



TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

TRUSTEE PROPERTY PETITION

LEGISLATIVE PROPOSAL (T&E-2015-10)

TO: Office of Governmental Affairs

FROM: James E. Lauth, Executive Committee, Trusts and Estates Section

DATE: February 6, 2014

RE: Trustee Property Petition
A proposal to add new Part 3 to Division 8 of the Probate Code, sections 13750 through 13759

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: January 18, 2014

Approval vote: 27 - 0 - 0

Section Contact:	Section Legislative Co-Chairs:
James E. Lauth, Esq. Beamer, Lauth, Steinley & Bond, LLP Phone: 619-533-7846 Fax: 619-235-6880 jlauth@lawblsb.com	Gina L. Lera, Esq. Lera Tiberini Direct Phone: 916-403-5181 Main Phone: 916-403-5180 Fax: 916-403-5190 glera@leratiberini.com Yvonne A. Ascher, Esq. Law Office of Yvonne A Ascher Phone: 831-641-9019 Fax: 831-641-9018 yascher@ascherlaw.com

SUMMARY OF PROPOSAL

Introduction

The proposed legislation would permit the trustee of a decedent's revocable trust that is designated as the remainder beneficiary in the decedent's will to collect specifically identified assets of such remainder upon petition to the probate court, if the limited circumstances provided in the statute all apply to the decedent's will and trust. The proposed procedure would be available instead of requiring a full, formal probate administration and could also replace a Heggstad petition, if the statutory requirements for the proposed procedure are satisfied in any particular case.

The proposal would be implemented by an addition to Division 8 of the Probate Code, which addresses the disposition of decedents' assets without probate administration. Part 1 concerns the collection or transfer of "small estates" by affidavit without probate administration and Part 2 provides for passage of property to a surviving spouse or surviving registered domestic partner by a "spousal or domestic partner property petition" without probate administration. Proposed Part 3 would provide a new procedure called a "trustee property petition" for assets to pass without probate administration to the trustee of a decedent's revocable trust if certain narrow requirements are satisfied. A common estate planning technique utilizes a revocable living trust as the centerpiece of the plan, with the intention of transferring the settlor's assets to the trust during the settlor's lifetime, in part to avoid probate of those assets upon the settlor's death.

The individual typically also executes a will that is commonly known as a "pour-over will." A pour-over will directs that, upon death, the remainder of the decedent's estate assets, if any, shall be transferred to the revocable trust that was established by the decedent during lifetime. The trust then provides all of the decedent's detailed directions about the application of trust assets to or for the benefit of the decedent's intended beneficiaries. In the proposed statute, a decedent's revocable trust that is the remainder beneficiary of a decedent's pour-over will is referred to as a "recipient trust."

The use of revocable living trusts as the centerpiece of individuals' estate plans has become common in California during the last thirty years precisely to avoid the need for a full, formal, court-supervised probate administration of decedents' estates. Current law requires the full probate administration of a decedent's estate if the total gross fair market value of the decedent's estate assets exceeds the statutory maximum for the alternative "small estate" procedure, which is \$150,000 under current law. However, assets that an individual transferred to a revocable trust during lifetime do not count toward that small estate maximum amount. Instead, the decedent's trust assets are administered independently pursuant to the terms of the trust and subject to Probate Code sections governing the administration of trusts. Therefore, if enough of the decedent's assets were transferred to the revocable living trust during the decedent's lifetime, so that any and all assets remaining outside the trust qualify for alternative disposition such as the small estate procedure, then no probate administration is required after the decedent's death.

However, as the use of revocable living trusts has proliferated in California, it has also become common to find that, upon a decedent's death, the decedent's assets remaining outside the trust still have a total value at that time in excess of the maximum amount that qualifies for the alternative small estate procedure. If the total gross value of the decedent's estate assets exceeds \$150,000 (under current law), then a full probate administration is required for those assets. Under current law, that rule applies even if the only assets to be probated simply pour-over to the decedent's revocable trust. Under current law, those pour-over assets would be subject to a full probate administration simply in order pass through the decedent's pour-over will to the trustee of the decedent's recipient trust.

The trustee of the recipient trust then holds the decedent's assets, with all of the applicable fiduciary duties, for the benefit of the decedent's ultimate beneficiaries (i.e., the trust beneficiaries), as if the assets had been transferred to the decedent's trust during the decedent's lifetime. The end result, therefore, is the same as if the decedent had transferred those assets to the trust before death – except with two significant differences: the decedent's ultimate beneficiaries are subjected to the cost and delay of a full probate administration and the court has to apply precious judicial resources to that long process.

