

1. ESTATE OF ELTISTE 22PR0067

Petition to Administer Estate.

TENTATIVE RULING # 1: THE PETITION IS GRANTED. THE COURT SETS A REVIEW HEARING RE: INVENTORY AND APPRAISAL AT 8:30 A.M. ON WEDNESDAY, AUGUST 31, 2022 IN DEPARTMENT EIGHT. (PROBATE CODE, § 8800 (b).) THE COURT FURTHER SETS A REVIEW HEARING RE: STATUS OF ADMINISTRATION AT 8:30 A.M. ON WEDNESDAY, APRIL 26, 2023 IN DEPARTMENT EIGHT. (PROBATE CODE, § 12200.)

2. ESTATE OF MARRS PP-20180235**Final Account and Report and Petition for Final Distribution.**

On April 15, 2022 an assistant public administrator filed a declaration re: heirship issue. She declares: heir Christy Hornsby passed away shortly before the filing of the Final Account and Report and Petition for Final Distribution; at the time the petition was filed it was unknown if she had a will or other testamentary instrument and whether probate of her estate would be required; after a diligent search, no will has been found, therefore, it is believed she died intestate; at the time of her death she was unmarried and had three adult children; Christy Hornsby's assets, including the interest in this estate, were below the threshold for probate, so no probate will be filed; and a Probate Code, §13100 affidavit of small estate has been provided to Christy Hornsby's heirs for completion.

A proof of service declares that on March 18, 2022 notice of the hearing and a copy of the Final Account and Report and Petition for Final Distribution were served by mail on all interested persons, including the three adult children of decedent Christy Hornsby.

TENTATIVE RULING # 2: THE PETITION IS GRANTED. THE FINAL ACCOUNT IS ALLOWED, SETTLED, APPROVED AND CONFIRMED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. THE COURT AUTHORIZES PAYMENT OF \$749 TO VALERIE MARRS' ATTORNEY, PAUL KRAFT, FOR EXPENSES INCURRED IN CONNECTION WITH VALERIE MARRS' COMPETING PETITION TO BE APPOINTED PERSONAL REPRESENTATIVE. THOSE EXPENSES ARE TO BE DEDUCTED FROM THE ESTATE AS A WHOLE. THE COURT ORDERS THAT THE EXTRAORDINARY EXPENSES INCURRED IN ADMINISTERING THE ESTATE IN THE AMOUNT OF \$780 THAT AROSE FROM THE PRE-EVICTION PROCESS TO EVICT HEIR HILLARY MARRS FROM A TRAILER ON THE

ESTATE'S REAL PROPERTY SHALL BE ALLOCATED TO HILLARY MARRS' SHARE OF THE ESTATE AS THEY AROSE FROM EFFORTS TO REMOVE HER FROM THE PROPERTY SO IT COULD BE SOLD. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. CHRISTY HORNSBY'S SHARE OF THE ESTATE IS TO BE DISTRIBUTED TO HER THREE INTESTATE HEIRS UPON THEIR PRESENTATION OF AN EXECUTED PROBATE CODE, §13100 AFFIDAVIT OF SMALL ESTATE. THE COURT SETS A REVIEW HEARING RE: STATUS OF ADMINISTRATION FOR 8:30 A.M. ON WEDNESDAY, AUGUST 24, 2022 IN DEPARTMENT EIGHT AT WHICH TIME THE COURT ANTICIPATES THAT THE RECEIPTS OF FINAL DISTRIBUTION WILL HAVE BEEN FILED AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) SUBMITTED.

3. ESTATE OF SHOCKLEY PP-20200119

Review Hearing Re: Status of Administration.

TENTATIVE RULING # 3: THE ORDER OF FINAL DISCHARGE HAVING BEEN ENTERED

ON MARCH 8, 2022, THIS MATER IS DROPPED FROM THE CALENDAR.

4. ESTATE OF HARNEY PP-20210198

Review Hearing Re: Inventory and Appraisal.

Letters of Special Administration were issued on November 17, 2021. There is no Final Inventory and Appraisal in the court's file.

Petitioner has not filed a petition for general administration of the estate. This needs to be remedied.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, APRIL 27, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. ESTATE OF WILBUR PP-20300164

1st and Final Report on Waiver of Account and Petition for Final Distribution.

