RECENT CALIFORNIA CASE LAW AND LEGISLATIVE DEVELOPMENTS AFFECTING TRUSTS, ESTATES, AND CONSERVATORSHIPS

SANTA CLARA COUNTY ESTATE PLANNING COUNCIL

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A. RECENT CALIFORNIA CASE LAW DEVELOPMENTS

Selected cases of interest to trust and estate attorneys published between May 1, 2014 and April 30, 2015.[1]

1. Evidence Code § 662 Form of Title Presumption Does Not Apply When it Conflicts with Family Code Transmutation Statutes

Case briefed by Jennifer M. Stier, Esq.

In re MARRIAGE OF VALLI (2014) 58 Cal. 4th 1396; 171 Cal. Rptr. 3d 454 [Filed May 15, 2014]

Short Summary: Husband purchased an insurance policy on his life with community funds, naming Wife as the policy's only owner and beneficiary. Appellate court reversed trial court's holding that the policy was a community asset by finding that Evidence Code § 662's form of title presumption prevailed. The Supreme Court reversed, holding that § 662 does not apply where it conflicts with transmutation statutes.

2. Duties of a General Partner Differ from Those of Trustee

Case briefed by Robert A. Gorini, Esq.

HARRIS v. BONANDER (2014) 2014 Cal. App. Unpub. LEXIS 3804 [Filed May 29, 2014]

Short Summary: Son appeals from a judgment holding him liable as trustee for acts that allegedly breached his fiduciary duties. The court concluded that these actions were taken in Son's capacity as general partner of a related limited partnership, not as trustee. Since the beneficiaries had previously released all their claims against Son in his capacity as general partner, the court reversed the judgment.

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[1] The case briefs herein were prepared by Temmerman, Cilley & Kohlmann, LLP associate attorneys and law clerks. While the speaker, Bob Temmerman, may have reviewed and revised some of the case briefs, he did not have an opportunity to review them all. No representations or guarantees of any kind are made with respect to the accuracy of these written materials and nothing herein should be relied upon to answer any specific legal questions. Attorneys using these case summaries in dealing with a specific client or clients or their own legal matters should also read the full published opinions and research other original sources of authority.

I would like to give a special thank you to Jennifer M. Stier, Esq., a TCK associate attorney, for her assistance with reviewing, assembling, and editing these materials.

3. Inability of Heir to Amend Complaint When Issues Settled by Personal Representative

Case briefed by Robert A. Gorini, Esq.

JOHNSON v. BAY AREA RAPID TRANSIT DIST. (2014) 2014 U.S. Dist. LEXIS 75665 [Filed June 2, 2014]

Short Summary: This case involves the Fruitvale shooting that killed Oscar Grant III in 2009. Plaintiff, the father of Decedent, moved to amend his complaint to include various constitutional claims against Defendant on behalf of Decedent and requested a continuance. The court denied both motions, holding that changing Plaintiff's complaint less than a month before trial would unduly prejudice Defendant and Plaintiff's proposed amendments would be futile.

4. County Assessor May Not Reassess Property Tax On Theory That Legislation Is Unconstitutional Without First Seeking Declaratory Relief

Case briefed by Jennifer M. Stier, Esq.

OCEAN AVENUE LLC v. COUNTY OF LOS ANGELES (2014) 227 Cal. App. 4th 344; 173 Cal. Rptr. 3d 445 [Filed June 3, 2014]

Short Summary: County Assessor, despite its own internal calculations concluding that no person or entity had obtained more than 50% ownership to trigger change in ownership statutes, reassessed property taxes on a Hotel property. Appellate Court affirmed lower court, holding that no possible calculations of the sale of membership interests in the LLC owning the Hotel resulted in any one buyer owning greater than 50% interest.

5. Funds from an Inherited IRA Are Not Exempt from Bankruptcy

Case briefed by Scott A. Fraser, Esq.