Distribution from a pour-over will to a recipient trust is distinctly different from other situations that require the probate administration of a decedent's will. For example, if the will distributes estate assets directly to the beneficiaries themselves without the intervening fiduciary role of the trustee of the decedent's trust, or when there is a more complicated division of assets (either by percentage or amount) among multiple beneficiaries and thus the division of those assets needs to be determined during the estate administration, or when there is some other dispute that requires judicial resolution, then a full, formal probate administration is the procedure to address those situations. The proposed legislation would neither replace nor modify the full probate administration in any of those circumstances.

However, there is not the same need for the comprehensive court supervision of a full probate administration when the remainder beneficiary of the will is the decedent's revocable trust.

Therefore, the proposed legislation would create an alternative procedure for very limited circumstances involving the remainder of a pour-over will passing to a recipient trust.

Trustee Property Petition

The proposed legislation would establish a new procedure called a "trustee property petition." The trustee of a decedent's revocable trust that is designated as the remainder beneficiary in the decedent's will could file a petition in the probate court to collect specifically identified assets of such remainder instead of requiring a full, formal probate administration, if all of the limited circumstances provided in the statute apply to the decedent's will and trust.

The proposed trustee property petition procedure would be available only in very limited circumstances, i.e., estates in which the decedent's revocable living trust is the residuary beneficiary of the entire remainder of the decedent's estate and the only non-residuary gifts, if

any, are specific gifts covered by either the small estate or the spousal or domestic partner property procedures of current law.

In other words, the trustee property petition would be available only if there is no other reason for a probate of the decedent's will except for the pour-over remainder gift to the decedent's recipient trust.

An important premise for the limited scope of the proposed legislation is that the bench, the bar and the public would all be best served if the trustee property petition could become very straightforward and very routine. The required elements for the petition are clearly enumerated in the statute, so it should be eminently clear when a situation does or does not qualify for the trustee property petition procedure.

As provided in the proposed statute, the trustee property petition procedure would be available only if all of the following facts and circumstances applied:

- (1) At least 40 days have elapsed since the death of the decedent;
- (2) No proceeding is being or has been conducted for the probate administration of the decedent's estate, either in this state or in any other jurisdiction;
- (3) The devise in the pour-over will to the trustee or trustees of the recipient trust applies to the entire remainder of the property subject to the will; and
- (4) Either of the following, as applicable:
 - (a) There is no devise in the pour-over will other than to the trustee or trustees of the recipient trust; or
 - (b) The only other devise or devises in the will are one or more specific gifts each of which would be eligible for disposition without administration either pursuant to the small estate provisions under the Probate Code (commencing with section 13000), determined by the petitioner as if the item or items of the decedent's property that are the subject of the trustee property petition were also excluded when determining that eligibility, or as property passing to a surviving spouse or surviving registered domestic partner pursuant to the Probate Code (commencing with section 13500).

Another important premise of the proposed legislation is that the trustee property petition is not intended to replace a probate administration if there is any significant uncertainty about, or adjudication required for, the administration of the decedent's estate. That is what probate is for, and the trustee property petition is not a modification of any probate procedure. The proposed legislation has been carefully drafted, in an effort to avoid adding features or options beyond the strict limitations of a narrow category of cases, additions which might make the trustee property

petition into something other than a straightforward and routine summary proceeding intended to handle only a typical pour-over will distributing to the decedent's revocable trust.

The rationales for some of the limitations are as follows:

Only for the pour-over to a decedent's existing revocable trust. There are other possible arrangements between a will and a trust besides a pour-over to the decedent's revocable trust. However, those other fact patterns raise issues that would better be resolved in a probate administration. For example, if the will provides for a testamentary trust – i.e., if detailed trust terms are provided in the will itself to create a trust upon the decedent's death, rather than a pour-over to the decedent's pre-existing trust -- then that will would be probated for the proper judicial establishment of the terms of the testamentary trust. If the decedent's will includes a devise to an existing irrevocable trust, which is a less common fact pattern likely involving more individualized circumstances than a typical pour-over to the decedent's revocable trust, then a probate administration would be the forum for that will. If there is any dispute or irregularity about the relationship of the will and the trust (e.g., if the trust had been revoked by the decedent during lifetime without updating the pour-over will, such that an incorporation by reference clause in the will would provide the trust terms, effectively making it into a testamentary trust), then the parties would probate the will as the forum for addressing any dispute or irregularity.

