

CHAPTER.....

AN ACT relating to trusts; revising certain provisions of the Uniform Principal and Income Act (1997) governing the allocation of distributions from certain entities to principal and income; revising certain provisions governing disbursements made from principal and income; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a trustee must allocate to the principal of the trust money received in total or partial liquidation of certain entities. (NRS 164.825) **Section 1** of this bill replaces this provision by requiring a trustee to allocate to principal money received in a distribution if the trustee determines that the distribution is a return of capital. To determine the extent to which money received in a distribution is a return of capital, the trustee may rely upon and determine the weight to be given to certain information and the trustee is not bound by a statement of the entity which made the distribution. If the trustee is in doubt about the portion of the distribution that is a return of capital, the trustee must allocate to income the amount the trustee believes is clearly not a return of capital and the trustee must allocate to principal any remaining amount.

Under existing law, regular compensation for the services of a trustee and any person providing investment services to the trustee must be paid evenly out of the principal of the trust and the income from the trust. (NRS 164.900, 164.905) **Sections 2 and 3** of this bill provide that the amount paid for regular compensation out of income must not exceed 5 percent of income for that portion of the accounting period on which the compensation is based.

For example, under existing law, if regular compensation owed to a trustee is \$20,000 for one year, \$10,000 is paid out of principal and \$10,000 is paid out of income, regardless of income for that year. Under the provisions of **sections 2 and 3** of this bill, the amount of income for the year would first be determined. Assuming the amount of income for the year were \$100,000 and the regular compensation owed to a trustee were \$20,000, then \$5,000 would be paid out of income and the remaining \$15,000 would be paid out of principal. However, if the amount of income for the year were \$200,000 instead of \$100,000, then regular compensation would be paid evenly out of income and principal, as under existing law, because the amount paid out of income, \$10,000, would not exceed the cap of 5 percent of income.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 164.825 is hereby amended to read as follows:
164.825 1. As used in this section, “entity” means a corporation, partnership, limited-liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which NRS 164.830 applies, a business



or activity to which NRS 164.835 applies or an asset-backed security to which NRS 164.895 applies.

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

3. A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money;

(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(c) Money received in ~~total or partial liquidation of the entity;~~ *a distribution if and to the extent that the trustee determines that the distribution is a return of capital;* and

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

4. ~~Money is received in partial liquidation:~~

~~—(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or~~

~~—(b) If the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.~~

~~—5. Money is not received in partial liquidation, nor may it be taken into account under paragraph (b) of subsection 4.] A trustee may determine that money is received as a return of capital if and to the extent that ~~it does not exceed~~ the money received exceeds the **total** amount of income tax that ~~a trustee or beneficiary~~ the beneficiaries must pay on their respective shares of the taxable income of the entity ~~that distributes the money.] and the trust must pay from income under NRS 164.810 to 164.925, inclusive, on its share of the taxable income of the entity. A trustee may determine that money which represents gain upon the sale or other disposition of property described in subsection 5 is a return of capital.~~~~

5. *In determining if and to what extent a distribution is a return of capital, a trustee may rely upon and determine the weight to be given to any information concerning the source of the money from which the distribution is made which is reasonably available to the trustee, including, without limitation, information concerning:*

(a) The amount of the distribution in question compared to the amount of the entity's regular, periodic distributions, if any,



during the year in which the distribution is made and in prior years;

(b) If the primary activity of the entity is not an investment activity described in paragraph (c), the amount of money the entity has received from the conduct of its normal business activities compared to the amount of money the entity has received from all other sources, including, without limitation:

(1) The sale of all or part of a business conducted by the entity or by another entity in which it owns an interest, directly or indirectly, including, without limitation, money representing any gain realized on such a sale;

(2) The sale of one or more business assets that are not sold to customers in the normal course of the entity's business, including, without limitation, money representing any gain realized on such a sale; and

(3) The sale of one or more investment assets, including, without limitation, money representing any gain realized on such a sale;

(c) If the primary activity of the entity is to invest funds in another entity or in investment property that the entity owns directly for the purpose of realizing gain on the disposition of all or a part of such an investment, the amount of money that the entity has received from the sale of all or part of one or more of those investments, including, without limitation, money representing any gain realized on such a disposition;

(d) The amount of money the entity has accumulated, to the extent that the governing body of the entity has decided the money is no longer needed for the business or investment needs of the entity;

(e) The amount of income tax, if any, that each beneficiary has paid on the undistributed income of the entity before the year of the distribution and the amount of income tax on the undistributed income of the entity that the trust has paid from the income or principal of the trust;

(f) The amount of money the entity has borrowed, whether or not repayment of the loan is secured to any extent by one or more of the entity's assets;

(g) The amount of money the entity has received from the sources described in NRS 164.855, 164.870, 164.875 and 164.880; and

(h) The amount of money the entity has received from a source not described in this subsection.



6. *If a trustee is in doubt about the portion of a distribution that is a return of capital, the trustee shall resolve the doubt by allocating to income the amount, if any, the trustee believes is clearly not a return of capital and by allocating the balance of the distribution to principal.*

7. A trustee may rely upon ~~{a statement made}~~ , without independent investigation, the financial statements of an entity and any other information provided by an entity about the ~~{source of}~~ character of a distribution *or the source of funds from which the distribution is made* if the ~~{statement is made}~~ information is provided at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors. *The trustee is not bound by any statement made or implied by the entity about the extent to which a distribution is or is not a return of capital. If the trustee receives additional information about the distribution after the trustee has decided the amount that is a return of capital, the trustee is not required to change that decision.*

Sec. 2. NRS 164.900 is hereby amended to read as follows:

164.900 A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (b) or (c) of subsection 2 of NRS 164.800 applies:

1. One-half of the regular compensation of the trustee and of any person providing advisory or custodial services to the trustee concerning investment ~~{}~~ , *except that the amount of the disbursements from income made pursuant to this subsection must not exceed 5 percent of income for the portion of the accounting period on which such regular compensation is based;*

2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

3. All 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; and

4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Sec. 3. NRS 164.905 is hereby amended to read as follows:

164.905 1. A trustee shall make the following disbursements from principal:



- (a) The remaining ~~one-half~~ *portion* of the disbursements described in subsections 1 and 2 of NRS 164.900;
- (b) All the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;
- (c) Payments on the principal of a trust debt;
- (d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
- (e) Premiums paid on a policy of insurance not described in subsection 4 of NRS 164.900 of which the trust is the owner and beneficiary;
- (f) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and
- (g) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

2. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

