



Ohio Revised Code

Section 5808.02 Duty of loyalty to beneficiaries - voidable transactions - conflicts of interest.

Effective: March 22, 2012

Legislation: Senate Bill 117 - 129th General Assembly

(A) A trustee shall administer the trust solely in the interests of the beneficiaries.

(B) Subject to the rights of persons dealing with or assisting the trustee as provided in section 5810.12 of the Revised Code, 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 that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless one of the following applies:

(1) The transaction was authorized by the terms of the trust or by other provisions of the Revised Code.

(2) The transaction was approved by the court.

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section 5810.05 of the Revised Code.

(4) The beneficiary or the beneficiary's representative consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 5810.09 of the Revised Code.

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(C) 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 one of the following:

(1) The trustee's spouse;



(2) The trustee's descendant, sibling, or parent or the spouse of a trustee's descendant, sibling, or parent;

(3) An agent or attorney of the trustee;

(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.

(D) 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.

(E) An investment by a trustee that is permitted by other provisions of the Revised Code is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Chapter 5809. of the Revised Code.

(F) 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.

(G) This section does not preclude either of the following:

(1) Any transaction authorized by another section of the Revised Code;

(2) Unless the beneficiaries establish that it is unfair, any of the following transactions:

(a) An agreement between a 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, 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-services institution that is an affiliate of the trustee;

(e) An advance by the trustee of money for the protection of the trust.

(H) 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.