The Override

Every Landman Wants One!

Volume III, Issue 1 | January, 2008

Los Angeles Association of Professional Landmen

Inside This Issue:

2006–2007 Officers & Board of Directors

Presidents Message

Joel W. Miller, Energy Asset Analyst

Transamerica Minerals Company

HAPPY NEW YEAR AND HIGH OIL PRICES

The first trading day of the New Year and one floor trade of crude at the NYMEX hits $100 and the overall close was $99.62. In 1970, the official price for Saudi crude was $1.80/bbl ($9.56 adjusting for inflation). The falling dollar, Nigerian murders, a helpless OPEC, and global consumption which has not slowed down, continues to push futures higher. A few years ago, economists were predicting $50 a barrel would cripple the U.S. and world economy, bringing everyone into recession; and thus driving prices back down between $20-$30/bbl. Well, consumers blew past $50/bbl and now would consider that cheap. There will be a breaking point in which consumers across the globe cannot handle the price of oil. Is that $75, $100, or $200 a barrel…. who knows? One thing we do know is consumption is not predicted to slow in the coming new year. Brazil had a huge oil field discovery of 8 billion barrels in 2007. I believe it was the largest oil field discovery since the Mexican Cantarell Field in 1976 which found 11 billion barrels of oil. Sounds like a lot, but in reality, 8 billion barrels would only supply the world for 95 days. Obviously lots of small discoveries are being found daily but it appears supply and demand are going to remain tight for the near future. So hopefully 2008 brings high oil and natural gas prices which should translate into everyone having a very successful year. See you on the 24th.

Joel, President

LAAPL 07-08

October 1, 2004 "Oil prices should today be in the high $20 a barrel range. Eventually, that barrel price should decline in the low $20 as oil inventories rise." Frederick P. Leuffer, Senior Managing Director and Senior Energy Analyst for Bear, Stearns, & Co. Inc.

January Luncheon Speaker

"OIL OR EDEN AGAIN - THE MARSHLANDS OF IRAQ"

Azzam Alwash, PhD., the Executive Director of Eden Again/Nature Iraq, was born in Kut, Iraq. He spent his youth in Nasiryah, where his father was a district irrigation engineer. In 1978, Dr. Alwash left Iraq, immigrating to the United States. He earned a bachelor's degree at California State University at Fullerton, and a doctorate at the University of Southern California, both in civil engineering.

Dr. Alwash serves on the Board of Directors for the Iraq Foundation, a Washington-based non-profit organization working for democracy and human rights in Iraq. Further, he is also the Executive Secretary of the Board of Trustees of the newly established American University of Iraq – Sulimani (AUI-S) as well as the founding Director of the Twin Rivers Environmental Research Institute at AUI-S

In 1998, he and his wife, geologist Suzanne Alwash, started Eden Again to bring attention to the environmental disaster caused by the drying of the marshes in Iraq. After the fall of Saddam Hussein, Dr. Alwash quit his consultant practice to direct the Eden Again operations in Iraq. He divides his time between Iraq and the United States, where he speaks to international audiences and continues to promote the restoration of the marshlands.

Editor's Corner

Joe Munsey
Newsletter Chair
Sempra Energy – Utilities

A cheerful Happy New Year to all. Trusting all enjoyed the season's holidays. Did 2007 come and go fast or what?

If my memory still serves me well, I boldly predicted oil would reach $91.59 come Christmas. The boys at the NYMEX must have read that issue of the Override and hence the rally to nudge oil close to the hundred bucks mark at the end of the year. So $100 oil did not come in 2007 but we did see $100 oil in 2008. So my conjecture of oil hitting hundred bucks was off by a couple of days. By now you are saying to yourself as you read this "Has our editor lost track of what he does and does not do for a living?" I concur; we will hang onto the day job before joining the ranks of the prognosticators.

Rather than rant about the Energy Independence and Security Act of 2007 here in this column, I have attempted to put my spin on the Act in a separate article. As mentioned, we had promised an article on the buffoonery of California claiming to be a green state while at the same time we are joined at the hip with the top 5 oil producing states, because quite frankly, we produce a whole lotta oil. The Energy Independence and Security Act of 2007 overrode my proclivity to expound on the greening of California.

