

**1. ESTATE OF CAROLYN SCOTT PP-20210150**

**Petition to Admit Will to Probate.**

The original will has not been lodged with the court. This needs to be corrected in order for the court to admit the will to probate.

At the hearing on September 22, 2021 petitioners stated that the original will was in a safety deposit box that can not be accessed until letters are issued. If the original will is not lodged at or before the hearing date, the court is inclined to consider an ex parte request of petitioners for issuance of special letters of administration that is strictly limited to obtaining access to the safe deposit box to retrieve the original will, with the special letters expiring on the continued date of the hearing on the petition to admit the will to probate.

**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**2. ESTATE OF KIRKPATRICK PP-20200145**

**Review Hearing Re: Status of Administration**

**TENTATIVE RULING # 2: THE COURT HAVING ORDERED ON NOVEMBER 10, 2021 FINAL DISTRIBUTION OF ALL ASSETS OF THE ESTATE TO THE PERSONAL REPRESENTATIVE AS SOLE HEIR AND THE ASSETS DID NOT INCLUDE TRANSFER OF ANY REAL PROPERTY TO THE PERSONAL REPRESENTATIVE, A RECEIPT OF DISTRIBUTION IS NOT REQUIRED AND THE REVIEW HEARING RE: STATUS OF ADMINISTRATION IS DROPPED FROM THE CALENDAR.**

**3. ESTATE OF POMPLIANO PP-20180229**

**Review Hearing Re: Inventory and Appraisal.**

**TENTATIVE RULING # 3: THE CORRECTED FINAL INVENTORY AND APPRAISAL  
HAVING BEEN FILED ON NOVEMBER 12, 2021, THE REVIEW HEARING RE INVENTORY  
AND APPRAISAL IS DROPPED FROM THE CALENDAR.**

**4. ESTATE OF LUTZ P-20200052**

**(1) Final Account and Report.**

**(2) Review Hearing Re: Status of Administration**

Letters of Administration with will annexed were issued on June 19, 2020. The Final Inventory and Appraisal filed on October 3, 2020. At the hearing on September 29, 2021 the court continued the review hearing and set a hearing on the Final Account and Report for January 5, 2022. There is no Final Account and Report in the court's file.

**TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**5. ESTATE OF SANCHEZ PP-20200103**

**(1) Review Hearing Re Inventory and Appraisal.**

**(2) Review Hearing Re: Status of Administration.**

**(3) Hearing Re: Allowance or Rejection of Co-Executor Sandra Woodring's Creditor's Claim.**

**Review Hearing Re: Inventory and Appraisal.**

Letters Testamentary were issued on September 23, 2020. Partial Inventory and Appraisal number one was filed on March 31, 2021. At the hearing on June 23, 2021 co-executor Woodring's counsel stated the March 31, 2021 Inventory and Appraisal is a final inventory and appraisal. Co-Executor Covey's counsel disagreed and stated that he believed there were more assets to be inventoried and appraised. There is no Final Inventory and Appraisal in the court's file.

**Review Hearing Re: Status of Administration.**

There appears to remain disputes between the two co-executors concerning the assets of the estate and whether co-executor Woodring loaned \$25,000 to decedent to purchase her home in 1999.

**Hearing Re: Allowance or Rejection of Co-Executor Sandra Woodring's Creditor's Claim.**

On November 4, 2020 co-executor Woodring filed a verified claim asserting decedent owed her \$25,000 representing a loan she made to decedent that was used to purchase her home in Cameron Park. Attached to the verified Judicial Council Form Creditor's Claim is a statement wherein she describes the transaction related to the purchase of the home on Bow Mar Court in Cameron Park. She states: she loaned her parents, Emilio and Gloria Sanchez, over \$25,000 to purchase a condo on Bow Mar Court in Cameo Park; it was purchased on

“September 13, 2099” [sic] in Ms. Woodring’s name, because her parents could not qualify for a loan due to their bankruptcy filing; the property became her parents primary residence; on April 9, 2003 she grant deeded the property to her parents to allow them to have tax write offs; and her parents lived from month to month and never had the money to pay her back.

