

SAN LUIS OBISPO COUNTY BAR ASSOCIATION
ESTATES AND TRUSTS SECTION

Estate Planning and Marital Status
Planning Issues When Marital Status Changes
April 25, 2018

1. Estate Planning Consequences of New Marriage
 - a. Pretermitted Spouse Statute – Prob. Code § 21610
 - i. Wills and trusts
 - ii. Non-testamentary transfers
 - b. ERISA Retirement Plans [401(k) Plans]
 - i. Spouse is beneficiary on day 1
 - ii. Cannot be waived in premarital agreement
2. Filing for Dissolution
 - a. Pre-filing
 - b. Filing - ATRO under F.C. § 2640
 - i. No notice or consent
 1. New will
 2. New revocable trust
 - ii. Notice
 1. Revoking a revocable trust
 2. Severing a joint tenancy
 3. Canceling a POD designation
 4. Canceling an IRA beneficiary designation
 - iii. Consent or court order
 1. Asset transfers
 2. Life insurance beneficiary change
 3. New non-probate transfers
 - c. Judgment of Dissolution – Cancels some transfers but not others
 - i. Wills and trusts
 - ii. Non-probate transfers
 1. IRA beneficiary designations
 2. POD accounts
 3. Insurance

4. ERISA plans
 5. Bona fide purchasers
3. Death of a Party – Before Dissolution
 - a. Family Court loses jurisdiction
 - b. Survivor gets his/her share of community property
 - c. Rights to estate of decedent governed by existing estate plan
 - i. Spouse benefits under trust/will
 - ii. Joint tenancy passes to surviving spouse
 - iii. Other non-probate transfers operate per terms
 - iv. Debts are characterized per family law rules and subject to allocation
 - d. Survivor may be appointed executor/successor trustee
 4. Death of a Party – After Dissolution
 - a. Family Court retains jurisdiction to divide property and allocate debts
 - b. Trust/will benefits automatically revoked
 - c. Automatic revocation of appointment of ex-spouse as executor/trustee
 - d. Joint tenancy property presumed community and divided accordingly
 - e. Some non-probate transfers automatically canceled
 - i. POD accounts
 - ii. IRA beneficiary designations
 - f. Others not canceled
 - i. ERISA plans
 - ii. Insurance beneficiary designations
 5. Child Support Issues
 - a. File a probate claim
 - i. 4 months after letters issued
 - ii. Substitute executor as party (Prob. Code 9370)
 - iii. Standing to file probate - “Any interested person” (Prob. Code § 8000)
 - b. Apply for family allowance (Prob. Code § 6540)
 - i. Has priority
 - ii. Granted only where child “does not have reasonable maintenance from other sources” (Prob. Code § 6540)
 - c. Claim against revocable trust
 - i. Child support collectible from trust

1. *Marriage of Perry* 58 Cal.App.4th 1104 (1997)
 2. Prob. Code 19001
 - ii. No personal trustee liability
 - iii. Transferee liability of beneficiaries
 - d. CCP 366.2 (One year statute)
6. Conclusions

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Further Reading

Statutes:

Prob. Code § 21600 (Pretermitted Spouses)

Fam. Code 2040 (Automatic Temporary Restraining Order)

Prob. Code §§ 5040, 5042, 6122 (Effect of Dissolution Order)

Fam. Code § 2610 (*Branco v. UFCW Northern California Employers Joint Pension Plan* 279 Fed. 3d 1154 (9th Cir. 2002))

Prob. Code § 5040 (effect of dissolution order – non-probate transfers)

Prob. Code § 6122 (effect of dissolution order - probate estate)

Fam. Code § 2640 (contribution rules)

Prob. Code § 19100 (trust liability for debts)

Cases:

Estate of Hermon, 39 Cal.App.4th 1525 (1995), *Estate of Jones*, 18 Cal.Rptr.3d 637 (2004)
(Disinheritance of stepchildren)

Egelhoff v. Egelhoff, 532 U.S. 141(2001) (ERISA pre-emption)

(*Branco v. UFCW Northern California Employers Joint Pension Plan* 279 Fed. 3d 1154 (9th Cir. 2002)) (ERISA pre-emption – Fam. Code § 2610)

In re Estate of Logan (1987) 191 Cal. App. 3d 319, 326 (CP Interest – Insurance premiums)

Marriage of Perry (1997), 58 Cal.App.4th 1104 (Child support claim against trust)

Other Resources:

Crum and Schoknecht, *How Can Our Divorcing Clients Plan Their Estates with the ATROs in the Wall* [California Trusts & Estates Quarterly, Vol. 13, Issue 4 (Winter 2008)]

Riffle, Durrans and Karlsten, *When Death and Divorce Collide* [California Trusts & Estates Quarterly, Vol. 11, Issue 1 (Spring 2005)]

Garrett, *Divorce Complications in Estates and Estate Planning: Together with the Unraveling of Common Provisions for the Former Spouse* [California Trusts and Estates Quarterly, Volume 10, Issue 4 (Winter 2004)]