

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 21.
FIDUCIARY RELATIONS AND PERSONS
WITH MENTAL ILLNESS.

CHAPTER 17.
GENERAL FIDUCIARY RELATIONS.

2001 Edition

DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 17. GENERAL FIDUCIARY RELATIONS.

TABLE OF CONTENTS

Subchapter I. Uniform Fiduciaries Act.

- § 21-1701. Definitions.
- § 21-1702. Application of payment made to fiduciaries.
- § 21-1703. Transfer of negotiable instruments by fiduciary.
- § 21-1704. Check drawn by fiduciary payable to third person.
- § 21-1705. Check drawn by and payable to fiduciary.
- § 21-1706. Deposit in name of fiduciary as such.
- § 21-1707. Deposit in name of principal; check drawn thereon by fiduciary; check payable to drawee bank.
- § 21-1708. Conforming amendment.
- § 21-1709. Deposit in names of two or more trustees.
- § 21-1710. Law not retroactive.
- § 21-1711. Cases not provided for by chapter.
- § 21-1712. Short title.

Subchapter II. General Provisions.

- § 21-1721. Investment of trust assets.[Repealed]
- § 21-1722. Prohibition from exercising powers conferred upon trustee.

CHAPTER 17. GENERAL FIDUCIARY RELATIONS.

SUBCHAPTER I. UNIFORM FIDUCIARIES ACT.

Refs & Annos

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1943, p. 544	7-7-1943	Code 1975, §§ 19-1-1 to 19-1-13.
Arizona	1951, c. 139	3-29-1951	A.R.S. §§ 14-7501 to 14-7512.
Colorado	1923, c. 65	4-16-1923	West's C.R.S.A. §§ 15-1-101 to 15-1-113.
District of Columbia	1928, 45 Stat. 509	5-14-1928	D.C. Official Code, 2001 Ed. §§ 21-1701 to 21-1712.
Hawaii	1945, c. 197	5-17-1945	HRS §§ 556-1 to 556-10.
Idaho	1925, c. 217	3-17-1925	I.C. §§ 68-301 to 68-315.
Illinois	1931, p. 676	7-7-1931	S.H.A. 760 ILCS 65/1 to 65/12.
Indiana	1927, c. 17	5-16-1927	West's A.I.C. 30-2-4-1 to 30-2-4-14.
Louisiana	1924, No. 226	1-1-1925	LSA-R.S. 9:3801 to 9:3814.
Maryland	1929, c. 572	4-11-1929	Code, Estates and Trusts, §§ 15-201 to 15-211.
Minnesota	1945, c. 202	3-31-1945	M.S.A. §§ 520.01 to 520.13.
Missouri	2004, H.B. No. 1511	1-1-2005	V.A.M.S. §§ 469.240 to 469.350.
Nevada	1923, c. 44	3-1-1923	N.R.S. 162.010 to 162.140.
New Jersey	1927, c. 30	7-4-1927	N.J.S.A. 3B:14-52 to 3B:14-61.
New Mexico	1923, c. 26		NMSA 1978, §§ 46-1-1 to 46-1-11.
New York	1948, c. 866	4-6-1948	McKinney's General Business Law §§ 359-i, 359-l.
North Carolina	1923, c. 85	2-27-1923	G.S. §§ 32-1 to 32-13.
Ohio	2006, H.B. 416	1-1-2007	R.C. §§ 5815.01 to 5815.11.
Pennsylvania	L.1923	5-31-1923	7 P.S. §§ 6351 to 6404.
Rhode Island	1961, c. 147	1-2-1962	Gen.Laws 1956, §§ 18-4-15 to 18-4-21.
South Dakota	1943, c. 19	2-6-1943	SDCL 55-7-2 to 55-7-15.
Tennessee	1953, c. 82	4-6-1953	T.C.A. §§ 35-2-101 to 35-2-112.
Utah	1925, c. 86	5-12-1925	U.C.A.1953, 22-1-1 to 22-1-11.
Virgin Islands	1957, Act No. 160	9-1-1957	15 V.I.C. §§ 1041 to 1053.
Wisconsin	1925, c. 227	6-1-1925	W.S.A. 112.01(1 to 16).
Wyoming	1929, c. 90	2-21-1929	Wyo.Stat.Ann. §§ 2-3-201 to 2-3-211.

§ 21-1701. DEFINITIONS.

