

include heirs or distributees,<sup>2</sup> life tenants or remaindermen.<sup>3</sup> Others who have sufficient interest are receivers,<sup>4</sup> sureties,<sup>5</sup> and the executor or administrator of a deceased cestui que trust, at least as to the period before the death of the latter.<sup>6</sup> According to some authorities, interested persons include creditors of the estate,<sup>7</sup> although there is also authority to the contrary.<sup>8</sup>

The next of kin of a beneficiary of a trust has no interest in the trust which would automatically entitle such person to demand that the trustee file an accounting.<sup>9</sup> If, upon citation to file a formal account, the trustee acquiesces without challenge and provides a formal accounting to the next of kin of the beneficiary, then the trustee cannot be heard to argue that the next of kin lacks standing to demand a filing of an account.<sup>10</sup>

A residuary legatee may require the trustee under a trust involving a specific bequest created by the will to account.<sup>11</sup> An executor who has no interest in the trust estate established by the testator is not entitled to an accounting by the trustee.<sup>12</sup>

### Cotrustees.

It has been held that one trustee may call on a cotrustee to account in a proper case,<sup>13</sup> although there is also authority to the contrary.<sup>14</sup>

### Successive trustees or their representatives.

There may be an accounting between an outgoing and an incoming trustee.<sup>15</sup> However, where the representatives of a deceased trustee render an account of the trust to the proper court, his or her successor in the trust is not entitled to a new accounting, in the absence of any allegation of fraud in procuring the former settlement, or that other money or assets have since been received.<sup>16</sup> The personal representatives of a deceased trustee are not entitled to an accounting from his or her successor.<sup>17</sup>

## § 596 Loss of right

The right to an accounting may be lost by operation of an estoppel through acquiescence or a waiver.

Fla.—Weiss v. Courshon, 618 So. 2d 255 (Fla. Dist. Ct. App. 3d Dist. 1993).

Wash.—In re Estate of Ehlers, 80 Wash. App. 751, 911 P.2d 1017 (Div. 3 1996).

<sup>2</sup>U.S.—De Korwin v. First Nat. Bank of Chicago, 84 F. Supp. 918 (N.D. Ill. 1949), judgment aff'd in part, rev'd in part on other grounds, 179 F.2d 347 (7th Cir. 1949).

<sup>3</sup>Md.—Jacob v. Davis, 128 Md. App. 433, 738 A.2d 904 (1999), cert. denied, 357 Md. 482, 745 A.2d 436 (2000).

<sup>4</sup>N.Y.—Loftin v. Kenan, 155 Misc. 552, 280 N.Y.S. 28 (Sup 1935), rev'd on other grounds, 250 A.D. 546, 294 N.Y.S. 883 (1st Dep't 1937), aff'd, 276 N.Y. 615, 12 N.E.2d 604 (1938).

<sup>5</sup>N.Y.—In re Donnelly's Estate, 172 Misc. 952, 16 N.Y. S.2d 770 (Sur. Ct. 1939).

<sup>6</sup>Mass.—Stuck v. Schumm, 290 Mass. 159, 194 N.E. 895 (1935).

<sup>7</sup>Okla.—Stuart v. Sands, 1947 OK 156, 198 Okla. 523, 180 P.2d 837 (1947).

<sup>8</sup>Ohio—Samuels v. U.S. Holding Co., 76 Ohio App. 163, 31 Ohio Op. 458, 44 Ohio L. Abs. 71, 63 N.E.2d 445 (1st Dist. Hamilton County 1945).

### Estoppel of trustee

Testamentary trustee, in filing his account on petition of hospital which made claim for care and treatment provided to one named as beneficiary and bringing in all other parties in interest, was estopped to question status of claimant hospital to compel the accounting.

N.Y.—In re Leahy's Estate, 184 Misc. 250, 55 N.Y. S.2d 435 (Sur. Ct. 1945).

<sup>9</sup>Pa.—Rock v. Pyle, 720 A.2d 137 (Pa. Super. Ct. 1998).