CLARK v. RAMEKER (2014) 134 S. Ct. 2242; 2014 U.S. LEXIS 4166 [Filed June 12, 2014]

Short Summary: Debtor filed for Chapter 7 bankruptcy and identified an inherited IRA as "retirement funds," and therefore exempt from the bankruptcy estate. In a unanimous decision, the United States Supreme Court held that the different legal characteristics of an inherited IRA versus a traditional or Roth IRA, particularly with respect to withdrawal rights, and the purpose of the Bankruptcy Code exemption provisions to only protect essential needs, supported a finding that the inherited IRA did not qualify as "retirement funds" and therefore was not exempt from the bankruptcy estate.

6. Investment Fund Manager and Firm Breached Fiduciary Duty to Trustee

Case briefed by Christine M. Kouvaris, Esq.

HASSO v. HAPKE (2014) 227 Cal. App. 4th 107; 173 Cal. Rptr. 3d 356 [Filed June 19, 2014]

Short Summary: Two irrevocable trusts invested about $3.0M each in a hedge fund in August 2007, which was decimated by the 2008 market collapse. Trustee sued the fund, Fund Manager, Fund CFO, and another related investment company and its manager, alleging fraud, breach of fiduciary duty, and related wrongful activity. The jury awarded a verdict and judgment against some but not all of the defendants, from which an appeal was made by both the plaintiff and defendants. The Appellate Court affirmed in part and reversed in part the trial court decision.

7. No "Necessities of Life" Exemption for Conserved Tortfeasor

Case briefed by Cathy E. Nelson, Esq.

CONSERVATORSHIP OF PARKER (2014) 228 Cal. App. 4th 803; 2014 Cal. App. LEXIS 699 [Filed August 4, 2014]

Short Summary: Creditor sought to collect an exemplary damages award from a tortfeasor, who was placed under a conservatorship during the pendency of a lawsuit against him for wrongdoing. The court held that the debt was incurred at the time the conservatee committed the tort, not when the jury rendered its verdict. Therefore, the damage award was payable from the conservatee's estate, regardless of whether it will jeopardize his ability to provide for his necessities of life.

8. Professional Home Health Care Workers Trained and Employed by an Agency Assume Risk of Tort by Alzheimer's Patient

Case briefed by Jennifer F. Scharre, Law Clerk

GREGORY v. COTT (2014) 59 Cal. 4th 996; 176 Cal. Rptr. 3d 1 [Filed August 4, 2014]

Short Summary: Caregiver, a home health care worker trained and hired through an agency by Husband of Patient, sued for negligence, premises liability and battery when Patient, who suffered from Alzheimer's, permanently damaged Caregiver's hand.

9. Standing to Apply Fraud Presumption

Case briefed by Erin N. Kolko, Esq.

VANCE V. BIZEK (2014) 228 Cal. App. 4th 1155; 177 Cal. Rptr. 3d 167 [Filed August 12, 2014]

Short Summary: The presumption of fraud under Prob. Code § 16004 only applies between a trustee and beneficiary, not, in this case, between a trustee and creditor.

10. Ninth Circuit Interprets Meaning of Defalcation of Trust in Light of Recent Supreme Court Decision

Case briefed by Scott A. Fraser, Esq.

In re CORREIA-SASSER (2014) 2014 Bankr. LEXIS 3513 [Filed August 19, 2014]

Short Summary: Judgment was entered against Debtor/trustee for breach of fiduciary duty in California state court for improper allocation of partnership distributions between herself and the other beneficiaries (Debtor's Sons). Debtor declared bankruptcy and Sons sought to except the judgment from bankruptcy as a judgment arising from a defalcation while acting in a fiduciary capacity. The Ninth Circuit found that Debtor's conduct rose to level of gross negligence required to sustain a finding of defalcation of trust.

11. Impairing a Property Right Can Be a "Taking" for Financial Elder Abuse

Case briefed by Tisa M. Pedersen, Esq.

BOUNDS v. SUPERIOR COURT (2014) 229 Cal. App. 4th 468; 177 Cal. Rptr. 3d 320 [Filed September 3, 2014]

Short Summary: The "taking" of an elder's property, where financial elder abuse is alleged, can include circumstances where the elder's use and enjoyment of the property is significantly impaired through an agreement between the elder and the alleged abuser, even when the title of the property is not transferred. In this case, the property was significantly impaired by escrow instructions and a lease purportedly obtained through fraud or undue influence. The case was returned to the trial court to determine whether this impairment of property rights was sufficient to constitute a "taking" under Welf. & Inst. Code § 15610.30.