Only if the entire remainder pours-over. If less than the entire remainder poured-over to the recipient trust (e.g., if a percentage of the remainder went to charity and a percentage to the recipient trust), then the petitioner, the beneficiaries and the court would have to determine which assets of the remainder would go to the recipient trust and which assets would go to the other remainder beneficiary in satisfaction of the designated percentages. That determination would be left to a probate administration.

Specific gifts are the only permitted non-residuary gifts. The provision permitting non-residuary devises of only "specific gifts" (i.e., gifts of specifically identified assets, as defined in Probate Code section 21117(a)) is included for two reasons.

First, specific gifts are included because they would not present significant issues for judicial determination when distributing the estate remainder to the recipient trust. By definition, specific gifts are particular specifically identified assets, which would not require judicial determinations like those that would be required for other categories of gifts. Specific gifts are also included in recognition that a common format for pour-over wills gives tangible personal property to individuals (e.g. to the decedent's spouse, registered domestic partner or children) and then the remainder to a recipient trust.

Second, other types of possible pre-residuary gifts are excluded because they would inevitably require decision-making that could expand the judicial time and resources needed beyond the intended goal of a streamlined trustee property petition procedure. A will that includes pecuniary dollar value gifts would require an evaluation and determination of where that cash would come from, or which assets might best be sold to generate the cash, if needed, or which assets would be distributed in kind to satisfy the value of the pecuniary gift before distributing the remainder to the recipient trust. Demonstrative gifts in the will would require

evaluating the assets of the estate to decide how best to satisfy those bequests before the remainder would pass to the recipient trust. There could be competing beneficiary interests, as well as pros and cons to weigh, which would start to make the trustee property petition a considerably more involved proceeding than it is intended to be. Those other categories of gifts would more appropriately benefit from the judicial forum of a probate administration.

Procedure

The procedure for a trustee property petition would commence with the filing of the petition with the appropriate probate court and having the petition set for hearing.

Only the trustee of the recipient trust could file the trustee property petition. The proposed legislation would require the petition to be verified by the trustee, or if there are co-trustees, then by all of the trustees. This requirement is intended to preclude the possibility of someone filing a trustee property petition to which a trustee might object.

The trustee property petition must include allegations of all of the facts and circumstances required by the statute for the availability of the trustee property petition procedure, and both a copy of the decedent's pour-over will and a trustee's certification of the recipient trust must be filed in support of the petition.

The required notice of hearing for the trustee property petition would be identical to that required in many other proceedings in probate court. Notice of hearing would be required as provided in Probate Code section 1220 to each of the persons named in the petition, which includes each heir and devisee of the decedent, each person named as executor or alternate executor in the pour-over will, each beneficiary of the recipient trust that is identified in the pour-over will, and each person named as a trustee or successor trustee in the recipient trust.

Neither publication of notice of death nor publication of notice of hearing would be required. This is consistent with other situations involving decedent's assets in which publication is not required, such as for joint tenancy accounts, life insurance or retirement account proceeds payable to designated beneficiaries, annuities, "pay on death" accounts and, most notably, the administration of a decedent's revocable trust.

The hearing would present interested persons the opportunity to object to the trustee property petition, if they chose to do so.

The proposed legislation also would not prevent any interested person from seeking a full probate administration of a decedent's will. For example, an appropriate interested person could file a petition for probate of the decedent's will, even if the trustee property petition procedure would otherwise be available.

If the requirements of the trustee property petition procedure are satisfied, the court would issue an order that the particular item or items of property pass without administration and are transferred to the recipient trust. Each such item of property would be individually listed in the court order.

No omnibus distribution provision would be permitted by the proposed legislation, in contrast to a probate administration, in which such an omnibus disposition of any later discovered assets of the decedent's estate is both available and customary. That limitation on the scope of the assets affected by the trustee property petition is just another way that the trustee property petition is not a substitute for a full probate administration.