TENTATIVE RULING # 5: THE PETITION IS GRANTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. INASMUCH AS THE SOLE BENEFICIARY ENTITLED TO FINAL DISTRIBUTION IS ALSO THE PERSONAL REPRESENTATIVE AND THERE IS NO REAL PROPERTY BEING DISTRIBUTED, THE COURT ORDERS VACATED THE JULY 6, 2022 REVIEW HEARING RE: STATUS OF ADMINISTRATION.

6. ESTATE OF MORRIS 22PR0057

Petition to Administer Estate.

There is no proof of publication in the court's file. (See Probate Code, §§ 8120 and 8121(a).) The court can not consider this petition absent proof of publication.

The verified petition states that petitioner is the sole intestate heir of the estate and petitioner filed a waiver of the bond requirement. The proof of service of notice of this hearing filed on April 7, 2022 declares that six persons and an attorney were mailed notice of the hearing. The proof of service does not declare that a copy of the petition was also served. The list of interested persons needs to be clarified in order for the court to properly determine whether the waiver of bond by a single person, the petitioner, is adequate to waive the bond requirement in this intestate estate and to determine whether adequate notice has been served where the six other persons did not receive a copy of the petition.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, APRIL 27, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

7. ESTATE OF TAPIA PP-2020088

(1) Petition for Determination of Entitlement to Estate Distribution.

(2) 1st and Final Account and Report and Petition for Final Distribution.

Petition for Determination of Entitlement to Estate Distribution.

On January 14, 2022, prior to the court's hearing on the 1st and Final Account and Report, intestate heir Sonia Tapia filed an objection to the 1st and Final Account and Report and a petition for Determination of Entitlement to Estate Distribution.

The verified petition alleges: petitioner is the biological daughter of decedent and, therefore, a legal heir of decedent's estate; while the personal representative claims that the entire estate is community property and as the surviving spouse the personal representative is entitled to distribution of 100% of the estate, the real property located on Chaparral Drive is decedent's separate property as of October 9, 2009, because title was expressly held by decedent as a married woman as her separate property by a recorded Interpositional Transfer Deed executed by the personal representative/surviving spouse; although the presumption of legal title set forth in Evidence Code, § 662 can be overcome by clear and convincing evidence, the presumption may not apply where it conflicts with the transmutation statutes; although the personal representative claims in the 1st and Final Account and Report that the transfer in 2009 was merely for lending purposes and title simply remained in decedent's name until her death, based upon information and belief, the interspousal transfer was made in 2009 when the parties were separating and decedent paid money in exchange for the personal representative/surviving spouse to sign the transfer deed and upon information and belief based upon a search of El Dorado County records, there was no mortgage on the property at the time of transfer or anytime thereafter; the original mortgage recorded at the time of the

original purchase was paid in full on August 17, 2005; each and every personal property asset held solely in decedent's name shall be presumed to be her separate property, unless the presumption of sole ownership is overcome by clear and convincing evidence that it was community property; and petitioner requests an award of attorney fees and costs from the personal representative's share of the estate as he has acted in bad faith.

The proof of service declares that on January 26, 2022 notice of the hearing and the petition were served by mail on the other two intestate heirs and the personal representative's counsel. There was no opposition in the court's file at the time this ruling was prepared.

"At any time after letters are first issued to a general personal representative and before an order for final distribution is made, the personal representative, or any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of the persons entitled to distribution of the decedent's estate. The petition shall include a statement of the basis for the petitioner's claim." (Probate Code, § 11700.)

"Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons: ¶ (a) Each person listed in Section 1220. ¶ (b) Each known heir whose interest in the estate would be affected by the petition. ¶ (c) Each known devisee whose interest in the estate would be affected by the petition. ¶ (d) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition." (Probate Code, § 11701.)

"Any interested person may appear and, at or before the time of the hearing, file a written statement of the person's interest in the estate. The written statement may be in support of, or in opposition to, the petition. No other pleadings are necessary and the written statement of each claimant shall be deemed denied by each of the other claimants to the extent the written statements conflict." (Probate Code, § 11702(a).)

“If a person fails timely to file a written statement: ¶ (1) The case is at issue notwithstanding the failure and the case may proceed on the petition and written statements filed by the time of the hearing, and no further pleadings by other persons are necessary. ¶ (2) The person may not participate further in the proceeding for determination of persons entitled to distribution, but the person's interest in the estate is not otherwise affected. ¶ (3) The person is bound by the decision in the proceeding.” (Probate Code, § 11702(b).)

