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## Fiduciary Administration - Nominee Statutes - Transfer of Securities Held for the Benefit of Another

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FIDUCIARY ADMINISTRATION—NOMINEE STATUTES—TRANSFER OF SECURITIES HELD FOR THE BENEFIT OF ANOTHER—Michigan is the forty-second jurisdiction to enact a nominee statute.<sup>1</sup> Nominee statutes authorize a fiduciary to nominate a third person to hold stock or securities in the third person's name without giving notice on the stock certificate or on the transfer books of the corporation of his qualified ownership. For the most part it has been assumed that these statutes would facilitate a more rapid transfer

<sup>1</sup> See appendix *infra* for citation of statutes.

of securities.<sup>2</sup> It is the purpose of this comment to compare and analyze these statutes and to determine whether they are the most effective means of accomplishing the end they are intended to serve.

*I. Rationale of the Nominee Statutes—Liability of Issuing Corporation and Transfer Agent for Transfer of Securities Involving a Breach of Fiduciary Duty*

The duty of a fiduciary to earmark trust funds and an unsound 1848 decision have imposed upon corporations issuing securities, their transfer agents and transferors holding stock in a fiduciary capacity unwarranted, time-consuming and expensive documentation in the transfer of securities. In order to understand the reasons behind the many attempts which have been made to alleviate such burdens, a brief discussion of the historical background is necessary.

A. *Duty To Earmark.* Until the early 1930's the American courts were nearly unanimous in holding that trustees were under a duty to earmark trust property, that is, that mortgages, deeds, securities, and bank accounts should show on their faces that they were held by the trustee for a particular trust.<sup>3</sup> This duty to earmark was absolute.<sup>4</sup> The effect of a breach of this duty was that the beneficiary could avoid the investment which was not earmarked and could recover from the fiduciary personally the amount of the trust funds invested in the unlabelled assets

<sup>2</sup> According to the Commissioners on Uniform State Laws in their prefatory note to the Uniform Trusts Act, p. 291 (§9 of which is the nominee registration section of that act), the need for nominee registration was stated as follows: "to enable the trustee to sell stock easily, and to avoid the requirements of stock exchanges that where stock is held in the name of a fiduciary elaborate proof of the power of the fiduciary to sell must be given." See STEPHENSON, *STUDIES IN TRUST BUSINESS*, 2d series, 373-374 (1944); Bogert, "Trust Investments: Earmarking or Nominees?" 24 *TEX. L. REV.* 417 at 432-433 (1946). Another purpose is to save both the issuing corporation and the fiduciary the time and expense involved in determining the fiduciary's authority to make a transfer of the securities so held.

<sup>3</sup> In *re* Arguello, 97 Cal. 196, 31 P. 937 (1893) (administrator personally liable for loss when he deposited funds of intestate's estate in a bank in his individual name); *Harward v. Robinson*, 14 Ill. App. 560 (1884); In *re* Clark's Guardianship, 104 Okla. 245, 230 P. 891 (1924) (guardian permitting deposit of ward's trust fund with nothing to indicate character thereof liable for loss of fund through bank's failure). See 3 *BOGERT, TRUSTS AND TRUSTEES* §596 (1935).

<sup>4</sup> By the terms of the trust, however, a trustee may be authorized to hold property in the name of a nominee. *TRUSTS RESTATEMENT* §179, comment *d* (1948 Supp.); 2 *SCOTT, TRUSTS*, 2d ed., §179.5 (1957). *Contra*, *Matter of Harris*, 169 Misc. 943, 9 N.Y.S. (2d) 508 (1938). Soon after this decision, however, the statute was amended to permit a bank or trust company to register and hold securities in the name of a nominee.

by treating it as being held by the fiduciary for his own account.<sup>5</sup> To deter fiduciaries in general from engaging in practices which the courts regarded as highly dangerous to the beneficiaries, this remedy granted the beneficiary was in the form of a penalty, no proof of damages arising from the failure to earmark being required. Thus, the *cestui* was granted this remedy in all cases, and not merely where the trust did not benefit from the failure to earmark, or where the fiduciary acted in bad faith.<sup>6</sup> Later cases, however, indicate that a trustee might not be liable for loss caused by his failure to earmark the trust property if he acted in good faith and there was no causal relationship between his failure to earmark and the loss sustained by the trust.<sup>7</sup> To avoid any possibility of loss occasioned by a failure to earmark, however, fiduciaries have conformed to the common law rule.

