

THE VOIDABILITY OF HEIR HUNTER CONTRACTS

by JEFFREY R. HARTMANN

PARKER, HARTMANN & BARR

Attorneys at Law

CA

Heir hunters have for many years been in the business of locating missing heirs in exchange for large finders fees, often in the form of an assignment of that heirs' inheritance, ranging from 15 to 50 percent. An heir is typically approached by a heir hunter at the heir's home, is told that he or she can claim inheritance rights to a relative's estate, and that the company will do everything necessary to secure those rights in exchange for an assignment of a hefty percentage. After the initial shock of being told that a relative has died and that property may be received from the estate, an heir may wish to cancel the contract with the heir hunter and secure other counsel to represent him or her in the probate proceeding.

The court may review the propriety and the reasonableness of so-called "heir hunter contracts" and may refuse distribution or may order distribution on any terms the court deems just and reasonable. Pursuant to Probate Code Section 11604, "The court on its own motion or on motion of the personal representative or other interested person or of the public administrator, may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary."

Pursuant to Probate Code 11604(c), "The court may refuse to order distribution or may order distribution on any terms that the court deems just and equitable, if the court finds either of the following: 1. The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable; 2. The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence."

A number of cases have voided assignments to heir hunters as contrary to public policy. The Supreme Court of California, in *In Re Butler's Estate* (Cal. 1947) 29 Cal.2d 644, 177 P.2d 16, held that a non-lawyer's practice of soliciting decedent's heirs for authorization to appear for them in administration proceedings and employing counsel to represent them under powers of attorney or assignments providing for his payment of all expenses, including attorney's fees and court costs, amounts to commercial exploitation of the legal profession and is contrary to public policy, and held that the assignments and the powers of attorney were void. The Court of Appeal, in *In Re Reilly's Estate* (Cal.App. 1 Dist. 1947) 81 Cal.App.2d 564, 184 P.2d 922, and in *In Re Larson's Estate* (Cal.App. 1949) 92 Cal.App.2d 267, 206 P.2d 852, followed the Supreme Court's holding in similar cases.

Other jurisdictions have also found heir hunting contracts to be void as against public policy. In *International Tracers of America, Inc. vs. Carolyn B. Snyder Rinier* (1976) 139 N.J. Super. 573, the Superior Court of New Jersey, Appellate Division, held that an agreement, whereby plaintiff agreed to pay defendant 25% of any amount which she collected and which appointed defendant as plaintiff's agent to do everything to protect both parties' share of the assets, was inimical to the public policy of protecting beneficiaries of estates from imposition and unnecessary expenses and that, since the illegality went to the main body of the agreement and did not constitute an insubstantial part of the contract, the illegal part could not be severed.

An argument can also be made that an heir can cancel a contract with an heir hunter within three days if it meets the definition of a "home solicitation contract" under Civil Code Section 1689.5.

Pursuant to Civil Code Section 1689.5, "a home solicitation contract or offer means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease or rental of goods or services or both, made at other than appropriate trade premises in the amount of twenty-five dollars (\$25) or more, including any interest or service charges."

The legislative purpose in enacting Civil Code Section 1689.5 et seq. was to protect consumers against the type of pressures that typically arise when salesmen appear at a buyer's home and are forced to make an immediate decision regarding a product or service. (See *Weatherall Aluminum Products Co. v. Scott* (App.2 Dist. 1977) 71 Cal.App.3d 245, 139 Cal.Rptr. 329; *Williams v. Kapilow & Son, Inc.* (1980) 105 Cal.App.3d 156, 161; 164 Cal.Rptr. 176; and *People v. Toomey* (1985) 157 Cal.App.3d 1; 203 Cal.Rptr. 642).

Even if an heir is unsuccessful in proving that the contract was a home solicitation contract or if he or she did not cancel it within three days, the court is still likely to take a serious and careful look at the contract and either void it in its entirety or modify its terms to be reasonable.

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