
WEST VIRGINIA CODE CHAPTER 44
ARTICLE 6

WV Legislature

§44-6-1. Fiduciaries to put money out at interest.

(a) Executors, administrators, guardians, curators, committees or trustees may, by direction of the circuit court of the county, where they were appointed or qualified, put out at interest all moneys in their hands which they are or may be lawfully required to retain, whether it belongs to minors, legatees or other person or persons, upon security, and for the length of time, as the court will allow, and if the security so taken, bona fide and without fraud, proves insufficient, it is the loss of the beneficiaries entitled thereto; and it is the duty of the executors, administrators, guardians, curators, committees or trustees, in cases where the estates in their hands may be materially benefited thereby, to make application to the circuit court for direction, and in case they neglect so to do they are accountable for the interest that might have been made thereby; but if no person who may be willing to take the money at interest, giving the security, can be found by the executors, administrators, guardians, curators, committees or trustees, then the executors, administrators, guardians, curators, committees or trustees, in those cases, are accountable for the principal money only, until it can be put out at interest as aforesaid; but in any case where executors, administrators, guardians, curators, committees or trustees use the money of the estates which come to their hands, they are accountable not only for the principal, but also for the interest thereon.

(b) This section does not apply to a trust or a trustee.

§44-6-2. In what securities fiduciaries may invest trust funds.

Any executor, administrator, guardian, curator, committee, trustee or other fiduciary whose duty it may be to loan or invest money entrusted to him or her as such, may, without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein: Provided, That except as otherwise provided in article six-c of this chapter, the 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:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the "Farm Credit Act Amendments of 1986" (12 U. S. C. §2001 et. seq.), as amended, debentures issued by the Federal National Mortgage Association, securities issued by the Federal Home Loan Bank System; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the "International Bank for Reconstruction and Development" or by the "Inter-American Development Bank" or by the "Asian Development Bank" or by the "African Development Bank";

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of the investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the Legislature of the state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political division of this state that have been issued pursuant to the authority of any law of this state, since May 9, 1917;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by the mortgage or trust deed does not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value is the higher, of the real estate covered by the mortgage or trust deed, and when the mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title or title insurance policy, showing good title in the mortgagor when making the mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his or her interest may appear: Provided, That the rate of interest upon the above enumerated securities in this subdivision, in which the investments may be made, may not be less than three and one-half percent per annum nor greater than the maximum rate of interest which the bonds or

negotiable notes may bear under applicable law: Provided, however, That the provisions herein establishing a minimum rate of interest do not apply to investments in force as of the effective date of this section;

(f) In savings accounts and time deposits of bank or trust companies to the extent that the deposits are insured by the Federal Deposit Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created, if there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the rate of interest upon the savings accounts or time deposits may not be less than the rate paid other depositors in the bank or trust company;

(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that the shares are insured by the Federal Savings and Loan Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created: Provided, That there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, however, That the dividend rate upon the shares may not be less than the rate paid to other shareholders in the associations; and

(h) In other securities of corporations organized and existing under the laws of the United States, or of the District of Columbia or any state of the United States, including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness and shares of common and preferred stocks of the corporations and securities of any open end or closed end management type investment company or investment trust registered under the "Federal Investment Company Act" of 1940, as from time to time amended, which persons of prudence, discretion and intelligence acquire or retain for their own account, as long as:

(1) An investment may not be made pursuant to the provisions of this subdivision which, at the time the investment is made, will cause the aggregate market value thereof to exceed fifty percent of the aggregate market value at that time of all of the property of the fund held by the fiduciary. Notwithstanding the aforesaid percentage limitation the cash proceeds of the sale of securities received or purchased by a fiduciary and made eligible by this subdivision may be reinvested in any securities of the type described in this subdivision;

(2) Bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of the corporations may not be purchased under authority of this subdivision unless the obligations, if other than issues of a common carrier subject to the provisions of section twenty-a of the "Interstate Commerce Act", as amended, are obligations issued, guaranteed or assumed by corporations which have any securities currently registered with the Securities and Exchange Commission; and

(3) Common or preferred stocks, other than bank and insurance company stocks, may not be purchased under authority of this subdivision unless currently fully listed and registered upon an exchange registered with the Securities and Exchange Commission as a national securities exchange. A sale or other liquidation of any investment may not be required solely

because of any change in the relative market value of those investments made eligible by this subdivision and those made eligible by the preceding subdivisions of this section. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under the provisions of this subdivision, a fiduciary may rely upon published market quotations as to those investments for which the quotations are available, and upon such valuations of other investments as in the fiduciary's best judgment seem fair and reasonable according to available information.