12. No Policy Distributions Made To Former Employee Terminated for Fraud Prob. Code § 18100 "Good Faith" Third Party Reliance Protection for Insurance

Case briefed by Robert A. Gorini, Esq.

WILLS v. AMERICAN GENERAL (2014) 2014 U.S. Dist. LEXIS 133917 [Filed September 23, 2014]

Short Summary: Life insurance provider's motion for judgment on the pleadings was denied because its claim for third party reliance protections afforded under Prob. Code § 18100 failed due to its distributions of large amounts to a former employee terminated due to multiple claims of fraud. Former employee who was acting as both the servicing agent of the policy and trustee of the plan. The court found that the life insurance provider could not be found to meet the conditions of acting in good faith and without actual knowledge of the trustee's indiscretions.

13. Successor Conservator May Bring Malpractice Suit Against Attorney Who Represented Prior Conservator; Malfeasance of Prior Conservator Not Imputed to Successor Conservator

Case briefed by Jennifer M. Stier, Esq.

STINE v. DELL'OSSO (2014) 230 Cal. App. 4th 834; 178 Cal. Rptr. 3d 895 [Filed October 17, 2014]

Short Summary: Attorney who assisted Son with establishment and administration of a conservatorship, and whom allegedly knew of assets that should have, but were not, included in the conservatorship estate and misappropriated by son, was sued by the successor conservator for malpractice. Appellate Court reversed the sustained demurrer, holding that a successor conservator can sue a prior conservator's attorney for legal malpractice and a prior conservator's malfeasance does not bar the successor conservator from pursuing a malpractice claim on behalf of the estate under the doctrine of unclean hands.

14. Sole Trustee, Who Is Sole Settlor and Beneficiary May Act In *Propria Persona*

Case briefed by Cathy E. Nelson, Esq.

AULISIO v. BANCROFT (2014) 230 Cal. App. 4th 1516; 179 Cal. Rptr. 3d 408 [Filed October 30, 2014]

Short Summary: Petitioner, the sole trustee, sole settlor and sole beneficiary of a living trust, appealed trial court order that he could not act in *pro per* in lawsuit to recover damages against defendants who towed a vehicle, which was trust asset.

15. Donative Transfers Test

Case briefed by Erin N. Kolko, Esq.

JENKINS v. TEEGARDEN (2014) 230 Cal. App. 4th 1128; 179 Cal. Rptr. 3d 304 [Filed October 23, 2014]

Short Summary: The test for a "donative transfer" is whether the consideration received is fair and reasonable under the circumstances.

Facts: In 2007, Decedent quitclaimed Property 1 to Defendant, his caregiver. Defendant prepared the quitclaim deed. Defendant testified that she gave the following consideration: (1) $100,000 for improvements to Property 1, (2) $45,000 in equity in Property 2, and (3) her caregiving services. The beneficiary of Decedent's trust contends the quitclaim is invalid under Probate Code former §21350.

16. Aiding and Abetting Liability Sans Fiduciary Duties to Third Party Beneficiaries

Case briefed by Robert A. Gorini, Esq.

NASWARI v. BUCK CONSULTANTS LLC (2014) 231 Cal. App. 4th 328; 179 Cal. Rptr. 3d 813 [Filed November 6, 2014]

Short Summary: Retired public employees, as beneficiaries of a public pension trust, alleged actuarial negligence caused the trust to be dramatically underfunded. They further alleged that, in failing to sue the actuaries for malpractice, the public entity trustee of the trust breached its fiduciary duties. The court held that the public entity trustee was immune from suit, but the beneficiaries were able to bring suit against the actuaries for aiding and abetting any breach by the public entity trustee.

17. Business Deal Between Attorney and Client

Case briefed by Erin. N. Kolko, Esq.

