

CHAPTER 229.

[H. B. 279.]

UNIFORM TRUSTEES ACCOUNTING ACT.

AN ACT concerning inventories and intermediate and final accountings by trustees and to make uniform the law with reference thereto.

Be it enacted by the Legislature of the State of Washington:

Definitions.

SECTION 1. As used in this act:

A "Testamentary Trustee" means a trustee serving under a trust created by a will of a testator domiciled in this state at the time of his death whose will has been admitted to probate in this state, whether the trustee was appointed by the testator or by a court or other authority.

A "Non-testamentary Trustee" means a trustee serving under a trust created in this state otherwise than by a will, whether the trustee was appointed by the settlor or by a court or other authority.

The word "Trustee" includes trustees, a corporate as well as a natural person, a successor or substitute trustee, and the successor in interest of a deceased sole trustee.

"Beneficiary" includes a beneficiary under the trust, a person who is entitled to the trust capital at the termination of the trust and a surety on the bond of the trustee.

"Settlor" includes the creator of a testamentary as well as a non-testamentary trust.

"Relative" means a person related by blood, adoption, or marriage within the fourth degree, according to the civil law.

"Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common cor

trol with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly.

This act shall not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a Federal Court or of the Superior Court when not sitting in probate, liquidation trusts or trust for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions.

Act not applicable.

SEC. 2. Within thirty (30) days after it is the duty of the first qualifying Testamentary Trustee to take possession of the trust property he shall file with the Clerk of the Court where the will was admitted to probate an inventory under oath, showing by its items all the trust property which shall have come to his possession or knowledge.

Duties of Testamentary Trustee.

Inventory.

SEC. 3. Within thirty (30) days after the expiration of the first year after the first qualifying testamentary trustee was under a duty to file his inventory as prescribed in section 2, the Testamentary Trustee then in office shall file with the Clerk of said Court an intermediate account under oath covering such year and showing:

Account.

(a) the period which the account covers;

Contents.

(b) the names and addresses of the living beneficiaries known to the trustee, with a statement as to those known to be minors or under legally declared disability; and a description of any possible unborn or unascertained beneficiaries; and the name of the surety or sureties on the trustee's bond with the amount of such bond;

List of beneficiaries.

(c) in a separate schedule the trust principal

Trust principal.

on hand at the beginning of the accounting period and the then status of its investment; the investments received from the settlor and still held; additions to trust principal during the accounting period with the dates and sources of acquisition; investments collected, sold or charged off during the accounting period, with the consequent loss or gain and whether credited to principal or income; investments made during the accounting period, with the date, source and cost of each; deductions from principal during the accounting period, with the date and purpose of each; and trust principal on hand at the end of the accounting period, how invested, and the estimated market value of each investment;

Investments.

Income.

(d) in a separate schedule the trust income on hand at the beginning of the accounting period, and in what form held; trust income received during the accounting period, when, and from what source; trust income paid out during the accounting period, when, to whom, and for what purpose; trust income on hand at the end of the accounting period, and how invested;

That parties doing business are not affiliated or related.

(e) that neither any seller of, nor buyer from, the trustee of trust property during the accounting period was at the time of such sale or purchase (1) in the case of a corporate trustee an affiliate, or any officer, employee, or nominee of the trustee or of an affiliate; or was (2) in the case of non-corporate trustee a relative, partner, employer, employee, or business associate; but none of the provisions of this sub-section shall apply to purchases and sales made by brokers for the trustee or to stock exchanges;

Unpaid claims.

(f) a statement of unpaid claims with the reason for failure to pay them, including a statement as to whether any estate or inheritance taxes have become due with regard to the trust property, and if due, whether paid;

(g) a brief summary of the account;

Summary.

(h) such other facts as the Court may by rule or Court order require.

Within thirty (30) days after the end of each yearly period thereafter during the life of the trust the Testamentary Trustee then in office shall file with the same Court an intermediate account under oath showing corresponding facts regarding the current accounting period.

Annual intermediate account.

SEC. 4. Within thirty (30) days after the termination of every testamentary trust the trustee, and in the case of the transfer of the trusteeship due to the death, resignation, removal, dissolution, merger or consolidation of a sole trustee the successor in interest of the old trustee, shall file with the Clerk of the Court where the will was admitted to probate a final account under oath, showing for the period since the filing of the last account the facts required by section 3 regarding intermediate accountings and in case of termination of the trust the distribution of the trust property which the accountant proposes to make.

Duty of new trustee upon change.

Final account.

SEC. 5. Within thirty (30) days after the distribution of the trust property by the Testamentary Trustee he shall file in the Court where the final account was filed a distribution account of the trust property which he has distributed and the receipts of the distributees.

