

§15.39A C. Grounds for a Prob C §850(a)(3) Petition

Under Prob C §850(a)(3), a trustee or any interested person may file a petition when:

- 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;
- The trustee has a claim to real or personal property, title to or possession of which is held by another; and
- The property of the trust is claimed to be subject to a creditor of the settlor of the trust.

A Prob C §850 petition may also include claims, causes of action, or matters that are normally raised in a civil action to the extent that the matters are related factually to the subject matter of the §850 petition. Prob C §855.

This proceeding may be used to seek a court order that property listed on a trust schedule, title to or possession of which was not formally transferred to the trust, is nevertheless a trust asset. This statute codifies the holding of *Estate of Heggstad* (1993) 16 CA4th 943, 20 CR2d 433, in which the court held that a written declaration of trust by the owner of real property that included an attached schedule listing a specific property was sufficient to create a trust in that property, and a transfer of title was unnecessary when a settlor declares himself or herself to be a trustee in his or her own property. See §15.40B for a sample form.[PAGE 1105]

§15.40A 2. Probate Code §850(a)(3) Petition

Petitions under Prob C §850(a)(3) follow the procedures stated in Prob C §§850-859. The proceeding under Prob C §850 is commenced with the filing of a verified petition stating the facts on which the claim is based and the names and addresses of each person entitled to notice of the petition. Prob C §§1021, 850(b). The clerk sets the matter for hearing. See §15.40E on notice requirements for a Prob C §850(a)(3) petition and §15.40F for chart of notice requirements.[PAGE 1106]

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SUPERIOR COURT OF CALIFORNIA COUNTY OF CONTRA COSTA

In re THE SMITH LIVING TRUST

Case No.:

Under Agreement Dated

PETITION FOR ORDER CONFIRMING
SUCCESSOR TRUSTEE AND TRUST ASSETS
(PROBATE CODE SECTION 850(a)(3))

June 1, 1994

Hearing Date: __[date]__

Time: __[time]__

Dep't: __[number]__

Judge: __[if known]__

Petitioner, MARY SMITH, alleges that:

1. The Petitioner is the presently acting Trustee of THE SMITH LIVING TRUST UNDER AGREEMENT DATED JUNE 1, 1994. A true and correct copy of THE SMITH LIVING TRUST UNDER AGREEMENT DATED JUNE 1, 1994, is attached hereto as Exhibit "1" and incorporated herein by this reference.

2. JOHN SMITH died on January 1, 1995. Before his death, JOHN SMITH and his spouse, MARY SMITH, were in the process of transferring title of all their assets into the Trust. On or about June 15, 1994, John Smith wrote to Peter Principle, his stockbroker at Merrill Lynch, and indicated they wished their account title changed into the name of the Trust. A copy of the June 15, 1994, letter to Peter Principle is attached hereto as Exhibit "2" and incorporated here by this reference.

3. Petitioner believes that the trust declaration under which she has been acting trustee is valid.

4. At Paragraph 1.03 of the trust instrument the Settlers, JOHN SMITH and MARY SMITH, declared that the property described in Schedule A, which is attached to the Trust Agreement at Page 18, is transferred in trust under the terms of the Agreement. The Schedule A lists, among other items, the Merrill Lynch brokerage account. In addition to signing the Trust Agreement both in their capacity as Settlers and as initial Cotrustees, JOHN SMITH and MARY SMITH also executed a document entitled "General Transfer and Assignment" on June 1, 1994. A true and correct copy of the General Transfer and Assignment is attached hereto as Exhibit "3" and incorporated herein by reference. Under the Assignment, the Settlers attempted to transfer and assign to the Cotrustees all of the Settlers' interest in all tangible and intangible personal property of whatever nature and wherever situated. The general transfer was intended to specifically include stocks, bonds, mutual funds, and limited partnerships as set forth in Paragraph 2 on Page 1 of the General Transfer and Assignment.

5. Petitioner requests this Court confirm that the assets set forth in Exhibit "3" attached hereto be deemed to be assets subject to THE SMITH LIVING TRUST UNDER AGREEMENT DATED JUNE 1, 1994, and under the control of MARY SMITH as Successor Trustee. Petitioner believes that the assets described in Exhibit "3" are subject to her control as Trustee either under Schedule A attached to the Trust Agreement as part of the trust declaration or as validly transferred and assigned under the General Transfer and Assignment.

6. Settlor JOHN SMITH was gravely ill and dying from cancer at the time he implemented his estate plan. On June 1, 1994, the Settlers signed the Transfer and Assignment document and on June 15, 1994, Settlor JOHN SMITH instructed his stockbroker to transfer the account to the Trust. Settlor JOHN SMITH died before he could officially change the title to his Merrill Lynch account. Petitioner is informed and believes that it was the Settlers' intention and understanding that the Settlers' interest in the stocks, bonds, mutual funds, and partnership interests were intended to be in the trust under the General Transfer and Assignment and Schedule A of the Trust Agreement.

7. Settlor JOHN SMITH was a resident of Contra Costa County, California, at the time of his death. A true and correct copy of his death certificate is attached hereto as Exhibit "4" and incorporated herein by reference. The Successor Trustee, MARY SMITH, is a resident of Contra Costa County. The principal place of trust administration is in Contra Costa County.

8. Article Five, Paragraph 5.08 of THE SMITH LIVING TRUST UNDER AGREEMENT DATED JUNE 1, 1994, expressly provides that if one of the initial Cotrustees for any reason fails to qualify or ceases to act as Trustee, then the surviving Cotrustee should act as Successor Trustee. On January 5, 1995, the named Successor Trustee, MARY SMITH, executed an Acceptance of Trust by Successor Trustee, a copy of which is attached hereto as Exhibit "5." Petitioner requests that the Court confirm the appointment of MARY SMITH as Successor Trustee. The Trust Agreement states that no bond is required of any Trustee (Article Five, Paragraph 5.03).

9. The names, addresses, and ages of the beneficiaries of THE SMITH LIVING TRUST UNDER AGREEMENT DATED JUNE 1, 1994, as well as their relationship to the Settlers are set forth below:

Mary Smith, Surviving Spouse 123 Main Street Anytown, CA

John Smith, Jr., Adult Son 1925 Sandy Rose Court Anytown, CA

Nancy Doe, Adult Daughter 1940 Sandy Rose Court Anytown, CA

Peter Smith, Adult Son 3421 Santa Maria Avenue Anytown, CA

WHEREFORE, Petitioner prays for an Order of this Court that:

1. THE SMITH LIVING TRUST UNDER AGREEMENT DATED JUNE 1, 1994, is valid;
2. The assets set forth on Exhibit "3" are assets subject to the management and control of MARY SMITH, as Successor Trustee of THE SMITH LIVING TRUST UNDER AGREEMENT DATED JUNE 1, 1994, under the General Transfer and Assignment document or under Schedule A of the Trust Agreement; and
3. Such other orders as the Court deems just and proper.

Dated: __[date]__

MARY SMITH, Trustee of The
Smith Living Trust Under Agreement Dated June 1, 1994