

AMENDED IN SENATE JUNE 15, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1985

Introduced by Assembly Member Silva

February 23, 2012

An act to amend Section 21134 of the Probate Code, relating to trusts and estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1985, as amended, Silva. Trusts and estates: construction of instruments.

Existing law provides rules for the interpretation of wills, trusts, deeds, and other instruments, which are to be used as interpretive aids ~~where~~ *if* the intention of the transferor is not indicated by the instrument. Under existing law, if after the execution of the instrument of gift, specifically given property is sold, or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, the transferee of the specific gift has the right to a general pecuniary gift equal to the net sale price of, or the amount of the unpaid loan encumbrance on, the property.

This bill would extend these provisions to any case in which specifically given property is encumbered by a deed of trust, mortgage, or other instrument. The bill would also apply these provisions to property that is sold by a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust. The bill would further specify that a transferee of a specific gift has the right to a general pecuniary gift equal to the net sale price of the property ~~without regard~~

~~to~~ *unreduced* by the payoff of any *such* encumbrance or the amount of the unpaid encumbrance on the property, as well as the property itself.

Under existing law, if an eminent domain award for the taking of specifically given property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if the proceeds on fire or casualty insurance on, or recovery for injury to, specifically gifted property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the recipient of a specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery.

This bill would extend these provisions to eminent domain awards, or insurance proceeds or recovery, paid to a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust. The bill would also specify that in those cases the recipient of the specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery *unreduced by the payoff of any encumbrance paid on the property by the conservator, agent, or trustee, after the execution of the instrument.*

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 21134 of the Probate Code is amended
- 2 to read:
- 3 21134. (a) Except as otherwise provided in this section, if,
- 4 after the execution of the instrument of gift, specifically given
- 5 property is sold, or encumbered by a deed of trust, mortgage, or
- 6 other instrument, by a conservator, by an agent acting within the
- 7 authority of a durable power of attorney for an incapacitated
- 8 principal, or by a trustee acting for an incapacitated settlor of a
- 9 trust established by the settlor as a revocable trust, the transferee
- 10 of the specific gift has the right to a general pecuniary gift equal
- 11 to the net sale price of the property ~~without regard to~~ *unreduced*
- 12 *by* the payoff of any such encumbrance, or the amount of the unpaid
- 13 encumbrance on the property as well as the property itself.
- 14 (b) Except as otherwise provided in this section, if an eminent
- 15 domain award for the taking of specifically given property is paid
- 16 to a conservator, to an agent acting within the authority of a durable

1 power of attorney for an incapacitated principal, or to a trustee
2 acting for an incapacitated settlor of a trust established by the
3 settlor as a revocable trust, or if the proceeds on fire or casualty
4 insurance on, or recovery for injury to, specifically gifted property
5 are paid to a conservator, to an agent acting within the authority
6 of a durable power of attorney for an incapacitated principal, or
7 to a trustee acting for an incapacitated settlor of a trust established
8 by the settlor as a revocable trust, the recipient of the specific gift
9 has the right to a general pecuniary gift equal to the eminent
10 domain award or the insurance proceeds or recovery *unreduced*
11 *by the payoff of any encumbrance placed on the property by the*
12 *conservator, agent, or trustee, after the execution of the instrument*
13 *of gift.*

14 (c) For the purpose of the references in this section to a
15 conservator, this section does not apply if, after the sale, mortgage,
16 condemnation, fire, or casualty, or recovery, the conservatorship
17 is terminated and the transferor survives the termination by one
18 year.

19 (d) For the purpose of the references in this section to an agent
20 acting with the authority of a durable power of attorney for an
21 incapacitated principal, or to a trustee acting for an incapacitated
22 settlor of a trust established by the settlor as a revocable trust, (1)
23 “incapacitated principal” or “incapacitated settlor” means a
24 principal or settlor who is an incapacitated person, (2) no
25 adjudication of incapacity before death is necessary, and (3) the
26 acts of an agent within the authority of a durable power of attorney
27 are presumed to be for an incapacitated principal. However, there
28 shall be no presumption of a settlor’s incapacity concerning the
29 acts of a trustee.

30 (e) The right of the transferee of the specific gift under this
31 section shall be reduced by any right the transferee has under
32 Section 21133.