

1 ALBERTSON & DAVIDSON, LLP
2 Keith A. Davidson, SBN 210658
3 Stewart R. Albertson, SBN 230841
4 Noah McCall, SBN 273300
5 3750 Santa Fe Avenue, Suite 109
6 Riverside, CA 92507
7 Telephone (951) 686-5296
8 Facsimile (951) 346-3785

9 Attorneys for Petitioner Bob Smith

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11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF RIVERSIDE
13

14 In the Matter of

15 ROBERT L. SMITH REVOCABLE
16 TRUST, DATED MAY 25, 2001

17 Case No.:

18 PETITION FOR AN ORDER TO CONFIRM
19 VALIDITY OF TRUST; CONFIRM TRUSTEE;
20 AND CONFIRM ASSETS TO REVOCABLE
21 TRUST

22 [Prob. Code §§ 850; 17200(a); and 17200(b)(1)]

23 Date:
24 Time:
25 Dept:

26
27 Petitioner Bob Smith (“Trustee”), successor trustee of the Robert L. Smith Revocable Trust,
28 dated May 25, 2001 (“Trust”), alleges:

29 **Jurisdiction and Venue**

30 1. The Court has jurisdiction over this matter under Probate Code sections 850(a)(3)(B),
31 17200(a), and 17200(b)(1) because the assets at issue belongs to the Trust, which was validly created
32 by the settlor.

33 2. Venue is properly in Riverside County under Probate Code section 17005 because the
34 named trustee of the Trust resides in Riverside County. Additionally, the principal place of trust
35 administration is in the City of San Jacinto, Riverside County, within this judicial district.

Background Facts

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2 3. On January 1, 1985, Robert L. Smith (“Settlor”) and his wife, Julie Smith, acquired the
3 real property at issue known as 12345 Main Street, Riverside, California 90507 (“Real Property”).

4 The legal description of the Real Property is attached as Exhibit A.

5 4. The Real Property remained titled in Settlor and his wife until her death on February
6 22, 2000. Ownership to Real Property then transferred to Settlor alone. A true and correct copy of
7 the “Affidavit of Death of Joint Tenant” is attached as Exhibit B.

8 5. On May 25, 2001, Robert L. Smith (“Settlor”) created the Trust. A true and correct
9 copy of the Trust instrument is attached as Exhibit C and incorporated herein by reference. Settlor
10 listed the Real Property within “Schedule A” of the Trust.

11 6. On the above date, Settlor executed a “Comprehensive Transfer Document” (attached
12 as Exhibit D and incorporated herein by reference), declaring that all Settlor’s real and personal
13 property was transferred to himself as trustee of the Trust. Concurrently, Settlor executed an
14 “Assignment of Real Estate to Revocable Living Trust” (attached as Exhibit E and incorporated
15 herein by reference), ostensibly transferring the Settlor’s Real Property to the Trust.

16 7. There has been no transfer of the Real Property after creation of the Trust.

17 8. After the Settlor created the Trust, he did not transfer the Real Property by deed to the
18 Trust.

19 9. On December 1, 2008, Robert L. Smith died. The Trust names Petitioner Bob Smith
20 as successor Trustee and Petitioner has agreed to act in that capacity.

21 10. At the time of the Settlor’s death, the Real Property remained titled in his individual
22 name as his separate property. Notwithstanding this titling, the Real Property was and is a proper
23 asset of the Trust.

24 11. Petitioner now petitions this Court to confirm Settlor’s Real Property as a Trust asset
25 to be held and administered pursuant to the terms of the Trust.

Legal Argument

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2 12. Probate Code Section 850(a)(3)(B) authorizes a trustee to bring a petition “where the
3 trustee has a claim to real or personal property....” Here, Petitioner, as successor Trustee, is claiming
4 an interest in the Real Property as being a proper Trust asset.