Attached to the verified claim and statement are authenticated documents consisting of the following: an original check, dated September 13, 1999, payable to “World Savings for Cash” in the amount of \$25,078.54 with the notation on the check that it was for “Bow Mar Ct”, which paid for a money order issued by World Savings Bank; the carbon copy of the World Savings Bank money order, dated September 13, 1999, made payable to Placer Title Company in the amount of \$25,078.54; a receipt, dated September 13, 1999, from Placer Title Company for \$25,078.54 received from co-executor Woodring; a grant deed, dated September 14, 1999, which conveyed the subject real property to co-executor Woodring, a unmarried woman; and the original El Dorado County real property bill for the subject real property for the tax year July 1, 2004 to June 30, 2005, which states that the Bow Mar Court property owners were Emilio Sanchez and Flora Sanchez.

Co-Executor Covey opposes the claim and requests that the court reject the claim on the following grounds: the two co-executors disagree on the validity of the creditor claim; the claim must be rejected as it does not provide documentation or sufficient information to support a conclusion that the decedent entered into a loan agreement with Ms. Woodring; co-executor Covey is unaware of the existence of a loan agreement; and there is no cotemporaneous signature or other writing by decedent or co-executor Woodring indicating either a loan from her to the decedent or that the amounts paid by co-executor Woodring for decedent’s benefit would be repaid.

“Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions: ¶ \* \* \* (8) Allowance, payment, or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate...” (Probate Code, § 10501(a)(8).)

“If the personal representative or the attorney for the personal representative is a creditor of the decedent, the clerk shall present the claim to the court or judge for approval or rejection. The court or judge may in its discretion require the creditor to file a petition and give notice of hearing.” (Probate Code, § 9252(a).)

“If the court or judge approves the claim, the claim is established and shall be included with other established claims to be paid in the course of administration.” (Probate Code, § 9252(b).)

“If the court or judge rejects the claim, the personal representative or attorney may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.” (Probate Code, § 9252(c).)

Co-Executor Covey has not submitted any evidence to support her request for the court to reject the creditor’s claim. There is evidence before the court in the form of the verified claim form and the incorporated statement and authenticated attached original documentation that supports the claim that co-executor Woodring loaned over \$25,000 for the purchase of the Bow Mar Court residence, title to the property was initially taken in Ms. Woodring’s name for purposes of obtaining a loan, and the property was eventually deeded to her parents for tax purposes. There is no evidence that the over \$25,000 paid for the residence was intended to be anything other than a loan to be repaid when her parents could afford repayment and that

they were never able financially to repay their daughter for fronting the money for their residence.

At the hearing on September 22, 2021 the parties presented oral argument, the parties stated they would file an 850 petition, the court ordered that the creditor's claim was rejected as of that date, and the court continued the hearings on the two review hearings and this matter to January 5, 2022.

**TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**



**6. ESTATE OF FELTS PP-20200050**

**(1) Review Hearing Re: Inventory and Appraisal.**

**(2) Review Hearing Re: Status of Administration**

While the court ordered the will admitted to probate and appointed the personal representative on January 6, 2021, no letters testamentary were issued as the personal representative failed to submit letters to the court for approval. This needs to be corrected.

There is no Final Inventory and Appraisal in the court's file and no Final Account and Report in the Court's file.

**TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**7. ESTATE OF GENOUD PP-20190251**

**Review Hearing Re: Status of Administration**

Letters of Administration were issued on April 15, 2020. The Final Inventory and Appraisal was filed on September 29, 2020.

At the hearing on July 14, 2021 the personal representative's counsel explained that purchases were made after decedent's death by a family member that they are attempting to sort out. The court continued the hearing to September 29, 2021.

At the hearing on September 29, 2021 the court continued the hearing to January 5, 2022.

The court has not received any further word concerning the status of working out the issue with the family member and there is no Final Account and Request for Order of Final Distribution in the court's file.

**TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**8. ESTATE OF SINGH PP-20210152**

**Petition to Administer Estate.**

Decedent apparently died intestate leaving a daughter and son. The daughter petitions to be appointed personal representative with full authority under the IAEA.

