

CHAPTER 501

USES AND TRUSTS

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501.01 ABOLISHED IN PART. Uses and trusts, except as authorized and modified in this chapter and except as authorized by law, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided by statute.

[R. L. s. 3240; 1961 c 740 s 1] (8081)

501.02 EXECUTED USES CONFIRMED. Every estate which is now held as a use executed under laws as they formerly existed is confirmed as a legal estate.

[R. L. s. 3241] (8082)

501.03 RIGHT OF POSSESSION AND PROFITS A LEGAL ESTATE. Every person who, by virtue of any grant, assignment, or devise, is entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein of the same quality and duration, and subject to the same conditions, as his beneficial interests.

[R. L. s. 3242] (8083)

501.04 ACTIVE TRUSTS NOT AFFECTED. The provisions of section 501.03 shall not divest the estate of any trustee in any existing trust where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

[R. L. s. 3242] (8083)

501.05 PASSIVE TRUSTS ABOLISHED. Every disposition of lands, whether by deed or devise, except as otherwise provided in this chapter, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other to the use of, or in trust for, such person; and, if made to one or more persons in trust for or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

[R. L. s. 3243] (8084)

501.06 LIMITING PRECEDING SECTIONS. Sections 501.01 to 501.05 shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

[R. L. s. 3244] (8085)

501.07 RESULTING TRUSTS. When a grant for a valuable consideration is made to one person, and the consideration therefor is paid by another, no use or trust shall result in favor of the person by whom such payment is made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of section 501.08.

[R. L. s. 3245] (8086)

501.08 FRAUD AGAINST CREDITORS. Every such conveyance shall be presumed fraudulent as against the creditors, at that time, of the person paying the consideration; and when a fraudulent intent is not disproved a trust shall result in favor of such creditors to the extent that may be necessary to satisfy their just demands.

[R. L. s. 3246] (8087)

501.09 LIMITING THE EFFECT OF SECTION 501.07. Section 501.07 shall not extend to cases where the alienee named in the conveyance has taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, has purchased the lands so conveyed with moneys belonging to another person.

[R. L. s. 3247] (8088)

501.10 BONA FIDE PURCHASERS PROTECTED. No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration, and without notice of such trust.

[R. L. s. 3248] (8089)

501.11 EXPRESS TRUSTS, PURPOSES. Express trusts may be created for any of the following purposes:

- (1) To sell lands for the benefit of creditors;
- (2) To sell, mortgage, or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon;
- (3) To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in chapter 500;
- (4) To receive the rents and profits of lands, and to accumulate the same, for either of the purposes, and within the limits prescribed in chapter 500;
- (5) To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind and to invest and loan the same for the benefit of the beneficiaries of such express trust; and the district courts of the state shall, upon petition and hearing, have power to appoint a trustee for the purpose herein set forth, requiring such trustee to give such bond for the faithful execution of such express trust as to the court may seem right and proper; and express trusts created under the provisions of this paragraph shall be administered under the direction of the court;
- (6) For the beneficial interests of any person, whether such trust embraces real or personal property or both, when the trust is fully expressed and clearly defined on the face of the instrument creating it, provided that the trust shall not continue for a period longer than the life or lives of specified persons in being at the time of its creation, and for 21 years after the death of the survivor of them, and that the free alienation of the legal estate by the trustee is not suspended for a period exceeding the limit prescribed in Chapter 500; provided, however, that the aforesaid limitation on the period of continuance of such trusts shall not apply to a trust forming a part of a stock bonus, pension, or profit sharing plan of an employer for the exclusive benefit of some or all of his employees, nor to a trust forming a part of a retirement plan created by and for the benefit of self-employed persons for the purpose of receiving their contributions thereunder and investing, accumulating, and distributing to such persons or their beneficiaries the corpus, profits, and earnings of the trust in accordance with the plan.

(7) Any city or village may receive, by grant, gift, devise, or bequest, and take charge of, invest, and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both, for the benefit of any public library, or any public cemetery, or any public park, located in, or within ten miles of, such city or village, or for the purpose of establishing or maintaining a kindergarten or other school or institution of learning therein.

Provided that any such city or village shall, with the approval of the district court of the county wherein such city or village is located, sell, lease, or otherwise

dispose of, freed of the provisions of such trust, any such tract, lot, parcel, reserve, block, or subdivision of the platted part of any such city or village, embraced within the area described in such grant, gift, devise, or bequest when any such tract, lot, parcel, reserve, block, or subdivision of the platted part of any such city or village shall be found to be unfit for the uses and purposes expressed in any such grant, gift, devise or bequest.

The income realized from any such sale, lease, or disposal of such trust property shall be credited to the funds of said trust of the city or village wherein said property is located.

Each city of the second class in this state, in addition to the foregoing, may receive by grant, gift, devise, or bequest, and take charge of, convert, invest, and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both, of any kind or nature and wherever located, for any public or charitable purpose, or to provide, enlarge, improve, lease, and maintain for the use and benefit of the inhabitants of such city, animal, bird, fish, game, and hunting preserves, public parks, public grounds, public waterways, public bath houses and grounds used in connection therewith, and public playgrounds within or without the limits of such city, whether within or without this state, or for the support, medical treatment, and nursing of the worthy poor residing in such city.

