

### CHAPTER 501

### USES AND TRUSTS

#### 501.01 ABOLISHED IN PART

Perpetuities, trusts of personalty, right of settlor to withdraw fixed sum annually from the corpus as being a power of revocation. 34 MLR 152.

Revocation of insurance trusts. 35 MLR 417.

Manifestation of intent necessary to create a spendthrift trust. 35 MLR 682.

#### 501.06 LIMITING PRECEDING SECTIONS

Non-claim statute. Degree of identification of trust res necessary. 35 MLR 209.

No fraud is shown where money is withdrawn from funds of an association by an associate for his personal use and property accounted for in the books of the association. *Lipinski v Lipinski*, 227 M 511, 35 NW(2d) 708.

The elements of a cause of action to enforce a constructive trust on the existence of a fiduciary relation and the abuse by defendant of confidence and trust imposed in him thereunder to plaintiff's harm, and if an element is lacking such a trust cannot be adjudged. *Wilcox v Nelson*, 227 M 545, 35 NW(2d) 741.

#### 501.07 RESULTING TRUSTS

Express trusts are those which are created by the direct and positive act of the parties, by some writing, or deed, or will; or by words either expressing or impliedly evincing an intention to create a trust. Express and implied trusts differ chiefly in that express trusts are created by the acts of the parties, while implied trusts are raised by operation of law, either to carry out a presumed intention of the parties or to satisfy the demands of justice or protect against fraud. *American Surety v Greenwald*, 223 M 44, 25 NW(2d) 681.

In an ejectment suit, defendant may plead equitable defenses and if the evidence is made in support thereof entitles him to conveyance of the property, the court has jurisdiction to find title in the defendant. The evidence that defendant's wife, since deceased, paid the consideration for purchase of realty involved did not sustain the finding that defendant was owner of the fee, title which stood in the name of the wife's niece and her husband. The payment of purchase price alone is not sufficient to entitle a purchaser to benefit interest in land conveyed to another. *Bastian v Brink*, 233 M 25, 45 NW(2d) 712.

Where one buys land and pays for it with his own money but takes a conveyance in the name of another, a trust results by operation of law in favor of the person so paying the purchase money and such trust need not appear on the face of the deed, but may be established or rebutted by clear and satisfactory parol evidence. Parties seeking to establish a resulting trust in realty have the burden of proving by clear and satisfactory evidence that they contributed to payments for the realty. In the instant case the attorneys sustained the trial court findings that brothers and sisters had not established by clear and satisfactory evidence that they or any of them or their father or mother had made any contribution toward the purchase price or paid any sum for any special interest in the realty. *Georgopolis v George*, 237 M 176, 54 NW(2d) 137.

#### 501.10 BONA FIDE PURCHASERS PROTECTED

The equitable doctrine of estoppel by conduct, which is altogether different from technical legal estoppels in pais, so far from being odious, is a favored doctrine of

the courts. To create an estoppel, the conduct of the party need not consist of affirmative acts or works. It may consist of silence or a negative omission to act when it was his duty to speak or act. It is not necessary that the facts be actually known to a party estopped. It is enough if the circumstances are such that a knowledge of the truth is necessarily imputed to him. *May v Ackerman*, 235 M 272, 51 NW(2d) 87.

### 501.11 PURPOSES OF EXPRESS TRUSTS

**HISTORY.** RS 1851 c 44 s 11; PS 1858 c 32 s 11; GS 1866 c 43 s 11; 1875 c 53 s 1; GS 1878 c 43 s 11; 1893 c 83 s 1; 1893 c 84 s 1; GS 1894 s 4284; 1897 c 80; 1901 c 95; RL 1905 s 3249; GS 1913 s 6710; 1915 c 98 s 1; 1925 c 133; 1929 c 110 s 1; 1931 c 65 s 1; 1947 c 597 s 1.

Reservation of control by settlor rendering trust invalid as to the surviving spouse. 32 MLR 193.

Right to withdraw a fixed sum annually from the corpus of a trust in personality is not a power of revocation. 35 MLR 152.

The validity of a trust enduring longer than the statutory period of suspension of the power of alienation in case where the trustee has an implied power of sale. 35 MLR 617.

Incorporation of amendable inter vivos trust. 37 MLR 153.

Effect of subsequent trust amendments formally executed. 37 MLR 153.