There is no proof of service of the required notice of hearing and a copy of the petition on the decedent's son in the court's file. "At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument." (Probate Code, § 8110.) The notice of hearing of a petition for administration of a decedent's estate that is served on the interested persons shall substantially state the language set forth in Section 8100. (Probate Code, § 8100.) Petitioner failed to provide a proof of service of the mandatory Judicial Council Form DE-121 – Notice of Petition to Administer Estate, which includes the statutory notice language.

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 petition states that the bond requirement should be waived as all heirs at law have waived the bond requirement. The Judicial Council of California adopted for mandatory use as of January 1, 2015 a form Waiver of Bond by Heir or Beneficiary (Judicial Council Form DE-142/DE-111(A-3d)). Petitioner failed to have the heirs execute and submit the mandatory form waivers. This must be remedied.

The petitioner has not filed an executed a statement of duties and liabilities. (Judicial Council Form DE-147.) Prior to issuing letters of administration, the personal representative, other than a trust company or public administrator, shall file an acknowledgement of receipt of a statement of duties and liabilities of the office of personal representative. The statement is a mandated Judicial Council form. (Probate Code, § 8404(a).)

**TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**9. ESTATE OF KENNY PP-20200237**

**Final Account and Report.**

At the hearing on September 29, 2021 the personal representative filed the Final Inventory and Appraisal. The court then set this hearing on the Final Account and Report. There is no Final Account and Report in the Courts file.

**TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**10. ESTATE OF VAN NESS 20210129**

**Petition to Administer Estate.**

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

The court notes that there was no proof of service by mail on the heirs, devisees and executors in the court's file at the time this ruling was prepared. "At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument." (Probate Code, § 8110.) The court can not consider this petition in the absence of adequate proof of service.

The petition fails to state whether decedent died testate or intestate. This must be corrected.

The petitioner failed to appear at the hearing on September 10, 2021. The court continued the hearing to January 5, 2022 at 8:30 a.m. in Department Eight and ordered that the petitioner's counsel appear at the continued hearing. The November 10, 2021 minute order was copied to petitioner's counsel's address of record.

**TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**11. ESTATE OF LANCE PP-20200114**

**Review Hearing Re: Status of Administration.**

Letters of Administration were issued on September 30, 2020. The Final Inventory and Appraisal was filed on January 26, 2021. There is no Final Account and Request for Order of Final Distribution in the court's file.

**TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**



**12. ESTATE OF ROBERT SCOTT PP-20210149**

**Petition to Admit Will to Probate.**

The original will has not been lodged with the court. This needs to be corrected in order for the court to admit the will to probate.

At the hearing on September 22, 2021 petitioners stated that the original will was in a safety deposit box that can not be accessed until letters are issued. If the original will is not lodged at or before the hearing date, the court is inclined to consider an ex parte request of petitioners for issuance of special letters of administration that is strictly limited to obtaining access to the safe deposit box to retrieve the original will, with the special letters expiring on the continued date of the hearing on the petition to admit the will to probate.

**TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**13. ESTATE OF WALLACE PP-20180214**

**(1) Final Account and Report.**

**(2) Review Hearing Re: Status of Administration.**

Letters Testamentary were issued on September 7, 2017. The case was transferred to the El Dorado County Superior Court. The Final Inventory and Appraisal was filed on December 9, 2019. At the hearing on July 14, 2021 the personal representative was directed to file a Final Account and Report. The Final Account and Request for Order of Final Distribution was not filed prior to the last hearing on September 29, 2021.

At the hearing on September 29, 2021 the court ordered the personal representative to file the final account and report no later than October 29, 2021. At the hearing on November 17, 2021, the court ordered the matters continued to January 5, 2022 and directed the Final Account and Report be filed and served no later than December 30, 2021.

At the time this tentative ruling was prepared, the final account and report was not in the court's file.

**TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**14. MATTER OF LINDA DROSTE PP-20120194**

**Petition to Determine Succession to Real Property.**

Petitioner apparently claims that trustor Linda Droste succeeded to a 50% interest in certain real property after Mildred Droste passed away; the other 50% interest was already owned by Linda Droste as trustee of her Living Trust; and petitioner succeed to 100% ownership of the property as the sole “heir in Trust”. The petition alleges that record title is held in the names of Mildred Droste as owner of 50% of the real property as a tenant in common and the remaining 50% interest owned by Linda Droste as trustee of the Linda L. Lee Droste Living Trust as a tenant in common; Mildred Droste passed away intestate on February 1, 2016 and Linda Droste survived her as her sole intestate heir, but later passed away on February 12, 2021; and Linda Droste’s pour-over will leaves the remainder of her estate to the Trust.

Petitioner seeks a court order determining that Linda Droste’s 50% interest in the subject real property passed to her without need for administration of decedent’s estate.

“Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed one hundred fifty thousand dollars (\$166,250) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to that real property. A petition under this chapter may include an additional request that the court make an order determining that the petitioner has succeeded to personal property described in the petition.” (Probate Code, § 13151.)

If a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed \$166,250, excluding the value of the property described in Probate Code, § 13050, and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property may petition the court of the county in which the estate may be administered to determine that the petitioner has succeeded to that real property. The petition may also include an additional request that the court order that the petitioner has succeeded to the personal property described in the petition. (Probate Code, § 13151.) Such a petition may only be used where either the decedent's personal representative consents in writing to use of this procedure or where no proceeding is being or has been conducted in this state for administration of the decedent's estate. (Probate Code, § 13150.)

“(c) If the petitioner bases the petitioner's claim to the described property upon the will of the decedent, a copy of the will shall be attached to the petition.” (Probate Code, § 13152(c).)

Attached to the petition must be an Inventory and Appraisal prepared by a probate referee and the petitioner may appraise the assets which a personal representative could appraise under Probate Code, § 8901. (Probate Code, § 13152(b).)

An inventory and appraisal was filed on October 27, 2021, which appraises the interest in the property as being worth \$65,000.

““Successor of the decedent” means: ¶ (a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent's will. For the purposes of this part, a trust is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will. ¶ (b) If the decedent died without a will, the sole person or all of the persons who succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or,

if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.” (Probate Code, § 13006.)

There is no certified copy of the grant deed attached to the petition as evidence of decedent’s ownership interest.

There is no authenticated copy of the Trust instrument attached to the verified petition to establish that petitioner is the sole remainder beneficiary and/or successor trustee of the Linda L. Lee Droste Living Trust. Therefore, there is no evidence before the court establishing petitioner’s claim to the property as the sole Trust beneficiary and/or successor trustee.

In addition, there is no indication that the original pour-over will was lodged with the court and no copy of the will is attached to the petition.

In fact, since Linda Droste allegedly survived the decedent for over five years, provided the estate of Linda Droste held assets outside the Trust estate that does not exceed \$166,250, the successor to Mildred Droste’s 50% interest in the property is the successor trustee of the Trust and not the purported remainder beneficiary. The property would have to be first claimed by the Trust and then distributed by the trustee according to the distributive provisions of the Trust instrument. If proven by a certified recorded grant deed, the other 50% interest in the property is purportedly owned by the Trust and would pass by the Trust’s distributive provisions.

Absent correction of the above-cited deficiencies, the court is inclined to deny the petition without prejudice

**TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**15. MATTER OF THE LUTZ FAMILY REVOCABLE TRUST PP-20200202**

**Hearing Re: Review of Conditions of Settlement.**

At the MSC on June 24, 2021 the parties reached a global settlement of all issues that was placed on the record in open court and each of the parties indicated their agreement with the settlement agreement on the record in open court. The court reserved jurisdiction to enforce the settlement pursuant to Code of Civil Procedure, § 664.6 and set this review hearing. The court specified that if a notice of settlement was filed, the September 29, 2021 hearing would be vacated. The September 29, 2021 review hearing was continued to January 5, 2022. There is no notice of settlement in the court's file.

**TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**16. MATTER OF MILDRED DROSTE PP-20210193****Petition to Determine Succession to Real Property.**

Petitioner claims that Linda Droste, as the sole next of kin/intestate heir of decedent Mildred Droste, succeeded to a 50% interest in certain real property after Mildred Droste passed away, which was owned by decedent Mildred Droste as a tenant in common. Petitioner asserts she is the sole “heir in Trust” (beneficiary) of Linda Droste’s Trust after trustor Linda Droste passed away. The petition alleges: the gross value of the real and personal property of the decedent in California did not exceed the value of \$166,250 as of the decedent’s date of death on February 1, 2016; that record title is held in the names of Mildred Droste as owner of 50% of the real property as a tenant in common and the remaining 50% interest owned by Linda Droste as trustee of the Linda L. Lee Droste Living Trust as a tenant in common; Mildred Droste passed away intestate on February 1, 2016 and Linda Droste survived her as her sole intestate heir, but later passed away on February 12, 2021; and Linda Droste’s pour-over will leaves the remainder of her estate to the Trust.

Petitioner seeks a court order determining that Mildred Droste’s 50% interest in the subject real property passed to her without need for administration of decedent’s estate.

“Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent’s real and personal property in this state does not exceed one hundred fifty thousand dollars (\$166,250) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which

the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to that real property. A petition under this chapter may include an additional request that the court make an order determining that the petitioner has succeeded to personal property described in the petition.” (Probate Code, § 13151.)

If a decedent dies leaving real property in this state and the gross value of the decedent’s real and personal property in this state does not exceed \$166,250, excluding the value of the property described in Probate Code, § 13050, and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property may petition the court of the county in which the estate may be administered to determine that the petitioner has succeeded to that real property. The petition may also include an additional request that the court order that the petitioner has succeeded to the personal property described in the petition. (Probate Code, § 13151.) Such a petition may only be used where either the decedent’s personal representative consents in writing to use of this procedure or where no proceeding is being or has been conducted in this state for administration of the decedent’s estate. (Probate Code, § 13150.)

Attached to the petition must be an Inventory and Appraisal prepared by a probate referee and the petitioner may appraise the assets which a personal representative could appraise under Probate Code, § 8901. (Probate Code, § 13152(b).)

An inventory and appraisal was filed on October 27, 2021, which appraises the interest in the property as being worth \$65,000.

““Successor of the decedent” means: ¶ (a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent’s will. For the purposes of this part, a trust is a beneficiary under the decedent’s will if the trust succeeds to the particular item of property under the decedent’s



will. ¶ (b) If the decedent died without a will, the sole person or all of the persons who succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or, if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.” (Probate Code, § 13006.)

There is no certified copy of the grant deed attached to the petition as evidence of decedent’s ownership interest.

There is no authenticated copy of the Trust instrument attached to the verified petition to establish that petitioner is the sole remainder beneficiary of the Linda L. Lee Droste Living Trust. Therefore, there is no evidence before the court establishing petitioner’s claim to the property as the sole Trust beneficiary.

In addition, there is no indication that the original pour-over will was lodged with the court and no copy of the will is attached to the petition. Therefore, there is no evidence before the court to establish that the 50% interest in the property owned by decedent Mildred Droste passed to the Trust.

In fact, since Linda Droste allegedly survived the decedent for over five years, the successor to Mildred Droste’s 50% interest in the property is the successor trustee of the Trust and not the purported remainder beneficiary. The property would have to be first claimed by the Trust and then distributed by the trustee according to the distributive provisions of the Trust instrument. If proven by a certified recorded grant deed, the other 50% interest in the property is purportedly owned by the Trust and would pass by the Trust’s distributive provisions.

The court is inclined to deny the petition without prejudice.

**TENTATIVE RULING # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**17. MATTER OF THALHOFER PP-20210207**

**Petition for Order Authorizing Transfer and Transmutation of Community Property.**

Petitioner seeks a court order to authorize petitioner on his own behalf and on behalf of his spouse, who lacks capacity for the proposed transaction, to transfer all interest in the community property residence to the petitioner and to transmute such community property to petitioner's sole and separate property.

