

# MAINE STATE LEGISLATURE

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CHAPTER 503  
TRUSTS AND TRUSTEES

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SUBCHAPTER I

GENERAL PROVISIONS

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**§ 3951. Vacancies; vesting in new trustee; record of decree**

Whenever vacancies shall occur by the death or resignation of any or all of the trustees named in any deed of trust or mortgage, and from any cause such vacancy cannot be filled by appointment by the surviving trustee or trustees named therein or such trustees neglect or refuse to make such appointment, the probate court or the Superior Court, on a complaint filed by any party interested in said trust, and upon such notice to all persons interested by publication or otherwise as the court shall order, and after hearing thereon, may appoint a trustee or trustees to fill such vacancy or vacancies. Upon and by virtue of said appointment the property described in said deed of trust or mortgage, held by said trustees at the time of such decease or resignation, shall vest in said trustees so appointed without further conveyance thereof, and they shall have the rights and powers and be subject to the duties relating to such trust to the same extent and for the same purpose as the same were held by the original trustees in said trust. The decree making such appointment shall confirm the transfer of title and shall be recorded as the original trust deed was recorded. The heirs at law and personal representatives of any deceased trustee shall not be necessary as parties to said complaint nor any proceedings thereunder, but may appear and be heard in relation to the matters therein contained,

and such notice of said complaint and hearing shall be given them by publication or otherwise as the court may order.

R.S.1954, c. 160, § 23; 1961, c. 317, § 524.

**§ 3952. Vacancy in trusts; bond**

When a trustee under a written instrument declines, resigns, dies or is removed before the objects thereof are accomplished, if no adequate provision is made therein for supplying the vacancy, the probate court or Superior Court shall, after notice to all persons interested, appoint a new trustee to act alone or jointly with the others, as the case may be. Such new trustee, upon giving the bonds and security required, shall have and exercise the same powers, rights and duties, whether as a sole or joint trustee, as if he had been originally appointed, and the trust estate vests in him in like manner as it had or would have vested in the trustee in whose place he is substituted.

R.S.1954, c. 160, § 24.

**§ 3953. Court may order conveyance to trustee**

Upon the appointment of a trustee under section 3952, the court may order such conveyance to be made by the former trustee or by his representatives, or by the other remaining trustees, as is proper or convenient to vest in such trustee, either alone or jointly with the others, the estate and effects to be held in trust.

R.S.1954, c. 160, § 25.

**§ 3954. Obligations in trust; amortization**

Where any part of the principal of a trust consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value. Upon their respective maturities or upon their sale or other disposition any loss or gain realized thereon shall, unless otherwise provided in the instrument creating the trust, fall upon or inure to principal; except that in the case of bonds bearing no stated interest and payable at maturity or at a future time at an amount in excess of their issue price, the amount realized upon their respective maturities or upon their sale or other disposition which is in excess of their inventory value or in default thereof of their market value at the time the principal

was established, or of their cost where purchased later, shall, unless otherwise provided in the instrument creating the trust, inure to income when received.

R.S.1954, c. 160, § 26; 1961, c. 395, § 54.

## SUBCHAPTER II

### TESTAMENTARY TRUSTS

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#### § 4001. Bonds

Every testamentary trustee, except those exempted, before entering on his duties shall give bond to the judge of probate for the county where the will is proved, with sufficient sureties resident in the State, or with a surety company authorized to do business in the State, as surety, in such sum as the judge prescribes, conditioned as follows:

**1. Faithful execution of trust.** That he will faithfully execute such trust according to the will of the testator so far as is consistent with law;

**2. Inventory.** That he will make a true and perfect inventory of the real estate, goods and chattels, and rights and credits of such estate to be returned into the probate office at such time as the judge orders;

**3. Account.** That he will render an account of the income and profits thereof and of his payments and expenses once in 3 years, and oftener if required by the judge;

4. **Settle accounts; pay balances; etc.** That at the expiration of such trust he will settle his accounts with the judge; pay and deliver over all balances, sums of money or other property that are due; and give possession of the other estate, with which he is entrusted, to the persons entitled thereto.

R.S.1954, c. 160, § 1.

### § 4002. Bond not required

In the following cases bonds shall not be required of such trustees, unless for special reasons the judge determines it to be necessary; but when no bond is required, they shall settle their account with the judge of probate annually:

1. **Testator requests.** When the testator has requested or directed that a bond should not be required or that a bond without sureties be accepted;

2. **All parties in interest request.** When all the parties interested in the trust fund, if of full age and legal capacity, in writing signify to the judge their request that a bond shall not be required.

R.S.1954, c. 160, § 2.

### § 4003. Failure to give bond; examination of bond

Every person appointed a testamentary trustee, who neglects to give bond within the time allowed therefor by the judge, shall be considered to decline the trust. Whenever any trustee settles an account in probate court, unless such account is a final one, the judge of probate shall examine his bond and the same proceedings shall be had in relation thereto as are provided in section 3902, relating to bonds of guardians.

