

No. 361, S.]

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CHAPTER 300

AN ACT to repeal 320.08; and to create 231.40 of the statutes, relating to trustee's fees and a uniform principal and income act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 231.40 of the statutes is created to read:

231.40 UNIFORM PRINCIPAL AND INCOME ACT. (1) DEFINITIONS. As used in this section:

(a) "Principal" 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" means the return derived from principal;

(c) "Tenant" 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" 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;

(e) "Trustee" includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee.

(2) APPLICATION; POWERS OF SETTLOR. This section 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 with or, unless otherwise stated herein-after, without the interposition of a trust; except that in the establishment of the principal provision may be made touching all matters covered by this section, 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 trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this section.

(3) INCOME AND PRINCIPAL; DISPOSITION. (a) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on 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 section.

(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 the 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 section. Any profit or loss resulting upon any change in form of principal shall enure to or fall upon principal.

(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.

(4) APPORTIONMENT OF INCOME. Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments

should be paid, he or his personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this subsection shall apply whether an ultimate remainderman is specifically named or not. Likewise when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal.

(5) CORPORATE DIVIDENDS AND SHARE RIGHTS. (a) All dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this subsection, all dividends payable otherwise than in the shares of the corporation itself, 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 trustee 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 trustee, except that any distribution by a mutual fund or investment company designated by it as a capital gains distribution shall be treated as principal.

(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 2 corporations shall be considered a single corporation in applying the provisions of this subsection. But 2 corporations shall not be considered a single corporation under this subsection 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.

(6) PREMIUM AND DISCOUNT BONDS. 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 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 any loss or gain realized thereon shall fall upon or enure to the principal; but the foregoing shall not apply to bonds or other obligations issued on a discount basis and subject to definite appreciation in value on a fixed schedule. The increment in value of such bonds or other obligations shall constitute income as of each date on which an increment occurs and shall be made available as income for such disposition as is provided for by the terms of the transaction under which the principal was established by transferring from the principal on each such date an amount equivalent to the increment then occurring.

(7) DISPOSITION OF NATURAL RESOURCES. 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 trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, 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, if received as rent on a lease, shall be deemed income, but if received as consideration, whether as royalties or otherwise, for the permanent severance of such natural resources from the lands, shall be deemed principal to be invested to produce income. Nothing in this subsection 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.

(8) EXPENSES; TRUST ESTATES. (a) All ordinary expenses incurred in connection with the trust estate 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 and compensation of assistants and agents shall be paid out of income.

(b) All other expenses including cost of investing or reinvesting principal, court costs, attorneys' fees, and other fees on accountings and in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state, or foreign, upon profit or gain defined as principal under the terms of sub. (3) (b) shall be paid out of principal notwithstanding the tax may be denominated a tax upon income by the taxing authority. The amount of tax paid out of principal shall be that proportion of the total tax payable by the trustee which the taxable portion of such profit or gain bears to taxable income.

(c) In the absence of any direction in an instrument creating a trust, unless the court having jurisdiction over the administration thereof shall otherwise direct, 75 per cent of the customary annual fees of the trustee shall be charged against the incomes, and 25 per cent thereof shall be charged against the corpus of the trust.

(d) Expenses paid out of income according to par. (a) which represent regularly recurring charges shall be considered to have accrued

from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(e) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in par. (b), the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

(9) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(10) SHORT TITLE. This section may be cited as the "Uniform Principal and Income Act".

(11) CONFLICTS. This section shall supersede any provision of law in conflict therewith.

(12) APPLICATION; ESTATES AFFECTED. This section shall apply to all estates of tenants or remaindermen which are effective at the time of its passage or which shall thereafter become effective.

SECTION 2. 320.08 of the statutes is repealed.

Approved July 3, 1957.