[*R L s 3249; 1915 c 98 s 1; 1925 c 133; 1929 c 110; 1931 c 65 s 1; 1947 c 597 s 1; 1955 c 434 s 1; 1955 c 508 s 1*] (8090)

501.12 EXPRESS TRUSTS FOR CHARITABLE, EDUCATIONAL, RELIGIOUS, AND OTHER PUBLIC USES. Subdivision 1. **Creation.** Express trusts of real or personal property, or both, may be created to receive by grant, devise, gift, or bequest, and to take charge of, invest, and administer in accordance with the terms of the trust, upon and for any charitable, benevolent, educational, religious, or other public use or trust.

Subd. 2. **Validity and construction.** No such trust shall be invalid because of indefiniteness or uncertainty of the object of such trust or of the beneficiaries thereof designated in the instrument creating the same nor by reason of the same contravening any statute or rule against perpetuities, but no such trust shall be construed so as to prevent or limit the free alienation of the title to any of the trust estate by the trustee in the administration of the trust, except as may be permitted under existing or subsequent statutes.

Subd. 3. **Liberal interpretation; administration.** Such trust shall be liberally construed by the courts so that the intentions of the donor thereof shall be carried out when possible and no such trust shall fail solely because the donor has imperfectly outlined the purpose and object of such charity or the method of administration. When it shall appear to the district court of the proper county that the purpose and object of such charity is imperfectly expressed, or the method of administration is incomplete or imperfect, or that the circumstances have so changed since the execution of the instrument creating the trust as to render impracticable, inexpedient, or impossible a literal compliance with the terms of such instrument, such court may, upon the application and with the consent of the trustee, and upon such notice as the court may direct, make an order directing that such trust shall be administered or expended in such manner as in the judgment of the court will, as nearly as can be, accomplish the general purposes of the instrument and the object and intention of the donor without regard to, and free from any, specific restriction, limitation, or direction contained therein. No such order shall be made without the consent of the donor of the trust if he is then living and mentally competent. The attorney general shall represent the beneficiaries in all cases arising under this section and it shall be his duty to enforce such trusts by proper proceedings in the courts.

Subd. 4. **Laws not affected.** Nothing in this section contained shall in any manner impair, limit, or abridge the operation and efficacy of the whole or any part of any existing statute authorizing the creation of corporations for charitable purposes or permitting municipal corporations to act as trustee for any public or charitable purpose under any existing statute. Nothing in this section, except as provided in subdivision 5, shall apply to any gift, bequest, devise, or trust made, created, or arising by or under the provisions of the will of any person whose decease occurred before this section became effective.

Subd. 5. **Determination of trust, gift bequest, devise.** Where any gift or trust has been made or created by any living person or persons prior to April 15, 1927,

or when any gift, bequest, devise or trust has been made or created by or under the will of any person whose decease occurred prior to April 15, 1927, and such gift, trust, bequest or devise has been made for any charitable, benevolent, educational, religious or other public use or trust or upon a condition, limitation or restriction of any kind that the property so given, bequeathed, devised, or entrusted be used only for the charitable, benevolent, educational, religious or other public use or trust therein expressed, the grantee, devisee, trustee or other holder of such property may have determined in the district court the legal rights and relationship of such holder, of the public, and the grantor, his heirs, representatives or assigns in and to such property. Notice of the application for such determination shall be personally served upon the donor, if living, and upon the attorney general. Service upon all other interested persons may be made by three weeks published notice, provided however, that the court may direct personal service or service by mail at the last known address of any person or persons. If it shall appear to the court that circumstances have so changed since the execution of the instrument as to render impracticable, inexpedient or impossible a literal compliance with the terms or conditions of such instrument but the terms and purposes of such instrument may be substantially performed, the court may make an order directing that the terms of such instrument shall be preformed and such property shall be administered or expended in such manner as in the judgment of the court will, as nearly as can be, accomplish the general purposes of the instrument and the object and intention of the donor without regard to, and free from any, specific restriction, limitation, condition, or direction therein contained. No such order shall be made without the consent of the donor if he is then living and mentally competent.

[1927 c 180 s 1-4; 1955 c 138 s 1, 2] (8090-1, 8090-2, 8090-3, 8090-4)

501.125 KINDS OF PROPERTY A TRUSTEE MAY ACQUIRE. Subdivision 1. **Properties and investments.** In acquiring, investing, reinvesting, exchanging and managing property, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other individual or corporate obligations, and corporate stocks, which an ordinarily prudent person of discretion and intelligence, who is a trustee of the property of others, would acquire as such trustee.

Subd. 2. Shall not be compelled to dispose of property. Unless the trust instrument or a court order specifically directs otherwise, a trustee shall not be required to dispose of any property, real, personal, or mixed, or any kind of investment, in the trust, however acquired, until the trustee shall determine in the exercise of a sound discretion that it is advisable to dispose of the same, but nothing herein contained shall excuse the trustee from the duty to exercise discretion at reasonable intervals and to determine at such times the advisability of retaining or disposing of such property.

Subd. 3. Not to alter terms of will. Nothing contained in this section shall be construed as authorizing any departure from or variation of the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the trustee's duties and powers, but the terms "authorized securities," or "authorized investments," or "legal investments," or words of similar import, as used in any such instrument or in the statutes of this state in so far as they relate to the investment of trust funds by corporate trustees or by individual trustees, shall be taken to mean every kind of property, real, personal or mixed, and every kind of investment, which a trustee is authorized to acquire under the terms of subdivision 1.

