

CHAPTER 554
TRUSTS AND TRUSTEES; ACCOUNTS

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Protection of charitable assets; attorney general's authority, see §28-5.2.

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Uniform Probate Code, see chapter 560, Article VII.

Rules of Court

See Hawaii Probate Rules.

Applicability of Hawaii Rules of Civil Procedure, see HRCPC rules 1, 81(a)(3), (f), (g), (h), (i). Proceedings not governed by Hawaii Rules of Civil Procedure, see RCC rule 31.

" **§554-1 Vesting title to trust estates.** In the case of the valid appointment or succession of any trustee to fill a vacancy in any trusteeship, whether the vacancy is caused by death, removal, or otherwise, any circuit court having jurisdiction over the subject matter of the trust, may make a vesting order which shall vest the legal title in and to the trust property situate in the State in the trustee so appointed or succeeding, subject to the trust, solely, unless there be a co-trustee or co-trustees in which case in the new trustee and the new trustee's co-trustee or co-trustees as the case may be jointly. [L 1909, c 59, §1; RL 1925, §2474; RL 1935, §4711; RL 1945, §12571; RL 1955, §340-1; HRS §554-1; am L 1972, c 145, §3(a); gen ch 1985]

Rules of Court

Vesting orders, see HPR rule 126(b).

" **§554-2 Nomination by beneficiaries; appointment of trustees.** (a) Whenever any appointment of a trustee under a private trust is made by any court of record, if, prior to such appointment, beneficiaries who constitute a majority both in number and interest of the beneficiaries of the trust (as hereinafter defined) nominate for the trusteeship by an instrument or instruments in writing filed in the court any qualified person or corporation worthy in the opinion of the court to be appointed, the court shall appoint the nominee as

the trustee, unless the express terms of the trust provide an effective method of nomination or appointment. No person so nominated as trustee by the beneficiaries of any such trust shall be held disqualified to be appointed or to act as the trustee for the sole reason that the person is a beneficiary or a possible beneficiary under the trust estate.

(b) The term "majority both in number and interest of the beneficiaries of the trust," as used in this section, means a majority of the competent adult beneficiaries holding more than one-half of the value of the then vested interests held by all the competent adult beneficiaries in the trust; provided that if the guardian of any spendthrift, non compos person, or minor, owning such a vested interest, when the guardian is not an adult beneficiary, or married to an adult beneficiary, of the trust, executes or joins in the execution of any instrument of nomination and presents the same to the court (each such guardian being hereby authorized in the guardian's discretion either to execute or to refrain from executing the instrument of nomination, as in the guardian's judgment shall be in the best interest of the guardian's ward), then the spendthrift, non compos person, or minor, and the value of the spendthrift's, non compos person's, or minor's interest shall be included in determining the majority both in number and interest of the beneficiaries of the trust. The value of the then vested interests shall be determined as of the date of the presentation of the instrument or instruments of nomination to the court, in the manner provided for the appraisal of similar interests under the laws of the State for inheritance tax purposes and as the same would be valued for the purposes if the trust had been created by instrument made in contemplation of the death of the person who created the trust and the trust had come into existence and the death had occurred on the date of presentation of the instrument or instruments of nomination. When more than one instrument is presented to the court designating the same nominee, the date of presentation for the purposes of this section shall be deemed to be the date when the last instrument is so presented.

(c) This section applies to trusts created before, as well as to those created after April 28, 1943. [L 1943, c 68, §1 and pt of §2; RL 1945, §12572; RL 1955, §340-2; HRS §554-2; am L 1972, c 145, §3(b); gen ch 1985]

Case Notes

Determination of majority in number and interest. 42 H. 640.
Cited: 235 F.2d 223.

" **§554-3 Trust estates, leases, investments, etc.** Any circuit court having jurisdiction over a trust, on application of one or more of the trustees, and after such notice to those interested as is ordered by the court or provided by the rules of the court, may, if it appears to be for the benefit of the trust estate, authorize or direct the trustee or trustees to lease or extend the terms of leases of the real property for such periods as may be deemed advantageous to the estate; or to invest moneys of the trust estate in the purchase of real or personal property, or the constructing, improving, or repairing of buildings or other improvements on the land belonging to the trust estate, or in such other manner as the court deems to be most for the benefit of the trust estate and as best effecting the objects of the trust. Any lease or extension of lease made under such authority or direction shall continue in force for the full period so authorized notwithstanding the trust has terminated. [L 1921, c 141, §1; RL 1925, §2464; am L 1929, c 92, §1; am L 1933, c 194, §1; RL 1935, §4712; RL 1945, §12573; RL 1955, §340-3; HRS §554-3; am L 1972, c 145, §3(c)]

Case Notes

Lease for term extending beyond duration of trust, application of this statute considered. 34 H. 333. See as to power under will, 40 H. 543, compare 31 H. 500.

