

Children supporting themselves? How sparring parties in support disputes seek to use the family code to bypass trust protections for beneficiaries

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California family courts have broad powers under the Family Code to consider the nature of assets held directly or indirectly for the benefit of spouses and parents when determining the amount and source of support obligations. Those powers are tested, however, when the assets in question are held in trust structures governed by the California Probate Code and other state trust laws. While the law is clear on how to handle certain types of trusts in certain situations, such as when a spouse holds assets in a revocable trust for his or her own benefit, it is often less clear to family law practitioners on how the court might consider other trust assets, such as those held irrevocably for the benefit of the children in adversarial support proceedings.

For example, to what extent may a divorcing spouse in a support proceeding pursue assets held in an irrevocable trust established by the other spouse to benefit their children at a time when the parties were not restrained by an automatic temporary restraining order ("ATRO")? Should the spouse seeking support seek to invalidate the trust, force the trust to make distributions, hold the trust jointly and severally responsible for support obligations, or simply seek to have the trust principal or income considered in the DissoMaster report? Understanding the legal landscape for managing these issues is the first key step in crafting a strategy to pursue or protect trust assets from support consideration. The trustee, acting in his or her fiduciary capacity, represents a trust in legal proceeding as a separate party entitled to separate counsel. Involving third party trusts in support disputes add another level of complexity and cost, and in some circumstances even require parallel proceedings before the California Probate Court.

This article acts as a road map for considering these issues. We first explore the trust fundamentals that are commonly involved in dissolution proceedings. Trust types and party relationships are pivotal factors in considering how the trust may be impacted by a support battle. Next, we consider how the family courts generally handle trusts where one of the spouses is the beneficiary, the trustee, or has some other direct or indirect interest in the trust. We then consider the difficult question of when it is appropriate for family courts to consider trusts created for the benefit of the children in support proceedings. Finally, we will consider other strategy considerations, including jurisdiction, tax, and ethical issues.

Types of trusts potentially at issue when determining support

A. Trust Fundamentals

To understand how a "trust" might impact support in dissolution proceedings, you must first understand trust fundamentals. Simply speaking, a trust is a legal arrangement by which title to property is held by one person, the "trustee," for the benefit of another, the "beneficiary." The trust creator is called the "settlor," but is also referred to as the "trustor" or "grantor." A settlor's creation of a trust divides title to transferred property, with legal title in the trustee and equitable title in the beneficiary. Trust lawyers utilize many terms to characterize different trust categories.

1. Express versus Implied Trusts

California law recognizes both express and implied trusts. “Express” trusts are created by the settlor’s intentional action, and “implied” trusts, such as “resulting” and “constructive” trusts, are recognized by law regardless of intent.¹ Express trusts may be either “private” trusts, which have specific persons designated as beneficiaries, or “charitable” trusts, which are established for charitable purposes and need not designate a specific ascertainable beneficiary. The California Attorney General supervises charitable trusts, and the inclusion of any charitable trust in dissolution matters will likely require notice to, and potentially the involvement of, the Attorney General. In family law matters, however, most disputes involve express private trusts.

2. Testamentary versus Living Trusts

Trusts are also classified as either “testamentary” trusts, or “inter vivos” or “living” trusts, depending on whether they become effective after the death of the settlor or during his or her life. Family law matters involve both testamentary and living trusts, as both types of trust -when effective - may impact support issues in a dissolution matter.

3. Revocable versus Irrevocable Trusts

An important consideration is whether a trust is, in whole or in part, classified as “revocable” or “irrevocable.” A revocable trust typically permits the settlor, when competent, to amend or completely revoke a trust. An irrevocable trust typically prohibits the settlor from revoking the trust and eliminates or significantly limits the settlor’s ability to amend the trust terms. In many estate planning scenarios irrevocability results in favorable tax treatment.