Upon a final order for distribution of the listed assets to the recipient trust, probate court involvement in the trustee property petition would end, but that would not end the probate court's possible role in the administration of the decedent's trust. Nothing in the proposed legislation would prevent the availability of probate court adjudication concerning the recipient trust. Although the proposed legislation requires the petitioning trustee of the recipient trust to provide a trustee's certification of trust in support of the trustee property petition, an order on the trustee property petition would not constitute any judicial action concerning the administration of the trust itself. Exactly as if the recipient trust had been fully funded by the decedent during lifetime, a trust beneficiary would be able to address concerns about the administration of the decedent's trust through the trust law in the Probate Code, including court involvement if and when needed. An interested person would have the right to petition the court at any time concerning the trust, as permitted by existing law.

Attorneys' Fees

Formal probate administration provides for statutory compensation to the personal representative and to the attorney based upon a percentage of the gross value of the estate. The "statutory fee" is 4% of the first \$100,000, 3% of the next \$100,000, 2% on the next \$800,000 and 1% on the next \$9,000,000. In addition to the statutory fee, the personal representative and the attorney can petition the court to approve compensation for "extraordinary services," i.e. services that are not part of every probate administration. Both the statutory fees and fees for extraordinary services can be paid only by court order.

In contrast, under the trustee property petition procedure, there is no personal representative to be paid a statutory fee, and neither does the attorney have a right to statutory compensation. Instead, the attorney would be entitled to reasonable compensation for services rendered, as in a trust administration. The attorneys' fees for services would be determined by private agreement between the attorney and the client, and no prior court approval would be required for the payment of those fees. This difference has the possibility of significantly benefitting beneficiaries by substantially reducing the costs of administration for a trustee property petition compared to the personal representative's and the attorneys' combined fees for a full probate administration.

Creditors' Rights

The proposed legislation has been prepared with sensitivity to the rights of the decedent's creditors. In the proposed statute, creditors' rights expressly conform to the law applicable to the creditors of deceased settlors of revocable living trusts.

Comparison to the Spousal or Domestic Partner Property Petition

The proposed legislation is neither a general substitute for probate nor a watered down “probate lite.” The better comparison is to the spousal or domestic partner property petition procedure in Probate Code section 13500 *et seq.*

For both the trustee property petition and the spousal or domestic partner property petition, particular assets of the decedent’s estate which are itemized in the petition are permitted to pass without administration in a very limited set of circumstances to a uniquely situated beneficiary. For the spousal or domestic partner property petition, that uniquely situated beneficiary is the decedent’s surviving spouse or surviving registered domestic partner, and for the trustee property petition that uniquely situated beneficiary is the decedent’s recipient trust.

The spousal or domestic partner property petition procedure has a long history of working extremely well permitting a decedent’s assets to pass without probate administration in a very limited set of circumstances to a uniquely situated beneficiary. Correspondingly, the trustee property petition procedure can have the same impact on reducing attorneys’ fees and shortening the duration of legal procedures when compared to a probate administration and also – very importantly, particularly in our current economic climate – reducing the demands on our overburdened courts.

Judicial Economy and the Heggstad Case

The proposed legislation would greatly promote judicial economy when administering decedent’s estates. Replacing a full, formal probate administration with a trustee property petition procedure in the appropriate circumstances is an obvious saving of precious judicial resources.

The trustee property petition would also significantly benefit judicial economy by replacing many instances of what has come to be known as a “Heggstad petition.” The trustee property petition would be significantly easier to adjudicate than a “Heggstad petition” and could be utilized in many of the same cases.

In Estate of Heggstad, (1993) 16 Cal. App. 4th 943 the settlor therein had declared that he had transferred certain property to his trust by briefly describing that property in a written schedule attached to the trust instrument. However, at the time of that settlor’s death, record title to a certain parcel of real property that was described on the trust asset schedule remained in that decedent’s name as an individual. There had been no deed formally conveying that property to the trustee of the trust. The Heggstad court held that the settlor’s written declaration that the property was held in trust was sufficient to create a trust in the subject real property, without the need of a formal conveyance of title to the settlor as trustee during the decedent’s lifetime. Therefore, that property was held to be an asset of the trust and not subject to disposition through the decedent’s will.

In the twenty years since the Heggstad decision, that case has become a well-established precedent for the proposition that, under certain circumstances, an asset may be considered held in trust even if not formally titled in the name of the trustee at the time of the decedent's death.

However, the circumstances to which a Heggstad petition can apply are not set forth anywhere with any specificity. The settlor's declaration that an asset is held in trust might be by a written list of assets on a "Schedule A" attached to the trust instrument, or by a separate written assignment of the asset to the trust, or in any other documentation that convinces the court of two essential facts: (1) that the deceased settlor intended that a particular asset was held in trust, and (2) that the asset presented for the court's consideration is the same asset as described in the settlor's written declaration or assignment to the trust.

