CONTESTED NONPROBATE TRANSFERS: WHEN THE ESTATE PLAN TRUMPS

*By Matthew R. Owens, Esq.**

MCLE Article

I. INTRODUCTION

The modern trend in California of bending title rules to accommodate evidence of the decedent's testamentary intent opens wide the probate court doors to litigation over nonprobate transfers. Financial accounts not titled in the name of the trust historically passed to the account's joint surviving owner, payee, or beneficiary, avoiding probate and bypassing the trust administration. Banks and other financial institutions simply honored their contractual obligation with the decedent and transferred the funds to the person named on the account's signature card or other title document. But Probate Code section 5302 contains an exception to the default rules on nonprobate transfers, if a party contesting the nonprobate transfer can prove by clear-and-convincing evidence the decedent intended the account to pass to someone else. The question then becomes what exactly constitutes clear-and-convincing evidence of the decedent's contrary intent.

The evidence necessary to satisfy the clear-and-convincing evidence standard could come in many forms. Probate Code section 5302 has even been interpreted to mean contrary provisions in an estate plan can alter the successor in interest to a financial account, without the account owner ever changing the signature card or other title documents on file with the financial institution. A long line of cases elevating the decedent's intent over title presumptions empowers litigants to invoke Probate Code section 5302 to contest nonprobate transfers by pointing to contrary provisions in estate planning documents such as trusts, wills, and assignments. Until recently, there was at least a firewall when it came to wills. Probate Code section 5302, subdivision (e), expressly states that a right of survivorship "cannot be changed by will." The 2019 case of *Placencia v. Strazicich* even eliminated that barrier, holding that a will can serve as the clear-and-convincing evidence necessary to override the default rules of joint ownership.[1]

Since the modern trend of bending title rules in service to other evidence of the decedent's intent shows no signs of stopping, practitioners must be prepared to evaluate potential contested nonprobate transfers in each new trust and probate administration. And although financial accounts typically are not the decedent's largest assets, their value can still be substantial, creating significant liability for a trustee who missteps when deciding whether to marshal the accounts as trust assets. For example, in *Placencia v. Strazicich* the disputed account had a balance of nearly a quarter-million dollars.[2] The author has litigated several contested nonprobate transfers involving multi-million-dollar accounts. The scope of this issue is already substantial and will continue to grow as litigants continue pushing the boundaries of what constitutes the clear-and-convincing evidence necessary to successfully contest a nonprobate transfer. This article examines the default rules governing nonprobate transfers, analyzes notable cases that applied exceptions to those default rules, and offers some recommendations for reducing litigation over contested nonprobate transfers.

II. DEFAULT RULES GOVERNING NONPROBATE TRANSFERS

In 1990, the California Multiple-Party Accounts Law (CAMPAL) became the governing statute for nonprobate transfers of various types of financial accounts upon the death of an account owner.[3] Nonprobate transfers are contractual in nature and are directed by the express terms of the agreement entered into between the financial institution and the owner when the account was established.[4] They are not considered testamentary transfers and the contracts governing them do not have to satisfy the requirements necessary to effectuate a testamentary transfer.[5] The types of accounts subject to CAMPAL are joint accounts, pay-on-death accounts, and Totten trust accounts,[6] and the funds from those accounts pass to "surviving parties," "payees," and "beneficiaries," respectively.[7] CAMPAL defines "account" to include, among other things, checking accounts, savings accounts, and certificates of deposit.[8] As discussed below, the rules governing disposition of nonprobate transfers differ depending on the type of account in question.[9]

A. Default Rules Governing the Disposition of Joint Accounts

A joint account is an account that is made payable on request to one or more parties, regardless of whether the account references right of survivorship.[10] Upon the death of a joint owner, the assets of a joint account pass to the surviving owner, unless there is clear-and-convincing evidence of a contrary intent.[11] Prior to enactment of CAMPAL, the legal standard for rebutting the presumption of survivorship on a joint account was preponderance of the evidence.[12] CAMPAL therefore strengthened survivorship rights by heightening the legal standard to clear-and-convincing evidence.[13]

California Probate Code section 5302 is based on the Uniform Probate Code section 6-104, with one important difference. Under the California statute, clear-and-convincing evidence can come *after* the account was created, while under the Uniform Probate Code clear-and-convincing evidence must have existed when the account was created.[14] The importance of that difference is that in California clear-and-convincing evidence can come in the form of estate planning documents executed after the account was created.