Subd. 4. Not to be construed to limit powers of court. Nothing contained in this section shall be construed as restricting the power of a court of proper jurisdiction to permit a trustee to deviate from the terms of any will, agreement, court order or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of trust property.

Subd. 5. Who are trustees. The term "trustee," as used in this section, includes individual trustees and corporations having trust powers and the provisions hereof shall govern trustees acting under wills, agreements, court orders and other instruments now existing or hereafter made.

[1943 c. 635]

501.13 DEVISES AS POWERS. A devise of lands to executors or other trustees to be sold or mortgaged, when such trustees are not also empowered to

receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs, or pass to the devisees of the testator, subject to the execution of the power.

[R. L. s. 3250] (8091)

501.14 TRUST PROFIT SURPLUS SUBJECT TO CREDITORS' RIGHTS.

When a trust is created to receive the rents and profits of lands and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the person for whose benefit the trust is created, shall be subject in equity to the claims of his creditors in the same manner as other personal property which cannot be reached by an execution at law.

[R. L. s. 3251] (8092)

501.15 EXPRESS TRUSTS; POWERS IN TRUST. When an express trust is created for any purpose not heretofore in this chapter enumerated, no estate shall vest in the trustee; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in chapter 502.

[R. L. s. 3252] (8093)

501.16 LEGAL TITLE IN BENEFICIARY. When the trust is valid as a power the land to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

[R. L. s. 3253] (8094)

501.17 TRUSTEES TAKE ESTATE, WHEN. Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustee, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands but may enforce the performance of the trust in equity.

[R. L. s. 3254] (8095)

501.18 SECTION 501.17 QUALIFIED. Section 501.17 shall not prevent any person creating a trust from declaring to whom the lands to which the trust relates shall belong in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust; and every such grantee shall have a legal estate in the lands as against all persons, except the trustees and those lawfully claiming under them.

[R. L. s. 3255] (8096)

501.19 REVERSION IN GRANTOR. When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to the person creating the trust, or his heirs, as a legal estate.

[R. L. s. 3256] (8097)

501.195 REVERSIONARY INTERESTS; POSSIBILITIES OF REVERTER; RESULTING TRUSTS. It is hereby declared to be the law of Minnesota that no express trust of property, whether real or personal, heretofore or hereafter created under the laws of this state shall under any circumstances be deemed to give rise, by operation of law or otherwise, to any reversionary interest, possibility of reverter or resulting trust of the trust property or of any interest or estate therein in the settlor of the trust or the estate of the settlor or the heirs at law of the settlor as such, if by the terms of the controlling trust instrument the settlor manifested irrevocably his intention to divest himself of all interest in said trust property or in said interest or estate therein, as the case may be, or expressly and irrevocably surrendered the right to revoke the trust and the right to make the settlor or the estate of the settlor a beneficiary of said trust property, or of said interest or estate therein, as the case may be. In any case where, but for the application of the principles herein expressed, a reversionary interest, possibility of reverter or resulting trust would be recognized in the settlor of the trust or the estate of the settlor or the heirs at law of the settlor as such, the subject matter thereof shall be deemed to be held upon a resulting trust for the State of Minnesota.

[1949 c 201 s 1]

501.20 ALIENATION RESTRAINED; LIMITATION. No person beneficially interested in a trust for the receipt of rents and profits of the lands can assign, or in any manner dispose of, such interest; provided, the power to sell or sign or transfer such beneficial interest shall in no manner be abridged or curtailed,

where such beneficial interest in the first instance shall have been acquired by purchase; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created are assignable.

[R. L. s. 3257; 1931 c. 66 s. 1] (8098)

501.21 EFFECT OF OMITTING TRUST IN CONVEYANCE. When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

[R. L. s. 3258] (8099)

501.211 DISCLAIMER OF INTERESTS PASSING BY DEED, ASSIGNMENT, UNDER CERTAIN NON-TESTAMENTARY INSTRUMENTS OR UNDER CERTAIN POWERS OF APPOINTMENT. Subdivision 1. As used in this section, unless otherwise clearly required by the context:

(a) "Beneficiary" means and includes any person entitled, but for his disclaimer, to take an interest: as grantee; as donee; under any assignment or instrument of conveyance or transfer; by succession to a disclaimed interest, other than by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; as beneficiary of an inter vivos trust or insurance contract; pursuant to the exercise or nonexercise of a nontestamentary power of appointment; as donee of a power of appointment created by a nontestamentary instrument; or otherwise under any nontestamentary instrument.

(b) "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof or any estate in any such property or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto;

(c) "Disclaimer" means a written instrument which declines, refuses, releases or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate.

Subd. 2. A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares, portions or assets thereof, by filing a disclaimer in court in the manner hereinafter provided. A guardian, executor, administrator or other personal representative of the estate of a minor, incompetent, or deceased beneficiary, if he deems it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary himself could disclaim if he were living, of legal age and competent. A beneficiary likewise may execute and file a disclaimer by agent or attorney so empowered.

