

Rule 5. Investments by a fiduciary.

(a) Investment standards.

(1) When investing, reinvesting, purchasing, acquiring, exchanging, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, specifically including, but not by way of limitation, the general economic conditions and the anticipated needs of the trust and its beneficiaries, or the ward or the probate estate and its creditors and interested persons, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, to attain the goals of the settlor as determined from the trust instrument or will, or the objectives of the ward as determined by the Court.

(2) Within the limitations of the foregoing and considering individual investments as part of an overall investment strategy, a fiduciary is authorized to acquire every kind of property, real, personal, or mixed, and every kind of investment. In the absence of express provisions to the contrary in any will or trust instrument, a fiduciary may without liability continue to hold property received into a trust or an estate at its inception or subsequently added to it or acquired pursuant to proper authority or previously held by the ward if and as long as the fiduciary, in the exercise of good faith and of reasonable prudence, discretion and intelligence, may consider that retention is in the best interests of the trust or the ward or probate estate or in furtherance of the goals of the settlor or testator as determined from any trust instrument or will or the objectives of the ward as determined by the Court.

(3) In the absence of express provisions to the contrary in any trust instrument or will, a deposit of funds at interest in any bank or other depository (including the trustee) shall be a permissible investment to the extent that such deposit is insured under any present or future law of the United States, is collateralized pursuant to any present or future law of the District of Columbia or the United States, or to such greater extent as the Court may authorize. Nothing in this rule shall be construed as limiting the right of fiduciaries in proper cases to make deposits of moneys in banks, subject, in the case of interest-bearing deposits, to such notice or other conditions respecting withdrawal as may be prescribed by law or governmental regulation affecting such deposits.

(4) Nothing in this rule shall abrogate or restrict the power of the Court in proper cases to direct or permit the fiduciary to deviate from the terms of the trust or will regarding the making or retention of investments.

(5) The provisions of this rule shall apply to all fiduciaries under the supervision of the Court. Terms such as "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "investments acquired using the judgment and care which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," and other words of similar import used in defining the powers of a fiduciary relative to investments, in the absence of other controlling or modifying provisions of a trust instrument or will shall be construed as authorizing any investment permitted, and imposing the standard of prudence required, by the terms of paragraph (1) of this rule.

(6) The term "property" as used in this rule includes life insurance, endowment, and annuity contracts issued by legal reserve companies.

(b) In all cases where a fiduciary is required to obtain Court authority prior to making investments, an order of Court so authorizing investments under this rule shall not constitute Court approval of the particular investments nor shall the fiduciary be relieved of any fiduciary responsibility for having made the investments.

(c) No fiduciary, without prior Court approval, shall purchase for the fiduciary's personal account or for any account in which the fiduciary is personally interested any asset held by the fiduciary, nor shall the fiduciary sell to himself or herself, as fiduciary, any asset in which the fiduciary has any personal or financial interest. Upon a petition by the fiduciary disclosing all pertinent facts and showing that either the trust instrument or will authorizes such a transaction, or that the beneficiary or ward has knowingly consented or that the transaction is in the best interest of the estate, trust, ward or beneficiary and after notice of the petition to all parties and affected persons and a hearing, the Court may approve the transaction.

COMMENT:

Subsection (a) of this rule maintains "the prudent investor" standard as expressed in *Johns v. Herbert*, 2 App. D.C. 485 (1894) but makes clear that a prudent investor uses a total asset management approach in light of the investment objectives for the beneficiary and allows the Court to permit generally accepted practices of risk allocation embodied in modern portfolio management theory. For further explication of current fiduciary investment practices with respect to trusts, see *D.C. Code §§ 28-4701 to 4712*.

The District of Columbia Code recognizes that the Court may allow the sale of estate property to a fiduciary by providing under § 21-2068 (Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1986) that such transactions otherwise voidable may be approved by the Court after a hearing with notice to enumerated individuals.