

#L-3041

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10/29/91

Fourth Supplement to Memorandum 91-10

Subject: Study L-3041 - Procedure for Creditor to Reach Nonprobate Assets (Policy Issues--further comments of Los Angeles County Bar)

Attached to this supplementary memorandum are further comments of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association opposed to proceeding with the project to develop a procedure for creditors to reach nonprobate assets. For their earlier comments, see the Second Supplement to Memorandum 91-10.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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October 29, 1991

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, California 94303-4739

via: Facsimile

RE: Study L-3041 -- Procedure for Creditor to Reach
Nonprobate Property

Dear Mr. Sterling:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association has reviewed Study L-3041 (Memorandum 91-10 and Supplements), relating to the right of a decedent's creditors to reach nonprobate assets, and would like to make the following comments.

Although we appreciate the need for protection of creditors' rights in decedents' estates, we believe that unpaid creditors are not a problem in most estates. Furthermore, most decedents do not pass substantial property at death through joint tenancy or POD accounts; rather, their estate plans provide for a living trust or will. Under these circumstances, we believe that the combination of existing claims procedures in probate estates and proposed claims procedures in trusts provides sufficient protection for creditors.

In the rare instance, in which a decedent has transferred property into a nonprobate form prior to death, in order to avoid creditors, proceeding under Probate Code Section 9653 (action to recover property fraudulently conveyed) and 9860 (action to recover property of decedent) are available to protect creditors.

We are particularly concerned that the implementation of new creditors' rights through personal representatives would greatly increase the burden upon the individual personal representatives and their attorneys, who would be required to identify, locate and value nonprobate property, in order to guarantee that the burden of creditors' claims is properly allocated among such property. Such efforts by counsel and the personal representative could cause

Nathaniel Sterling
October 29, 1991
Page 2

additional expense to the probate estate and its beneficiaries, in the form of asset searches and extraordinary compensation. Moreover, the dockets of the probate courts would be further crowded by petitions, seeking discretionary exemptions and hardship status.

This would result in the cost of collection of debt being transferred from the creditor -- who should properly bear it -- to the Courts and beneficiaries of a decedent's estate.

Finally, the ability of state law to control disposition of IRS's, retirement plans and other assets subject to federal law remains unclear. This could result in considerable litigation concerning the right of a personal representative to reach certain kinds of nonprobate property, further burdening the Courts.

Therefore, the Executive Committee believes that the legislation on creditors' claims against trusts should be implemented -- and its result evaluated -- before the proposal in Study L-3041 is further considered.

Thank you for your consideration of these comments.

Very truly yours,



Carol A. Reichstetter

CAR/ps

cc: Executive Committee