Subd. 3. Such disclaimer shall be filed at any time after the creation of the interest, but in all events within six months after the effective date of the nontestamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or his interest has not then become indefeasibly fixed both in quality and in quantity, such disclaimer shall be filed not later than six months after the event which would cause him so to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity.

Subd. 4. Such disclaimer shall be effective upon being filed in any district court of the State of Minnesota. A copy of the disclaimer shall be delivered or mailed to the trustee of any trust in which the interest disclaimed exists or to such other person as has legal title to, or possession of, the property in which the interest disclaimed exists, and no such trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer. If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the clerk of the district court wherein the same has been filed, shall also be filed with the register of deeds or with the registrar of titles, as hereinafter provided, in the county or counties where the real estate is situated and shall constitute notice to all persons only from and after the time of such filing. If title to such real estate has

not been registered under the provisions of Minnesota Statutes, Chapter 508, such disclaimer or certified copy shall be filed with the register of deeds. If title to such real estate has been registered under the provisions of Chapter 508, such disclaimer or certified copy shall be filed with the registrar of titles.

Subd. 5. Unless otherwise provided in the nontestamentary instrument creating the interest with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity and, in any case, the disclaimer shall relate for all purposes to that date, whether filed before or after such death or other event. However, one disclaiming an interest in a non-residuary gift under a trust instrument or otherwise shall not be excluded, unless his disclaimer so provides, from sharing in a gift of the residue even though, through lapse, such residue includes the assets disclaimed.

Subd. 6. The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to any interest in real or personal property, by any beneficiary or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before he has disclaimed, as herein provided, bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest.

Subd. 7. The right to disclaim granted by this section shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed as provided in this section, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under him, except that a beneficiary so waiving may thereafter transfer, assign or release his interest if such is not prohibited by an express or implied spendthrift provision. If an interest in real estate is disclaimed and the disclaimer is duly filed in accordance with the provisions of subdivision 4 of this section, the spouse of the disclaimant, if such spouse has consented to the disclaimer in writing, shall thereupon be automatically debarred from any spouse's statutory or common law right or estate by curtesy or in dower or otherwise in such real estate to which such spouse, except for such disclaimer, would have been entitled.

Subd. 8. This section shall not abridge the right of any person, apart from this section, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest.

Subd. 9. Any interest which exists on May 22, 1965 but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after May 22, 1965 in the manner provided herein.

[1965 c 552 s 2]

501.22 TRUST ESTATES. Subdivision 1. Contravention void. When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustee, in contravention of the trust, shall be absolutely void.

Subd. 2. **Sale, mortgage.** The district court of the district wherein such property held in trust is situate, may, by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether he be beneficially interested in such trust property or not, to mortgage or sell such real property or any part thereof when it appears to the satisfaction of the court that it is for the best interest of such estate, or that it is necessary or for the benefit of the estate or of the persons beneficially interested therein holding the first and present estate, interest or use, and that it will do no substantial injury to the heirs in tail, or others in expectancy, succession, reversion, or remainder.

Subd. 3. **Five year limitation on leases.** A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income, and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease

of such real property for a term not exceeding five years without application to the court.

Subd. 4. Court may lengthen term of lease. The district court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewal term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term.

Subd. 5. Protection of ward. The district court shall not grant an order to mortgage or sell such real property or lease the same for a term exceeding five years, unless it appears to the satisfaction of such court that a written notice, stating the time and place of the application therefor, and the object thereof, has been served upon the beneficiary of such trust and every other person in being having an estate vested or contingent in reversion or remainder in the real property at least eight days before the making thereof, if such beneficiary or other person is an adult within the state, or if a minor, lunatic, person of unsound mind, habitual drunkard, or absentee, until proof of the service, on such beneficiary or other person, of such notice as the court or a judge thereof prescribes. The court shall appoint a guardian ad litem for any minor and for any lunatic, person of unsound mind, or habitual drunkard who shall not be represented by a committee or guardian duly appointed.

Subd. 6. Petition contents; publication. The application must be by petition duly verified, which shall set forth the condition of the trust estate and the particular facts which make it necessary or proper that the application be granted. Such petition shall contain a description of the estate to be sold, mortgaged, or leased, a clear statement of the interest of the petitioner therein, and a copy of the will, deed, or other instrument in writing by which the estate is created; all persons in being who are interested in the estate, or who may, by the terms of the will, deed or other instrument creating the estate, thereafter become interested therein as heir, reversioner, or otherwise shall be made parties to the petition; and if the names of any persons who ought to be made parties are unknown to the petitioner, or if the residence of any such person is unknown to the petitioner, the facts shall be verified by the affidavit of the petitioner, then such notice shall be served upon such unknown persons whose residence is unknown, by publication for six successive weeks, once in each week in some newspaper published in the county in which the property is held in trust.

Subd. 7. Final order; bond. After taking proof of the facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted the final order must authorize the real property affected by the trust or some portion thereof, to be mortgaged, sold, or leased upon such terms and conditions as the court may prescribe. In case a mortgage or sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such mortgage or sale and must require the trustee to give bond in such amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting for all moneys received by him pursuant to the order. If the trustee elects not to give such bond, the final order must require the proceeds of such mortgage or sale to be paid into court to be disposed of or invested as the court shall specially direct. Before a mortgage, sale, or lease can be made pursuant to the final order, the trustee must enter into an agreement therefor, subject to the approval of the court and report the agreement to the court under oath. Upon the confirmation thereof, by order of the court he must execute, as directed by the court, a mortgage, deed, or lease.

