

Beverly Hills Bar Association – Trusts & Estate Section

January 2018 Case Updates

PLR 201745001

An individual created a living trust, and named a private foundation, a non-profit public benefit corporation, as the sole residuary beneficiary. Upon the individual's death, his trust became irrevocable.

The Trustees decided to distribute Trust assets to the Foundation prior the completion of the administration of the Trust. The Trustees were concerned that making early distributions to the Foundation would expose them to personal liability, as they were not going to have a reserve.

The Trustees ultimately decided to distribute Trust assets to the Foundation, on the condition that the Foundation agreed to reimburse, indemnify and hold harmless the Trustees from any liabilities and expenses sustained in the administration of the Trust.

In an unsurprising ruling, the IRS held that the Agreement does not give rise to Section 4946 self-dealing excise tax because the Trustees are not disqualified persons under IRC Sec. 4946(a)(1), and that payments back to the Trust would be not be "taxable expenditures."

***In re Marriage of Steiner* - filed Nov. 30, 2017, Fourth District, Div. One**

Cite as 2017 S.O.S. 5892

Husband was an active duty military service member. He had a group life insurance policy through the military. As part of Husband and Wife's bifurcated divorce, and as part of the status determination, the court ordered Husband to name his Wife as the beneficiary of his life insurance through the military. He ignored the court order and instead named his sister as a beneficiary. Husband died, and his sister received the insurance proceeds. The court held that state law is pre-empted by federal law, which gives a serviceman/servicewoman the right to choose anyone he or she would like to name as the beneficiary of such policy. The court is also precluded from imposing a constructive trust on the military insurance proceeds. While the court might (in other circumstances) impose a sanction on husband's estate, because he left all of his other assets to his children, his wife was unwilling to pursue sanctions as it would have negatively affected her children, and not her husband's sister.

Chief Counsel Advice 201745012

Donor created an irrevocable trust to benefit Donor and his descendants. The trust provided that an annuity would be payable to the Donor for the term of the trust, and the remainder would be distributed to Donor's descendants. Prior the expiration of the term, Donor purchased the remainder interest with two unsecured promissory notes. The following day, Donor died. The IRS concluded that the purchase was a gift for gift tax purposes, and the liability under the note was not deductible from the Donor's gross estate because the IRS did not determine that there was adequate and full consideration for the note.

***In re Marriage of Kamgar* - filed Nov. 17, 2017, publication ordered Dec. 8, 2017, Fourth District, Div. Three ; Cite as 2017 S.O.S. 6072**

Husband was a successful business man. Despite Wife's education (she began Harvard at age 16), Husband controlled and managed their finances. Wife had not reviewed bank statements for many years. At one point, and with Wife's consent, Husband opened a self-directed trading account and started doing option trading. Husband told Wife he would deposit \$2.5M into the account. Later on, Husband deposited another \$8.2M into the account without telling his Wife. A few years later, the account dropped to roughly \$400,000 after some major losses.

During Husband and Wife's divorce proceedings, Wife's attorney concluded that Husband's speculative investments amounted to gambling. The court held that Husband breached his fiduciary duty of disclosure as he did not disclose the additional investment to Wife and did not allow his Wife the "proper exercise of [her] rights and duties."

The court determined that Husband's undisclosed and reckless trading resulted in a loss of almost \$6.5M to the community. Thus, the court granted Wife \$2M for Husband's breach.