B. Default Rules Governing the Disposition of Totten Trust Accounts

A Totten trust account is an account in the name of a party as trustee for one or more beneficiaries where the relationship is established by the form of the account.[15] For Totten trust accounts, upon the death of the trustee, the assets pass to the designated beneficiary, unless there is clear-and-convincing evidence of a contrary intent.[16]

The rights of beneficiaries of Totten trust accounts were strengthened under CAMPAL with the addition of the clear-and-convincing evidence standard.[17] "Under prior California law, a tentative or 'Totten' trust could be defeated by circumstantial and often flimsy evidence, making its use unreliable."[18]

C. Default Rules Governing the Disposition of Pay-on-Death Accounts

A pay-on-death account is payable upon the owner's death to the person designated as the payee on the account.[19] As the Law Revision Commission noted, "When the depositor's intent in creating a multiple-party account is solely to provide for payment of the funds to a named beneficiary on the depositor's death, the 'pay-on-death' account is superior to the joint account because the depositor retains sole ownership of the account funds during his or her lifetime. It is superior to the tentative or 'Totten' trust account for such purpose because the effect of the 'pay-on-death' account form will be more readily understood by lay persons who use it."[20]

Upon the death of the owner, the balance of a pay-on-death account passes to the designated payee.[21] However, unlike joint accounts and Totten trust accounts, the provision governing pay-on-death accounts does not expressly include an exception for clear-and-convincing evidence of a contrary intent.[22] CAMPAL gives no clear guidance on what legal standard applies to a contest brought to overcome the presumption that funds in a pay-on-death account pass to the payee.

From the perspective of a contest to the account title, pay-on-death accounts arguably afford less protection than joint accounts or Totten trust accounts since they do not carry a statutory directive heightening the legal standard for their contests to clear-and-convincing evidence.[23] They could be subject to attack based merely on a preponderance of evidence of a contrary intent, just like joint accounts and Totten accounts were prior to CAMPAL.[24]

From the perspective of validating account title, pay-on-death accounts arguably are not subject to attack at all since the provision governing them does not include a clear-and-convincing evidence exception.[25] This statutory omission effectively renders their title presumption conclusive. However, given the modern trend of cases elevating the decedent's intent over title presumptions, courts may be reluctant to strictly adhere to the beneficiary designation form on file for a pay-on-death account in the face of evidence of a contrary intent found in an estate plan that came later in time.

As an alternative that falls between these two extremes, pay-on-death accounts could simply be treated the same as joint accounts and Totten trust accounts: subject to contest but only upon a showing of clear-and-convincing evidence. Treating pay-on-death accounts differently than Totten trust accounts would be questionable given the similarities between them. Both account types designate a person or persons who will receive the funds in the account upon the owner's death, so practically speaking, the difference between them is little more than the box checked on the signature card.

In sum, joint accounts, Totten trust accounts, and potentially pay-on-death accounts can be subject to a claim that clear-and-convincing evidence exists to defeat the express terms of the accounts and to alter their ultimate disposition. It is not enough, then, to simply follow the financial institution's title records without further inquiry.

