

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 4. SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR
CHARITABLE PURPOSES ACT

TEXT OF PROPOSED REGULATIONS

§ 328.1 Transactions Involving All or Substantially All Assets of Charitable Corporation or Trust, or Assets in Charitable Trust Held by a Mutual Benefit Corporation

(a) For purposes of giving notice to the Attorney General of certain transactions involving all or substantially all of the assets of a charitable corporation or trust, “substantially all” of the charitable assets means an asset or assets equal to or exceeding 75% of the value of all assets held by the charitable corporation or trust at the time of the notice or at any time during the six-month period before submitting the notice.

(b) The duty to give notice may not be avoided by structuring a single transaction into multiple transactions to avoid triggering the 75% threshold. If a transaction is part of or related to a series of transactions, all of the related transactions shall be considered and analyzed as a single transaction for purpose of giving notice. When determining whether a series of transactions will be considered a single transaction for purposes of this section, the Attorney General will consider the surrounding circumstances, including, but not limited, to any of the following factors:

(1) whether the parties to the transaction are the same parties in another transaction, or related to or affiliated with parties in another transaction;

(2) whether the completion of one transaction is conditioned upon the completion of another transaction;

(3) whether the membership, officers, or governing board of the charitable corporation or trust has taken any action to wind down or dissolve the charitable corporation or trust; and

(4) whether the liabilities of the charitable corporation or trust significantly outweigh its assets.

(c) A trustee or board of directors may request a waiver of the notice requirement. The Attorney General may waive notice for a particular transaction if the Attorney General determines that the transaction poses no risk to the public interest and the financial cost to the charitable corporation, trust, or nonprofit mutual benefit corporation of providing notice to the Attorney General outweighs the potential benefit to the public interest. When requesting a waiver, the trustee or board of directors must provide the Attorney General with all material facts to enable the Attorney General to make such a determination. “Material facts” are defined in section 999.1, subdivision (c), of these regulations.

(d) This section does not apply to a nonprofit mutual benefit corporation, unless it holds its assets in charitable trust.

Note: Authority cited: Sections 5913, 7913 and 9633, Corporations Code; Section 16106, Probate Code. Reference: Sections 5913, 7238, 7913 and 9633, Corporations Code; Section 16106, Probate Code, Sections 12586 and 12587, Government Code.