The verified petition alleges: petitioner Dale Thalhofer and respondent Cynthia Thalhofer have been married for 20 years; respondent is 72 years old and resides with her husband in their home; petitioner is also 72 years old; respondent lacks the capacity to engage in the proposed transaction as she suffers from advanced dementia, having first been diagnosed with dementia in 2015, she lacks the cognitive capacity to manage her financial resources, to engage in financial transactions, to make financial decisions, to make informed legal consent to health care, and she is unable to understand and appreciate the consequences of her actions with regard to the proposed transaction or to resist fraud or undue influence; the condition worsened over the years and today she requires assistance with every aspect of her life; petitioner has provided home care services to his spouse every day for the past six years, which allowed respondent to avoid placement in a nursing home for at least three years; due to petitioner's age and health, respondent's condition, and foreseeable costs for respondent's care, petitioner may need to raise funds by selling their residence in order to move both of them to an assisted living community; it is necessary for him to have title to the real property as his sole and separate property in order be able to execute all documents necessary to sell or otherwise convey the home in order to accomplish such a sale in order to pay for placement in a continuing care facility for the mutual benefit of both petitioner and respondent; petitioner

also anticipates he will have to apply for Medi-Cal to seek long term nursing benefits for the respondent, which will necessitate the conveyance of the property away from respondent; the subject real property residence is the community property of petitioner and respondent and the total value is \$450,000, with each of them having a share in the amount of \$225,000 in the property; the transfer and transmutation will also serve as a gift to petitioner, which respondent would make on her own if she had the capacity to do so to help provide for her husband's support and care and to enhance his ability to engage in long term care planning for both of them; the transfer and transmutation will not prejudice respondent's prospective eligibility for Medi-Cal benefits as the home is an exempt asset, transfers of the home to petitioner is an exempt transfer, and, therefore, would have no bearing on respondent's Medi-Cal eligibility; the couple's total gross income is \$4,703 per month; no bond should be required as it would serve no useful purpose, since the transaction benefits the community estate for the mutual support of petitioner and respondent; and respondent will not attend the hearing.

A proceeding to obtain court authorization for a proposed transaction may be brought if one of the spouses is alleged to lack legal capacity for the proposed transaction, whether or not that spouse has a conservator and if the other spouse either has legal capacity for the proposed transaction or has a conservator. (Probate Code, § 3101.) If the petitioning spouse has legal capacity, the appointment of a conservator for the spouse that lacks legal capacity is not required. (Probate Code, § 3113.)

"The petition shall set forth all of the following information: ¶ (a) The name, age, and residence of each spouse. (b) If one or both spouses is alleged to lack legal capacity for the proposed transaction, a statement that the spouse has a conservator or a statement of the facts upon which the allegation is based. ¶ (c) If there is a conservator of a spouse, the name and address of the conservator, the county in which the conservatorship proceeding is

pending, and the court number of the proceeding. ¶ (d) If a spouse alleged to lack legal capacity for the proposed transaction is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services, the name and address of the institution. ¶ (e) The names and addresses of all of the following persons: ¶ (1) Relatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction. ¶ (2) If the petition is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, as would be properly the subject of a petition under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship, the names and addresses of the persons identified in Section 2581. ¶ (f) A sufficient description of the property that is the subject of the proposed transaction. ¶ (g) An allegation that the property is community property, and, if the proposed transaction involves property in which a spouse also has a separate property interest, an allegation of good cause to include that separate property in the transaction. ¶ (h) The estimated value of the property. ¶ (i) The terms and conditions of the proposed transaction, including the names of all parties thereto. ¶ (j) The relief requested.” (Probate Code, § 3121.)

“If the proceeding is brought for a court order authorizing a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, all of the following: ¶ (a) An allegation that one of the spouses has a conservator or facts establishing lack of legal capacity of the spouse for the proposed transaction. ¶ (b) An allegation that the other spouse has legal capacity for the proposed transaction or has a conservator. ¶ (c) An allegation that each spouse either: (1) joins in or consents to the proposed transaction, (2) has a conservator, or (3) is substantially unable to manage his or her financial resources or resist fraud or undue influence. ¶ (d) Facts that may be relied upon to show that the authorization

sought is for one or more of the following purposes: ¶ (1) The advantage, benefit, or best interests of the spouses or their estates. ¶ (2) The care and support of either spouse or of such persons as either spouse may be legally obligated to support. ¶ (3) The payment of taxes, interest, or other encumbrances or charges for the protection and preservation of the community property. ¶ (4) The providing of gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses.” (Probate Code, § 3122.)