FERGUSON v. YASPAN (2014) 2014 Cal. App. Unpub. LEXIS 9281 [Filed December 31, 2014]

Short Summary: An action to rescind an agreement between Attorney and Client was subject to the four year statute of limitations. In concluding Attorney rebutted the statutory presumption of undue influence, the court properly focused on the agreement as a whole and on the facts known to the parties. Attorney's duty of disclosure was discharged where he recommended Client consult independent legal counsel and Client did so.

18. Appeal Dismissed under Disentitlement Doctrine for Appellant's Failure to Comply with Lower Court Order

Case briefed by Cathy E. Nelson, Esq.

BLUMBERG v. MINTHORNE (2015) 233 Cal. App. 4th 1384; 183 Cal. Rptr. 3d 179, [Filed January 27, 2015; Certified for Publication February 4, 2015]

Short Summary: In a dispute about the interpretation of trust documents, the surviving spouse/trustee flagrantly ignored the trial court's orders to account and convey real property back to the trust. On motion by a beneficiary, the Court of Appeals dismissed the surviving spouse's appeal under the Disentitlement Doctrine.

19. Trustee Has Broad Discretion to Liquidate Specific Gifts During Settlor's Life

Case briefed by Robert A. Gorini, Esq.

SIEGEL v. FIFE (2015) 234 Cal. App. 4th 988; 184 Cal. Rptr. 3d 531 [Filed February 26, 2015]

Short Summary: Trustee had the authority to sell a specifically gifted house, held in an express trust (irrevocable at the time) because the trust needed liquid funds to provide for the conserved trustor's accrued and ongoing expenses and the trust instrument prioritized the interests of the trustor over those of all remainder beneficiaries. Furthermore, nothing in the abatement statutes prevented the sale of this asset despite the specific gift and the dispossessed beneficiary would have sufficient remedies at law to recover her interests should she pursue them, in the probate court's discretion.

20. *Heggstad* Broadened: Statute of Frauds Satisfied If Extrinsic Evidence Could Be Used to Identify Property as Part of Trust Assets

Case briefed by Jennifer M. Stier, Esq.

UKKESTAD v. RBS ASSET FINANCE, INC. (2015) 235 Cal. App. 4th 156; 2015 Cal. App. LEXIS 237 [Filed March 16, 2015]

Short Summary: Trustee attempted to collect two parcels of real property, which Settlor owned in his individual name and which were not specifically identified in the trust instrument, via a Prob. Code § 850 Petition. Appellate Court held that a general assignment in the trust instrument was sufficient because it provided the means by which the description may be made certain, and the properties could be identified by referring to publicly available records to determine Settlor's real estate holdings.

21. State Can Recover from First-Party SNT for Services Provided to Beneficiary under Age 55

Case briefed by Tisa M. Pedersen, Esq.

HERTING v. CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (2015) 235 Cal. App. 4th 607; 185 Cal. Rptr. 3d 401 [Filed March 27, 2015]

Short Summary: A special needs trust created using the beneficiary's own funds was not exempt from post-death recovery for services provided through Medi-Cal, even though the beneficiary was under age 55 when the services were provided.

22. Privately Acknowledged Child Is Not an Heir

Case briefed by Tisa M. Pedersen, Esq.

ESTATE OF BRITEL (2015) 2015 Cal. App. LEXIS 340 [Filed April 23, 2015]

Short Summary: A child who was born outside of a marriage and never publicly presented as the decedent's child, even though the decedent had confided to his best friend that he had conceived the child, was not the decedent's heir.

23. Ineffective Exercise of Nonexclusive Power of Appointment

Case briefed by Mark A. Schmuck, Esq.

SEFTON v. SEFTON (Sefton II) (2015) 2015 Cal. App. LEXIS 343 [Filed April 24, 2015]

Short Summary: Father was given a testamentary power of appointment over trust assets to be exercised in favor of his issue. Father excluded one of his children in his exercise of the power of appointment. As a nonexclusive power of appointment, Father was required to appoint a substantial share of the trust estate to all of his children. His failure to do so rendered the exercise of the power void. The result was to distribute the assets as though no power was exercised at all.

