

RESOLUTION 03-19-08

DIGEST

Enforcement of Judgments: Amendment of Judgment

Adds Code of Civil Procedure section 670.5 to provide a procedure to amend a judgment to add additional names used by a judgment debtor.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Code of Civil Procedure section 670.5 to provide a procedure to amend a judgment to add additional names used by a judgment debtor. This resolution should be disapproved because amendment of a judgment to add additional names used by a judgment debtor would be better accomplished by amending existing Code of Civil Procedure section 680.135, and amendment to add the name of a revocable trust is not appropriate.

Code of Civil Procedure section 680.135 provides for an “affidavit of identity,” which can be filed with a request for issuance of a writ of execution or an abstract of judgment; based thereon, the court clerk can issue a writ or an abstract in the original and any additional names used by the judgment debtor which are properly attested to therein. No court motion is required. An amended judgment could be added to this code section as a third document which can be issued by the clerk in additional names, based upon an affidavit of identity.

This resolution seeks to include the name of a revocable trust settled by a judgment debtor as an additional name of the judgment debtor. This directly contradicts the language at lines 8 through 11 of the resolution, which provides that the amendment shall not include “any legal entities not separately named in the judgment”

Under existing law, a judgment can be enforced against the judgment debtor’s interest in any trust, by motion made to the court pursuant to Code of Civil Procedure sections 695.030 and 709.010. This is the appropriate procedure. It reaches any judgment debtor’s interest in a trust, even where the judgment debtor is not the settlor or is not the sole settlor, and even where the judgment debtor is not the sole beneficiary. A vast body of law controls what trust property can be reached to satisfy a judgment against a judgment debtor’s interest in a trust. This resolution would ignore and contravene this body of law.

This resolution seeks to achieve the same result as Resolution 03-23-08.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Code of Civil Procedure section 670.5 to read as follows:

1 §670.5
2 The court may, at any time after judgment, upon motion by a party, amend the
3 name of any party to include both the correct legal name and the actually used name or
4 names of that party. The motion shall set forth the name of the judgment debtor stated in
5 the judgment, the additional name or names by which the judgment debtor is known and
6 may include the name of a revocable trust of which the judgment debtor is the settlor, and
7 the facts upon which the judgment creditor has relied in obtaining the judgment debtor's
8 additional name or names. The amendment shall not include the name or names of persons,
9 including any corporations, partnerships, or any legal entities not separately named in the
10 judgment in which the judgment debtor is a partner, shareholder, or member, other than the
11 judgment debtor.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: Provides a procedure for amending a judgment to add additional names used by a judgment debtor, but only in the Small Claims Act.

This Resolution: Would create a new section with the same provision applicable to all courts.

The Problem: Current practice requires resort to the general provision of Code of Civil Procedure §187 to amend a Judgment in the Superior Court.

IMPACT STATEMENT:

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

AUTHOR AND/OR PERMANENT CONTACT: Jerome J. Blum, Herzlich & Blum LLP, 15760 Ventura Boulevard, Suite 2024, Encino, CA 91436-3002, (818) 783-8891, fax (818) 783-6682, jerry@herzlich-blum.com; and Richard L. Enkelis: (Deceased)

RESPONSIBLE FLOOR DELEGATE: Phyllis Kupferstein

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This resolution would permit a judgment creditor to proceed against a trust settled by a judgment debtor by all the same means and methods as are provided by law for the enforcement of judgments against judgment debtors themselves. It makes no exception for and does not address the common situation in which the judgment debtor is not a sole settlor.

Under existing law, a judgment can be enforced against the judgment debtor's interest in any trust, by motion made to the court pursuant to Code of Civil Procedure sections 695.030 and 709.010. This is the appropriate procedure. It reaches any judgment debtor's interest in a trust, even where the judgment debtor is not the settlor, and even where the judgment debtor is not the sole beneficiary. A vast body of law controls what trust property can be reached to satisfy a judgment against a trust beneficiary. This resolution would ignore and contravene this body of law.

The intent of this resolution, amendment of a judgment to add additional names used by a judgment debtor, would be better accomplished by amending existing Code of Civil Procedure section 680.135. Amendment to add the name of a revocable trust to a judgment entered against its "settlor" is not appropriate, makes the proposed statute self-contradictory, and contravenes the spirit, intent and rationale of a vast body of existing law.