IRA CUSTODIAN CAN "HOLD" ACCOUNT UNDER GUISE OF INHERITED IRA

A decedent named a charity as the beneficiary of an IRA. At the decedent's death, the IRA custodian required the charity to open a new IRA (Transfer IRA), to which the custodian would transfer the assets directly in a trustee-to-trustee transfer. Distributions could then be made to the charity. The documents used by the custodian indicated that the type of application used was for situations where the original account owner is dead and the beneficiary is an entity. The charity must provide the decedent's name, Social Security number, date of birth and date of death. The application specifically refers to an Inherited IRA. No further contributions are permitted to the Transfer IRA.

The charity requested the IRS to rule that the Transfer IRA is not an IRA as defined in Code §408. The IRS said that the Transfer IRA is merely a "continuation in substance" of the Inherited IRA from which the transfer is accepted. It is not established by the charity as an original IRA to which the charity can make contributions. The IRS added that the Transfer IRA does not fail to be an IRA merely because documents from the custodian suggest that the charity is the "owner" of the Transfer IRA, which is associated with the charity's tax identification number.

The IRS ruled the original IRA does not lose its status as an IRA under Reg. §1.408-2(a) at the decedent's death merely because it is maintained for the benefit of a charity. The Transfer IRA, likewise, does not fail merely because it is maintained for the charity as beneficiary of the decedent. The Transfer IRA is established simply to facilitate a transfer from one IRA, maintained for the benefit of charity as beneficiary of the decedent, to another IRA, maintained for the benefit of the same charity as a beneficiary of the same decedent.

The charity requesting the IRS ruling suggested that the Transfer IRA does not meet the definition of an inherited IRA [Code §408(d)(3)(C)(ii)]. The IRS noted that the definition is merely intended to prohibit certain individuals from performing rollovers from IRAs. Nothing suggests that accounts held by non-individual beneficiaries cannot meet the definition of inherited IRAs. Therefore, concluded the IRS, the Transfer IRA does not fail to be an IRA under Code §408, and is exempt from tax under Code §408(e)(1).. The IRS also held that the trustee-to-trustee transfer of assets from the original IRA, of which the charity was the beneficiary, to a Transfer IRA, an IRA maintained for the benefit of the same charity, is not includible in gross income (Ltr. Rul. 201943020).

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GIFT MEANT FOR CHARITY, NOT INDIVIDUAL

Louis Sackett is a 91-year old widower with no children. He plans to leave the bulk of his estate to two named charities. Sackett had been attempting to sell one of the assets in his estate, a 25-acre parcel of farm property, for several years. He was asking $350,000 for the land, but eventually agreed to sell the land to Bart Marzolf for $300,000. Marzolf told Sackett that the bank needed to see a quit claim deed in order for Marzolf to obtain a loan. Sackett executed the deed, which Marzolf recorded. Marzolf immediately moved into the farm house and told Sackett he was assuming ownership by way of the deed, without payment. Sackett sought a court order to quiet title to the land, claiming undue influence and material misrepresentation to transfer the property by gift.

Marzolf argued that the two did not share a confidential relationship and that Sackett bore the burden of proving undue influence or material misrepresentation by "clear, cogent and convincing evidence." Several witnesses testified that Sackett was "frugal," "not much into giving" and "wouldn't give the farm away." The trial court found that Sackett established that he never meant the transfer as a gift and quieted title to the property in Sackett. Marzolf appealed.

The Washington Court of Appeals determined that Sackett's long-standing estate plan provided for his estate to pass to two charities and that the liquidation of the farm land was important in funding his plan. The trial court heard substantial evidence that Sackett never intended to make a gift of the land to Marzolf and executed the quit claim deed under the impression that it was solely to allow Marzolf to obtain a loan. Marzolf actively participated in a transaction that gave him a large portion of Sackett's estate. The court found this "particularly unnatural," given that the bulk of Sackett's estate was passing to charities, not individuals. The court of appeals ruled that the trial court did not err in voiding the quit claim deed and quieting title in the property to Sackett (*Sackett v. Marzolf*, No. 78164-2-I).

