



DISTRICT 18

SENATOR ROBERT M. HERTZBERG

Senate Bill 155 Streamlining Pour-Over Wills

SUMMARY

SB 155 simplifies legal procedures for certain types of wills, called “pour-over wills,” saving clients, attorneys and the courts, time and money. It applies to very specific cases, in which assets to be transferred, as well as beneficiaries, are within well-defined parameters in statute. When applicable, the new procedure will streamline probate court for these “pour over wills.”

ISSUE

A “pour-over will” directs that assets in a decedent’s estate be distributed upon death to a revocable trust that was previously established by the decedent during his or her lifetime. Under current law, a full probate administration is required if the total value of the decedent’s assets subject to the will exceeds \$150,000, even if those assets simply pour-over to the decedent’s revocable trust. The end result is the same as if the decedent had transferred the assets to his or her trust before death; only now the beneficiaries are subject to the cost and delay of a full probate administration and the court has to utilize its scarce resources on this lengthy process.

Probate proceedings can be long and complex, but are necessary in many cases. However, there are cases involving pour-over wills that are not complex, yet currently have to go through long probate proceedings.

According to the Judicial Council of California, fewer than 70% of the probate cases that were filed in 2013 were disposed of. Clearly there is a greater demand for California probate court resources than can be met. Providing a secure and expedited method of handling routine cases involving typical pour-over wills will reduce the demand on overburdened courts and alleviate some of the unnecessary stress placed on affected clients.

SB 155 (HERTZBERG)

SB 155 authorizes the trustee of a decedent’s previously established trust, to petition the superior court for an order to transfer real and personal property, of any amount or value, from the decedent’s “pour-over will” to the trust. The bill has important protections, including: (1) that at least 40 days must have passed since the death of the decedent before the trustee property petition procedure could be implemented, and (2) that the procedure would be available only if no probate administration is being or has been conducted for the decedent’s estate. When there is any uncertainty about the will or the estate, or when there is a dispute among parties interested in the estate, a full probate administration would still be available.

This proposal is comparable to the existing spousal or domestic partner property petition, which allows assets of the deceased to be transferred to the surviving spouse or domestic partner in a simplified procedure.

SPONSOR:

The State Bar of California- Trusts and Estates Section

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