<sup>10</sup>Pa.—Rock v. Pyle, 720 A.2d 137 (Pa. Super. Ct. 1998).

<sup>11</sup>Kan.—Cavert v. Ferrell, 123 Kan. 254, 255 P. 62 (1927).

<sup>12</sup>Or.—In re Workman's Estate, 156 Or. 333, 68 P.2d 479 (1937).

<sup>13</sup>U.S.—Equitable Trust Co. v. Schwebel, 32 F. Supp. 241 (E.D. Pa. 1940), order aff'd, 117 F.2d 738 (C.C.A. 3d Cir. 1941).

Ill.—Conant v. Lansden, 341 Ill. App. 488, 94 N.E.2d 594 (4th Dist. 1950), aff'd in part, rev'd in part on other grounds, 409 Ill. 149, 98 N.E.2d 773 (1951).

<sup>14</sup>N.Y.—Bartlett v. Hatch, 17 Abb. Pr. 461, 1864 WL 3792 (N.Y. Sup 1864).

<sup>15</sup>Md.—Mitchell v. Colburn, 61 Md. 244, 1884 WL 5911 (1884).

<sup>16</sup>N.J.—Reeves v. Davis, 3 A. 881 (N.J. Ch. 1886).

<sup>17</sup>Pa.—In re Scott's Estate, 202 Pa. 389, 51 A. 1023 (1902).

### Duty to exact formal accounting

It is responsibility of successor trustees to take into their possession, on assuming office, entire trust property, but they are not under a legal obligation to exact a formal accounting by requiring the judicial settlement of the account of their predecessor.

## Research References

West's Key Number Digest, Trusts ⇨291

The right to an accounting may be lost by operation of an estoppel through acquiescence or a waiver.<sup>1</sup> Also, the right thereto may be relinquished or surrendered as by a release,<sup>2</sup> or by a valid transfer or assignment of the beneficiary's full interest in the trust estate to a third person.<sup>3</sup> In addition, the circumstances may be such as either to make an accounting unnecessary or improper to be decreed.<sup>4</sup> Whether a beneficiary of a trust has waived an accounting by the trustee depends on the circumstances in evidence.<sup>5</sup> Thus, when all persons possessing an interest under the trust have agreed that the trustee shall account to designated ones of their number, the others have no right to require an accounting until

after a failure on his or her part so to account or a refusal or failure of the designated persons to require an accounting.<sup>6</sup>

Remaindermen are not bound by a life tenant's acceptance of the trustee's account,<sup>7</sup> despite a trust provision that the beneficiary's acceptance shall constitute a discharge of the trustee.<sup>8</sup> Where one beneficiary is entitled to certain proceeds, a ratification or agreement on the part of such beneficiary will not operate as an estoppel against the other beneficiaries.<sup>9</sup> Assent by a cestui, while estopping him or her, is not binding on heirs after his or her death if their rights are given by the law independent of the ancestor's will and they may demand an accounting despite his

N.Y.—In re Ketcham's Estate, 124 N.Y.S.2d 895 (Sur. Ct. 1953).

### [Section 596]

<sup>1</sup>N.Y.—Re v. Re, 39 A.D.2d 760, 332 N.Y.S.2d 462 (2d Dep't 1972).

Limitations or laches as bar to accounting see § 603.

<sup>2</sup>N.H.—Spooner v. Dunlap, 87 N.H. 384, 180 A. 256 (1935).

N.Y.—In re Toel's Estate, 180 Misc. 447, 39 N.Y.S.2d 898 (Sur. Ct. 1943).

Tex.—Hamilton v. Keller, 148 S.W.2d 1011 (Tex. Civ. App. Eastland 1941).

### Equivalent to judicial decree

A general release of all claims against testamentary trustee by life beneficiaries and remainderman has effect equivalent to that of judicial decree settling trustee's accounts. A trust beneficiary has no more right to complain of trustee's failure to point out possible bases of objection to his account settled by release than in case of account adjusted before court, in absence of any suppression of material facts, fraud, imposition, or overreaching.

