

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

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 s. 324.18.

Note: Chap. 339, section 27, laws of 1969, amends this section to substitute "879.03" for the cross reference to "324.18", effective April 1, 1971. Chap. 283, laws of 1969, repeals the section, effective July 1, 1971.

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.

Note: Chap. 339, section 27, laws of 1969, amends this section to substitute "879.03" and "323.25" for the references to "324.18" and "312.11", respectively, effective April 1, 1971. Chap. 283, laws of 1969, repeals the section, effective July 1, 1971.

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

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 certificate 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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

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.

Note: This section is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

323.21 Inventories, accounts. (1) VERIFICATION, EXAMINATION IN COURT. Every trustee and guardian shall verify by his oath every inventory required of him and verification shall be to the effect that the inventory is true of all property which belongs to his decedent's or to the trust estate or his ward, which has come to his possession or knowledge, and that upon diligent inquiry he has not been able to discover any property belonging to the estate or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine him on oath in relation thereto, or in relation to any supposed omission.

(2) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any trustee or guardian neglects to file his inventory or account when required by law, the county judge shall call his attention to his neglect. If he still neglects his duty in the premises, the court shall order him to file his inventory, and the costs may be adjudged against him.

Note: This section is printed as amended by Chap. 339, laws of 1969, effective April 1, 1971. As of July 1, 1971, it is renumbered 319 191 and is there printed as amended by Chaps. 283, 339 and 411, laws of 1969.

323.23 Accounting by agent. The county court, upon the application of any trustee or guardian appointed by it may order any person who has been intrusted by him with any part of the estate of a decedent or the trust estate to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to his possession and of his proceedings thereon. If he refuses to appear and render an account the court may proceed against him as for contempt.

Note: This section is printed as amended by Chap. 339, laws of 1969, effective April 1, 1971. As of July 1, 1971, it is renumbered 319 245 and is there printed as amended by Chaps. 283, 339 and 411, laws of 1969.

323.25 Fraud, waste, mismanagement. Whenever the county court has reason to believe that any trustee or guardian within its jurisdiction has filed a false inventory, or claims as his own property, or permits others to claim and retain property belonging to the estate which he represents, or is guilty of waste or mismanagement of the estate, or is unfit for the proper performance of his duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the trustee or guardian to file his account. If upon the examination of the account the court deems it necessary to proceed farther, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days' notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the court is of the opinion that the interests of the estate, and of the persons interested, require it, the trustee or guardian may be removed and another appointed.

Note: This section is printed as amended by Chap. 339, laws of 1969, effective April 1, 1971. As of July 1, 1971, it is renumbered 319 192 and is there printed as amended by Chaps. 283, 339 and 411, laws of 1969.

323.27 Resale by trustee without license. Whenever any testamentary trustee has purchased real estate at judicial sale, under a judgment in an action in which he is plaintiff, or has redeemed real estate from a foreclosure or judicial sale, he may sell and convey it without license, upon terms he deems best. The proceeds of the sale shall be held by him the same as he would have held the money due upon the debt by virtue of which he purchased or held the money with which he redeemed the real estate.

Note: This section is printed as amended by Chap. 339, laws of 1969, effective April 1, 1971. Chapter 323 of the statutes is repealed by Chap. 283, laws of 1969, effective July 1, 1971.

323.30 Charitable trusts; trustee's annual account; removal. (1) Every trustee of a testamentary trust for charitable purposes shall, prior to March of each year, account to the court having jurisdiction thereof for the preceding calendar year and shall further account as required by the court; and he may be examined by the court upon any matter relating to his account and his conduct of the trust.

(2) The court shall promptly examine such account, and if it is not satisfactory it shall be examined on notice and the court shall make such order as is necessary to carry out the provisions of the trust.

(3) The court may remove the trustee for failure to comply with this section or with the order of the court and appoint another trustee as provided by law or the terms of the will creating the trust.

(4) An action of the court upon such account is not final until notice is mailed to the attorney general and published under s. 879.05 (4).

Cross References: Enforcement of public charitable trust by attorney general, see 231.34.

Time limit on mailing notice to attorney general, see 879.05 (2).

Note: This section is printed as renumbered from 317.06 and amended by Chap. 339, laws of 1969. We call attention to the fact that Chap. 283, laws of 1969, repeals 317.06 and all of Ch. 323 of the statutes, effective July 1, 1971.

323.32 Accounts, failure of fiduciaries to file. If a guardian or trustee resides out of this state, or neglects to render his account within the time provided by law or the order of the court, or neglects to settle the estate according to law, or to perform any judgment or order of the court, or absconds, or becomes insane or otherwise incapable or unsuitable to discharge the trust, the county court may remove him and appoint a successor; but an order of removal may not be made until the person affected has been notified, under s. 879.67, or, if a resident, such notice as the court deems reasonable to show cause at a specified time why he should

not be removed.

Note: This section is printed as amended by Chap. 339, laws of 1969, effective April 1, 1971. As of July 1, 1971, it is renumbered 319.251 and is there printed as amended by Chaps. 283, 339 and 411, laws of 1969.

323.34 Accounts; failure of fiduciaries to file. If a guardian or trustee fails to file his account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to the sheriff ordering the guardian or trustee to show cause before the court why he should not immediately make and file his reports or accounts. If a guardian or trustee fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if he fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian or trustee be brought before the court to show cause why he should not be punished for contempt. If the court finds that the failure, refusal or neglect is wilful or inexcusable, the guardian or trustee may be fined not to exceed \$50 or imprisoned not to exceed 10 days or both.

Note: This section is printed as amended by Chap. 339, laws of 1969, effective April 1, 1971. As of July 1, 1971, it is renumbered 319.252 and is there printed as amended by Chaps. 283, 339 and 411, laws of 1969.

323.36 Formal accounting by guardians and trustees. The judge may at any time require an accounting by any guardian or trustee at a hearing after notice to all interested persons including sureties on the bond of a guardian or trustee. The sureties on a bond of a guardian or trustee may once in every 3-year period petition the court for such a hearing.

Note: This is former section 324.356, which was renumbered 323.36 by Chap. 339, laws of 1969, effective April 1, 1971. As of July 1, 1971, it is renumbered 319.253 and is there printed as amended by Chap. 283, laws of 1969.