24. Enforcement of Attorney's Lien on Client's Estate

Case briefed by Elise S. Pecchenino, Law Clerk

NOVAK v. FAY (2015) 2015 Cal. App. LEXIS 351 [Filed April 28, 2015]

Short Summary: An attorney represented a client in an action against the client's wife's estate; the two parties negotiated a contingency fee agreement that allowed the attorney a lien on the client's recovery in settlement. The attorney was able to enforce the lien on the client's estate without filing an independent creditor claim.

B. CASES PENDING BEFORE CALIFORNIA SUPREME COURT

1. No Extrinsic Evidence Allowed Where a Will Unambiguously Failed to Include a Testamentary Provision for the Circumstances That Occurred

Case briefed by Scott A. Fraser, Esq.

ESTATE OF DUKE (2011) 201 Cal. App. 4th 559, 133 Cal. Rptr. 3d 845, [Filed December 5, 2011] California Supreme Court granted review on March 21, 2012. *Still pending. Oral argument set for May 26, 2015.*

Short Summary: Decedent Husband's holographic will provided for testamentary gifts if Wife died first or if he and Wife died simultaneously: instead, Husband and Wife died five years apart. The Court of Appeal held that where the will unambiguously failed to include a testamentary provision for the disposition of Decedent Husband's estate under the circumstances which actually occurred, no extrinsic evidence was admissible and that the estate passed to Decedent Husband's Nephews under intestate succession.

C. CALIFORNIA 2014 CHAPTERED LEGISLATION AFFECTING PROBATE, TRUST, AND CONSERVATORSHIP MATTERS

1. AB 1888 (Ting) Documentary Transfer Tax: Documentation for Recordation: Amount of Tax Due Shown on Separate Paper

Status: 6/4/2014 Chaptered by Secretary of State, Chapter Number 20, Statutes of 2014

SUMMARY: The Documentary Transfer Tax Act permits counties and cities to impose a tax for instruments that transfer interests in real property and required the amount of tax due to be shown on the face of the document. Previously the person requesting recordation could request that the tax be shown on a separate, non-recorded piece of paper. This bill removes the ability to request that the transfer tax be shown on a separate, non-recorded piece of paper, thereby requiring all transfer taxes to be shown on the face of the recording instrument. (Rev. & Tax Code §§ 11932, 11933 amended).

COMMENT: The author states that transfer tax is public information, but the ability to note the amount of tax on a separate non-recorded piece of paper often caused that information to be inaccessible. The practice of disclosing transfer tax varied greatly amongst county recorders, which caused issues for appraisers to accurately appraise properties that have been sold. Requiring transfer tax to be reflected on the face page of a deed ensures the information is easily accessible. Score this one a win for information seekers and a loss for privacy seekers.

2. AB 2685 (Cooley) Crime Victim Compensation and Government Claims Board

Status: 9/20/2014 Chaptered by Secretary of State, Chapter Number 508, Statutes of 2014

SUMMARY: Under existing law, when an heir of a decedent is incarcerated, the estate attorney, beneficiary, personal representative or person in possession of the decedent's property must notify the California Victim Compensation and Government Claims Board of the decedent's death within 90 days of the date of death. This bill amends Prob. Code §§ 216 and 1215 to expand the notification provisions to include (1) an incarcerated beneficiary, as well as an heir, and (2) previously confined beneficiaries or heirs, as well as those currently confined. The bill limits reporting for previously confined heirs or beneficiaries to those whom the estate attorney or representative actually knows, without any additional investigation, has been previously confined.

COMMENT: The bill specifically relieves estate attorneys and representatives from conducting an investigation into whether any heirs or beneficiaries were previously confined. However, the legislative analysis notes that if actual knowledge of prior confinement arises at any point during the administration or probate, the attorney or representative should notify the Claims Board. Practitioners should add this additional requirement to their probate and trust administration checklists for discussion with the client.

3. SB 940 (Jackson) California Conservatorship Jurisdiction Act

Status: 9/24/2014 Chaptered by Secretary of State, Chapter Number 553, Statutes of 2014.

