

Beware Transfer on Death (TOD) Deeds



AB 139 (Gatto) was recently signed by the Governor and became effective January 1, 2016. This new law allows for the transfer of real property on the death of its owner without a probate proceeding. The bill also provides that the deed, during the owner's life, does not affect his or her ownership rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal recovery. The new law creates a statutory form - the "SIMPLE Revocable Transfer on Death (TOD) Deed." Unfortunately, there is nothing simple about this new law. Not only is it not simple, but it will surely complicate the lives of those it is aimed to assist, i.e., seniors who don't wish to pay or can't afford to pay attorneys fees who are looking for a cheap way to transfer their homes.

CANHR strongly opposed this bill - and similar bills over the years - as we believe it would not only make many elders even more susceptible to undue influence and elder abuse, but also subject many seniors to Medi-Cal estate recovery that could otherwise be avoided. Proposed as a low cost alternative for those seniors who cannot afford attorneys for trusts or other alternatives, the new law will undoubtedly cause more harm than good. As one organization opposed to the bill noted, these deeds "will become the new form of easy, convenient, and cheap elder abuse."

It is important to note that thousands of California citizens who are 55 years of age or older and who have recently signed up for health care under California's Medi-Cal

expansion program will now have their estates subject to Medi-Cal recovery when they die. If their homes were transferred before their deaths, transferred to an irrevocable trust or if they transferred the property and retained an irrevocable life estate (another cheap, but effective way to transfer property) there will be no estate claim on the home. But, because the TOD is revocable and the transfer of the property under a TOD does not occur until the death of the owner, these TODs are *subject to estate recovery*, which means that those same low-income elders, who are likely to execute TODs will also be more likely to be on Medi-Cal and thus subject their estates to recovery.

The new law also includes a provision requiring the California Law Revision Commission to report back to the Legislature by January 1, 2020 on the uses or misuses of the forms and include recommendations for changes. Unless the legislature acts otherwise, the law would sunset on January 1, 2021.

CANHR will be embarking on a campaign to educate consumers about the impact of this new law. For the text of the bill as passed, see http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB139

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