III. CONFLICT BETWEEN DEFAULT NONPROBATE TRANSFER RULES AND TERMS OF COMMON ESTATE PLANNING INSTRUMENTS

The trend of modern cases favoring evidence of the decedent's intent over form of title has evolved significantly over the last few decades. The line of cases driving that evolution has streamlined trust administration by providing tools to rectify trust funding neglect. Although estate planners recommend that their clients properly title in the name of the trust all assets intended to pass under the trust's terms, the reality is that clients often fail to do so. Only upon death do family members discover that, despite the retention of an estate planning attorney for the purpose of preparing a thoughtful and well-crafted estate plan,

the decedent forgot to fund the trust. Family members and their attorneys can use the line of cases discussed below to remediate this problem. But that remedial estate planning comes at a cost, and may fail altogether,[26] when the estate planning documents conflict with the default rules governing nonprobate transfers.

Any number of estate planning instruments can be used to satisfy the clear-and-convincing evidence exception to the default nonprobate transfer rules. Below are several cases in which litigants pointed to various estate planning instruments as evidence of the decedent's intent and successfully overcame those default rules and title presumptions.

A. Wills

In *Placencia v. Strazicich*, the decedent left a will, a trust, and joint bank account.[27] Lisa, one of the decedent's three daughters, had a right of survivorship in the joint bank account.[28] The decedent's will, however, contained a statement that he did not want Lisa to have the right of survivorship in the joint bank account, but that he instead wanted the bank account to go to his trust so that it could benefit his three daughters, including Lisa, in accordance with the trust's terms.[29] Following the decedent's death, the bank released the account to Lisa.[30] Stephanie, one of the decedent's other daughters, and Lisa both filed petitions in the probate court to determine their respective rights to the account.[31] The probate court determined the decedent's intent should prevail and ordered Lisa to account to the trustee for the funds in the account.[32] Lisa appealed.[33]

The Court of Appeal agreed with the probate court's underlying determination that the decedent's intent, as stated in the will, should prevail over the right of survivorship.[34] However, the Court of Appeal did reverse the portion of the probate court's order requiring Lisa to account to the trustee because the funds first had to be probated through decedent's estate before passing to the trust under the pour-over will.[35] The primary issue of whether Lisa was entitled to the joint account owing to her right of survivorship was decided against her in both the probate court and the Court of Appeal.[36]

As the Court of Appeal noted, the case turned on a close reading of Probate Code sections 5302 and 5303.[37] On the one hand, Probate Code section 5302, subdivision (a), states that a joint account entails a right of survivorship "unless there is clear-and-convincing evidence of a different intent."[38] The Court of Appeal confirmed intent can post-date creation of the account: "the intention to negate survivorship may be shown to have existed *after* the time of creation of the account."[39] Under Stephanie's argument, the will satisfied the clear-and-convincing evidence exception and the account should have passed to the estate.[40]

On the other hand, Probate Code section 5303 provides that survivorship rights are determined by the form of the account at the death of one of the joint account owners.[41] Under Probate Code section 5303, subdivision (b), the express terms of a joint account can only be changed by one of several statutorily-enumerated methods that generally require the joint owner to file an application, signature card, or other title documentation with the financial institution.[42] Under Lisa's argument, the will had no impact on her survivorship right to the account because the decedent never filed the required title documentation with the bank to remove her as the sole surviving joint owner.[43] Further, Probate Code section 5302, subdivision (e), expressly provides that a right of survivorship "cannot be changed by will."[44]

The Court of Appeal harmonized the two competing statutes by distinguishing between the *express terms* of the account and the *beneficial owner* of the account, which can differ.[45] Probate Code section 5302 governs the identity of the beneficial owner of the account, while Probate Code section 5303 governs the express terms of the account.[46] The bank correctly released the funds to Lisa because that is what the *express terms* of the account required, but the *beneficial owner* of the funds was the decedent's estate.[47]

The decedent's will constituted clear-and-convincing evidence of an intent contrary to Lisa's survivorship right.[48] This ruling was proper even though Probate Code section 5302, subdivision (e), on its face, seems to eliminate wills as possible vehicles to satisfy the clear-and-convincing evidence exception by stating that survivorship rights "cannot be changed by will."[49] The Court of Appeal reasoned that provision "merely preserves the nonprobate quality of survivorship rights."[50] Notwithstanding this provision, the will was still fair game to consider as evidence of the decedent's intent with respect to disposition of the joint account.[51]