During the time that a trust is revocable and the person holding the power to revoke the trust is competent, that person and not the beneficiary, has the rights afforded beneficiaries.² In support matters, the issues of revocability and trust control are paramount to determining whether a spouse has an enforceable interest in trust held assets that should be considered in support proceedings.

B. Probate court’s exclusive and concurrent jurisdiction rules

In addition, the Probate Code’s special jurisdictional and venue rules may impact how a party approaches issues of trust administration in support disputes. The Probate Code sets forth specific rules governing trust proceedings, including provisions relating to jurisdiction and venue, notice, and petitions relating to the internal affairs and existence of trusts.³ In determining jurisdiction and venue in trust proceedings, “the principal place of administration of the trust” is defined as the usual place where the day-to-day activity of the trust is carried on by the trustee or the trustee’s representative who is primarily responsible for the trust’s administration.⁴ This means that a family law matter and a trust matter may have different proper venues.

The Probate Code states that the superior court having jurisdiction over a trust has exclusive jurisdiction of proceedings concerning its internal affairs.⁵ This “probate division” also has concurrent jurisdiction over proceedings to determine the existence of the trust, actions and proceedings by or against creditors or debtors of the trust, and other actions and proceedings involving the trustee or trustees and third persons.⁶ Trustees also regularly represent trusts in non-Probate Code matters without triggering the exclusive jurisdiction of the probate division.

For example, family courts may join trusts as parties to matrimonial matters in family court in enforcement actions in situations that do not involve internal trust administration.⁷

C. Typical Parent/Child Roles in Trusts

It is also important to scrutinize how the players in a matrimonial dispute are related to any trusts at issue. Understanding a spouse or child's role and respective rights and responsibilities under the trust and governing trust law must occur first before understanding how those roles interplay with family law and established support considerations.

1. Spouse/Parent(s) as Settlers

Family courts generally treat assets held in revocable trusts settled by one or both of the spouses in a dissolution matter in the same manner as if the assets had not been transferred to the trust. Transmutations reflected in the trust language or in separate documents may still be valid, but title transfer is ignored as the power to revoke permits the spouse access to the funds for both dissolution and support purposes.

2. Spouse/Parent(s) as Trustees

While a spouse may hold legal title to an asset as trustee, the spouse does so in a fiduciary capacity. Unless there are fraudulent transfer or equitable issues in play, the family court typically does not consider assets held in trust by a spouse or parent in a support scenario unless one of the spouses is either the settlor or the beneficiary, or when the trust itself is established to address support.

3. Spouse/Parent(s) as Beneficiaries

A family court's broad authority relating to family support obligations allow it to consider the assets of a trust benefitting a spouse/parent when determining either spousal or child support.⁸ The Family Code considers all sources of income to a parent, including income received from a trust.⁹ Although it is well-established that regularly distributed trust income received by a parent is considered when determining income available for support, it is less clear how to handle sporadic distributions. As discussed below, interests in discretionary trusts are more difficult for the family courts to ascertain because the distributions may be frequent, scarce, or even nonexistent.

4. Children as Beneficiaries

Unlike with parent beneficiaries, a court will not typically consider a child's income when determining a parent's spousal support award. A court may, however, consider a child's trust when determining child support under limited circumstances. These circumstances are explored in detail below and include a consideration of the precise language of the trust, fraudulent activity, and whether the parents have sufficient income to provide for the child's basic needs.

D. Common Types of Distributive Terms

A trust's terms dictate how its assets may be distributed. Courts have held that the particular distributive language of a trust is an important consideration when making support orders.¹⁰ The common distributive trust terms scrutinized in family support proceedings include:

- **Fully Discretionary.** A discretionary trust typically directs a trustee to distribute to beneficiaries any amount the trustee deems appropriate, either at set intervals or events, or completely at the trustee's discretion.
- **Ascertainable Standards.** Trusts often include an ascertainable standard to guide a trustee's discretion, such as the health, education, maintenance, and support ("HEMS") of its beneficiary.
- **Spendthrift and Shutdown Clauses.** A spendthrift clause provides that the beneficiary may not assign her interest in the trust and the trust is not subject to the claims of creditors. In this way, a spendthrift clause protects a beneficiary's trust funds from creditors before distribution. A related tool is a "shutdown clause," so called because it prohibits a trustee from making certain distributions if they would become subject to creditors' claims.