“If a spouse alleged to lack legal capacity is not otherwise represented, the court may in its discretion appoint the public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse.” (Probate Code, § 3140(b).)

“If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint the public defender or private counsel under Section 1471 to represent the spouse and, if such appointment is made, Section 1472 applies.” (Probate Code, § 3140(c).)

“Except as provided in subdivision (c), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons.” (Probate Code, § 3140(d).)

“The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of that sum. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.” (Probate Code, § 1472(a)(1).)

“The court may authorize the proposed transaction if the court determines all of the following: ¶ (1) The property that is the subject of the proposed transaction is community property of the spouses. ¶ (2) One of the spouses then has a conservator or otherwise lacks legal capacity for the proposed transaction. ¶ (3) The other spouse either has legal capacity for the proposed transaction or has a conservator. ¶ (4) Each of the spouses either (i) joins in or consents to the proposed transaction, (ii) has a conservator, or (iii) is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved by isolated incidents of negligence or improvidence. ¶ (5) The proposed transaction is one that should be authorized under this chapter.” (Probate Code, § 3144(a).) If the proposed transaction is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, the court may authorize the proposed transaction only if the transaction is one that the court would authorize pursuant to a substituted judgment petition brought in a conservatorship proceeding. (Probate Code, § 3144(b).) Therefore, the court must apply Probate Code, §§ 2580, et seq., to its determination of the instant petition brought pursuant to the provisions of Probate Code, §§ 3100, et seq.

The court may make an order authorizing such a proposed action only if it determines that the spouse who lacks legal capacity either is not opposed to the proposed action or if opposed, lacks legal capacity for the proposed action; and either the proposed action will have no adverse effect on the estate, or the remainder of the estate will be adequate to provide for the needs of the conservatee and those legally entitled to support from the conservatee. (Probate Code, § 2582.)

“Except as provided in subdivision (b), upon the filing of the petition, the clerk shall issue a citation to each nonpetitioning spouse alleged to lack legal capacity for the proposed transaction, setting forth the time and place of hearing. The citation and a copy of the petition

shall be served upon the spouse at least 15 days before the hearing.” (Probate Code, § 3130(a).)

“Service under this section shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.” (Probate Code, § 3130(c).)

The mandated citation to the respondent has not been issued and there is no proof of service of a citation on respondent in the court’s file. The court can not reach the merits of the petition absent issuance and service of the citation.

“(c) At least 15 days before the hearing on the petition, the petitioner shall deliver pursuant to Section 1215 a notice of the time and place of the hearing on the petition to those persons required to be named in the petition at the addresses set forth in the petition.” (Probate Code, § 3131(c).)

Paragraph 11 of the petition lists 12 interested persons entitled to notice of this proceeding. There is no proof of service in the court’s file. The court can not reach the merits of the petition absent proof of adequate service on all interested persons.

“If the spouse is not able to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the spouse is an adherent of a religion whose tenets and practices call for reliance upon prayer alone for healing and is under treatment by an accredited practitioner of the religion, by the affidavit of the practitioner.” (Probate Code, § 3141(b).) “Emotional or psychological instability is not good cause for absence of the spouse from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage.” (Probate Code, § 3141(c).)



Petitioner states that the respondent will not attend the hearing without explanation of why she will not attend. Petitioner needs to explain why the respondent will not attend. If medically unable to attend, petitioner will have to establish the inability to attend by the affidavit or certificate of a licensed medical practitioner, or, if the respondent is an adherent of a religion whose tenets and practices call for reliance upon prayer alone for healing and is under treatment by an accredited practitioner of the religion, by the affidavit of the practitioner.