The judicial determination of those two facts can require the expenditure of considerable judicial time, depending on the facts and circumstances of each case. For example, if a deceased settlor had listed a particular brokerage account on the trust's "Schedule A" list of assets attached to the trust instrument, some courts have interpreted Heggstad to apply only to the specific assets that were in the brokerage account on the date of the settlor's written declaration. If a particular court subscribes to that interpretation, any subsequent additions to or changes in that account would not qualify under the Heggstad precedent and would therefore have to be probated. In that case, detailed information must be provided by the petitioner and evaluated by the court, and the brokerage account might have to be divided into categories of pre- and post-declaration holdings. All of that takes significant time, both to prepare the Heggstad petition and for the court to evaluate it. And that is just one example of how particular facts about particular assets can make a Heggstad petition difficult. For any particular decedent, there can be multiple assets requiring multiple different factual determinations even for just one Heggstad petition.

There are no clear guidelines about what facts and circumstances satisfy the Heggstad precedent. Each court must make its own decisions on a case-by-case basis on the facts and circumstances of each individual situation. Consequently, the result of a Heggstad petition can be very unpredictable. That unpredictability can require even greater attorney time – and therefore larger bills for attorneys' fees – for prospective petitioners trying to decide whether to go directly into a more burdensome but more predictable probate administration rather than spending time and money on an unpredictable Heggstad petition that might not succeed and therefore would end up in probate anyway.

In contrast, the trustee property petition would not require the court to make either of the potentially difficult factual determinations that are central to a Heggstad petition. If the decedent's pour-over will directs disposition of the entire estate remainder to a recipient trust (and if the other easily determined requirements for a trustee property petition are satisfied), then any asset titled in the decedent's name at death qualifies to be included in the trustee property petition. This procedure would be much easier for the courts to administer than Heggstad petitions, because the court would not need to make factual determinations about the adequacy of the trust's Schedule A asset descriptions, or about any implications arising from the length of time between the preparation of the trust's Schedule A and the decedent's death, or about the decedent's intent concerning after-acquired assets added to accounts listed on the Schedule A, all of which have been factors in various courts' responses to Heggstad petitions.

With clear criteria and straightforward adjudication, trustee property petitions could routinely replace innumerable time-consuming Heggstad petitions, with considerably more predictable results.

It is important to note, however, that the proposed legislation is not intended either to replace or to codify Heggstad.

The proposed legislation is not a replacement for Heggstad, since the Heggstad case itself did not concern a pour-over will. Heggstad involved a dispute about inconsistent testamentary provisions in a will and a trust. In the Heggstad case itself, if the property in question were in the trust then it would pass to a different beneficiary than if the property were subject to the terms of the decedent's will. Heggstad would still be precedent for addressing those kinds of unusual situations. There could be cases that do not qualify for the trustee property petition but which could still use a Heggstad petition.

The proposed legislation is also not a codification of Heggstad: The proposed statute goes beyond what Heggstad has come to stand for, i.e., that assets properly assigned to a trust or listed on a trust's Schedule A may be regarded as held in the trust. For the trustee property petition, any asset that would pass to the decedent's recipient trust pursuant to the pour-over will could be covered by the trustee property petition procedure if the clear requirements in the proposed legislation were satisfied, regardless of whether there were any lifetime assignments of those assets to the trust or if they were listed on the trust's Schedule A. In that way, the proposed legislation is broader than Heggstad and much more useful than Heggstad.

Potential Judicial Council Forms

Assuming the proposed legislation is enacted, we believe that adoption of appropriate Judicial Council forms for the trustee property petition and court order would be beneficial. That standardization would further enhance the routine nature of attorneys preparing, and the court reviewing, the trustee property petition.

HISTORY:

There have not been any prior legislative proposals focused in this way on this single specific topic. The Executive Committee of the Trusts and Estates Section previously submitted a legislative proposal for the Elective Administration of Decedent's Estates ("EADE") that would have permitted for elective, informal probate in a wider variety of circumstances. This legislative proposal for a new trustee property petition procedure has been drafted in careful consideration of comments that were received about the EADE proposal. As a result, this legislative proposal takes a very different approach. Instead of an informal probate procedure with jurisdiction over a decedent's entire estate but with modified probate procedures in a wider variety of circumstances, the trustee property petition would be a non-probate procedure for disposition of only specifically listed assets of a decedent in only one very limited situation, i.e., the remainder of a decedent's estate passing entirely to the decedent's revocable trust. We believe that this legislative proposal addresses the concerns that were expressed about EADE and finds a constructive solution for this one limited, but significant, set of facts and circumstances.

