



Trusts & Estates

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A review of Masry v. Masry (2008) 166 Cal.App.4th 738

CASE SUMMARY

This article examines factors contributing to the revocation of a trust when joint settlors are involved.

A revocable trust may be revoked by compliance with the revocation method in the trust instrument or by a writing signed by the settlor and delivered to the trustee while the settlor is still alive, unless the method in the trust instrument is explicitly designated as the exclusive method of revocation.

Edward and Joette Masry created a revocable living trust (Family Trust). The property transferred to the trust was community property as it was acquired during marriage. The trust named Edward and Joette each as a trustor (settlor) and trustee of the trust and reserved the right of each to revoke the trust “by written direction delivered to the other Trustor and to the Trustee.”

Edward executed a Notice of Revocation of Trust shortly before his death but did not inform Joette. Edward created a separate trust naming his children from a prior marriage as successor co-trustees and

planned on transferring his assets into his new trust.

Joette learned of Edward’s new trust shortly after his death and filed a petition claiming that the revocation of the Family Trust was invalid because Edward did not provide notice of the revocation to her. The trial court found that Edward’s revocation to himself as trustee was effective because the Family Trust did not explicitly require delivery of a revocation to Joette as the exclusive method of revocation. Joette appealed.

Prob Code Section 15401(a)(2) states that a revocable trust may be revoked by compliance with the revocation method in the trust instrument or by a writing signed by the settlor and delivered to the trustee while the settlor is still alive, unless the method in the trust instrument is explicitly designated as the exclusive method of revocation. Probate Code Section 15401(b) states that a trust created by more than one settlor may

When it is intended for a revocation method to be the exclusive method of revocation, the trust must “directly and unambiguously” express such intent.

be revoked by any settlor as to the



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portion that that settlor contributed, except as provided under Family Code Section 761. Family Code Section 761 grants either spouse the ability to act alone to revoke his or her community property share of trust assets unless the trust expressly provides otherwise.

The appellate court found that the Family Trust did not “directly and unambiguously” make the revocation method it provided the exclusive method of revocation. Therefore, Edward was allowed to revoke the Family Trust for the portion he contributed by using the method provided by Probate Code Section 15401(a)(2). Edward satisfied the requirements of Probate Code Section 15401(a)(2) by delivering from himself as settlor to himself as trustee the Notice of Revocation of Trust he created shortly before his death. The appellate court confirmed the trial court’s ruling that Edward was allowed to dispose of his one-half of the community property in the Family Trust without notice to Joette.