N.Y.—In re Salomon's Will, 175 Misc. 264, 23 N.Y.S.2d 72 (Sur. Ct. 1940).

<sup>3</sup>Mass.—Ball v. Carew, 30 Mass. 28, 13 Pick. 28, 1832 WL 2526 (1832).

### <sup>4</sup>Acts in accordance with agreement

Where defendant acquired premises at foreclosure sale under mortgage held in trust for benefit of defendant and complainants and stood ready to convey premises to complainants on their paying him his investment, plus interest, in accordance with agreement, complainants could not waive right to conveyance and demand accounting.

N.J.—Hall v. Finn, 116 N.J. Eq. 34, 172 A. 531 (Ch. 1934), aff'd, 119 N.J. Eq. 165, 181 A. 41 (Ct. Err. & App. 1935).

<sup>5</sup>R.I.—Haas v. McGinn, 64 R.I. 133, 11 A.2d 284 (1940).

### Circumstances held not to show waiver or estoppel

(1) In action to recover land held as constructive trustees by defendants who were guilty of no fraud, and who had expended money for benefit of land, record did not show a waiver of defendants' right to an accounting notwithstanding defendants' statement in open court that defendants did not wish case referred to an auditor for an accounting.

U.S.—Cahill v. Bryan, 184 F.2d 277 (D.C. Cir. 1950).

(2) Provision in trust agreement for filing of statement of account with a named bank did not preclude beneficiaries of trust from a timely examination thereof under supervision of chancery court, and did not constitute a waiver of right of beneficiaries to an accounting.

N.J.—United Towns Bldg. & Loan Ass'n v. Schmid, 23 N.J. Super. 239, 92 A.2d 844 (Ch. Div. 1952).

<sup>6</sup>Tex.—Buchner v. Wait, 137 S.W. 383 (Tex. Civ. App. Galveston 1911), writ refused, (May 24, 1911).

<sup>7</sup>N.Y.—In re Crane, 34 N.Y.S.2d 9 (Sup 1942).

### <sup>8</sup>"Matters covered by such account"

In inter vivos trust providing that written acceptance of beneficiary entitled to income of the correctness of any account rendered by trustees should discharge trustees with respect to "matters covered by such account," the quoted phrase related only to matters in which the life beneficiary was interested, namely, income, as affecting conclusiveness on remaindermen of life beneficiary's acceptance of trustees' account.

N.Y.—In re Crane, 34 N.Y.S.2d 9 (Sup 1942).

<sup>9</sup>Va.—Rowland v. Kable, 174 Va. 343, 6 S.E.2d 633 (1940).

or her acquiescence.<sup>10</sup> However, a beneficiary precluded from requiring an accounting in his or her own right cannot claim it as a representative of other persons possessing remote possible interests in the estate.<sup>11</sup> In order to hold a cestui estopped on the grounds of acquiescence or ratification, actual and full knowledge of all material particulars and circumstances is indispensable, the cestui must be fully apprised of the acts ratified and of his or her legal rights in the matter, and the conduct invoked to show ratification must be clear and unequivocal, fairly indicating an intent to affirm the transaction.<sup>12</sup>

The conduct of the cestui during minority will not estop him or her to demand an accounting after he or she comes of age.<sup>13</sup>

#### *Waiver of answer under oath.*

The right to an accounting is not affected by a waiver of an answer under oath.<sup>14</sup>

### § 597 Right of court

**A court may order an accounting by a trustee to a beneficiary at any time, where equity demands.**

#### Research References

West's Key Number Digest, Trusts ⇨291

A court may order an accounting by a

trustee to a beneficiary at any time, where equity demands,<sup>1</sup> particularly where such trustee is an appointee of the court.<sup>2</sup> The fact that an application for an accounting is made by persons possessing no sufficient interest to entitle them to one does not affect this independent power of the court.<sup>3</sup> The exercise of the power is especially appropriate where serious reflections are made on the conduct of the trust.<sup>4</sup>