In construing provisions of a living trust, a surviving spouse of a deceased child of the settlor becomes, upon the death of such child, entitled to have and immediately receive, free from trust, one-third of the share of such child in all the properties mentioned under the trust instrument, except for certain stocks remaining in the trust. Likewise such spouse is entitled to receive during his lifetime the net income from one-third of deceased child's share, and upon final disposition a similar one-third free from the trust. *Atwood v Holmes*, 224 M 157, 28 NW(2d) 188.

In construing a will the cardinal rule is that the testator's intention is to be gathered from the language of the will itself; and the court does not possess the power to, and never should, rewrite or remake a will to provide by conjecture what the testator might have said if he had foreseen events occurring subsequent to his death, or to escape what seems to be an undesirable result. *Cosgrave's Will*, 225 M 443, 31 NW(2d) 22.

The word "proceeds" in a will directing trustees to pay "income" of trust to widow and two daughters in equal shares and authorizing trustee to use "proceeds" of trust for widow's support if widow's share of proceeds of trust was insufficient for such purpose, authorizes use of income but not of corpus for widow's support. *Cosgrave's Will*, 225 M 443, 31 NW(2d) 22.

Where by his will, the testator gave the residue of his estate in trust, if his wife survives him, with directions to the trustees to pay the "income" therefrom in equal shares to his wife and two daughters by a prior marriage, with a proviso that if the one-third of the "proceeds" of the trust was insufficient for his wife's support in the style and manner in which he supported her, the trustees in their discretion were authorized to apply so much of the shares thereof given to the daughters as the trustees deem necessary for such purpose, with resulting diminution of the shares given to the daughters, the widow was not entitled to support out of the corpus, it being limited to income only. *Cosgrave's Will*, 225 M 443, 31 NW(2d) 22.

Sound public policy imposes a positive duty upon the courts to exercise an affirmative vigilance in protecting trust estates from depletion from unnecessary or illegal expenditures; and an order allowing attorney's fees for service to a trust estate affecting a substantial right of attorneys was appealable and subject to modification by motion or other form of direct attack, but it could not be questioned or modified in a collateral proceeding. *Atwood v Holmes*, 227 M 495, 38 NW(2d) 65.

A devise of land to a village "to be used for a public park," creates a valid charitable trust. The village council's acceptance created a charitable trust effective by

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common law rules and not under the provisions of section 465.03. Acceptance of a charitable trust need not be express, but may be inferred from the conduct of the trustee. *Schaeffer v Newbury*, 235 M 282, 50 NW(2d) 477.

The evidence did not show an intention of joint ownership in a house taken in the name of one of the family, and no trust was established under the theory of joint enterprise. *Georgopolis v George*, 237 M 176, 54 NW(2d) 137.

Where a husband pays the consideration for property transferred to his wife there is a rebuttable presumption of a gift by him to her. *Kath v Kath*, ..... M ....., 55 NW(2d) 691.

A court of equity will not permit a trust to fail for want of a trustee. *Munson's Estate*, ..... M ....., 57 NW(2d) 22.

Where there is a wrongful commingling of trust funds with personal funds of trustee, the entire amount will be treated as trust funds except insofar as the trustee is able to distinguish what is his. *Peterson v Swan*, ..... M ....., 57 NW(2d) 842.

Where funds or property of husband and wife are rightfully commingled and in the possession of the wife, and thereafter part of the property of one co-owner is wrongfully appropriated by the wife and invested in government bonds in the name of her mother, the burden rests with the wrongdoer to show what part of the property belonged to her, and if it is impossible to make an equitable division the whole of the property is held to belong to the one who has done no wrong. *Peterson v Swan*, ..... M ....., 57 NW(2d) 842.

Where a trust is created by bequest and accepted by a city as trustee, the trust must be executed in accordance with the terms of the trust, and the trust fund may not be diverted to a purpose not intended by its creator. OAG June 29, 1950 (59-A-22).

If the city council in the exercise of its sound judgment and consideration of all the facts, determines that the use of the portion of the proposed building by the chamber of commerce will not be inconsistent with or hostile to the use of the property donated to the city for park and recreational purposes and that the use of a part of the proposed building will not constitute a use of the tract involved for commercial purposes, and then accepts the proposal of the chamber of commerce, the attorney general would not be justified in instituting an action under section 501.12, subdivision 3. OAG Sept. 3, 1953 (59-A-40).

