

ASSEMBLY BILL

No. 846

Introduced by Assembly Member Ackerman

February 24, 1999

An act to amend Section 10251 of the Corporations Code, and to amend Sections 1063, 10531, 17351, and 21524 of, to add Chapter 3 (commencing with Section 16320) to Part 4 of Division 9 of, and to repeal Chapter 3 (commencing with Section 16300) of Part 4 of Division 9 of, the Probate Code, relating to the Uniform Principal and Income Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 846, as introduced, Ackerman. Uniform Principal and Income Act.

Existing law, the Revised Uniform Principal and Income Act, requires a trust to be administered, as specified, with due regard to the respective interests of defined income beneficiaries and defined remainder beneficiaries.

This bill would repeal these provisions and enact the Uniform Principal and Income Act.

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 10251 of the Corporations Code
2 is amended to read:
3 10251. (a) "Educational institution," as used in this
4 section, means any nonprofit corporation organized

1 under Chapter 4 (commencing with Section 94400) or
2 Chapter 7 (commencing with Section 94700) of Part 59 of
3 the Education Code or organized under Part 1
4 (commencing with Section 9000) of this division in effect
5 on December 31, 1979, and designated on or after January
6 1, 1980, as a nonprofit public benefit corporation, or
7 organized for charitable or eleemosynary purposes under
8 Part 2 (commencing with Section 5110) of this division,
9 or Part 3 (commencing with Section 10200) of this
10 division in effect on December 31, 1979, and designated
11 on or after January 1, 1980, as a nonprofit public benefit
12 corporation for the purpose of establishing, conducting or
13 maintaining an institution offering courses beyond high
14 school and issuing or conferring a diploma or for the
15 purpose of offering or conducting private school
16 instruction on the high school or elementary school level
17 and any charitable trust organized for such purpose or
18 purposes. “Educational institution,” as used in this
19 section, also means the University of California, the
20 California State University, the California Community
21 Colleges, and any auxiliary organization, as defined in
22 Section 89901 of the Education Code, established for the
23 purpose of receiving gifts, property and funds to be used
24 for the benefit of a state college.

25 (b) It shall be lawful for any educational institution to
26 become a member of a nonprofit corporation
27 incorporated under the laws of any state for the purpose
28 of maintaining a common trust fund or similar common
29 fund in which nonprofit organizations may commingle
30 their funds and property for investment and to invest any
31 and all of its funds, whenever and however acquired, in
32 the common fund or funds; provided that, in the case of
33 funds or property held as fiduciary, the investment is not
34 prohibited by the wording of the will, deed, or other
35 instrument creating the fiduciary relationship.

36 (c) An educational institution electing to invest in a
37 common fund or funds under this section may elect to
38 receive distributions from each fund in an amount not to
39 exceed for each fiscal year the greater of the income, as
40 ~~defined in Section 16303~~ *determined under the Uniform*



1 *Principal and Income Act, Chapter 3 (commencing with*
2 *Section 16320) of Part 4 of Division 9 of the Probate Code,*
3 accrued on its interest in the fund or 10 percent of the
4 value of its interest in the fund as of the last day of its next
5 preceding fiscal year. The educational institution may
6 expend the distribution or distributions for any lawful
7 purpose notwithstanding any general or special law
8 characterizing the distribution, or any part thereof, as
9 principal or income; provided that, in the case of funds or
10 property invested as fiduciary, the expenditure is not
11 prohibited by the wording of the will, deed, or other
12 instrument creating the fiduciary relationship. No such
13 prohibition of expenditure shall be deemed to exist solely
14 because a will, deed, or other instrument, whether
15 executed or in effect before or after the effective date of
16 this section, directs or authorizes the use of only the
17 “income,” or “interest,” or “dividends” or “rents, issues
18 or profits,” or contains words of similar import.

19 (d) The Corporate Securities Law of 1968 shall not
20 apply to the creation, administration, or termination of
21 common trust funds authorized under this section, or to
22 participation therein.

23 (e) This section shall become operative on January 1,
24 1997.

25 SEC. 2. Section 1063 of the Probate Code is amended
26 to read:

27 1063. (a) In all accounts, there shall be an additional
28 schedule showing the estimated market value of the
29 assets on hand as of the end of the accounting period, and
30 a schedule of the estimated market value of the assets on
31 hand as of the beginning of the accounting period for all
32 accounts subsequent to the initial account. The
33 requirement of an estimated value of real estate, a closely
34 held business, or other assets without a ready market, may
35 be satisfied by a good faith estimate by the fiduciary.

36 (b) If there were purchases or other changes in the
37 form of assets occurring during the period of the account,
38 there shall be a schedule showing these transactions.
39 However, no reporting is required for transfers between
40 cash or accounts in a financial institution or money

1 market mutual funds as defined in subdivision (d) of
2 Section 8901.

3 (c) If an estate of a decedent or a trust will be
4 distributed to an income beneficiary, there shall be a
5 schedule showing an allocation of receipts and
6 disbursements between principal and income.

7 (d) If there is specifically devised property, there shall
8 be an additional schedule accounting for income,
9 disbursements, and proceeds of sale pursuant to ~~Sections~~
10 *Section 12002 and ~~16314~~ subdivision (a) of Section 16340.*

11 (e) If any interest has been paid or is to be paid under
12 Section 12003, 12004, or 12005, or ~~16314~~ *subdivision (b) of*
13 *Section 16340*, there shall be a schedule showing the
14 calculation of the interest.

15 (f) If the accounting contemplates a proposed
16 distribution, there shall be a schedule setting forth the
17 proposed distribution, including the allocation of income
18 required under Section 12006. If the distribution requires
19 an allocation between trusts, the allocation shall be set
20 forth on the schedule, unless the allocation is to be made
21 by a trustee after receipt of the assets. If the distribution
22 requires valuation of assets as of the date of distribution,
23 the schedule shall set forth the fair market value of those
24 assets.

