

Memorandum 90-59

Subject: Study L-3039 - Revocable Trust as Lottery Beneficiary

We have received a suggestion for revision of the Lottery Act provision affecting the estate plans of substantial lottery prize winners. (See the letter from Michael J. Anderson attached as Exhibit 1.) The provision in question is Government Code Section 8880.32(g):

(g) The right of any person to a prize shall not be assignable, except that payment of any prize may be paid to the estate of a deceased prize winner or to a person designated pursuant to an appropriate judicial order. In the event that there is no probate, the prize shall be paid to the survivors of the claimant in the following order:

- (1) The claimant's spouse.
- (2) The claimant's children.
- (3) The claimant's parents.
- (4) The claimant's brothers and sisters.

Payment shall be to the members of the group entitled, who are living on the date of death of the claimant, share and share alike. No payment shall be made to persons in any group if at the date of death there are living persons in any group preceding it. The Director, the Commission, and the state shall be discharged of all further liability upon the payment of a prize pursuant to this subdivision.

The California State Lottery takes the position that this section requires winnings to be paid only to the prize winner, while living, and not to a trust created by the prize winner. This applies even as to a revocable living trust which represents no effective change in ownership during the lifetime of the holder of the power of revocation. (See letters from Timothy Ford, Staff Counsel, to John W. Driscoll in Exhibit 4, and from Paul Sickert, Staff Counsel, to Michael J. Anderson in Exhibit 5.)

The prohibition against assignment prevents the effective use of a revocable living trust as a will substitute. In the absence of probate of a will, Section 8880.32(g) applies its own intestate succession rules. This distribution scheme was enacted in this form only in

1989. From 1986-1990, this section incorporated the scheme of Government Code Section 21211, which is part of the Public Employees' Retirement Law. Section 21211 was amended in 1988 to make clear that adoptees are included in the class of children, and to provide another set of takers in the absence of a beneficiary designation where the estate does not require probate. Without becoming sidetracked in the PERS rules, it is apparent that they have been designed to avoid probate. These rules focus on beneficiary designations, and even permit a survivor to designate a further beneficiary. See Gov't Code §§ 21204, 21204.5.

Apparently the 1988 revisions of the PERS rules were not workable or acceptable in some way as applied to the lottery, because the Lottery Act was amended to continue the simple rules that applied to PERS before the 1988 amendments.

We know of no background on the intent of the anti-assignment rule, but we assume that it is intended to prevent speculators from preying on lottery winners and inveigling them to assign their rights to future prize payments for a song. It may also be intended to protect future payments from creditors, although a winner needing credit now may not consider this a benefit. The California State Lottery may prefer the anti-assignment rule simply because it avoids trouble, confusion, and unproductive paperwork. Unfortunately, the rule also restricts the freedom of lottery prize winners to make effective estate plans concerning what is, in most cases, by far their largest asset.

Mr. Anderson represents several lottery winners and is concerned that the anti-assignment rule of Section 8880.32(g) forces probate and defeats the effort to use revocable living trusts for marital deduction planning. (See letter in Exhibit 3.) He suggests amending the relevant part of Section 8880.32(g) as follows (see Exhibit 2):

(g) The right of any person to a prize shall not be assignable, except that payment of any prize may be paid to the estate of a deceased prize winner or to a person designated pursuant to an appropriate judicial order or payable to the revocable trust established by the prize winner or to the trustee then acting under such revocable trust.

The staff inclines toward the view that a pay-on-death beneficiary designation would be a better, more flexible approach to deal with this problem. This approach would be helpful to lottery prize winners generally, not just those who want to use revocable living trusts. If the Commission wishes to pursue this subject, the staff proposes to prepare a draft statute to permit lottery winners to make a beneficiary designation that would be effective at death. The prize winner would then be able to select whatever beneficiaries he or she desires, including a living trust, whether revocable or irrevocable. The beneficiary designation would be subject to amendment by the prize winner like other POD and TOD beneficiary designations and would not be subject to amendment or revocation by will.