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WILL CHALLENGE PROVES COSTLY TO BENEFICIARY

Anne Florance's trust and pour-over will both contained in terrorem clauses. At her death in 2013, her executor filed the will, but did not probate the will, because the assets automatically transferred to the trust. After several specific bequests, the balance of the estate passed to charities. The executor notified Florance's niece, Emily Howell, that she was to receive a $25,000 specific bequest. In 2016, Howell sought letters of administration from the probate court, claiming that Florance died "without a valid will." In response, the executor filed a petition to probate the will, to which Howell objected. She claimed the executor had exerted undue influence, making the will invalid. The executor said that the statute of limitations for challenging the trust had expired and that Howell had violated the no contest clause of the documents.

The Superior Court found that the statute of limitations period expired in 2015. Therefore, as to Howell's challenge of the trust, the action was barred as a matter of law. The court also ruled that because Howell violated the no contest clause, she forfeited her right to any distributions under the trust. Howell appealed the court's holding.

The Georgia Court of Appeals affirmed the ruling. Howell had actual notice of the trust well within the two-year limitation period, the court noted. The court found the in terrorem clause valid and enforceable. Howell first claimed Florance died without a will and then challenged the validity of the will. Both these actions violated the plain language of the clause, said the court. As a result, Howell is prohibited from receiving any disbursements from the trust. The distributions that she would have received instead become part of the residue that passes to charity, the court held (*Howell v. Bates*, A19A0338).

Note: In terrorem or "no challenge" clauses in estate documents are not recognized or enforceable in all states.

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BENEFICIARY'S "HELP" AMOUNTS TO UNDUE INFLUENCE, COURT SAYS

In February 2015, while recuperating from heart surgery, Rudolfo Follosco executed a holographic will naming his cousins, Carmelita and Roy Pablo, along with his long-time friend, Teodoro Laguatan, as co-executors. The will made several specific bequests to individuals, with the residue divided between the Pablos and other named individuals. Laguatan was not a beneficiary of the will.

Several months later, Follosco told Laguatan he wanted to change his will. Although Laguatan was an attorney, he told Follosco he didn't do probate work, but would find an estate attorney to draft a new will. Follosco indicated he wanted the residue of his estate to be used for "orphan children, poor old people and the homeless in the Philippines." The share passing to the Pablos was reduced. Laguatan drafted language naming himself as primary executor and leaving the residue to him to manage and dispose of "using his judicious prudent judgment according to guidelines relating to Christian humanitarian charitable principles." Laguatan provided this language to another attorney, who incorporated it directly, without ever talking to Follosco.

Follosco died several days later. Laguatan petitioned to probate the will. The Pablos objected, claiming undue influence and lack of testamentary capacity. They asked that the holographic will be probated. The trial court noted that a conclusive presumption of undue influence was created, as the new will was drafted by and included a donative transfer to Laguatan, The court found Laguatan had a confidential relationship with Follosco, actively participated in procuring the document's preparation or execution and would unduly benefit by the instrument.

The California Appeals Court noted that under the holographic will, Laguatan received nothing, while under the second will, he was the sole residuary beneficiary. He argued that it was not an outright gift, but solely to benefit charities. The court, however, pointed out that no charities are specifically identified and the will does not contain language directing how the funds are to be used or spent. Laguatan has "the unhindered ability" to determine recipients, as well as the amount and timing of the gifts. Because the will did not define how Laguatan was to dispose of the funds, the bequest "resulted in a gift to him." The fact that Laguatan did not personally draft the will was irrelevant, said the court, noting that drafting also consists of "directly participating in the instrument's physical preparation" (*Laguatan v. Pablo*, A152115, A153350).

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PURCHASE PRICE SATISFIES WILL, IF NOT CHARITIES

Under the terms of Ralph Shepley's will, his 191-acre ranch was to be sold, with the proceeds divided into three equal shares. His daughter, Debra Fountain and two charities each received one share. The will provided that the property was to be appraised by an MAI appraiser qualified to value rural ranch properties. Larry and Linda Brewer were given a first right to purchase any or all of the land from the estate at a sales price equal to the appraised value.

Following Shepley's death in 2016, the estate retained an appraiser who valued the land at $4.4 million. The Brewers exercised their option by selecting 21.3 acres for $794,849.45. The portion the couple selected included the farm house, a majority of the lake and the access road to the homestead. This created an orphan tract of seven acres and the bulk of the land that is inaccessible by the road because the Brewers included the entire access road.