25 (g) If, at the end of the accounting period, there are
26 liabilities of the estate or trust, except current or future
27 periodic payments, including rent, salaries, utilities, or
28 other recurring expenses, there shall be a schedule
29 showing all of the following:

30 (1) All liabilities which are a lien on estate or trust
31 assets.

32 (2) Taxes due but unpaid as shown on filed returns or
33 assessments received subsequent to filing of returns.

34 (3) All notes payable.

35 (4) Any judgments for which the estate or trust is
36 liable.

37 (5) Any other material liability.

38 SEC. 3. Section 10531 of the Probate Code is amended
39 to read:



1 10531. (a) The personal representative has the
 2 power to manage and control property of the estate,
 3 *including making allocations and determinations under*
 4 *the Uniform Principal and Income Act, Chapter 3*
 5 *(commencing with Section 16320) of Part 4 of Division 9.*
 6 Except as provided in subdivision (b), the personal
 7 representative may exercise this power without giving
 8 notice of proposed action under Chapter 4 (commencing
 9 with Section 10580).

10 (b) The personal representative shall comply with the
 11 requirements of Chapter 4 (commencing with Section
 12 10580) in any case where a provision of Chapter 3
 13 (commencing with Section 10500) governing the
 14 exercise of a specific power so requires.

15 SEC. 4. Chapter 3 (commencing with Section 16300)
 16 of Part 4 of Division 9 of the Probate Code is repealed.

17 SEC. 5. Chapter 3 (commencing with Section 16320)
 18 is added to Part 4 of Division 9 of the Probate Code, to
 19 read:

20
 21 CHAPTER 3. UNIFORM PRINCIPAL AND INCOME ACT

22
 23 Article 1. Short Title and Definitions

24
 25 16320. This chapter may be cited as the Uniform
 26 Principal and Income Act.

27 16321. The definitions in this article govern the
 28 construction of this chapter.

29 16322. “Accounting period” means a calendar year
 30 unless another 12-month period is selected by a fiduciary.
 31 The term includes a portion of a calendar year or other
 32 12-month period that begins when an income interest
 33 begins or ends when an income interest ends.

34 16323. “Fiduciary” means a personal representative
 35 or a trustee.

36 16324. “Income” means money or property that a
 37 fiduciary receives as current return from a principal asset.
 38 The term includes a portion of receipts from a sale,
 39 exchange, or liquidation of a principal asset, to the extent
 40 provided in Article 5.1 (commencing with Section



1 16350), 5.2 (commencing with Section 16355), or 5.3
2 (commencing with Section 16360).

3 16325. “Income beneficiary” means a person to whom
4 net income of a trust is or may be payable.

5 16326. “Income interest” means the right of an
6 income beneficiary to receive all or part of net income,
7 whether the trust requires it to be distributed or
8 authorizes it to be distributed in the trustee’s discretion.

9 16327. “Mandatory income interest” means the right
10 of an income beneficiary to receive net income that the
11 trust requires the fiduciary to distribute.

12 16328. “Net income” means the total receipts
13 allocated to income during an accounting period minus
14 the disbursements made from income during the
15 accounting period, plus or minus transfers under this
16 chapter to or from income during the accounting period.

17

18 Article 2. General Provisions and Fiduciary Duties

19

20 16335. (a) In allocating receipts and disbursements
21 to or between principal and income, and with respect to
22 any other matter within the scope of this chapter, a
23 fiduciary:

24 (1) Shall administer a trust or decedent’s estate in
25 accordance with the trust or the will, even if there is a
26 different provision in this chapter.

27 (2) May administer a trust or decedent’s estate by the
28 exercise of a discretionary power of administration given
29 to the fiduciary by the trust or the will, even if the exercise
30 of the power produces a result different from a result
31 required or permitted by this chapter, and no inference
32 that the fiduciary has improperly exercised the discretion
33 arises from the fact that the fiduciary has made an
34 allocation contrary to a provision of this chapter.

35 (3) Shall administer a trust or decedent’s estate in
36 accordance with this chapter if the trust or the will does
37 not contain a different provision or does not give the
38 fiduciary a discretionary power of administration.

39 (4) Shall add a receipt or charge a disbursement to
40 principal to the extent that the trust or the will and this



1 chapter do not provide a rule for allocating the receipt or
2 disbursement to or between principal and income.

3 (b) In exercising a discretionary power of
4 administration regarding a matter within the scope of this
5 chapter, whether granted by a trust, a will, or this
6 chapter, including the trustee's power to adjust under
7 subdivision (a) of Section 16336, the fiduciary shall
8 administer the trust or decedent's estate impartially,
9 except to the extent that the trust or the will expresses an
10 intention that the fiduciary shall or may favor one or more
11 of the beneficiaries. The exercise of discretion in
12 accordance with this chapter is presumed to be fair and
13 reasonable to all beneficiaries.

14 16336. (a) Subject to subdivision (b), a trustee may
15 make an adjustment between principal and income to the
16 extent the trustee considers necessary if all of the
17 following conditions are satisfied:

18 (1) The trustee invests and manages trust assets under
19 the prudent investor rule.

20 (2) The trust describes the amount that shall or may be
21 distributed to a beneficiary by referring to the trust's
22 income.

23 (3) The trustee determines, after applying the rules in
24 subdivision (a) of Section 16335, that the trustee is unable
25 to comply with subdivision (b) of Section 16335.

26 (b) A trustee may not make an adjustment between
27 principal and income in any of the following
28 circumstances:

29 (1) Where it would diminish the income interest in a
30 trust that (A) requires all of the income to be paid at least
31 annually to a spouse and (B) for which, if the trustee did
32 not have the power to make the adjustment, an estate tax
33 or gift tax marital deduction would be allowed, in whole
34 or in part.

