

§ 593 Private accounting and settlement

A private accounting and settlement, without any formal decree of the court, between the trustee and parties to the trust who are of age, is binding on them in the absence of fraud or undue advantage, and is effective to relieve the trustee from the duty to render an account in judicial proceedings, unless the trustee thereafter receives funds belonging to the trust.

Research References

West's Key Number Digest, Trusts ⇨332

As a general rule, parties of full age may settle and distribute an estate in which they are interested among themselves without any formal decree of the court, and such settlement and arrangement, in the absence of fraud or undue advantage, is binding.¹ The binding effect of the settlement, and the estoppel arising therefrom, are mutual as to both the trustees and beneficiaries,² but the rights of one beneficiary as against another beneficiary not a party to the settlement are not affected thereby.³ Such a settlement possesses the same force as a decree of judicial settlement and is impeachable only for reasons that would warrant the vacatur of a decree.⁴ As a result the trustee may be relieved from the duty to render an account,⁵ unless the trustee thereafter receives funds belonging to the

trust estate.⁶

Settlements between a trustee and the cestui que trust are narrowly watched in a court of equity, and where there is the least suspicion of unfairness, they will not relieve the trustee from accounting.⁷ However, this rule does not apply where the beneficiary, refusing to place confidence in the trustee, seeks outside advice.⁸

B. WHO MAY REQUIRE ACCOUNTING

§ 594 Generally

Any person possessing a sufficient interest in the trust estate may call on the trustee to account.

Research References

West's Key Number Digest, Trusts ⇨291

A beneficiary has the right to inspection on demand to see that the trust is properly executed.¹ Any person possessing a sufficient interest in the trust estate may call on the trustee to account.² However, unless it appears clearly that such person is already fully informed as to the management and condition of the trust estate,³ the right to require an accounting is limited to those having some interest in the trust or in the trust property.⁴ Persons who have no personal right or interest in a trust cannot demand an accounting or

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¹N.Y.—In re Schoenewerg's Estate, 277 N.Y. 424, 14 N.E.2d 777 (1938).

²N.Y.—In re Schroder's Will, 176 Misc. 1024, 29 N.Y. S.2d 754 (Sur. Ct. 1941).

³N.Y.—In re Knox' Will, 163 Misc. 264, 296 N.Y.S. 745 (Sur. Ct. 1937).

⁴N.Y.—In re Schroder's Will, 176 Misc. 1024, 29 N.Y. S.2d 754 (Sur. Ct. 1941).

⁵N.Y.—In re Schoenewerg's Estate, 277 N.Y. 424, 14 N.E.2d 777 (1938).

⁶N.Y.—In re Taggard's Estate, 16 N.Y.S. 629 (Gen. Term 1891), aff'd, 138 N.Y. 610, 33 N.E. 1082 (1893).

⁷Mass.—Akin v. Warner, 318 Mass. 669, 63 N.E.2d 566 (1945).

⁸Cal.—Colton v. Stanford, 82 Cal. 351, 23 P. 16 (1890).

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¹Ill.—Corsi v. Corsi, 302 Ill. App. 3d 519, 236 Ill. Dec. 82, 706 N.E.2d 956 (1st Dist. 1998).

²U.S.—Chisholm v. House, 160 F.2d 632 (C.C.A. 10th Cir. 1947).

Colo.—Ferguson v. Mueller, 115 Colo. 139, 169 P.2d 610 (1946).

Transferee or assignee of interest

(1) Transferee or assignee has right to an accounting.

N.J.—McKnight v. Robbins, 5 N.J. Eq. 229, 1845 WL 19 (Ch. 1845), aff'd, 5 N.J. Eq. 642, 1847 WL 102 (Ct. Err. & App. 1847).

(2) Where defendant received funds contingently for benefit of named beneficiary and treated moneys received as trust fund which was repayable less charges and expenses on happenings of certain specified events which occurred, assignee of funds could maintain equitable action for accounting to reveal defendant's dealings and account for unused balance as a more adequate remedy than an action at law.

N.Y.—Jacobson v. Freedman & Slater, 275 A.D. 631, 92 N.Y.S.2d 333 (1st Dep't 1949).

³Mich.—Cochrane v. Adams, 50 Mich. 16, 14 N.W. 681 (1883).