Trust funds received by executors, administrators, guardians, curators, committees, trustees and other fiduciaries may be kept invested in the securities originally received by them, or if the trust funds originally received were stock or securities of a bank, in shares of stock or other securities (and securities received as distributions in respect thereof) of a holding company subject to the federal Bank Holding Company Act of 1956, as amended, received upon conversion of, or in exchange for, shares of stock or other securities of the bank; unless otherwise ordered by a court having jurisdiction of the matter, as hereinafter provided, or unless the instrument under which the trust was created directs that a change of investment be made, and any such fiduciary is not liable for any loss that may occur by depreciation of the securities.

This section does not apply where the instrument creating the trust, or the last will and testament of any testator or any court having jurisdiction of the matter, specially directs in what securities the trust funds shall be invested, and every the court has power specially to direct by order or orders, from time to time, additional securities in which trust funds may be invested, and any investment thereof made in accordance with the special direction is legal, and no executor, administrator, guardian, curator, committee, trustee or other fiduciary may be held for any loss resulting in any such case.

This section does not apply to trusts or trustees.

§44-6-2a.

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

§44-6-3. Authority for investment.

When any fiduciary desires the authority or direction of the circuit court with respect to the investment of any funds in his hands, he shall file his petition in the circuit court of the county in which he qualified, setting out fully the facts, and verifying such petition by his affidavit. Ten days' notice of the time fixed for the hearing on the petition shall be served on the beneficiaries of such trust funds, who shall be made defendants thereto, and, for any who may be under disability, a guardian ad litem shall be appointed. Such guardian ad litem shall answer the petition under oath, and be present at the hearing and represent the interests of the person or persons for whom he shall have been appointed guardian ad litem. The matters arising on such petition may be heard upon affidavits, or depositions duly taken and returned, or upon oral testimony. The court upon the hearing may make such order in relation to the investment of the trust funds as may be to the best interests of the beneficiaries thereof. Such petition may be filed, and the hearing thereon had, by the judge of the court in vacation, as well as by the court in term time.

§44-6-4. Beneficiaries may have fiduciary instructed by court as to investments.

The circuit court of the county where any fiduciary qualified, or the judge of such court in vacation, may, on the application of any person interested in the estate or trust in charge of such fiduciary, after ten days' notice to such fiduciary and all other persons interested therein, authorize or require the fiduciary to sell and transfer any securities, or any other personal estate or effects, held by him in his fiduciary capacity, and to invest the proceeds of such sale, and also any other moneys in his hands, in other securities, or in any other manner that shall to the court be deemed best for the interests of all concerned therein; and such circuit court or judge may make such further orders, and give such directions, as the case may require, for managing, investing and disposing of the estate and effects in the hands of the fiduciary.

§44-6-5. Application to circuit court for directions regarding estate held to meet a contingency.

Whenever, under the provisions of a will, it shall be necessary for the personal representative to retain in his hands the personal estate, or any part thereof, after all just claims are discharged, as where money or some other thing is directed to be paid at a distant period, or upon a contingency, the circuit court of the county in which such personal representative qualified, or the judge of such court in vacation, shall have the power, on the application of such personal representative, or of a party interested, after ten days' notice to all parties interested in the retained funds or estate, to decree and give directions thereto; and in any such case it shall be the duty of such personal representative to make such application to such court, or judge thereof in vacation; and such court, or judge thereof in vacation, shall have full power to decree or direct what part of the personal estate shall be retained or appropriated for the purpose, in what manner it shall be disposed of, how the legacy or benefit intended by the will shall be secured to the person to be entitled at a future period or contingency, how the necessary part of the personal estate to be appropriated for the purpose shall be prevented from being unproductive, and how it shall be applied, agreeably to the intent of the will or the construction of law, in case the contingency shall not take place.

§44-6-6. Establishment of common trust funds; investments.

(a) Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing, or making available, investments to itself as fiduciary, or to itself and others, as cofiduciaries, and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating its fiduciary status or relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment: Provided, That unless such fiduciary acquiring or holding any interest in any common trust fund is specifically permitted by the instrument, judgment, decree or order creating the fiduciary status or relationship to invest in securities other than those described in section two of this article, or any amendments or reenactments thereof, such common trust funds shall be invested only in those securities described in said section two and subject to the limitations and conditions of said section, and any amendments or reenactments thereof, except that a common trust fund or funds may be established for the purchase of securities of the type described in said section two without regard to the percentage limitation specified in subparagraph (1), subdivision (h) of said section two, in which event the funds invested by a fiduciary in interests in such last mentioned common trust fund or funds shall not exceed the percentage limitation specified in said subparagraph (1), subdivision (h) unless a larger investment is permitted by the instrument, judgment, decree or order creating the fiduciary status or relationship.

