

## **RESOLUTION 02-05-06**

### **DIGEST**

#### Trustees: Escheat to State of Undistributed Property

Adds Probate Code sections 16700-16704 to permit a trustee to distribute to the State of California property that cannot be distributed to known beneficiaries.

### **RESOLUTIONS COMMITTEE RECOMMENDATION**

#### **DISAPPROVE**

#### History:

Related to Resolution 02-04-06.

#### Reasons:

This resolution adds Probate Code sections 16700-16704 to permit a trustee to distribute to the State of California property that cannot be distributed to known beneficiaries. This resolution should be disapproved because it is unnecessary and may lead to confusion in application with the Unclaimed Property Law.

The Unclaimed Property Law (Code of Civil Procedure sections 1300 through 1600) already permits the trustee, as a “holder,” to make such transfers. A separate set of sections for this procedure may result in conflict with that law. The sections, as now written, presuppose a court proceeding pending in which the order for distribution would be made. The vast majority of trust administrations are not under continuing court supervision and therefore there is no “pending” proceeding. Therefore, the proposed sections are unnecessary or, at most, should refer trustees to the Code of Civil Procedure sections.

### **SECTION/COMMITTEE REPORT**

#### **TRUSTS AND ESTATES SECTION**

#### **DISAPPROVE**

The Trusts & Estates Section believes the comments expressed above apply to this resolution which proposes to transfer the provisions of Probate Code section 11900 to Series 16000 of the Probate Code.

*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 add Probate Code Sections 16700, 16701, 16702, 16703, and 16704 to read as follows:

1 §16700

2 (a) The court shall order property that is not ordered distributed to known  
3 beneficiaries to be distributed to the state.

4 (b) Insofar as practicable, any real property or tangible personal property shall be  
5 converted to money before distribution to the state.

6  
7 §16701

8 If the court orders distribution of property in the decedent's trust estate to the state,  
9 and the order includes words that otherwise create a trust in favor of unknown or  
10 unidentified persons as a class, the distribution shall vest in the state both legal and equitable  
11 title to the property.

12  
13 §16702

14 (a) If the court orders distribution to the state, the trustee shall promptly:

15 (1) Deliver any money to the State Treasurer.

16 (2) Deliver any personal property other than money to the Controller for deposit in  
17 the State Treasury.

18 (3) Cause a certified copy of the order to be recorded in the office of the county  
19 recorder of each county in which any real property is located.

20 (b) At the time of making a delivery of property or recordation under this section, the  
21 trustee shall deliver to the Controller a certified copy of the order for distribution together  
22 with a statement of the date and place of each recording and other  
23 appropriate recording information.

24  
25 §16703

26 (a) Property distributed to the state shall be held by the Treasurer for a period of five  
27 years from the date of the order for distribution, within which time any person may claim the  
28 property in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of  
29 the Code of Civil Procedure.

30 (b) A person who does not claim the property within the time prescribed in this  
31 section is forever barred, and the property vests absolutely in the state, subject to the  
32 provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil  
33 Procedure.

34  
35 §16704

36 No deposit of property in an trust estate shall be made in the county treasury by a  
37 trustee if any other property in the trust estate is to be or has been distributed to the state  
38 under this chapter, but the property that would otherwise be deposited in the county treasury  
39 shall be transmitted promptly to the State Treasurer or Controller as provided in this chapter.

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

PROPONENT: Sacramento County Bar Association

#### STATEMENT OF REASONS

Existing Law: Probate Code Section 11900 et seq. provide the procedure for distribution of property that the court orders will not be distributed to known beneficiaries in a probate estate, and instead will be distributed to the state of California.

This Resolution: Would provide trustees with the procedure for distributing property that the court orders will not be distributed to known beneficiaries in a probate estate, and instead is ordered distributed to the state of California.

The Problem: Very often, a decedent's estate does not result in a court-supervised probate, and no personal representative is appointed by the court to administer the estate. Alternatively, more and more decedent's estates are administered by the trustee of the trust. This new chapter to the Trust Law section of the Probate Code will inure trustees of trust estates with the same powers as a court-appointed personal representative of a probate estate. It will provide the trustee with the procedures for making distributions that have been ordered distributed to the state of California instead of known beneficiaries of an estate.

#### IMPACT STATEMENT

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

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