The family court's potential approach to a trust created for a parent/spouse's benefit in support proceedings

As outlined above, the types of trusts and trust roles directly impact how a trust may be considered in a support context. In the context of analyzing the parent/ spouse's current and future interest in a trust for support purposes, you typically see the court handle trust assets, income and/or trust distributions in three ways: (1) treat as available income for all purposes; (2) impute a hypothetical income stream for the purpose of support; or (3) analyze what assets are available for enforcing support obligations. Understanding each of these tools is fundamental to pursuing or defending a potential trust or income stream.

A. Trust income or distributions as part of gross income available for support

California family courts have broad discretion to consider a party's income available for support when determining an appropriate child or spousal support award. When calculating support, a court may consider all of a parent's income, from whatever source derived and without confinement to community property or income.¹¹ The Family Code specifically authorizes the consideration of trust income when establishing a parent's annual gross income available for support.¹² The court may also consider issues of control and concealment in the context of treating third party trust income as parent/ spouse income.¹³ Whether the "trust income" at issue is that income received by the trust or that income received from the trust, family courts may use their discretion to consider whether such income will be considered available for support.

1. Income received by the trust included in support calculations as income received by the spouse.

In order for the court to consider the income received by the trust to be included in a party's available income for support, there must be a theory as to why—despite the transfer of title to a trust—the trust's income stream should be considered the spouse's income in the support context. This comes up in several scenarios:

- As stated above, the assets of a revocable trust established by a parent/spouse may be treated directly as the spouse's assets for all support purposes because the spouse has the ability to revoke the trust and control the assets for support purposes.
- A parent/spouse is the trustor and/or trustee of an irrevocable trust, but retains certain distributive rights permitting them to control what income they may receive as beneficiary (or

assets they may remove as trustor). Similar to the revocable trust scenario, this is where a spouse retains rights to trust income or assets in a manner where the spouse should be able to make them available for support if such power was exercised.

- A party seeking support alleges that a trust established by the opposing party should be disregarded or invalidated because the trust was formed for an improper purpose, was created in violation of the ATRO, or is an alter ego created to cause injustice. The attacking attorney will need to consider whether to just attack the trust for support calculation purposes, or to take the extra step to invalidate the trust for enforcement purposes, as discussed further below.
- A party created a valid trust but under inequitable circumstances, such that the total support calculations should consider the income even though the spouse has no legal entitlement to the trust income and the court does not disturb the trust structure.

The primary way courts handle including income received by the trust as income to the spouse is through imputation. The Family Code expressly authorizes a court to attribute income to a parent when determining support, without regard to deliberate attempts by the parent to reduce income.¹⁴ For an irrevocable trust, if the family court is simply including the trust's income in support calculations that mathematical computation can occur without seeking an order invalidating the trust structure or taking any other actions that may invoke the exclusive jurisdiction of the probate court.

2. Distributions received by spouse included in support calculations as income.

In trusts with simple non-variable, non-discretionary, and/or predictable distribution terms, the court will obviously treat these distributions as part of a parent's gross income available for support.¹⁵ However, when trust distributions are variable, wholly, or partially discretionary or unpredictable, courts will consider trust income in relation to support issues on a case-by-case basis as discussed below.