The list of successors in Section 8880.32(g) would continue to apply in cases where there is no beneficiary designation, will, or "appropriate judicial order."

This approach would preserve the anti-assignment rule insofar as it applies during the lifetime of the prize winner, along with its assumed goals of preventing squandering of prize winners' expectancies, but would permit flexibility in estate planning.

The proposal would not permit the present assignment of winnings to a revocable trust. The living prize winner (or a conservator or attorney in fact) can transfer payments into the trust as they are received. While it would be more convenient to the prize winner who wants to avoid probate through revocable living trusts if the future payments were permanently assignable to the revocable trust, as suggested by Mr. Anderson, there may be difficulties with such an approach. The California State Lottery may not want to be in the position of having to determine whether a trust is revocable. If assignments can be made to an irrevocable trust, the anti-assignment policy could be easily supervened.

This discussion assumes that the anti-assignment policy is primarily directed toward irrevocable assignments. An alternative would be to provide for revocable assignments permitting the prize winner to direct payment to a named payee until the direction is revoked or amended. This would afford more flexibility than the staff proposal. By forbidding irrevocable assignments, the prize winner is

given great flexibility in planning while preserving the protection of the prize winner from speculators -- assuming that there is not some creative means for a creditor or speculator to bind the prize winner by contract from exercising the right to alter or revoke the assignment. The alternative of permitting revocable assignments (payee designations) might be viewed as administratively burdensome by the California State Lottery.

The Commission will also need to consider whether this matter is worth considering, particularly in light of the other matters on the Commission's agenda of topics. This issue affects a miniscule percentage of Californians, although the cumulative number increases weekly.

Respectfully submitted,

Stan Ulrich
Staff Counsel

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Michael J. Anderson

CA LAW REV. COMMISSION
MAR 13 1990
RECEIVED

March 9, 1990

Chairman
California Law Revision Commission
4000 Middlefield Rd., Ste.D-2
Palo Alto, CA 94303-4739

Chairman:

I have recently been involved with the estate planning for several lottery winners. I attempted to work through the chief counsel of the lottery.

Enclosed are copies of correspondence and their response. I've also enclosed a copy of a letter I sent to one of my clients to suggest legislative change. Could you please review to see if this proposal could be made.

Sincerely,



MICHAEL J. ANDERSON

MJA/fa

Michael J. Anderson

September 6, 1989

Dear Mr.

Enclosed would be my recommended change to California Government Code)8880.32.(g). First sentence of which is rewritten as follows:

The right of any person to a prize will not be assignable, except that the payment of any prize may paid to the estate of a deceased prize winner or a person designated pursuant to an appropriate judicial order [or payable to the revocable trust established by the prize winner or to the Trustee then acting under such revocable trust.]

The reasoning for this change would be that many individuals are setting up revocable trusts in the formation of their estate plan. A revocable trust is nothing more then a "will substitute" and would contain the same terms that a person would have incorporated under their will.

Sincerely,


MICHAEL J. ANDERSON

MJA:md

Michael J. Anderson, Inc.

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Sacramento, California 95825

(916) 921-6921

Michael J. Anderson

September 27, 1989

Roland Bowns
Chief Counsel
State Lottery
600 N. 10th Street
Sacramento, CA 95814

Dear Mr. Bowns:

I am working with several lottery winners in respect to their estate planning. The current state statute dealing with who is a permissible beneficiary or designee by the lottery winner has created some problems (see attached Exhibit A).

Most individuals with substantial estates consider implementing a revocable living trust as part of their estate planning documentation. Enclosed in a copy of an article that appeared in the Wall Street Journal in 1987 (see attached Exhibit B).

A living trust is nothing more than a "will substitute", ie. it contains the same terms that one would put into a will and would have the same effect as a will in the distribution of a one's estate.

The advantage of the revocable trust is that you bypass the probate process and its time, delay and cost in favor of a more expedient method of settling a decedent's affairs.