Subd. 8. Validity. A mortgage, deed, or lease made pursuant to a final order granted as provided in this section and sections 501.20 and 501.21 shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards, and persons not in being interested in the trust or having estates vested or contingent in reversion or remainder in the real property and against all other persons so interested or having such estates who shall consent to such

order, or who, having been made parties to such proceeding as herein provided, shall not appear therein and object to the granting of such order.

Subd. 9. Voluntary consent. All parties in interest may appear voluntarily and consent in writing to such sale, mortgaging, or leasing of such real property; and testamentary guardians and guardians appointed by the probate court, may assent thereto in the place of their wards.

Subd. 10. Rights of purchaser. A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him from the trustee in consideration of the payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

[G. S. 1878 c. 43 s. 2; G. S. 1894 s. 4294; R. L. s. 3259; 1905 c. 339] (8100)

501.23 SALE, MORTGAGE, PLEDGE, OR LEASE OF PROPERTY IN TRUST CREATED BY WRITTEN INSTRUMENT; VOID, WHEN; DISTRICT COURT POWERS. When any trust is expressed in the instrument creating the trust estate every sale, conveyance, or other act of the trustee in contravention of the trust shall be absolutely void, except as in sections 501.23 to 501.32 provided. The district court of the county wherein the property, whether real or personal, or any part thereof, held in trust is situate may, by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether he be beneficially interested in such trust property or not, to sell or otherwise dispose of, mortgage, or pledge all or any part of such trust property, whether real or personal, when it appears to the satisfaction of the court that it is necessary, or for the best interest, or for the benefit of the trust estate, or of the person or persons beneficially interested therein holding the first and present estate, interest, or use, and that it will do no substantial injury to the heirs or next of kin, or others in succession, expectancy, reversion, or remainder, in respect of such property.

[1925 c. 360 s. 1] (8100-1)

501.24 LEASES; AUTHORITY OF TRUSTEE; ORDER OF COURT FOR LEASE. The trustee appointed to hold real property in trust during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to or for the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The district court may, by order, on such terms and conditions as seem to it just and proper, authorize such trustee to lease such property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay, at the end of the term or any renewal term, to the lessee, the then fair and reasonable value of any buildings and improvements which may have been erected or placed on the leased premises during such term or renewal term.

[1925 c. 360 s. 2] (8100-2)

501.25 SALE; APPLICATION FOR; PETITION, NOTICE, AND ORDER FOR HEARING; FILING. Application to the court for such order to sell or otherwise dispose of, mortgage, or pledge such trust property, real or personal, or any part thereof, or to lease such trust property, real, or any part thereof, shall be by petition, duly verified, made by such trustee, or any person beneficially interested in such property. Such petition shall set forth the nature of the trust estate, the particular facts making it necessary or proper for the application to be granted, a description of the trust property to be sold or otherwise disposed of, mortgaged, pledged, or leased, and the interest of the petitioner therein. Such petition and the notice of hearing thereof shall set out, so far as appears of record or as known to the petitioner, the names, and in addition such petition shall set out the places of residence, of all persons, who have any right, title, interest, estate, or lien, and the nature thereof, in or upon the trust property, or who, by the terms of the instrument creating the trust, may, at any time thereafter, have any such right, title, interest, estate, or lien, and the nature thereof. If there be persons having, or claiming to have, or who, at any time thereafter, may have any interest in the trust property, whose names are unknown, it shall be lawful to include such persons in such petition and the notice of hearing thereof, by the name and description of unknown persons interested in the trust property, and, to that end, such petition and notice, in addition to setting out the names of the persons aforesaid, may

contain the following: "Also all other persons unknown, having, or claiming to have, or who at any time may have any right, title, or interest, estate, or lien in or upon the trust property." Such petition, together with a copy, annexed thereto, of the deed, will, or other written instrument creating the trust estate, shall be filed in the office of the clerk of the district court of the county wherein such property, or some part thereof, is situate. Upon the filing of any such petition, the district court shall, by order, fix a time and place of hearing the same. Such hearing may be at chambers, or at a general or special term of the court wherein the proceedings are pending.

[1925 c. 360 s. 3] (8100-3)

501.26 NOTICE OF HEARING; SERVICE. Notice of such hearing stating the time and place thereof and the objects of the petition shall be served upon all persons named in the petition as having any right, title, interest, estate, or lien in or upon the trust property, or who, by the terms of the instrument creating such trust, may, at any time thereafter, have any such right, title, interest, estate, or lien. Such notice shall be served, except as provided in section 501.27, in the same manner as a summons in a civil action, at least ten days before such time of hearing. If any such person, whose name is set out in the petition, be not a resident of the state, or if his place of residence be unknown to the petitioner, then, upon the filing in the court of an affidavit of the petitioner, his agent or attorney, alleging that he believes that such person is not a resident of the state, and that he has mailed a copy of such notice to him at his last known place of residence, or that his place of residence is not known and cannot be ascertained by the affiant, the service of such notice upon such person may be made by publication thereof for two successive weeks in a qualified newspaper. Service of such notice may be had upon all persons named and described in such petition and notice, as unknown persons interested in the trust property, by publication of such notice in the same manner and for the same time, as in the case of non-residents whose names are set out in the petition upon the filing in the court of an affidavit by the petitioner, his agent or attorney, stating that there are, or that affiant is informed or believes there are, certain persons, in addition to those whose names are set out in such petition, who have, or claim to have, or may have some right, title, interest, estate, or lien in or upon the trust property, the nature of which is, as well as the names and places of residence of whom are, to affiant unknown.

