

AMENDED IN SENATE MAY 24, 2013

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 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, 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”~~ *section:*
4 (1) *“Entity”* means a corporation, partnership, limited liability
5 company, regulated investment company, real estate investment
6 trust, common trust fund, or any other organization in which a
7 trustee has an interest other than a trust or decedent’s estate to
8 which Section 16351 applies, a business or activity to which
9 Section 16352 applies, or an asset-backed security to which Section
10 16367 applies.

11 (2) *“Capital asset”* means a capital asset as defined in Section
12 1221 of the Internal Revenue Code.

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

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

- 17 (1) Property other than money.
- 18 (2) Money received in one distribution or a series of related
19 distributions in exchange for part or all of a trust’s interest in the
20 entity.

21 (3) Money received in total liquidation of the entity or in partial
22 liquidation of the entity, as defined in subdivision (d).

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

26 (d) For purposes of paragraph (3) of subdivision (c), money
27 shall be treated as received in partial liquidation to the extent the
28 amount received from the distributing entity is attributable to the
29 proceeds from a sale by the distributing entity, or by the distributing
30 entity’s subsidiary or affiliate, of a capital asset ~~as defined in~~
31 ~~Section 1221 of the Internal Revenue Code.~~ The following shall
32 apply to determine whether money is received in partial liquidation:

1 (1) A trustee may rely without investigation on a written
2 statement made by the distributing entity regarding the receipt.

3 (2) A trustee may rely without investigation on other information
4 ~~that is~~ actually known by the trustee regarding *whether* the receipt
5 *is attributable to the proceeds from a sale by the distributing entity,*
6 *or by the distributing entity's subsidiary or affiliate, of a capital*
7 *asset.*

8 (3) With regard to each receipt from a distributing entity, if
9 within 30 days from the date of the receipt the distributing entity
10 provides no written statement to the trustee that the receipt is a
11 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 and the trustee has no actual knowledge that
14 the receipt is a distribution attributable to the proceeds from a sale
15 of a capital asset by the distributing entity or by the distributing
16 entity's subsidiary or affiliate, then the following shall apply:

17 (A) The trustee shall have no duty to ~~inquire or~~ investigate
18 whether the receipt from the distributing entity is in partial
19 liquidation of the entity.

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

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

31 (ii) In the case of an interest that is not a security regularly traded
32 on a public exchange or market, the trust's proportionate share of
33 the value of the distributing entity as set forth in the most recent
34 appraisal, *if any*, actually received by the trustee and prepared by
35 a professional appraiser with a valuation date within three years
36 of the date of the receipt. The trustee shall have no duty to
37 investigate the existence of the appraisal or to obtain an appraisal
38 nor shall the trustee have any liability for relying upon an appraisal
39 prepared by a professional appraiser. The term "professional
40 appraiser" shall refer to an appraiser who has earned an appraisal

1 designation for valuing the type of property subject to the appraisal
2 from a 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~~ *If the trust's interest in the*
6 *distributing entity cannot be valued under clause (i) or clause (ii),*
7 the trust's proportionate share of the distributing entity's net assets,
8 *to be calculated as gross assets minus liabilities,* as shown in the
9 distributing entity's yearend financial statements immediately
10 preceding the receipt.

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

15 (e) If a trustee allocates a receipt to principal in accordance with
16 subdivision (d), or allocates a receipt to income because the receipt
17 is not determined to be in partial liquidation under subdivision (d),
18 ~~then~~ the trustee shall not be liable for any claim of improper
19 allocation of the receipt that is based on information that was not
20 received or actually known by the trustee as of the date of
21 allocation.

22 (f) (1) Notwithstanding anything to the contrary in subdivision
23 (d), if the receipt was allocated between December 2, 2004, and
24 July 18, 2005, a trustee shall not be liable for allocating the receipt
25 to income if the amount received by the trustee, when considered
26 together with the amount received by all owners, collectively,
27 exceeded 20 percent of the entity's gross assets, but the amount
28 received by the trustee did not exceed 20 percent of the entity's
29 gross assets.

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

O