*B. Lowry Doctrine.* In 1848, Judge Taney in the leading case of *Lowry v. Commercial & Farmers Trust Company*<sup>8</sup> held that a corporation, in making transfers of its stock on its books, acts in a fiduciary capacity and must protect equitable as well as legal interests in its stock. That is, where the name of the holder of corporate securities as registered on the books of the corporation indicate that the securities are being held in a fiduciary capacity, and the holder transfers the securities in breach of trust, the corporation is liable for participation in the breach of trust if it registers the transfer without making inquiry as to the extent of the powers of the fiduciary when such inquiry would have disclosed the breach of trust. The *Lowry* decision overruled prior American<sup>9</sup> decisions and, in effect, rejected the English rule which had been developed a number of years earlier, that a corporation was under no duty to inquire as to the authority of a fiduciary to transfer stock.<sup>10</sup> The responsibility imposed upon corporations

<sup>5</sup> See note 3 *supra*.

<sup>6</sup> In re Arguello, 97 Cal. 196, 31 P. 937 (1893) (liable "regardless of care or prudence"); *Gilbert v. Welch*, 75 Ind. 557 at 561 (1881) ("... there should be no inquiry permitted into the good faith of such transactions").

<sup>7</sup> *Chapter House Circle v. Hartford Nat. Bank*, 121 Conn. 558, 186 A. 543 (1936); *Guthrie's Estate*, 320 Pa. 530, 182 A. 248 (1936); TRUSTS RESTATEMENT §179, comment d (1948 Supp.). See Bogert, "Trust Investments: Earmarking or Nominees?" 24 TEX. L. REV. 417 (1946); 50 HARV. L. REV. 317 (1936).

<sup>8</sup> (C.C. Md. 1848) 15 Fed. Cas. 1040, No. 8,581.

<sup>9</sup> *Bank of Virginia v. Craig*, 6 Leigh (33 Va.) 399 (1835); *Hutchins v. State Bank*, 12 Metc. (53 Mass.) 421 (1847).

<sup>10</sup> *Hartga v. The Bank of England*, 3 Ves. Jr. 55, 30 Eng. Rep. 891 (1796). Since this decision, English corporations have been prohibited by statute from recording on their books notice of any trust, express, implied or constructive. Companies Act of 1845, 8 & 9 Vict., c. 16, §20; Companies Act of 1862, 25 & 26 Vict., c. 89, §30; Companies Consolidate

by the *Lowry* case has not been changed despite the vigorous attack by Professor Austin W. Scott and others.<sup>11</sup>

A corporation is not absolutely liable when it records transfers in breach of fiduciary obligations. The duty owed to the beneficial owner of stock by the corporation is to exercise due care to determine that the assignment of the stock does not constitute a breach of trust by the legal owner.<sup>12</sup> It is difficult to determine what is due care under the existing authorities; and hence, a transfer agent must, in many cases, impose requirements on the transfer of stock which seem beyond reason.<sup>13</sup>

A corporation's duty to inquire into possible abrogation of equitable interests arises not merely when there is reason to suspect a breach of trust but whenever notice of the fiduciary relationship exists. Thus, where the record owner is described on the stock books or the certificate as "trustee," the corporation, on the receipt of a request for the transfer of the stock, must inquire as to the nature of the beneficial interests involved, and as to the power of the trustee to dispose of the trust property.<sup>14</sup> Similarly, a transfer by or to a person "as executor" gives notice of the existence of a will and binds the corporation to discover its contents.<sup>15</sup> Knowledge of the contents of the will or inter vivos

Act of 1908, 8 Edw. 7, c. 69, §27; Companies Act of 1929, 19 & 20 Geo. 5, c. 23, §101. The Companies Act of 1929 provides: "No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England."

