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Bill Analysis
Legislative Service Commission

Am. Sub. H.B. 83
126th General Assembly
(As Passed by the House)

Reps. Hughes, Coley, Willamowski, Allen, Barrett, Blessing, Book, Brown, Carano, Cassell, Combs, DeBose, Domenick, C. Evans, Flowers, Gilb, Harwood, Key, J. McGregor, Oelslager, Otterman, T. Patton, Perry, Reidelbach, G. Smith, Strahorn, Williams, Woodard, Yuko

BILL SUMMARY

- Defines "third-party distribution" as the distribution of the assets of an estate or trust by the fiduciary of the estate or trust to a person other than the beneficiary of the estate or trust pursuant to an agreement between the beneficiary and another person that requires the fiduciary or beneficiary to pay a percentage of an inheritance or a dollar amount to anyone other than the beneficiary.
- Establishes a procedure for approval by a probate court of third-party distributions.
- States that the bill's provisions do not apply to third-party distributions to an attorney who represents a beneficiary and do not affect any other provision of law regarding the compensation of attorneys.

CONTENT AND OPERATION

Background

When the beneficiaries of estates and trusts are determined by reference to the statute of descent and distribution (for example, when a person dies without a will), the identity and location of the beneficiaries may not be known. Furthermore, even if a beneficiary is named in a will or trust, the current location of the beneficiary may not be known. Professional "heir hunters" track down beneficiaries, who may not be aware that they are entitled to a distribution from an estate or trust. Sometimes, an heir hunter will inform a beneficiary that he or she may be entitled to a distribution and offer to reveal information concerning the

estate or trust in return for a percentage of the beneficiary's share.¹ The California Probate Code subjects such agreements to judicial supervision.² The Revised Code has no comparable provision.

Third-party distributions

The bill governs third-party distributions made by the fiduciary of an estate or trust. The bill defines "third-party distribution" as the distribution by a fiduciary of an estate or trust of the assets of the estate or trust when both of the following apply: (1) the fiduciary makes the distribution either to the transferee of a beneficiary or to any person pursuant to an agreement, request, or instruction of a beneficiary or pursuant to a legal claim against a beneficiary, and (2) the distribution is the subject of an agreement between a beneficiary and any person that requires the fiduciary or beneficiary to pay a percentage of an inheritance or a dollar amount to any person other than the beneficiary. (R.C. 2109.361(A).)

Approval prior to third-party distribution

The bill provides that before the fiduciary makes a third-party distribution, the affected beneficiary or the guardian or other legal representative of the beneficiary may file an application with the probate court for approval of the distribution. The application must identify the person to whom the third-party distribution is to be made, disclose the basis for making the distribution, and include a copy of any written agreement between the affected beneficiary and the person to whom the distribution is to be made. (R.C. 2109.361(B).)

The court must hold a hearing on an application for approval of a third-party distribution. The applicant must serve notice of the hearing on all interested parties at least 15 days before the hearing. Service must be made, and the right to receive any notice may be waived, in accordance with Civil Rule 73. (R.C. 2109.361(C).)

The probate court may approve the third-party distribution, in whole or in part, as the court determines is just and equitable. To the extent that the application is approved, the court must determine whether the third-party distribution is properly charged solely against the beneficiary's share of the estate or trust or whether some or all of the third-party distribution is properly charged against the residue of the affected estate or trust. The court may consider any

¹ See, for example, *Estate of Wright v. Caudill* (2001), 90 Cal. App.4th 228, review denied (2001), 2001 Cal. LEXIS 6242.

² Cal. Prob. Code § 11604.

relevant factors in evaluating the application including the following (R.C. 2109.361(D)):

(1) The amount or percentage of the affected beneficiary's share that would be the subject of the proposed third-party distribution measured against the reasonable value of any goods or services the person to whom the third-party distribution would be made provided to the beneficiary or to the estate or trust;

(2) Whether the agreement, request, or instructions of the affected beneficiary were procured by duress, fraud, misrepresentation, undue influence, or other unfair means;

(3) Whether the amount of the proposed third-party distribution is fixed or contingent under the terms of the agreement between the affected beneficiary and the recipient of the proposed third-party distribution;

(4) Whether the affected beneficiary was represented by an attorney;

(5) The extent, if any, to which the recipient of the third-party distribution incurred expenses in connection with the services provided to the affected beneficiary, estate, or trust;

(6) Whether the affected beneficiary was required to advance any payments for fees or expenses to the recipient of the proposed third-party distribution.

Compensation of attorneys

The bill states that its provisions do not apply to third-party distributions to an attorney who represents a beneficiary and do not affect any other provision of law regarding the compensation of attorneys (R.C. 2109.361(E)).

HISTORY

ACTION	DATE
Introduced	02-23-05
Reported, H. Judiciary	02-14-06
Passed House (93-1)	03-01-06

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