Our Chapter President, Joel Miller, Energy Asset Analyst of Transamerica Minerals Company, had a sneak peak at the article and thought we should rally around the State Capital here in Sacramento and push for a massive drilling program offshore of California and in the LA Basin. The oil is there and everyone wants independence, so what is the problem? We have the proverbial brick wall built in part by NIMBY bricks, Not In My Backyard. So what is the "alternative" for the U.S.? The answer is light bulbs – go read the article.

Ah, to move on to more pleasant topics. We welcome a new advertiser to the Override; the Stanford Petroleum Investments Committee. Not to advocate one advertiser over another; well, yes, that is exactly what we are doing here, but for a worthy cause. The SPIC is on the search for donations of royalties, minerals, (producing or non-producing) properties to further the educational needs of the School of Earth Sciences at Stanford University. The SPIC exemplifies volunteerism at its best as the members consist of a group of alumni volunteers who manage, on a pro bono basis, the investment of the Petroleum Investments Funds (PIF)--essentially oil and gas royalties and other energy-related investments-for the benefit of the School of Earth Sciences at Stanford University. Your support, by "talk'n it up" and "spread'n the word" would be appreciated. Please see their ad.

We welcome Dr. Mark W. Hendrickson's article "Congress to the Energy Rescue" in this issue of the Override. Dr. Hendrickson is a faculty member, economist, and contributing scholar with the Center for Vision and Values at Grove City College. In securing the permission to run his article, Dr. Hendrickson offered best wishes to all of you in the persecuted energy industry. I like this guy already.

Remember, our joint meeting with the Los Angeles Basin Geological Society will be held at The Grand at Willow Street Conference Center on January 24th, 2008. See you there.

Article I

ENERGY INDEPENDENCE AND SECURITY ACT OF 2007

Joe Munsey, Land Advisor
Sempra Energy - Utilities

Congress swiftly voted the "energy rescue act" on December 19th 2007, just before the Christmas Holiday's madcap rush was in full force. Congressmen and Congresswomen were able to return to their districts in good conscience, resting in ease they had conquered the energy beast.

Let's analyze briefly what most voters perceive the Energy Independence and Security Act of 2007 would do for them. Remember, congress "feels" the energy beast has been subjugated to their authority. Of course, as in the same mind of reference the former impeached President Clinton would say, "it depends on what 'is' is;" congress will have a ball having to explain to their constituents, "it depends on what 'energy independence is.'" Darn it, we are back to what "'is' is!"

Will the purchaser of a gallon of gasoline at the pump figure it meant more exploration here in the good ole USA and in those countries friendly to Uncle Sam, and therefore driving down the price of crude oil? Sure they would! The bill was called the Energy Independence and Security Act of 2007.

To continue our "brief" perception theory; how about those alternative energy sources such as corn (the holy grail of energy alternatives…except now tacos and corn flakes prices are going up), biomass (that sounds scary, better scratch that one), Willy Nelson's bio-diesel fuels (everyone likes Willy), wind mills (sounds good except to the Kennedy family who fought to keep 'em out of their back yard), geo-thermal (oops, most people have no idea what geo-thermal means, sounds a whole lot like nuclear thermal dynamics….scratch that one).

There, I briefly discussed what "Joe/

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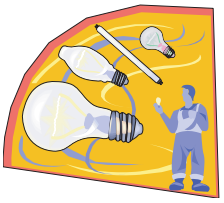
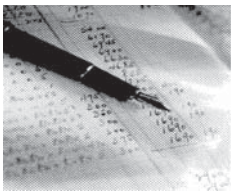
Josephine six-pack" thinks they got. Therefore, Joe and Josephine went out and spent money on Christmas presents and good food and drink under the allusion we now have energy independence. For those celebrating Hanukkah, well, they had to purchase gifts and celebrate the holidays under the cloud of doom and gloom as we lacked a congress approved energy independence act before Hanukkah.

The devil is in the details, so you have to actually read the Energy Independence Act of 2007…..we got light bulbs, fluorescent bulbs. Did I say it included exploration?