<sup>11</sup> Scott, "Participation in a Breach of Trust," 34 HARV. L. REV. 454 at 465-467 (1921); CHRISTY AND McLEAN, THE TRANSFER OF STOCK, 2d ed., §2 (1940); Christy, "Responsibilities in the Transfer of Stock," 53 MICH. L. REV. 701 at 702-704 (1955); 3 SCOTT, TRUSTS, 2d ed., §325 (1956); Conard, "Simplifying Securities Transfers," 30 ROCKY MT. L. REV. 33 at 37-40 (1957). REPORT OF THE NEW YORK LAW REVISION COMMISSION 158-162 (1937).

<sup>12</sup> Geyser-Marion Gold Mining Co. v. Stark, (8th Cir. 1901) 106 F. 558. See CHRISTY AND McLEAN, THE TRANSFER OF STOCK, 2d ed., §41 (1940).

<sup>13</sup> CHRISTY AND McLEAN, THE TRANSFER OF STOCK, 2d ed., §41 (1940). One court has laid down the following rule: "Ordinary diligence, and not suspicious watchfulness, is the measure of duty which a corporation owes to its stockholders in such cases." Peck v. Providence Gas Co., 17 R. I. 275 at 284, 21 A. 543 (1891), affd. 17 R. I. 275 at 281, 23 A. 967 (1892).

<sup>14</sup> A corporation is liable to a trust beneficiary for making transfers which the trustee did not have the right to effect, when it knows that the stock is held by a trustee. Geyser-Marion Gold Mining Co. v. Stark, (8th Cir. 1901) 106 F. 558; West v. Titanic Standard Mining Co., 71 Utah 158, 263 P. 490 (1928); Marbury v. Ehlen, 72 Md. 206, 19 A. 648 (1890); Loring v. Salisbury Mills, 125 Mass. 138 (1876); Bayard v. Farmers & Mechanics Bank, 52 Pa. 232 (1866). *Contra*, Northwestern Portland Cement Co. v. Atlantic Portland Cement Co., 174 Cal. 308, 163 P. 47 (1917).

<sup>15</sup> Lowry v. Commercial & Farmers Bank, (C.C. Md. 1848) 15 Fed. Cas. 1040, No. 8,581; Wooten v. Wilmington & W. R. Co., 128 N.C. 119, 38 S.E. 298 (1901); Marbury v. Ehlen, 72 Md. 206, 19 A. 648 (1890); Caulkins v. Memphis Gas-Light Co., 1 Pick. (85 Tenn.) 683, 4 S.W. 287 (1887).

trust instrument may then require further investigation of restrictions contained therein. Once a corporation acquires knowledge of the existence of a fiduciary relationship, such notice may continue over a period of years.<sup>16</sup>

*G. Consequences of the Duty To Earmark Combined With the Lowry Doctrine.* As a result of the requirement of earmarking and the liability imposed upon corporations for participation in a breach of trust concerning earmarked securities, the transfer of securities has become a highly complex procedure involving much time and expense on the part of both the fiduciary and the transfer agent or issuing corporation. In an understandable effort to protect themselves against charges of failure to fulfill their legal responsibilities, corporations and their agents have often imposed voluminous and not always uniform documentary requirements on the transfer of securities.<sup>17</sup> Compliance with these regulations, while usually not impossible, is vexatious, time-consuming and expensive. Furthermore, stock exchanges have long provided that contracts effected on the exchange may not be completed by tender of securities registered in the name of a fiduciary.<sup>18</sup> This requirement necessitates a transfer of title out of the name of the fiduciary. There are often serious delays of many days, and sometimes even several months, in examining papers necessary to determine the authority of the fiduciary to sell or transfer the security. This delay obviously has serious consequences in a fluctuating market. The fiduciary may be faced with the prospect of losing an advantageous market price, of selling the trust securities at a lower price on the understanding that delivery will not be made until investigation is complete, or of borrowing other shares of the same stock to make the sale. It is seldom that a fiduciary will be willing to follow any of these courses, as such action must be justified by a showing of an emergency in the event a beneficiary charges mismanagement of the trust.<sup>19</sup>