35 (2) Where it would reduce the actuarial value of the
36 income interest in a trust to which a person transfers
37 property with the intent to qualify for a gift tax exclusion.

38 (3) Where it would change the amount payable to a
39 beneficiary as a fixed annuity or a fixed fraction of the
40 value of the trust assets.



1 (4) From any amount that is permanently set aside for
2 charitable purposes under a will or trust, unless both
3 income and principal are so set aside.

4 (5) Where possessing or exercising the power to make
5 an adjustment would cause an individual to be treated as
6 the owner of all or part of the trust for income tax
7 purposes, and the individual would not be treated as the
8 owner if the trustee did not possess the power to make an
9 adjustment.

10 (6) Where possessing or exercising the power to make
11 an adjustment would cause all or part of the trust assets
12 to be included for estate tax purposes in the estate of an
13 individual who has the power to remove a trustee or
14 appoint a trustee, or both, and the assets would not be
15 included in the estate of the individual if the trustee did
16 not possess the power to make an adjustment.

17 (7) Where the trustee is a beneficiary of the trust.

18 (c) Notwithstanding Section 15620, if paragraph (5),
19 (6), or (7) of subdivision (b) applies to a trustee and there
20 is more than one trustee, a cotrustee to whom the
21 provision does not apply may make the adjustment unless
22 the exercise of the power by the remaining trustee or
23 trustees is not permitted by the trust.

24 (d) A trustee may release the entire power conferred
25 by subdivision (a) or may release only the power to adjust
26 from income to principal or the power to adjust from
27 principal to income in either of the following
28 circumstances:

29 (1) If the trustee is uncertain about whether
30 possessing or exercising the power will cause a result
31 described in paragraphs (1) to (6), inclusive, of
32 subdivision (b).

33 (2) If the trustee determines that possessing or
34 exercising the power will or may deprive the trust of a tax
35 benefit or impose a tax burden not described in
36 subdivision (b).

37 (e) A release under subdivision (d) may be
38 permanent or for a specified period, including a period
39 measured by the life of an individual.



1 (f) A trust that limits the power of a trustee to make
2 an adjustment between principal and income does not
3 affect the application of this section unless it is clear from
4 the trust that it is intended to deny the trustee the power
5 of adjustment provided by subdivision (a).

6 16337. (a) A trustee may give a notice of proposed
7 action regarding a matter governed by this chapter as
8 provided in this section. For the purpose of this section,
9 a proposed action includes a course of action and a
10 decision not to take action.

11 (b) The trustee shall mail notice of the proposed action
12 to all adult beneficiaries who are receiving, or are entitled
13 to receive, income under the trust or to receive a
14 distribution of principal if the trust were terminated at
15 the time the notice is given.

16 (c) Notice of proposed action need not be given to any
17 person who consents in writing to the proposed action.
18 The consent may be executed at any time before or after
19 the proposed action is taken.

20 (d) The notice of proposed action shall state that it is
21 given pursuant to this section and shall state all of the
22 following:

23 (1) The name and mailing address of the trustee.

24 (2) The name and telephone number of a person who
25 may be contacted for additional information.

26 (3) A description of the action proposed to be taken
27 and an explanation of the reasons for the action.

28 (4) The time within which objections to the proposed
29 action can be made, which shall be at least 30 days from
30 the mailing of the notice of proposed action.

31 (5) The date on or after which the proposed action
32 may be taken or is effective.

33 (e) A beneficiary may object to the proposed action by
34 mailing a written objection to the trustee at the address
35 stated in the notice of proposed action within the time
36 period specified in the notice of proposed action.

37 (f) A trustee is not liable to a beneficiary for an action
38 regarding a matter governed by this chapter if the trustee
39 does not receive a written objection to the proposed
40 action from the beneficiary within the applicable period



1 and the other requirements of this section are satisfied. If
2 no beneficiary entitled to notice objects under this
3 section, the trustee is not liable to any current or future
4 beneficiary with respect to the proposed action.

5 (g) If the trustee receives a written objection within
6 the applicable period, either the trustee or a beneficiary
7 may petition the court to have the proposed action taken
8 as proposed, taken with modifications, or denied. In the
9 proceeding, a beneficiary objecting to the proposed
10 action has the burden of proving that the trustee's
11 proposed action should not be taken. A beneficiary who
12 has not objected is not estopped from opposing the
13 proposed action in the proceeding. If the trustee decides
14 not to implement the proposed action, the trustee shall
15 notify the beneficiaries of the decision not to take the
16 action and the reasons for the decision. A beneficiary may
17 petition the court to have the action taken, and has the
18 burden of proving that it should be taken.

19 16338. This chapter applies to every trust or
20 decedent's estate existing on January 1, 2000, except as
21 otherwise expressly provided in the trust or will or in this
22 chapter.

23

24 Article 3. Decedent's Estate or Terminating Income
25 Interest

26

27 16340. After the decedent's death, in the case of a
28 decedent's estate, or after an income interest in a trust
29 ends, the following rules apply:

30 (a) If property is specifically given to a beneficiary, by
31 will or trust, the fiduciary of the estate or of the
32 terminating income interest shall distribute the net
33 income and principal receipts to the beneficiary who is to
34 receive the property, subject to the following rules:

35 (1) The net income and principal receipts from the
36 specifically given property are determined by including
37 all of the amounts the fiduciary receives or pays with
38 respect to the property, whether the amounts accrued or
39 became due before, on, or after the decedent's death or
40 an income interest in a trust ends, and by making a



1 reasonable provision for amounts the fiduciary believes
2 the estate or terminating income interest may become
3 obligated to pay after the property is distributed.

4 (2) The fiduciary may not reduce income and
5 principal receipts from the specifically given property on
6 account of a payment described in Section 16370 or 16371,
7 to the extent that the will, the trust, or Section 12002
8 requires payment from other property or to the extent
9 that the fiduciary recovers the payment from a third
10 person.