B. Calculation of hypothetical income from a trust to a parent beneficiary

The primary way courts handle variable or discretionary trust income is through imputation of a hypothetical income stream included as part of the analysis of a parent's potential earning capacity. In general, family courts are likely to treat discretionary trust income like other uncertain or sporadic income, such as stock options and contingent bonuses. The family court has recognized the difficulties inherent in calculating support based on uncertain and/or sporadic income, but has stated that this impediment does not justify excluding such income from a support calculation.¹⁶ Trial courts are permitted to adjust the award where the guideline "monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties".¹⁷ In addition, courts have discretion to impute reasonable income to a party based on her assets and "adjust the child support order as appropriate to accommodate seasonal or fluctuating income."¹⁸

There are a number of unique considerations for calculating potential income from a trust in the support analysis. These include:

- Do the trust terms impact future distributions? Will the trust change (will it split, beneficiaries change, etc.) based upon some future condition?

- If there is more than one beneficiary, how do the other beneficiaries' rights impact distribution streams?
- How has the trust historically been administered?
- How will a third-party trustee impact the predictability of the income stream?
- What are the assets and when will they exhaust?
- Will the family court's potential findings impact estate or income tax treatment?

Like in a business scenario, the court's income stream analysis for a trust involves looking at the complete circumstances and will often involve competing expert witness reports.

C. Enforcement of support obligations against trust distributions or the trust itself

Support obligations belong to a parent, so in a typical situation you would not expect a third-party trustee to be a support-debtor in a family law matter. However, in cases where a spouse cannot or has not satisfied the court's support orders or in situations where equity demands trust responsibility, family courts will be asked to consider enforcing orders against future trust distributions or against the trust assets themselves. Even where a trust beneficiary's co-parent has obtained an order directing the beneficiary to pay a specified amount for support, the co-parent cannot compel the trustee to fulfill the support obligation without an enforcement order from the court. Enforcement tools can include:

- **Order Compelling Trustee to Divert Funds Earmarked for Beneficiary Spouse to Payment of Support Obligations.** Under existing garnishment laws, a creditor-spouse can apply to have trust income streams garnished for support purposes.¹⁹ These orders can require the trustee to make the distribution payment directly to the support-creditor spouse to satisfy all or part of the debtor-creditor's support obligations.
- **Order Compelling Trustee to Make Distributions for Purpose of Support.** In cases where a trustee has discretion to make or withhold distributions to a debtor-spouse in a support situation, practitioners often seek orders compelling the trustee to make distributions.
- **Order to Enforce Support Obligation Against Trust Principal.** Practitioners sometimes seek to enforce support obligations directly against the trust and its assets as a joined party.²⁰ These efforts typically involve a litigant either seeking to invalidate the trust, seeking to utilize the fraudulent transfer laws to find liability against the trust, or efforts to have the trust deemed an alter ego of the debtor-spouse. If these efforts seek to challenge the validity of the trust or alter the distributive terms in any way, then these efforts may require a probate court action due to that court's exclusive jurisdiction over internal trust administration matters.²¹

A spendthrift or shutdown clause alone is unlikely to protect against a beneficiary's child and spousal support obligations.²² Probate Code section 15305 specifically allows support orders to be enforced against a beneficiary/ support-debtor's trust containing spendthrift provisions.²³ The law provides courts the power to prevent a trustee from exercising trust discretion with an improper motive by withholding distributions to the support-debtor.²⁴ If payments from the trust are discretionary, the court may order support payments to be made "out of all or part of future payments that the trustee, pursuant to the exercise of the trustee's discretion, determines to make to or for the beneficiary's benefit."²⁵

Cases reflect the willingness of courts to order third-party trustees to make distributions when justified by the circumstances. Those circumstances can include where a spouse with support arrearages is both the settlor and the beneficiary,²⁶ a beneficiary with the right to compel trust distributions²⁷, a beneficiary of trust where the trustors' intent is to provide support for beneficiary's children,²⁸ or a spendthrift trust beneficiary with income in excess of the amount needed for the spouse's health, education, maintenance or support.²⁹ It is important to remember, however, the more one relies upon the trust terms to seek a distribution, the more a proceeding becomes directly related to the internal trust administration, bringing the matter under the probate court's exclusion jurisdiction.³⁰