<sup>16</sup> *Marbury v. Ehlen*, 72 Md. 206, 19 A. 648 (1890) (corporation was charged with knowledge of the contents of a will which the corporation had investigated fourteen years before); *Baker v. Atlantic Coast Line R. Co.*, 173 N.C. 365, 92 S.E. 170 (1917) (corporation was charged with continuing knowledge over a period of eleven years).

<sup>17</sup> Conard, "Simplifying Securities Transfers," 30 ROCKY MT. L. REV. 33 (1957); CHRISTY AND McLEAN, *THE TRANSFER OF STOCK*, 2d ed., §200 (1940).

<sup>18</sup> Rule 201 of the New York Stock Exchange, CCH STOCK TRANSFER GUIDE, ¶1220-27 (1953); Rule SR-36 of the American Stock Exchange, CCH STOCK TRANSFER GUIDE, ¶1310-8 (1953).

<sup>19</sup> Capron, "Nominee Registration of Fiduciary Securities," 79 TRUSTS AND ESTATES 309 at 310 (1944).

## II. *Various Attempts To Avoid the Lowry Doctrine*

The burden imposed by the documented authority system is well evidenced by the ingenious devices used to avoid it. Among these devices are indemnity agreements, statutes modelled after section 3 of the Uniform Fiduciaries Act, statutes modelled after the Model Fiduciaries Securities Transfer Act and nominee statutes.

A. *Indemnity Agreements.* One of the means to accomplish quicker stock transfers is the indemnity agreement. With the use of this device a fiduciary, by certifying that the transfer is proper and guaranteeing to indemnify the issuer against any loss sustained in transferring it, omits the transfer documents.<sup>20</sup> This device is not authorized by statute, but has been worked out by the trust companies themselves as a substitute for documentation. Because of its acceptance by an issuing corporation from only a strong financial institution,<sup>21</sup> it is unavailable to the individual serving in a fiduciary capacity.<sup>22</sup>

B. *Section 3 of the Uniform Fiduciaries Act and Similar Statutes.* The first attempt to deal with the *Lowry* decision by statute on a national basis was section 3 of the Uniform Fiduciaries Act as approved by the National Conference of Commissioners on Uniform State Laws in 1922.<sup>23</sup> Eighteen<sup>24</sup> jurisdictions at present have either exact copies of the act or statutes containing slight modifications. In substance this section exempts the issuer or transfer agent from liability for transferring stock held by a fiduciary except in cases where the transfer takes place with (1) actual knowledge of a breach of fiduciary obligation, or (2) with knowledge of such facts that the action in registering

<sup>20</sup> Christy, "Responsibilities in the Transfer of Stock," 53 MICH. L. REV. 701 at 704 (1955); Conard, "Simplification of Security Transfers by Fiduciaries," 94 TRUSTS AND ESTATES 835 at 836 (1955).

<sup>21</sup> Conard, "Simplification of Security Transfers by Fiduciaries," 94 TRUSTS AND ESTATES 835 at 837 (1955).

<sup>22</sup> Conard, "Simplifying Securities Transfers," 30 ROCKY MT. L. REV. 33 at 37 (1957).

