

Missouri Revised Statutes

Chapter 456

Trusts and Trustees--The Uniform Trust Code

Section 456-008.802

August 28, 2009

Duty of loyalty.

456.8-802. 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 456.10-1012, 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:

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

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 456.10-1005;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 456.10-1009; or

(5) 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:

(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.

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. The following transactions are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction complies with the Missouri prudent investor act.

(1) an investment by a trustee in securities of an investment company or investment trust, or in shares or interests in a partnership or limited liability company or other entity that operates as a privately offered investment fund, to which the trustee, or its affiliate, provides services in a capacity other than as trustee.

(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

(3) in addition to the trustee's fees charged to the trust, the trustee, its affiliate, or associated entity may be compensated for any transaction or provision of services described in this subsection 6 or in subdivision (4), (5), or (6) of subsection 8 of this section; provided, however, that with respect to any investment in securities of an investment company or investment trust, or in shares or interests in a partnership or limited liability company or other entity that operates as a privately offered investment fund, to which the trustee or its affiliate provides investment advisory or investment management services or any services described in subdivision (5) of subsection 8 of this section, the trustee shall at least annually notify the persons entitled under section 456.8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined.

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. The following transactions, if fair to the beneficiaries, are not presumed to be affected by a conflict between personal and fiduciary interests and are not precluded by this section:

(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 financial institution operated by the trustee or an affiliate;

(5) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee, provided that notice of any compensation paid pursuant to the delegation is given as provided in subdivision (3) of subsection 6 of this section; or

(6) any loan from the trustee or its affiliate.

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.

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