

of the trust.<sup>22</sup>

### *Multiple trusts.*

In view of the rule requiring undivided loyalty, a trustee cannot undertake another trust adverse in nature, so as to acquire any interest or take any undue advantage adverse to the interest of the beneficiary without the beneficiary's knowledge or consent,<sup>23</sup> that is, he or she cannot escape or minimize his or her obligation by putting himself or herself in a position where his or her obligation to one trust conflicts with his or her obligation to another trust.<sup>24</sup> The handling of multiple trusts, of necessity, calls for a high degree of care and a sense of extreme loyalty on the part of a trustee as to each of his or her various trusts,<sup>25</sup> and nothing but extreme diligence and fair dealing in the handling of multiple trusts will, under the law, exonerate the trustee.<sup>26</sup> So, a trustee of two trusts who enters into a transaction involving dealing between the two trusts has the burden, where the transaction is challenged as unfair and results in a loss to one of the trusts, of showing that the transaction was in good faith and in the exercise of sound discretion and prudence.<sup>27</sup> While there is authority that a corporation or individual authorized to act in a trust capacity is not inhibited by law from acting as trustee of multiple trusts, or from transferring securities from one trust to another by purchase and sale, provided the trustee does not have a beneficial interest in the securities so transferred, and provided the terms of sale and purchase are fair and made in good faith as between

the several trusts,<sup>28</sup> there is also authority that such a transfer constitutes a breach of trust, since the duties to the beneficiaries of the different trusts are conflicting and irreconcilable,<sup>29</sup> but that no penalty will be imposed on the trustee where he or she has sustained the burden of showing that he or she acted in good faith in making sales from one trust to another and that the sales were fair and not otherwise improper.<sup>30</sup>

## § 331 Information to beneficiaries

**A trustee has the duty to keep informed as to the condition of the trust fund, and on request to impart information as to the administration of the trust to the cestuis que trust. The beneficiaries must be fully informed of all facts relating to the subject matter of the trust which come to the trustee's knowledge and which are material to the beneficiaries to know for the protection of their interests.**

### Research References

West's Key Number Digest, Trusts ⇨ 173, 270

It is the duty of a trustee to keep informed as to the condition of the trust fund,<sup>1</sup> and on request to impart information as to the administration of the trust to the cestuis que trust<sup>2</sup> or their representatives<sup>3</sup> for which they may have any reasonable use.<sup>4</sup> While there is authority that a trustee is not under a duty to the beneficiary to furnish information to him or her in the absence of a request for such information,<sup>5</sup> there is also authority, without apparent reference to the necessity for such request, that the trustee is bound to com-

<sup>22</sup>N.J.—*In re James' Estate*, 86 N.Y.S.2d 78 (Sur. Ct. 1948).

<sup>23</sup>Cal.—*Churchill v. Peters*, 57 Cal. App. 2d 521, 134 P.2d 841 (4th Dist. 1943).

<sup>24</sup>S.C.—*Epworth Orphanage v. Long*, 207 S.C. 384, 36 S.E.2d 37 (1945).

<sup>25</sup>Ohio—*In re Binder's Estate*, 137 Ohio St. 26, 17 Ohio Op. 364, 27 N.E.2d 939, 129 A.L.R. 130 (1940).

<sup>26</sup>Ohio—*In re Binder's Estate*, 137 Ohio St. 26, 17 Ohio Op. 364, 27 N.E.2d 939, 129 A.L.R. 130 (1940).

<sup>27</sup>Ala.—*First Nat. Bank v. Basham*, 238 Ala. 500, 191 So. 873, 125 A.L.R. 656 (1939).

<sup>28</sup>Ohio—*In re Rees' Estate*, 53 Ohio L. Abs. 385, 85 N.E.2d 563 (Ct. App. 8th Dist. Cuyahoga County 1949).

<sup>29</sup>U.S.—*Barker v. First Nat. Bank*, 20 F. Supp. 185 (N.D. Ala. 1937).

<sup>30</sup>U.S.—*Barker v. First Nat. Bank*, 20 F. Supp. 185 (N.D. Ala. 1937).

### [Section 331]

<sup>1</sup>N.J.—*Shallcross Exp., Inc. v. Local 478 Trucking and Allied Industries Pension Fund*, 119 N.J. Super. 196, 290 A.2d 744, 80 L.R.R.M. (BNA) 2826, 68 Lab. Cas. (CCH) ¶ 12686 (Law Div. 1972).

<sup>2</sup>N.Y.—*Frontier Excavating, Inc. v. Sovereign Const. Co.*, 30 A.D.2d 487, 294 N.Y.S.2d 994 (4th Dep't 1968).

<sup>3</sup>Ill.—*Alcoa Bldg. Products, Inc. v. LaSalle Nat. Bank*, 62 Ill. App. 3d 510, 19 Ill. Dec. 551, 379 N.E.2d 66 (1st Dist. 1978).

<sup>4</sup>Ill.—*Shaw v. Weisz*, 339 Ill. App. 630, 91 N.E.2d 81 (1st Dist. 1950).