⁴U.S.—Ellis v. Stevens, 37 F. Supp. 488 (D. Mass. 1941), judgment aff'd, 126 F.2d 263 (C.C.A. 1st Cir. 1942).

any other relief against the trustee.⁵ However, even though the trust instrument makes entirely discretionary with the trustee the time and manner of payments from the estate or income to a beneficiary, the latter has a sufficient interest to entitle him or her to an accounting.⁶ The right of a beneficiary to maintain a bill for an accounting is not dependent on the allowance or disallowance of any particular item of credit claimed by the beneficiary.⁷

Contingent or reversionary interest as basis of right.

Under some statutes, the right to require an accounting is expressly recognized as appertaining, more or less generally, to persons possessing an interest contingent in nature.⁸ Apart from any statute, trustees may be required to account at the instance not only of the cestui que trust or of those having a vested or even a contingent interest therein, but also, in a proper case, by those having an estate in reversion.⁹ However, a person only contingently interested has no standing to require an accounting without showing some mismanagement or other facts giving rise to an inference of waste or that a property right under the trust is likely to be dissipated or wasted.¹⁰ Where the contingent interest comes to an end or is destroyed without the occurrence of the

contingency stipulated, one in whose favor such a contingent interest existed theretofore cannot make the trustee account.¹¹

Beneficiary to whom full disclosure has been made.

Where the trustee has at all times kept records open for inspection and has furnished accounts to a beneficiary for examination and inspection, fully and freely affording every opportunity for information, a beneficiary receiving such full disclosures and opportunity to investigate has no right to vex and harass the trustee by demanding an accounting.¹² This is so particularly when it is not shown that a definite or useful purpose will be served by an accounting.¹³

§ 595 Particular persons

Interested persons who may, in a proper case, require a trustee to account include heirs or distributees, remaindermen, receivers, and sureties.

Research References

West's Key Number Digest, Trusts ⇨291

Each trust beneficiary has an enforceable right to an accounting from a trustee.¹ Additionally, interested persons who may, in a proper case, require a trustee to account

N.Y.—Anderson v. Hinrichs, 266 A.D. 863, 42 N.Y. S.2d 610 (2d Dep't 1943).

⁵Iowa—Eik v. Stiles, 244 Iowa 1008, 57 N.W.2d 806 (1953).

Md.—Ridgely v. Pflugstag, 188 Md. 209, 50 A.2d 578 (1946).

Divorced father

Divorced father did not have standing in his own right to demand a formal accounting from the trustee of a life insurance trust, which was established for the benefit of the minor children by their mother during the marriage, despite fact that he was the children's father and despite fact that he had to contribute to the trust pursuant to a valid postnuptial property settlement agreement; father was not a party in interest, was not the appointed guardian of the beneficiaries, and was not acting on their behalf.

Pa.—Rock v. Pyle, 720 A.2d 137 (Pa. Super. Ct. 1998).

⁶R.I.—Barbour v. Cummings, 26 R.I. 201, 58 A. 660 (1904).

Va.—Rinker's Adm'r v. Simpson, 159 Va. 612, 166 S.E. 546 (1932).

⁷Ala.—Drath v. Armstrong, 224 Ala. 661, 141 So. 634 (1932).

⁸Mich.—In re Childress Trust, 194 Mich. App. 319, 486 N.W.2d 141 (1992).

⁹Ill.—Barnhart v. Barnhart, 415 Ill. 303, 114 N.E.2d 378 (1953).

Md.—In re Clarke's Will, 198 Md. 266, 81 A.2d 640 (1951).

¹⁰Ill.—Barnhart v. Barnhart, 415 Ill. 303, 114 N.E.2d 378 (1953).

N.Y.—Furniss v. Furniss, 148 A.D. 211, 133 N.Y.S. 535 (1st Dep't 1911).

¹¹Me.—Cutting v. Haskell, 122 Me. 454, 120 A. 618 (1923).

¹²Okla.—Bryan v. Seiffert, 1939 OK 315, 185 Okla. 496, 94 P.2d 526 (1939).

¹³Okla.—Bryan v. Seiffert, 1939 OK 315, 185 Okla. 496, 94 P.2d 526 (1939).

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¹U.S.—In re Lloyd's American Trust Fund Litigation, 954 F. Supp. 656 (S.D.N.Y. 1997).