Types of trusts potentially at issue when determining support

In general, California authority does not support paying child support from a child's own resources as it is a parent's duty to support the child.³¹ There are, however, some exceptions to this general rule. For instance, Family Code section 3902 states that "[t]he court may direct that an allowance be made to the parent of a child for whom support may be ordered out of the child's property for the child's past or future support, on conditions that are proper, if the direction is for the child's benefit." Additionally, Probate Code section 2422 allows an interested party to petition the court for support out of a child's estate, notwithstanding a parent's individual obligation of support.³² There is little guidance in the case law on how courts should apply these exceptions, but typically a child's trust won't impact a support order absent exceptional circumstances warranting imputation or enforcement.

A. The general rule: A child's trust does not impact support orders

The general rule is that a parent with sufficient financial resources has a duty to support their child regardless of the child's independent estate. This rule furthers the best interest of the child and assures that the child's own estate is preserved for use later in the child's life. The family courts have recognized a narrow exception for the child's basic needs only if the parents are unable to fulfill their support obligation themselves.³³

B. Imputation of a child's trust income to a trustor-parent

Typically, you would not expect a trust established by a third-party for a child's benefit to be at issue in a support proceeding. A child's trust typically becomes an imputation focus when a spouse has transferred significant wealth from his or herself to a trust for the children, impacting the spouse's remaining income and resources available for support. Even in those situations, however, the irrevocable transfer of assets to a trust for the benefit of the children often benefits the children in a variety of important ways that the family court would normally not want to disturb. For example, the trust could specifically cover current educational or health expenses reducing the child's support needs from the parents. It could guarantee support for the beneficiaries when they are adults and/or for future generations. If it remained intact, the trust could provide the children additional future resources with tax protections.

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disturb. For example, the trust could specifically cover current educational or health expenses reducing the child's support needs from the parents. It could guarantee support for the beneficiaries when they are adults and/or for future generations. If it remained intact, the trust could provide the children additional future resources with tax protections.

Because of these benefits, where there is evidence of bad faith and a parent has created an irrevocable trust for the benefit of the child in order to diminish his or her own assets available for support, a court would likely prefer to impute this income back to the parent for purpose of calculating the support order, rather than enforce an order against the trust and diminishing the assets held for the children's benefit. This approach addresses the misconduct of the transferring spouse by acknowledging the income from the transferred assets in support analysis without actually disturbing the benefits of the transfer to the children.

C. Invalidating specific transfers

A spouse seeking to transfer assets to a children's trust in order to avoid a support order implicates the state's voidable transfer and debt collection laws. For example, California's Uniform Voidable Transfer Act (UVTA) was established to prevent debtors from wrongfully transferring their assets to defraud creditors.³⁴ In the family law context, a spouse could seek to use the UVTA to invalidate the other spouse's transfer of his/her assets in an irrevocable trust for the benefit of their child if the spouse challenging the transfer shows an actual intent by the debtor spouse to hinder, delay or defraud the support creditor spouse.³⁵ An open question, however, is if an effort to invalidate a trust under the UVTA, rather than under a provision of the Probate Code, implicates the probate court's exclusive jurisdiction to handle internal trust administration matters.³⁶

D. Enforcement against a child's trust

There have been no California family law cases wherein a court has ordered a support obligation paid directly from a child's trust. This concept does come up in guardianship context, however, as the use of a child's independent resources to supplement their parents' support contribution is implicitly recognized in the Probate Code relating to the guardianship of a minor's estate.³⁷ For support disputes, a court may be more likely to find good cause to order a child's trust to contribute to support obligations in a situation where the parents lack sufficient resources and the express purpose of the trust in question is for the support and maintenance of the child.³⁸ For example, one court stated while a parent must provide for the needs of his or her minor child regardless of the child's property, there is an exception to this rule when "the express purpose of the trust in question [is] contribution to the support and maintenance of the child."³⁹ That court found that under those circumstances the father's use of the child's trust funds for the child's own support in addition to using his own funds was appropriate.⁴⁰