R.S.1954, c. 160, § 3.

### § 4004. Agent in State for nonresident trustee

No person residing out of the State shall be appointed a testamentary trustee unless he shall have appointed an agent or attorney in the State. Such appointment shall be made in writing and shall give the name and address of the agent or attorney. Said written appointment shall be filed and recorded in the probate office for the county in which the principal is appointed, and by such appointment the subscriber shall agree that the service of any legal process against him as such testamentary trustee, or that the service of any such process against him in his individ-

ual capacity in any action founded upon or arising out of any of his acts or omissions as such testamentary trustee shall, if made on such agent, have like effect as if made on himself personally within the State, and such service shall have such effect. A testamentary trustee who after his appointment removes from and resides without the State shall so appoint an agent within 30 days after such removal. If an agent appointed under this section dies or removes from the State before the final settlement of the accounts of his principal, another appointment shall be made, filed and recorded as provided. The powers of an agent appointed under this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made. Neglect or refusal by a testamentary trustee to comply with any provision of this section shall be cause for removal. A testamentary trustee residing out of the State shall not appoint his cotrustee, residing in the State, as his agent.

R.S.1954, c. 160, § 4.

#### § 4005. Resignation or removal after notice

Such trustee at his own request may be allowed to resign his trust when it seems proper to the judge. No person succeeding to such trust as executor or administrator of a former trustee is required to accept or retain it against his will. When any trustee, appointed either by the testator or the judge, becomes mentally ill or otherwise evidently unsuitable to discharge his trust, the judge, upon personal notice to him and all others interested, if they reside within the State, or by public notice if their residence is out of the State or unknown, may remove him and appoint another.

R.S.1954, c. 160, § 5; 1959, c. 242, § 8.

#### § 4006. Powers and duties

Every trustee appointed by the judge shall have and exercise the same powers, rights and duties as sole or joint trustee as if he had been appointed by the testator, and the trust estate vests in him accordingly. The judge may order such conveyances to be made by the former trustee or his representatives, or by the remaining trustees, as are proper to vest in the new trustee, solely or jointly, such estate and effects.

R.S.1954, c. 160, § 6.

**§ 4007. Bond of appointed trustee**

Every trustee appointed by the judge shall, before entering on his duties, give bond as aforesaid; but the judge may dispense with the making and returning of an inventory by any substituted trustee when he thinks it unnecessary, and the condition of the bond shall be altered accordingly; but without such bond, accepted by the judge, no right or authority vests in such trustee.

R.S.1954, c. 160, § 7.

**§ 4008. Inventory and appraisal**

When a trustee is required to return an inventory, the estate and effects shall be appraised by disinterested appraisers appointed and sworn as in case of the estates of deceased persons. Only one appraiser may be appointed if in the opinion of the judge or register the nature of the property makes it desirable to do so; otherwise 3 appraisers shall be appointed. Warrants for inventories may be revoked by the judge for cause and new ones issued if deemed necessary.

R.S.1954, c. 160, § 8.

**§ 4009. Reference or compromise**

The judge after a hearing, public or personal notice of which shall have been given in accordance with order of court, may authorize any trustee to refer or compromise any claim or action of whatsoever nature by or against the trust estate. Any such award or compromise, if found by the judge just and reasonable in its effect upon all persons who may then or at any time thereafter be or become interested in said trust estate, shall be valid and binding on such persons. Where it shall appear that the interests of any persons under disability not represented by guardian or any future contingent interest may be affected, the court may appoint some suitable person or persons to represent such persons under disability or future interests.

R.S.1954, c. 160, § 9; 1961, c. 317, § 519.

**§ 4010. Sale of trust estates and investment of moneys**

Any judge of probate having jurisdiction of the trust and the Superior Court, on application of the trustee or of any person interested in the trust estate, after such notice as the judge or court shall order, may authorize or require him to sell any real or personal estate held by him in trust and to invest the pro-

ceeds thereof, with any other trust moneys in his hands, in real estate, in policies of life or endowment insurance or annuity contracts issued by life insurance companies authorized to transact business in the State, on the life of any beneficiary of the trust or on the life of any person in whose life such beneficiary has an insurable interest, or in any other manner most for the interest of all concerned therein; and may give such further directions as the case requires for managing, investing and disposing of the trust fund, as will best effect the objects of the trust.

R.S.1954, c. 160, § 10; 1961, c. 317, § 520.

### **§ 4011. Power of courts as to trusts**

Either of said courts may hear and determine all other matters relating to the trusts herein mentioned.

R.S.1954, c. 160, § 11; 1961, c. 317, § 521.

### **§ 4012. Action on bonds of trustees**

A civil action upon any bond given by a trustee may be brought by order of the judge of probate for the benefit of any person interested in the trust estate. The proceedings in such action shall be conducted in the manner prescribed with respect to bonds of administrators.

R.S.1954, c. 160, § 12; 1961, c. 317, § 522.