“Section 11704 is part of a statutory scheme creating a procedure for a court to ascertain who is entitled to distribution rights from a decedent's estate.[Footnote omitted.] Section 11700 et seq., details the procedures by which interested persons and personal representatives may seek to establish who is entitled to a distribution from an estate by filing a petition. Any interested person may appear and oppose such a petition and file a written statement of that person's interest in the estate. (§ 11702, subd. (a).) [Footnote omitted.] Section 11704 provides: “(a) The court shall consider as evidence in the proceeding any statement made in a petition filed under Section 11700 and any statement of interest filed under Section 11702. The court shall not hear or consider a petition filed after the time prescribed in Section 11700.¶¶ (b) The personal representative may file papers and otherwise participate in the proceeding as a *party to assist the court.*” (Italics added.) Section 11705, subdivision (a) expressly provides that in ruling on such a petition, “The court shall make an order that determines the persons entitled to distribution of the decedent's estate and specifies their shares.” When an order for final distribution becomes final, it is “conclusive as to the rights of all interested persons.” (§ 11705, subd. (b).)” (In re Estate of Bartsch (2011) 193 Cal.App.4th 885, 891-892.)

“The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.” (Evidence Code, § 662.)

“...the requirements for a valid transmutation under Family Code section 852, subdivision (a), can be divided into two basic components: (1) a writing that satisfies the statute of frauds; and (2) an expression of intent to transfer a property interest. Based upon the *MacDonald* court's interpretation and application of section 852, subdivision (a), as well as its reliance upon its prior construction of the express declaration requirement in Civil Code section 683, we understand the Supreme Court to have interpreted the express declaration language of section 852, subdivision (a), to specifically require that a writing effecting a transmutation of property contain on its face a clear and unambiguous expression of intent to transfer an interest in the property, independent of extrinsic evidence. (See *In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 593, 81 Cal.Rptr.2d 726 (*Barneson*) [“The *MacDonald* test ... requires only a clear demonstration of a change in ownership or characterization of the property at issue”].)” (*Estate of Bibb* (2001) 87 Cal.App.4th 461,468.)

In *Bibb*, *supra*, the grant deed on the subject real property stated that a surviving joint tenant, Everett, granted the property to himself and Evelyn as joint tenants. The appellate court found that since “grant” is the historically operative word for transferring interests in real property, there is no doubt that Everett's use of the word “grant” to convey the real property into joint tenancy satisfied the express declaration requirement of section 852, subdivision (a); and this deed validly transmuted the property as held in joint tenancy, became Evelyn's separate property upon Everett's death, and was properly excluded from the probate estate. (*Estate of Bibb* (2001) 87 Cal.App.4th 461, 468-469.)

In reversing the trial court's order finding that an Interspousal Transfer Grant Deed executed by the husband that conveyed the property to the wife as her separate property did not transmute the real property from community property to separate property the appellate court held: “Prior to the enactment of former Civil Code section 5110.730 in 1984, it was

relatively “ ‘easy’ ” for spouses to transmute community property into separate property and vice versa, simply by oral statement. (See *Estate of MacDonald* (1990) 51 Cal.3d 262, 268-269, 272 Cal.Rptr. 153, 794 P.2d 911 (*MacDonald*), quoting Recommendation Relating to Marital Property Presumptions and Transmutations, 17 Cal.Law Revision Com.Rep. (1984) p. 213 (1984 Law Revision Commission Report).) The allure of easy transmutations had encouraged extensive litigation by allowing spouses to “ ‘transform a passing comment into an “agreement” or even to commit perjury by manufacturing an oral or implied transmutation.’ ” (*MacDonald, supra*, 51 Cal.3d at p. 269, 272 Cal.Rptr. 153, 794 P.2d 911, quoting 1984 Law Revision Commission Report, *supra*, at p. 214.) With the passage of former Civil Code section 5110.730, the era of easy transmutation came to an end. ¶ The statute was transmogrified into current Family Code section 852 in 1992 (see Stats. 1992, ch. 162, operative Jan. 1, 1994), with literally no change in language. Section 852 sets forth these elements: (1) the transmutation must be made in writing; (2) the writing must contain an “express declaration” of transmutation; and (3) the writing must be “made, joined in, consented to, or accepted” by the adversely affected spouse. [FN 6] ¶ FN 6. The elements of transmutation are all found in subdivision (a) of section 852. The remainder of the statute involves such collateral topics as effect on third parties, gifts of a personal nature like jewelry, and commingling. The exact text of subdivision (a) is: “A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.” ¶ Most of the litigation involving section 852 has centered on the “express declaration” element. For example, in *MacDonald*, a deceased husband used community funds to open three IRA accounts, with the beneficiary of each account being a trust that left most of money to one of his three children from a prior marriage. Our Supreme Court held the opening of the accounts did not qualify as

