

CHAPTER 35. Subchapter VII.

§ 3580. Definition 89

§ 3581. Breach of trust; equitable remedies 89

§ 3582. Damages against trustee for breach of trust 89

§ 3583. Liability of trustee in absence of breach 90

§ 3584. Attorneys' fees and costs 90

§ 3585. Limitation of action against trustee following trustee's report 90

§ 3586. Reliance on trust instrument 91

§ 3587. Events affecting administration or distribution 91

§ 3588. Beneficiary's consent, release, or ratification 91

§ 3589. Limitation on personal liability of trustee 92

§ 3590. Protection of person dealing with trustee 92

§ 3591. Certification of trust 92

§ 3592. Failure of trust to dispose of all assets 93

§ 3593. Interest on pecuniary gifts in trust 94

§ 3594. Legacy to creditor of trustor 94

§ 3595. Abatement of gifts in trust 94

§ 3580. Definition.

In this subchapter, “good faith” means honesty in fact and the observance of reasonable standards of fair dealing.

72 Del. Laws, c. 388, § 7.;

§ 3581. Breach of trust; equitable remedies.

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may order any equitable remedy, including:

- (1) Compelling the trustee to perform the trustee’s duties;
- (2) Enjoining the trustee from committing a breach of trust;
- (3) Compelling the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) Ordering a trustee to account;
- (5) Appointing a special fiduciary to take possession of the trust property and administer the trust;
- (6) Suspending or removing the trustee;
- (7) Reducing or denying compensation to the trustee;
- (8) Subject to § 3590 of this title, voiding an act of the trustee, imposing a lien or a constructive trust on trust property or tracing trust property wrongfully disposed of and recover the property or its proceeds; or
- (9) Granting any other appropriate relief.

72 Del. Laws, c. 388, § 7; 73 Del. Laws, c. 409, § 4.;

§ 3582. Damages against trustee for breach of trust.

A beneficiary may charge a trustee who commits a breach of trust with:

- (1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred;
- (2) The profit that the trustee made by reason of the breach; or

(3) Such other relief as may be fashioned by the court.

72 Del. Laws, c. 388, § 7.;

§ 3583. Liability of trustee in absence of breach.

(a) Except to the extent a trustee realizes a profit from conduct expressly permitted by law or the terms of the trust, a trustee is accountable to a beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for the failure to make a profit.

72 Del. Laws, c. 388, § 7; 77 Del. Laws, c. 330, § 18.;

§ 3584. Attorneys' fees and costs.

In a judicial proceeding involving a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorneys' fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

72 Del. Laws, c. 388, § 7.;

§ 3585. Limitation of action against trustee following trustee's report.

(a) A beneficiary may initiate a proceeding against a trustee for breach of trust until the first to occur of:

(1) Two years after the date the beneficiary was sent a report that adequately disclosed the facts constituting a claim; or

(2) The date the proceeding was otherwise precluded by adjudication, release, consent or limitation.

(b) A report adequately discloses the facts constituting a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.

(c) For the purpose of subsection (a) of this section, a beneficiary is deemed to have been sent a report if:

(1) In the case of a beneficiary having capacity, it is sent to the beneficiary; or

(2) In the case of a beneficiary who under § 3547 of this title may be represented and bound by another person, it is sent to the other person.

(d) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 5 years after the first to occur of:

- (1) The removal, resignation, or death of the trustee;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(e) This section does not preclude an action to recover for fraud or misrepresentation related to the report.

72 Del. Laws, c. 388, § 7; 76 Del. Laws, c. 254, § 15.;

§ 3586. Reliance on trust instrument.

A trustee who acted in good faith reliance on the terms of a written trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

72 Del. Laws, c. 388, § 7.;

§ 3587. Events affecting administration or distribution.

Whenever the happening of an event, including marriage, divorce, performance of education requirements or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

72 Del. Laws, c. 388, § 7.;

§ 3588. Beneficiary's consent, release, or ratification.

Whether or not the consent, release, or ratification is supported by consideration, a beneficiary may not hold a trustee liable for a breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

- (1) The consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or
- (2) At the time of the consent, release or ratification, the beneficiary did not know of:
 - a. The beneficiary's rights; or
 - b. Material facts the trustee knew or should have known with the exercise of reasonable inquiry.