(a) In this chapter unless the context otherwise requires:

"bank" includes a person or association of persons, whether incorporated or not, carrying on the business of banking;

"fiduciary" includes a trustee under a trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or other person acting in a fiduciary capacity for a person, trust, or estate;

"person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest;

"principal" includes a person to whom a fiduciary as such owes an obligation.

(b) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether negligently or not.

(Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1701.

1973 Ed., § 21-1701.

Uniform Law

This section is based upon § 1 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1702. APPLICATION OF PAYMENT MADE TO FIDUCIARIES.

A person who in good faith pays or transfers to a fiduciary money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of the payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1702.

1973 Ed., § 21-1702.

Uniform Law

This section is based upon § 2 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1703. TRANSFER OF NEGOTIABLE INSTRUMENTS BY FIDUCIARY.

If a negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if a negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse the instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, the instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in a transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

(Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1703.

1973 Ed., § 21-1703.

Uniform Law

This section is based upon § 4 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1704. CHECK DRAWN BY FIDUCIARY PAYABLE TO THIRD PERSON.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such an instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering

the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith. Where, however, the instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in a transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1704.

1973 Ed., § 21-1704.

Uniform Law

This section is based upon § 5 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1705. CHECK DRAWN BY AND PAYABLE TO FIDUCIARY.

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such an instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligations as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1705.

1973 Ed., § 21-1705.

Uniform Law

This section is based upon § 6 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1706. DEPOSIT IN NAME OF FIDUCIARY AS SUCH.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which the deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1706.

1973 Ed., § 21-1706.

Uniform Law

This section is based upon § 7 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1707. DEPOSIT IN NAME OF PRINCIPAL; CHECK DRAWN THEREON BY FIDUCIARY; CHECK PAYABLE TO DRAWEE BANK.

If a check is drawn upon a bank account of his principal by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay the checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check, or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1707.

1973 Ed., § 21-1707.

Uniform Law

This section is based upon § 8 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1708. CONFORMING AMENDMENT.

When a fiduciary deposits in a bank to his personal credit checks:

- (1) drawn by him upon an account in his own name as fiduciary; or
- (2) payable to him as fiduciary; or
- (3) drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon; or
- (4) payable to his principal and indorsed by him, if he is empowered to indorse such checks --
or if he otherwise deposits funds held by him as fiduciary, the bank has notice of the breach of fiduciary duty if the instrument is deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; March 21, 1995, D.C. Law 10-249, § 3, 42 DCR 467; Apr. 9, 1997, D.C. Law 11-255, § 20(d), 44 DCR 1271.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1708.

1973 Ed., § 21-1708.

Legislative History of Laws

Law 10-249, the "Uniform Commercial Code-Negotiable Instruments Act of 1994," was introduced in Council and assigned Bill No. 10-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-396 and transmitted to both Houses of Congress for its review. D.C. Law 10-249 became effective on March 23, 1995.

Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Uniform Law

This section is based upon § 9 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1709. DEPOSIT IN NAMES OF TWO OR MORE TRUSTEES.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized by the others to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize the trustee to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1709.

1973 Ed., § 21-1709.

Uniform Law

This section is based upon § 10 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1710. LAW NOT RETROACTIVE.

This chapter does not apply to transactions that took place prior to May 14, 1928.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1710.

1973 Ed., § 21-1710.

Uniform Law

This section is based upon § 11 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1711. CASES NOT PROVIDED FOR BY CHAPTER.

In a case not provided for by this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking, continue to apply.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1711.

1973 Ed., § 21-1711.

Uniform Law

This section is based upon § 12 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-1712. SHORT TITLE.

This subchapter may be cited as the "Uniform Fiduciaries Act".

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; June 16, 1989, D.C. Law 8-9, § 2(c), 36 DCR 3361.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1712.

1973 Ed., § 21-1712.

Legislative History of Laws

For legislative history of D.C. Law 8-9, see Historical and Statutory Notes following § 21-1721.

This section is based upon § 14 of the Uniform Fiduciaries Act. See Volume 7A, Part I Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

SUBCHAPTER II. GENERAL PROVISIONS.

§ 21-1721. INVESTMENT OF TRUST ASSETS.[REPEALED]

(June 16, 1989, D.C. Law 8-9, § 2(d), 36 DCR 3361; Mar. 16, 1993, D.C. Law 9-187, 39 DCR 8228; Mar. 24, 1998, D.C. Law 12-81, § 14(p), 45 DCR 745.; Mar. 10, 2004, D.C. Law 15-104, § 3(a)(2), 51 DCR 208.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-1721.

