

CHAPTER 323.

TESTAMENTARY TRUSTS.

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323.01 Testamentary trusts; trustee's bond; conditions. Every trustee to whom any estate, real or personal, shall be devised or bequeathed in trust for, or in whom as trustee any trust shall be created in any manner in favor or for the benefit of any minor or other person by the will of any deceased person, including any trust created under s. 231.49 (1), or who may be appointed by any county court to carry out the provisions of any will which creates a trust without naming a trustee, shall give bond to the county judge having jurisdiction of the probate of the will in such sum and with such sureties as the court may order, conditioned as follows:

(1) To make and return to the county court, within such time as the court shall direct, a true inventory of all the goods, chattels, rights, credits, and estate so devised or bequeathed;

(2) To annually render an account to such court of the trust estate in his hands, of the management, disposition, and annual income thereof;

(3) To faithfully execute such trust under the direction of the court according to the true intent and meaning thereof.

(4) To adjust and settle his accounts with such court at the expiration of his trust and pay and deliver to the person entitled thereto all balances, money, and property in his possession and for which he is liable as such trustee. But if the testator in his will has directed that no bond be required of such trustee, none need be given by him unless the court, at the time of proving the will or thereafter, shall determine that a bond is required by a change in the circumstances or situation of the trustee or for other sufficient reason. The cost of procuring a bond may be allowed the trustee, as provided in section 271.14; provided, however, that no bond shall be required from any religious, charitable, or educational corporations or societies, where devises or bequests are given to such corporations or societies in trust for any of the purposes of such corporations or societies.

History: 1963 c. 269.

Cross Reference: For provisions relating to testamentary trusts for charitable purposes, see 317.06.

323.02 When trust declined. Any person appointed trustee by any will who shall refuse to give the bond herein required or neglect to do so for twenty days after receiving notice that such bond is required shall be deemed to have declined such trust.

323.025 Trusts of \$5,000 or less. Where a trust estate valued at \$5,000 or less is created for any of the purposes set forth in s. 72.04 (1) or for the perpetual care of cemetery lots, the court may order distribution of such estate on terms which will as nearly as possible carry out the intent of the testator if the entity named as beneficiary in the trust instrument is improperly described, or if the court finds that the cost of operating the trust will probably defeat the intent of the testator.

History: 1963 c. 165.

323.03 Trustee's refusal to act; successor; rights of. If any trustee appointed in any will not containing a provision for perpetuating the trust shall refuse to accept the same, or shall resign, be removed or die, or if a trust be created by the will and no trustee be therein named to execute such trust a trustee may be appointed by the county court, after notice to the persons interested in such trust estate. Every trustee so appointed by the court shall be bound by the provisions of this chapter in the same manner and to the same extent as though appointed by will, and the estate so given in trust shall vest in such trustee in like manner, to all intents and purposes, as the same vested in the original trustee named in such will, and he may demand, sue for and recover from any other person holding the same any and all property belonging to such trust estate.

323.035 Special trustees; appointment. If there is necessary delay in appointing a trustee or issuing letters of trust, or if it appears to the court to be necessary, the court may appoint a special trustee to act until the matter causing the delay is disposed of or the necessity therefor ceases to exist. No appeal shall be allowed from the appointment of such special trustee, and the appointment may be made without notice. He may be removed whenever the court so orders. The special trustee, before entering upon the duties of his trust, shall give a bond to the court in such sum and with such sureties as the court designates and approves.

323.04 Resignation of trustee. Any trustee so appointed by will or by the court may, upon a request in writing, be permitted to resign the trust if the court shall think it expedient.

When testamentary trusts of long duration are involved, it is not good practice for a trustee to wait until the termination of the trust to have his accounts for the full period approved, although he can do this under (4). Estate of Martin, 21 W (2d) 334, 124 NW (2d) 297.

323.05 May be removed. Any trustee who shall become disqualified by insanity or incapacity, or who shall be evidently unsuitable to perform his duties as such trustee, or who shall neglect or refuse to comply with the provisions of this chapter shall be removed by the court after notice to such trustee and other parties interested as provided by section 324.18.