Farm land given to a city in trust, the revenue from which was to be used for park purposes, is exempt from ad valorem assessment. OAG May 25, 1948 (414-A-11).

Where a citizen conveyed to the city of Redwood Falls certain real estate within the city as a gift to the city "for the purpose of a public park and community building" and further gave the city certain cash with which to maintain the building and further deeded to the city an 80-acre farm outside of the city, the income from which was to be used for care and upkeep of the park, the 80-acre farm is exempt for ad valorem assessment. OAG May 28, 1948 (414-A-11).

A village has authority to accept by grant a gift of real or personal property for a public cemetery. It may accept a transfer by a public cemetery association of a cemetery under section 306.025, and may own and maintain a municipal cemetery as provided in section 412.221, but is not authorized to accept as a gift a building used exclusively as a burial vault building and to assume an unpaid obligation thereon of \$600. OAG Nov. 13, 1952 (870-J).

## 501.12 EXPRESS TRUSTS FOR CHARITABLE, EDUCATIONAL, RELIGIOUS, AND OTHER PUBLIC USES

NOTE: Nonprofit corporations, see sections 317.17, 317.26, 317.38.

A devise of realty to village for park purposes is not governed by statute relating to creation or establishment of a charitable trust where testator died prior to effective date of statute. *Schaeffer v Newberry*, 227 M 259, 35 NW(2d) 287.

Neither the American Legion Post which was a corporation composed of a membership comprising large numbers of citizens of a village, nor a private citizen, would be proper party defendant in action to quiet title to realty devised to village for public park purposes, where no showing was made that the attorney general has refused or will refuse to perform his legal function of compelling compliance with conditions impressed upon a gift for charitable purposes. *Schaeffer v Newberry*, 227 M 259, 35 NW(2d) 287.

When the trust res is clearly earmarked for purely charitable use, it is immaterial whether the designated trustee of the trust is a charitable corporation or a private corporation, since if the corporation becomes incapable of administering a trust, the court can supply a successor. A court of equity will not permit a trust to fail for want of a trustee, and if an attempt is ever made to deviate from purely charitable purpose, the public interest will be protected by the attorney general who has the right and duty to enforce a charitable trust by proper court proceedings. In *re Quinlan's Estate*, 233 M 35, 45 NW(2d) 807.

All instruments pertaining to charitable trusts are to be construed literally in behalf of such trusts; and under a will devising real estate to a corporate foundation to be devoted to furtherance of its general objects and purposes with unrestricted power in the board of trustees to dispose of the property devised for the promotion of religious, educational, scientific, medical, surgical, social or charitable activities within the purpose of the corporation, the gift was in trust for charitable purposes. In *re Quinlan's Estate*, 233 M 35, 45 NW(2d) 807.

A statute embodying the doctrine of *cy pres* becomes applicable when the will discloses (1) a valid bequest, (2) a trustee indicated in some manner, (3) a definable charitable use or object, and (4) a charitable intent. A devise or bequest, although in form an outright gift, is in purpose and effect a charitable trust when made to an institution whose sole reason for existence is charitable. This is true even though no words of express trust are used. In the instant case, testator bequeathed the residue of his estate for the purpose of erecting a children's orphanage, to be under the management of a specified existing home. *Stoppel v Red River Valley Conference*, ..... M ....., 57 NW(2d) 22.

A devise or bequest although in form an outright gift, when made to an institution whose sole reason for existence is charitable, is in purpose and effect a charitable trust, even though in making the devise or bequest no words of express trust are used. *Munson's Estate*, ..... M ....., 57 NW(2d) 22.

Where an agreement was entered into between divorced husband and wife, under the terms of which the wife had custody of the son while the husband was requested to pay a specified sum for the son's maintenance and education, the father was excused from making the payments during the time the son was in the armed forces of the United States. *Spaulding v Moore*, Mass. 76 NE(2d) 137.

A trust for the construction and perpetual operation and maintenance of a hotel at Virginia City, Montana, as a memorial to the testator cannot be sustained as a valid charitable trust; even if "the city is a state shrine and of historic importance" and needs a hotel. *Swayze's Estate*, 120 Mont. 546, 191 P(2d) 322.

