

RESOLUTION 05-03-2007

DIGEST

Child Support: Security and Offset to Noncustodial Parent's Estate

Amends Family Code section 4012 to permit the court to order an obligor of child support to establish a trust or annuity for child support in the event of the obligor's death.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION

APPROVE IN PRINCIPLE

The Family Law Executive Committee approves this Resolution for the reasons given by the proponent.

This position is only that of the FAMILY LAW 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 FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TRUST & ESTATES SECTION

APPROVE IN PRINCIPLE

This is consistent with existing law.

This position is only that of the TRUST & 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 TRUST & ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF RESOLUTION

RESOLVED, that Conference of Delegates of California Bar Association recommends that legislation be sponsored to amend Family Code Section 4012 to read as follows:

- 1 §4012
- 2 (a) Upon a showing of good cause, the court may order a parent required to make a
- 3 payment of child support to give reasonable security for the payments.

4 (b) For the purpose of Section 4001, where it is just and reasonable in view of the
5 circumstances of the parties, the court, in determining the needs of a supported child(ren),
6 may include an amount of support sufficient to maintain insurance for the benefit of the
7 supported child(ren) on the life of the parent required to make the payment of support so that
8 the supported child(ren) will not be left without means of support in the event that the child
9 support is not sustainable due to insufficient funds in the estate of the parent required to
10 make the payment of support. Any such order may contain step-down provisions such that
11 as the child ages, the value of the insurance may be reduced accordingly. The purpose of the
12 insurance is to insure the future payment of child support, not constitute a windfall.

13 (c) If the court has not ordered a security described in § 4012 (b), and the supporting
14 parent voluntarily provides one of the securities described in § 4012(b), this voluntary
15 security will automatically be used to offset the child support obligation of the estate of the
16 parent required to make the payment of support.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

Existing Law: The existing child support security statute (Family Code section 4012) provides that the court may order reasonable security for child support payments. It is not clear if this applies to the payor parent during life only, or if it also applies in the event of the payor's death. The proposed modifications of Family Code section 4012 are an effort to align child support security with the existing spousal support security statute (Family Code section 4360), which currently provides that a supporting spouse may be required to provide security to compensate for the loss of spousal support upon the death of the paying spouse. Unlike a spousal support obligation, a child support obligation survives the death of the parent ordered to pay child support. However, the Family Code does not have a sufficiently descriptive child support security statute.

This Resolution: Amends the Family Code by adding two subsections to Family Code section 4012, which would allow a court to order a similar security for child support, or if a payor parent voluntarily provides a similar child support security, it would be automatically used to offset the continuing child support obligation of the payor parent's estate.

The Problem: Proponents are concerned that unless the Family Code explicitly provides for the court to order a security in the event of the payor parent's death, and further explicitly provides for a voluntary security to be used as an offset against the child support obligation of the payor parent's estate, then the payee parent may demand the full support obligation be paid by the payor parent's estate AND collect the security proceeds on behalf of the minor child. In effect, current law keeps the door open for the surviving payee parent to double dip for child support payments.

By mirroring Family Code section 4360 spousal support surety language, the child support statute would provide children with the same protection as currently available to spouses in the event of

a payor parent's / spouse's death. Because family law practitioners often rely on Family Code section 4012 to provide a security during the payor parent's life, the modifications make the statute operative regardless of the reason support is deficient. Accordingly, Family Code section 4012 would apply whether or not the payor parent is alive or deceased.

IMPACT STATEMENT

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

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