Because of the amount of the lottery prize, they by necessity will be implementing marital deduction planning in their estate plan. Enclosed is another article dealing with the concept of A B and A B C trusts (see attached Exhibit C). These trusts could be incorporated under a will (as well as under a revocable trust) but that requires probate if under a will.

It seems illogical to force a lottery winner to implement this plan under a will and to also have them go through the probate court, when revocable trusts have been recognized for years as an alternate.

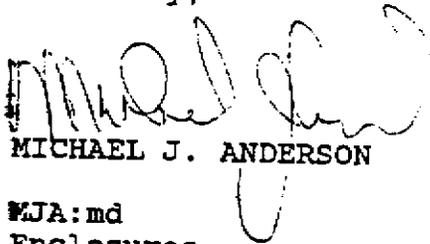
Could you please contact me to address your concerns in this area so that we may hopefully get this resolved as soon as possible.

I have reviewed the opinion prepared by the previous attorney for the attorney general's office on this issue. Whereby they take a position that this is an assignment (see attached Exhibit D). Designating the trust as a beneficiary is not an assignment of the proceeds.

If you will study the documentation that I have prepared for you, I think you will understand why it would not be perceived to be an assignment.

If I can be of any further assistance to you in this matter, please call me.

Sincerely,



MICHAEL J. ANDERSON

MJA:md
Enclosures

cc: James Shively

STATE OF CALIFORNIA

CALIFORNIA STATE LOTTERY
600 NORTH 10th STREET
SACRAMENTO, CA 95814

October 16, 1987

John W. Driscoll
RILEY, COMBELLACK & DRISCOLL
263 Main Street
P.O. Box 1065
Placerville, CA 95667

Dear Mr. Driscoll:

This is in response to your recent letter about your request to have your clients, Mr. & Mrs. James Shivley's future checks paid directly to a trust.

The California State Lottery cannot honor a request to have winnings paid to a person or entity other than the prize winner. Section 8880.32(g) of the California Government Code prohibits assignment of prize winnings. That section also provides that prize money owing a deceased winner be paid into probate. In April 1986, this section was amended to provide that, in the event there is no probate, unpaid winnings be paid to the heirs of the decedent as set forth in Government Code section 21211. The only exception provided for in Section 8880.32(g) is when the State Lottery is directed to pay winnings to some other person or entity pursuant to "an appropriate judicial order."

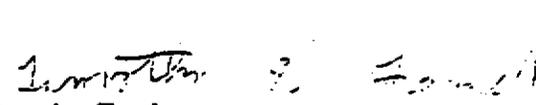
Your letter to the Lottery indicates that you are seeking the document referred to in Mr. Shivley's letter dated 8/20/87. Please be advised that the only documentation in this regard is the prize winner's letter of award, which you obviously already have in your possession.

I regret that I cannot fulfill the precise wishes of your clients. It seems, however, that Section 8880.32(g) will meet their testamentary wishes, if so expressed in a will.

Sincerely,

Nancy Sweet
Chief Counsel

By


Timothy Ford
Staff Counsel
Legal OfficeEnclosure
TF/slr

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA STATE LOT Y
600 North 10th Street
Sacramento, CA 95814

October 16, 1989

Michael J. Anderson, Inc.
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Dear Mr. Anderson:

Thank you for your recent letter and for the articles regarding a living trust. As Mr. Ford's letter explained, Government Code section 8880.32(g) prohibits the payment of winnings to a person or entity other than a prize winner. This includes an intervivos trust. I have examined the materials you have provided and see nothing in them to alter the conclusions expressed by Mr. Ford. As you can appreciate, the Lottery is compelled to follow the Lottery Act, including section 8880.32(g). It is, nonetheless receptive to any legal authority which would cause it to reconsider its position.

Thank you for your interest in the Lottery.

Sincerely,



Paul Sickert
Staff Counsel
Legal Office

PS:mg