

RESOLUTION 05-06-2007

DIGEST

Marriage: Validity of Death Bed Marriages

Adds Family Code section 308.10 to create a presumption that marriages performed in hospitals, hospice facilities or skilled nursing homes are presumed invalid unless the patient survives for 30 days.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Family Code section 308.10 to create a presumption that marriages performed in hospitals, hospice facilities or skilled nursing homes are presumed invalid unless the patient survives for 30 days. This resolution should be disapproved because the location of the testator in a hospital or other facility should not affect his or her ability to make a valid marriage.

If enacted, the resolution could render void marriages that were entered into by lucid couples fully intending to get married. For example, a person may choose to get married prior to undergoing a risky procedure so as to provide his or her partner with survivor benefits; a prospective mother may decide to marry the father of her child in a hospital prior to a difficult birth; or a terminally ill patient in hospice may wish to provide survivor benefits to a longstanding and supportive partner. In each such situation, the patient is lucid and is deliberately choosing to get married. Such marriages should not be presumed invalid simply because they were performed in a particular facility.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION DISAPPROVE

The Family Law Executive Committee disapproves this Resolution. While existing law does not protect heirs from marriages on death bed for financial reasons, the presumption that it is invalid unless the person survives 30 calendar days, seems to be an arbitrary number. In addition, standard, clear and convincing, in which the presumption can be rebutted is too high of a standard. Finally the proponent states this resolution will not affect any other law, statute or rule. Currently when one does marry, there are many rights and responsibilities that both parties acquire.

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
DISAPPROVE**

The Trust & Estates Section does not understand the rationale for this change. The location of the testator in a nursing home or other facility should not affect his/her ability to make a valid marriage, irrespective of timing. Abuses, if any, can be adequately addressed by existing law on duress, undue influence, etc.

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 the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add section 308.10 to the Family Code to read as follows:

- 1 §308.10
- 2 A marriage performed while one or both of the consenting parties is a patient in a
- 3 hospital, hospice facility or skilled nursing home is presumed invalid unless the party or
- 4 parties in the hospital, hospice facility or skilled nursing home survive(s) 30 calendar days
- 5 from the date the marriage is performed. This presumption may be rebutted by clear and
- 6 convincing evidence that the marriage was not procured by undue influence, fraud or duress.
- 7 An action to set aside the marriage must be brought within 3 years from the date the
- 8 marriage is performed.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Does not protect persons who are patients in a hospital, hospice, skilled nursing

home from entering a "death bed" marriage for the purpose of financial gain for the new spouse.

This Resolution: Would protect the heirs at law from "death bed" marriages where the new spouse is a friend, care giver, acquaintance or facility employee marrying a patient in a hospital, hospice, skilled nursing home for financial gain.

The Problem: There are increasing numbers of "death bed" marriages where the new spouse is a friend, care giver, acquaintance or facility employee marrying a patient in a hospital, hospice, skilled nursing home for financial gain.

IMPACT STATEMENT

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

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COUNTERARGUMENTS

BAR ASSOCIATION OF SAN FRANCISCO

This resolution has many of the infirmities of Resolution 01-03. Furthermore, no case is made that death-bed marriages are a problem. Such a marriage would have to be officiated over by someone authorized to perform marriages (e.g., a judicial officer or a minister of religion), which would seem to provide some protection against undue influence. If the proponent wishes to do some further study of the problem and can convince the Conference that a real problem exists, a resolution without the impediments of this resolution and Resolution 01-03 would be worthy of consideration.

SAN DIEGO COUNTY BAR ASSOCIATION

The resolution is extremely broad and, at the same time, limiting. It appears to be targeting (as are many of this year's resolutions) fraudulent conveyances. It does not, however, provide a convincing reason why an individual should not be able to marry if he or she has recently been hospitalized (for any reason) and later dies. The current law on fraudulent conveyance seems an adequate protection against unlawful acts of transfer. True, there may be errant cases where justice is not done, but that is insufficient justification to forbid and invalidate marriages merely due to coincidental timing.