

ASSEMBLY BILL

No. 381

Introduced by Assembly Member Chau

February 14, 2013

An act to amend Sections 859 and 4231.5 of the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 381, as introduced, Chau. Estates and trusts: undue influence and elder abuse.

(1) Existing law provides that a person found liable for taking, concealing, or disposing of property belonging to the estate of a decedent, conservatee, minor, or trust through the use of undue influence in bad faith, or through the commission of elder or dependent adult financial abuse, is liable for twice the value of the property.

This bill would also provide for this person's liability for reasonable attorney's fees and costs.

(2) Existing law provides that a person who, in bad faith, wrongfully takes, conceals, or disposes of property belonging to a principal under a power of attorney is liable for twice the value of the property recovered by an action to recover the property or for surcharge.

This bill would extend this liability to a person who has taken, concealed, or disposed of property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined. The bill would also provide for liability for reasonable attorney's fees and costs under these provisions and those described above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 859 of the Probate Code is amended to
2 read:

3 859. If a court finds that a person has in bad faith wrongfully
4 taken, concealed, or disposed of property belonging to the estate
5 of a decedent, conservatee, minor, or trust, or has taken, concealed,
6 or disposed of the property by the use of undue influence in bad
7 faith or through the commission of elder or dependent adult
8 financial abuse, as defined in Section 15610.30 of the Welfare and
9 Institutions Code, the person shall be liable for twice the value of
10 the property recovered by an action under this part *and shall also*
11 *be liable for reasonable attorney's fees and costs.* ~~The remedy~~
12 *remedies* provided in this section shall be in addition to any other
13 remedies available in law to a trustee, guardian or conservator, or
14 personal representative or other successor in interest of a decedent.

15 SEC. 2. Section 4231.5 of the Probate Code is amended to
16 read:

17 4231.5. (a) If the attorney-in-fact breaches a duty pursuant to
18 this division, the attorney-in-fact is chargeable with any of the
19 following, as appropriate under the circumstances:

20 (1) Any loss or depreciation in value of the principal's property
21 resulting from the breach of duty, with interest.

22 (2) Any profit made by the attorney-in-fact through the breach
23 of duty, with interest.

24 (3) Any profit that would have accrued to the principal if the
25 loss of profit is the result of the breach of duty.

26 (b) If the attorney-in-fact has acted reasonably and in good faith
27 under the circumstances as known to the attorney-in-fact, the court,
28 in its discretion, may excuse the attorney-in-fact in whole or in
29 part from liability under subdivision (a) if it would be equitable
30 to do so.

31 (c) If a court finds that a person has in bad faith wrongfully
32 taken, concealed, or disposed of property belonging to a principal
33 under a power of attorney, *or has taken, concealed, or disposed*
34 *of property by the use of undue influence in bad faith or through*
35 *the commission of elder or dependent adult financial abuse, as*
36 *defined in Section 15610.30 of the Welfare and Institutions Code,*
37 the person shall be liable for twice the value of the property
38 recovered by an action to recover the property or for surcharge

- 1 *and shall also be liable for reasonable attorney's fees and costs.*
- 2 ~~The remedy~~ *remedies* provided in this section shall be in addition
- 3 to any other remedies available in law to the principal or any
- 4 successor in interest of the principal.

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