

RESOLUTION 03-23-2008

DIGEST

Enforcement of Judgments: Levy on Revocable Trust

Amends Probate Code section 18200 and Code of Civil Procedure section 680.135 to permit enforcement of a judgment against the revocable trust of a judgment debtor, based upon an affidavit of identity for purposes of a writ of execution.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 18200 and Code of Civil Procedure section 680.135 to permit enforcement of a judgment against the revocable trust of a judgment debtor, based upon an affidavit of identity for purposes of a writ of execution. This resolution should be disapproved because it makes numerous changes to existing law, some of which are too ambiguous and would invite further litigation without resolving current problems.

Current law does not specify what methods of levy shall be used by a levying officer to reach property in a revocable trust. This resolution purports to provide for such levy, namely by allowing a levy in the name of the revocable trust even where the name of the trust does not appear in the writ of execution, so long as there is a declaration filed that the judgment debtor is the settlor of the revocable trust.

Unfortunately the proposed legislation is unclear as to what the substance of such a declaration must be, so that there is no vehicle by which to evaluate whether such a declaration is sufficient. Without such clarity, the amendment would simply invite litigation.

Further, modification of Code of Civil Procedure section 680.135 proposes to clarify that an "affidavit of identity" may include the name of a revocable trust. This single change appears to meet the drafter's intent without anything further being needed.

Finally, a subdivision (b) of Section 680.135 is proposed which would allow the modified "affidavit of identity" to be used "with any other motion or application ... for any other method of enforcement." This appears to be too broad and lacks necessary specificity.

This resolution seeks to achieve the same result as Resolution 03-19-08.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 18200 and Code of Civil Procedure section 680.135 to read as follows:

1 §18200

2 If the settlor retains the power to revoke the trust in whole or in part, the trust
3 property is subject to the claims of creditors of the settlor to the extent of the power of
4 revocation during the lifetime of the settlor. A judgment creditor may enforce a judgment
5 against such property in the name of the revocable trust pursuant to any of the methods of
6 enforcement provided in Code of Civil Procedure Part II, Title 9, commencing with
7 §680.010. A levying officer shall levy upon such property in the name of the revocable
8 trust pursuant to the methods of levy provided in Code of Civil Procedure Part II, Title 9,
9 Division 2, Chapter 3, Article 4, commencing with §700.010 even if the name of the trust
10 does not appear on the writ of execution so long as there is a declaration filed with the
11 levying officer which shall also be delivered to the person upon whom the levy is made at
12 the time of levy that the judgment debtor is the settlor of the revocable trust.

13

14 §680.135

15 (a) "Affidavit of Identity" means an affidavit or declaration executed by a judgment
16 creditor, under penalty of perjury, that is filed with the clerk of the court in which the
17 judgment is entered at the time the judgment creditor files for a writ of execution or an
18 abstract of judgment or is filed in conjunction with any other motion or application to
19 enforce the judgment. The affidavit of identity shall set forth the case name and number,
20 the name of the judgment debtor stated in the judgment, the additional name or names by
21 which the judgment debtor is known and may include the name of a revocable trust of
22 which the judgment debtor is the settlor, and the facts upon which the judgment creditor
23 has relied in obtaining the judgment debtor's additional name or names. The affidavit of
24 identity shall not include the name or names of persons, including any corporations,
25 partnerships, or any legal entities not separately named in the judgment in which the
26 judgment debtor is a partner, shareholder, or member, other than the judgment debtor.

27 (b) An affidavit of identity may also be used in conjunction with any other motion
28 or application to enforce the judgment for any other method of enforcement provided for
29 under the Enforcement of Judgments Law, Code of Civil Procedure, Title 9 commencing
30 with §680.010.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: Provides that property in a revocable trust is subject to enforcement of a money judgment. Existing law says a trust is revocable unless it says to the contrary in the body of the trust, but there is no provision for any designation in the name of the trust, thereby creating confusion between revocable and irrevocable trusts.

This Resolution: Clarifies revocable and irrevocable trusts, provides references to reach property held in a revocable trust, and provides a method of having the revocable trust's name appear upon a Writ of Execution and an Abstract of Judgment or in an Assignment Order or Turnover

Order.

The Problem: Current law does not specify what methods of levy shall be used by a levying officer to reach property in a revocable trust. Also, existing law does not provide a method of reaching property held by a revocable trust by non levy procedures such as by an assignment order.

IMPACT STATEMENT:

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

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RESPONSIBLE FLOOR DELEGATE: Phyllis Kupferstein

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This resolution would direct a levying officer to levy on property in a revocable trust without a court order to do so. Such levy could easily reach property of a co-settlor of the trust. A declaration by a judgment creditor to the effect that the declarant believes that the judgment debtor has a certain power of revocation under a trust and is the settlor thereof is not sufficient.

The proposed amendments to Code of Civil Procedure section 680.135 might be acceptable if the new language at lines 21-22, providing that the name of a revocable trust may be added as an additional name of the judgment debtor, were to be deleted.