" **§554-4 Annual account; trustees to file.** Every trustee acting under appointment of any court or under any appointment requiring the approval of any court, shall, except in cases where the prior trustee, if any, was not required by statute or the instrument creating the trust or appointing the trustee to file such an account, file annually with the court having jurisdiction thereof an account showing in detail all receipts and disbursements, together with a full and detailed inventory of all property in the trustee's possession or under the trustee's control; provided that the court in cases in which it deems it advisable in the interests of the beneficiaries may permit the accounts to be filed biennially or triennially instead of annually or, if they are filed annually, may permit them to accumulate to be passed upon biennially or triennially; and provided further that the court on its own examination or that of its clerk, shall, without reference to a master, pass upon the accounts in cases in which the annual income does not exceed \$1,000, except in the case of a final account when the court may refer the same to a master, irrespective of the amount of the annual income, if for any reason it is deemed proper or necessary. If any such trustee fails to file an account as

herein required, the clerk of the court in which the trustee is required to file the account, shall notify the trustee promptly of such failure, and, if the trustee fails to file the account within thirty days after such notification, the trustee shall be cited to appear before the court and be required to show cause why the trustee should not be punished for contempt of court as provided by section 710-1077 and the trustee shall be subject to all of the penalties in such section provided. The court may also, in its discretion, remove any such trustee.

Unless otherwise required by the instrument creating the trust, nothing in this section shall be construed to require the filing of an annual account by a trustee or trustees appointed by the court as additional trustee or trustees to serve with or in the place and stead of a trustee or trustees appointed in the instrument creating a trust, nor by a trustee whose appointment is made in accordance with or pursuant to the instrument creating the trust where such appointment has been confirmed by any court in proceedings brought to secure the confirmation or approval thereof. This provision applies to trusts existing on May 13, 1935, and appointments made thereunder as well as to future trusts. [L 1915, c 101, §1; RL 1925, §2475; am L 1929, c 169, §1; am L Sp 1933, c 38, §1; RL 1935, §4713; am L 1935, c 154, §1 and pt of §2; RL 1945, §12574; am L 1945, c 186, §1; RL 1955, §340-4; HRS §554-4; am L 1976, c 200, pt of §1; am L 1984, c 95, §11]

Cross References

Commissions and further allowances of trustees, see §607-18.

Rules of Court

Accountings, see Hawaii Probate Rules, part A(VII); HPR rules 83, 84.

Ex parte proceedings regarding accounts, applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(a).

Case Notes

Duty to render accurate accounts. 30 H. 359, 391.

Trustee may not make profits for itself. 30 H. 359, 386; 47 H. 629, 394 P.2d 432.

Right to interest on advance made by trustee to pay interest. 31 H. 958.

Ex parte approval of accounts not binding. 34 H. 263; 35 H. 501, 537; 35 H. 689, 707; 46 H. 475, 559, 382 P.2d 920.

What bookkeeping system required of trustee. 34 H. 417.

Whether accounts should be settled before termination of trust, duty of master to advise court. 46 H. 475, 561, 382 P.2d 920.

An appellate court in reviewing trustee's accounting has duty to question any receipt or expenditure which is improper without regard to whether the issues were argued and briefed on appeal. 53 H. 604, 499 P.2d 670.

Trial court's award of master's fee will be reversed only on showing of abuse of discretion. 53 H. 604, 499 P.2d 670.

Cited: 36 H. 403, 452; 37 H. 111, 122, 146.

" **§554-5 REPEALED.** L 1973, c 200, §2.

