

CHAPTER 112

FIDUCIARIES

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112.01 Uniform fiduciaries act. (1) DEFINITIONS. In this section unless the context or subject matter otherwise requires:

(a) “Bank” includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

(b) “Fiduciary” includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, prime contractor or subcontractor who is a trustee under ch. 779, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

(c) A thing is done “in good faith” within the meaning of this section, when it is in fact done honestly, whether it be done negligently or not.

(d) “Person” includes a corporation, limited liability company, partnership, or other association or 2 or more persons having a joint or common interest.

(e) “Principal” includes any person to whom a fiduciary as such owes an obligation.

(3) APPLICATION OF PAYMENTS MADE TO FIDUCIARIES. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(5) TRANSFER OF NEGOTIABLE INSTRUMENT BY FIDUCIARY. If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to a fiduciary’s principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his or her principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary, unless the indorsee takes the instrument with actual knowledge of such breach or with knowledge of such facts that the indorsee’s action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of the fiduciary’s obligation as fiduciary in transferring the instrument.

(6) CHECK DRAWN BY FIDUCIARY PAYABLE TO THIRD PERSON. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of a fiduciary’s principal by a fiduciary empowered to draw such instrument in the name of his or her principal, the payee is not bound to inquire whether the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary unless the payee takes the instrument with actual knowledge of such breach, or with knowledge of such facts that the payee’s action in taking the instrument amounts to bad faith.

If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of the fiduciary’s obligation as fiduciary in drawing or delivering the instrument.

(7) CHECK DRAWN BY AND PAYABLE TO FIDUCIARY. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of a fiduciary’s principal by a fiduciary empowered to draw such instrument in the name of his or her principal, payable to the fiduciary personally, or payable to a 3rd person, and transferred by the 3rd person to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary, unless the transferee takes the instrument with actual knowledge of such breach, or with knowledge of such facts that the transferee’s action in taking the instrument amounts to bad faith.

(8) DEPOSIT IN NAME OF FIDUCIARY AS SUCH. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary in drawing the check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank, and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of the fiduciary’s obligation as fiduciary in drawing or delivering the check.

(9) DEPOSIT IN NAME OF PRINCIPAL. If a check is drawn upon the account of a fiduciary’s principal in a bank by a fiduciary, who is empowered to draw checks upon his or her principal’s account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of the fiduciary’s obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of the fiduciary’s obligation as fiduciary in drawing or delivering the check.

(10) DEPOSIT IN FIDUCIARY’S PERSONAL ACCOUNT. If a fiduciary makes a deposit in a bank to the fiduciary’s personal credit of checks drawn by the fiduciary upon an account in his or her own name as fiduciary, or of checks payable to the fiduciary as fiduciary, or of checks drawn by the fiduciary upon an account in the name of his or her principal if the fiduciary is empowered to draw checks thereon, or of checks payable to his or her principal and

indorsed by the fiduciary, if the fiduciary is empowered to indorse such checks, or if the fiduciary otherwise makes a deposit of funds held by the fiduciary as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his or her obligation as fiduciary. The bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary, including checks payable to the bank, without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his or her obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith, and the bank paying the check is not bound to inquire whether the fiduciary is committing thereby a breach of his or her obligation as fiduciary.

(11) DEPOSIT OR SAFE DEPOSIT BOX RENTAL IN NAME OF ESTATE OR TWO OR MORE FIDUCIARIES. When a deposit is made in a bank or a safe deposit box or storage space rented, in the name of 2 or more persons as trustees, executors or administrators, or in the name of an estate having 2 or more executors or administrators, and a check is drawn upon such account, or access to said box or storage space is sought by any one or more of such fiduciaries authorized by the other fiduciary or fiduciaries to draw checks upon such account, or to enter said box or said storage space, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such fiduciary or fiduciaries to draw checks upon such account, or to enter said box or storage space, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

(12) NOT RETROACTIVE. The provisions of this section shall not apply to transactions taking place prior to June 4, 1925.