Fountain sought court approval to have the property reappraised in two parts: the tract selected by the Brewers and the property the couple declined to purchase. The two charities objected, arguing that the purchase price proposed by the Brewers violated the appraisal process, which did not authorize a per-acre valuation. The trial court ordered a reappraisal, based on the partition proposed by the Brewers. The date-of-death valuation for the area the couple selected was $2,869,592. The Brewers objected, claiming this over-valued the tract they chose. The court said the Brewers had the right to purchase any or all of the land for the full value, but if they purchased less than the entire parcel, they would have to pay the $4.4 million, with an offset reimbursement up to $3.5 million. The Brewers appealed.

The Texas Court of Appeals reversed, finding the formula for ascertaining the value of the selected property to be clear and unambiguous. Shepley's intent was to grant the Brewers the right to purchase all or part of the parcel. By requiring the Brewers to pay the full $4.4 million, the lower court was effectively requiring the couple to buy all the land. The selected portion must be appraised at the date-of-death value, without regard to any diminution in value to the remainder of the property, the court held (*Brewer v. Fountain*, No. 01-18-00550-CV).

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NEW NAME, SAME TUNE

Mark Howard, founder of Trinity Irish Dance Company, met Bill Larson in 2001. Over the years, Larson provided financial support to the organization. At his death in 2006, Larson established a $1 million fund at the Greater Milwaukee Foundation to support Trinity or its successor organization. The fund required distributions to stop if Trinity or its successor ceased operating as a non-profit or as a dance company primarily for girls. If payments stopped, any remaining funds were to be used to provide scholarships to worthy students at the University of Chicago.

In 2014, after years of concerns over Howard's management, Trinity's board split from Howard. Due to a trademark dispute, Howard retained rights to the name Trinity Irish Dance Company. The original Trinity changed its name to American Company of Irish Dance, but kept the same board and tax identification number. The Foundation notified American Company that it planned to change the beneficiary of the trust to scholarships at the University of Chicago, but would delay making the change if American Company could show that it continued to meet the trust's requirements.

Howard formed a new organization, assuming the Trinity Irish Dance Company name (Trinity II), and informed the Foundation that it was the proper recipient of the funds as the successor organization to the original Trinity. The Foundation sought construction of the trust, asking the court whether American Company or Trinity II was the successor organization. Howard claimed it was Larson's intent to have the funds go to the dance company's founder. The trial court determined that the original Trinity no longer existed as it did when Larson's trust was established. Although American Company retained the tax identification number, it was no longer operating as a dance company primarily for girls and was not conducting "the live progressive Irish dance performances which clearly captivated Mr. Larson." American Company appealed the court ruling that Trinity II was the proper successor to receive trust funds.

The Wisconsin Court of Appeals determined that Trinity had changed its name, not its corporate identity. State law relating to corporate succession provides that there is no successor organization in this case, because the name change did not render it a "new" corporation. A corporation continues to exist unless it has been voluntarily dissolved or the state has taken away the corporate life, noted the court. Neither of these apply to American Company. Trinity II urged the court to ignore corporate succession laws and focus instead on Larson's intent. Trinity II claimed American Company was not fulfilling the trust's charitable purpose, resulting in a latent ambiguity. The cy pres doctrine should be applied to assure Larson's intent was met by naming Trinity II as the proper recipient of the funds.

The court disagreed that an ambiguity exists, adding that the trust's plain language names Trinity or a successor organization as the intended recipient. If American Company no longer meets the trust's requirements, there is no provision for another dance company to receive the funds. The University of Chicago is named as a contingent beneficiary in the event American Company is not compliant. The court

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remanded the matter, with directions to declare American Company as beneficiary of the funds, subject to requirements of the trust (*In re Bill Borchert Larson Revocable Trust*, Appeal No. 2018AP1294).

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NO "REASONABLY CERTAIN BENEFICIARIES," CAUSING TRUST TO PASS BY INTESTACY

The revocable trust Ollie Waid established in 2010 included several specific bequests to individuals and charities. The residue was to be held in trust "in perpetuity," with the trustee, Steven Post, given sole discretion to pay principal and undistributed income, subject to "limitations imposed by law." The balance in the trust after the specific bequests was about $4.6 million. In Post's petition to docket the trust with the trial court, he noted that the drafting attorney said Waid intended the residue to be distributed to charities. Because there was no specific direction in the trust, Post asked the court to determine that the trust was solely charitable.