Treasurers Report

As of 10/11/2007, the LAAPL account held a balance of	$ 5,891.39
Luncheon 11/15/2007 14 Buffets/w/tax (invoice 3235)	$ 244.61
13 members paid for lunch	$ 234.00
Paid w/check # 1677 dated 10/18/2007 for Hi/Ball Glasses w/ LAAPL Logo to Direct Promotions	$ 441.68
Transfer from LAAPL to WCLI account Kevin Rupp's check of $500.00 (WCLI) LAAPL's check of $500.00 (WCLI)	$ 1,000.00
The LAAPL account with Bank of America as of January 4,2007, shows a balance of	$ 4,439.10
Merrill Lynch Money Account shows a total	$10.259.32

Guest Article I

CONGRESS TO THE ENERGY RESCUE?

By
Dr. Mark W. Hendrickson
November 15, 2007

Dr. Mark W. Hendrickson

Americans are hoping and praying for relief from rising gasoline, oil and electricity prices. We are uncomfortable importing so much of our raw energy supplies from unstable parts of the world. Many of our compatriots, not understanding the minuscule impact that carbon dioxide has on global warming,[1] desire energy sources that don't emit carbon dioxide. Congress, acting on the widely held but mistaken notion that all problems, real and imaginary, can be solved with more laws, is hatching a new energy bill right now.

In my book, that means it's time to get worried. Think about it: What has Congress done in the past to inspire our confidence that its energy policies will be helpful? It was Congress that regulated the domestic energy markets so heavily in the 1970s that we suffered unnecessary long lines and high prices at gas stations until Ronald Reagan convinced Congress to deregulate in 1981. Congress has repeatedly increased our dependency on foreign imports by thwarting the development of nuclear power and perennially blocking the development of domestic oil and gas reserves in the Rocky Mountain region, Alaska, and on the continental shelf.

"OK," you may say, "but we have different people in Congress now than we did 30 years ago." True, but it is the current crop of legislators who have given us the most recent energy fiasco—the corn-based ethanol boondoggle—which does nothing to increase our energy independence but does much to exacerbate a host of other problems.[2]

Let's examine the proposed energy policies on their own merits. A primary proposal is to phase in a 35 mile-per-gallon fuel standard for cars and light trucks. Proponents claim that this would reduce U.S. oil use by 2.5 million barrels per day. The problem with this calculation is that it employs a static rather than dynamic analysis. In the real world, people alter their behavior in response to changes in costs. Improved fuel economy in cars lowers the per-mile cost of driving. As a result, total miles driven increases, resulting in no net reduction in fuel consumed. On the negative side of the ledger, the lighter cars built to improve gas mileage don't provide as much protection as heavier cars. The result has been an increase in the number of fatalities and severity of injuries suffered in car crashes. We should doubt the wisdom of a policy that may not reduce fuel consumption but certainly will increase human loss and suffering.

Another principal feature of the pending legislation would mandate U.S. utilities to produce 15 percent of their power from renewable sources (e.g., wind, water, solar). A few days ago I heard a radio ad supporting this proposal on the grounds that such a shift in energy sources would save people money. Look, if you believe in the carbon dioxide bogeyman, then I can see why you might prefer electricity to be generated from renewable sources instead of fossil fuels, but don't kid yourself that a congressional mandate for utilities to switch to these energy sources is guaranteed to save you money. If anything, your total energy bill is likely to go up. Let me explain.

Periodically, electric utilities adjust their mix of coal, oil, gas, nuclear,

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hydro, etc., switching to lower-priced energy sources from higher-priced sources whenever they can in order to keep costs down. If renewable sources of energy should ever become less expensive than other sources, utility companies will use them without any prodding from Congress. To the extent that congressional mandates compel utilities to use less economical sources of energy, the natural result will be electricity that is more expensive than it would be without such mandates.

There is an added wrinkle to the renewable energy proposal. Some members of Congress want to impose additional taxes on U.S. oil companies and use that revenue to subsidize the development of competing energy sources. Ethically, this is no fairer than taxing pro-football to finance a subsidy to pro-basketball. Politically, members of Congress would love to create another group of subsidy addicts, like corn farmers and ethanol producers, because this would channel a steady flow of funds into congressional election campaigns. Economically, increasing the tax burden on oil companies would be stupid. Part of such new taxes would be shifted to consumers (Hello—that means us!) in higher prices for fossil fuel products. The rest would impair the efficiency of capital and labor in the oil industry. Why do we want to penalize an industry that has been and will remain so valuable and vital to our economic well-being? This is ideological malarkey, not economic sanity.

