

RESOLUTION 06-01-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 859, to read as follows:

1 § 859
2 If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of
3 property belonging to a conservatee, a minor, an elder, a dependent adult, a trust, or the estate of
4 a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in
5 bad faith or through the commission of elder or dependent adult financial abuse, as defined in
6 Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the
7 value of the property in addition to the property recovered by an action under this part. In
8 addition, except as otherwise required by law, including Section 15657.5 of the Welfare and
9 Institutions Code, the person may, in the court's discretion, be liable for reasonable attorney's
10 fees and costs. The remedies provided in this section shall be in addition to any other remedies
11 available in law to a person authorized to bring an action pursuant to this part.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): For many years, the court had the power to award double damages for wrongful taking in Trust, Estate, Guardianship and Conservatorship matters. There has been confusion by the courts whether the double damages are to be added to the damage award or is the damage award only to be doubled. The appellate courts in published and unpublished decision have disagreed as to how Section 859 is to be applied. The most recent case is *Conservatorship of Ribal (Rogers v. Nguyen)* (January 18, 2019) 2018 DJDAR 561, where the court held that the damage award was to be doubled and not have double damages added to the damage award.

The Solution: The past application of Section 859 was treated in its application as if it was similar to an award of punitive damages. In cases involving punitive damages, punitive damages are added to the award of actual damages. Similar penalties (such as triple damages) in civil litigation are also added to the actual damage award. The *Ribal* case is the first published case that interprets a penalty provision to not be added to an actual damage award. This would reduce the protection as to the elderly and minors from those that attempt to wrongfully exploit them. The proposed amendment is to ensure that the purpose of the statute would be maintained and protect this vulnerable population.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known

AUTHOR AND/OR PERMANENT CONTACT:

Marc L. Sallus, Oldman, Cooley, Sallus, Birnberg, Coleman, & Gold LLP, 16133 Ventura Blvd., Penthouse, Encino, California 91436 818-986-8080 msallus@ocslaw.com

RESPONSIBLE FLOOR DELEGATE: Marc L. Sallus

RESOLUTION 06-02-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 5600, to read as follows:

1 § 5600

2 (a) This part applies to a revocable transfer on death deed made by a transferor who dies
3 on or after January 1, 2016, whether the deed was executed or recorded before, on, or after
4 January 1, 2016.

5 (b) Nothing in this part invalidates an otherwise valid transfer under Section 5602.

6 (c) This part shall remain in effect only until January 1, 2022~~2032~~, and as of that date is
7 repealed, unless a later enacted statute, that is enacted before January 1, 2022~~2032~~, deletes or
8 extends that date. The repeal of this part pursuant to this subdivision shall not affect the validity
9 or effect of a revocable transfer on death deed that is executed before January 1, 2022~~2032~~, and
10 shall not affect the authority of the transferor to revoke a transfer on death deed by recording a
11 signed and notarized instrument that is substantially in the form specified in Section 5644.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): From the introduction to SB 1305 (Roth, Reg. Sess. 2019-2020): “Existing law governs the execution, revocation, and effectiveness of a revocable transfer on death (TOD) deed, defined as an instrument that makes a donative transfer of property to a named beneficiary, as defined, that operates on the transferor’s death, and remains revocable until the transferor’s death. Existing law establishes statutory forms for executing and revoking a revocable TOD deed that include provisions and instructions for the forms to be notarized by the transferor and recorded with the county recorder. Existing law requires that subsequent pages of the form to execute a revocable TOD deed include statutory ‘common questions’ regarding the use of that form. Existing law requires that, in order to be effective, a revocable TOD deed be recorded on or before 60 days after the date it was executed.” These are all good things. The problem with Probate Code section 5600 is that it will cause all of the provisions for Revocable Transfer Upon Death Deeds (RTDDs) to expire on January 1, 2022.

The Solution: Revocable Transfer Upon Death Deeds (RTDDs) are an economical way to avoid probate for transfers of real property, without having to rely on an attorney. California’s RTDD provisions have been in effect in excess of five years now. In November 2019, the California Law Revision Commission (CLRC) issued a study about RTDDs. The CLRC study recommended that the provisions for RTDDs be extended for another ten (10) years. This resolution follows the CLRC’s recommendation to extend the RTDD provisions for an additional ten (10) years (as of January 1, 2022). See *Revocable Transfer on Death Deed: Follow-Up*

Study, 46 Cal. L. Revision Comm'n Reports 135 (2019). See also *Assembly Committee on Judiciary Bill Analysis Report*, SB -1305 (Reg. Sess. 2019-2020) (Aug. 07, 2020).

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Amended by Stats. 2020, Ch. 238, Sec. 1. (SB 1305) Effective January 1, 2021 (which extended the expiration date from January 1, 2021 until January 1, 2022).

AUTHOR AND/OR PERMANENT CONTACT:

Meera Balat, Aaron Riechert Carpol & Riffle, 333 Twin Dolphin Dr. Ste. 350, Redwood City, CA 94065-1489; tel. 650-368-4662; mbalat@arcr.com.

RESPONSIBLE FLOOR DELEGATE: Meera Balat