SUMMARY: This bill implements the California Conservatorship Jurisdiction Act, which is a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The Act overhauls conservatorship jurisdiction issues under the Probate Code, as follows:

1. Establishes conditions for the transfer of a California conservatorship to a foreign jurisdiction;
2. Establishes conditions for the transfer of a foreign conservatorship in California;
3. Establishes procedures for California registration and recognition of a foreign conservatorship and implements a $30 charge for registering;
4. Establishes rules regarding appeals of orders made under the Act;
5. Authorizes California courts to make specific requests of a court in another jurisdiction and authorizes California courts to grant similar requests from foreign jurisdictions; and
6. Requires the Judicial Counsel to develop court rules and forms to implement the Act on or before January 1, 2016.

The changes made by this bill are operative on January 1, 2016, with the exception of new Prob. Code § 2023, which is operative on January 1, 2015 and requires the Judicial Counsel to develop rules and forms for implementation of the Act. In implementing the above, the bill amends Code of Civ. Proc. § 1913 and Prob. Code §§ 1455, 1471, 1821, 1834, 1840-1849, 1890, 2107, 2200, 2300, 2352, 2505, 2650, and 3800. The bill further adds a new Chapter 8 entitled "Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act" to Part 3 of Division 4 of the Probate Code, commencing at § 1890, as well as adding Prob. Code §§ 1301.5 and 1851.1, and Gov't Code § 70663.

COMMENT: The California Law Review Commission began studying potential adoption of the UAGPPJA in 2011. In December 2013, the CLRC recommended that the UAGPPJA be enacted in California, with certain modifications to protect

California policies and to work smoothly with existing California laws. The CLRC recommendation noted that 37 states have enacted the UAGPPJA, including Arizona, Oregon, and Nevada. Our society has become increasingly more mobile and a conservatee may have ties to two or more states, which raises issues with resolving jurisdictional disputes. The Act is designed to streamline and facilitate resolving multiple jurisdiction issues.

4. SB 1050 (Monning) Notaries Public: Verification of Identity: Notice

Status: 8/15/2014 Chaptered by Secretary of State. Chapter 197, Statutes of 2014.

SUMMARY: Notaries public are required to execute acknowledgments, proofs of execution, and jurats on forms specified under the Civil Code. This bill amends the required forms to add an enclosed box which explains that the notary has only confirmed the identity of the person who signed the document and has not confirmed the truthfulness, accuracy, or validity of the document. The new acknowledgment form is as follows (proofs of execution and jurats also include the same box):

> A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, [insert name and title of officer], personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (SEAL)
[Signature]

COMMENT: The text in the box is only required to be "legible." The bill does not require any specific formatting. In support of the bill, the author notes that people who are unfamiliar with the purpose of a notary acknowledgment often believe that the seal represents an official endorsement of authenticity and legal correctness, which has been exploited for fraudulent purposes. The common confusion is well illustrated by the following scene from the 1966 Peanuts television special "It's the Great Pumpkin, Charlie Brown":

> Lucy: This time you can trust me. See? Here's a signed document testifying that I promise not to pull it away.
>
> Charlie Brown: (examining document) It *is* signed. It's a signed document! I guess if you have a signed document in your possession, you can't go wrong. This year, I'm really going to kick that football!
>
> (Lucy pulls the ball away and Charlie Brown falls flat on his back)
>
> Lucy: (re-examining the document) Peculiar thing about this document, it was never notarized.

D. SELECTED CALIFORNIA LEGISLATIVE DEVELOPMENTS

1. AB 139 (Gatto) Nonprobate Transfers: Revocable Transfer Upon Death Deeds

Status: 4/9/2015 - In Senate. Read first time. To Com. on RLS. for assignment.

SUMMARY: This bill would create a Revocable Transfer on Death Deed (RTODD), which would allow for the transfer of property on the death of its owner without a probate proceeding through January 1, 2021. For a RTODD to be valid, the transferor must have had testamentary capacity at the time of execution; use a statutory form; and the RTODD must be signed, dated, acknowledged, and recorded within 60 days of signing. A RTODD does not effect the owner's rights during his or her lifetime, and the property remains included in the owner's estate for Medi-Cal eligibility and reimbursement. A RTODD would be void if the property is titled in joint tenancy or community property with right of survivorship.