No rational person could believe that mandating the use of more costly sources of energy and raising taxes on less expensive sources of energy is going to lower our energy bills. Let's hope that the light of reason dawns before congress cripples our energy markets yet again.

Footnotes:

[1] See archived editorial dated 2/22/07:

"Questions About Global Warming"

[2] See archived editorial dated 7/6/07:

"Corn-Based Ethanol: Your Tax Dollars at Work"

Dr. Mark W. Hendrickson is a faculty member, economist, and contributing scholar with the Center for Vision and Values at Grove City College.

Lawyers's Joke of the Month

Jack Quirk, Esq.
Bright and Brown

There were two nuns.

One of them was known as Sister Mathematical (SM), and the other one was known as Sister Logical (SL). The following conversation took place while they are walking on a dark evening some distance from their convent.

SM: Have you noticed that a man has been following us for the past thirty-eight and a half minutes? I wonder what he wants.

SL: It's logical. He wants to rape us.

SM: Oh, no! At this rate he will reach us in 15 minutes at the most! What can we do?

SL: The only logical thing to do of course is to walk faster.

SM: It's not working.

SL: Of course it's not working. The man did the only logical thing. He started to walk faster, too.

SM: So, what shall we do? At this rate he will reach us in one minute.

SL: The only logical thing we can do is split. You go that way and I'll go this way. He cannot follow us both.

The man decided to follow Sister Logical. Sister Mathematical arrived at the convent worried about what had happened to Sister Logical. Then Sister Logical arrived.

SM: Sister Logical! Thank God you are here! Tell me what happened!

SL: The only logical thing happened. The man couldn't follow us both, so he followed me.

SM: Yes, yes! But what happened then?

SL: The only logical thing happened. I started to run as fast as I could and he started to run as fast as he could.

SM: And?

SL : The only logical thing happened. He caught me.

SM : Oh, dear! What did you do?

SL : The only logical thing to do. I lifted my dress up.

SM : Oh, Sister! What did the man do?

SL: The only logical thing to do. He pulled down his pants.

SM: Oh, no! What happened then?

SL: Isn't it logical, Sister? I can run faster with my dress up than he could run with his pants down.

Some of you owe two Hail Marys for what you were thinking!

OUR HONORABLE GUESTS

November's luncheon was another successful LAAPL Chapter luncheon meeting held at the Long Beach Petroleum Club. Our guests of honor who attended:

Mark Gaughan, Regional Public Affairs Manager, Southern California Gas Company

Jesse Martinez, Account Executive, Southern California Gas Company

CHAPTER BOARD MEETINGS

The Board of Directors will not hold a board meeting at our January luncheon. As a reminder, we have a joint meeting with the Los Angeles Basin Geological Society on January 24, 2008, at The Grand at Willow Street Conference Center in Long Beach.

The Board of Directors schedules meeting on the third Thursday of the month at 11:00 AM at the Long Beach Petroleum Club. Board meeting dates coincide with the LAAPL's luncheons.

LAAPL AND LABGS HOLD JOINT LUNCHEON

The Los Angeles Association of Professional Landmen and the Los Angeles Basin Geological Society will hold its joint luncheon. Please note the date of the luncheon is the fourth Thursday of January and the location is at the Grand at Willow Street Conference Center.

When: Thursday, Jan 24th
Time: 11:30am
Cost: $20 with reservations
$25 without reservations
Meeting Place: The Grand at Willow Street Conference Center
4101 East Willow Street
Long Beach
Contact: Joel Miller, LAAPL Chapter President
Transamerica Minerals Company
Telephone: 310-533-0508

SCHEDULED LAAPL LUNCHEON TOPICS AND DATES

January 24, 2008
Joint Meeting With
Los Angeles Basin Geological Society
The Grand at Willow Street Conference Center

March 20, 2008
John Harris, Esq.
Topic – Assembly Bill 2867
Assessment of Mineral Rights
Officer Nominations

May 15th
Eco & Associates
Topic - CEQA Process for Drilling Permits
Officer Elections

NEW MEMBERS AND TRANSFERS

Our Chapter Board of Directors welcomes the following new member to the Los Angeles Chapter:

None to Report

No Transfers

Case of the Month

Submitted by L. Rae Connet, Esq.

