result is that when the owners of a home or other real property die, their heirs must go through the probate process which results in the loss of money to legal fees that could have gone to the heirs. This diminishes the intergenerational wealth effects of home ownership which are particularly important to low- and moderate-income households where their home is the most valuable asset they have.

SUPPORT

California Association of Realtors (sponsor)

⁷ *Ibid.*

⁸ *Ibid.*

Asian Real Estate Association of America
Bakersfield Association of Realtors
Bridge Association of Realtors
Citrus Valley Association of Realtors
Contra Costa Association of Realtors
Delta Association of Realtors
L Dorado County Association of Realtors
Fresno Association of Realtors
Glendale Association of Realtors
Greater Palm Springs Realtors
Greater San Diego Association of Realtors
LGBTQ+ Real Estate Alliance
Merced County Association of Realtors
Marin Association of Realtors
Monterey County Association of Relators
Multicultural Real Estate Alliance for Urban Change
National Hispanic Organization of Real Estate
Associates
North Bay Association of Realtors
Orange County Association of Realtors
Pacific West Association of Realtors
Pasadena Foothills Association of Realtors
Placer County Association of Realtors
Rancho Southeast Association of Realtors
Santa Barba Association of Realtors
Santa Ynez Valley Association of Realtors
South Bay Association of Realtors
Southland Regional Association of Realtors
Southwest Riverside County Association of Realtors
Tri-Counties Association of Realtors

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 522 (Niello, 2023) repeals the existing Uniform Principal and Income Act and recasts and updates those provisions under a new name, the Uniform Fiduciary Income and Principal Act. This bill is currently pending in the Assembly Judiciary Committee.

AB 288 (Maienschein, 2023) allows ownership in a stock cooperative to be transferred by a RTODD. This bill is currently pending on the Senate floor.

Prior Legislation:

SB 315 (Roth, Ch. 215, Stats. 2021) made various changes recommended by the Commission to the RTODD statutes.

SB 1305 (Roth, Ch. 238, Stats. 2020) extended the sunset date of the RTODD pilot program one year, until January 1, 2022, due to the COVID-19 pandemic.

AB 139 (Gatto, Ch. 293, Stats. 2015) established a five-year pilot program that allows owners of real property, until January 1, 2021, to transfer their property upon death, outside the normal probate procedure, through an RTODD.

AB 699 (Wagner, 2011) would have established a pilot program that allows owners of real property to transfer their property upon death, outside the normal probate procedure, through an RTODD. This bill failed passage in the Senate Appropriations Committee.

AB 724 (DeVore, 2010) would have established a pilot program that allows owners of real property to transfer their property upon death, outside the normal probate procedure, through an RTODD. This bill failed passage in the Senate Appropriations Committee.

AB 250 (DeVore, 2007) would have established a pilot program that allows owners of real property to transfer their property upon death, outside the normal probate procedure, through an RTODD. This bill failed passage in this Committee.

AB 12 (DeVore, Ch. 422, Stats. 2005) directed the Commission to study and determine whether California should create it the RTODD as a new nonprobate transfer instrument that becomes effective only upon the death of the transferor.

PRIOR VOTES

Assembly Floor (Ayes 74, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
