

## APRIL 2024 APPELLATE UPDATE

### **TRUSTS**

The issue in this case is, how may a settlor modify a revocable trust? The California Supreme Court resolved a split of authority among appellate courts regarding the procedure that must be followed pursuant to Probate Code section 15402. The Court held that the settlor may amend the trust instrument using the procedure set forth in statute, unless the trust instrument expressly precludes it or explicitly makes a specified procedure exclusive.

***Haggerty v. Thornton (Feb. 3, 2024) 15 Cal.5th 729***

### **ARBITRATION**

The issue in this case was, who had the authority to decide whether a dispute is subject to arbitration, the court or the arbitrator? The answer to the question depends upon whether the parties have agreed to give the court or the arbitrator the authority to determine arbitrability. Both federal and state law presumes the parties intend courts, not arbitrators, to determine whether their dispute must be arbitrated. Evidence that the parties intended otherwise must be clear and unmistakable. Here, the parties' arbitration agreement provided that arbitration would be conducted pursuant to the rules and procedures of a specified arbitration. The court held that an arbitration agreement which merely subjected the parties' arbitration to specified rules did not clearly and unmistakably delegate authority to the arbitrator to determine whether the parties' dispute was subject to arbitration.

***Mondragon v. Sunrun, Inc. (April 23, 2024)***

Second Appellate District, case no. B328425