HEGGSTAD MOTION

Estate of Heggstad (1993) 16 Cal.App.4th 943 , 20 Cal. Rptr. 2d 433

[No. A055005. First Dist., Div. Two. Jun 21, 1993.]

Estate of HALVARD L. HEGGSTAD, Deceased.

GLEN P. HEGGSTAD, as Trustee, etc., Petitioner and Respondent, v. NANCY RHODES HEGGSTAD, Objector and Appellant.

(Superior Court of San Mateo County, No. 91190, Phrasel L. Shelton, Judge.)

(Opinion by Phelan, J., with Kline, P. J., and Benson, J., concurring.)

COUNSEL

Thirkell & Cretan, Edward D. Thirkell and Daniel Passamaneck for Objector and Appellant. [16 Cal.App.4th 946] Wilson & Wilson, Donald A. Wilson, Weinberg, Ziff & Miller and Michael Patiky Miller for Petitioner and Respondent.

OPINION

PHELAN, J.

In response to respondent's petition for order instructing trustee, the probate court decreed that the decedent's undivided 34.78 percent interest in property identified as 100 Independence Drive, Menlo Park, San Mateo County, was vested in Glen P. Heggstad, as successor trustee of the Heggstad Family Trust, and was not part of the decedent's estate. We hold that the settlor's written declaration stating that he holds this property as trustee was sufficient to create a revocable living trust, and we affirm the probate court's order.

Facts

On May 10, 1989, decedent Halvard L. Heggstad executed a will naming his son, respondent Glen P. Heggstad, as executor. Concurrently, the decedent executed a valid revocable living trust, naming himself as the trustee and his son Glen, the successor trustee (hereafter the Heggstad Family Trust). All the trust property was identified in a document titled schedule A, which was attached to the trust document. The property at issue was listed as item No. 5 on Schedule A, and was mislabeled as "Partnership interest in 100 Independence Drive, Menlo Park, California."

In truth, decedent had an undivided 34.78 percent interest in that property as a tenant in common. There is no dispute as to the nature of the decedent's interest in this property. This property remained in decedent's name, as an unmarried man, and there was no grant deed reconveying this property to himself as trustee of the revocable living trust. Both sides agree that decedent had formally transferred by separate deeds, all the other real property listed in Schedule A to himself as trustee of the Heggstad Family Trust.

About one month after executing these documents, the decedent married appellant Nancy Rhodes Heggstad. She was not provided for in either the will or the trust documents, and all parties agree that she is entitled to one- third of the decedent's estate (her intestate share) ***fn.1*** as an omitted spouse pursuant to Probate Code section 6560. ***fn.2*** She takes nothing under the terms of the trust and makes no claim thereto.

Decedent died on October 20, 1990, and his son was duly appointed executor of his estate and became successor trustee under the terms of the [16 Cal. App.4th 947] Heggstad Family Trust. The trust documents were recorded following decedent's death on January 10, 1991.

During the probate of the will, Glen, the successor trustee, petitioned the court for instructions regarding the disposition of the 100 Independence Drive property. The trustee claimed that the trust language was sufficient to create a trust in the subject property and that the property was not part of his father's estate.

In pertinent part, article 1 of the trust provided: "Halvard L. Heggstad, called the settlor or the trustee, depending on the context, declares that he has set aside and transfers to Halvard L. Heggstad in trust, as trustee, the property described in Schedule A attached to this instrument."

Appellant objected, arguing: the trustee is asking for a change of title, which is not available as a remedy in a petition for instructions; the property was not transferred to the trust by a properly executed document or by operation of law; and the trustee is also a beneficiary of the trust and should be removed because of this conflict of interest.

The probate court concluded that the trust document, specifically article 1, was sufficient to create a trust in the subject property.

Discussion

[1a] Appellant contends that a written declaration of trust is insufficient, by itself, to create a revocable living trust in real property, and the decedent was required to have executed a grant deed transferring the property to himself as trustee of the Heggstad Family Trust. None of the authorities cited by appellant require a settlor, who also names himself as trustee of a revocable living trust, to convey his property to the trust by a separate deed. ***fn.3***. Our independent research has uncovered no decisional law to support this position.