" **§554-6 Investments.** Every trustee, other than a trust company acting as such, except insofar as the terms of the instrument or words creating or defining the trust specifically provide otherwise, or unless it is otherwise ordered by the court, which order may be made on an ex parte hearing, shall invest the funds of the trust only in the investments authorized in the cases of trust companies acting as trustees under article 8 of chapter 412, and with respect to all investments and the security for the same every such trustee shall have and be subject to the same rights, powers, privileges, duties, obligations, and responsibilities as would apply to trust companies acting as trustees as to similar investments and the security for the same under article 8 of chapter 412. Nothing in this section shall be deemed to authorize any trustee other than a trust company to issue participation certificates or notes. Any investment made by any such trustee under order by the court made on an ex parte hearing or otherwise may be held during the life of the trust or lesser period unless the terms of the instrument or words creating or defining the trust or the terms of the order of the court or of any subsequent order of the court specifically provide otherwise. [L Sp 1933, c 47, §1; RL 1935, §4715; am L 1941, c 154, §1; RL 1945, §12576; RL 1955, §340-6; HRS §554-6; am L 1976, c 200, pt of §1; am L 1993, c 350, §33]

Case Notes

This section applicable only when trust instrument does not otherwise provide. 35 H. 1, 8.

Duty to diversify investments, to exercise reasonable judgment. 47 H. 548, 393 P.2d 96; 47 H. 577, 393 P.2d 89.

Cited: 43 H. 37, 41; 47 H. 629, 638, note 6, 394 P.2d 432.

" **§554-7 Assignee for creditors, instructions, and approval of accounts.** A trustee or assignee for creditors has the same right, by application to a circuit court to request and receive instructions or to have the trustee's or assignee's accounts approved or be discharged from the trustee's or assignee's trust, as any other fiduciary, according to the usages and principles of courts of equity concerning trusts. [L 1941, c 292, §1; RL 1945, §12577; RL 1955, §340-7; HRS §554-7; am L 1972, c 145, §3(d); gen ch 1985]

Rules of Court

Accountings, see Hawaii Probate Rules, part A(VII); HPR rules 83, 84.

Case Notes

See 36 H. 732.

" **§554-8 Charitable trusts; expenses.** In any proceedings, in any court, concerning a trust, which is wholly or partly charitable and in which the attorney general has been cited by the court or trustees as a necessary or proper party, the court having jurisdiction of such proceedings may require the payment of all reasonable and necessary expenses incurred by the attorney general for the protection of the beneficial interest in, or for the proper conduct of, such proceedings from the corpus or income, or both, of the trust estate, in such reasonable amounts as the court may order. [L Sp 1941, c 16, §1; RL 1945, §12578; RL 1955, §340-8; HRS §554-8]

" **§554-9 Charitable trusts; leases.** Trustees of a charitable trust may modify, suspend, or waive the enforcement of any provision of any lease or accept a surrender thereof if a leased land or any structure built thereon has been destroyed in part or in whole by any natural disaster, or the use of the land or the construction of any improvements thereon has been restricted or prohibited in any manner by law, ordinance, or regulation of any government agency due to natural disaster. [L Sp 1960, c 8, §1; Supp, §340-9; HRS §554-9]

" **[§554-10] Charitable trusts; administration.** (a) In the administration of any trust which is a "private foundation" as defined in section 509 of the Code or to which section 4947 of the Code applies, the following shall be prohibited:

- (i) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Code);

- (ii) Retaining any "excess business holdings" (as defined in section 4943(c) of the Code);
- (iii) Making any investments in such manner as to subject it to tax under section 4944 of the Code; and
- (iv) Making any "taxable expenditures" (as defined in section 4945(d) of the Code);

provided that this subsection (a) shall not apply to such amounts of any trust to which section 4947(a)(2) of the Code applies as are described in the second sentence of said section and items (ii) and (iii) of this subsection (a) shall not apply to any trust to which said section 4947(a)(2) applies which is described in section 4947(b)(3) of the Code.

(b) In the administration of any trust which is a "private foundation" as defined in section 509 of the Code or a "charitable trust" as defined in section 4947(a)(1) of the Code, there shall be distributed, and the trustee or trustees shall be empowered and authorized to distribute, for the purposes specified in the trust instrument, such amounts at such time and in such manner as shall be required so as not to subject it to tax under section 4942 of the Code.

(c) Nothing in this section shall impair the rights and powers of the courts or the attorney general of this State with respect to any trust.

(d) References in this section to sections of the Code are to sections of the Internal Revenue Code of 1954, as heretofore amended, and shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws. [L 1971, c 136, §1]