11 (b) The fiduciary shall distribute to a beneficiary who
12 receives a pecuniary amount, whether outright or in
13 trust, the interest or any other amount provided by the
14 will, the trust, or Chapter 8 (commencing with Section
15 12000) of Part 10 of Division 7, from the remaining net
16 income determined under subdivision (c) or from
17 principal to the extent that net income is insufficient.

18 (c) The fiduciary shall determine the remaining net
19 income of the decedent's estate or terminating income
20 interest as provided in this chapter and by doing the
21 following:

22 (1) Including in net income all income from property
23 used to discharge liabilities.

24 (2) Paying from income or principal, in the fiduciary's
25 discretion, fees of attorneys, accountants, and fiduciaries,
26 court costs and other expenses of administration, and
27 interest on death taxes, except that the fiduciary may pay
28 these expenses from income of property passing to a trust
29 for which the fiduciary claims an estate tax marital or
30 charitable deduction only to the extent that the payment
31 of these expenses from income will not cause the
32 reduction or loss of the deduction.

33 (3) Paying from principal all other disbursements
34 made or incurred in connection with the settlement of a
35 decedent's estate or the winding up of a terminating
36 income interest, including debts, funeral expenses,
37 disposition of remains, family allowances, and death taxes
38 and related penalties that are apportioned to the estate
39 or terminating income interest by the will, the trust, or
40 Division 10 (commencing with Section 20100).



1 (d) After distributions required by subdivision (b),
2 the fiduciary shall distribute the remaining net income
3 determined under subdivision (c) in the manner
4 provided in Section 16341 to all other beneficiaries.

5 (e) For purposes of this section, a reference in Chapter
6 8 (commencing with Section 12000) of Part 10 of Division
7 7 to the date of the testator's death means the date of the
8 settlor's death or of the occurrence of some other event
9 on which the distributee's right to receive the gift
10 depends.

11 16341. (a) Each beneficiary described in subdivision
12 (d) of Section 16340 is entitled to receive a portion of the
13 net income equal to the beneficiary's fractional interest
14 in undistributed principal assets, using values as of the
15 distribution dates and without reducing the values by any
16 unpaid principal obligations.

17 (b) If a fiduciary does not distribute all of the collected
18 but undistributed net income to each beneficiary as of a
19 distribution date, the fiduciary shall maintain appropriate
20 records showing the interest of each beneficiary in that
21 net income.

22 (c) The distribution date for purposes of this section
23 may be the date as of which the fiduciary calculates the
24 value of the assets if that date is reasonably near the date
25 on which assets are actually distributed.

26

27 Article 4. Apportionment at Beginning and End of
28 Income Interest

29

30 16345. (a) An income beneficiary is entitled to net
31 income from the date on which the income interest
32 begins. An income interest begins on the date specified
33 in the trust or, if no date is specified, on the date an asset
34 becomes subject to a trust or successive income interest.

35 (b) An asset becomes subject to a trust at the following
36 times:

37 (1) In the case of an asset that is transferred to a trust
38 during the transferor's life, on the date it is transferred to
39 the trust.



1 (2) In the case of an asset that becomes subject to a
2 trust by reason of a will, even if there is an intervening
3 period of administration of the testator's estate, on the
4 date of the testator's death.

5 (3) In the case of an asset that is transferred to a
6 fiduciary by a third party because of the individual's
7 death, on the date of the individual's death.

8 (c) An asset becomes subject to a successive income
9 interest on the day after the preceding income interest
10 ends, as determined under subdivision (d), even if there
11 is an intervening period of administration to wind up the
12 preceding income interest.

13 (d) An income interest ends on the day before an
14 income beneficiary dies, or another terminating event
15 occurs, or on the last day of a period during which there
16 is no beneficiary to whom a trustee may distribute
17 income.

18 16346. (a) A trustee shall allocate an income receipt
19 or disbursement other than one to which subdivision (a)
20 of Section 16340 applies to principal if its due date occurs
21 before a decedent dies in the case of an estate or before
22 an income interest begins in the case of a trust or
23 successive income interest.

24 (b) A trustee shall allocate an income receipt or
25 disbursement to income if its due date occurs on or after
26 the date on which a decedent dies or an income interest
27 begins and it is a periodic due date. An income receipt or
28 disbursement shall be treated as accruing from day to day
29 if its due date is not periodic or it has no due date. The
30 portion of the receipt or disbursement accruing before
31 the date on which a decedent dies or an income interest
32 begins shall be allocated to principal and the balance shall
33 be allocated to income.

34 (c) An item of income or an obligation is due on the
35 date the payer is required to make a payment. If a
36 payment date is not stated, there is no due date for the
37 purposes of this chapter. Distributions to shareholders or
38 other owners from an entity to which Section 16350
39 applies are deemed to be due on the date fixed by the
40 entity for determining who is entitled to receive the



1 distribution or, if no date is fixed, on the declaration date
2 for the distribution. A due date is periodic for receipts or
3 disbursements that must be paid at regular intervals
4 under a lease or an obligation to pay interest or if an entity
5 customarily makes distributions at regular intervals.

6 16347. (a) For the purposes of this section,
7 “undistributed income” means net income received
8 before the date on which an income interest ends. The
9 term does not include an item of income or expense that
10 is due or accrued or net income that has been added or
11 is required to be added to principal by the trust.

12 (b) Except as provided in subdivision (c), on the date
13 when a mandatory income interest ends, the trustee shall
14 pay to a mandatory income beneficiary who survives that
15 date, or to the estate of a deceased mandatory income
16 beneficiary whose death causes the interest to end, the
17 beneficiary’s share of the undistributed income that is not
18 disposed of under the trust.

19 (c) If immediately before the income interest ends,
20 the beneficiary under subdivision (b) has an unqualified
21 power to revoke more than 5 percent of the trust, the
22 undistributed income from the portion of the trust that
23 may be revoked shall be added to principal.