IMPACT ON PENDING LITIGATION:

No pending litigation would be impacted by this legislation if enacted.

LIKELY SUPPORT & OPPOSITION:

Trusts and estates practitioners are likely to support.

The proposed legislation would likely reduce the number of formal probate administrations involving pour-over wills. Probate referees, bonding companies, and “heir finders” might oppose the proposed legislation on the assertion that a corresponding reduction of court oversight might lead to increased fraud or abuse. To our knowledge, no definitive surveys of this type of claim have ever been completed. Anecdotal evidence suggests, however, that the incidence of fraud and abuse in the administration of decedent’s trusts and estates has not increased due to such changes in the law, e.g., the spousal or domestic partner property petition. The fiduciary duty of the trustee of the recipient trust is a protection against fraud and abuse, since the trustee property petition will only pour-over estate assets into the decedent’s revocable living trust. In this narrow circumstance, where the potential for possible fraud or abuse is far outweighed by the time and cost savings to the beneficiaries, any interested person may still seek the protection of the court at any time. An interested person could petition to probate the decedent’s will, and a beneficiary or other interested person could petition the probate court at any time about the administration of the recipient trust.

FISCAL IMPACT:

Unknown fiscal impact. The trustee property petition procedure would continue to require that petitions be filed with the court, accompanied by the then applicable filing fees, even if the trustee property petition procedure could involve only one petition compared to the multiple petitions that can be required in a full probate administration. On the other hand, enactment of the proposed legislation may increase the budgetary efficiency of the courts, as there could be fewer petitions and procedures requiring court staff involvement and judicial time, compared to full probate administrations.

GERMANENESS:

This proposal requires the special knowledge, training, experience and technical expertise of the members of the Executive Committee of the Trusts and Estates Section because it relates to the resolution of probate, estate and trust matters which are the special purview of the Committee.

DISCLAIMER:

This position is only that of the Trusts and Estates Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall

membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Trusts and Estates Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF PROPOSAL

SECTION 1. Part 3 of Division 8, sections 13750 through 13759, are added to the Probate Code, to read:

Division 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

* * * * *

Part 3. DETERMINATION OF PROPERTY PASSING WITHOUT ADMINISTRATION TO TRUSTEE OF A RECIPIENT TRUST IDENTIFIED IN THE DECEDENT'S POUR-OVER WILL

CHAPTER 1. TRUSTEE PROPERTY PETITION

§ 13750 Definitions

(a) For purposes of this chapter, a "pour-over will" means a will (including any codicils) that devises property to the trustee or trustees of a recipient trust.

(b) For purposes of this chapter, a "recipient trust" means a trust established as a revocable trust by a decedent during his or her lifetime, either alone or in conjunction with his or her spouse or registered domestic partner, and identified in the pour-over will.

§ 13751. Trustee property petition

Subject to further requirements provided in this chapter, if a decedent dies testate and by his or her pour-over will devises some or all of his or her property to the trustee or trustees of a recipient trust, the trustee or trustees of such recipient trust, without procuring letters of administration, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting an order that a particular item or items of property pass without administration to the petitioner as trustee or trustees of the recipient trust.

§ 13752. When procedure provided by chapter may be used

(a) The procedure provided by this chapter may be used only if:

- (1) At least 40 days have elapsed since the death of the decedent;
- (2) No proceeding is being or has been conducted for the probate administration of the decedent's estate, either in this state or in any other jurisdiction;
- (3) The devise in the pour-over will to the trustee or trustees of the recipient trust applies to the entire remainder of the property subject to the will, and
- (4) The only other devise or devises, if any, in the will are one or more specific gifts, as defined in section 21117(a), all of which would be eligible for disposition without administration either pursuant to the small estate provisions in Part 1 (commencing with section 13000) of this Division, as determined by the petitioner as if the item or items of the decedent's property that are the subject of the trustee property petition were excluded when determining that eligibility, or as property passing to a surviving spouse or surviving registered domestic partner pursuant to Part 2 (commencing with section 13500) of this Division, as determined by the petitioner. The court may rely on the petitioner's representations concerning such determinations.

