

75-7-802 Duty of loyalty.

- (1) A trustee shall administer the trust solely in the interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided in Section 75-7-1012, 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:
 - (a) the transaction was authorized by the terms of the trust;
 - (b) the transaction was approved by the court;
 - (c) the beneficiary did not commence a judicial proceeding within the time allowed by Section 75-7-1005;
 - (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 75-7-1009; or
 - (e) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
- (3) 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:
 - (a) the trustee's spouse;
 - (b) the trustee's descendants, siblings, parents, or their spouses;
 - (c) an agent of the trustee, including but not limited to an attorney, accountant, or financial advisor; or
 - (d) 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.
- (4) 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 is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.
- (5) 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.
- (6) An investment by a trustee in securities of an investment company or investment trust 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 complies with the prudent investor rule of Section 75-7-901. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust.
- (7) 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.
- (8) This section does not preclude the following actions by the trustee:
 - (a) an agreement between the trustee and a beneficiary relating to the appointment or compensation of the trustee;
 - (b) payment of reasonable compensation to the trustee;
 - (c) a transaction between a trust and another trust, decedent's estate, conservatorship, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

- (d) a deposit of trust money in a regulated financial service institution operated by the trustee;
- (e) an advance by the trustee of money for the protection of the trust;
- (f) collecting, holding, and retaining trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made, even though the assets include an asset in which the trustee is personally interested;
- (g) acquiring an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;
- (h) borrowing money to be repaid from the trust assets or otherwise;
- (i) advancing money to be repaid from the assets or otherwise;
- (j) employing persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the trustee:
 - (i) to advise or assist the trustee in the performance of the trustee's administrative duties or perform any act of administration, whether or not discretionary; or
 - (ii) to act without independent investigation upon their recommendations;
- (k) if a governing instrument or order requires or authorizes investment in United States government obligations, investing in those obligations, either directly or in the form of securities or other interests, in any open-end or closed-end management type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:
 - (i) the portfolio of the investment company or investment trust is limited to United States government obligations, and repurchase agreements are fully collateralized by United States government obligations; and
 - (ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.
- (9) The court 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.

Enacted by Chapter 89, 2004 General Session