24 (d) When a trustee’s obligation to pay a fixed annuity
25 or a fixed fraction of the value of the trust’s assets ends,
26 the trustee shall prorate the final payment.

27

28 Article 5.1. Allocation of Receipts During
29 Administration of Trust: Receipts from Entities

30

31 16350. (a) For the purposes of this section, “entity”
32 means a corporation, partnership, limited liability
33 company, regulated investment company, real estate
34 investment trust, common trust fund, or any other
35 organization in which a trustee has an interest other than
36 a trust or decedent’s estate to which Section 16351 applies,
37 a business or activity to which Section 16352 applies, or an
38 asset-backed security to which Section 16367 applies.



1 (b) Except as otherwise provided in this section, a
2 trustee shall allocate to income money received from an
3 entity.

4 (c) A trustee shall allocate to principal the following
5 receipts from an entity:

6 (1) Property other than money.

7 (2) Money received in one distribution or a series of
8 related distributions in exchange for part or all of a trust's
9 interest in the entity.

10 (3) Money received in total or partial liquidation of the
11 entity.

12 (4) Money received from an entity that is a regulated
13 investment company or a real estate investment trust if
14 the money distributed is a capital gain dividend for
15 federal income tax purposes.

16 (d) For purposes of paragraph (3) of subdivision (c):

17 (1) Money is received in partial liquidation (A) to the
18 extent that the entity, at or near the time of a distribution,
19 indicates that it is a distribution in partial liquidation, or
20 (B) if the total amount of money and property received
21 in a distribution or series of related distributions is greater
22 than 20 percent of the entity's gross assets, as shown by the
23 entity's year-end financial statements immediately
24 preceding the initial receipt.

25 (2) Money is not received in partial liquidation, nor
26 may it be taken into account under subparagraph (B) of
27 paragraph (1), to the extent that it does not exceed the
28 amount of income tax that a trustee or beneficiary is
29 required to pay on taxable income of the entity that
30 distributes the money.

31 (e) A trustee may rely on a statement made by an
32 entity about the source or character of a distribution if the
33 statement is made at or near the time of distribution by
34 the entity's board of directors or other person or group of
35 persons authorized to exercise powers to pay money or
36 transfer property comparable to those of a corporation's
37 board of directors.

38 16351. A trustee shall allocate to income an amount
39 received as a distribution of income from a trust or a
40 decedent's estate (other than an interest in an



1 investment entity) in which the trust has an interest
2 other than a purchased interest, and shall allocate to
3 principal an amount received as a distribution of
4 principal from the trust or estate.

5 16352. (a) If a trustee who conducts a business or
6 other activity determines that it is in the best interest of
7 all the beneficiaries to account separately for the business
8 or other activity instead of accounting for it as part of the
9 trust's general accounting records, the trustee may
10 maintain separate accounting records for its transactions,
11 whether or not its assets are segregated from other trust
12 assets.

13 (b) A trustee who accounts separately for a business or
14 other activity may determine the extent to which its net
15 cash receipts must be retained for working capital, the
16 acquisition or replacement of fixed assets, and its other
17 reasonably foreseeable needs, and the extent to which the
18 remaining net cash receipts are accounted for as principal
19 or income in the trust's general accounting records. If a
20 trustee sells assets of the business or other activity, other
21 than in the ordinary course of the business or other
22 activity, the trustee shall account for the net amount
23 received as principal in the trust's general accounting
24 records to the extent the trustee determines that the
25 amount received is no longer required in the conduct of
26 the business or other activity.

27 (c) Businesses and other activities for which a trustee
28 may maintain separate accounting records include the
29 following:

30 (1) Retail, manufacturing, service, and other
31 traditional business activities.

32 (2) Farming.

33 (3) Raising and selling livestock and other animals.

34 (4) Managing rental properties.

35 (5) Extracting minerals and other natural resources.

36 (6) Timber operations.

37 (7) Activities to which Section 16366 applies.

38

39 Article 5.2. Allocation of Receipts During
40 Administration of Trust: Receipts Not Normally



Appportioned

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16355. A trustee shall allocate to principal:

(a) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary.

(b) Subject to any contrary rules in this article and in Articles 5.1 (commencing with Section 16350), 5.2 and 5.3 (commencing with Section 16360), money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit.

(c) Amounts recovered from third parties to reimburse the trust because of disbursements described in paragraph (7) of subdivision (a) of Section 16371 or for other reasons to the extent not based on the loss of income.

(d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

(e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.

(f) Other receipts allocated to principal as provided in Article 5.3 (commencing with Section 16360).

16356. Unless the trustee accounts for receipts from rental property pursuant to Section 16352, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease, and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.



1 16357. (a) An amount received as interest, whether
2 determined at a fixed, variable, or floating rate, on an
3 obligation to pay money to the trustee, including an
4 amount received as consideration for prepaying
5 principal, shall be allocated to income without any
6 provision for amortization of premium.

7 (b) An amount received from the sale, redemption, or
8 other disposition of an obligation to pay money to the
9 trustee more than one year after it is purchased or
10 acquired by the trustee, including an obligation whose
11 purchase price, or its value when it is otherwise acquired,
12 is less than its value at maturity, shall be allocated to
13 principal. If the obligation matures within one year after
14 it is purchased or acquired by the trustee, an amount
15 received in excess of its purchase price, or its value when
16 it is otherwise acquired, shall be allocated to income.

17 (c) This section does not apply to an obligation to
18 which Section 16361, 16362, 16363, 16364, 16366, or 16367
19 applies.

20 16358. (a) Except as otherwise provided in
21 subdivision (b), a trustee shall allocate to principal the
22 proceeds of a life insurance policy or other contract in
23 which the trust or its trustee is named as beneficiary,
24 including a contract that insures the trust or its trustee
25 against loss for damage to, destruction of, or loss of title to
26 a trust asset. The trustee shall allocate dividends on an
27 insurance policy to income if the premiums on the policy
28 are paid from income, and to principal if the premiums
29 are paid from principal.

