

RESOLUTION 05-11-05

DIGEST

Probate: Gifts to Relatives of Spouse

Amends Probate Code section 6122 to provide that devises to issue or other relatives of a former spouse of the deceased are not revoked by dissolution or annulment of the marriage.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to 5-12-05.

Reasons:

This resolution amends Probate Code section 6122 to provide that devises to issue or other relatives of a former spouse of the deceased are not revoked by dissolution or annulment of the marriage. This resolution should be approved in principle because it would clarify sub-section (c)(1) of Probate Code section 6122, which provides only that gifts to a former spouse are revoked by dissolution and annulment.

Although the courts in the two cases cited by proponent felt that a decedent would not want gifts to the former spouse's children or relatives carried out after the dissolution or annulment, it is just as likely in this modern world of multiple marriages and families that the decedent would have had a good relationship with those children or relatives and would not have wanted the gifts revoked. Moreover, the average individual would prefer to avoid the cost of re-writing his or her will after the dissolution or annulment. If the person had specifically included the relatives of the spouse in the will, it was probably because the person had a good relationship with them, which would not necessarily have been affected by the dissolution or annulment. Where there is a true class gift, however, such as "to the class composed of the heirs of my spouse," there is good reason to revoke the gift. This amendment works for both purposes.

SECTION/COMMITTEE REPORTS

TRUSTS & ESTATES COMMITTEE RECOMMENDATION

DISAPPROVE

This proposal attempts to undo the result from the cases of *Estate of Hermon* (1995) 39 Cal. App. 4th 1526 and *Estate of Jones* (2004) 122 Cal. App. 4th 326 which found that gifts to named stepchildren were class gifts and thus revoked by divorce. The *Jones* court recommended that the legislature adopt UPC 2-804 which provides that divorce *would* revoke devises to the former spouse or partner's relatives. The proponent believes that it is equally likely to presume that even after termination of a relationship, gifts to a spouse or domestic partner's relatives were intended to continue. He also notes that the current Judicial Council Family Law Judgment form does not warn of the potential termination of gifts to relatives of the spouse or partner. While some relationships may be good in these circumstances, the UPC provision seems more likely to be the norm and thus, if statutory change is to be made, the UPC provision should be adopted and the Judicial Council form modified to reflect this provision. The Section also questions whether the proposed legislation would actually change the result in *Hermon* and *Jones*.

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 Governors 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 RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation

be sponsored to amend Probate Code section 6122 to read as follows:

1 § 6122
2 (a) Unless the will expressly provides otherwise, if after executing a will the testator's
3 marriage is dissolved or annulled, the dissolution or annulment revokes all of the following:
4 (1) Any disposition or appointment of property made by the will to the former spouse.
5 (2) Any provision of the will conferring a general or special power of appointment on the
6 former spouse.
7 (3) Any provision of the will nominating the former spouse as executor, trustee, conservator,
8 or guardian.
9 (b) If any disposition or other provision of a will is revoked solely by this section, it is revived
10 by the testator's remarriage to the former spouse.
11 (c) In case of revocation by dissolution or annulment:
12 (1) Property prevented from passing to a former spouse because of the revocation passes as
13 if the former spouse failed to survive the testator, provided, however, that devises to the issue or
14 other relatives of the former spouse are not revoked by the dissolution or annulment unless the
15 devises to such issue or other relatives are class gifts and are specifically designated as such.
16 (2) Other provisions of the will conferring some power or office on the former spouse shall be
17 interpreted as if the former spouse failed to survive the testator.
18 (d) For purposes of this section, dissolution or annulment means any dissolution or
19 annulment which would exclude the spouse as a surviving spouse within the meaning of Section 78.
20 A decree of legal separation which does not terminate the status of husband and wife is not a
21 dissolution for purposes of this section.
22 (e) Except as provided in Section 6122.1, no change of circumstances other than as
23 described in this section revokes a will.
24 (f) Subdivisions (a) to (d), inclusive, do not apply to any case where the final judgment of
25 dissolution or annulment of marriage occurs before January 1, 1985. That case is governed by the
26 law in effect prior to January 1, 1985.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

Existing Law: Did not provide that gifts to the issue or relatives of the former spouse would be revoked by dissolution or annulment of marriage, until the cases of *Estate of Hermon* (1995) 39 Cal.App.4th 1526, 46 Cal.Rptr.2d 577, and *Estate of Jones* (2004) 122 Cal.App.4th 326, 18 Cal.Rptr.3d 637, in which the courts determined that gifts to named stepdaughters, and to the spouse's children, were class gifts, and the presumed intent of the testator would have been to exclude the class after the revocation. The court in *Hermon* recommended that the legislature should adopt Uniform Probate Code 2-804, which provided that divorce would revoke devises to the former spouse's relatives.

This Resolution: Would make it clear that gifts to the issue or relatives of the former spouse are not revoked by dissolution or annulment, unless they are specifically designated as class gifts to the issue or relatives.

The Problem: The *Hermon* and *Jones* cases rely on what the court determined was the presumed intent of the testator. Many testators, however, have excellent relationships with their step-children or grandchildren, and with other relatives of the former spouse. It is just as likely that a testator would not have wanted such gifts revoked by the dissolution or annulment. Each person obtaining a dissolution or annulment presently receives a copy of Judicial Council Form FL-180 (Judgment (Family Law)), which informs them that gifts to the former spouse are revoked but says nothing about gifts to other relatives of the former spouse. This change in the statute would retain a clear guideline for persons obtaining a dissolution or annulment and would make it unnecessary for parties to litigate to determine their rights in

such situations.

IMPACT STATEMENT

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

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