

ASSEMBLY BILL

No. 1029

Introduced by Assembly Member Maienschein

February 22, 2013

An act to amend Section 16350 of the Probate Code, relating to trusts and estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1029, as introduced, Maienschein. Trusts and estates: allocations of receipts.

Existing law regulates the administration of trusts and the estates of decedents and, in this regard, establishes the Uniform Principal and Income Act. Existing law defines “income” in this regard and prescribes rules for determining the character of money received from an entity. Existing law generally requires that money received from an entity be allocated to income, but provides that money received in total or partial liquidation of the entity is allocated to principal. Existing law establishes rules for determining whether money is received in partial liquidation, including if the total amount of money and property received by all owners, collectively, in a distribution or series of related distributions is greater than 20% of the entity’s gross assets, as specified.

This bill would revise and recast the requirements by which a trustee is to determine whether money received from a distributing entity is be treated as a partial liquidation. The bill would provide that a trustee is not liable for any claim of improper allocation of the receipt that is based on information that was not received or actually known by the trustee as of the date of allocation, as specified. The bill would also make various technical changes.

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 16350 of the Probate Code is amended
2 to read:
3 16350. (a) For the purposes of this section, “entity” means a
4 corporation, partnership, limited liability company, regulated
5 investment company, real estate investment trust, common trust
6 fund, or any other organization in which a trustee has an interest
7 other than a trust or decedent’s estate to which Section 16351
8 applies, a business or activity to which Section 16352 applies, or
9 an asset-backed security to which Section 16367 applies.
10 (b) Except as otherwise provided in this section, a trustee shall
11 allocate to income money received from an entity.
12 (c) A trustee shall allocate to principal the following receipts
13 from an entity:
14 (1) Property other than money.
15 (2) Money received in one distribution or a series of related
16 distributions in exchange for part or all of a trust’s interest in the
17 entity.
18 (3) Money received in total or partial liquidation of the entity.
19 (4) Money received from an entity that is a regulated investment
20 company or a real estate investment trust if the money distributed
21 is a capital gain dividend for federal income tax purposes.
22 (d) For purposes of paragraph (3) of subdivision (c):
23 ~~(1) Money is received in partial liquidation (A) to the extent~~
24 ~~that the entity, at or near the time of a distribution, indicates that~~
25 ~~it is a distribution in partial liquidation, or (B) if the total amount~~
26 ~~of money and property received by all owners, collectively, in a~~
27 ~~distribution or series of related distributions is greater than 20~~
28 ~~percent of the entity’s gross assets, as shown by the entity’s yearend~~
29 ~~financial statements immediately preceding the initial receipt. If~~
30 ~~that receipt is allocated (c), money shall be treated as received in~~
31 ~~partial liquidation to the extent the amount received from the~~
32 ~~distributing entity is attributable to the proceeds from a sale by~~
33 ~~the distributing entity, or by the distributing entity’s subsidiary or~~
34 ~~affiliate, of a capital asset as defined in Section 1221 of the Internal~~

1 *Revenue Code. The following shall apply to determine whether*
2 *money is received in partial liquidation:*

3 *(1) A trustee may rely without investigation on a written*
4 *statement made by the distributing entity regarding the source of*
5 *the receipt.*

6 *(2) A trustee may rely without investigation on any other*
7 *information that is actually known by the trustee regarding the*
8 *source of the receipt.*

9 *(3) With regard to each receipt from a distributing entity, if*
10 *within 30 days from the date of receipt the distributing entity*
11 *provides no written statement to the trustee regarding the source*
12 *of the receipt and the trustee has no actual knowledge regarding*
13 *the source of the receipt, then the following shall apply:*

14 *(A) The trustee shall have no duty to inquire or investigate*
15 *whether the receipt from the distributing entity is in partial*
16 *liquidation of the entity.*

17 *(B) If the receipt from the distributing entity is in excess of 10*
18 *percent of the value of the trust's interest in the distributing entity,*
19 *then the receipt shall be deemed to be received in partial*
20 *liquidation of the distributing entity, and the trustee shall allocate*
21 *all of the receipt to principal. For purposes of this subparagraph,*
22 *the value of the trust's interest in the distributing entity shall be*
23 *determined as follows:*