### C. WHO MAY BE REQUIRED TO ACCOUNT

#### § 598 Generally

**Only a person occupying the position of trustee can be required to account as such, and any person who assumes the character of a trustee incurs a trustee's liability to account.**

#### Research References

West's Key Number Digest, Trusts ⇨292

Only a person occupying the position of trustee can be required to account as such.<sup>1</sup> Thus, other beneficiaries under the trust cannot be required to account,<sup>2</sup> at least unless it appears that such other beneficiaries received more than their share of the trust estate.<sup>3</sup> Persons named to be trustees in the event of the occurrence of a specified contingency,

<sup>10</sup>Md.—Ehlen v. Ehlen, 63 Md. 267, 1885 WL 4390 (1885).

<sup>11</sup>Ind.—Copeland v. Bruning, 44 Ind. App. 405, 87 N.E. 1000 (Div. 2 1909).

N.Y.—Woodbridge v. Bockes, 170 N.Y. 596, 63 N.E. 362 (1902).

<sup>12</sup>Ill.—Winterland v. Winterland, 322 Ill. App. 186, 54 N.E.2d 409 (3d Dist. 1944), judgment rev'd on other grounds, 389 Ill. 384, 59 N.E.2d 661 (1945) (overruled on other grounds by, In re Gerbing's Estate, 61 Ill. 2d 503, 337 N.E.2d 29, 74 A.L.R.3d 1087 (1975)).

N.H.—Spooner v. Dunlap, 87 N.H. 384, 180 A. 256 (1935).

<sup>13</sup>N.Y.—Jones v. Jones, 2 N.Y.S. 844 (Gen. Term 1888).

<sup>14</sup>Mich.—Cochrane v. Adams, 50 Mich. 16, 14 N.W. 681 (1883).

#### [Section 597]

<sup>1</sup>U.S.—In re New England Mut. Life Ins. Co. Litigation, 841 F. Supp. 345, 88 Ed. Law Rep. 1054 (W.D. Wash. 1994), aff'd, 54 F.3d 786, 100 Ed. Law Rep. 65 (9th Cir. 1995).

N.Y.—Gouiran v. Gouiran, 263 A.D.2d 393, 693 N.Y.S.2d 127 (1st Dep't 1999).

<sup>2</sup>S.C.—Vincent v. MacMillan, 149 S.C. 227, 146 S.E. 869 (1929).

<sup>3</sup>N.Y.—Holbert v. Jackson, 134 Misc. 618, 235 N.Y.S. 642 (Sup 1929).

<sup>4</sup>N.Y.—Holbert v. Jackson, 134 Misc. 618, 235 N.Y.S. 642 (Sup 1929).

#### [Section 598]

<sup>1</sup>Mich.—In re Goldman Estate, 236 Mich. App. 517, 601 N.W.2d 126 (1999).

#### Minority interest

If stock ownership of trust estate represents only a minority interest, fiduciaries cannot by reason of such stock interest be required to render an account of corporate transactions.

N.Y.—In re Hubbell's Will, 90 N.Y.S.2d 74 (Sur. Ct. 1948), decree aff'd by, 276 A.D. 134, 93 N.Y.S.2d 555 (2d Dep't 1949), appeal granted, 276 A.D. 974, 95 N.Y.S.2d 341 (2d Dep't 1950) and order rev'd on other grounds, 302 N.Y. 246, 97 N.E.2d 888, 47 A.L.R.2d 176 (1951).

<sup>2</sup>Mo.—Easton v. Demuth, 179 Mo. App. 722, 162 S.W. 294 (1913).

<sup>3</sup>Ill.—Sajdak v. Sajdak, 224 Ill. App. 3d 481, 166 Ill. Dec. 758, 586 N.E.2d 716 (1st Dist. 1992).