

## **Chapter 32.**

### **Fiduciaries.**

#### Article 1.

#### Uniform Fiduciaries Act.

##### **§ 32-1. Short title.**

This Article may be cited as the Uniform Fiduciaries Act. (1923, c. 85, s. 14; C.S., s. 1864(d); 1965, c. 628, s. 2.)

##### **§ 32-2. Definition of terms.**

(a) In this Article unless the context or subject matter otherwise requires:

"Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

"Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

"Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

(b) A thing is done "in good faith" within the meaning of this Article when it is in fact done honestly, whether it be done negligently or not. (1923, c. 85, s. 1; C.S., s. 1864(e); 1965, c. 628, s. 2.)

##### **§ 32-3. Application of payments made to fiduciaries.**

A person who in good faith pays or transfers to a fiduciary any money or other property, which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (1923, c. 85, s. 2; C.S., s. 1864(f).)

##### **§ 32-4. Repealed by Session Laws 1977, c. 814, s. 8, effective January 1, 1978.**

##### **§ 32-5. Transfer of negotiable instrument by fiduciary.**

If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by a fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a

breach of his obligation as fiduciary in transferring the instrument. (1923, c. 85, s. 4; C.S., s. 1864(h).)

**§ 32-6. Check drawn by fiduciary payable to third person.**

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument. (1923, c. 85, s. 5; C.S., s. 1864(i).)

**§ 32-7. Check drawn by and payable to fiduciary.**

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. (1923, c. 85, s. 6; C.S., s. 1864(j).)

**§ 32-8. Deposit in name of fiduciary as such.**

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith.

If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (1923, c. 85, s. 7; C.S., s. 1864(k).)

**§ 32-9. Deposit in name of principal.**

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is

payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (1923, c. 85, s. 8; C.S., s. 1864(l).)

**§ 32-10. Deposit in fiduciary's personal account.**

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary or of checks payable to him as fiduciary or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith. (1923, c. 85, s. 9; C.S., s. 1864(m).)

**§ 32-11. Deposit in names of two or more trustees.**

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (1923, c. 85, s. 10; C.S., s. 1864(n).)

**§ 32-12. Cases not provided for in Article.**

In any case not provided for in this Article the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply. (1923, c. 85, s. 12; C.S., s. 1864(p); 1965, c. 628, s. 2.)

**§ 32-13. Uniformity of interpretation.**

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1923, c. 85, s. 13; C.S., s. 1864(q); 1965, c. 628, s. 2.)