transmutations of community property to separate, even though the wife signed a writing to the effect she consented to them. The reason was there was nothing in the documents that warned the wife her husband was changing the character of the property. (See *MacDonald*, *supra*, 51 Cal.3d at pp. 272-273, 272 Cal.Rptr. 153, 794 P.2d 911.) “Obviously, the consent paragraphs contain no language which characterizes the property assertedly being transmuted, viz., the pension funds which had been deposited in the account. It is not possible to tell from the face of the consent paragraphs, or even from the face of the adoption agreements as a whole, whether decedent was aware that the legal effect of her signature might be to alter the character or ownership of her interest in the pension funds. There is certainly no language in the consent paragraphs, or the adoption agreements as a whole, expressly stating that decedent was effecting a change in the character or ownership of her interest. Thus, we agree with the Court of Appeal that these writings fail to satisfy the ‘express declaration’ requirement of section 5110.730 (a).” (*MacDonald*, *supra*, 51 Cal.3d at pp. 272-273, 272 Cal.Rptr. 153, 794 P.2d 911.) ¶ On the other hand, in *Estate of Bibb* (2001) 87 Cal.App.4th 461, 104 Cal.Rptr.2d 415 (*Bibb*), a grant deed signed by the deceased husband transferring his separate property interest in an apartment to himself and his wife as joint tenants was effective to transmute his separate interest to community. The *Bibb* court reasoned the word “ ‘grant’ is the historically operative word for transferring interests in real property” and thus the grant deed “validly transmuted” the apartment into joint tenancy. (*Id.* at pp. 468-469, 104 Cal.Rptr.2d 415, quoting *MacDonald*, *supra*, 51 Cal.3d at p. 273, 272 Cal.Rptr. 153, 794 P.2d 911.) ¶ The present case is more like *Bibb* than *MacDonald*. For one thing, there were *fewer* magic words in *Bibb* than here. Here, not only did the writing use the verb “grant”—the main point of *Bibb*—but the heading added the words “interspousal”—denoting a spouse-to-spouse transaction—and “transfer grant”—denoting that whoever was

doing the granting was actually transferring something out of that person's estate. Furthermore, this ITGD unequivocally stated the transfer was to make the property Wife's as her sole and separate property, inescapably pointing the reader in the direction of a change in the marital characterization of the property. ¶ We therefore disagree with the trial court that the ITGD did not contain enough “magic words” to effectuate a transmutation. (See *Bibb*, *supra*, 87 Cal.App.4th at p. 468, 104 Cal.Rptr.2d 415 [noting that the words “I give to the account holder any interest I have” would be enough under *MacDonald*].) We do not believe any form of the word “transmute” is necessary.” (Emphasis added.) (In re Marriage of Kushesh & Kushesh-Kaviani (2018) 27 Cal.App.5th 449, 453–455.) The appellate court further stated: “But ITGD's are not only title documents. They are also writings that expressly transfer spousal interests, in which spouses unequivocally make “interspousal” transfers to another, and do so, to harken back to *Bibb*, by way of the traditional word for a conveyance—a “grant.” They don't just *reflect* title. They use a verb—“grant”—to *convey* title. And in that role ITGD's *do* meet section 852's transmutation requirements.” (In re Marriage of Kushesh & Kushesh-Kaviani (2018) 27 Cal.App.5th 449, 456.)

Although there are no oppositions or objections in the court's file, an objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.) Therefore, appearances are required.

Personal representative Santiago Tapia appeared at the hearing on March 23, 2022. Sonia Tapia did not appear. The court continued the hearing on this matter to April 27, 2021. There is no proof of service of notice of the continuance on Sonia Tapia in the court's file. The court can not reach the merits unless proof of adequate service of notice of the continuance is provided.

1st and Final Account and Report and Petition for Final Distribution.

Intestate heir Sonia Tapia objects to the 1st and Final Account on the grounds that the real property located on Chaparral Drive is not community property as reported by the personal representative and is, instead, the decedent's separate property as its recorded title states; and, therefore, the personal representative/surviving spouse does not own 50% of that property as his community property interest in the property and he is not entitled to inherit the remaining 50% as the surviving spouse.