Although there is an absence of California authority thoroughly analyzing this issue, it is likely that a court will ultimately consider the total impact to the children for any requested support-related relief. If a spouse can show that unmet current needs are such that the children will be better off using their trust resources to satisfy those needs now rather than holding on to the resources for the future, that spouse will have a more compelling narrative to invade those resources. On the other hand, if the opposing spouse can show other means to satisfy the unmet needs and can quantify the harm to the children from disturbing the estate planning or depriving the children of the future use of their trust rights, then a court will likely be hesitant to compel the children's trust to be liable for any support-related need.

Key considerations for planning your offensive or defensive strategy

Whether to pursue a trust, and how to attack or defend a trust in a support dispute is a fact-specific analysis. A family law attorney should map out their strategy after considering all of the approaches and considerations above. In addition, a practitioner should consider some or all of the additional issues set forth below.

A. Choosing Between Family and Probate Court

As discussed above, the probate court maintains exclusive jurisdiction over matters concerning the internal affairs of trusts.⁴¹ As a result, an attorney who seeks to avoid a separate probate action will attempt to define the disputed issue as not being one of internal trust administration or trust interpretation and will instead seek to impute trust income for support purposes without joining the trustee as a party.⁴² An attorney seeking to keep a trust issue out of family court, on the other hand, often will frame the pleadings and remedies as internal trust administration matters within the probate court's exclusive jurisdiction, even if the trustee is not a joined party. In deciding the best venue, factors such as the judge's familiarity and expertise in trust matters, the cost of having two lawsuits, and the need to hire trust counsel familiar with trust law and probate procedures, are all important considerations.

B. Tax law considerations

The funding and creation of a trust often revolves around effective tax planning, as the transfers to trusts can provide estate, income and property tax benefits to the beneficiary and/or increase the value of estates for future generations. A family court's interference with the plan, or, worse yet, finding that the settlor maintained some control over the trust or had a relationship with the trust contrary to the intended tax planning, could strip the planning of the intended tax benefit and cause the child- beneficiary to incur additional, and often significant, additional tax liabilities. Tax issues may directly impact what is the best interest of the children, and must be considered in preparing a support strategy.

C. Attorneys' fees

Attacking or defending a trust in family matters often increases costs through the need for additional trust counsel, testifying experts, additional probate court matters, and the need to address additional evidentiary issues at trial. An important consideration for a practitioner crafting a plan is to consider the fee-shifting mechanism available under the Family Code.⁴³ The potential benefit or risk of shifting these costs in the family matter to the wealthier spouse is an important consideration, as is the absence of such a fee-shifting mechanism under the Probate Code. In addition, it is important to consult a trust attorney about other probate remedies potential available in a probate action.⁴⁴

D. Considerations at the planning stage

If one represents a spouse preparing an estate plan prior to an anticipated support battle (but not restrained by an ATRO), it is important to consider both the implications and optics of the plan itself and its timing. Some rights reserved by the settlor that may be completely appropriate under tax laws may unnecessarily give a party seeking imputation in support matters a platform to argue spousal control. In addition, including support terms that sound like child support or that permit a trustee to distribute directly to a custodial parent for support needs, which may satisfy legitimate planning goals, may provide ammunition to the opposing spouse in support

proceedings. Choice of trustee can also be key, as the trustee may need to administer the trust in the face of sparring parents, and may need to defend his or her administration decisions both in family court and probate court. For a new plan created on the eve of a support battle, the tax attorneys should work with family lawyers to reach the estate planning goals in a manner calculated to have the least unintended consequences in the support battle.