24 *(i) In the case of an interest that is a security regularly traded*
25 *on a public exchange or market, the closing price of the security*
26 *on the public exchange or market occurring on the last business*
27 *day before the date of the receipt.*

28 *(ii) In the case of an interest that is not a security regularly*
29 *traded on a public exchange or market, the value as set forth in*
30 *the most recent appraisal prepared by a professional appraiser*
31 *of the trust's interest in the distributing entity with a valuation*
32 *date within three years of the date of the receipt, if the appraised*
33 *value is actually known to the trustee without any duty of the trustee*
34 *to investigate the existence of the appraisal. The trustee shall have*
35 *no duty to obtain an appraisal nor shall the trustee have any*
36 *liability for relying upon an appraisal prepared by a professional*
37 *appraiser. The term "professional appraiser" shall refer to an*
38 *appraiser who has earned an appraisal designation for valuing*
39 *the type of property subject to the appraisal from a recognized*
40 *professional appraiser organization.*

1 (iii) In the case of an interest that is not a security regularly
2 traded on a public exchange or market and for which there is no
3 appraisal meeting the requirements of clause (ii), the value of the
4 trust's interest in the distributing entity shall be the trust's
5 proportionate share of the distributing entity's net assets as shown
6 in the distributing entity's yearend financial statements immediately
7 preceding the receipt.

8 (iv) If the trust's interest in the distributing entity cannot be
9 valued under clause (i), (ii) or (iii), the federal cost basis of the
10 trust's interest in the distributing entity on the date immediately
11 before the date of the receipt.

12 (e) For purposes of subdivision (d), a written statement or other
13 information "regarding the source of the receipt" refers to a
14 written statement or other information indicating whether or not
15 the receipt is attributable to the proceeds from a sale by the
16 distributing entity, or by the distributing entity's subsidiary or
17 affiliate, of a capital asset as defined in Section 1221 of the Internal
18 Revenue Code.

19 (f) (1) If, within 60 days of the date of the receipt, a trustee
20 allocates a receipt to principal in accordance with subdivision
21 (d), or allocates a receipt to income because the receipt is not
22 determined to be in partial liquidation under subdivision (d), based
23 on information received or actually known by the trustee on the
24 date that is 30 days after the date of the receipt, the trustee shall
25 not be liable for any claim of improper allocation of a receipt
26 which is based on information that was not received or actually
27 known by the trustee within 30 days of the date of the receipt.

28 (2) If a trustee allocates a receipt to principal in accordance
29 with subdivision (d), or allocates a receipt to income because the
30 receipt is not determined to be in partial liquidation under
31 subdivision (d), more than 60 days after the date of receipt, and
32 on the date of allocating the receipt the trustee has neither received
33 information nor has any actual knowledge, without any duty to
34 investigate, of the source of the receipt, then the trustee shall not
35 be liable for any claim of improper allocation of the receipt which
36 is based on information that was not received or actually known
37 by the trustee as of the date of allocation.

38 (g) (1) Notwithstanding anything to the contrary in subdivision
39 (d), if the receipt was allocated between December 2, 2004, and
40 ~~the operative date of the act adding this sentence July 18, 2005, a~~

1 trustee shall not be liable for allocating the receipt to income if the
2 amount received by the trustee, when considered together with the
3 amount received by all owners, collectively, ~~exceeds~~ *exceeded* 20
4 percent of the entity's gross assets, but the amount received by the
5 trustee ~~does~~ *did* not exceed 20 percent of the entity's gross assets.

6 (2) Money is not received in partial liquidation, nor may it be
7 taken into account under ~~clause (B) of paragraph (1) subdivision~~
8 *(d)*, to the extent that it does not exceed the amount of income tax
9 that a trustee or beneficiary is required to pay on taxable income
10 of the entity that distributes the money.

11 ~~(e) A trustee may rely on a statement made by an entity about~~
12 ~~the source or character of a distribution if the statement is made~~
13 ~~at or near the time of distribution by the entity's board of directors~~
14 ~~or other person or group of persons authorized to exercise powers~~
15 ~~to pay money or transfer property comparable to those of a~~
16 ~~corporation's board of directors.~~