30 (b) A trustee shall allocate to income proceeds of a
31 contract that insures the trustee against loss of occupancy
32 or other use by an income beneficiary, loss of income, or,
33 subject to Section 16352, loss of profits from a business.

34 (c) This section does not apply to a contract to which
35 Section 16361 applies.

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37 Article 5.3. Allocation of Receipts During
38 Administration of Trust: Receipts Normally



Appportioned

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16360. (a) If a trustee determines that an allocation between principal and income required by Section 16361, 16362, 16363, 16364, or 16367 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subdivision (b) of Section 16336 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subdivision (c) of Section 16336 and may be released for the reasons and in the manner provided in subdivisions (d) and (e) of Section 16336.

(b) An allocation is presumed to be insubstantial in either of the following cases:

(1) Where the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent.

(2) Where the value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(c) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

16361. (a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same



1 accounting period that is not characterized as interest, a
2 dividend, or an equivalent payment.

3 (c) If no part of a payment is characterized as interest,
4 a dividend, or an equivalent payment, and all or part of
5 the payment is required to be made, a trustee shall
6 allocate to income 10 percent of the part that is required
7 to be made during the accounting period and the balance
8 to principal. If no part of a payment is required to be
9 made or the payment received is the entire amount to
10 which the trustee is entitled, the trustee shall allocate the
11 entire payment to principal. For purposes of this
12 subdivision, a payment is not “required to be made” to
13 the extent that it is made because the trustee exercises a
14 right of withdrawal.

15 (d) If, to obtain an estate tax marital deduction for a
16 trust, a trustee shall allocate more of a payment to income
17 than provided by this section, the trustee shall allocate to
18 income the additional amount necessary to obtain the
19 marital deduction.

20 (e) This section does not apply to payments to which
21 Section 16362 applies.

22 16362. (a) In this section, “liquidating asset” means
23 an asset whose value will diminish or terminate because
24 the asset is expected to produce receipts for a period of
25 limited duration. The term includes a leasehold, patent,
26 copyright, royalty right, and right to receive payments
27 under an arrangement that does not provide for the
28 payment of interest on the unpaid balance. The term does
29 not include a payment subject to Section 16361, resources
30 subject to Section 16363, timber subject to Section 16364,
31 an activity subject to Section 16366, an asset subject to
32 Section 16367, or any asset for which the trustee
33 establishes a reserve for depreciation under Section
34 16372.

35 (b) A trustee shall allocate to income 10 percent of the
36 receipts from a liquidating asset and the balance to
37 principal.

38 16363. (a) To the extent that a trustee accounts for
39 receipts from an interest in minerals or other natural



1 resources pursuant to this section, the trustee shall
2 allocate them as follows:

3 (1) If received as a nominal bonus, nominal delay
4 rental, or nominal annual rent on a lease, a receipt shall
5 be allocated to income.

6 (2) If received from a production payment, a receipt
7 shall be allocated to income if and to the extent that the
8 agreement creating the production payment provides a
9 factor for interest or its equivalent. The balance shall be
10 allocated to principal.

11 (3) If an amount received as a royalty, shut-in-well
12 payment, take-or-pay payment, bonus, or delay rental is
13 more than nominal, 90 percent shall be allocated to
14 principal and the balance to income.

15 (4) If an amount is received from a working interest or
16 any other interest in mineral or other natural resources
17 not described in paragraph (1), (2), or (3), 90 percent of
18 the net amount received shall be allocated to principal
19 and the balance to income.

20 (b) An amount received on account of an interest in
21 water that is renewable shall be allocated to income. If the
22 water is not renewable, 90 percent of the amount shall be
23 allocated to principal and the balance to income.

24 (c) This chapter applies whether or not a decedent or
25 donor was extracting minerals, water, or other natural
26 resources before the interest became subject to the trust.

27 16364. (a) To the extent that a trustee accounts for
28 receipts from the sale of timber and related products
29 pursuant to this section, the trustee shall allocate the net
30 receipts as follows:

31 (1) To income to the extent that the amount of timber
32 removed from the land does not exceed the rate of
33 growth of the timber during the accounting periods in
34 which a beneficiary has a mandatory income interest.

35 (2) To principal to the extent that the amount of
36 timber removed from the land exceeds the rate of growth
37 of the timber or the net receipts are from the sale of
38 standing timber.

39 (3) To or between income and principal if the net
40 receipts are from the lease of timberland or from a



1 contract to cut timber from land owned by a trust, by
2 determining the amount of timber removed from the
3 land under the lease or contract and applying the rules in
4 paragraphs (1) and (2).

5 (4) To principal to the extent that advance payments,
6 bonuses, and other payments are not allocated pursuant
7 to paragraph (1), (2), or (3).

8 (b) In determining net receipts to be allocated under
9 subdivision (a), a trustee shall deduct and transfer to
10 principal a reasonable amount for depletion.

11 (c) This chapter applies whether or not a decedent or
12 transferor was harvesting timber from the property
13 before it became subject to the trust.

14 16365. (a) If a marital deduction is allowed for all or
15 part of a trust whose assets consist substantially of
16 property that does not provide the spouse with sufficient
17 income from or use of the trust assets, and if the amounts
18 that the trustee transfers from principal to income under
19 Section 16336 and distributes to the spouse from principal
20 pursuant to the terms of the trust are insufficient to
21 provide the spouse with the beneficial enjoyment
22 required to obtain the marital deduction, the spouse may
23 require the trustee to make property productive of
24 income or convert it into productive property or exercise
25 the power under subdivision (a) of Section 16336 within
26 a reasonable time. The trustee may decide which action
27 or combination of actions to take.

28 (b) In cases not governed by subdivision (a), proceeds
29 from the sale or other disposition of a trust asset are
30 principal without regard to the amount of income the
31 asset produces during any accounting period.