<sup>23</sup> At least four states had statutes similar to §3 of the Uniform Fiduciaries Act before it was approved by the National Conference of Commissions on Uniform State Laws. Del. Rev. Code (1915) §3396; Ky. Stat. (1909) §4169; Mass. Stat. (1918) c. 68, §3; Pa. (Purdon's Dig. 13th ed. 1910) p. 4850, §7. Section 3 of the Uniform Fiduciaries Act is based upon the Massachusetts statute cited herein.

<sup>24</sup> Alabama, Arizona, Arkansas, District of Columbia, Idaho, Kansas, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Wisconsin and Wyoming. For citation of these statutes see appendix infra under heading "UFA, MFSTA or Similar Acts."

the transfer amounts to bad faith. Six<sup>25</sup> states have statutes which are similar in purpose to the Uniform Fiduciaries Act but vary considerably in their provisions.

Several reasons have been advanced as to why the statutes under this heading have been ineffective.<sup>26</sup> At any rate, these statutes have been ineffective in streamlining security transfers, and many states have attempted to rectify this by nominee statutes. Another type of statute, however, deserves to be mentioned first.

C. *Model Fiduciaries Securities Transfer Act*. This act is discussed in an article by Professor Alfred E. Conard at page 843 supra.<sup>27</sup> Suffice it to say that in section 5 of this act the drafters have aptly stated that the purpose is to abrogate<sup>28</sup> the American common law rule laid down in the *Lowry* decision.

D. *Nominee Statutes*. Evidence of the fact that the above statutes, with the exception of the Model Fiduciaries Securities Transfer Act which has been enacted only recently in three<sup>29</sup> states, have been ineffective in making securities more readily transferrable on the market is the use of nominee statutes. In all but four<sup>30</sup> of the twenty-four jurisdictions having section 3 of the Uniform Fiduciaries Act, or some similar statute, there is also a nominee statute.

### III. *Analysis and Comparison of Nominee Statutes*

At common law the use of a nominee was not permitted since this would be a breach of trust.<sup>31</sup> Because of the present difficulties inherent in stock transfers by fiduciaries, however, a practice has arisen whereby fiduciaries may transfer stock to an individual,

<sup>25</sup> California, Massachusetts (two statutes, one of which is part of the Uniform Commercial Code), Ohio, Oregon, Pennsylvania (part of the Uniform Commercial Code) and Wisconsin. Two of these states, Pennsylvania and Wisconsin, also have §3 of the Uniform Fiduciaries Act.

<sup>26</sup> See Christy, "Responsibilities in the Transfer of Stock," 53 MICH. L. REV. 701 at 706-718 (1955); Bogert, "Trust Investments: Earmarking or Nominees?" 24 TEX. L. REV. 417 at 437 (1946); Conard, "Simplifying Securities Transfers," 30 ROCKY MT. L. REV. 33 at 41 (1957); Nylund, "The Uniform Acts Relating to Trusts," 16 CHI-KENT L. REV. 81 at 94 (1938); REPORT OF THE NEW YORK LAW REVISION COMMISSION 158-162 (1937).

<sup>27</sup> Conard, "A New Deal for Fiduciaries' Stock Transfers," 56 MICH. L. REV. 843 (1958).

<sup>28</sup> Ibid. See also Jolls, "Security Transfer Simplification," 96 TRUSTS AND ESTATES 641 at 642 (1957).

<sup>29</sup> Connecticut, Delaware and Illinois. For citation of these statutes see Appendix infra under the heading "*UFA, MFSTA or Similar Acts*."

<sup>30</sup> Arizona, District of Columbia, Rhode Island and Wyoming.

<sup>31</sup> 2 SCOTT, TRUSTS, 2d ed., §179.5 (1957).



a partnership or a corporation. Such individuals, partnerships or corporations are known as nominees. Their ownership of the stock is virtually fictitious. The usefulness of the nominee device is that it precludes notice of the fiduciary relationship upon the stock books and on the share certificate.

