

CHAPTER 881

TRUST FUND INVESTMENTS

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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) (a) 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 to do any of the following:

1. 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.

2. 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.

(b) A fiduciary may rely upon published market quotations as to those investments for which published quotations are available, and upon such valuations of other investments as are fair and reasonable according to available information.

(c) The purchase and investment limitations of this subsection are not applicable to any bank or trust company authorized to exercise trust powers.

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; 1995 a. 225, 273.

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).

881.015 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.

History: 1995 a. 273.

881.016 Employes and agents of a fiduciary. Unless prohibited by the terms of the instrument governing a fiduciary relationship, a fiduciary may employ attorneys, accountants, invest-

ment 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.

History: 1995 a. 273.

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 this chapter.

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

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, reinvest-

ment, 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.