On March 16, 2022 the personal representative filed an amended 1st and Final Account and Report. In paragraph 35 of the amended 1st and Final Account and Report the personal representative states that in order to avoid litigation and the further breakdown of the relationships of the family members, the personal representative is willing to treat the Chaparral Drive property as decedent's separate property and proposes to distribute intestate shares of 1/3 each to the personal representative/surviving spouse and decedent's two daughters, Sandra Villasenor and Sonia Tapia in accordance with Probate Code, § 6401(c).

There is no proof of service of a copy of the Amended 1st and Final Account and Report on the interested persons in the court's file.

Personal representative Santiago Tapia appeared at the hearing on March 23, 2022. Sonia Tapia did not appear. The court continued the hearing on this matter to April 27, 2021. There is no proof of service of notice of the continuance on Sonia Tapia in the court's file. The court can not reach the merits unless proof of adequate service of notice of the continuance and a copy of the Amended 1st and Final Account and Report is provided.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, APRIL 27, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE

SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT
www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

8. ESTATE OF ARNESEN PP-20210040

Review Hearing Re: Status of Administration.

**TENTATIVE RULING # 8: THE ORDER FOR FINAL DISCHARGE HAVING BEEN ENTERED
ON FEBRUARY 16, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.**

9. ESTATE OF DYKSTRA PP-20210035

Petition for Final Distribution on Waiver of Account.

Letters of Administration were issued on May 5, 2021. On June 21, 2021 Golden 1 Credit Union filed a creditor's claim in the amount of \$12,424.76 for amounts due and owing on a vehicle loan and a credit card. On April 4, 2022 Marshall Medical Center filed a creditor's claim for \$235.64.

Paragraph 6 of the report lists two creditor claims were filed and paid. Neither of the above-cited claims were addressed in paragraph 6. The court is unable to find a rejection or allowance of the claims in the court's file. It appears the administration of this estate is not in a condition to be closed until these two creditor claims are addressed.

Exhibits A-E are not attached to the petition. The original waivers of account were filed on March 22, 2022.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, APRIL 27, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

10. ESTATE OF STOLP PP-20210035

Review Hearing Re: Status of Administration.

Letters of Administration with Will Annexed were issued on March 11, 2021. The Corrected Final Inventory and Appraisal was filed on September 3, 2021. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, APRIL 27, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

11. ESTATE OF DEKKER PP-20170034

Review Hearing Re: Status of Administration.

On August 26, 2020 the court removed the personal representative for failure to perform his duties and appointed the Public Administrator as successor personal representative. (Probate Code, §§ 8500(b) and 8502(c).) Letters of Administration were issued on November 16, 2020. There is no Final Account and Report in the Court's file.

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, APRIL 27, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

12. MATTER OF THE TRUST OF YOUMANS FAMILY 21PR0067**Petition to Determine Ownership of Trust Property and for Order Authorizing and Directing Trustee to Transfer Estate Property.**

Petitioner is the successor trustee and one of three Trust beneficiaries. The verified petition alleges: surviving settlor/trustor Zoe Youmans passed away on August 15, 2021; after she passed away it was discovered that she was entitled to a refund of the unamortized balance of the entrance fees she had paid to Acts Retirement – Life Communities, Inc., which entry fee refund needs to be titled in the name of the Trust; it is believed that the entrance fee to be refunded is less than \$60,000; a Probate Code, § 13100 affidavit was sent to Acts Retirement – Life Communities, Inc. claiming the refund as a trust asset to be paid to the trustee; Acts Retirement – Life Communities, Inc. refused to transfer the fees to the trustee; and pursuant to Probate Code, § 13105(b) petitioner is entitled to recover from Acts Retirement – Life Communities, Inc. the attorney fees and costs incurred to bring the petition.

Petitioner requests the issuance of an order providing the following: the entrance fee refund is an asset of the Trust; the entrance fee refund is to be distributed to the trustee of the Trust; the successor trustee is authorized to execute any and all necessary instruments and commitments to complete the transaction; and Acts Retirement – Life Communities, Inc. is directed to pay the successor trustee of the Trust the legal fees and costs incurred in this proceeding.

Attached to the petition are consents to the petition to determine the Trust owns the subject entrance fee refund executed by the other two beneficiaries of the Trust. (See Petitioner's Exhibits F and G.)

“All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2.” (Probate Code, § 17200.1.)

The trustee or any interested person may file a petition to determine ownership of real or personal property and to obtain an order directing the conveyance or transfer of real or personal property in any of the following cases: “(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. (C) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust.” (Probate Code, § 850(a)(3).)

“Except as provided in Sections 853 and 854, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other fiduciary, or the person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief.” (Probate Code, § 856.)