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To the contrary, all the authorities we have consulted support the conclusion that a declaration by the settlor that he holds the property in trust for another, alone, is sufficient.

[2] To create an express trust there must be a competent trustor, trust intent, trust property, trust purpose, and a beneficiary. (Prob. Code, §§ 15201-15205; Walton v. City of Red Bluff (1991) 2 Cal.App.4th 117, 124 [16 Cal.App.4th 948] [3 Cal.Rptr.2d 275].) The settlor can manifest his intention to create a trust in his property either by: (a) declaring himself trustee of the property or (b) transferring the property to another as trustee for some other person, by deed or other inter vivos transfer or by will. (11 Witkin, Summary Cal. Law (9th ed. 1990) Trusts, § 26, p. 911; see also Getty v. Getty (1972) 28 Cal.App.3d 996, 1003 [105 Cal. Rptr. 259] ["An inter vivos trust can be created either by agreement or by a unilateral declaration of the person who assumes to act as trustee." (Italics in original.)].)

These two methods for creating a trust are codified in section 15200: "(a) A declaration by the owner of property that the owner holds the property as trustee," and "(b) A transfer of property by the owner during the owner's lifetime to another person as trustee." (§ 15200; see also Rest.2d Trusts, § 17.)

[1b] Where the trust property is real estate, the statute of frauds requires that the declaration of trust must be in writing signed by the trustee. (§ 15206; accord Rest.2d, Trusts, § 40, com. b, at p. 105.) Here, the written document declaring a trust in the property described in Schedule A was signed by the decedent at the time he made he declaration and constitutes a proper manifestation of his intent to create a trust. Contrary to appellant's assertion, there is no requirement that the settlor/trustee execute a separate writing conveying the property to the trust. A review of pertinent sections of the Restatement Second of Trusts, illustrates our point. This consideration is particularly appropriate, since the Law Revision Commission Comment to section 15200 indicates: "This section is drawn from section 17 of the Restatement (Second) of Trusts (1957)." (Deering's 1991 Prob. Code Special Pamp., p. 963.)

Section 17 of the Restatement Second of Trusts provides that a trust may be created by "(a) a declaration by the owner of property that he holds it as trustee for another person; or (b) a transfer inter vivos by the owner of property to another person as trustee for the transferor or for a third person ..." The comment to clause (a) states: "If the owner of property declares himself trustee of the property, a trust may be created without a transfer of title to the property." (Ibid.)

Illustration "1" of section 17 of the Restatement Second of Trusts is instructive. It reads: "A, the owner of a bond, declares himself trustee of the bond for designated beneficiaries. A is the trustee of the bond for the [16 Cal. App.4th 949] beneficiaries. [¶] So also, the owner of property can create a trust by executing an instrument conveying the property to himself as trustee. In such a case there is not in fact a transfer of legal title to the property, since he already has legal title to it, but the instrument is as effective as if he had simply declared himself trustee." (Italics added.)

[3, 1c] Section 28 of the Restatement Second of Trusts announces the rule that no consideration is necessary to create a trust by declration. ***fn.4*** This rule applies both to personal and real property, and it also supports our conclusion that a declaration of trust does not require a grant deed transfer of real property to the trust. Illustration "6" provides: "A, the owner of Blackacre, in an instrument signed by him, gratuitously and without a recital of consideration declares that he holds Blackacre in trust for B and his heirs. B is not related to A by blood or marriage. A is trustee of Blackacre for B."

More directly, comment m to section 32 of the Restatement Second of Trusts (Conveyance Inter Vivos in Trust for a Third Person) provides in pertinent part: "Declaration of trust. If the owner of property declares himself trustee of the property a transfer of the property is neither necessary nor approprite..." (Second italics added.) ***fn.5***

Additionally, comment b to section 40 of the Restatement Second of Trusts (Statute of Frauds) establishes that a written declaration of trust, by itself, is sufficient to create a trust in the property. Comment b states: "Methods of creation of trust. The statute of frauds is applicable whether a trust of an interest in land is created by the owner's declaring himself trustee or by a transfer by him to another in trust." (Second italics added.) ***fn.6***