323.06 Control by court. (1) **ORDERS AND WRITS.** The county court, on application of any such trustee or any person interested, may, after notice to all parties in interest, as provided by s. 324.18, authorize and require such trustee to sell any property so held in trust in such manner as the court may direct and to invest the proceeds of such sale in such manner as will be most for the interest of all concerned therein; and such court may from time to time make such orders and decrees as it may deem just and reasonable in relation to the sale, management, investment and disposition of such trust property and to the settlement of the account of such trustees, but no such order shall be made in violation of the terms of the trust. To keep the trust property from being removed out of the state or improperly or illegally used or invested the county court shall have the same power as circuit courts to issue the writ of ne exeat and injunctions.

(2) **PURCHASES BY TRUSTEE OR GUARDIAN.** Except when authorized by the terms of the trust, no trustee of a trust estate and no guardian of any heir of the decedent shall purchase or be interested in the purchase of any part of the real or personal estate in such trust estate sold unless such sale is made with written consent of the parties concerned and of the guardian ad litem for minors and incompetents and approval of the court after notice and hearing. Violation of this section shall be grounds for the court to proceed against a trustee as provided in s. 312.11.

Where a testamentary trustee entered into a contract of sale of trust property, subject to the approval of the county court, pursuant to an order of the court permitting the trustee to sell at private sale, the court had no power to refuse confirmation of the sale on the application of the trustee himself to refuse confirmation because the trustee in the interim had received a higher offer than the contract price of \$16,000, there being no claim of mistake, misapprehension or inadvertence, and no suspicion of fraud, nor claim or finding that the \$16,000 was disproportionate to the value of the property. Estate of Strass, 11 W (2d) 410, 105 NW (2d) 553.

Sale of trust property; receipt of higher offer before confirmation. 1961 WLR 338.

323.065 Borrowing on personalty. The county court, on the application of any such trustee, may at any time order the personal property so held in trust to be used as collateral for a secured loan when it appears to be necessary for the purpose of paying debts, expenses of administration, for the preservation of trust property, for the purposes of the trust, or when it is requested by all the beneficiaries residing in this state; or the court may order such personal property to be so used upon a showing by the trustee that such borrowing is beneficial to the trust estate; but no order for such use shall be made in violation of the terms of the trust.

History: 1965 c. 334.

323.07 Accounts of testamentary trustees. Upon rendering any account to the court of his trusteeship, the testamentary trustee shall produce for examination by the court, or a duly authorized clerk thereof, all securities, evidences of deposits and investments reported by him, which shall be described in such account in sufficient detail so that the same may be readily identified, and the court, or its duly authorized clerk, shall ascertain whether such securities, evidences of deposits and investments correspond with such account. But such court may by a general or special order exempt any trust company bank, or any bank with trust powers, which has made the deposit required by s. 223.02 from the requirements of this section, if such bank shall, within 30 days after each examination by its proper supervisory banking authority file in such court a certifi-

cate of the examiner in charge, that at such examination the securities, evidences of deposits and investments of all trust accounts of such bank were examined and compared with the records of the several trusts and found to be correct. In lieu of producing the same physically for examination by the court the testamentary trustee may file with the court and the court may accept the certificate of a state or national bank examiner or certified public accountant setting forth that the testamentary trustee currently has in his possession all securities, evidences of deposit and investments reported by him and a descriptive list thereof corresponding with such account. Notwithstanding any such order of exemption or the filing of such certificate in lieu thereof the court may at any time require the testamentary trustee to produce all securities, evidences of debt and investments for examination as provided in this section.

History: 1961 c. 25.

Proper accounting, charges against a trustee and burden of proof as to shortages discussed. *Estate of Martin*, 21 W (2d) 334, 124 NW (2d) 297.

Liability discussed as between co-trustees where one is only passively guilty of

misconduct. *Will of Mueller*, 28 W (2d) 26, 135 NW (2d) 354.

Possible differences between the duty to account of a testamentary trustee and that of a trustee under a judicially imposed trust. 1964 WLR 733.

323.10 Guardian ad litem. Possible persons unborn or presently unascertainable, having successor or contingent interests in a trust estate as beneficiaries, heirs or next of kin, if not already represented by a fiduciary, may be represented in an accounting by a guardian ad litem if the court deems it necessary. The court may dispense with or terminate the appointment of a guardian ad litem for a person having a successor or contingent interest who is legally incompetent, unborn or presently unascertainable, if there is a living person, sui juris, having in the judge's opinion a substantially identical interest, who is a party to the proceeding and whose interest is not adverse.