This statement from the Court of Appeal is telling. Under this reasoning, any estate planning document—a will, a trust, an assignment, or the like—could serve as the evidence on which a claimant could contest a nonprobate transfer. But why stop there? So long as the evidence is clear and convincing, any writing could theoretically serve as grounds for defeating a joint owner's survivorship right to an account. This reasoning from the Court of Appeal, although perfectly in accord with the modern trend of cases and unquestionably in service of the lofty goal of honoring the decedent's true intent, is what puts every joint account under scrutiny for a potential contest upon

the death of a joint owner. The signature card on a joint account is only the beginning of the analysis when there could be clear-and-convincing evidence of a contrary intent lurking in the estate plan or elsewhere.

The Court of Appeal also clarified the safe harbor provision permitting financial institutions to release multiple-party accounts based on the express terms of the account.[52] Under Probate Code section 5405, subdivision (a), financial institutions can simply release the funds to the joint owner or designated beneficiary without the need to make an independent inquiry into the deceased account owner's overall estate plan.[53] This safe harbor provision is significant because without it, financial institutions would be faced with the impossible task of determining for each deceased account owner whether there is clear-and-convincing evidence of a contrary intent that could defeat the express terms of the account as reflected in the financial institution's signature card or other title documents. To fulfill this task, financial institutions would potentially have to demand copies of trusts and other estate planning documents for the purpose of conducting a comprehensive review of the estate plan before releasing any funds. Fortunately, Probate Code section 5405, subdivision (a), relieves financial institutions of that burden and permits them to release the funds without risking liability. Once released, however, those funds remain subject to a potential claim that the recipient of the funds was not the decedent's intended beneficial owner if the clear-and-convincing evidence exception found in Probate Code section 5302 can be satisfied.[54]

B. Trusts

1. *Araiza v. Younkin*

In *Araiza v. Younkin*, the Court of Appeal relied on Probate Code section 5302, subdivision (c), to hold that the trust terms changed the beneficiary designation on a Totten trust account.[55] The trust instrument itself provided clear-and-convincing evidence of the settlor's contrary intent with respect to disposition of the account upon death because it contained a specific gift of the account to a specific beneficiary.[56] The trust language stated, "I give the following savings and checking accounts to GABRIELLA REEVES," and then went on to list the accounts.[57] The Court of Appeal held that by including that provision in the trust, the settlor effectively changed the beneficiary of the Totten trust account to the person specifically identified in the trust.[58]

Araiza v. Younkin did not address the issue of whether a more generic statement transferring the account to the trust, without identifying a specific beneficiary, would have satisfied the clear-and-convincing evidence standard. That Court did not need to address the issue because the settlor did not merely say the account should pass to her trust—she went one step further and named the specific trust beneficiary she wanted to inherit the account.[59] The holding in *Placencia v. Strazicich* supports an argument that specifically naming the beneficiary—as was done in *Araiza v. Younkin*—is not required, because in *Placencia* the statement of the decedent's intent for an account to pass to his trust instead of to the surviving joint owner was deemed sufficient to constitute clear-and-convincing evidence.

2. *Estate of Heggstad*

One of the most well-known California trust administration cases, *Estate of Heggstad* involved a dispute over title to a parcel of real property that, although listed on the trust's "Schedule A," was not properly funded into the trust.[60] The settlor left a trust naming himself as trustee and his son as successor trustee.[61] Attached to the trust was a document called "Schedule A," which listed all assets the settlor intended to place in the trust, including the parcel of real property.[62] The trust terms included a declaration of trust over all assets listed on the "Schedule A," and the settlor declared he was transferring the scheduled assets to himself as trustee.[63] Notwithstanding that declaration of trust, the settlor failed to execute a deed transferring into the trust one parcel of real property listed on the "Schedule A," so title remained in his name individually when he died.[64] The settlor's son, as successor trustee, filed the very first (and now famous) *Heggstad* petition claiming the declaration of trust over the assets listed on the "Schedule A" was sufficient to create a trust in the parcel of real property.[65] The decedent's wife, who was entitled to inherit one-third of the settlor's estate as an omitted spouse,[66] objected to the son's petition and claimed the real property was an estate asset.[67] The probate court granted the son's petition and determined the trust document was sufficient to create a trust in the real property.[68]

