



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites	
------	------------------	----------------	--------------	-----------------	------------------	--------------	--

Code: Section:

[Up^](#) [Add To My Favorites](#)

CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.)*

PART 1. PROPERTY IN GENERAL [654 - 749] (*Part 1 enacted 1872.)*

TITLE 2. OWNERSHIP [669 - 742] (*Title 2 enacted 1872.)*

CHAPTER 2.6. Legal Estates Principal and Income Law [731 - 731.15] (*Chapter 2.6 added by Stats. 1968, Ch. 193.)*

731. This chapter may be cited as the Legal Estates Principal and Income Law.

(*Added by Stats. 1968, Ch. 193.*)

731.01. Nothing in this chapter shall affect the provisions of the Personal Income Tax Law and the Bank and Corporation Tax Law.

(*Added by Stats. 1968, Ch. 193.*)

731.02. This chapter shall apply to all transactions by which a principal was established without the interposition of a trust on or after September 13, 1941, or is hereafter so established. Transactions by which a principal is held in trust are governed by Chapter 3 (commencing with Section 16300) of Part 4 of Division 9 of the Probate Code.

(*Amended by Stats. 1986, Ch. 820, Sec. 3. Operative July 1, 1987, by Sec. 43 of Ch. 820.*)

731.03. (a) "Principal" as used in this chapter means any realty or personalty which has been so set aside or limited by the owner thereof or a person thereto legally empowered that it and any substitutions for it are eventually to be conveyed, delivered, or paid to a person, while the return therefrom or use thereof or any part of such return or use is in the meantime to be taken or received by or held for accumulation for the same or another person;

(b) "Income" as used in this chapter means the return derived from principal;

(c) "Tenant" as used in this chapter means the person to whom income is presently or currently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution;

(d) "Remainderman" as used in this chapter means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.

(*Added by Stats. 1968, Ch. 193.*)

731.04. This chapter shall govern the ascertainment of income and principal and the apportionment of receipts and expenses between tenants and remaindermen in all cases where a principal has been established without the interposition of a trust, except that in the establishment of the principal, provision may be made touching all matters covered by this chapter, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the tenant or other person to do so, and such provision and direction, where not otherwise contrary to law shall control notwithstanding this chapter. The exercise by the tenant or other designated person, of such discretionary power if in good faith and according to his best judgment, shall be conclusive, irrespective of whether it may be in accordance with the determination which the court having jurisdiction would have made.

(*Added by Stats. 1968, Ch. 193.*)

731.05. (a) All receipts of money or other property paid or delivered as rent of realty or hire of personalty, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this chapter. Dividends on corporate shares, payable in stock or otherwise, shall be deemed income except as provided in Section 731.07.

(b) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal unless otherwise expressly provided in this chapter. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal, except in the case of property referred to and defined by Section 731.14, in which case the provisions of Section 731.14 shall govern.

(c) All income, after payment of expenses properly chargeable to it, shall be paid and delivered to the tenant or retained by him if already in his possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law, except in the case of property referred to and defined by Section 731.14, in which case the provisions of Section 731.14 shall govern.

(Added by Stats. 1968, Ch. 193.)

731.06. Whenever a tenant's right to income shall cease by death, or in any other manner, all payments theretofore actually paid to the tenant shall belong to the tenant or to his personal representative; all income actually received after such termination shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established.

(Added by Stats. 1968, Ch. 193.)

731.07. (a) All dividends on shares of a corporation forming a part of the principal which are payable

(1) In shares of the declaring corporation of the same kind and rank as the shares on which such dividend is paid; and

(2) In shares of the declaring corporation of a different kind or rank to the extent that they represent a capitalization of surplus not derived from earnings, shall be deemed principal.

Subject to the provisions of this section, all dividends, other than those awarded to principal under (1) and (2) above, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed income.

Where the tenant shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the tenant except as provided in subdivision (f) of this section.

(b) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(c) Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(d) Where a corporation succeeds another by merger, consolidation, or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to, or in substitution for, their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But, two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(e) In applying this section the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or in default thereof the date of declaration of the dividend.

(f) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(g) The tenant may rely upon the statement of the paying corporation as to whether dividends are paid from profits or earnings or are a return of capital or division of corporate property, and as to any other fact, relevant under any provision of this chapter, concerning

the source or character of dividends or disbursements of corporate assets.

