

Second Supplement to Memorandum 91-36

Subject: Study L-3051 - Transfer of Unintentionally Omitted Property to Trust by Conservator (Report of State Bar Team 1)

The report of Team 1 of the State Bar Estate Planning, Trust and Probate Law Section was attached to Memorandum 91-42, distributed for the last meeting. Team 1 recommends the staff draft of a *Tentative Recommendation relating to Transfer of Unintentionally Omitted Property to Trust by Conservator* attached to the basic memo be revised to read substantially as follows:

Probate Code § 2580 (amended). Petition to authorize proposed action

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.
(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for such purposes, and to such charities, relatives (including the other spouse), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life.

(6) Transferring to a trust created by the conservator or conservatee any property unintentionally omitted from the trust.

~~(6)~~ (7) Exercising options of the conservatee to purchase or exchange securities or other property.

~~(7)~~ (8) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change

beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

- (i) Life insurance policies, plans, or benefits.
- (ii) Annuity policies, plans, or benefits.
- (iii) Mutual fund and other dividend investment plans.
- (iv) Retirement, profit sharing, and employee welfare plans and benefits.

~~(8)~~ (9) Exercising the right of the conservatee to elect to take under or against a will.

~~(9)~~ (10) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

~~(10)~~ (11) Exercising the right of the conservatee (i) to revoke a revocable trust or (ii) to surrender the right to revoke a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke a revocable trust if the instrument governing the trust (i) evidences an intent to reserve the right of revocation exclusively to the conservatee, (ii) provides expressly that a conservator may not revoke the trust, or (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke the trust.

~~(11)~~ (12) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

Comment. Section 2580 is amended to add paragraph (6) to subdivision (b).

If property is discovered after the conservatee's death that has been unintentionally omitted from a trust created by the conservator or conservatee, the conservator has control of the property pending its disposition according to law. Prob. Code § 2467. See also Prob. Code § 2630 (continuing jurisdiction of court).

This revision of the draft is acceptable to the staff.

Respectfully submitted,

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