The purpose of this nominee device is to relieve the issuing corporation of its duty to investigate fiduciary relationships, which in turn makes for speedier transfers.<sup>32</sup> That is to say, since statutes similar to the Uniform Fiduciaries Act have been ineffective for one reason or another in overruling the *Lowry* doctrine, the nominee registration statutes have been enacted in an attempt to evade the doctrine by not putting the issuing corporation on notice that there is any fiduciary relationship involved.

At the present time nine jurisdictions have nominee statutes modelled after section 9 of the Uniform Trusts Act.<sup>33</sup> Four<sup>34</sup> of these are exact copies of that section of the act, while the other five<sup>35</sup> are variations. The main criticism of the Uniform Act is that it applies to trustees only, and not to fiduciaries in general, and that nominee registration is limited to stock investments instead of securities in general.<sup>36</sup>

Pennsylvania and Minnesota have two statutes on nominee registration.<sup>37</sup> It is interesting to note that Pennsylvania also has an act similar to section 3 of the Uniform Fiduciaries Act; in addition, it has another act designed to accomplish the same purpose in its version of the Uniform Commercial Code.<sup>38</sup> Four

<sup>32</sup> See note 2 *supra*.

<sup>33</sup> Section 9 of the Uniform Trusts Act reads as follows: "Sec. 9. HOLDING STOCK IN THE NAME OF NOMINEE.—A trustee owning stock may hold it in the name of a nominee, without mention of the trust in the stock certificate or stock registration books; provided that (1) the trust records and all reports or accounts rendered by the trustee clearly show the ownership of the stock by the trustee and the facts regarding its holding; and (2) the nominee shall deposit with the trustee a signed statement showing the trust ownership, shall endorse the stock certificate in blank, and shall not have possession of the stock certificate or access thereto except under the immediate supervision of the trustee. The trustee shall be personally liable for any loss to the trust resulting from any act of such nominee in connection with stock so held."

<sup>34</sup> Nevada, New Mexico, Oklahoma and South Dakota. For citation of these statutes see Appendix *infra* under "Statute."

<sup>35</sup> Louisiana, North Carolina, Tennessee, Texas and Virginia. For citation of these statutes see Appendix *infra* under "Statute."

<sup>36</sup> With the exception of Louisiana, the states mentioned in note 34 *supra* in enacting the Uniform Trusts Act have recognized such deficiencies and have corrected one or both of these defects. See each individual statute in Appendix *infra*.

<sup>37</sup> For citation of these statutes see Appendix *infra* under the heading of "Statute."

<sup>38</sup> For citation of these statutes see Appendix *infra* under the heading of "UFA, MFSTA or Similar Acts."

acts attempting to accomplish the same thing! All of this could have been spared the legislature if a court had had the courage to overrule the questionable *Lowry* decision.

An analysis and comparison of the various nominee statutes follows.<sup>39</sup>

1. *Legal entities authorized to use nominees.* In six<sup>40</sup> jurisdictions only corporations, whether banks or trust companies,<sup>41</sup> are permitted to use nominees. In twelve<sup>42</sup> jurisdictions individuals, as well as corporate fiduciaries, are permitted the use of nominees. Twenty-three<sup>43</sup> jurisdictions permit individuals to use the nominee statute if they are acting as a co-fiduciary of a corporate fiduciary. These latter jurisdictions also permit a corporation when acting as a sole fiduciary the use of nominee registration.

Eight<sup>44</sup> of the forty-two jurisdictions that have nominee statutes permit individuals<sup>45</sup> to deposit trust assets with a bank or trust company to be registered in the name of its nominee.

As for those jurisdictions that do not permit the individual fiduciary to make use of the nominee registration in his own right, an unwarranted discrimination would seem to exist. If we admit that the purpose of nominee registration is to relieve the issuing corporation of its duty to investigate fiduciary relationships which in turn makes for speedier transfers, it should not matter whether the fiduciary is an individual or corporation. This extra burden of investigating the fiduciary's authority where the fiduciary is an individual should not be thrust upon the issuing corporation which has had no control over who the fiduciary shall be.

