CHAPTER 881

TRUST FUND INVESTMENTS

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Cross-reference: See definitions in ch. 851.

881.01 Uniform prudent investor act. (1) DEFINITIONS. In this section:
(a) “Beneficiary” means any of the following:
1. With respect to a will, a beneficiary, as defined in s. 851.03.
2. With respect to a trust, a beneficiary, as defined in s.
701.0103 (3).
3. With respect to guardianship of the estate, a ward for whom a
guardian of the estate has been appointed.
4. With respect to a conservatorship, a person for whose estate a
conservator has been appointed.
(b) “Fiduciary” means a personal representative, trustee, con-
servator, guardian of the estate, a directing party, as defined in s.
701.0103 (7), who has the power to direct the trustee’s investment
decisions, a trust protector, as defined in s. 701.0103 (31), who has a
power exercisable in a fiduciary capacity over the investment of
trust assets, and any other person to whom a court appoints a
power over the investment of the assets of a decedent’s estate, a
trust, a conservatorship, or guardianship of the estate.
(c) “Prudent investor rule” means a rule that the fiduciary
shall exercise reasonable care, skill, and
caution.
(d) “Risks and objectives” means the risks and investment
objectives that the fiduciary shall consider in
managing the trust assets.
(e) “Risk” means the risk of
loss, including the risk of personal injury or
property damage.
(f) “Return” means the gain or loss from an investment.
(g) “Trustee” means a fiduciary who manages
personal property for the benefit of another.
(h) “Voluntary fiduciary” means a fiduciary
who is not appointed by a court.

881.02 (2) PRUDENT INVESTOR RULE. (a) Except as provided in s.
112.11 and except as otherwise provided in par. (b), a fiduciary
who invests and manages assets owes a duty to the beneficiaries
to comply with the prudent investor rule set forth in this section.

(b) The prudent investor rule, a default rule, may be expanded,
restricted, eliminated, or otherwise altered by the provisions of a
will, trust, or court order. A fiduciary is not liable to a beneficiary
to the extent that the fiduciary acted in reasonable reliance on the
provisions of the will, trust, or court order.

(3) STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND
RETURN OBJECTIVES. (a) A fiduciary shall invest and manage
assets as a prudent investor would, by considering the purposes,
terms, distribution requirements, and other circumstances of the
estate, trust, conservatorship, or guardianship. In satisfying this
standard, the fiduciary shall exercise reasonable care, skill, and
cautions.
(b) A fiduciary’s investment management decisions about
individual assets shall be evaluated, not in isolation but in the
context of the portfolio as a whole and also as part of an overall
investment strategy being evaluated and return objectives reasonably suited
to the estate, trust, conservatorship, or guardianship.

(c) Among circumstances that a fiduciary shall consider in
investing and managing assets are those of the following that are
relevant to the estate, trust, conservatorship, or guardianship or its
beneficiaries:
1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or
strategies.
4. The role that each investment or course of action plays
within the overall portfolio, which may include financial assets,
interests in closely held enterprises, tangible and intangible
personal property, and real property.
5. The expected total return from income and the appreciation
of capital.
6. Other resources of the beneficiaries.
7. Needs for liquidity, regularity of income, and preservation
or appreciation of capital.
8. An asset’s special relationship or special value to the pur-
poses of the estate, trust, conservatorship, or guardianship or to
one or more of the beneficiaries.
(d) A fiduciary shall make a reasonable effort to verify facts
relevant to the investment and management of assets.
(e) A fiduciary may invest in any kind of property or type of
investment consistent with the standards of this section.

(f) A fiduciary who has special skills or expertise, or who is
named fiduciary in reliance upon the fiduciary’s representation
that the fiduciary has special skills or expertise, has a duty to use
those special skills or expertise.

(4) DIVERSIFICATION. (a) General rule. A fiduciary shall
diversify investments unless the fiduciary reasonably determines
that because of special circumstances the purposes of the estate,
trust, conservatorship, or guardianship are better served without
diversifying.