(Added by Stats. 1968, Ch. 193.)

731.08. Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value as fixed by the appraiser or appraisers regularly appointed by the court, or, in default thereof, at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale or other disposition any loss or gain realized thereon shall fall upon or inure to the principal, except in the case of property referred to and defined by Section 731.14, in which case the provisions of Section 731.14 shall govern. Where any part of the principal consists of a bond or other obligation for the payment of money, bearing no stated interest but redeemable at maturity or a future time at an amount in excess of the amount in consideration of which it was issued, such accretion, as when realized, shall inure to income.

(Added by Stats. 1968, Ch. 193.)

731.09. (a) Whenever a tenant is authorized by the terms of the transaction by which the principal was established or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(b) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross returns during, and the inventory value of the property at the end of, such period, the expenses during, and the inventory value of the property at the beginning of, such period.

(c) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(d) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon principal.

(Added by Stats. 1968, Ch. 193.)

731.10. Where any part of the principal consists of animals employed in business, the provisions of Section 731.09 shall apply; and in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income.

(Added by Stats. 1968, Ch. 193.)

731.11. (a) Where any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas, or other natural resources, and the tenant in possession is not under a duty to change the form of the investment of the principal, or (the duty to change the form of the investment being absent) is authorized by law or by the terms of the transaction by which the principal was established, to lease or otherwise develop such natural resources, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such proceeds shall be deemed income, whether received as rent or bonus on a lease or as a consideration, by way of royalties or otherwise for the permanent severance of such natural resources from the lands. A duty to change the form of the investment shall be negated, and authority to develop such natural resources shall be deemed to exist (not excluding other cases where appropriate intent is manifested) where: (1) the resources or the right to exploit them is specifically devised or granted, or (2) where development or exploitation of the resources had begun prior to the transaction by which the principal was established, or (3) where by the terms of that transaction a general authority to lease or otherwise develop is conferred, or (4) where the lands are directed to be retained. The fact that such property received upon creation of the principal does not fall within the category of investments which the tenant or a trustee would be authorized to make under the law or the terms of the particular instrument by which the principal is established, nor the conferring of a mere authority, as distinguished from a direction, to sell such property, shall not be deemed to evidence an intent that the form of the investment shall be changed.

(b) Where any part of the principal consists of property in lands containing such natural resources, and the conditions under which the proceeds thereof become income shall not exist, then in the absence of the expression of contrary intent in the terms of the transaction by which the principal was established, all such proceeds from such resources, not in excess of 5 percent per annum of the inventory value of such resources as fixed by the appraiser or appraisers regularly appointed by the court, or in default thereof their fair market value at the time the principal was established, or their cost if acquired later, shall be deemed income and the remainder principal.

(c) Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own benefit.

(Added by Stats. 1968, Ch. 193.)

731.12. Where any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, and the tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties, or income from the property shall be income to the tenant; but where the tenant is under a duty to change the form of the investment, either at once or as soon as a reasonable price, not representing an undue sacrifice of value, may be obtained, then the rents, royalties or income from such property not in excess of 5 percent per annum of its inventory value as fixed by the appraiser or appraisers regularly appointed by the court, or in default thereof its market value at the time the principal was established or at its cost where purchased later, shall be deemed income and the remainder principal.

(Added by Stats. 1968, Ch. 193.)

731.13. (a) Where any part of a principal in the possession of a tenant consists of realty or personalty which for more than a year and until disposed of as hereinafter stated has not produced an average net income of at least 1 percent per annum of its inventory value as fixed by the appraiser or appraisers regularly appointed by the court, or in default thereof its market value at the time the principal was established or of its cost where purchased or otherwise acquired later, and the tenant is under a duty to change the form of the investment as soon as a reasonable price, not representing an undue sacrifice of value, may be obtained and such change is delayed, but is made before the principal is finally distributed, then the tenant shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(b) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of 5 percent per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the inventory value of the property as fixed by the appraiser or appraisers regularly appointed by the court, or in default thereof its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(c) The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed in the absence of evidence to the contrary, to be one year after the tenant first received the property if then unproductive, otherwise one year after it became unproductive.