### **§ 4013. Executors becoming trustees by operation of law**

The foregoing provisions are applicable to executors who by the provisions of a will become trustees by operation of law without express appointment; but they are not required to return another inventory.

R.S.1954, c. 160, § 13.

### **§ 4014. Investment forming part of estate retained**

In the absence of instruction from the court or direction in the will, a testamentary trustee may retain as a part of the estate any investment which formed a part of the estate of a deceased person at the time of his death.

A guardian or conservator may likewise retain investments which formed part of the estate of his ward. Nothing herein contained shall relieve such fiduciary from the exercise of reasonable

business judgment as to the supervision of such investments and the sale thereof when such judgment so requires.

R.S.1954, c. 160, § 14.

### § 4015. Income earned during period of administration

Unless otherwise expressly provided by the will of a testator dying after August 28, 1957, all net income from real and personal property earned during the period of administration of the estate of such testator and not payable to others or otherwise disposed of by the will shall be distributed pro rata to or for the benefit of the immediate income beneficiaries of any trusts created out of the residuary estate of such testator and the other persons entitled to such residuary estate. None of such income shall, after such distribution, be added to the principal of the residuary estate the whole or any part of which is devised or bequeathed in trust or for life or for a term of years, but shall be paid ratably to the income beneficiary of a trust, or to the tenant for life or for a term of years, or to the absolute residuary distributee, as the case may be. Unless otherwise directed in the will, income shall be payable to the life beneficiaries of trusts, or to life tenants from the date of testator's death. Nothing contained in this section shall affect the right of any person to income on any portion of the estate not part of the residuary estate of such testator.

1957, c. 183.

### § 4016. Net income on general bequest in trust

Where a general bequest other than of residue is given in trust or for life or for a term of years, that portion of the net income of the estate, except income from assets specifically devised or bequeathed, earned during the period of administration up to the time of distribution of such bequest, computed as provided in this section, shall be distributed as income to or for the benefit of the immediate income beneficiary of such bequest. Such portion shall be that proportion of the net income of the estate earned to the time of distribution of such bequest, except income from assets specifically devised or bequeathed, which the value of such bequest bears to the total inventory value of the estate reduced by all debts, expenses and taxes payable out of the residue of the estate; by the amount of any general bequest other than of residue, which is not given in trust or for life or for a term of years; and by the inventory value of assets specifically devised and bequeathed.

1957, c. 183.

## SUBCHAPTER III

## VOLUNTARY TRUSTS

Sec.

- 4051. Confirmation of voluntary trustee by judge; bond; filing of inventory.
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**§ 4051. Confirmation of voluntary trustee by judge; bond; filing of inventory**

A person placing property for any purpose in the hands of a trustee or any person resident of the State having property in this State in his hands as trustee may, on petition to the judge of probate in the county where he resides, have the appointment of trustee confirmed by the judge. Where the trust property includes real estate situated in the State, the settlor of said trust or the trustee named in said trust may, on petition to the judge of probate in any county where said real estate is situated, have the appointment of trustee confirmed by said judge. Said trustee shall file a bond, with sureties resident in the State, or with a surety company authorized to do business in the State, as surety, to be approved by the judge, for the fulfillment of said trust, according to the terms and conditions of the trust deed or declaration, unless the same be waived in the instrument creating said trust, and shall file inventory, and thereafterwards, at least once in 3 years, account to the said judge or his successor in office, after such public notice as said judge may order thereon. Section 3952 is applicable to cases of voluntary trusts arising under this section.

R.S.1954, c. 160, § 15.

**§ 4052. Accountability to probate judge**

The trustee shall file inventory and account to the judge in the same manner as testamentary trustees, unless excused or released therefrom by the person creating the trust or for whose benefit it was created. At the termination of such trust, the

money or property held by the trustee shall be paid or delivered to the person legally entitled thereto.

R.S.1954, c. 160, § 16.

**§ 4053. Remedy where trustee fails to fulfill bond**

If said trustee at any time fails to fulfill the conditions of the trust or of his bond, parties interested have the same remedies, and like proceedings shall be had as in case of other probate bonds.

R.S.1954, c. 160, § 17.

**§ 4054. Prudence required; capital gains dividends**

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 men 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, and stocks, preferred or common, and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Dividends received which represent capital gains realized from the sale of securities owned by any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended, shall for all purposes be considered as principal unless otherwise provided by the will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers.

R.S.1954, c. 160, § 18; 1963, c. 1.

**§ 4055. Exceptions**

Nothing contained in sections 4054 to 4057 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 section 4054.

R.S.1954, c. 160, § 19.

**§ 4056. Power of court not restricted**

Nothing contained in sections 4054 to 4057 shall be construed 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, reinvestment, exchange, retention, sale or management of fiduciary property.

R.S.1954, c. 160, § 20.

**§ 4057. Applicability of provisions**

Sections 4054 to 4057 shall govern fiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made.

R.S.1954, c. 160, § 21.