5 13. An authorized method of creating a trust is by “[a] declaration by the owner of the
6 property that the owner holds the property as trustee.” California Probate Code (“P.C.”) §15200(a).
7 If real property is involved, the declaration of trust must be in writing, signed by the trustee. P.C. §
8 15206(a). However, in a declaration of trust for real property, no separate transfer by deed is
9 required. (*Estate of Heggstad* (1993) 16 Cal. App. 4th 943.) In *Heggstad*, Mr. Heggstad created a
10 valid revocable living trust in which he named himself as trustee and included within his trust the real
11 and personal property listed in Schedule A, which was attached to the trust. Mr. Heggstad never
12 transferred the title of the real property to himself as trustee. The Court, in affirming the trial court’s
13 decision, held that “a written declaration of trust by the owner of real property, in which he names
14 himself as trustee, is sufficient to create a trust in that property, and the law does not require a
15 separate deed transferring the property to the trust.” (*Estate of Heggstad* (1993), 16 Cal. App. 4th
16 943, 950.)

17 14. Here, Settlor executed the Trust and declared himself trustee (Exhibit C). As in
18 *Heggstad*, Settlor listed the Real Property at issue in “Schedule A” of the Trust (Exhibit C).
19 Additionally, Settlor executed a “Comprehensive Transfer Document” (Exhibit D), declaring himself
20 to be trustee of the Trust and declaring that the Trust now held “all real property wherever located.”
21 The “Comprehensive Transfer Document” further provided that “[t]his declaration shall apply even
22 though ‘record’ ownership or title . . . be registered in the Grantor’s name, in which event such record
23 ownership shall hereafter be deemed held in Trust even though such trusteeship remains
24 undisclosed.” To make his intent even clearer, Settlor executed the “Assignment of Real Estate to
25 Revocable Living Trust” (Exhibit E), specifically handwriting the address of the Real Property on the
26 document in order to place the Real Property in the Trust. As such, pursuant to P.C. § 15200(a), the
27 Real Property is properly an asset of the Trust estate as of the date of the assignment to the Trust
28 (May 25, 2001) because the owner of the Real Property declared himself to be trustee of his Real

1 Property. Therefore, the Real Property should be confirmed as a Trust asset so that Petitioner, the
2 successor Trustee, can hold, administer and distribute the Real Property along with the other Trust
3 assets.

4 15. Petitioner respectfully requests that this Court confirm that the Real Property is an
5 asset of the Trust estate to be held and administered pursuant to the Trust's terms.

6 16. The names and addresses of the beneficiaries of the Trust, all of whom are entitled to
7 notice (other than Petitioner), are as follows:

<u>Name & Address</u>	<u>Age</u>	<u>Relationship</u>
	Adult	Beneficiary
	Adult	Beneficiary
Bob Smith-Petitioner	Adult	Successor Trustee/Beneficiary

14
15 **Wherefore, petitioner prays for:**

- 16 1. An order determining that the Robert L. Smith Revocable Trust, dated May 25, 2001,
17 is valid;
- 18 2. An order confirming that Bob Smith is the successor trustee of the Robert L. Smith
19 Revocable Trust, dated May 25, 2001.
- 20 3. An order confirming that all of Robert L. Smith's right, title and interest in and to the
21 real property commonly known as 1234 Main Street, Riverside, California 90507, with a legal
22 description set forth in Exhibit A attached hereto, is an asset of the Robert L. Smith Revocable Trust,
23 dated May 25, 2001, to be held, administered, and distributed by Bob Smith, as successor trustee,
24 under the terms of said Trust.
- 25 4. Such and further orders as the Court deems proper.

26 DATED: January 1, 2011

ALBERTSON & DAVIDSON, LLP

27 By: _____
28 Noah McCall
Attorney for Petitioner Bob Smith

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VERIFICATION

I, Bob Smith, am the petitioner in the above-entitled proceeding. I have read the foregoing petition and know its contents. I declare that the contents are true of my own knowledge, except as to those matters which are stated on information and belief. As to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on _____ at Riverside, California.

Bob Smith