Finally, Bogert, in his treatise on trusts and trustees observes: "Declaration of Trust [¶] It is sometimes stated that the transfer by the settlor of a legal title to the trustee is an essential to the creation of an xpress trust. The statement is inaccurate in one respect. Obviously, if the trust is to be created by declaration there is no real transfer of any property interest to a trustee. [16 Cal.App.4th 950] The settlor holds a property interest before the trust declaration, and after the declaration he holds a bare legal interest in the same property interest with the equitable or beneficial interest in the beneficiary. No new property interest has passed to the trustee. The settlor has merely remained the owner of part of what he formerly owned." (Bogert, Trusts and Trustees (2d ed. rev. 1977) § 141, pp. 2-3, fn. omitted.)

[4] (See fn.7.), [1d] These authorities provide abundant support for our conclusion that a written declaration of trust by the owner of real propert, in which he names himself trustee, is sufficient to create a trust in that property, and that the law does not require a separate deed transferring the property to the trust. ***fn.7***

None of the practice guides relied upon by appellant state a contrary rule. In fact, as appellant concedes, these works only recommend that a deed be

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prepared conveying title to the settlor as trustee. The purpose is to provide solid evidence of the settlor's manifestation of intent to create a trust, should a question arise. (See Drafting Cal. Revocable Living Trusts (2d ed. Cont. Ed.Bar 1984) § 3.1, p. 52.)

[5] (See fn. 8), [1e] Moreover, the practice guide, Drafting California Revocable Living Trusts, supra, supports our conclusion that a transfer of title is not necessary when the settlor declares himself trustee in his own property. ***fn.8*** Section 1.6 of that practice guide states in part: "A trust always requires transfer of legal title to the trustee or, if a settlor is also trustee, a declaration by the settlor that he or she holds legal title in trust for another." (Italics added.) In fact, the very language recommended by that practice guide for declaring trusts is consistent with the decedent's trust document. Section 3.14-1 reads: "[Name of settlor] (called the settlor or the trustee, depending on the context) declares that [he/she] has set aside and holds in trust [e.g., the property described in Schedule A attached to this instrument] ...." Article One of the trust substantially tracks this language and constitutes a valid declaration of trust in the property identfied in Schedule A. Decedent took all the necessary steps to create a valid revocable living trust.

Respondent/trustee errs when he argues that in order to uphold the trust, we must view the trust document as a valid conveyance of the property to the trust. This argument misses the point that a declaration of trust is [16 Cal.App.4th 951] sufficient to create a trust, without the need of a conveyance of title to the settlor as trustee. (See Bogert, Trusts & Trustees, supra, § 141 at pp. 2-3.)

II

[6a] Appellant next contends the probate court lacked jurisdiction to determine the testamentary nature of 100 Independence Drive, i.e., whether it was part of the estate or trust property. She claims that a petition for instruction to the trustee, under section 17200, cannot resolve the legal status of disputed trust property. This contention defies common sense and finds no support in the law.

Section 17000 defines the subject matter jurisdiction of the probate court over trusts as follows: "(a) The superior court having jurisdiction over the trust pursuant to this part has exclusive jurisdiction of proceedings concerning the internal affairs of trusts. [¶] (b) The superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction of the following: [¶] (1) Actions and proceedings to determine the existence of trusts. ..."

Section 17200 provides in part: "(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or o determine the existence of the trust. [¶] (b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: [¶] (1) Determining questions of construction of a trust instrument. ... [¶] (3) Determining the validity of a trust provision." (Italics added.)

These sections, by their express language, provide that a trustee's petition for instruction under subdivision (b)(1) of section 17200, invokes the probate court's general jurisdiction to decide the merits of a third party challenge to the inclusion of property n a trust. This interpretation not only makes sense as a matter of judicial economy, but it also recognizes the probate court's inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust.

[7] As the Law Review Commission Report to section 17001 explains: "A corollary of the principle that the superior court considering internal trust affairs should have full powers is the rule tha this court has concurrent jurisdiction with other courts over questions involving the existence of trusts, disputes with creditors or debtors of trusts, and other matters involving disputes between trustees and third persons. Thus as a matter of judicial economy, the superior court, in proceedings brought before it concerning [16 Cal.App.4th 952] internal trust affairs, has the power to determine issues other than those strictly relating to the internal affairs of the trust. If a question as to the rights of a third person arises in such proceedings, the court will have the opportunity to decide the issue and need not refer it to another department of the superior court." (18 Cal. Law Revision Com. Rep., p. 581, italics added.) ***fn.9***

Also, the Law Revision Commission Report on section 17200 states: "The proposed law continues existing law in this area, but adds additional grounds for petition. These include determining questions of construction of trust instruments ...." (18 Cal. Law Revision Com. Rep., p. 583.)