32 16366. (a) In this section, “derivative” means a
33 contract or financial instrument or a combination of
34 contracts and financial instruments that gives a trust the
35 right or obligation to participate in some or all changes in
36 the price of a tangible or intangible asset or group of
37 assets, or changes in a rate, an index of prices or rates, or
38 other market indicator for an asset or a group of assets.

39 (b) To the extent that a trustee does not account,
40 under Section 16352, for transactions in derivatives, the



1 trustee shall allocate to principal receipts from and
2 disbursements made in connection with those
3 transactions.

4 (c) If a trustee grants an option to buy property from
5 the trust, whether or not the trust owns the property
6 when the option is granted, grants an option that permits
7 another person to sell property to the trust, or acquires an
8 option to buy property for the trust or an option to sell an
9 asset owned by the trust, and the trustee or other owner
10 of the asset is required to deliver the asset if the option is
11 exercised, an amount received for granting the option
12 shall be allocated to principal. An amount paid to acquire
13 the option shall be paid from principal. A gain or loss
14 realized upon the exercise of an option, including an
15 option granted to a settlor of the trust for services
16 rendered, shall be allocated to principal.

17 16367. (a) In this section, “asset-backed security”
18 means an asset whose value is based upon the right it gives
19 the owner to receive distributions from the proceeds of
20 financial assets that provide collateral for the security.
21 The term includes an asset that gives the owner the right
22 to receive from the collateral financial assets only the
23 interest or other current return or only the proceeds
24 other than interest or current return. The term does not
25 include an asset to which Section 16350 or 16361 applies.

26 (b) If a trust receives a payment from interest or other
27 current return and from other proceeds of the collateral
28 financial assets, the trustee shall allocate to income the
29 portion of the payment which the payer identifies as
30 being from interest or other current return and shall
31 allocate the balance of the payment to principal.

32 (c) If a trust receives one or more payments in
33 exchange for the trust’s entire interest in an asset-backed
34 security in one accounting period, the trustee shall
35 allocate the payments to principal. If a payment is one of
36 a series of payments that will result in the liquidation of
37 the trust’s interest in the security over more than one
38 accounting period, the trustee shall allocate 10 percent of
39 the payment to income and the balance to principal.

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Article 6. Allocation of Disbursements During Administration of Trust

16370. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (2) or (3) of subdivision (c) of Section 16340 applies:

(a) Except as otherwise ordered by the court, one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.

(b) Except as otherwise ordered by the court, one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

(c) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

(d) All recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

16371. (a) A trustee shall make the following disbursements from principal:

(1) Except as otherwise ordered by the court, the remaining one-half of the disbursements described in subdivisions (a) and (b) of Section 16370.

(2) Except as otherwise ordered by the court, all of the trustee’s compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale.

(3) Payments on the principal of a trust debt.

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.



1 (5) Premiums paid on a policy of insurance not
2 described in subdivision (d) of Section 16370 of which the
3 trust is the owner and beneficiary.

4 (6) Estate, inheritance, and other transfer taxes,
5 including penalties, apportioned to the trust.

6 (7) Disbursements related to environmental matters,
7 including reclamation, assessing environmental
8 conditions, remedying and removing environmental
9 contamination, monitoring remedial activities and the
10 release of substances, preventing future releases of
11 substances, collecting amounts from persons liable or
12 potentially liable for the costs of those activities, penalties
13 imposed under environmental laws or regulations and
14 other payments made to comply with those laws or
15 regulations, statutory or common law claims by third
16 parties, and defending claims based on environmental
17 matters.

18 (b) If a principal asset is encumbered with an
19 obligation that requires income from that asset to be paid
20 directly to the creditor, the trustee shall transfer from
21 principal to income an amount equal to the income paid
22 to the creditor in reduction of the principal balance of the
23 obligation.

24 16372. (a) For purposes of this section,
25 “depreciation” means a reduction in value due to wear,
26 tear, decay, corrosion, or gradual obsolescence of a fixed
27 asset having a useful life of more than one year.

28 (b) A trustee may transfer from income to principal a
29 reasonable amount of the net cash receipts from a
30 principal asset that is subject to depreciation, under
31 generally accepted accounting principles, but may not
32 transfer any amount for depreciation under this section
33 in any of the following circumstances:

34 (1) As to the portion of real property used or available
35 for use by a beneficiary as a residence or of tangible
36 personal property held or made available for the personal
37 use or enjoyment of a beneficiary.

38 (2) During the administration of a decedent’s estate.

39 (3) If the trustee is accounting under Section 16352 for
40 the business or activity in which the asset is used.



1 (c) An amount transferred from income to principal
2 need not be held as a separate fund.

3 16373. (a) If a trustee makes or expects to make a
4 principal disbursement described in this section, the
5 trustee may transfer an appropriate amount from income
6 to principal in one or more accounting periods to
7 reimburse principal or to provide a reserve for future
8 principal disbursements.

9 (b) Principal disbursements to which subdivision (a)
10 applies include the following, but only to the extent that
11 the trustee has not been and does not expect to be
12 reimbursed by a third party:

13 (1) An amount chargeable to income but paid from
14 principal because it is unusually large, including
15 extraordinary repairs.

16 (2) A capital improvement to a principal asset,
17 whether in the form of changes to an existing asset or the
18 construction of a new asset, including special assessments.

19 (3) Disbursements made to prepare property for
20 rental, including tenant allowances, leasehold
21 improvements, and broker's commissions.

22 (4) Periodic payments on an obligation secured by a
23 principal asset to the extent that the amount transferred
24 from income to principal for depreciation is less than the
25 periodic payments.

26 (5) Disbursements described in paragraph (7) of
27 subdivision (a) of Section 16371.