[1925 c. 360 s. 4] (8100-4)

501.27 INCOMPETENTS; NOTICE; SERVICE; GUARDIAN AD LITEM. In case any person, whose name is set out in such petition, is a minor, lunatic, idiot, or person of unsound mind, or an habitual drunkard or spendthrift, such notice of hearing shall be served upon the duly appointed guardian, conservator, committee, or other legal representative, of such person, if any. If there be none, then the district court in which such proceedings are pending shall appoint a guardian ad litem to such person and may compel the person so appointed to act. In such case, service of such notice of hearing shall be had by service on such guardian ad litem.

[1925 c. 360 s. 5] (8100-5)

501.28 HEARING; FINAL ORDER; REPORT OF SALE; CONVEYANCE BY TRUSTEE; DISPOSITION OF PROCEEDS; BONDS. Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for and against the granting of such petition, regulating the order of proof as it may deem best, and make and enter a final order upon the application. If the application is granted, the final order shall authorize the sale or other disposition, or the mortgaging, pledging, or leasing, as the case may be, of such trust property, or any part thereof, in manner and upon such terms as the court may prescribe. Any such sale or other disposition, mortgaging, pledging, or leasing of such trust property, by such trustee, shall be reported to the court for confirmation and confirmed by the court, before the same shall become effective and valid. Upon such confirmation, such trustee shall make, execute, and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, good and sufficient instruments of conveyance, assignment, and transfer or mortgage, pledge, or lease, as the case may be. On receipt by such trustee of the money or other proceeds derived from any such sale or other disposition, or mortgaging, pledging,

or leasing of such trust property, such money or other proceeds shall be held, administered, distributed, or otherwise dealt with by such trustee under and pursuant to the terms of the deed, will, or other written instrument creating the trust estate, but subject, at all times, to the direction and order of the court. The court in its discretion may require such trustee to give bond in such amount and with such sureties as the court shall direct, conditioned for accounting for all such money or other proceeds so received by such trustee and for the faithful discharge of his trust.

[1925 c. 360 s. 6] (8100-6)

501.29 FINAL ORDER, EFFECT OF; OBJECTIONS, TIME FOR. The final order of the court in such proceedings, made or had with respect to such unknown persons, shall have the same effect and be as binding and conclusive upon them, as though they had been named and described in such petition and notice by their proper names. If any such unknown persons be minors without guardian ad litem or other guardian or legal representative duly appointed when such order is made, they may be allowed to appear and object to such order and the granting thereof at any time within one year after becoming of age.

[1925 c. 360 s. 7] (8100-7)

501.30 PERSONS ENTITLED TO OBJECT. In every case where service of such notice is made and had by publication, as provided in sections 501.23 to 501.32, any person so served shall have the right to appear and oppose the granting of such petition before the making of such final order, and the right to appear and object to such order and the granting thereof, on such terms as may be just, at any time within one year after such order has been made and entered. If the objection be sustained in such case or in the case of a minor without a guardian, as provided in section 501.29, the direction of the court shall be such as seems to it just and equitable in the circumstances.

[1925 c. 360 s. 8] (8100-8)

501.31 FINAL ORDERS AND CONVEYANCES VALID AS TO PERSONS SERVED WITH NOTICE. The final order of the court in such proceedings, and every deed or other instrument of conveyance, assignment, transfer, mortgage, pledge, or lease made, executed, and delivered by such trustee pursuant to any such final order shall be valid and effectual against all persons whose names are set out in such petition, and all persons therein named and described as unknown persons interested in the trust property, served with notice of hearing as provided in sections 501.23 to 501.32 or appearing voluntarily in the proceedings and consenting to the granting of such order, whether such persons, or any of them, are in being or not in being, and whatever the nature of their interest and estate in the trust property, whether vested or contingent, in expectancy, in reversion, or in remainder, or otherwise, at the time of the granting of such order.

[1925 c. 360 s. 9] (8100-9)

501.32 LIMITATION; LIABILITY OF PERSONS PAYING MONEY TO TRUSTEE. Any person who shall actually and in good faith pay to any such trustee any money or other proceeds derived from the sale or other disposition, or from the mortgaging, pledging, or leasing of such trust property, or any part thereof, shall not be responsible for the proper application of such money or other proceeds in accordance with the terms of the trust; and any right, title, interest, or estate derived from such trustee by such person, in consideration of such payment, shall not be impeached or called in question in consequence of any misapplication by such trustee of such money or proceeds so paid.

[1925 c. 360 s. 10] (8100-10)

501.33 TRUSTEE; CONFIRMATION OF APPOINTMENT; COURT JURISDICTION. Upon petition of any person appointed as trustee of an express trust by any will or other written instrument, or upon petition of any beneficiary of such trust, the district court of the county wherein such trustee resides or has his place of business, shall consider the application to confirm the appointment of the trustee and specify the manner in which he shall qualify. Thereafter such district court shall have jurisdiction of such trust as a proceeding in rem.

