

59-1703. Duties of fiduciary; certain transactions voidable; exceptions. No fiduciary shall make a profit by the increase, nor suffer loss by the decrease or destruction without such fiduciary's fault, of any part of the estate, and such fiduciary shall account for the excess when he or she sells for more than the appraisement and shall not be responsible for the loss when he or she sells for less, if such sale appears to be beneficial to the estate.

A fiduciary shall not be responsible for any loss happening by the insolvency of any purchaser, or his or her sureties, for any sale duly made according to law, if such fiduciary proceeded with due caution in taking surety, and has used due diligence to collect thereon.

A fiduciary shall not be accountable for debts due the decedent or conservatee which remain uncollected without fault on such fiduciary's part, but where a fiduciary neglects or unreasonably delays to raise money by collecting debts or selling property, or neglects to pay over the money in his or her hands and by reason thereof the value of the estate is lessened, or unnecessary costs, interest, or penalties accrue, or the persons interested suffer loss, the same shall be deemed waste and the fiduciary shall be charged in his or her account with the damages sustained. A fiduciary shall not purchase any claim against the estate nor shall a fiduciary purchase directly or indirectly or be interested in the purchase of any property sold by such fiduciary, except as hereinafter provided.

Any sale, lease or mortgage to the personal representative, his or her spouse, child or grandchild, agent or attorney in fact, or to any corporation in which he or she has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable unless: (1) The will or a contract entered into by the decedent expressly authorized the transaction; or (2) the transaction is approved by the court after hearing upon notice to interested persons.

History: L. 1939, ch. 180, § 133; L. 1965, ch. 346, § 16; L. 1975, ch. 299, § 12; Jan. 1, 1976.