Final account.

SEC. 6. Every Testamentary Trustee who files an intermediate account in court shall within ten (10) days after such filing deliver to each known beneficiary a notice of such filing, and if there is to be no Court hearing on the account a summary of the account with an offer to deliver the full account on demand, or if there is to be a Court hearing on the account a copy of the account. Such delivery may be (1) by handing the notice or copy to the

Notice of account to beneficiaries.

Method of notice.

May petition
court for
hearing.

Hearing
every three
years.

Notice to
beneficiary.

Contents of
notice.

Fees.

beneficiary personally, or to his guardian, or attorney of record; or (2) by sending it by registered mail with return receipt requested to such beneficiary, or his guardian or attorney of record, at the last known address of the addressee. Any beneficiary or the trustee may petition the Court for a hearing on any intermediate account, and the holding of such a hearing shall be in the discretion of the Court. In the case of the third intermediate accounting and every three (3) years thereafter the Trustee shall apply to the Court for a hearing on and approval of all unapproved accounts and shall give each known beneficiary written notice of such application twenty (20) days before the return day thereof, in the manner prescribed for the delivery of the copy of the account. The return day of the application for a hearing on an intermediate accounting shall be at least twenty (20) days after the latest account was filed. The notice by the Trustee of the application for a hearing on and approval of the account shall inform the beneficiaries of the amount of commissions or other compensation to be requested by the Trustee on such hearing, and the amount of other fees which the Court will then be requested to allow.

Copy of
account to
beneficiaries.

SEC. 7. At least twenty (20) days before the return day of a final accounting the Testamentary Trustee shall deliver to each beneficiary a copy of the account and a notice of the time and place at which the account will be presented for approval, which date shall not be earlier than twenty (20) days after the account was filed. Such delivery may be accomplished in the same manner as with regard to the service of papers on the intermediate accounting. The notice shall inform the beneficiaries of the amount of commissions or other compensation to be requested by the Trustee on the application for approval of the account, and the amount of other fees which the court will then be requested to allow.

SEC. 8. When an intermediate or final account is presented for consideration in Court the Testamentary Trustee shall produce in Court vouchers for all expenditures of twenty dollars (\$20) or more, made by the Trustee during the accounting period. The vouchers shall be returned to the Trustee after the account is approved, but shall be reproduced by him upon order of the Court.

Vouchers for expenditures over 20 dollars.

SEC. 9. Any beneficiary who is an infant, of unsound mind or otherwise legally incompetent, and also possible unborn or unascertained beneficiaries shall be represented in a testamentary trust accounting by a guardian ad litem. If the residence of any beneficiary is unknown, or there is doubt as to the existence of one or more persons as beneficiaries, the Court shall make such provision for service of notice and representation on the accounting as it believes proper.

Incompetents to be represented by guardian ad litem.

SEC. 10. On the return day of an application for a hearing on and approval of an intermediate or final account the Testamentary Trustee shall file an affidavit proving the timely delivery to the known beneficiaries of the documents required by the act or by Court order. The procedure as to filing of objections, examination of the Trustee and other witnesses, inspection of the trust property, adjournments, reference to a master or other representative of the Court, amendment of the account, and similar matters, shall be in the discretion of the Court. The Court shall, as soon as practicable, act upon the account, and discharge the Trustee if the account is an approved distribution account.

Affidavit of service.

Procedure.

SEC. 11. The approval by the Court of a Testamentary Trustee's account after due notice and service of papers or representation as provided in this act, shall, subject to the right of appeal, relieve the Trustee and his sureties from liability to all ben-

Approval relieves Trustee.

Court may charge Trustee for breach.

eficiaries then known or in being, or who thereafter become known or in being, for all the Trustee's acts and omissions which are fully and accurately described in the account, including the then investment of the trust funds. The Court may disapprove the account and surcharge the Trustee for any loss caused by a breach of trust committed by him. The account may be reopened by the Court on motion of the Trustee or a beneficiary, for amendment or revision, if it later appears that the account is incorrect, either because of fraud or mistake. Court approvals or disapprovals of intermediate or final accounts shall be deemed final judgments in so far as the right of appeal is concerned. No account shall be reopened because of a mistake more than one year after its approval. No beneficiary may move for the reopening of any account because of fraud more than six (6) months after he discovers the existence of the fraud.

Order final.

Time for reopening.

Filing notice of appointment.