[1933 c. 259 s. 1] (8100-11)

501.34 INVENTORY, FILING; ANNUAL ACCOUNT. Any trustee whose appointment has thus been confirmed shall file with the clerk of the district court an

inventory containing a true and complete list of all property received by the trustee belonging to the trust estate. Thereafter such trustee shall render to such court at least annually a verified account containing a complete inventory of the trust assets and itemized principal and income accounts.

[1933 c. 259 s. 2] (8100-12)

501.35 MAY APPLY TO COURT FOR INSTRUCTIONS. Any trustee whose appointment has thus been confirmed at any time thereafter may petition the court for instructions in the administration of the trust or for a construction of the trust instrument, or upon or after the filing of any account, for the settlement and allowance thereof. Upon the filing of such petition the court shall make an order fixing a time and place for hearing thereof, unless hearing has been waived in writing by the beneficiaries of such trust. Notice of such hearing shall be given by publishing a copy of such order one time in a legal newspaper of such county at least 20 days before the date of such hearing, and by mailing a copy thereof to each party in interest then in being, at his last known address, at least ten days before the date of such hearing or in such other manner as the court shall order and if such court shall deem further notice necessary it shall be given in such manner as may be specified in such order. Upon such hearing the court shall make such order as it deems appropriate, which order shall be final and conclusive as to all matters thereby determined and binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the supreme court may be taken from such order within 30 days from the entry thereof by filing notice of appeal with the clerk of the district court, who shall mail a copy of such notice to each adverse party who has appeared of record.

[1933 c. 259 s. 3] (8100-13)

501.36 GUARDIAN MAY BE APPOINTED. If any person upon whom the court has ordered that personal service be made is a minor or otherwise incompetent to act in his own behalf and has no general guardian within the state, or if any party in interest is unascertained or not in being, or unknown to the trustee or outside this state, the court shall be deemed to represent such person, but may, upon the application of the trustee, or any other person interested therein, appoint a guardian ad litem for any such minor or incompetent person.

[1933 c. 259 s. 4] (8100-14)

501.37 APPLICATION. The provisions of sections 501.33 to 501.38 shall not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. The word "person," as used therein, shall refer to an artificial as well as to a natural person.

[1933 c. 259 s. 5] (8100-15)

501.38 NOT TO LIMIT JURISDICTION OF COURT. Nothing in sections 501.33 to 501.37 shall be deemed to limit or abridge the power or jurisdiction of the district court over trusts and trustees.

[1933 c. 259 s. 6] (8100-16)

501.39 MISAPPLICATION OF PAYMENT TO TRUSTEE. No person who actually and in good faith makes any payment to a trustee which the trustee, as such, is authorized to receive, shall be responsible for the proper application thereof according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question in consequence of any misapplication of such payment by the trustee.

[R. L. s. 3260] (8101)

501.40 TERMINATION OF TRUSTEES' ESTATE. When the purposes for which an express trust is created cease, the estate of the trustee shall also cease.

[R. L. s. 3261] (8102)

501.41 TRUST TO VEST IN DISTRICT COURT ON DEATH OF TRUSTEE. Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the district court with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.

[R. L. s. 3262] (8103)

501.42 RESIGNATION OF TRUSTEE. Upon the petition of any trustee of an express trust, the district court may accept his resignation and discharge him from the trust, under such regulations as it shall establish for that purpose and upon such terms as the rights and interests of the person interested in the execution of the trust require.

(R. L. s. 3263) (8104)

501.43 REMOVAL OF TRUSTEE. Upon the complaint of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, it may remove any trustee who has violated or threatened to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause is deemed an unsuitable person to execute the trust.

(R. L. s. 3264) (8105)

501.44 POWERS OF COURT. The district court has full power to appoint a new trustee in place of one deceased, resigned, or removed; and when, in consequence of such death, resignation, removal, or other cause, there is no acting trustee, the court, in its discretion, may appoint a trustee, or cause the trust to be executed by one of its officers under its direction; and when any person other than the trustee originally named, or appointed by a court of this state, has in good faith done any act in execution of the trust, the court may confirm such act.

(R. L. s. 3265) (8106)

501.45 FIDUCIARY POWERS, SUSPENSION DURING WAR SERVICE.
Subdivision 1. **Definitions.** When used in this section unless the context otherwise requires:

(a) "War service" includes the following, during the period the United States is engaged in war or other major military engagement with any foreign nation:

(1) Active membership in the military, naval, or air forces of the United States or any of its allies;

(2) Acceptance for membership in the military, naval, or air forces of the United States or any of its allies and awaiting induction into that service;

(3) Participation in any work abroad in connection with a governmental agency of the United States or any of its allies, with the Red Cross, or with any other similar service;

(4) Internment by an enemy or absence from the United States and inability to return;

(5) Any service arising out of or in connection with the war or other major military engagement, which in the opinion of the court prevents the fiduciary from giving the proper attention to his duties.

(b) "Fiduciary" refers to a trustee of a testamentary trust or of an express trust, a guardian of the person or estate of any person, an executor of a will, an administrator of the estate of the decedent, or an advisor or consultant in a testamentary or express trust.

