

RESOLUTION 11-06-2007

DIGEST:

Legal Life Estate: Obligations of Life Tenant

Amends Civil Code section 840, adds Civil Code section 840.5, and amends Probate Code section 11603 to require holders of life estates in real property to insure the property and to require court orders establishing life interests to include notice of the life tenant's duties.

COMMITTEE/SECTION REPORT

TRUST & ESTATES SECTION

APPROVE AS AMENDED

The Trust & Estates Section believes the proposal has merit, but recommends that it needs to be modified in certain pertinent respects. Specifically, the Section believes that the proposal should (1) provide that a contrary provision in Testator's Will will control, (2) clarify specific insurance requirements, (3) delete court order requirement, and (4) provide for alternative protection for the remaindermen if adequate insurance cannot be obtained (due to vacancy or other conditions causing the property to be uninsurable, for example).

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 amend Civil Code section 840 and to add Civil Code section 840.5, to read as follows:

- 1 §840
- 2 Unless otherwise provided in the creating instrument, the owner of a life estate
- 3 must keep the buildings and fences in repair for ordinary waste, ~~and~~ must pay the taxes on
- 4 the property, and other annual charges, and a just proportion of extraordinary assessments
- 5 benefiting the whole inheritance. To the extent that it is reasonable to do so, the life tenant
- 6 must pay for premiums of insurance to replace the loss of the buildings or other
- 7 improvements. The presumptive remainderman has the right to demand proof that the life
- 8 tenant has obtained such insurance as is reasonable under the circumstances. The life tenant
- 9 must comply with such demand within 40 days.
- 10
- 11 §840.5

12 The owner of a life estate has a duty to use the proceeds of any insurance received to
13 compensate for a loss to the buildings or other improvements to restore the buildings or
14 other improvements to the condition they were in previous to the loss, so as to not cause any
15 injury to the inheritance. Any proceeds in excess of that required to fully restore the property
16 are the property of the life tenant.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: States that a life tenant has a duty to do no injury to the inheritance and has a duty to maintain the property. There is no duty to insure the property against loss. Furthermore, existing case law states that the proceeds of any such insurance are the exclusive property of the purchaser. If the property were held in a trust, the trustee would have a duty to insure the property and to maintain it. Insurance proceeds would be paid to the trust which is held for the benefit of both the life beneficiary and remainder beneficiary/ies.

This Resolution: Imposes a duty on a life tenant to carry insurance against loss and to use the proceeds of any such insurance to restore the property. In order to put the life tenant on notice of such duties, if the life tenancy is created by distribution from a probated estate, the order of distribution must set forth the duties of a life tenant.

The Problem: There are two problems. One is that those who receive a legal life estate from a probate do not know their duties. The second is that those duties do not include the duty to insure the property against harm. This legislation addresses both of those problems. The Probate Code section provides that court orders for distributions of life estates set forth the legal rights, restrictions and duties of life tenants. The two Civil Code sections impose a duty to carry insurance on the property and to use the proceeds of such insurance to restore the property after a loss is suffered. Such a duty to insure is imposed on the Trustee of a trust. While these changes do not guarantee compliance, they set a clear standard to be enforced in court in the event of noncompliance and harm to the property.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Valerie J. Merritt, Calleton, Merritt, DeFrancisco & Real-Salas LLP, 131 North El Molino Avenue, Suite 300, Pasadena, CA 91101, voice 626-395-0860, fax 626-395-0865, valerie@cmdrlaw.com

RESPONSIBLE FLOOR DELEGATE: Valerie J. Merritt