

RESOLUTION 02-07-2014 (as amended)

DIGEST

Probate: Clarify Meaning of “Deceased Settlor’s Estate” and “Estate of the Deceased Settlor”
Amends Probate Code Section 19000, to define the terms “deceased settlor’s estate” and “estate of the deceased settlor” as used in the statute.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 19000 to define the terms “deceased settlor’s estate” and “estate of the deceased settlor” as used in the statute. This resolution should be approved in principle because use of the undefined terms “deceased settlor’s estate” and “estate of the deceased settlor” creates confusion leading to errors and unnecessary litigation.

The term “estate” is ambiguous because it can be used to mean all assets equitably controlled by a person (e.g. a life insurance policy), or can mean the assets subject to administration under Division 7 of the Probate Code. The subject of litigation regarding a deceased settlor’s estate can vary greatly, depending on which of these meanings is applicable.

Although the term “probate estate” is used in several other sections of the Probate Code, there are other provisions in the Probate Code where the identified problem would merit further clarification, as noted in the “Counterargument to Resolution 02-07-2014 submitted by TEXCOM.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 19000 to read as follows:

§ 19000

- 1 As used in this part:
- 2 (a) “Claim” means a demand for payment for any of the following, whether due, not due,
- 3 accrued or not accrued, or contingent, and whether liquidated or unliquidated:
- 4 (1) Liability of the deceased settlor, whether arising in contract, tort, or otherwise.
- 5 (2) Liability for taxes incurred before the deceased settlor’s death, whether assessed
- 6 before or after the deceased settlor’s death, other than property taxes and assessments secured by
- 7 real property liens.
- 8 (3) Liability for the funeral expenses of the deceased settlor.
- 9 (b) “Claim” does not include a dispute regarding title to specific property alleged to be
- 10 included in the trust estate.
- 11 (c) “Creditor” means a person who may have a claim against the trust property.
- 12 (d) “Trust” means a trust described in Section 18200, or, if a portion of a trust, that

13 portion that remained subject to the power of revocation at the deceased settlor's death.
14 (e) "Deceased settlor" means a deceased person who, at the time of his or her death, held
15 the power to revoke the trust in whole or in part.
16 (f) "Debts" means all claims, as defined in subdivision (a), all expenses of administration,
17 and all other proper charges against the trust estate, including taxes.
18 (g) The terms "decedent's estate," "estate of a decedent," and "decedent's probate estate"
19 as referenced in Division 9, Part 8 of this Code means a decedent's estate subject to
20 administration under Division 7 of this code."
21 (h) The terms "trust estate" and "trust estate of the deceased settlor" as referenced in
22 Division 9, Part 8, Chapter 9 of this Code means a decedent's property, real and personal, that is
23 titled in the name of the trustee of the deceased settlor's trust or confirmed by order of the court
24 to the trustee of the deceased settlor's trust.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: In the trust creditor claim procedures it is unclear to some practitioners that the terms "deceased settlor's estate" and "estate of the deceased settlor" refers to a decedent's probate estate. This misunderstanding leads to confusion by a creditor or an attorney representing a creditor, and some judges, in analyzing the proper process for perfecting a creditor's claim when a trustee does not follow the elective trust creditor claim procedure. This confusion leads some practitioners to believe that a decedent's estate is generic and can mean either a decedent's trust assets or a decedent's probate assets. The Commentary to Probate Code section 19001 tells practitioners that a creditor must first exhaust the deceased settlor's probate estate before seeking payment from the trust estate. By amending Probate Code section 19000 to define the terms "deceased settlor's estate" and "estate of the deceased settlor" as meaning the decedent's probate estate a clear definition for those terms is provided as those terms are used throughout this sometimes complicated trust creditor claim procedures. This resolution is intended to bring into Code section 19000 a definition that is in line with the intent of the trust creditor claim procedures. For the trust and estate attorney who regularly represent trustees or creditors it is understood that the reference to "deceased settlor's estate" or "estate of the deceased settlor" means a decedent's probate estate. However, some creditors, inexperienced trust/estate attorneys who represent creditors, and judicial officers with no practical probate/trust experience are unsure as to the exact meaning of a "deceased settlor's estate" or "estate of the deceased settlor," which leads to misapplication of the law when the trustee has elected not to follow the formal trust creditor claim procedure.

The Solution: Under the proposed amendment, Probate Code section 19000 will clearly define "deceased settlor's estate" or "estate of the deceased settlor," as meaning a decedent's probate estate which will clarify the exact meaning of those terms as used in the trust creditor claim procedures.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Penny Brown, Boutin Jones Inc., 555 Capitol Mall, Suite 1500, Sacramento, CA 95814; (916) 321-4444; pbrown@boutinjones.com

RESPONSIBLE FLOOR DELEGATE: Penny Brown

SECTION COMMENTS TO RESOLUTION 02-07-2014

TRUST AND ESTATE SECTION OF THE STATE BAR OF CALIFORNIA

SUPPORT IF AMENDED: The Executive Committee of the Trusts & Estates Section (TEXCOM) is supportive in principle of the Resolution's attempt to make this worthy clarification. However, TEXCOM has identified the following two issues that should be addressed: ***(AMENDMENTS MADE AT CONFERENCE PRIOR TO ADOPTION)***

1. The Resolution's proposed definition of "deceased settlor's estate" and "estate of the deceased settlor" to mean "a decedent's probate estate" may itself be ambiguous because the meaning of the term "probate estate" is somewhat unclear. TEXCOM understands the term "probate estate" is intended in this context to refer the property left by a decedent that is subject to probate administration; however, it would be more accurate for the definition to refer instead, rather than to a "decedent's probate estate" to "a decedent's estate subject to administration under this code," or something to that effect. (See Prob. Code §§ 7000, 7001.) There are other existing references to "probate estate" in Part 8 whose meaning could also be clarified in this manner. (See e.g., Prob. Code §§ 19001, 19320, 19324, 19326.)

2. The new proposed definition would affect Part 8 of Division 9 of the Probate Code. However, there are some references in Chapter 9 of that Part 8 to "trust estate of the deceased settlor" (See e.g., Prob. Code. §§ 19300, 19302, 19402.) The proposed definition of "estate of the deceased settlor" would seemingly have an unintended impact upon those references to "trust estate of the deceased settlor".

TEXCOM would support the Resolution if it were amended to adequately address the concerns mentioned above.

Disclaimer:

This position is only that of the TRUSTS and ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the TRUSTS and ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.