

HEGGSTAD PETITIONS

WHAT IS A HEGGSTAD PETITION?

In California, a Heggstad Petition is a judicial procedure used to obtain a court order declaring that property is a trust asset, despite the fact that title to the property was never formally transferred to the trust.

There are several reasons why a Heggstad Petition may be required. They are:

- The person creating the trust forgot to transfer the property into the trust.
- The person died before the transfer was completed.
- The paperwork effecting the transfer is flawed.
- The person creating the trust did not know that the title to the property needed to be changed.
- In some situations, real property that was already transferred into a trust might have been removed from it so that the property could be refinanced. Due to various circumstances, the property was never put back into the trust and therefore, is no longer held as a trust asset.

THE PROCESS

A verified petition is filed with the Superior Court under Probate Code Section 17200 which states the **facts on which the claim is based** and includes the **names and addresses of each person entitled to notice of the petition**. The petition must be supported by evidence showing the **unquestionable intent of the Settlor to transfer the property into the trust as an asset**. **This can be satisfied by attaching the signed schedule of assets** that specifically identify the property that was inadvertently omitted from the trust, and/or by the testimony of the petitioner or other witnesses. After the filing of the Petition, the clerk will set the matter for hearing.

A Heggstad Petition requires 30 days notice to all interested parties. Typically, a Heggstad Petition can be prepared, filed, heard by a judge, and completed within approximately 60 to 90 days. This is substantially shorter than the 7-10 months that a typical full probate takes.

TITLE

In order for California Title Company to close a transaction that involves a Heggstad petition, **a certified copy of the Heggstad order putting the property into the trust must be received**. Contact your Title Officer for more information on what will be required to avoid delays in closing your transaction.

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