Legislative History of Laws

Law 8-9, the "Fiduciary Investment Act of 1989," was introduced in Council and assigned Bill No. 8-140, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 4, 1989, and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-25 and transmitted to both Houses of Congress for its review.

Law 9-187, the "Banking Institutions Trust Investment Act of 1992," was introduced in Council and assigned Bill No. 9-395, which was referred to the Committee on Education. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-307 and transmitted to both Houses of Congress for its review. D.C. Law 9-187 became effective on March 16, 1993.

Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Law 15-104, the "Uniform Trust Act of 2003", was introduced in Council and assigned Bill No. 15-234, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on December 18, 2003, it was assigned Act No. 15-286 and transmitted to both Houses of Congress for its review. D.C. Law 15-104 became effective on March 10, 2004.

§ 21-1722. PROHIBITION FROM EXERCISING POWERS CONFERRED UPON TRUSTEE.

(a) For purposes of this section, the term:

- (1) "Adverse party" shall have the same meaning as construed under § 672 of the Internal Revenue Code and the regulations promulgated thereunder.
- (2) "Ascertainable standard relating to the trustee's health, education, support, and maintenance" shall have the same meaning as construed under §§ 2041 and 2514 of the Internal Revenue Code and the regulations promulgated thereunder.
- (3) "Internal Revenue Code" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 *et seq.*).
- (4) "Parties in interest" means:
 - (A) Each trustee then serving; and
 - (B) Each beneficiary then in existence or, if the beneficiary has not attained the age of majority or is otherwise incapacitated, the beneficiary's parent or legal representative under applicable law or the beneficiary's attorney-in-fact under a durable power of attorney.
- (5) "Party who is not related or subordinate" shall have the same meaning as construed under § 672 of the Internal Revenue Code and the regulations promulgated thereunder.

(b)(1) None of the following powers conferred upon a trustee by the governing instrument may be exercised by the trustee:

- (A) The power to make any discretionary distributions of either principal or income to or for the benefit of the trustee in the trustee's individual capacity, unless limited by an ascertainable

standard relating to the trustee's health, education, support, and maintenance; or

(B) The power to make any discretionary distributions of either principal or income to satisfy any of the trustee's legal obligations in the trustee's individual capacity for support.

(2) If a trustee is prohibited by subsection (b)(1) of this section from exercising a power conferred upon the trustee, the trustee may nevertheless exercise the power, except that the trustee's exercise of that power shall be limited by an ascertainable standard relating to the trustee's health, education, support, and maintenance.

(c) If (1) a power described in subsection (b) of this section is exercisable in favor of a beneficiary, and (2) a power is conferred on that beneficiary to remove or replace the trustee, the beneficiary may exercise the power only to replace the trustee with a person who is either an adverse party or a party who is not related or subordinate.

(d) If the governing instrument contains a power described under subsection (b) of this section and there is no trustee who can exercise the power, the trustee then serving may appoint a special trustee who is either an adverse party or a party who is not related or subordinate to exercise the power. If the trustee fails to appoint a special trustee, upon application of any party in interest, a court may appoint a special trustee who is not disqualified under this subsection to exercise the power during the period of time that the court designates.

(e) This section shall not apply to a trust if and to the extent that:

(1) The trust qualifies for and claims the estate or gift tax marital deduction under § 2056 or § 2523 of the Internal Revenue Code;

(2) The trust is revocable or amendable at the time of the exercise of the power; or

(3) Contributions to the trust qualify for the annual exclusion under § 2503(c) of the Internal Revenue Code.

(f)(1) Subject to subsection (e) of this section, this section applies to:

(A) Any trust created under a governing instrument executed after the effective date of this section, unless the governing instrument provides expressly that this section shall not apply; and

(B) Any trust created under a governing instrument executed before the effective date of this section [April 3, 2001], unless all parties in interest elect affirmatively not to be subject to this section on or before the later of:

(i) Three years after the effective date of this section; or

(ii) Three years after the date on which the trust becomes irrevocable.

(3) The election required under paragraph (1) of this subsection shall be made by a written declaration signed by the parties in interest and delivered to the trustee.

(Apr. 3, 2001, D.C. Law 13-234, § 2, 48 DCR 590.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 13-234, the "Estate Tax Technical Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-497, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-511 and transmitted to both Houses of Congress for its review. D.C. Law 13-234 became effective on April 3, 2001.