The Court of Appeal affirmed and held the settlor did not have to execute a deed transferring the real property to himself as trustee since a written declaration of trust by the owner of real property naming himself as trustee was sufficient to create a trust in that property.[69] The Court of Appeal noted, however, that a deed conveying title to the settlor as trustee, although not required, would still be "solid evidence of the settlor's manifestation of intent to create a trust."[70]

After *Estate of Heggstad,* probate attorneys began testing the limits of that case's holding by invoking it in pursuit of orders transferring all sorts of assets into trusts post-mortem through *Heggstad* petitions. As discussed below in Sections III.B.3 and III.C, *Estate of Heggstad* has been expanded to apply to a trust

that did not specifically identify the parcels of real property at issue and a general assignment that did not specifically identify the shares of stock at issue. This modern trend favoring evidence of the decedent's intent over record title continues to evolve. Under the progeny of *Estate of Heggstad*, litigants can find support for claims that even the most generic references in estate planning documents to the disposition of "all assets" or the like may constitute the clear-and-convincing evidence required to trump the default rules governing nonprobate transfers. The cases that follow his modern trend are discussed in the next two sections of this article.

3. Ukkestad v. RBS Asset Finance, Inc.

In *Ukkestad v. RBS Asset Finance, Inc.*, the settlor left a trust stating that he had assigned ownership of all of his real property to the trustee of his trust.[71] Specifically, the trust stated that the settlor conveyed "all of his real and personal property" to the trustee, including "real property . . . wherever situated."[72] The settlor owned two parcels of real property that were not identified in the trust, and that were held in the settlor's name individually at the time of his death.[73] After the settlor's death, a co-trustee of his trust filed a petition under Probate Code section 850, subdivision (a)(3), seeking to confirm title to the two parcels of real property in the name of the trust.[74] In support of the petition, the co-trustee lodged real estate title documents establishing the settlor was the owner of the subject properties.[75] The probate court denied the petition on grounds that the trust did not satisfy the statute of frauds as to the subject properties.[76]

The Court of Appeal reversed, holding that the evidence submitted was sufficient to satisfy the statute of frauds.[77] The primary issue was whether the description of real property in the trust was sufficiently specific.[78] A description is sufficiently specific "if it furnishes the 'means or key' by which the description may be made certain and identified with its location on the ground."[79] A description can be considered a sufficient "means or key" if extrinsic evidence can be used to define the subject property.[80] The trust at issue in *Ukkestad v. RBS Asset Finance, Inc.*, sufficiently identified the real property being conveyed to the trust by referring to "all" of the settlor's real property.[81] That reference to "all" of the settlor's real property provided a sufficient "means or key" by which extrinsic evidence could be used to define the property intended to be treated as trust assets.[82] Having identified the "means or key," the Court of Appeal reasoned, it was simply a matter of referring to publicly available real estate title documents to determine the properties the settlor owned.[83] Since those records identified the settlor as the owner of the two subject properties, the statute of frauds did not bar the probate court from confirming the subject properties as trust assets.[84]