(13) CASES NOT PROVIDED FOR IN SECTION. In any case not provided for in this section the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

(14) 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.

(15) SHORT TITLE. This section may be cited as the “Uniform Fiduciaries Act”.

(16) INCONSISTENT LAWS REPEALED. All acts or parts of acts inconsistent with this section are repealed.

History: 1975 c. 409; 1979 c. 89; 1981 c. 391 s. 210; 1983 a. 189; 1993 a. 112, 492; 1997 a. 253.

Actual knowledge or bad faith is precondition for liability under (6). *Bolger v. Merrill Lynch Trust*, 143 Wis. 2d 766, 423 N.W.2d 173 (Ct. App. 1988).

Sub. (10) applies when a person is actually acting as a fiduciary and the bank is aware that it is dealing with a fiduciary. If these facts are not present the defenses contained in sub. (10) do not apply. *Larson v. Kleist Builders, Ltd.* 203 Wis. 2d 341, 553 N.W.2d 281 (Ct. App. 1996).

112.02 Suspension of powers of fiduciaries engaged in war service.

(1) Whenever an executor, administrator, guardian or testamentary trustee is engaged in war service as defined in this section, such fiduciary or any other person interested in the estate or fund may present a petition to the court having jurisdiction praying for a decree suspending the powers of such fiduciary while the fiduciary is engaged in war service and until the further order of the court, and if the suspension of such fiduciary will leave no person acting as executor, administrator, guardian or testamentary trustee, or leave the sole beneficiary of a trust as the only acting trustee thereof, the petition must pray for the appointment of a successor unless a successor has been named in the will and such successor is not engaged in war service or is not for other reasons unable or unwilling to act as a fiduciary.

(2) For the purposes of this section a fiduciary shall be deemed to be engaged in war service in any of the following cases:

(a) If the fiduciary is a member of the military or naval forces of the United States or of any of its allies or if the fiduciary has

been accepted for such service and is awaiting induction into such service.

(b) If the fiduciary is engaged in any work abroad in connection with a governmental agency of the United States or in connection with the American Red Cross society or any other body with similar objects.

(c) If the fiduciary is interned in an enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state.

(3) Where the application is made by a fiduciary engaged in war service notice shall be given to such persons and in such manner as the presiding judge may direct. Where the application is made by any other person interested in the estate or fund and the fiduciary is in the military or naval service of the United States notice shall be given to such fiduciary in such manner as the judge may direct. In every other case where the application is made by a person other than the fiduciary notice thereof shall be given to such persons and in such manner as the judge may direct.

(4) Upon the filing of the petition and the proof of service of the notice prescribed, the court may, notwithstanding any other provision of law, suspend the fiduciary engaged in war service from the exercise of all of the fiduciary’s powers and duties while such fiduciary remains engaged in war service and until the further order of the court. The decree may further provide that the remaining executor, administrator, guardian or testamentary trustee or if there be none, the successor named in the will or appointed by the court is possessed of and may exercise all of the powers and duties incidental to the person’s office as fiduciary.

(5) When the suspended fiduciary ceases to be engaged in war service the suspended fiduciary may be reinstated as executor, administrator, guardian or testamentary trustee if any of the duties of such office remain unexecuted, upon application to the court and upon such notice as the presiding judge thereof may direct. If the suspended fiduciary is reinstated the court shall thereupon remove the suspended fiduciary’s successor and revoke the successor fiduciary’s letters and make such other order or decree as justice requires, but such removal and revocation of letters shall not bar the successor from subsequently qualifying as a fiduciary in accordance with the provisions of the will or if for any reason it thereafter becomes necessary that a fiduciary be appointed.

History: 1993 a. 492.