(b) Special rule for assets collected by a fiduciary. 1. For
purposes of this paragraph, an “asset that is collected by the
decedent’s estate, a beneficiary, as defined in s.
851.03.
2. Notwithstanding par. (a), a fiduciary may retain an asset
that is collected by the fiduciary until the fiduciary reasonably
determines that it is advisable to dispose of the asset. While the

asset is being retained, the fiduciary has a duty to exercise discre-

tion at reasonable intervals to determine the advisability of contin-
uing to retain or disposing of the asset that was collected.
3. At any time after an asset that is collected by the fiduciary
is being retained, a beneficiary may file an application with a court
that has jurisdiction over the fiduciary to compel the fiduciary to
teach the asset and invest the sale proceeds in accordance with this
section.
4. If a beneficiary files an application under subd. 3., the court
shall conduct a hearing after giving notice to all interested per-
sons, as determined by the court. After the hearing, the court shall
enter an order directing the fiduciary to retain or sell the asset that
is being retained based on what the court finds to be in accordance
with the terms and purposes of the estate, trust, conservatorship,
or guardianship of the estate and the interests of the beneficiaries.

(5) DUTIES AT INCEPTION. Within a reasonable time after
accepting a fiduciary appointment or receiving assets, a fiduciary
shall review the assets and make and implement decisions concern-

ing the retention and disposition of assets, in order to bring the
portfolio into compliance with the purposes, terms, distribution
requirements, and other circumstances of the estate, trust, con-
servatorship, or guardianship and with the requirements of this
section.

(6) LOYALTY. A fiduciary shall invest and manage the assets
solely in the interest of the beneficiaries.
881.015 Investment companies, investment trusts and collective investment vehicles. (1) In this section:

(a) “Collective investment vehicle” means an investment vehicle authorized for the collective investment of trust funds, including vehicles under 12 CFR 9.

(b) “Investment company” means an open-end or closed-end management investment company registered under 15 USC 80a–1 to 80a–64.

(c) “Investment trust” means an investment trust registered under 15 USC 80a–1 to 80a–64.

(2) In addition to other investments authorized by law for the investment of funds held by a fiduciary, or by the instrument governing the fiduciary relationship, a bank or trust company acting as a fiduciary, agent or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as fiduciary, invest and reinvest in the securities of, or other interests in, an investment company, investment trust or collective investment vehicle, so long as the portfolio of the investment company, investment trust or collective investment vehicle consists of investments not prohibited by the governing instrument. In the absence of an express provision to the contrary, when a governing instrument directs or requires investment in obligations of the U.S. government or an agency of the U.S. government, a bank, trust company, trust department trustee or other fiduciary may invest in these obligations either directly or in the form of securities of, or other interests in, an investment company, investment trust or collective investment vehicle, if the portfolio of the investment company, investment trust or collective investment vehicle consists of obligations of the U.S. government or an agency of the U.S. government and repurchase agreements fully collateralized by these obligations.

(3) If the requirements of this subsection are met, a bank or trust company may invest or reinvest funds under sub. (2) in the securities of, or other interests in, an investment company, investment trust or collective investment vehicle, notwithstanding the fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company, investment trust or collective investment vehicle such as those of an investment adviser, custodian, transfer agent, broker, registrar, paying agent, sponsor, distributor, administrator, manager or otherwise and receives compensation for those services. In order to invest or reinvest funds under sub. (2) in the securities of, or other interests in, the investment company, investment trust or collective investment vehicle for which the bank, trust company or affiliate provides services, the bank, trust company or affiliate shall disclose in writing the basis upon which any compensation for such services is calculated, whether expressed as a percentage of asset value or otherwise. The disclosure shall be made by prospectus, account statement or otherwise and shall be delivered, at least annually, to all persons to whom statements of account for the invested or reinvested funds are provided.


881.016 Employees and agents of a fiduciary. Unless prohibited by the terms of the instrument governing a fiduciary relationship, a fiduciary may employ attorneys, accountants, investment advisers, agents or other persons, even if they are associated with the fiduciary, to advise or assist the fiduciary in the performance of the fiduciary’s duties. The fiduciary may act without independent investigation upon their recommendations or, instead of acting directly, employ one or more agents to perform any act of administration, whether or not discretionary. If the terms of the governing instrument do not address the authority of the fiduciary to delegate the fiduciary’s duties, all of the following apply:

(1) The fiduciary may delegate some, but not all, of the fiduciary’s duties to an agent.
(2) The employment of an agent by the fiduciary does not relieve the fiduciary of liability for acts of the agent that, if done by the fiduciary, would result in the liability of the fiduciary.

(3) The employment of an agent by a fiduciary does not relieve the fiduciary of the fiduciary’s duty to use reasonable care in selecting and retaining the agent.


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.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 881.02; 1995 a. 273; 2003 a. 264.

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.

881.06 Law governing existing instruments. Subject to s. 881.01 (12), this chapter shall govern fiduciaries, including personal representatives, guardians of the estate, conservators, 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; 2003 a. 264.