E. Additional beneficiaries and due process rights

Under the Probate Code and under due process jurisprudence, one is typically required to either provide notice to (or in some cases join as a party) anyone whose interest in a trust is impacted by a proceeding.⁴⁵ In a trust where a child is but one beneficiary or is one of a beneficiary class, for example, there may be numerous people who have rights implicated by a proceeding attacking or interpreting the trust. This raises a number of questions: Who is required to receive notice? Do the minor children need a guardian ad litem to represent them on the trust issues even if they do not need one in a typical support proceeding?⁴⁶ Do unborn children whose future inheritance may be impacted by the support proceedings need a guardian ad litem to represent their interests? Are contingent or remainder beneficiaries who are not entitled to any distributions now, but may in the future, entitled to notice and an opportunity to object? Notice and due process rights are key considerations in initiating any proceedings impacting trust rights.

F. Mediation

Litigating trust issues in the middle of a dissolution matter can add complexities, additional stakeholders, potential additional lawsuits and, of course, added cost. Inviting a trustee and his or her counsel to mediation efforts is often advisable, as you may be able to come to a compromise with the trustee without having to tackle many of the difficult issues listed above. Mediation has the added benefit of raising issues in a confidential setting that will likely not find its way to the IRS reducing the danger of potentially invalidate the tax planning.

G. Ethical considerations

Conflicts of interest and protecting the separate interests of the minor children are a common problem in addressing trusts in dissolution proceedings. For example, it may be improper under the Rules of Professional Conduct for one set of counsel to represent a spouse both as a party in a dissolution proceeding and as the trustee of the children's trust implicated in the support proceeds.⁴⁷ In addition, any acts by a parent seeking support from the child's trust assets will create a conflict between that parent and the child's interest as a beneficiary. As part of strategic planning, an attorney must consider the interests implicated and whether the matter is being handled properly under both due process rules and the Rules of Professional Conduct.

Conclusion: Do not treat trusts like any other asset

Trusts are a legitimate means of creating a tax- efficient way to share one's wealth. As a legal transfer of assets to a trustee is a hallmark of trust creation, dealing with those transferred assets is an issue that often complicates dissolution matters for high net worth individuals. But digging into the issues on the trust side demonstrates that it can be actually more complicated than being simply another contested asset. Understanding the legal and strategic considerations, and consulting with trust and tax counsel when needed, can make a meaningful difference in crafting successful plans to pursue or defend a trust connected to a spouse or a child.

