

CASE UPDATES

BHBA Trusts & Estates Section – July, 2017 luncheon program

Financial Elder Abuse – *Mahan v. Charles W. Chan Insurance Agency, Inc.*, 1st Dist., June 2, 2017

Husband and Wife purchased two life insurance policies in the 1990s, naming their children as beneficiaries. The policies were held by a self-sustaining revocable living trust with their daughter as trustee. In 2013, their insurance agent and others allegedly took advantage of the elderly couple, who at this point had cognitive issues, by arranging the surrender of one of the life insurance policies, forcing the elderly couple to feed cash into the Trust, and depleting most of the gift in transaction costs and commissions to the respondents.

[The policies they originally bought provided death benefits of approx. \$1M, at an annual premium cost of \$14K. The premium for the new coverage, spread over the term, amounted to around \$800K, forcing the couple to feed cash into the Trust to sustain the new policy, consuming most of the \$1M gift in transaction costs, including \$100K in commissions to the agent.]

The agent demurred to the elders' and their daughter's action on the ground that only the Trust (the policy holder) was a proper plaintiff because the Trust owned the life insurance policies and all of the commissions were paid out of the Trust and the Trust cannot bring an action because it is not 65 years old. The trial court sustained the demurrer, and the plaintiff's appeal followed. The Court of Appeal reversed the trial court's decision to sustain the demurrer, holding that the complaint alleged a sufficient financial elder abuse claim.

"Surviving Spouse" – *Irvin v. Contra Costa County Employees' Retirement*, 1st District, June 30, 2017

The Court of Appeal, First District, reversed a trial court's order holding that W was not H's surviving spouse for purposes of receiving the surviving spouse benefits when H died a few months after their legal separation judgment had been entered. The Court of Appeal reasoned:

Because the entry of a *judgment of legal separation does not terminate a marriage, but only separates a couple's economic interests*, the plain meaning of the term "surviving spouse" includes a legally separated person. While the Probate Code defines "surviving spouse" generally to not include a person who is legally separated, several substantive provisions of the Probate Code treat legally separated spouses in the same manner as a surviving spouse. For that reason, no meaningful conclusion can be drawn from the Probate Code's definition. Further, the Board has not articulated any plausible public policy that would be furthered by the denial of continuance benefits in these circumstances.

Documentary Transfer Tax- 926 N. Ardmore Avenue, LLC v. County of Los Angeles, California Supreme Court, June 29, 2017

H and W were the owners of an apartment building. After H's death, the building was transferred to an administrative trust for W's benefit. The trust subsequently engaged in a series of transactions, including conveying the trust's interest in the building to the LLC, forming a limited partnership called BA Realty. The admin trust held a 99% interest in BA Realty. Then the trust's 99% interest in BA Realty was divided and distributed to 4 subtrusts. W remained the beneficial owner throughout the transactions.

Next, the 3 out of the 4 trusts transferred their interests in BA Realty to Allen and Bruce's separate trusts, triggering an imposition of the documentary transfer tax.

A county may, under Rev. & Taxation Code section 11911, impose a documentary transfer tax on a written instrument that transfers beneficial ownership of real property from one person to two others if the document reflects a **sale** – that is, an actual transfer of legal beneficial ownership made for consideration.

Note that the sons signed promissory notes to purchase their 44.595% interest in BA Realty, and this was not a gift. If it was a gift, there would have been no documentary transfer tax under Section 11911.