“If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the court, before commencement of the hearing on the merits, shall inform the spouse of all of the following: ¶ (1) A determination of lack of legal capacity for the proposed transaction may result in approval of the proposed transaction. ¶ (2) The spouse has the right to legal counsel of the spouse's own choosing, including the right to have legal counsel appointed by the court if unable to retain legal counsel.” (Probate Code, § 3142(a).) “This section does not apply if the spouse is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 3141 and any showing required by Section 3141 has been made.” (Probate Code, § 3142(b).)

“Unless the court for good cause dispenses with the bond, the court shall require the petitioner to give a bond, in the amount fixed by the court, conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction to be received by the petitioner only as the court may by order direct.” (Probate Code, § 3150(a).) “Unless the court for good cause fixes the amount of the bond in a lesser amount, if given by an admitted surety insurer, the bond shall be in an amount not less than the value of the personal property (including cash and any notes) to be received by the petitioner, as determined by the court.” (Probate Code, § 3150(b).) “If the sureties on the bond are personal sureties, the bond shall be approved by the court and shall be for twice the amount required for a bond given by an

admitted surety insurer.” (Probate Code, § 3150(c).) “Section 2328 is applicable to the bond of the petitioner under this chapter.” (Probate Code, § 3150(d).)

As stated earlier in this ruling, the court can not reach the merits of the petition absent proof of service of a copy of the petition and citation on the respondent non-petitioning spouse and notice of the hearing and a copy of the petition on all other interested persons.

In addition, petitioner needs to explain why the respondent will not attend and/or provide the required affidavit related to respondent’s not appearing at the hearing.

**TENTATIVE RULING # 17: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JANUARY 5, 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](http://www.eldorado.courts.ca.gov/online-services/telephonic-appearances).**

**18. MATTER OF THE RAFTER TRUST PP-20210216**

**Petition for Order Confirming Trust Assets.**

One of the successor co-trustees petitions for a court order determining that despite record title stating the deceased settlor's primary residence is held by the settlor individually and as trustee of the Trust as tenants in common that property is, in reality, held entirely as an asset of the trust

"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.)

"A proceeding under this chapter is commenced by filing a petition stating facts showing that the petition is authorized under this chapter. The petition shall also state the grounds of the petition and the names and addresses of each person entitled to notice of the petition." (Probate Code, § 17201.)

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 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).)

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 November 17, 2021 notice of the hearing and the petition were served on the interested parties. There are no oppositions or objections to the petition in the court's file.

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.)

In addition, where the Trust Instrument or another writing states that all of settlor's right, title and interest to all of his or her real property is included in the Trust's assets, and it is possible by resorting to extrinsic evidence to determine that the settlor held title to the real property that is sought to be confirmed as a Trust asset, the statute of frauds creates no bar to a petition for an order confirming that the real property is part of the Trust's assets. (See Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156, 164.)

The verified petition states: the settlor passed away on August 14 2021; the subject real property was the deceased settlor's primary residence; the preamble of the initial Trust Instrument declared that all property listed in Schedule A, which included the subject real property, was transferred to and held by the trustee in Trust (See Trust Instrument, Exhibit A.); between the end of 2002 and beginning of 2003 settlor obtained a Home Equity Conversion Mortgage (HECM) on the subject real property, which resulted in the property being partially transferred out of the name of the Trust and into the settlor's name individually by Grant Deed recorded on February 27, 2003 (See Exhibit H.); and paragraph A of the October 30, 2002 2<sup>nd</sup>

amendment to the Trust expressly states that the deceased settlor's principal residence will be encumbered to secure repayment of the HECM loan and the property has or will be transferred to the Trust (See Exhibit C.).(Verified Petition, Paragraphs 7, 9, and 10; and Exhibits A, C, and H.)

Absent objection or opposition, it appears that there are sufficient written declarations by the settlor in the Trust instrument and 2<sup>nd</sup> amendment that the principal residence owned by the settlor is held as the trustee of the Trust even where the HECM loan was secured by the property and record title is held by the Trust and the settlor individually as tenants in common. The intent to hold the entire principal residence as a Trust asset despite the loan and record title was clearly expressed.

“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.)

Absent opposition or objection, the petition is granted.

**TENTATIVE RULING # 18: THE PETITION IS GRANTED.**