

386.609 Avoidance of qualified dispositions.

- (1) A qualified disposition to a qualified trust shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition was avoided, together with costs, including attorneys' fees, that the court may allow.
- (2) In the event any qualified disposition is avoided as described in subsection (1) of this section:
 - (a) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:
 1. The qualified trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the qualified trustee in defense of the action or proceedings to avoid the qualified disposition except any valid lien attaching to the property before a disposition of that property to a trustee of a qualified trust shall survive the disposition, and the trustee shall take title to the property subject to the valid lien and subject to any agreements that created or perfected the valid lien;
 2. The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims, and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and
 3. For purposes of this paragraph, it shall be presumed that the qualified trustee did not act in bad faith merely by accepting the property; and
 - (b)
 1. If the court is satisfied that a beneficiary of a qualified trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the beneficiary's right to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees of the qualified trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid a qualified disposition.
 2. For purposes of this paragraph, it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.
- (3) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of KRS 386.601(11)(a).
- (4) In the case of a disposition to more than one (1) trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the recipient trustees are qualified trustees.

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