WEST VIRGINIA CODE: §44D-8-802

§44D-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section one thousand twelve, article ten of this chapter, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) The transaction was authorized by the terms of the trust instrument;

(2) The transaction was approved by the court having jurisdiction over the trust;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section one thousand five, article ten of this chapter;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with section one thousand nine, article ten of this chapter; or

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) The trustee's spouse;

(2) The trustee's descendants, siblings, parents or their spouses;

(3) An agent or attorney of the trustee; or

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage from such transaction is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust, mutual fund or other investment or financial product to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Uniform Prudent Investor Act in article six-c, chapter forty-four of this code. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company, investment trust, mutual fund or other investment or financial product, or by the affiliated entity sponsoring, selling or providing the service, and the compensation may be in addition to the compensation the trustee is receiving as a trustee if the trustee notifies the persons entitled to receive a copy of the trustee's annual report as provided hereunder of the rate and method by which that compensation was determined and of any subsequent changes to the rate or method of compensation.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) Payment of reasonable compensation to the trustee;

(3) A transaction between a trust and another trust, decedent's estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial service institution operated by the trustee; or

(5) An advance by the trustee of money for the protection of the trust.

(i) The court having jurisdiction over the trust may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

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