112.03 Proxy voting of corporate stock by fiduciaries.

Shares of stock in any corporation organized under the laws of the United States, any of the states thereof, any foreign country or any province or other political subdivision thereof held by a fiduciary may be voted by such fiduciary by general or limited proxy, with or without power of substitution, unless such manner of voting is expressly prohibited by the document creating the fiduciary relationship or unless the manner of voting such shares is specifically directed in such document. For the purpose of this section the word “corporation” shall be construed to include investment companies which are common law trusts.

112.07 Holding of securities by fiduciaries and by custodians for fiduciaries.

(1) Notwithstanding any other provision of the statutes, any fiduciary, as defined in s. 112.01 (1) (b), who is holding securities in a fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary may deposit or arrange for the deposit of such securities in a clearing corporation as defined in s. 408.102 (1) (e). When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other such securities deposited in that clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian,

as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank or trust company which deposits securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered institutions, the division of banking and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company in a clearing corporation pursuant to this section for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such a party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section applies to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent or custodian for a fiduciary, acting on December 4, 1975 or who after that date may act, regardless of the date of the agreement, instrument or court order by which appointed and regardless of whether or not the fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of the clearing corporation in which the securities are deposited.

History: 1975 c. 107, 199; 1983 a. 189 s. 329 (24); 1985 a. 237 s. 119; 1995 a. 27; 1997 a. 297.

112.08 Premium on bond allowed as expense. Any fiduciary required to give a suretyship obligation may include as a part of the expense of executing the trust the lawful premium paid a surety corporation for executing the obligation.

History: 1977 c. 339; Stats. 1977 s. 112.07; 1977 c. 447; Stats. 1977 s. 112.08.

Legislative Council Note, 1977: This provision is part of s. 204.11, repealed by this act. It has nothing to do with the law of insurance but deals solely with the proper conduct of fiduciaries. As such it belongs in ch. 112 and is transferred there without change. [Bill 258–S]

112.10 Uniform management of institutional funds act. (1) **DEFINITIONS.** In this section:

(a) “Endowment fund” means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(b) “Gift instrument” means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

(c) “Governing board” means the body responsible for the management of an institution or of an institutional fund.

(d) 1. “Historic dollar value” means the aggregate fair value in dollars of the following:

a. An endowment fund at the time it became an endowment fund.

b. Each subsequent donation to the fund at the time it is made.

c. Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

2. The determination of historic dollar value made in good faith by the institution is conclusive.

(e) “Institution” means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(f) “Institutional fund” means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include any of the following:

1. A fund held for an institution by a trustee that is not an institution.

2. A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(2) **APPROPRIATION OF APPRECIATION.** The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by sub. (6). This subsection does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

(3) **RULE OF CONSTRUCTION.** Subsection (2) does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only “income”, “interest”, “dividends”, or “rents, issues or profits”, or “to preserve the principal intact”, or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after May 15, 1976.

(4) **INVESTMENT AUTHORITY.** In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

(a) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, limited liability companies, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, limited liability companies, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

(5) **DELEGATION OF INVESTMENT MANAGEMENT.** Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may do any of the following:

(a) Delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds.

(b) Contract with independent investment advisers, investment counsel or managers, banks, or trust companies, to act in place of the board in investment and reinvestment of institutional funds.

(c) Authorize the payment of compensation for investment advisory or management services.

(6) **STANDARD OF CONDUCT.** In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its edu-

cational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

(7) RELEASE OF RESTRICTIONS ON USE OR INVESTMENT. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the circuit court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under

this paragraph may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this subsection may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This subsection does not limit the application of the doctrine of cy pres.

(8) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this section among those states which enact it.

(9) SHORT TITLE. This section may be cited as the “Uniform Management of Institutional Funds Act”.

History: 1975 c. 247; Stats. 1975 s. 112.07; 1975 c. 422; Stats. 1975 s. 112.10; 1977 c. 449; 1983 a. 189; 1993 a. 112; 1995 a. 225; 1999 a. 83.

NOTE: Chapter 247, laws of 1975, which created this section, contained extensive notes by the National Conference of Commissioners on Uniform State Laws.