

RESOLUTION 9-06-2002

DIGEST

Recordable Documents: Notice of Change of Trustee

Amends Government Code section 27280 to provide that a notice of a change in trustee may be recorded.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

Reasons:

This resolution amends Government Code section 27280 to provide that a notice of a change in trustee may be recorded. This resolution should be disapproved because a procedure already exists for recording a change in trustee.

In the majority of cases, the trustee is not infirm and can (and must) simply convey the title to the successor. (Probate Code §§ 15644, 16226.) Therefore, this resolution would be relevant only in the event that the trustee had become incompetent through age, infirmity, or other factors. Protecting an infirm trustee from undue influence, and the trust from depletion, is a worthy goal. However, removing an incompetent trustee and appointing a new trustee – and thereby changing the ownership of real property, since title is in the trustee rather than the trust – is too important a step to entrust to the simple filing of a document.

Current law already recognizes this importance. Probate Code section 17200 provides for the filing of a petition to have the court determine issues relating to the internal affairs of a trust, including the removal and appointment of trustees. As part of the order changing the trustee, the court can then order a conveyance of the property to the new trustee, which of course is perfected through recordation.

If a trustee is no longer able to administer the trust, the trustee should be removed in the manner provided by law. Methods already exist for installing a successor trustee and conveying title from the former trustee. The current mechanisms provide assurance that title is conveyed properly and should not be changed in the manner suggested in the resolution.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Government Code section 27280 to read as follows:

- 1 § 27280
- 2 (a) Any instrument or judgment affecting the title to or possession of real property,
- 3 including notice of a change of trustee, may be recorded pursuant to this chapter.
- 4 (b) Any instrument or document submitted for recordation which effectuates a change in
- 5 ownership may be accompanied by a change in ownership statement as provided for in Section
- 6 480 of the Revenue and Taxation Code. Upon receipt of such change in ownership statement,
- 7 the recorder shall transmit, as soon as possible, the original statement or true copy thereof to
- 8 the county assessor along with the recorded document as required by Section 255.7 of the
- 9 Revenue and Taxation Code. The change in ownership statement shall not be recorded nor
- 10 open and available to public inspection and shall at all times remain confidential, except as
- 11 provided in Section 408 of the Revenue and Taxation Code.

(Proposed new language underlined, language to be deleted stricken.)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS:

Existing Law: Although Government Code section 27280 is worded broadly, so as to allow recordation of **any** document affecting title to real property, in some counties in California, the County Recorder declines to record documents identifying a change in the identity of the trustee of a trust which holds title to real property.

This Resolution: Would amend Government Code section 27280 to specifically indicate that documents indicating a change in the identity of the trustee of a trust holding title to real property are recordable.

The Problem: In a situation where a trustee of trust holding title to real property becomes incapacitated, it becomes necessary to appoint a successor trustee. This is particularly important where the trustee is the trustor of the family trust and is affected by the infirmities of age or disease and no longer has capacity to act, and there is a risk of undue influence. Given the fact that a major purpose of trusts is to avoid the necessity of resort to the Court system, it should be possible for the successor trustee to be identified in the official records of the County, so as to avoid the possibility of an inappropriate transfer, and to assure consistency in the chain of title.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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