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Endnotes

- 1 Implied trusts may also be a part of a family law proceeding, such as when a marital asset is wrongfully held by a third party or when one spouse received property that should have gone to other spouse or the children. These types of implied trusts are beyond the scope of this article.
- 2 CAL. PROB. CODE § 15800.
- 3 CAL. PROB. CODE §§ 17000 *et seq.*, CAL. PROB. CODE §§ 17100 *et seq.*, CAL. PROB. CODE §§ 17200 *et seq.*
- 4 CAL. PROB. CODE § 17002(a).
- 5 CAL. PROB. CODE § 17000(a).
- 6 CAL. PROB. CODE § 17000(b).
- 7 33 CAL. JUR. 3D *Family Law* § 1146; *Armstrong v. Armstrong*, 15 Cal. 3d 942 (1976).
- 8 CAL. FAM. CODE § 4058.
- 9 CAL. FAM. CODE § 4058(a)(1).
- 10 Guardianship of K.S., 177 Cal. App. 4th 1525, 1530 (2009).
- 11 CAL. FAM. CODE § 4058(a)(1), *formerly* CAL. CIVIL CODE § 4721(a) (1) (repealed 1993); *In re Marriage of Ostler & Smith*, 223 Cal. App. 3d 33, 36 (1990); *Borelli v. Brusseau*, 12 Cal. App. 4th 647, 652 (1993).
- 12 CAL. FAM. CODE § 4058(a)(1).
- 13 *Ventura Cnty. Dept. of Child Support Servs. v. Brown*, 117 Cal. App. 4th 144, 145 (2004).
- 14 CAL. FAM. CODE § 4058(b); *see also In re Marriage of Destein*, 91 Cal. App. 4th 1385 (2001).
- 15 CAL. FAM. CODE § 4058(a)(1).
- 16 *In re Marriage of Cheriton*, 92 Cal. App. 4th 269, 287 (2001).
- 17 *Id.* at 768; *see also* CAL. FAM. CODE § 4060.
- 18 *Id.* at 272, 768; *see also* CAL. FAM. CODE § 4064.
- 19 CAL. CIV. PROC. CODE § 709.010.
- 20 CAL. FAM. CODE § 2021; CAL. CT. R., CAL. FAM. JUV. R. 5.150 & 5.154.
- 21 CAL. PROB. CODE § 17000(a).
- 22 CAL. PROB. CODE § 15305.
- 23 *Id.*
- 24 *Ventura Cnty. Dept. of Child Support Servs. v. Brown*, 117 Cal. App. 4th 144 (2004) (trustee of discretionary trust compelled to satisfy beneficiary's child support obligation where trustee's refusal to distribute was in bad faith.); *Pratt v. Ferguson*, 3 Cal. App. 5th 102 (2016) (trustee of discretionary trust ordered to pay child support judgment owed by its beneficiary, notwithstanding spendthrift clause); *Marriage of Furie*, 16 Cal. App. 5th 816 (2017).
- 25 CAL. PROB. CODE § 15305(c).
- 26 *Ventura*, 117 Cal. App. 4th at 145.
- 27 *Pratt*, 3 Cal. App. 5th at 102.
- 28 *Ventura*, 117 Cal. App. 4th at 145.
- 29 *Estate of Johnston*, 252 Cal. App. 2d 923 (1967).
- 30 CAL. PROB. CODE § 17000(a).
- 31 CAL. FAM. CODE §§ 3900 *et seq.*
- 32 CAL. PROB. CODE § 2422(a).
- 33 *Armstrong v. Armstrong*, 15 Cal. 3d 942 (1976); *In re Marriage of Cosgrove*, 27 Cal. App. 3d 424, 426 (1972).
- 34 CAL. CIV. PROC. CODE §§ 3439–3439.12; *see, e.g., Mejia v. Reed*, 31 Cal. 4th 657 (2003) (applying the fraudulent transfer analysis in the child support context).
- 35 CAL. CIV. PROC. CODE § 3439.04.
- 36 Another consideration is whether a parent's transfer of assets to the child's trust occurred in violation of an ATRO. If there was an ATRO violation, a court may be more likely to impute the wrongfully transferred assets to the parent.
- 37 CAL. PROB. CODE § 2422(a).
- 38 *Guardianship of K.S.*, 177 Cal. App. 4th 1525, 1530 (2009).
- 39 *Id.* at 1531.
- 40 *Id.* at 1538; *see also* 33 CAL. JUR. 3D *Family Law* § 1146 (noting that a court may consider the child's trust income where the trust explicitly authorizes the income to be used to relieve the parents of their basic support duty); *Armstrong v. Armstrong*, 15 Cal. 3d 942 (1976).
- 41 CAL. PROB. CODE § 17000(a).
- 42 California allows permissive joinder in family law disputes if it would be appropriate to determine a particular issue in the proceeding and the trustee to be joined is either indispensable for the court to make an order about that issue or is necessary for judgment enforcement. (CAL. FAM. CODE § 2021; CAL. CT. R., CAL. FAM. JUV. R. 5.24.)
- 43 CAL. FAM. CODE § 2030.
- 44 CAL. PROB. CODE § 17200 *et seq.*
- 45 CAL. PROB. CODE § 17203.
- 46 CAL. PROB. CODE § 15405.
- 47 CAL. RULES OF PRO. CONDUCT, RULE r. 1.7.