

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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 provided that the trustee satisfies*

specified *requirements*. 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 *liquidation of the entity* or in partial
- 19 liquidation of the entity, *as defined in subdivision (d)*.
- 20 (4) Money received from an entity that is a regulated investment
- 21 company or a real estate investment trust if the money distributed
- 22 is a capital gain dividend for federal income tax purposes.
- 23 (d) For purposes of paragraph (3) of subdivision (c), money
- 24 shall be treated as received in partial liquidation to the extent the
- 25 amount received from the distributing entity is attributable to the
- 26 proceeds from a sale by the distributing entity, or by the distributing
- 27 entity’s subsidiary or affiliate, of a capital asset as defined in
- 28 Section 1221 of the Internal Revenue Code. The following shall
- 29 apply to determine whether money is received in partial liquidation:
- 30 (1) A trustee may rely without investigation on a written
- 31 statement made by the distributing entity regarding ~~the source of~~
- 32 the receipt.

1 (2) A trustee may rely without investigation on ~~any~~ other
2 information that is actually known by the trustee regarding the
3 ~~source of the receipt.~~

4 (3) With regard to each receipt from a distributing entity, if
5 within 30 days from the date of *the* receipt the distributing entity
6 provides no written statement to the trustee ~~regarding the source~~
7 ~~of the receipt~~ *that the receipt is a distribution attributable to the*
8 *proceeds from a sale of a capital asset by the distributing entity*
9 *or by the distributing entity's subsidiary or affiliate* and the trustee
10 has no actual knowledge ~~regarding the source of~~ *that the receipt*
11 *is a distribution attributable to the proceeds from a sale of a capital*
12 *asset by the distributing entity or by the distributing entity's*
13 *subsidiary or affiliate*, 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 liquidation
20 of the distributing entity, and the trustee shall allocate all of the
21 receipt to principal. For purposes of this subparagraph, the value
22 of the trust's interest in the distributing entity shall be determined
23 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 traded
29 on a public exchange or market, *the trust's proportionate share*
30 *of the value of the distributing entity* as set forth in the most recent
31 appraisal *actually received by the trustee and* prepared by a
32 professional appraiser ~~of the trust's interest in the distributing~~
33 ~~entity~~ with a valuation date within three years of the date of the
34 receipt, ~~if the appraised value is actually known to the trustee~~
35 ~~without any duty of the trustee to investigate the existence of the~~
36 ~~appraisal.~~ The trustee shall have no duty *to investigate the existence*
37 *of the appraisal or* to obtain an appraisal nor shall the trustee have
38 any liability for relying upon an appraisal prepared by a
39 professional appraiser. The term "professional appraiser" shall
40 refer to an appraiser who has earned an appraisal designation for

1 valuing the type of property subject to the appraisal from a
2 recognized professional appraiser organization.

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

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

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

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

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

39 (e) *If a trustee allocates a receipt to principal in accordance*
40 *with subdivision (d), or allocates a receipt to income because the*

1 *receipt is not determined to be in partial liquidation under*
2 *subdivision (d), then the trustee shall not be liable for any claim*
3 *of improper allocation of the receipt that is based on information*
4 *that was not received or actually known by the trustee as of the*
5 *date of allocation.*

6 ~~(g)~~

7 (f) (1) Notwithstanding anything to the contrary in subdivision
8 (d), if the receipt was allocated between December 2, 2004, and
9 July 18, 2005, a trustee shall not be liable for allocating the receipt
10 to income if the amount received by the trustee, when considered
11 together with the amount received by all owners, collectively,
12 exceeded 20 percent of the entity's gross assets, but the amount
13 received by the trustee did not exceed 20 percent of the entity's
14 gross assets.

15 (2) Money is not received in partial liquidation, nor may it be
16 taken into account under subdivision (d), to the extent that it does
17 not exceed the amount of income tax that a trustee or beneficiary
18 is required to pay on taxable income of the entity that distributes
19 the money.

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