

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 65 TRUSTS IN GENERAL

PART 8
TRUSTS

Chapter 65. Trusts in General.
Chapter 66. Trusts for the Benefit of Third Persons.

CHAPTER 65
TRUSTS IN GENERAL

Article 1. Nature & Creation of a Trust.
Article 2. Obligations of Trustee.
Article 3 . Obligations of Third Persons.

ARTICLE 1
NATURE & CREATION OF A TRUST

§ 65101. Trusts Classified.
§ 65102. Voluntary Trust.
§ 65103. Involuntary Trust.
§ 65104. Parties to Contract.
§ 65105. Trustee Defined.
§ 65106. What Purposes Created.
§ 65107. Voluntary Trust, how Created as to Trustor.
§ 65108. How Created as to Trustee.
§ 65109. Involuntary Trustee.
§ 65110. Involuntary Trust from Fraud, Mistake, etc.

§ 65101. Trusts Classified.

A trust is either:

1. Voluntary; or
2. Involuntary.

SOURCE: CC § 2215.

§ 65102. Voluntary Trust.

A *voluntary trust* is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

SOURCE: CC § 2216.

§ 65103. Involuntary Trust.

An *involuntary trust* is one which is created by operation of law.

SOURCE: CC § 2217.

§ 65104. Parties to Contract.

The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

SOURCE: CC § 2218.

§ 65105. Trustee Defined.

Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this Chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

SOURCE: CC § 2219.

§ 65106. What Purposes Created.

A trust in relation to real and personal property, or either of them, may be created for any purpose or purposes for which a contract may be made.

SOURCE: CC § 2220.

§ 65107. Voluntary Trust, how Created as to Trustor.

Subject to the provisions of 21 GCA §13101 [Trusts must be in Writing], a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,
2. The subject, purpose, and beneficiary of the trust.

SOURCE: CC § 2221.

§ 65108. How Created as to Trustee.

Subject to the provisions of 21 GCA §13101, a voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty:

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 65 TRUSTS IN GENERAL

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,

2. The subject, purpose, and beneficiary of the trust.

SOURCE: CC § 2222.

§ 65109. Involuntary Trustee.

One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

SOURCE: CC § 2223.

§ 65110. Involuntary Trust from Fraud, Mistake, etc.

One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

SOURCE: CC § 2224.

NOTE: No 1970 Civil Code §§ 2225-2227 existed.

ARTICLE 2
LIABILITIES OF TRUSTEE

- § 65201. Obligation to Good Faith.
- § 65202. Not to use for own Profit.
- § 65203. Certain Transactions Forbidden.
- § 65204. Trustee's Influence, not to be used for his Advantage.
- § 65205. Adverse Interests not Allowed.
- § 65206. Same, Disclosed.
- § 65207. When Guilty of Fraud.
- § 65208. Presumption Against Trustees.
- § 65209. Mingling Trust Property Prohibited.
- § 65210. Liability for Breach.
- § 65211. Limitation on Liability.
- § 65212. Co-trustees; Individually Liable.

§ 65201. Obligation to Good Faith.

In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

SOURCE: CC § 2228.

§ 65202. Not to use for own Profit.

A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

SOURCE: CC § 2229.

§ 65203. Certain Transactions Forbidden.

Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

SOURCE: CC § 2230.

§ 65204. Trustee's Influence, not to be Used for His Advantage.

A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

SOURCE: CC § 2231.

§ 65205. Adverse Interests not Allowed.

No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

SOURCE: CC § 2232.

§ 65206. Same, Disclosed.

If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

SOURCE: CC § 2233.

§ 65207. When Guilty of Fraud.

Every violation of the provisions of the preceding sections of this Article is a fraud against the beneficiary of a trust.

SOURCE: CC § 2234.

§ 65208. Presumption Against Trustees.

All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

SOURCE: CC § 2235.

§ 65209. Mingling Trust Property Prohibited.

A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use.

SOURCE: CC § 2236.

§ 65210. Liability for Breach.

A trustee who uses or disposes of the trust property, contrary to § 65202 of this Chapter, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 65 TRUSTS IN GENERAL

SOURCE: CC § 2237.

§ 65211. Limitation on Liability.

A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

SOURCE: CC § 2238.

§ 65212. Co-trustees; Individually Liable.

A trustee is responsible for wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

SOURCE: CC § 2239.

NOTE: No 1970 Civil Code §§ 2240-2242 existed.

ARTICLE 3
LIABILITIES OF THIRD PERSONS

§ 65301. Involuntary Trustees.

§ 65302. Third Persons, Trust Property.

§ 65301. Involuntary Trustees.

Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.

SOURCE: CC § 2243.

§ 65302. Third persons, Trust Property.

One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 65 TRUSTS IN GENERAL

SOURCE: CC § 2244.

NOTE: No 1970 Civil Code §§ 2245-2249 existed.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 65 TRUSTS IN GENERAL