SEC. 12. Within thirty (30) days after it is the duty of the first qualifying Trustee of a non-testamentary trust to take possession of the trust property he shall file in the office of the Clerk of the Superior Court in the county where the trust was created a notice of his appointment as Trustee, a copy of the instrument creating the trust if the trust was created by a writing, a list of the names, addresses, and dates of birth of the known living beneficiaries, a description of any possible unborn or unascertained beneficiaries, and an inventory under oath of the trust property which shall have come to his possession or knowledge.

Copy of instrument.

Beneficiaries.

Inventory.

Procedure same as for Testamentary Trustee.

SEC. 13. Every Non-testamentary Trustee shall file intermediate, final and distribution accounts with the Clerk of the Superior Court in the county where the trust was created, at the same intervals, under the same conditions, and with the same effect as

herein provided with respect to the accountings of a Testamentary Trustee.

SEC. 14. The Clerk of the Court shall keep records of all trust inventories and accounts filed under this act, and shall within thirty (30) days after the filing should have occurred notify the Court of all failures by Trustees to file accounts in accordance with this act. The Court shall, upon learning that a Trustee subject to its jurisdiction has failed to perform any duty placed upon him by this act, issue a citation or order to the Trustee requiring him to perform such duty.

Duty of Clerk of Court.

Order of court.

SEC. 15. The settlor of any trust affected by this act may, by provision in the instrument creating the trust if the trust was created by a writing, or by oral statement to the Trustee at the time of the creation of the trust if the trust was created orally, or by an amendment of the trust if the settlor reserved the power to amend the trust, relieve his Trustee from any or all of the duties which would otherwise be placed upon him by this act, or add duties to those imposed by this act on his Trustee with regard to inventories and accountings. But no expression of intent by any settlor shall effect the jurisdiction of the Courts of this State over inventories and accounts of Trustees, in so far as such jurisdiction does not depend upon the provisions of this act.

Power of settlor.

Intent of settlor not to effect jurisdiction of court.

SEC. 16. Any beneficiary, if of full age and sound mind, may, if acting upon full information, by written instrument delivered to the Trustee, excuse the Trustee as to such beneficiary from performing any of the duties imposed on him by this act or exempt the trustee from liability to such beneficiary for failure to perform any of the duties imposed upon the trustee by the terms of this act.

Beneficiary of legal age may relieve Trustee.

SEC. 17. Nothing herein contained shall be construed to abridge the power of any court of com-

Powers of court.

Powers of court.

petent jurisdiction to require Testamentary or Non-Testamentary Trustees to file an inventory, to account, to exhibit the trust property, or to give beneficiaries information or the privilege of inspection of trust records and papers, at times other than those herein prescribed; and nothing herein contained shall be construed to abridge the power of such court for cause shown to excuse a Trustee from performing any or all of the duties imposed on him by this act. Nothing herein contained shall prevent the Trustee from accounting voluntarily when it is reasonably necessary, even though he is not required to do so by this act or by Court order.

Rights of beneficiary.

SEC. 18. Any beneficiary may apply to the Court of competent jurisdiction for an order requiring the Trustee to perform the duties imposed upon him by this act.

Trustee may be removed for breach.

SEC. 19. When a Trustee fails to perform any of the duties imposed upon him by this act he may be removed, his compensation may be reduced or forfeited, or other civil penalty inflicted, in the discretion of the Court.

Court may prescribe forms.

SEC. 20. The Courts given jurisdiction over accountings by this act may prescribe forms in which inventories and accounts shall be presented.

Oath of Trustee.

SEC. 21. Whenever an oath or affirmation is required of a Trustee under this act it may be made in the case of a corporate Trustee by an officer of such corporate Trustee, and in the case of co-Trustees acting jointly by any one of the co-Trustees.

Includes charitable trusts.

SEC. 22. This act shall apply to charitable trusts. Documents required to be delivered to beneficiaries of such trusts shall be delivered to the Attorney General of the State.

Uniform act.

SEC. 23. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SEC. 24. This act shall be cited as the Uniform Trustees' Accounting Act. Title.

SEC. 25. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. Partial
invalidity.

SEC. 26. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. Inconsistent
acts repealed.

SEC. 27. This act shall apply only to non-testamentary trusts created after the effective date of this act and to testamentary trusts created by wills in cases where the testator died subsequent to the effective date of the act: *Provided, however,* That it shall not apply to trusts created by wills executed prior to the effective date of the act which contains provisions for accounting by the Trustee thereof inconsistent with the provisions of this act. Application
to future
trusts.

Proviso.

SEC. 28. This act shall not apply to executors, administrators or guardians. Exception.

Passed the House February 14, 1941.

Passed the Senate March 11, 1941.

Approved by the Governor March 25, 1941.