COMMENT: In support, the bill's author states that twenty other states allow for RTODDs as simple and inexpensive non-probate transfer mechanisms, which are especially helpful to those whose estate is comprised mostly of one real property. In opposition, the California Escrow Association and California Land Title Association state that they will provide easy and convenient elder abuse, and, additionally, when used by transferors without advice from legal counsel, could create confusion and ambiguity that could cloud legal title. A form of this bill has been submitted in 2007, 2009, and 2010, but has not passed the Senate. The California Law Review Commission has reviewed RTODDs in other states and implication in California and is generally in favor, despite the downsides, and recommends implementation of carefully drafted RTODDs and a comprehensive review of non-probate transfers in California.

2. AB 193 (Maienschein) Mental Health: Conservatorship Hearings

Status: 4/21/2015 - From committee: Do pass and re-refer to Com. on APPR.

SUMMARY: Under current law, the director of a psychiatric facility may recommend the establishment of an LPS conservatorship to a conservatorship investigator who, after conducting an investigation, petition a superior court for the establishment of a LPS conservatorship. This bill would provide an additional means for recommending a LPS conservatorship by allowing a probate court, after a hearing attended by the proposed conservatee and/or their counsel, and consultation with a physician providing comprehensive evaluation or intensive treatment, to recommend a LPS conservatorship. The bill would not allow a court to initiate on its own motion.

COMMENT: The author states that there is a current gap in providing help to persons who are conserved, but do not necessarily qualify for a "5150" psychiatric hold, which triggers the LPS process and requires that the person be gravely disabled or a danger to self or others. In a probate conservatorship, a conservator may consent to treatment on the conservatee's behalf, but may not compel treatment if the conservatee refuses, while an LPS conservator may compel psychiatric treatment if allowed by court order. Opponents, including counties and public guardians, argue that the bill would increase costs and workloads for counties and investigators and circumvents the legal process under the LPS Act and corresponding due process rights. Proponents respond that the bill serves a relatively small population of existing conservatees who would benefit from the additional medical powers allowed under the LPS process and that due process rights are not affected as the bill only allows a court to make a recommendation for the LPS process and the investigator still makes a final decision regarding whether to pursue the LPS process. This bill was introduced last year as AB1725 in substantially the same form, but died in the Assembly Appropriations Committee.

3. AB 436 (Jones) Guardian or Conservator: Powers and Duties

Status: 4/9/2015 - In Senate. Read first time. To Com. on RLS. for assignment.

SUMMARY: Under existing law, if a conservator petitions for dementia powers, the court must appoint counsel to represent the conservatee at the hearing regarding the petition for dementia powers. This bill would require the court, upon either granting or denying dementia powers to the conservator, to either discharge the court appointed counsel or order continuation of the representation.

COMMENT: Existing law is silent as to whether the court appointed representation should terminate or continue, which has led to confusion by courts as to whether to discharge or retain court appointed counsel for conservatees. Attorneys have stated that if they do not continue providing counsel, they could be subject to discipline for client abandonment, or, on the other hand, if they continue their actions could be subject to resentment or challenge that they only acted to generate fees. This bill is considered non-controversial and is sponsored by the Conference of California Bar Associations.

4. AB 548 (Garcia) Estates: Administrators

Status: 4/9/2015 - In Senate. Read first time. To Com. on RLS. for assignment.

SUMMARY: When a decedent dies intestate, law prescribes an order of preference for appointment of a personal representative to administer the estate. Previously, a non-U.S. resident could not nominate the personal representative, despite being

high in the statutory order of preference for a nominator. A statute passed in 2012 (AB 1670 (Lara), Chapter 635, Statutes of 2012) created a pilot program to allow non-resident heirs to nominate administrators of the estate, but is set to sunset on January 1, 2016. This bill would delete the January 1, 2016 date of repeal.

COMMENT: In its comment to the bill, the Senate Judiciary Committee states that it is unaware of any instances where the nomination by a non-resident heir resulted in any harm to any interested party. In support, the author notes that there is no basis for the requirement that only a resident can nominate the personal administrator, leaving non-resident heirs with no say over who administers the estate.