Cheryl Doll, who received a $10,000 specific bequest, sought to intervene, claiming that the residuary clause failed as a matter of law because it did not identify a beneficiary with reasonable certainty. If the residue failed, Doll would receive at least a portion through intestate succession. The court found the residuary clause to be ambiguous and allowed extrinsic evidence of Waid's intent. The court held the trust to be charitable, as defined by Indiana law, and ruled the trustee could distribute the residue to a charity or charities, in his sole discretion. Doll appealed.

The Indiana Court of Appeals agreed with Doll that the residuary clause unambiguously fails to identify a beneficiary with reasonable certainty. The trustee's authority to distribute the residue is circumscribed by "limitations imposed by law," the court noted. One such limitation under the state's trust code is that a beneficiary be identified with reasonable certainty. Waid's trust fails to even identify a class of beneficiaries. Therefore, there is no equitable title holder for whom the trustee can hold legal title, the court said. The court declined to term the trust a charitable trust, noting that under state law, a charitable trust is one in which all beneficiaries are charitable. Because the trust includes bequests to several individuals, the court said it could be, at most, a split-interest trust. The court found the cy pres doctrine did not apply, because the trust lacks any requirement that the residue be applied to charitable purposes.

The court said a resulting trust was created by operation of law over the residue of the trust. Where the trust does not provide who shall receive the property on the trust's termination, the resulting trust will pass to the settlor's successors in interest. The court remanded the matter to the trial court, instructing that the residue be distributed to Waid's heirs at law under the intestate succession statutes (*Doll v. Post*, No. 19A-TR-715).

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TRUST DIDN'T FAIL, SO NO INTESTACY

William Moore's executor asked the probate court to declare that his will did not fail and that the residue should pass in equal shares to two named charities. Moore's will provided that the residue should be held in trust for his mother's benefit if she survived him. At her death, specific bequests were to be made to various named individuals and charities, with the balance passing to two charities. Moore's mother predeceased him. The probate court directed the executor to make immediate distributions to the individuals and charities.

Linda Lenz, Moore's sole heir at law, appealed, arguing the trust failed as a matter of law because Moore's mother, the sole beneficiary, predeceased him. Therefore, she claimed, the residuary estate should pass to her under intestate succession.

The Texas Court of Appeals disagreed, saying that whenever possible, courts should avoid a construction resulting in partial intestacy. The fact that a testator executes a will creates a presumption that he or she intended to dispose of the entire estate and not to die intestate. Moore's mother was to be a life beneficiary if she survived him, but the charities were intended to have vested interests in the remainder of the residuary estate following her death. There were other named remainder beneficiaries "sufficient to prevent the trust from failing," the court said. Because Moore's mother did not survive him, the trust immediately terminated according to its own terms, leaving the corpus to be distributed to the remainder beneficiaries (*In re Estate of Moore*, No. 05-18-00019-CV).

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FOUNDATION NOT "IN EXISTENCE" AT DEATH

The trustee of Curtiss Sibley's trust was to distribute $250,000 to the Fellowship House Foundation upon his death, with the balance passing to the Curtiss F. Sibley Charitable Foundation. If the Sibley Foundation were no longer in existence at his death, the entire amount was to pass to Fellowship House. In 2017, Fellowship House filed a petition to reopen for subsequent administration, claiming that at Curtiss' death, the Sibley Foundation was "no longer in existence."

The trial court determined that three months prior to Sibley's death, the Sibley Foundation was administratively dissolved and was not reinstated until seven months after Curtiss' death. The trustee acknowledged that the Sibley Foundation was never funded , but claimed that in 2018, seven years after Curtiss' death, the Foundation was "ready" to be funded. The court directed the trustee to distribute the trust estate to Fellowship House.

The trustee appealed, saying that the foundation's administrative dissolution did not constitute being "no longer in existence." Under Florida corporate law, a corporation that is administratively dissolved may not carry on any business except liquidating its business and affairs. The question, said the Florida Court of Appeals, was not whether the foundation could be reinstated and resume its work, but whether at the precise point in time it was no longer in existence. The lower court ruling was affirmed (*In re Estate of Sibley*, No. 3D18-2027).

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