

RESOLUTION 08-02-2017

DIGEST

Probate: Definition of Kindred

Adds Probate Code section 51 to codify a definition of “kindred.”

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Probate Code section 51 to codify a definition of “kindred.” This resolution should be approved in principle because “kindred” is defined nowhere else in the Code, and codifying a clear, unambiguous and accurate definition will provide certainty, clarity and consistency.

Probate Code section 21110 (commonly referred to as the “anti-lapse statute”) generally provides that if a person named as a beneficiary in a testamentary instrument is not alive and is related to the decedent (*i.e.*, a “kindred”), his or her share will pass to that descendant in the absence of a contrary intent expressed in the instrument. The statute does not define “kindred” and the term is not defined elsewhere in the Probate Code.

The decision in *Estate of Dye* (2001) 92 Cal.App.4th 966, and the Law Revision Commission for the 2002 amendment to Probate Code section 21110, make clear that “kindred,” as used in the statute, refers to persons related by blood or adoption, and not by affinity (spouses and domestic partners). This definition is sound and clear. This resolution provides certainty and clarity to the term by codifying the *Dye* decision definition, rather than leaving open the possibility of a conflicting interpretation or application.

“Kindred” appears elsewhere in the Probate Code as well (see Prob. Code §§ 6402(f), 15840(a)(2), 21115(c)(1)). While the definition should appear in the portion of the Code applicable to definitions (see Prob. Code §20, *et seq.*), the resolution effectively addresses an identified issue and should be approved in principle.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Probate Code section 51 to read as follows:

- 1 § 51
- 2 “Kindred.”
- 3 Subject to Section 6451, “kindred” means a relationship by blood or adoption and not by
- 4 affinity.

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: The anti-lapse statute, Probate Code section 21110, uses the word kindred to define what happens to a bequest when a beneficiary fails to survive the settlor of a trust. However, the Probate Code does not define kindred.

The Solution: This Resolution would codify the California Court's definition of kindred as stated in the *Estate of Dye* (2001) 92 CA4th 966 and the Law Revision Commission Comments, 2002 Amendment. In the *Estate of Dye*, the Court confirmed that kindred, as used in the anti-lapse statute, applies only to relatives by blood or adoption, including parents and children, but would not apply to spouses and domestic partners. The Law Revision Commission Comments confirms that the term kindred refers to persons related by blood and adoption.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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