

Interpretation of California *Inter Vivos* Trusts

As an estate planning device to have an estate pass to beneficiaries upon the death of the settlor, an *inter vivos* trust (i.e., "living trust") is preferable to a will, or nothing. A will has to be submitted to probate court, it becomes a public document, and the attorney's fees are a percentage of the gross value of the estate (e.g., 4% of the first \$100,000, 3% of next \$100,000, etc.).

A trust does not have to be filed in probate court, but petitions can be filed to have the probate court decide issues that are created by the trust, or arise from disputes of trustees or beneficiaries.

In the recent case of *Trolan v. Trolan*, the Court of Appeal resolved certain issues of interpretation of the trust in a dispute between 6 siblings over the interpretation of the Trolan Family Trust ("Trust"). Upon the death of their mother in 2015, the siblings became co-trustees of the trust, with the power to act by majority vote.

Five of the siblings, agreed to maintain the assets in trust, hoping they would increase in value for the next generation ("Five Siblings"). The sixth sibling asked for distribution of her share of the trust in cash, setting the stage for the dispute and eventual appeal. ("Sixth Sibling")

Upon a petition filed by the Five Siblings, the trial court interpreted the trust to require liquidation and distribution of the trust assets upon the death of the last surviving parent, based primarily on a provision requiring distribution to any beneficiary when he or she turned 30 years old. The court removed the siblings as trustees, and ordered the replacement trustee to liquidate and distribute the trust assets, as all of the parties were over 30.

The Court of Appeal agreed with the trial court that the clear, unambiguous language of the trust required distribution of the trust assets and termination of the trust. However, it found the trial court erred when it ordered liquidation of the trust assets to accomplish that purpose, rather than deferring to the discretion of the co-trustees to distribute the trust.

In 2003, Alice Trolan amended the trust to name all six of her children as successor co-trustees, with the power to act by majority vote. When Alice Trolan died in July 2015, the trust became irrevocable, and the six siblings became the co-trustees.

The Fifth section of the trust entitled "Dispositive Provisions" provides that the estate shall be apportioned into equal shares for each of the Trolans' "then living children."

The trust does not require the trustee to physically segregate or divide the trust shares, “except as segregation or division may be required by the termination of any of the trusts.” The trustees have the ability to “distribute the remaining principal and any accumulated income, or continue the trust for the benefit of the beneficiaries named in the trust, under the terms and conditions” set forth in the “Dispositive Provisions” section.

Relevant to the instant dispute, the trust had a spendthrift provision: “Distributions of principal shall be made as follows: Whenever any beneficiary for whom a trust is then held shall have attained the age of twenty-five (25) years the Trustee shall distribute to such beneficiary one-half (1/2) of the principal of the trust held for him; upon having attained the age of thirty (30) years the Trustee shall distribute to such beneficiary the balance of his or her trust.”

The trust also set forth “Trustee’s Powers,” giving the trustee certain “powers and discretions” in addition to those “granted to or vested in the Trustee” by law or by the trust. The trustee can “continue to hold any property received in trust, including undivided interest in real property, and to operate any property or any business received in the trust as long as the Trustee, in the Trustee’s discretion may deem advisable.”

The trustee also has the power, upon any division or distribution of the Trust Estate, to partition, allot and distribute the Trust Estate in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution.

The trust estate consisted primarily of Comerica Bank stock and several parcels of real property. Following Alice Trolan’s death, Sixth Sibling asked to receive her one-sixth share of the estate in cash. Five Siblings agreed they wanted to retain the real property in trust hoping the property would appreciate in value.

Five Siblings filed a Petition Regarding the Internal Affairs of a Living Trust (the petition), asking the probate court to make findings regarding the value of the trust estate as a whole and Sixth Sibling's share of the estate, based on the lower appraisal the Five Siblings had obtained in response to the probate referee’s overvaluation of the real properties.

After ruling the Age 30 Provision required liquidation and distribution of the trust, the probate court ordered the removal of all co-trustees and appointed a professional fiduciary to carry out the trust terms. It did so based on the court’s belief that the failure to distribute the trust assets was a breach of the fiduciary duties of loyalty and impartiality, and the fact that the parties could not reach a

resolution even when they were aware of the Court's tentative ruling, and based on the court's authority provided by Probate Code §15642(a). The court then ordered the new trustee to liquidate the trust assets, pay expenses and taxes, pay both parties' attorney fees and costs from the trust, and distribute the balance equally between the parties.

The Appellate Court held that in order to first ascertain, and then, if possible, give effect to the intent of the trustor, the court must consider the whole of the trust instrument, not just separate parts of it. If the language of the instrument clearly sets forth the intent, the court does not consider extrinsic evidence; it only looks to extrinsic evidence in the event of an ambiguity.

Considering the trust as a whole, the Appellate Court concluded the trust is not ambiguous on its face; the provisions clearly require the distribution of assets and termination of the trust upon the death of the last surviving spouse if the beneficiaries have all reached age 30. In reviewing all provisions together, the Appellate Court found the Age 30 Provision to be specific and unambiguous, and *consistent* with the other provisions of the trust.

Having found the trust clearly and unambiguously required distribution of the trust assets, the Appellate Court also concluded that the language of the trust clearly and unambiguously granted the co-trustees discretion regarding the method of distribution of the trust assets. Therefore, the Five Siblings were not required to liquidate the assets to accomplish distribution of the trust under its terms; rather, liquidation is one of several possible options.

The Appellate Court concluded the probate court exceeded its authority when it ordered immediate liquidation of the trust assets, and substituted its judgment regarding the method of distribution of the trust assets for that of the co-trustees.

The Appellate Court noted that the trustees could accomplish the purpose of the trust—the distribution of equivalent shares of the trust assets to each of the beneficiaries—without liquidating the trust assets. The trust did not require liquidation of the assets, but distribution of them.

LESSONS:

1. If the beneficiaries or trustees of a trust have disputes, they can file a petition to have the probate court resolve the disputes.
2. In interpreting the terms of the trust, the court must consider the whole of the trust instrument, not just separate parts of it.

3. If the language of the instrument clearly sets forth the intent, the court does not consider extrinsic evidence; it only looks to extrinsic evidence in the event of an ambiguity.

4. Although the Five Siblings lost on the issue of the timing of the distribution, they won on the issue of their authority to determine the method of distribution - illustrating how a party can lose a battle, but win the war.