(b) The procedure provided by this chapter may be used for real or personal property of any amount or value, so long as the other requirements of this chapter are satisfied. The value of the item or items of property need not be included in the petition, neither for any individual item nor in total. No inventory and appraisal shall be required for the property subject to the procedure provided by this chapter.

§ 13753. Contents of petition; copy of will; trustee's certification of trust

(a) The trustee property petition shall be verified by the current trustee or all of the current trustees of the recipient trust as petitioner, shall contain a request that the court make an order pursuant to this chapter that a particular item or items of the decedent's property pass without administration to the petitioner as trustee or trustees of the recipient trust, and shall state all of the following:

- (1) The facts necessary to determine that the petition is filed in the proper county.
- (2) That at least 40 days have elapsed since the death of the decedent.
- (3) That no proceeding is being or has been conducted for administration of the decedent's estate, either in this state or in any other jurisdiction.
- (4) The facts and the provision or provisions of the pour-over will upon which the petitioner bases the allegation that a particular item or items of property should pass without administration to the petitioner as trustee or trustees of the recipient trust, including but not limited to the following:

(A) That the devise in the pour-over will to the trustee or trustees of the recipient trust applies to the entire remainder of the property subject to the will; and

(B) Either of the following, as applicable:

(i) That there is no devise in the pour-over will other than to the trustee or trustees of the recipient trust; or

(ii) That the only other devise or devises in the will are one or more specific gifts, as defined in section 21117(a), all of which would be eligible for disposition without administration either pursuant to the small estate provisions in Part 1 (commencing with section 13000) of this Division, determined by the petitioner as if the item or items of the decedent's property that are the subject of the trustee property petition were excluded when determining that eligibility, or as property passing to a surviving spouse or surviving registered domestic partner pursuant to Part 2 (commencing with section 13500) of this Division.

(5) A description or descriptions of the particular item or items of the decedent's property for which the petitioner requests an order pursuant to this chapter.

(6) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, each person named as executor or alternate executor in the pour-over will, each beneficiary of the recipient trust, and each person named as trustee or successor trustee in the recipient trust. For any future interests, this determination shall be made pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(7) The name and address of any person serving as guardian of the estate or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) A copy of the pour-over will must be filed in support of the petition.

(c) A trustee's certification of trust for the recipient trust that satisfies the requirements of Section 18100.5 must be filed in support of the petition.

§ 13754. Notice of hearing

Notice of hearing shall be given as provided in Section 1220 to each of the persons named in the petition pursuant to Section 13753 (a) (6) and (7).

13755. Court order for transfer of property

If the requirements of this chapter are satisfied, the court shall issue an order that a particular item or items of property pass without administration and are transferred to the petitioner as the trustee or trustees of the recipient trust. Each item of property shall be described in the order. No omnibus distribution provision shall be permitted by the procedure provided in this chapter.

§ 13756. Effect of order

Upon becoming final, an order under this chapter that property passes without administration to the trustee or trustees of the recipient trust shall be conclusive on all persons, whether or not they are in being; provided, however, that such an order shall not preclude any person from bringing any otherwise permissible petition concerning the recipient trust pursuant to Section 17200 or otherwise.

§ 13757. Liability for payment of claims, debts and expenses from recipient trust

Property transferred to the trustee or trustees of a recipient trust pursuant to a trustee property petition shall be subject to the payment of claims, debts and expenses as provided in Part 8 (commencing with Section 19000) of Division 9.

§ 13758. Attorneys' fees

Attorneys' fees for services performed in connection with the preparing and filing of a trustee property petition and obtaining a court order under this chapter shall be determined by private agreement between the attorney and the client and are not subject to approval by the court. If there is no agreement between the attorney and the client concerning the attorney's fees for such services and if there is a dispute concerning the reasonableness of the attorney's fees for those services, a petition may be filed with the court in the same proceeding or otherwise requesting that the court determine the reasonableness of the attorney's fees for those services. If there is an agreement between the attorney and the client concerning the attorney's fees for such services and if there is a dispute concerning the meaning of the agreement, a petition may be filed with the court in the same proceeding or otherwise requesting that the court determine the dispute.

§ 13759. Compliance with affidavit procedure for personal property collection or transfer

Nothing in this chapter excuses compliance with Chapter 3 (commencing with Section 13100) by the holder of the decedent's personal property if an affidavit or declaration is furnished as provided in that chapter.

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