C. General Assignments

In *Kucker v. Kucker*, the settlor left an estate plan that included a trust, a pour-over will, and a general assignment through which she assigned all of her assets to the trust.[85] The general assignment was broad, covering "all of [settlor's] right, title and interest in all property owned by [settlor], both real and personal and wherever located."[86] The settlor died owning 3,017 shares stock worth over $100,000, and her estate planning documents did not specifically refer to those shares.[87] The shares were not held in the trust's brokerage account.[88] The settlor later executed another assignment transferring to the trust all of her shares in 11 specified corporations and funds, but through inadvertence did not include the 3,017 shares because the stock certificate had been lost.[89] Citing *Estate of Heggstad*, the successor co-trustees of the settlor's trust filed an unopposed petition under Probate Code section 850, subdivision (a)(3)(B), seeking to confirm that the 3,017 shares of stock were a trust asset.[90] They contended that, based on the general assignment, it was the settlor's intent that all of her stock, including the 3,017 shares at issue in the petition, be marshaled as trust assets.[91] The probate court denied the petition, concluding the transfer was subject to the statute of frauds since it exceeded $100,000 and therefore required a writing specifically describing the subject property.[92]

The Court of Appeal reversed, holding that the general assignment was effective to transfer the shares of stock to the trust.[93] The probate court's reliance on the statute of frauds was misplaced because the provision on which it relied—Civil Code section 1624, subdivision (a)(7)—cannot be construed as applying to the transfer of shares of stock to a trust.[94] That provision only applies to agreements to loan money or extend credit made by persons in that business.[95] The transfer at issue in *Kucker v. Kucker* had nothing to do with loaning money or extending credit, so that provision of the statute of frauds did not apply.[96] The general assignment and pour-over will demonstrated the settlor's intent to transfer all of her personal property to the trust.[97] The settlor was not required to specifically list the assets subject to the assignment to make it effective.[98]

Kucker v. Kucker suggests general assignments may serve as the clear-and-convincing evidence required under Probate Code section 5302 to trump the bank's title documents that would otherwise leave the account to the surviving joint owner or designated beneficiary. Given that many estate planners now include general assignments in their standard set of estate planning documents, the financial accounts of estate planning clients are potential litigation targets if not handled carefully.

IV. RECOMMENDATIONS

A. Carve Out Accounts Intended to Pass by Nonprobate Transfer

General assignments can be useful tools for cleaning up trust funding oversights, capturing those dangling assets and saving them from an otherwise unnecessary probate. But the attorney should carefully craft them to carve out any accounts that the estate planning client wishes to pass through a nonprobate transfer. Joint accounts, pay-on-death accounts, and Totten trust accounts should be discussed with each estate planning client to identify accounts the client does not wish to fund into the trust through trust titling or assignment.

Similarly, the trust instrument itself can include provisions that recognize specified financial accounts may pass by beneficiary designation or right of survivorship. Again, a broad declaration of trust over "all assets" can be a useful probate avoidance technique, but it can also create ambiguities if there are nonprobate transfers that conflict with such sweeping declarations.

B. Provide Clear Guidance in the Trust Funding Letter

In the trust funding letter sent to the client after the estate planning documents have been executed, the attorney should carefully review instructions to the client on the steps needed to properly fund the trust. Many trust funding letters state that the general assignment or schedule of assets attached to the trust is sufficient to fund the trust, even though financial institutions will not treat those documents as superior to signature cards or beneficiary designations. With respect to titling financial accounts in the name of the trust, it is critical that clients have clear guidance on how to accomplish this objective so they do not rely solely on the general assignment or the trust's schedule of assets.

Alternatively, the attorney can offer to assist the client with trust funding, although the author recognizes many estate planning clients do not wish to pay for those services. The attorney's involvement would help ensure the assets intended to pass under the trust's terms are properly funded into the trust while other assets remain outside of trust, eliminating potential post-mortem disputes over which assets belong to the trust.