## 501.125 KINDS OF PROPERTY A TRUSTEE MAY ACQUIRE

**HISTORY.** 1943 c 635 s 1-5.

Trusts; duly not to delegate; purchase of shares in investment trust company. 34 MLR 163.

A credit union may invest its funds in a portion of savings, building, and loan association shares. OAG June 28, 1948 (53-B).

A credit union may invest funds in shares of national banking associations organized and operating under Acts of Congress. OAG July 23, 1949 (53-B).

A village as trustee is limited in its investment by section 471.56. OAG Sept. 7, 1951 (476-A-8).

### 501.13 DEVICES AS POWERS

Incorporation of amendable inter vivos trust. 37 MLR 153.

Effect of subsequent trust amendments formally executed. 37 MLR 153.

### 501.14 TRUST PROFIT SURPLUS SUBJECT TO CREDITORS' RIGHTS

An attempt by beneficiary of a trust to assign part of the corpus to his wife by property settlement incident to divorce is held to be invalid. The cardinal purpose of construing a will or a trust is to ascertain the intention of the testator or settlor. Where the power of alienation has been suspended we have a spendthrift trust, but the beneficiary need not be an improvident person. The validity of a spendthrift trust is upheld on the theory that the owner of property, in the free exercise of his will in disposing of it, may secure as he sees fit and may limit its benefits to persons of his choice who part with nothing in return, to the exclusion of creditors and others. If a spendthrift trust is established expressly or by implication, the claims of a spouse for alimony or support can no more reach the beneficiary's interests in the hands of a trustee than can creditors of the beneficiary for any other debt or obligation. In re Loulton's Estate, 233 M 286, 46 NW(2d) 667.

### 501.17 TRUSTEES TAKE ESTATE, WHEN

Distribution of principal and income from property used to pay administration expense, debts and legacies. 37 MLR 303.

### 501.195 REVERSIONARY INTERESTS, POSSIBILITIES OF REVERTER, RESULTING TRUSTS

HISTORY. 1949 c 201 s 1.

Reversions; concurrent lessee's right to rent. 35 MLR 218.

### 501.20 ALIENATION RESTRAINED, LIMITATION

Manifestation of intent necessary to create a spendthrift trust. 35 MLR 682.

### 501.22 TRUST ESTATES

Trusts; duty not to delegate; purchase of shares in investment trust company. 34 MLR 163.

Validity of trust enduring longer than the statutory period of suspension of alienation where trustee has an implied power of sale. 35 MLR 617.

Federal estate taxation; retention of power to terminate trusts. 37 MLR 405.

A trustee is presumed to know the conditions and limitations governing a trust estate accepted by him. Butler's Estate, 223 M 196, 26 NW(2d) 204.

The word "proceeds" in a will directing trustees to pay "income" of trust to widow and two daughters in equal shares and authorizing trustees to use "proceeds" of trust for widow's support if widow's share of proceeds of trust was insufficient for such purpose, authorizes use of income but not of corpus for widow's support. Cosgrave's Will, 225 M 443, 31 NW(2d) 22.

Where by his will, the testator gave the residue of his estate in trust, if his wife survives him, with directions to the trustees to pay the "income" therefrom in equal shares to his wife and two daughters by a prior marriage, with a proviso that if the one-third of the "proceeds" of the trust was insufficient for his wife's support in the style and manner in which he supported her, the trustees in their discretion were authorized to apply so much of the shares thereof given to the daughters as the trustees deem necessary for such purpose, with resulting diminution of the shares given to the daughters, the widow was not entitled to support out of the corpus, it being limited to income only. Cosgrave's Will, 225 M 443, 31 NW(2d) 22.

In construing a will the cardinal rule is that the testator's intention is to be gathered from the language of the will itself; and the court does not possess the power to, and never should, rewrite or remake a will to provide by conjecture what the testator might have said if he had foreseen events occurring subsequent to his death, or to escape what seems to be an undesirable result. *Cosgrave's Will*, 225 M 443, 31 NW(2d) 22.

Appeal from an order denying a motion for amended findings or a new trial brought up for review the order only insofar as it denied a motion for a new trial. The elements of a cause of action to enforce a constructive trust are the existence of a fiduciary relation and the abuse by the defendant of confidence and trust imposed in him thereunder to plaintiff's harm, and if an element is lacking, such a trust cannot be adjudged. In the instant case the evidence warrants the finding that the defendant purchased the property for his own benefit with his own money and there was no agreement to purchase the property for the plaintiff. *Wilcox v Nelson*, 2217 M 545, 35 NW(2d) 741.

