

RESOLUTION 3-05-03

DIGEST

Trusts: Requests for Special Notice by Non-beneficiary

Amends Probate Code section 17204 to allow any interested party to request notice of court proceedings regarding a trust.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to resolution 03-06-01, which was approved in principle.

Reasons:

This resolution amends Probate Code 17204 to allow any interested party to request notice of court proceedings regarding a trust. This resolution should be approved in principle because it would allow non-beneficiary parties with legal interests at stake in a trust proceeding to better protect those interests.

Under section 17204, as currently written, only trust beneficiaries are entitled to notice of court proceedings regarding trusts. Even though trusts do not ordinarily require court administration, the rise in the number of trusts in the past ten years has caused the number of trust proceedings to rise. Third parties (who are often creditors of the decedent) may be affected by such court proceedings and should be given a method for receiving notice so they may protect their rights. Similar notice rules already exist for proceedings regarding wills.

This resolution also makes the non-beneficiary's request for notice effective upon deposit in the mail. While ordinarily such a provision might lead to inequitable results if the request were not actually received, the provision that requests must also be filed provides a safe-guard as the court will review whether a request has been complied with prior to granting a petition.

SECTION/COMMITTEE REPORT

TRUSTS AND ESTATES SECTION EXECUTIVE COMMITTEE

Recommendation: **APPROVE PRINCIPLE**

Reasons:

The committee proposes as a friendly amendment that lines 2 and 3 be amended to provide as follows: "If proceedings involving a trust are pending, any interested person, including a beneficiary of the trust, may ...

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 17204 to read as follows:

- 1 §17204
- 2 (a) If proceedings involving a trust are pending, a beneficiary of the trust or any interested
- 3 person may, in person or by attorney, file with the court clerk where the proceedings are pending a
- 4 written request stating that the ~~beneficiary person~~ beneficiary person desires special notice of the filing of petitions in
- 5 the proceeding relating to any or all of the purposes described in Section 17200 and giving an

6 address for receiving notice by mail. A copy of the request shall be personally delivered or mailed to
7 the trustee or the trustee's attorney, pursuant to Probate Code Section 1215. If personally delivered,
8 the request is effective when it is delivered. If mailed, the request is effective ~~when it is received as~~
9 of date deposited. When the original of the request is filed with the court clerk, it shall be
10 accompanied by a written admission or proof of service. A request for special notice may be
11 modified or withdrawn in the same manner as provided for in the making of the initial request.

12 (b) Except as provided in subdivision (c), after serving and filing a request and proof of
13 service pursuant to subdivision (a), the beneficiary person is entitled to notice pursuant to Section
14 17203.

15 (c) A request for special notice made by a beneficiary person whose right to notice is
16 restricted by Section 15802 is not effective.

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

PROPOSER: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: In trust matters that are before the Court, only beneficiaries of a trust may request special notice so as to be kept informed of any pleadings, accountings or rulings filed with the Court.

This Resolution: Makes the special notice provisions regarding trusts consistent with the special notice provisions regarding estates, allowing interested persons, including creditors of the trust or the beneficiaries of the trust, to receive copies of the pleadings, accountings or rulings filed with the Court.

The Problem: Trusts are now being used as will substitutes so that an estate does not need to be opened in the probate court. However there are times when a trust proceeding will be commenced in the probate court such as an accounting, petition for distribution, petition for instructions, or a petition to seek damages. The present law restricts the ability to require the parties to the court proceedings to send copies of the filings with the court. Presently only the beneficiaries of the trust may make such a demand. In similar situations regarding estates all interested parties to the estate, including creditors, may be able to request special notice and obtain these documents directly from the parties to the court proceedings. (Prob. Code § 1250.)

The right to request special notice should be so extended in trust matters that are before the court since it may seriously effect the right of the interested parties, including creditors. The resolution would still require the interested parties to file and serve such a request on all parties involved in the court proceedings.

IMPACT STATEMENT

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

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