Subd. 2. Powers of fiduciary may be suspended; petition. Whenever any fiduciary contemplates entering war service, such fiduciary may petition, or whenever any fiduciary is engaged in war service, such fiduciary or co-fiduciary or any interested person may petition the proper court having jurisdiction in matters of that nature for the suspension of the powers and duties of the fiduciary during the period of his war service and until the further order of the court, and in like manner any one of such persons may petition for the reinstatement of such fiduciary upon his return.

Subd. 3. Notice of hearing. Notice of the hearing on the petition shall be given to such persons and in such manner as the court may direct.

Subd. 4. Hearing; order. Upon a hearing on the petition or in the case of an executor, administrator, or guardian on the court's own motion, the court may:

(a) Order the suspension of the powers and duties of the fiduciary who is in war service for the period of the war service and until the further order of the court;

(b) Appoint a successor fiduciary to serve for the period of suspension of the powers and duties of the fiduciary and until the further order of the court, if upon suspension of his powers and duties, there is no fiduciary to exercise the powers and duties of the fiduciary who is in war service, or if in the opinion of the court the appointment of a co-fiduciary is advisable.

(c) Decree that the ownership and title to the trust res shall vest in the successor fiduciary or cofiduciary, as the case may be, and that the duties, powers and discretions, or such of the powers and discretions as are not personal to the fiduciary, may be exercised by the cofiduciary or successor fiduciary; or

(d) Make such further orders in the premises as the court may deem advisable with respect to the trust estate or its administration, and authorize a reasonable compensation to the successor fiduciary.

(e) Reserve jurisdiction for the entry of further orders and for the reinstatement of the fiduciary.

Upon a petition therefor, the court shall thereafter order the reinstatement of the fiduciary when his war service has terminated if it appears that the trust is not fully executed or administration of the estate is not completed.

Subd. 5. Responsibility of fiduciary. The fiduciary shall have no responsibility for the acts and doings of his cofiduciary or successor fiduciary during the period of the suspension of his powers and duties, but he is not hereby relieved of responsibility for his own acts or doings in the administration of the trust fund or estate. A successor fiduciary appointed hereunder shall have no responsibility for the acts and doing of the predecessor fiduciary.

[1943 c 497 s 1-5; 1951 c 177 s 1]

501.46 TRUSTS FORMING PART OF RETIREMENT PLANS FOR PARTICIPATING MEMBERS. In case of a trust forming part of a retirement plan created by and for the benefit of self-employed persons for the purpose of receiving their contributions thereunder and investing, accumulating, and distributing to such persons or their beneficiaries the corpus, profits, and earnings of the trust in accordance with the plan, the power of any person beneficially interested in such trust to sell, assign or transfer such beneficial interest, to anticipate payments thereunder, or to terminate the trust, may be limited or withheld in accordance with the provisions of the plan, whether or not he furnished consideration for the creation of the trust.

[1955 c 628 s 1]

501.47 PRINCIPAL, INCOME; ALLOCATION. Subdivision 1. **Income and principal, ascertainment.** (1) Subject to clause (2), the provisions of this section govern the ascertainment of income and principal and apply in the construction of

(a) all agreements containing trust provisions entered into subsequent to the effective date of this act;

(b) all wills made by testators who die subsequent to March 17, 1951; and

(c) all other wills and trust agreements and trust relations insofar as such terms do not impair the obligation of contract or deprive persons of property without due process of law.

(2) A specific provision, contained in any trust instrument or agreement or in any will, which governs the allocation of principal and income, controls such allocation notwithstanding this section.

Subd. 2. Dividends, when deemed principal. All dividends on shares of a corporation forming a part of the principal, which are payable only in the shares of the corporation, shall be deemed principal. All rights to subscribe to shares or other obligations of a corporation accruing on account of the ownership of shares in such corporation and the proceeds of any sale thereof shall be deemed principal.

Subd. 3. Corporate assets, disbursements to stockholders deemed principal. All disbursements of corporate assets to the stockholders of a corporation, which are designated by the corporation as a return of capital or as a division of corporate property, shall be deemed principal.

Subd. 4. Trustee, option in receiving dividend, deemed income. Where a trustee shall have the option of receiving a dividend, either in cash or in the shares of the declaring corporation, such dividend shall be considered a cash dividend and shall be deemed income irrespective of the option selected by the trustee.

Subd. 5. Dividends deemed income. Subject to the provisions of subdivisions 2, 3, and 4, all dividends, including ordinary and extraordinary dividends and dividends payable in share or other securities or obligations other than those of the declaring corporation, shall be deemed income.

Subd. 6. Limitation of section. The provision of this section shall not govern the ascertainment of what constitutes the receipt of income or principal by the estate or trust for income tax purposes.

Subd. 7. Distributions from regulated investment companies and real estate investment trusts. (1) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(2) Notwithstanding the provisions of subdivision 1, this subdivision shall apply only to:

(a) Irrevocable agreements containing trust provisions entered into subsequent to April 30, 1967,

(b) Revocable agreements containing trust provisions which become irrevocable subsequent to April 30, 1967, and

(c) Wills made by testators who die subsequent to April 30, 1967.

[1951 c 79 s 1-6; 1967 c 376 s 1]