It is a fundamental rule of appellate procedure that the determination of a trial court of a matter resting in its discretion will not be reversed on appeal except for a clear abuse of discretion. This discretionary power of the trial court must be exercised judicially, with close regard to all facts of the particular case and in furtherance of justice. In determining whether abuse of discretion is shown, the supreme court construes the findings of the trial court in the light of the record. An appellate court cannot determine issues of fact *de novo*, but must accept any awards for alimony and for the adjudication of property rights unless, in the light of the evidence as a whole, it appears that the trial court has abused its discretion. In a valid spendthrift trust, both the principal and interest are free from the claims of creditors and are protected in transmission until actually paid over to the beneficiary. This applies to obligations for alimony and support money. From the face of the record, there appears to be such an abuse of discretion in this case as to justify a reversal of the order of the trial court. *Lamberton v Lamberton*, 229 M 29, 38 NW(2d) 72.

In the proceedings for the allowance to the respondent of attorneys' fees and expenses, the trial court specifically found that (a) the terms of the trust instrument were ambiguous and uncertain in meaning and that they had been construed at different times in different ways; (b) that litigation was necessary to resolve these ambiguities in meaning as a prerequisite to a determination of the present and future rights of all parties concerned; (c) that respondent in his representative capacity was a necessary and proper party to this litigation; (d) that all litigation in which respondent participated and all the legal services performed and expenses incurred in connection therewith were necessary and proper and were of benefit to all the beneficiaries and to the trustees in resolving the trust-instrument ambiguities and in procuring a final adjudication of the respective rights of the beneficiaries and of the duties of the trustees; and (e) that the respective sums of \$4,000 and \$814.58 for attorneys' fees and expenses were reasonable. *Atwood v Holmes*, 229 M 37, 35 NW(2d) 736.

Under a trust agreement which provides that expenses incurred by the trustee be paid, an allowance of attorney's fees for services rendered to a trustee rests in the discretion of the court. Where the individual trustee served without compensation, payment for legal services can only be made when the services are beyond duties the trustee should perform. In *re Conan's Will*, 231 M 164, 42 NW(2d) 400.

Where purchaser of government bonds caused them to be registered in his name and the name of his niece, jointly, and placed bonds with father of niece for safe keeping and niece procured and cashed bonds and purchased new securities jointly in her name and the name of her mother, despite fact that mother did not have securities in her possession and did not have knowledge that they had been purchased in her name, constructive trust of such securities in favor of injured party would be imposed on securities held by mother and daughter. *Altman v Altman*, 234 M 183, 47 NW(2d) 870.

Payments on bonds made to a trustee under a trust deed were binding upon the bondholders even if the trustee, who did not pay the bondholders, intended all the while to defraud bondholders, where those making the payments had no knowl-

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edge of such alleged fraudulent intent on the part of the trustee. *May v Ackerman*, 235 M 273, 51 NW(2d) 87.

Where plaintiff's money was paid to defendant because of a mistake of fact induced by the material misrepresentation of defendant, and plaintiff received nothing in exchange for the money so paid, in an action for money had and received, based on unjust enrichment, the good or bad faith of the defendant is not material. *Dwinnell v Oftedahl*, 235 M 383, 51 NW(2d) 93.

## 501.23 SALE, MORTGAGE, PLEDGE, OR LEASE OF PROPERTY IN TRUST CREATED BY WRITTEN INSTRUMENT; VOID, WHEN; DISTRICT COURT POWERS

Distribution of principal and income from property used to pay administration expense, debts, and legacies. 37 MLR 303.

## 501.28 HEARING; FINAL ORDER; REPORT OF SALE; CONVEYANCE BY TRUSTEE; DISPOSITION OF PROCEEDS; BONDS

Where purchaser of government bonds caused them to be registered in his name and the name of his niece, jointly, and placed bonds with father of niece for safe keeping and niece procured and cashed bonds and purchased new securities jointly in her name and the name of her mother, despite fact that mother did not have securities in her possession and did not have knowledge that they had been purchased in her name, constructive trust of such securities in favor of the injured party would be imposed on securities held by mother and daughter. *Altman v Altman*, 234 M 183, 47 NW(2d) 870.

