

HEGGSTAD PETITION

Understanding How Real Property Can Be Confirmed Into a Trust After Death

WHAT IS A HEGGSTAD PETITION?

A Heggstad Petition is a legal process used in California when real property was intended to be part of a trust, but the deed transferring the property into the trust was never recorded before the trustor passed away. In these situations, the property may not legally appear to belong to the trust, even though that was the clear intention.

This procedure stems from the court decision in Estate of Heggstad, which established that if a valid trust document specifically identifies a property as a trust asset, the court can confirm that the property belongs to the trust, even without a recorded deed.

WHY IS IT IMPORTANT?

When property is left out of a trust unintentionally, it can create significant complications. Without correction, the asset may need to go through full probate, which can be costly, time-consuming, and stressful for heirs. A Heggstad Petition may provide a more efficient alternative by asking the court to confirm that the property was always intended to be held in trust.

This process can help preserve the estate plan, reduce delays, and allow property to be transferred or sold in accordance with the trust's terms.

HOW THE PROCESS WORKS

The trustee or interested party files a petition with the California Probate Court, along with a copy of the trust and supporting documentation. The court reviews the trust language to determine whether the property was clearly identified as a trust asset. If the court is satisfied that the intent was clear, it will issue an order confirming the property as part of the trust.

Once a certified copy of the court order is recorded in the county where the property is located, title can typically be transferred according to the trust instructions.

WHEN MIGHT THIS APPLY?

A Heggstad Petition is often used when a property was listed on the trust's Schedule A but no deed was recorded, or when a refinance removed the property from the trust and it was never transferred back. It is only applicable when the trust documentation clearly shows the intent to include the property.

Not every situation qualifies, which is why careful review by a probate or estate planning attorney is essential.