28 (c) If the asset whose ownership gives rise to the
29 disbursements becomes subject to a successive income
30 interest after an income interest ends, a trustee may
31 continue to transfer amounts from income to principal as
32 provided in subdivision (a).

33 16374. (a) A tax required to be paid by a trustee
34 based on receipts allocated to income shall be paid from
35 income.

36 (b) A tax required to be paid by a trustee based on
37 receipts allocated to principal shall be paid from
38 principal, even if the tax is called an income tax by the
39 taxing authority.



1 (c) A tax required to be paid by a trustee on the trust's
2 share of an entity's taxable income shall be paid
3 proportionately as follows:

4 (1) From income to the extent that receipts from the
5 entity are allocated to income.

6 (2) From principal to the extent that both of the
7 following apply:

8 (A) Receipts from the entity are allocated to principal.

9 (B) The trust's share of the entity's taxable income
10 exceeds the total receipts described in paragraph (1) and
11 subparagraph (A).

12 (d) For purposes of this section, receipts allocated to
13 principal or income shall be reduced by the amount
14 distributed to a beneficiary from principal or income for
15 which the trust receives a deduction in calculating the
16 tax.

17 16375. (a) A fiduciary may make adjustments
18 between principal and income to offset the shifting of
19 economic interests or tax benefits between income
20 beneficiaries and remainder beneficiaries that arise from
21 any of the following:

22 (1) Elections and decisions, other than those described
23 in subdivision (b), that the fiduciary makes from time to
24 time regarding tax matters.

25 (2) An income tax or any other tax that is imposed
26 upon the fiduciary or a beneficiary as a result of a
27 transaction involving or a distribution from the estate or
28 trust.

29 (3) The ownership by a decedent's estate or trust of an
30 interest in an entity whose taxable income, whether or
31 not distributed, is includable in the taxable income of the
32 estate, trust, or a beneficiary.

33 (b) If the amount of an estate tax marital deduction or
34 charitable contribution deduction is reduced because a
35 fiduciary deducts an amount paid from principal for
36 income tax purposes instead of deducting it for estate tax
37 purposes, and as a result estate taxes paid from principal
38 are increased and income taxes paid by a decedent's
39 estate, trust, or beneficiary are decreased, each estate,
40 trust, or beneficiary that benefits from the decrease in



1 income tax shall reimburse the principal from which the
2 increase in estate tax is paid. The total reimbursement
3 must equal the increase in the estate tax to the extent that
4 the principal used to pay the increase would have
5 qualified for a marital deduction or charitable
6 contribution deduction but for the payment. The
7 proportionate share of the reimbursement for each
8 estate, trust, or beneficiary whose income taxes are
9 reduced must be the same as its proportionate share of
10 the total decrease in income tax. An estate or trust shall
11 reimburse principal from income.

12 SEC. 6. Section 17351 of the Probate Code is amended
13 to read:

14 17351. (a) If any of the trustees of a trust described in
15 Section 17350 is a trust company, the trust shall be
16 removed from continuing court jurisdiction as provided
17 in this section. Within six months after the initial funding
18 of the trust, the trustee shall give a notice of removal of
19 the trust from continuing court jurisdiction to each
20 beneficiary. Notice of removal shall be sent by registered
21 or certified mail or by first-class mail, but notice sent by
22 first-class mail is effective only if an acknowledgment of
23 receipt of notice is signed by the beneficiary and returned
24 to the trustee.

25 (b) The notice of removal of the trust from continuing
26 court jurisdiction shall contain the following:

27 (1) A statement that as of January 1, 1983, the law was
28 changed to remove the necessity for continuing court
29 jurisdiction over the trust.

30 (2) A statement that Section 17200 of the Probate
31 Code gives any beneficiary the right to petition a court to
32 determine important matters relating to the
33 administration of the trust.

34 (3) A copy of the text of Sections 17200 and 17201.

35 (4) A statement that each income beneficiary, as
36 defined in ~~subdivision (a) of Section 16301~~ *Section 16325*,
37 is entitled to an annual statement of the principal and
38 income receipts and disbursements of the trust and that
39 any other beneficiary is entitled to such information upon
40 written request to the trustee.



1 (5) The name and location of the court in the county
2 in which it is appropriate to file a petition pursuant to
3 Section 17200, the name and location of the court that had
4 jurisdiction over the administration of the decedent's
5 estate, and a statement that it is appropriate to file a
6 petition pursuant to Section 17200 with either court.

7 (c) The trustee shall file with the court that had
8 jurisdiction over the administration of the decedent's
9 estate proof of giving notice under this section within
10 seven months after the initial funding of the trust.

11 SEC. 7. Section 21524 of the Probate Code is amended
12 to read:

13 21524. If a marital deduction gift is made in trust, in
14 addition to the other provisions of this chapter, each of
15 the following provisions also applies to the marital
16 deduction trust:

17 (a) The transferor's spouse is the only beneficiary of
18 income or principal of the marital deduction property as
19 long as the spouse is alive. Nothing in this subdivision
20 precludes exercise by the transferor's spouse of a power
21 of appointment included in a trust that qualifies as a
22 general power of appointment marital deduction trust.

23 (b) Subject to subdivision (d), the transferor's spouse
24 is entitled to all of the income of the marital deduction
25 property not less frequently than annually, as long as the
26 spouse is alive.

27 (c) The transferor's spouse has the right to require that
28 the trustee of the trust make unproductive marital
29 deduction property productive or to convert it into
30 productive property within a reasonable time.

31 (d) Notwithstanding ~~subdivision (d) of Section 16304~~
32 *Section 16347*, in the case of qualified terminable interest
33 property under Section 2056(b)(7) or Section 2523(f) of
34 the Internal Revenue Code, on termination of the
35 interest of the transferor's spouse in the trust all of the
36 remaining accrued or undistributed income shall pass to
37 the estate of the transferor's spouse, unless the instrument



1 provides a different disposition that qualifies for the
2 marital deduction.

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