## 501.33 TRUSTEE; CONFIRMATION OF APPOINTMENT; COURT JURISDICTION

In proceedings by trustees of inter vivos and testamentary trusts or petitions for allowance of accounts the burden of proving the accounts is on the trustees. Granting a motion for an order restraining a trustee from proceeding with a hearing on his account as trustee until the determination of an independent action involving the trustee's account is a matter lying within the discretion of the trial court, whose action will not be reversed except for a clear abuse of discretion. There being no showing of abuse of such discretion by the trial court in denying such motion, the appellate court will affirm. *Plunkett v Lampert*, 231 M 484, 43 NW(2d) 489.

## 501.34 TRUSTEE TO FILE INVENTORY

In proceedings by trustees of inter vivos and testamentary trusts or petitions for allowance of accounts, the burden of proving the accounts is on the trustees. In all accounting proceedings the trustee must make full measure of disclosure. *Plunkett v Lambert*, 231 M 484, 43 NW(2d) 489.

A trustee is required to file his account annually. Before the enactment of section 501.34 he could have an intermediate account allowed. In the absence of fraud an order allowing such account was binding. *Anneke's Trust*, 229 M 60, 38 NW(2d) 177.

## 501.35 MAY APPLY TO COURT FOR INSTRUCTIONS

Validity of trust enduring longer than the statutory period of suspension of alienation where trustee has an implied power of sale. 35 MLR 617.

A trustee is presumed to know the conditions and limitations governing a trust estate accepted by him. *Butler's Estate*, 223 M 196, 26 NW(204).

Where a trustee's account and the petition for allowance thereof do not apprise the beneficiaries of self dealing by the trustee, self dealing is not a matter involved in the accounting and is not *res judicata*; and an order vacating an order allowing the trustee's annual account to the extent necessary to permit beneficiary to litigate against the trustee a claim basing on the trustee's self dealing is free from the defense that the vacated order was *res judicata* of that question. *Re Enger's Will*, 225 M 229, 30 NW(2d) 696.

The matters determined by an order allowing a trustee's annual account are those put in issue by the petition and the account and by the objections thereto; and an order allowing a trustee's annual account under section 501.35 is final and conclusive as to matters determined and has the same legal effect as a final judgment. *Re Enger's Will*, 225 M 229, 30 NW(2d) 696.

Sound public policy imposes a positive duty upon the courts to exercise an affirmative vigilance in protecting trust estates from depletion from unnecessary or illegal expenditures; and an order allowing attorney's fees for service to a trust estate affecting a substantial right of attorneys was appealable and subject to modification by motion or other form of direct attack, but it could not be questioned or modified in a collateral proceeding. *Atwood v Holmes*, 227 M 495, 38 NW(2d) 65.

Appeal from an order denying a motion for amended findings or a new trial brought up for review the order only insofar as it denied a motion for a new trial. The elements of a cause of action to enforce a constructive trust are the existence of a fiduciary relation and the abuse by the defendant of confidence and trust imposed in him thereunder to plaintiff's harm, and if an element is lacking, such a trust cannot be adjudged. In the instant case the evidence warrants the finding that the defendant purchased the property for his own benefit with his own money and there was no agreement to purchase the property for the plaintiff. *Wilcox v Nelson*, 227 M 545, 35 NW(2d) 741.

In the proceedings for the allowance to the respondent of attorneys' fees and expenses, the trial court specifically found that (a) the terms of the trust-instrument were ambiguous and uncertain in meaning and that they had been construed at different times in different ways; (b) that litigation was necessary to resolve these ambiguities in meaning as a prerequisite to a determination of the present and future rights of all parties concerned; (c) that respondent in his representative capacity was a necessary and proper party to this litigation; (d) that all litigation in which respondent participated and all the legal services performed and expenses incurred in connection therewith were necessary and proper and were of benefit to all the beneficiaries and to the trustees in resolving the trust-instrument ambiguities and in procuring a final adjudication of the respective rights of the beneficiaries and of the duties of the trustees; and (e) that the respective sums of \$4,000 and \$814.58 for attorneys' fees and expenses were reasonable. *Atwood v Holmes*, 229 M 37, 35 NW(2d) 736.