C. Consider a Petition for Instructions

A trustee with knowledge of a question over the decedent's intent with respect to a financial account cannot simply rely on the financial institution's signature card and consider the analysis complete. The attorney should advise the trustee to investigate whether the decedent's estate plan could potentially trump the financial institution's title records for certain accounts, especially when the estate plan was executed later in time.[99] If the decedent's intent is unclear because the estate plan conflicts with the financial institution's title records, then the trustee should consider seeking instructions from the probate court to determine whether to marshal the contested account as a trust asset.[100] Depending on the circumstances, the trustee may need to take an active role in the litigation or it may be sufficient to file the petition for instructions and then defer to the potential beneficiaries to litigate the contested account. At a minimum, though, the trustee should consider the impact of the recent cases discussed in this article on the default rules that have traditionally governed nonprobate transfers.

V. CONCLUSION

Although the decedent's intent can, for the most part, be clarified in the estate plan itself, if the decedent left large, multiple-party accounts, litigants will be tempted to invoke the clear-and-convincing evidence exception to try to claim those accounts. The modern trend of bending title rules in an effort to effectuate a decedent's presumed intent has paved the way for those types of claims. Since the decedent's intent—a fact-intensive inquiry on which family members often have different views—will ultimately control, practitioners must evaluate each new administration on a case-by-case basis to determine whether CAMPAL's default rules or a contrary estate planning document will govern disposition of the decedent's accounts.

Withers Bergman LLP, San Diego, CA

1 *Placencia v. Strazicich* (2019) 42 Cal.App.5th 730.

2 *Id.* at p. 737.

3 Prob. Code, sections 5100 et seq.

4 Prob. Code, section 5304.

5 *Ibid.*

6 Prob. Code, section 5132.

7 See Code commrs., note foll. Prob. Code, section 5302, McGovern & Hirsch, Ann. Prob. Code (2020) p. 531.

8 Prob. Code, section 5122, subd. (a); see also *Estate of O'Connor* (2017) 16 Cal.App.5th 159, 165.

9 See Prob. Code, section 5302.

10 Prob. Code, section 5130; see also *Estate of O'Connor, supra,* 16 Cal. App.5th at pp. 165-166.

11 Prob. Code, section 5302, subd. (a).

12 Cal. Law Revision Com. com., McGovern & Hirsch, Ann. Prob. Code (2020) foll. section 5302, p. 530 (citing *Schmedding v. Schmedding* (1966) 240 Cal.App.2d 312, 315-316 (presumption rebuttable); Evid. Code, section 115 (burden of proof is ordinarily preponderance of the evidence); Evid. Code, section 606 (rebuttable presumption must ordinarily be defeated by preponderance of the evidence)).

13 *Id.* at p. 530.

14 *Ibid.*

15 Prob. Code, section 80.

16 Prob. Code, section 5302, subd. (c); *Araiza v. Younkin* (2010) 188 Cal. App.4th 1120.

17 Cal. Law Revision Com. com., McGovern & Hirsch, Ann. Prob. Code, *supra*, foll. section 5302, p. 531.

18 *Ibid.* (citing 7 B. Witkin, Summary of California Law Trusts (8th ed. 1974) section 18, pp. 5380-5382)).

19 Prob. Code, sections 5139-5142.

20 Recommendation: Non-Probate Transfers (Dec. 1980) 15 Cal. Law Revision Com. Rep. (1980) p. 1620.

21 Prob. Code, section 5302, subd. (b).

22 See generally Prob. Code, section 5302, subds. (a)-(c).

23 See Code commrs., note foll. Prob. Code, section 5122, McGovern & Hirsch, Ann. Prob. Code, *supra*, p. 521 (citing *Estate of Auen* (1994) 30 Cal.App.4th 300, superseded by statute on other grounds as stated in *Rice v. Clark* (2002) 28 Cal.4th 89, for the proposition that a joint account not covered by Probate Code section 5302, subdivision (a), could be set aside even without clear-and-convincing evidence).

24 See *id.* at p. 531.

25 See Code commrs., note foll. Prob. Code, section 5302, McGovern & Hirsch, Ann. Prob. Code, *supra*, p. 531 ("The proviso about 'clear-and-convincing evidence of a different intent' does not apply to P.O.D. payees; if the statute is interpreted literally, they take regardless of intent.").