72 Del. Laws, c. 388, § 7; 75 Del. Laws, c. 300, § 4.; 78 Del. Laws, c. 117, § 14.;

§ 3589. Limitation on personal liability of trustee.

Repealed by 73 Del. Laws, c. 409, § 3, effective July 10, 2002.

§ 3590. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with another person knowing that the other person is a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee or who for value and in good faith deals with a former trustee without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) The protection provided by this section to persons assisting or dealing with a trustee is superseded by comparable protective provisions of other laws relating to commercial transactions or to the transfer of securities by fiduciaries.

72 Del. Laws, c. 388, § 7; 73 Del. Laws, c. 409, § 3.;

§ 3591. Certification of trust.

(a) Instead of providing a person other than a beneficiary with a copy of the trust instrument, a trustee may provide the person with a certification of trust containing statements concerning, but not limited to, the following matters:

(1) The existence of the trust and the date of execution of the trust instrument;

(2) The identity of the trustor or trustors and of the currently acting trustee or trustees of the trust;

(3) The powers of the trustee;

(4) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(5) The authority of co-trustees to sign and whether all or less than all are required to sign in order to exercise powers of the trustee;

(6) The trust's taxpayer identification number; and

(7) The manner in which title to trust property may be taken.

(b) A certification of trust must be in the form of an acknowledged writing and may be signed by any trustee.

(c) A certification of trust must contain a statement that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to provide copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including attorney's fees, if the court determines that the person did not act in good faith in requesting the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

72 Del. Laws, c. 388, § 7; 73 Del. Laws, c. 409, § 3.;

§ 3592. Failure of trust to dispose of all assets.

In the event that the terms of an inter vivos trust do not effectively dispose of a portion of or all of the principal and income of such inter vivos trust:

(1) If such failure occurs simultaneously with the death of the trustor,

the trust principal not effectively disposed of shall be treated as though it were an additional part of the trustor's estate, and shall be disposed of in accordance with the provisions of the trustor's will, or if the trustor has no valid will, then the provisions of § 501 et seq. of this title shall govern the disposition of such principal.

(2) If such failure occurs at any time other than simultaneously with the death of the trustor, the trust income and principal not effectively disposed of shall be distributed as though the trustor had died on the date on which such failure occurred, a resident of the state of Delaware, owning the property so distributable, as though the provisions of § 501 et seq. of this title applied, but provided that if the provisions of § 502(2) or (3) of this title would apply for purposes of determining the share of a surviving spouse, the share of such surviving spouse shall be half of the personal property of the trust plus a life estate in the real estate of the trust.

75 Del. Laws, c. 299, § 1; 76 Del. Laws, c. 90, § 17.;

§ 3593. Interest on pecuniary gifts in trust.

Except where circumstances justify a longer period, pecuniary gifts from an inter vivos trust which are payable as of the death of the trustor shall bear interest at the rate of 4 percent per annum payable from the trust beginning 13 months after the trustee first takes office as trustee following the death of the trustor until payment, unless a contrary intent is indicated by the trust instrument.

75 Del. Laws, c. 299, § 2.;

§ 3594. Legacy to creditor of trustor.

A gift to a beneficiary of an inter vivos trust which is made effective as of the death of the trustor shall not be deemed to be in satisfaction of a debt due from the trustor to the donee, unless the intention of the trustor that it shall be so accepted shall appear in the trust expressly or by manifest implication.

75 Del. Laws, c. 299, § 3.;

§ 3595. Abatement of gifts in trust.

(a) Except as provided in subsection (b) of this section, shares of distributees of an inter vivos trust, who are entitled to distributions from the trust as of the date of the death of the trustor, abate, with personal property to be abated prior to real property within each class, in the following order:

(1) Property owned by the trust not disposed of by the trust instrument.

- (2) Residuary gifts under the trust instrument.
- (3) General gifts under the trust instrument.
- (4) Specific gifts under the trust instrument.

For purposes of abatement, a general gift charged on any specific property or fund is a specific gift to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general gift to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property that each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the trust instrument.

(b) If the trust instrument expresses an order of abatement, or if the overall plan of distribution at the trustor's death or the express or implied purpose of the gift would be defeated by the order of abatement stated in subsection (a) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the trustor.

(c) If the subject of a preferred gift is sold or used incident to administration of the trust, abatement shall be achieved by appropriate adjustments in, or contributions from, other interests in the remaining assets.

75 Del. Laws, c. 299, § 4.;

35-7