(d) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(e) As between successive tenants, or a tenant and a remainderman, delayed income shall be apportioned in the same manner as provided for income by Section 731.06.

(Added by Stats. 1968, Ch. 193.)

731.14. (a) Where any part of the principal in possession of the tenant consists of an obligation for the payment of money secured by a mortgage or other hypothecation of real or personal property, and by reason of the enforcement of such obligation or by agreement in lieu of enforcement the tenant acquires any property, real or personal, of whatsoever kind, including a money judgment, such property shall be treated as a single substituted asset, and thereafter all income therefrom, expenses incident thereto and proceeds received upon sale, satisfaction, or transfer thereof, not a leasing or letting, excepting gain or profit on such sale, satisfaction or transfer, shall be apportioned in the same manner as provided by this chapter for property of like character acquired by purchase or held as a part of the estate at the time the principal was established.

Gain or profit realized on sale, satisfaction, or transfer, not a leasing or a letting, of property referred to in this section shall be credited to the income in an amount up to, but not exceeding, the accrued unpaid interest on the original obligation secured by such property as of the date of its acquisition by enforcement of the obligation or agreement in lieu thereof, and the balance shall be credited to principal. Such credit to income on account of accrued interest shall be in addition to any and all other credits due income by the terms of any other section of this chapter. Should any portion of such credit to income on account of accrued interest be in a form other than cash, then, and in that event, the full amount of such credit to income shall be paid first out of any sums received from the conversion of such asset into cash whether by payment, sale, or transfer before any sums so received shall be paid to principal.

As between successive tenants or a tenant and a remainderman, all sums paid hereunder on account of accrued interest shall be apportioned in the same manner as provided for income by Section 731.06.

The cost price of the property shall be the unpaid balance of the principal sum of the debt secured by such property, plus all sums whenever paid on any of the following items:

- (1) All costs, charges, and expenses incident to the acquisition of such property;

(2) All taxes, bonds, and assessments, or any of them, which were payable at the date of the acquisition of such property by the tenant, excepting, however, interest accruing thereon from the date of the acquisition of such property by the tenant; and all such sums shall be a charge against the principal.

(b) Upon the sale, surrender, or other disposition of a bond, debenture, note, or other evidence of an indebtedness, voluntarily created, or of a certificate of deposit evidencing the deposit of any such instrument with a protective or reorganization committee, or of stock or other security received through participation in the enforcement of such obligation or the foreclosure of the security therefor, upon which bond or other obligation there is overdue unpaid interest which accrued after the establishment of the principal, the proceeds realized upon such sale, surrender, or other disposition, after repayment (1) of expenses incurred in connection therewith and (2) of any sums paid to protect or preserve such security, shall be divided pro rata between income and principal, computing interest at the rate specified in such obligation. The amount allocable to income shall in no case exceed the interest accrued and unpaid on the original obligation up to the time of such sale or other disposition or, where another security has been received in lieu of the original obligation, the income which would have accrued on the latter up to such time, less income received from the original or the substituted security. The terms sale, surrender, or other disposition, as above used, shall include compromise, settlement, accord and satisfaction, and similar arrangements.

(Added by Stats. 1968, Ch. 193.)

731.15. (a) All ordinary expenses incurred in connection with the principal or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, compensation of assistants and court costs on regular accountings, except attorneys' fees, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive property as defined in Section 731.13, shall be paid out of principal, subject to the provisions of subdivision (b) of Section 731.13. Attorneys' fees for ordinary or current services shall be paid one-half out of income; one-half out of principal or in such other proportion as the court may direct.

(b) Attorneys' fees and other costs incurred in maintaining or defending any action to protect the property or assure the title thereof, unless due to the fault or cause of the tenant, costs of, or assessments for, improvements to property forming part of the principal, brokers' commissions, title charges, and other costs incurred in connection with purchasing, selling, or leasing property, or investing or reinvesting principal, and all other expenses, except as specified in subdivision (a) of this section, shall be paid out of principal. Any tax levied by any authority, federal, state, or foreign, upon profit or gain defined under the terms of subdivision (b) of Section 731.05 shall be paid out of principal, notwithstanding such tax may be denominated a tax upon income by the taxing authority.

(Added by Stats. 1968, Ch. 193.)