Settlors who are also the trustees of a trust may create a trust by written declaration in the Trust instrument that certain real and personal property that they own is held as trustees of the Trust without having to formally transfer or convey the property to the Trust in a separate instrument such as a deed. (Estate of Heggstad (1993) 16 Cal.App.4th 943, 947-948.)

A written document declaring a trust in the property described in Schedule A signed by the settlor who owns the described property at the time he or she made the declaration constitutes a proper manifestation of his or her intent to create a trust. There is no requirement that the settlor/trustee execute a separate writing conveying the property to the trust. (Estate of Heggstad (1993) 16 Cal.App.4th 943, 948.)

The appellate court opinion in Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156 essentially held that where the Trust Instrument states that all of trustor's "right, title and interest" to all of his or her real and personal property is included in the Trust's assets and it is possible by resorting to extrinsic evidence to determine that the trustor held title to the subject property, then such a designation is sufficient to designate that property as being held in Trust and to satisfy the statute of frauds related to real property. (Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156, 164.) In fact, the appellate court stated a general assignment of personal property in a written instrument is legally effective. "The rule expressed in *Sterling* and in *Beverage* is consistent with our Supreme Court's long-standing view that a general assignment of a party's real and personal property in a written instrument is sufficiently certain to be legally effective..." (Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156, 162, fn. 6.)

Attached as Exhibit B to the verified petition is a written general transfer and assignment of all of the trustors' personal property interests to the trustees of the Trust. It provides: the agreement is effective as to all assets and benefits of the trustors when signed; and effective prospectively with respect to all other assets and benefits hereafter acquired by the trustors, with specified exceptions. (Petition, Exhibit B – General Transfer, paragraphs 2 and 5.) The written general transfer agreement was executed by both trustors/settlors on July 3, 2014.

"(a) If the requirements of Sections 13100 to 13104, inclusive, are satisfied: ¶ (1) The person or persons executing the affidavit or declaration as successor of the decedent are entitled to have the property described in the affidavit or declaration paid, delivered, or transferred to them. ¶ (2) A transfer agent of a security described in the affidavit or declaration shall change the registered ownership on the books of the corporation from the decedent to the person or persons executing the affidavit or declaration as successor of the decedent. ¶ (b) If

the holder of the decedent's property refuses to pay, deliver, or transfer any personal property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this section, the court shall award reasonable attorney's fees to the person or persons bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to them as required by subdivision (a).” (Probate Code, § 13105.)

Where the petition to determine ownership of property involves a Trust, notice of the hearing and a copy of the petition must be served at least 30 days prior to the hearing on the trustee and each person claiming an interest in, or having title to or possession of, the subject property in the same manner as service of a summons and complaint and by mail to all beneficiaries and the Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General. (Probate Code, §§ 851(a)(2), 851(b)(3) and 17203(a).)

The proof of service declares that on January 5, 2022 the Trust beneficiaries and Acts Retirement – Life Communities, Inc., which is allegedly in possession of the subject funds claimed to be a trust asset, were served notice of the hearing and a copy of the petition by ordinary mail. As the entity having title to or possession of the subject property, Acts Retirement – Life Communities, Inc. must be served notice of the hearing and a copy of the petition in the same manner as service of a summons and complaint. Acts Retirement – Life Communities, Inc. is located in Pennsylvania.

“A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this

form of mail is deemed complete on the 10th day after such mailing.” (Code of Civil Procedure, § 415.40.)

“Proof that a summons was served on a person outside this state shall be made: ¶ (a) If served in a manner specified in a statute of this state, as prescribed by Section 417.10, and if service is made by mail pursuant to Section 415.40, proof of service shall include evidence satisfactory to the court establishing actual delivery to the person to be served, by a signed return receipt or other evidence;” (Code of Civil Procedure, § 417.20(a).)

On March 16, 2022 petitioner filed a proof of service that declares on February 23, 2022 Acts Retirement – Life Communities, Inc. was served the petition by mail with an acknowledgement of receipt on February 23, 2022. A copy of the signed USPS delivery receipt is attached to the proof of service.

The proof of service filed on February 24, 2022 declares that Acts Retirement – Life Communities, Inc. and the other interested parties were served notice of the April 27, 2022 continued hearing and a copy of the petition.

At the time this ruling was prepared there were no objections or oppositions in the court’s file.

Absent objection or opposition, the petition is granted.

TENTATIVE RULING # 12: ABSENT OBJECTION OR OPPOSITION, THE PETITION IS GRANTED.