26 See, e.g., *Estate of O'Connor* (2017) 16 Cal.App.5th 159 (clear-and-convincing evidence standard not satisfied where substantial evidence existed to demonstrate decedent intended joint account to pass to surviving party).

27 *Placencia v. Strazicich* (2019) 42 Cal.App.5th 730, 733.

28 *Ibid.*

29 *Ibid.*

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*

34 *Placencia v. Strazicich, supra,* 42 Cal.App.5th at p. 734.

35 *Ibid.*

36 *Id.* at pp. 733-734.

37 *Placencia v. Strazicich, supra*, 42 Cal.App.5th at p. 733.

38 *Ibid.*

39 *Ibid.* (quoting Cal. Law Revision Com. com., 53 West's Ann. Prob. Code (2009 ed.) foll. section 5302, p. 61).

40 *Id.* at p. 733.

41 *Placencia v. Strazicich, supra,* 42 Cal.App.5th at p. 733.

42 *Ibid.*

43 *Id.* at p. 737.

44 *Id.* at p. 734.

45 *Placencia v. Strazicich, supra,* 42 Cal.App.5th at pp. 733-734.

46 *Id.* at p. 734.

47 *Ibid.*

48 *Placencia v. Strazicich, supra,* 42 Cal.App.5th at p. 734.

49 *Ibid.*

50 *Ibid.*

51 *Ibid.*

52 *Id.* at p. 734.

53 *Id.* at p. 738.

54 *Ibid.*

55 *Araiza v. Younkin* (2010) 188 Cal.App.4th 1120, 1125-1126.

56 *Ibid.*; but see *Estate of O'Connor* (2017) 16 Cal.App.5th 159 (clear-and-convincing evidence standard not satisfied where joint account was opened after trust was created).

57 *Id.* at p. 1123.

58 *Id.* at pp. 1125-1126.

59 *Araiza v. Younkin, supra,* 188 Cal.App.4th at p. 1123.

60 *Estate of Heggstad* (1993) 16 Cal.App.4th 943.

61 *Id.* at p. 946.

62 *Ibid.*

63 *Id.* at p. 947.

64 *Id.* at p. 946.

65 *Id.* at p. 947.

66 *Id.* at p. 946.

67 *Id.* at p. 947.

68 *Ibid.*

69 *Estate of Heggstad, supra,* 16 Cal.App.4th at p. 950.

70 *Ibid.*

71 *Ukkestad v. RBS Asset Finance, Inc.* (2015) 235 Cal.App.4th 156, 159.

72 *Ibid.*

73 *Ibid.*

74 *Ibid.*

75 *Ibid.*

76 *Id.* at p. 160.

77 *Ukkestad v. RBS Asset Finance, Inc., supra,* 235 Cal.App.4th at p. 164.

78 *Id.* at p. 161.

79 *Ibid.* (quoting *Beverage v. Canton Placer Mining Co.* (1955) 43 Cal.2d 769, 774).

80 *Id.* at p. 163 (citing *Alameda Belt Line v. City of Alameda* (2003) 113 Cal.App.4th 15, 22).

81 *Id.* at p. 163.

82 *Ibid.*

83 *Ibid.*

84 *Id.* at p. 164.

85 *Kucker v. Kucker* (2011) 192 Cal.App.4th 90, 92.

86 *Ibid.*

87 *Ibid.*

88 *Ibid.*

89 *Id.* at pp. 92, 94-95.

90 *Id.* at p. 92.

91 *Ibid.*

92 *Id.* at p. 93.

93 *Kucker v. Kucker, supra,* 192 Cal.App.4th at p. 94.

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 *Ibid.*

98 *Id.* at p. 95.

99 See *Estate of O'Connor* (2017) 16 Cal.App.5th 159 (clear-and-convincing evidence standard not satisfied where joint account was opened after trust was created).

100 Prob. Code, section 17200, subd. (b)(6).