[6b] The plain language of the statutes and the Law Revision Commission's comments support our conclusion that the probate court may decide if an enforceable declaration of trust has been made upon review of a trustee's petition for instruction.

The same relief would have been available to this respondent/trustee, who also was executor of the estate, had he petitioned the probate court for an order to convey or transfer property held by the decedent under section 9860. That statute provides in part: "(a) The personal representative or any interested person may file a petition requesting that the court make an order under this chapter in any of the following cases: ... [¶] (3) Where the decedent died in possession of, or holding title to, real or personal property and the property or some interest therein is claimed to belong to another..." (See also 12 Witkin, Summary Cal. Law, Wills and Probate, op. cit. supra, § 341, pp. 377-378.)

The probate court has general subject matter jurisdiction over the decedent's property and as such, is empowered to resolve competing claims over the title

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to and distribution of the decedent's property. (§ 7050, subd. (b); see, e.g., Estate of Baglione (1966) 65 Cal.2d 192, 196-197 [53 Cal.Rptr. 139, 417 P.2d 683] ["[A] superior court sitting in probate that has jurisdiction over one aspect of a claim to certain property can determine all aspecs of the claim."].) It is of no legal significance that respondent/trustee chose to seek relief through a petition for instruction (§ 17200), rather than the equivalent petition for conveyance or transfer (§ 9860).

The issue of whether the property belonged to a living trust or whether it should be probated in decedent's estate are opposit sides of the same coin, and it is a fruitless exercise in semantics for appellant to argue that the probate court may only decide this issue as part of its administration of the decedent's estate. Appellant's contention fails. [16 Cal. App.4th 953] The probate court's order declaring that the property identified as "100 Independence Way, Menlo Park, San Mateo County," is included in the living trust is affirmed.

Kline, P. J., and Benson, J., concurred.

FN 1. Decedent was survived by his son Glen and daughter Susan and a granddaughter.

FN 2. Unless otherwise indicated, all further statutory references are to the Probate Code.

FN 3. The case of Nichols v. Emery (1895) 109 Cal. 323 [41 P. 1089] cited by respondent is inapposite. That decision involves a revocable living trust, created by conveyance of the trust property, by deed, to a third party trustee. It has no application to the situation before us-the creation of a revocable living trust by declaration of the settlor.

FN 4. The section reads: "The owner of property can create a trust of the property by declaring himself trustee of it although he receives no consideration for the declaration of trust."

FN 5. Section 32 states: "(1) Except as stated in Subsection (2), if the owner of property makes a conveyance inter vivos of the property to another person to be held by him in trust for a thid person and the conveyance is not effective to transfer the property, no trust of the property is created. [¶] (2) If the conveyance is ineffective only because no trustee is named in the instrument of conveyance or because the person named trustee is dead or otherwise incapable of taking title to the property, a trust is created."

FN 6. Section 40 states: "(1) If by statute it is provided that all declarations or creations of trusts of land shall be manifested and proved by some writing signed by the party who is by law enabled to declare such a trust, or by his last will in writing, or else they shall be utterly void and of none effect, the rules stated in §§ 41-52 are applicable. [¶] (2) A statute containing such a provision is in this Chapter referred to as the Statute of Frauds."

FN 7. We hasten to note, however, that to be effective as to strangers, the declaration of trust must be recorded.

FN 8. While practice guides are not compelling authority, they are persuasive when there is an absence of precedent. As Witkin has observed, "Textbooks dealing with specialized areas of the law, and works on practice, are persuasive indications of what the prevailing law may be." (Witkin, Manual on Appellate Court Opinions (1977) § 69, p. 114.)

FN 9. Section 17001 provides: "In proceedings commenced pursuant to this division, the court is a court of general jurisdiction and has all the powers of the superior court."

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