

RESOLUTION 10-07-05

DIGEST

Subdivision Map Act: Exemption of Transfers into Trusts

Amends Government Code section 66499.34 to provide that the transfer of real property into an estate planning trust will not affect the conditions for a development permit.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 66499.34 to provide that the transfer of real property into an estate planning trust will not affect the conditions for a development permit. This resolution should be approved in principle because transferring property into a trust should not impose new conditions on the development of the property.

Trusts have become a common and popular method of estate planning. Avoiding probate proceedings and adverse tax effects are the most obvious advantages of creating an estate planning trust. Moreover, when the settlor dies, his or her real property will pass to the heirs through the trust's provisions, instead of having to go through probate. Estate planning trusts also add a measure of privacy protection to the settlor's personal affairs, as the settlor's financial affairs do not become public record through the filing of a probate proceeding.

As the proponent points out, the present law is unclear as to whether the transfer of real property into an estate planning trust is a change in ownership for purposes of complying with building code requirements and other conditions for developing the property. No court decisions have been found which construe the effect of transferring property into a trust on the development requirements under section 66499.34. However, the absence of an express provision in the statute creates an ambiguity that should not continue.

The transfer of ownership to an estate planning trust is nothing more than a paper transaction. The settlor remains in actual possession of the property for all intents and purposes, and there is no change in the actual characteristics of the property. There is thus no reason to require the owner/settlor to comply with additional development requirements that did not exist before the trust was created. The resolution would advance the policy that the creation of an estate planning trust should not adversely affect the owner of the property.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code section 66499.34 to read as follows:

- 1 §66499.34
- 2 (a) No local agency shall issue any permit or grant any approval necessary to develop any real
- 3 property which has been divided, or which has resulted from a division, in violation of the provisions
- 4 of this division or of the provisions of local ordinances enacted pursuant to this division if it finds that
- 5 development of such real property is contrary to the public health or the public safety. The authority
- 6 to deny such a permit or such approval shall apply whether the applicant therefor was the owner of
- 7 record at the time of such violation or whether the applicant therefor is either the current owner of
- 8 record or a vendee of the current owner of record pursuant to a contract of sale of the real property
- 9 with, or without, actual or constructive knowledge of the violation at the time of the acquisition of

10 his or her interest in such real property.
11 (b) If a city or a county issues a permit or grants approval for the development of any such real
12 property, it may impose only those conditions that would have been applicable to the division of the
13 property at the time the applicant acquired his or her interest in such real property, and which has
14 been established at such time by this division or local ordinance enacted pursuant thereto, except
15 that where the applicant was the owner of record at the time of the initial violation of the provisions of
16 this division or of local ordinances enacted pursuant thereto who, by a grant of the real property
17 created a parcel or parcels in violation of this division or local ordinances enacted pursuant thereto,
18 and such person is the current owner of record of one or more of the parcels which were created as
19 a result of the grant in violation of the division or local ordinances enacted pursuant thereto, then the
20 local agency may impose such conditions as would be applicable to a current division of the
21 property, and except that if a conditional certificate of compliance has been filed for record under the
22 provisions of subdivision (b) of Section 66499.35, only such conditions stipulated in that certificate
23 shall be applicable. For the purposes of determining when an applicant acquired his or her interest in
24 the real property, the transfer of said property into an estate planning trust under Revenue and
25 Taxation Code section 62 shall not be considered as an event that would affect the conditions that
26 may be imposed upon an applicant.
27 (c)The issuance of a permit or grant of approval for development of real property, or with respect to
28 improvements that have been completed prior to the time a permit or grant of approval for
29 development was required by local ordinances in effect at the time of the improvement, or with
30 respect to improvements that have been completed in reliance upon a permit or grant of approval for
31 development, shall constitute "real property which has been approved for development," for the
32 purposes of subdivision (c) of Section 66499.35, and upon request by the person owning the real
33 property or a vendee of such person pursuant to a contract of sale, the local agency shall issue a
34 certificate of compliance for the affected real property.

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

PROPOSER: Ventura County Bar Association

STATEMENT OF REASONS

Existing Law: The Subdivision Map Act governs the division of land. Subdivisions that were legal under previous versions of the Subdivision Map Act are entitled to Certificates of Compliance, which verify that a lot was legally created, and permit the issuance of a building permit. However, the conditions which govern construction vary greatly depending on the year of the entitlement, and the year of the entitlement is based upon the year a person acquired a lot. For example, lots that were created only recently have more strict building code requirements than those lots which were created decades ago.

This Resolution: The proposal divides the existing code section into subdivisions (a), (b) and (c), and adds the underlined language, which brings the Subdivision Map Act into conformity with existing law under the Revenue and Taxation Code. Under the Revenue and Tax Code, the transfer of any property into a revocable estate-planning trust does not result in a change of ownership that may trigger a re-appraisal of the property. The proposed change to section 66499.34 would insure that the transfer of a lot into an estate-planning trust would not change the date of acquisition, such that additional or more onerous building code requirements would apply.

The Problem: In some counties, the date of acquisition could mean the difference between conditions that cost an owner thousands of dollars versus conditions that could cost an owner hundreds of thousands of dollars. Recently, some planners have taken the position that transfer of property from an owner into that owner's revocable estate planning trust is a change in ownership that triggers a

different date from which entitlements stem. This modification would bring the Subdivision Map Act into conformity with the Revenue and Taxation Code's mandates that transfer of property into an estate planning trust should not result in a penalty to the owner.

IMPACT STATEMENT

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

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

The section of the Subdivision Map Act proposed to be changed relates only to property which was originally subdivided in violation of the Act and /or local ordinances. In order for the intent of this resolution to be effectuated, other sections of the Act must also be amended. The improvements required by the Act generally relate to road and infrastructure work. The date of purchase of one or more lots has no effect on the building standards applicable at the time a building permit is sought for construction of any type of building. Moreover, building and construction standards are imposed (and enhanced from time to time) for the protection not only of the public, but also for that of the property owner; thus, while saving money, the use of older construction standards could result in increased safety risks to the property owner as well as the public.