

FIDUCIARY NEWSLETTER



WHO PAYS THE TRUSTEE'S ATTORNEY FEES IN A REMOVAL ACTION?

Under California statute, a trustee who successfully defends himself or herself in a removal action is entitled to reasonable attorney fees from the trust estate; California Probate Code §15684(a). However, the same statute provides that a trustee who defends him or herself unsuccessfully in a removal action, brought on the grounds of breach of fiduciary duty, must bear the cost of his or her own attorney fees and may be ordered to pay the attorney fees of the petitioner who brought the removal action. Therefore, it is wise to carefully evaluate the prospect of trustee removal prior to making, or accepting, an appointment as trustee. Careful drafting of the language within a trust instrument can provide the specific criteria by which a trustee may be permitted to reimburse him or herself from the trust estate for attorney fees in the event of a removal action or other litigation matter to which the trust may become a party.

THE COURT'S RESOLUTION TO HOSTILITY AMONG CO-TRUSTEES

Under California Probate Code §15620, unless a trust instrument provides otherwise, decisions made by co-trustees must be unanimous. A deadlock of co-trustees may be resolved by an interested person filing a Petition for Instructions with the court under California Probate Code §17200(b)(10). However, filing repetitive petitions is not a practical means of administering a trust and in situations where continuous deadlocks or hostility among co-trustees is hindering administration, the court has the power to intervene and replace any co-trustee or co-trustees the court deems necessary to resolve the matter.

Some suggestions to facilitate trust administration and to avoid trustee removal:

- 1) consult with legal counsel early to assist with administration or assess the need for legal or other types of action;
- 2) with guidance from legal counsel, attempt an informal mediation among the co-trustees;
- 3) with guidance from legal counsel, provide Notice of Proposed Action by Trustee under California Probate Code §16500.

For further information regarding trust administration or dispute resolution among co-trustees, please contact our offices.

GRANPARENT'S LUMP SUM TUITION PAYMENT NOT SUBJECT TO GIFT OR GENERATION-SKIPPING TAXES

Under IRS Private Letter Ruling 200602002, a gentleman entered into a contract with a private school to prepay the tuition of all six of his grandchildren, who were not yet in school, all the way through the 12th grade. The contract provided that the grandchildren were not guaranteed admission to the school and that no part of the payment was refundable if they were not admitted or if they were admitted but left the school before completing the 12th grade. The contract also provided that the school would not be given any preference over other children applying to the school.

The IRS ruled that the payment qualified for exclusion from gift tax under Internal Revenue Code ("IRC") Section 2503(e), which excludes amounts paid directly to an educational organization for tuition on behalf of an individual. Because the amount was excluded from gift tax under Section 2503(e), it was also excluded from the generation-skipping tax by virtue of IRC Section 2611(b)(1), which excludes from generation-skipping tax any transfers excluded from gift tax by Section 2503(e).

If a client is highly confident that his or her grandchildren will be admitted to a particular school, this can be an effective means to remove assets from his or her taxable estate without using any of his or her annual lifetime exemption amount.

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