(b) Any bank or trust company qualified to act as a fiduciary in this state may establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by any bank or trust company qualified to act as fiduciary in this state which is owned or controlled by a bank holding company which owns or controls such establishing bank or trust company. Any such commonly owned or controlled bank or trust company may, as fiduciary or cofiduciary with others, invest funds which it holds in common trust funds so established and maintained. The restrictions contained in subsection (a) of this section shall apply to the establishment, maintenance and investment of common trust funds under this subsection.

§44-6-7. Accounting required of fiduciaries as to common trust funds.

Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust fund, as provided for in section six of this article, shall not be required to render an accounting with regard to such fund, before any commissioner of accounts, but it may, by application to the circuit court of the county in which is located the principal place of business of said bank or trust company, secure the approval of an accounting in such condition as the court may fix: Provided, however, That nothing herein shall be interpreted as relieving any fiduciary acquiring, holding or disposing of an interest in any common trust fund from making an accounting as required by law with respect of such interest.

§44-6-8. How §§44-6-6 to 44-6-8 cited; purpose; provisions severable.

This act, being said sections six, seven and eight of this article, may be cited as the "Uniform Common Trust Fund Act". It shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which have or may hereafter enact it, or similar legislation. It shall apply to fiduciary relationship, or status, now in existence or hereafter established. If any of its provisions or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect the other provisions or applications which can be given effect without the invalid provision or application, and to this end its provisions are declared to be severable.

§44-6-9. Investment of trust assets in mutual funds; investments in mutual fund companies otherwise served by the bank; investment of trust assets in time deposits.

(a) A bank or trust company qualified and acting in a fiduciary capacity in this state 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 trust assets in mutual funds which are the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1, et seq.), as amended: Provided, That the portfolio of such investment company or investment trust does not consist of investments prohibited by the governing fiduciary instrument.

(b) The fact that a bank or trust company or an affiliate of the same provides services to an investment company or investment trust, including, but not limited to, services as an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or otherwise, and is receiving reasonable compensation for those services, does not preclude such bank or trust company from investing or reinvesting in mutual funds which are the securities of the open-end or closed-end management investment trust registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1, et seq.), as amended. Such bank or trust company or affiliate thereof is entitled to receive fiduciary fees with respect to such assets. For such services the bank or trust company or affiliate thereof shall also be entitled to the normal fiduciary fee.

(c) A bank or trust company qualified and acting in a fiduciary capacity in this state 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 trust assets in time deposits, including certificates of deposit, of the bank or trust company in accordance with the provisions of subdivision (f), section two of this article: Provided, That such investments are authorized by the governing fiduciary instrument.

§44-6-10. Purchase of service or product through or directly from bank or trust company or affiliate.

(a) A bank or trust company acting in any fiduciary capacity, including, but not limited to, the capacities described in this article, may purchase any service or product, including, but not limited to, insurance or securities: underwritten or otherwise distributed by the bank, the trust company or by an affiliate; through or directly from the bank, the trust company or an affiliate; or from a syndicate or selling group that includes the bank, the trust company or an affiliate: Provided, That the purchase is otherwise prudent under article six-c of this chapter; the compensation for the service or product is reasonable; and the transaction is not prohibited by the instrument governing the fiduciary relationship. The compensation charged for the service or product may be in addition to the compensation that the bank or trust company is otherwise entitled to receive from the fiduciary account.

(b) A bank or trust company shall disclose at least annually any purchase authorized by this section that was made by the bank or trust company during that reporting period. The disclosure shall be given, in writing or electronically, to all persons entitled to receive statements of account activity. The disclosure shall include a description of any capacities in which the bank or trust company or an affiliate acts for the issuer of the securities or the provider of the products or services and a declaration of the fact that the bank or trust company or an affiliate may have an interest in the products or services.

(c) This section applies to the purchase of securities made at the time of the initial offering of the securities or at any time thereafter.

§44-6-11. Application only to executors, administrators, guardians, curators or committees.

The provisions of this article apply only to executors, administrators, guardians, curators or committees, as the case may be, and do not apply to or affect trustees who are governed by the provisions of the West Virginia Uniform Prudent Investor Act in article six-c of this chapter and the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

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