5. AB 637 (Campos) Physician Orders for Life Sustaining Treatment Forms

Status: 4/16/2015 - In Senate. Read first time. To Com. on RLS. for assignment.

SUMMARY: Currently, to create a valid Physician Orders for Life Sustaining Treatment (POLST) form, it must be signed by a physician and the patient or their legally recognized health care decision maker. This bill would add nurse practitioners and physicians assistants acting under the supervision of the physician, in addition to physicians, as authorized signatories for the creation of a valid POLST form.

COMMENT: As of January 1, 2015, 24 states had POLST programs, and 14 of those states allow RN's and physicians assistants to sign POLST forms. In support, the author states that allowing the additional signatories will increase the availability of POLST forms, which are helpful, reliable and effective at ensuring preferences for end-of-life care are honored. In opposition, the California Right to Life Committee argues that the bill replaces physicians with health care providers who have lower level of medical training and devalues the lives of elderly and vulnerable citizens. Many attorneys remain concerned at the level of use of POLST forms and whether patients are signing POLST forms in fragile states without realizing that, as the later signed document, the POLST form overrides any conflicting terms in an Advance Health Care Directive, which is more likely to have been carefully considered during drafting of estate planning documents.

6. AB 1085 (Gatto) Personal Representatives: Conservators and Attorneys-In-Fact

Status: 4/22/2015 - In committee: Hearing postponed by committee

SUMMARY: Under existing law, a conservator may not control a conservatee's personal rights, including the right to receive visitors, phone calls, and personal mail, unless specifically limited by a court order. This bill would provide that a

court order may be issued that specifically grants the conservator the power to limit or enforce the conservatee's right to receive visitors, telephone calls, and personal mail. This bill would further provide that a conservator must notify the family of the conservatee when the conservatee dies or is admitted to a medical facility for three or more days; and would include similar notice requirements for an attorney-in-fact to notify the relatives of a principal, and further require an attorney-in-fact to notify relatives of funeral arrangements and the principal's final resting place.

COMMENT: There is concern regarding the reaches of this bill. Some conservatees or principals may not want all relatives informed of their hospitalization, or their funeral and final resting place. There is currently no language in this bill allowing for a more limited notice in certain situations.

7. SB155 (Hertzberg) Decedent's Estates

Status: 2/19/2015 - Referred to Com. on JUD.

SUMMARY: Under existing law, if a decedent has a will drafted to "pour-over" their non-trust assets into their trust, the will must still be probated if the decedent's non-trust assets are valued over $150,000. This bill would establish simplified procedures for the distribution of property, real or personal of any amount or value, devised by a will to the trustee of a recipient trust, without procuring letters of administration.

COMMENT: This bill would accomplish a necessary fix to the probate system. Too often when clients walk out of an attorneys office, they neglect to fund their new trusts, or they acquire additional assets and fail to retitle them into their trusts. Upon their death, despite having clear testamentary wishes to avoid probate by the creation of a trust and a pour-over will, assets must still be probated if there is insufficient evidence to support a petition under Probate Code § 850. This bill would also help to alleviate over-burdened probate courts, by limiting this process to a single petition, rather than requiring the full, burdensome probate process.

8. SB 269 (Vidak) Conservator Appointments: Compensation

Status: 4/23/2015 - In Assembly. Read first time. Held at Desk.

SUMMARY: Under existing law, a conservator of the estate and a person who unsuccessfully petitioned for the appointment of a conservator may petition the probate court for an order fixing and allowing compensation to the conservator or unsuccessful petitioner and their counsel for services rendered in connection with the appointment of a conservator. This bill would additionally allow a third party who successfully petitioned for the appointment of a conservator to petition the probate court for an order allowing compensation for themselves and their counsel

for services rendered in connection with the appointment of a conservator.

COMMENT: This bill fixes a gap in who is permitted to be compensated for their efforts in connection with the appointment of a conservator. A successful petitioner may request fees on their own behalf, and an unsuccessful petitioner may request fees on their own behalf, but a successful petitioner who succeeds in having a third party appointed may not petition for their own fees and costs. This existing gap may discourage friends and family members from petitioning if they have limited means and are unable to afford the costs on their own.