

§ 36C-8-802. Duty of loyalty.

(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 G.S. 36C-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 that is otherwise affected by a conflict between the trustee's fiduciary and personal interests, is voidable by a beneficiary affected by the transaction, without regard to whether the transaction is fair to the beneficiary, unless:

- (1) The terms of the trust authorized the transaction;
- (2) The court approved the transaction;
- (3) The beneficiary did not commence a judicial proceeding within the time allowed by G.S. 36C-10-1005;
- (4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with G.S. 36C-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.

(c) In determining whether a sale, encumbrance, or other transaction involving the investment or management of trust property is affected by a conflict of interest between the trustee's fiduciary and personal interests, the transaction is rebuttably presumed to be affected by a conflict of interest if the trustee enters into the transaction with:

- (1) The trustee's spouse or a parent of the trustee's spouse;
- (2) The trustee's descendants, siblings, ancestors, or their spouses;
- (3) An agent, attorney, employee, officer, director, member, manager, or partner of the trustee, or an entity that controls, is controlled by, or is under common control with the trustee; or
- (4) Any other person or entity in which the trustee, or a person that owns a significant interest in the trust, has an interest or relationship that might affect the trustee's best judgment.

(d) 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 and which is outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those the trustee generally offers similarly situated customers, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) 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.

(f) Notwithstanding subsection (c) of this section:

- (1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee or its affiliate has an investment, or to which the trustee, or its affiliate, provides services for compensation, 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 Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually provides notice of the rate and method by which the compensation was determined to each beneficiary of the trust to whom the trustee owes a duty under G.S. 36C-8-813(a)(1) to provide the information described in that subdivision; and

- (2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent with payments generally made for the same or similar services.

(g) 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 to appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude any of the following transactions:

- (1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee.
- (2) Payment of compensation to which the trustee is entitled under G.S. 36C-7-708.
- (3) A transaction that is fair to the beneficiaries between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an interest.
- (4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the trustee.
- (5) An advance by the trustee of money for the protection of the trust.

(i) 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. (1999-215, s. 1; 2005-192, s. 2; 2007-106, ss. 31, 32, 33; 2015-205, s. 10.5; 2015-264, s. 31(a).)