

CHAPTER 881

TRUST FUND INVESTMENTS

881.01 Investment; prudent person rule.
 881.02 Construction; court orders; written instruments
 881.03 Jurisdiction of court

881.04 Investments under prior laws not affected
 881.05 Retention of securities by trustees
 881.06 Law governing existing instruments

Cross-reference: See definitions in ch. 851.

881.01 Investment; prudent person rule. Except as provided in ss. 25.15 and 25.17 (2) (c), personal representatives, guardians and trustees may invest the funds of their trusts in accordance with the provisions pertaining to investments contained in the instrument under which they are acting, or in the absence of any such provision, then within the limits of the following standards:

(1) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, stocks, preferred or common, and shares of investment companies and investment trusts, which persons of prudence, discretion and intelligence acquire or retain for their own account.

(2) Notwithstanding sub. (1), a fiduciary shall not purchase or otherwise invest in common stocks if the percentage of the fund invested in common stocks immediately after such purchase or investment will exceed 50% of the total market value of the fund. The preceding sentence shall not be construed a) to require the sale or other liquidation of a portion of a fund's holdings of common stocks even though at any given time the market value of the common stock investments of the fund exceeds 50% of the total market value of the fund, or b) to prevent the reinvestment of the proceeds of the sale or other disposition of common stocks in other common stocks even though at the time the market value of the common stock investments of the fund exceeds 50% of the total market value of the fund. A fiduciary may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuations of other investments as are fair and reasonable according to available information. The purchase and investment limitations of this subsection are not applicable to any bank or trust company authorized to exercise trust powers.

(3) Within the limitations of the instrument, if the instrument directs or permits investment in obligations of the federal government or of an agency of the federal government, the trustee may invest in and hold those obligations either directly or in the form of interests in an open-end management investment company or investment trust registered under the investment company act of 1940 or in an investment vehicle authorized for the collective investment of trust funds under 9 CFR 12 if the portfolio of that investment company, investment trust or collective investment vehicle is limited to obligations of the federal government or of an agency of the federal government and to repurchase agreements fully collateralized by those obligations.

(4) Subject to sub. (1), a bank or trust company exercising investment discretion as a fiduciary may invest in the securities of

an open-end or closed-end management investment company or of an investment trust if the investment company or investment trust is registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64. A bank or trust company may invest in these securities notwithstanding that the bank or trust company, or an affiliate of the bank or trust company, provides investment services to the investment company or investment trust if the bank or trust company waives its fee as fiduciary for the assets that it invests in these securities or if the bank, trust company or affiliate waives its fees for providing investment services to the investment company or investment trust.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.01; 1973 c. 85; 1975 c. 94 s. 91 (12); 1975 c. 200; 1983 a. 27; 1987 a. 220; 1989 a. 300

Court properly imposed surcharge against administrator who breached duty by allowing estate funds to lie idle in noninterest bearing checking accounts. *Matter of Estate of Kugler*, 117 W (2d) 314, 344 NW (2d) 160 (1984).

See note to 221.04, citing *In Matter of Estate of Ames*, 152 W (2d) 217, 448 NW (2d) 250 (Ct. App. 1989).

881.02 Construction; court orders; written instruments. Nothing contained in this chapter shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of s. 881.01.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 881.02.

881.03 Jurisdiction of court. Nothing contained in this chapter shall be construed to affect the power or jurisdiction of any court of the state of Wisconsin in respect to trusts and trustees, nor as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.03

881.04 Investments under prior laws not affected. Nothing contained in this chapter shall affect any investment made prior to the enactment hereof or any amendment hereof or affect any rights or interests established, accrued or created thereunder or affect any suit or action pending when this chapter or any amendment hereof becomes effective.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.04

881.05 Retention of securities by trustees.
 (1) Unless the trust instrument or a court order specifically directs otherwise, a trustee shall not be required to dispose of any property, real or personal, or mixed, in the estate or trust, however acquired, until the trustee determines in the exercise of a sound discretion that it is advisable to dispose of the same; but nothing herein contained shall excuse the trustee from the duty to exercise discretion at reasonable intervals and to determine at such times the advisability of retaining or disposing of such property.

(2) Any heir or beneficiary shall have the right at any time to file an application with the court in which said estate or trust is being administered for the purpose of compelling the sale of such

property so held, and to compel the investment of the proceeds in other investments which are in accordance with this chapter. Upon the filing of such application said court shall conduct a hearing, after giving to all persons interested in said estate or trust such notice as shall be designated by said court, and upon such hearing said court shall enter an order thereon directing the retention or sale of such property as may be for the best interests of said estate or trust.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.05.

881.06 Law governing existing instruments. This chapter shall govern fiduciaries, including personal representatives, guardians, and trustees acting under wills, agreements, court orders and other instruments now existing or hereafter made.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.06; 1975 c. 200.