<sup>5</sup>Cal.—*Zottarelli v. Pacific States Savings & Loan Co.*, 94 Cal. App. 2d 480, 211 P.2d 23 (1st Dist. 1949).

municate to the beneficiary any knowledge he or she may have affecting the beneficiary's interests, so far as they are embraced in the trust relation,<sup>6</sup> and that he or she cannot rid himself or herself of his or her duty to warn and to denounce any improvidence or oppression which he or she may discover.<sup>7</sup> In other words, the trustee is under a duty fully to inform the beneficiary of all facts relating to the subject matter of the trust which come to the trustee's knowledge and which are material to the beneficiary to know for the protection of his or her interest.<sup>8</sup> Additionally, the trustee is under a duty to communicate to the beneficiary those material facts which the trustee should have known.<sup>9</sup> So, the fiduciary must make a full and complete disclosure of all transactions in relation to his or her trust in which he or she may have a personal interest,<sup>10</sup> and the cestui is not required to inquire as to this fact or to examine every voucher to ascertain if self-dealing has been practiced by the trustee.<sup>11</sup> Furthermore, the trustee's duty to fully disclose all material facts to the beneficiary exists independently of the rules of discovery<sup>12</sup> and applies even if no litigious dispute exists between the trustee and beneficiary.<sup>13</sup>

*c. Exclusion of Individual Interest and Profit*

*(1) In General*

§ 332 Generally

**A trustee must act solely for the beneficiaries, and not for himself or herself in antagonism to the interests of the beneficiaries. He or she is prohibited from**

**using the advantage of his or her position to gain any benefit for himself or herself at the expense of the cestuis que trust and from placing himself or herself in any position where his or her self-interest will, or may, conflict with his or her duties as trustee.**

**Research References**

West's Key Number Digest, Trusts ⇨231, 231(1)

In administering the trust, a trustee must act solely for the beneficiaries, and not for himself or herself in antagonism to the interests of the beneficiaries.<sup>1</sup> He or she is prohibited from using the advantage of his or her position to gain any benefit for himself or herself at the expense of the cestuis que trust,<sup>2</sup> and from placing himself or herself in any position where his or her self-interest will, or may, conflict with his or her duties as trustee,<sup>3</sup> or in a position where he or she will be exposed to the temptation of acting contrary to the best interests of the beneficiaries.<sup>4</sup> As otherwise expressed, where one person is placed in such relation to another by the act or consent of such other person, the act of a third person, or the law, that he or she becomes interested for him or her or interested with him or her in any subject of property or business, he or she is prohibited from acquiring rights in such subject antagonistic to the person with whose interest he or she has become associated.<sup>5</sup> Furthermore, a testator's contemplation of a trustee's position of possible conflict of interest will not excuse an actual breach of duty by the trustee.<sup>6</sup>

A trustee is required to protect against all hazards, even to his or her own personal loss or disadvantage, the estate under his or her

<sup>6</sup>Tex.—Huie v. DeShazo, 922 S.W.2d 920 (Tex. 1996), reh'g of cause overruled, (June 28, 1996).

<sup>7</sup>N.Y.—Globe Woolen Co. v. Utica Gas & Electric Co., 224 N.Y. 483, 121 N.E. 378 (1918).

<sup>8</sup>Conn.—Pacelli Bros. Transp., Inc. v. Pacelli, 189 Conn. 401, 456 A.2d 325 (1983).

<sup>9</sup>Conn.—Pacelli Bros. Transp., Inc. v. Pacelli, 189 Conn. 401, 456 A.2d 325 (1983).

<sup>10</sup>Ariz.—Lane Title & Trust Co. v. Brannan, 103 Ariz. 272, 440 P.2d 105 (1968).

<sup>11</sup>N.J.—Isham v. Union County Trust Co., 7 N.J. Super. 488, 71 A.2d 902 (Ch. Div. 1950).

<sup>12</sup>Tex.—Huie v. DeShazo, 922 S.W.2d 920 (Tex. 1996), reh'g of cause overruled, (June 28, 1996).

<sup>13</sup>Tex.—Huie v. DeShazo, 922 S.W.2d 920 (Tex. 1996), reh'g of cause overruled, (June 28, 1996).

**[Section 332]**

<sup>1</sup>Ark.—Hosey v. Burgess, 319 Ark. 183, 890 S.W.2d 262 (1995).

<sup>2</sup>Ark.—Hosey v. Burgess, 319 Ark. 183, 890 S.W.2d 262 (1995).

<sup>3</sup>U.S.—Jefferson Sav. & Loan Ass'n v. Lifetime Sav. & Loan Ass'n, 396 F.2d 21 (9th Cir. 1968).

<sup>4</sup>Cal.—Toedter v. Bradshaw, 164 Cal. App. 2d 200, 330 P.2d 688 (3d Dist. 1958).

<sup>5</sup>U.S.—Jefferson Sav. & Loan Ass'n v. Lifetime Sav. & Loan Ass'n, 396 F.2d 21 (9th Cir. 1968).

<sup>6</sup>D.C.—Jones v. Hagans, 634 A.2d 1219 (D.C. 1993).