A bank acting as trustee cannot lawfully buy from itself or a subsidiary or affiliated corporation owned by the trustee securities owned by it for the trust and the trust instrument in the instant case did not grant to the trustee a right to buy from itself securities which it owned. *Perl v First & American National Bank*, 229 M 60, 38 NW(2d) 177.

The purchase for trust of securities owned by the trustee or from a corporation owned and used by it in violation of the rules against self-dealing, was not authorized notwithstanding the fact that the trust agreement gave the trustee board powers of investment and reinvestment. *Perl v First & American National Bank*, 229 M 60, 38 NW(2d) 177.

The use of trust property by a trustee is limited to the use specified in the trust agreement. If there is any doubt as to the proposed use being within the purview of the use specified application should be made to the district court for an order thereon. OAG Aug. 6, 1952 (469-C-11).

### 501.39 MISAPPLICATION OF PAYMENT TO TRUSTEE

Under the facts of the case, failure of trustee, when signing satisfaction of trust deed, to include "as trustee" was not fatal, and the purchasers could be charged only with notice and knowledge of the facts which would have been disclosed to them upon an examination of the instruments in the record. When the trustee, under a mortgage in the nature of a trust deed, satisfied this mortgage of record, and the bondholder, knowing that something was wrong, failed to act so as to warn the purchasers, the bondholder is equitably estopped from asserting any claim in the land as against a bona fide purchaser for value. *May v Ackerman*, 235 M 273, 51 NW(2d) 87.



## **501.40 TERMINATION OF TRUSTEES' ESTATE**

Validity of trust enduring longer than the statutory period of suspension of alienation where trustee has an implied power of sale. 35 MLR 617.

The court may terminate an express trust in a proper case where the purposes of the trust have been fully accomplished, even before the expiration of the term for which it was created; and in the instant case where testatrix provided equally for her sister and her son, the court did not err in holding that the purposes and objects of the trust had not been fully accomplished and had not ceased when the sister renounced and declined to accept her beneficial interest in the trust, where it appeared from the record that three beneficiaries in a separate trust had assigned their interests to the sister several months before the death of the testatrix, and that the latter made no changes in her will or trust affecting the contingent beneficial interest which would go to her grandchildren under certain provisions contained in the trust. *Blacque v Kalman*, 225 M 258, 30 NW(2d) 599.

## **501.41 TRUST TO VEST IN DISTRICT COURT ON DEATH OF TRUSTEE**

Upon the death of a trustee of an express trust, the trust estate vests in the district court with all powers and duties of the original trustees, and the district court has full power to appoint a new trustee in place of one deceased, resigned, or removed. *State ex rel v District Court*, 222 M 546, 25 NW(2d) 692.

Upon the death of a trustee of an express trust, the estate vests in the district court with all the powers and duties of the original trustee. The district court appoints a new trustee in place of the one deceased, resigned or removed. In this case this rule applied where a lumber company acting as trustee of benefit funds to which the company's employees contributed was wound up and liquidated. *State ex rel v District Court*, 222 M 546, 25 NW(2d) 692.

## **501.42 RESIGNATION OF TRUSTEE**

Administration of trusts is equitable in character. The court having jurisdiction of a trust will allow the beneficiary wide latitude in cross examination of the trustee. In acting proceedings the trustee must make the fullest measure of disclosure. In an action against trustees for an accounting a trial by jury is not granted as a matter of right. *Plunkett v Lampert*, 231 M 484, 43 NW(2d) 489.

Where the district court had excellent jurisdiction over inter vivos and testamentary trusts as a proceeding in rem, and the beneficiary thereafter began actions against trustees for an accounting and the trustees filed a petition in the same court for the allowance of their accounts, refusal to enjoin hearings on the trustee's petitions until the determination of the beneficiary's action was not an abuse of discretion. *Plunkett v Lampert*, 231 M 484, 43 NW(2d) 489.

## **501.44 POWERS OF COURT**

Upon the death of a trustee of an express trust, the estate vests in the district court with all powers and duties of the original trustees, and the district court has full power to appoint a new trustee in place of one deceased, resigned, or removed. *State ex rel v District Court*, 222 M 546, 25 NW(2d) 692.

## **501.45 FIDUCIARY POWERS, SUSPENSION DURING WAR SERVICE**

**HISTORY.** 1943 c 497 s 1-5; 1951 c 177 s 1.