At this point an analysis and comparison should be made of

<sup>39</sup> For citation of the statutes mentioned in the analysis and comparison which follows see Appendix infra under "*Statute*."

<sup>40</sup> Alabama, Delaware, Michigan, North Carolina, Oregon and Virginia.

<sup>41</sup> With the exception of the Michigan statute which states "corporation" and does not limit its application to either banks or trust companies or both as in other jurisdictions.

<sup>42</sup> Florida, Illinois, Louisiana, Massachusetts, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee and Texas.

<sup>43</sup> Arkansas, California, Colorado, Connecticut, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota (both statutes), Mississippi, New Hampshire, New Jersey, New York, Ohio, Pennsylvania (both statutes), Utah, Vermont, Washington, West Virginia and Wisconsin.

<sup>44</sup> California, Colorado, Connecticut, Massachusetts, New York, Pennsylvania, Vermont and Wisconsin.

<sup>45</sup> All except Pennsylvania also permit corporate fiduciaries to do so.

the statutes permitting individuals to use nominees if they deposit the assets in a bank<sup>46</sup> or trust company.

Three<sup>47</sup> of the statutes permitting such procedure do not elaborate the method employed except to state that the bank or trust company may hold such investments in the name of its nominee to the same extent and subject to the same requirements as such corporation would be authorized if it were the fiduciary. The Pennsylvania statute permits the individual trustee to employ the bank or trust company to act as his attorney-in-fact in the performance of ministerial duties, and incidental to that is the power to place the investments in the name of a nominee.<sup>48</sup> Of the remaining five statutes, four<sup>49</sup> permit this procedure only for stock or other securities, while the fifth<sup>50</sup> permits it for any property.

All five prohibit the bank or trust company from making a redelivery of such investments to the individual fiduciary unless they are first registered in his name as fiduciary. This prevents the individual fiduciary's using this device to register investments in his own name without any indication of the fiduciary relationship. These five statutes also make it clear that any other transfer or sale by the bank or trust company does not constitute such a redelivery when done pursuant to the direction of the individual fiduciary. This is an essential provision which is no doubt implied in the statute itself; otherwise, the purpose of the nominee statute would be defeated. If the stock or security would have to be first retransferred to the individual fiduciary, he would then be required to submit documented proof of his authority before transferring to the purchaser.

Two<sup>51</sup> statutes do not permit the individual fiduciary to make use of the depository device for nominee registration if there is an express provision to the contrary in the instrument or in the court order creating the fiduciary relationship. This necessitates checking the fiduciary's authority by the corporation acting as the depository.

<sup>46</sup> It must be noted that the New York statute permits private bankers to act as depositories for the purposes outlined above. See statute in Appendix *infra* for qualifications of such private banker.

<sup>47</sup> California, Pennsylvania and Vermont.

<sup>48</sup> Only one of the two Pennsylvania statutes permits this. Pa. Stat. Ann. (Purdon, 1950) tit. 20, §320.943. The other statute, however, permits the individual when acting as a co-fiduciary with a corporation the use of the nominee registration device.

<sup>49</sup> Connecticut, Massachusetts, New York and Wisconsin.

<sup>50</sup> Colorado.

<sup>51</sup> Connecticut and Wisconsin.

Three<sup>52</sup> statutes provide for discharge of the depository and its nominee's liabilities once they have accounted for or paid over the proceeds of any sale or transfer made as directed by the fiduciary.

Three<sup>53</sup> of the statutes authorize the depository to make any disposition of investments so held where such disposition is authorized or directed by an order, judgment or decree of any court having jurisdiction. The purpose of such a provision, perhaps, is to allow quick disposition of such investments where the fiduciary himself is unable to act such as in the case of death, illness or incompetency. It is doubted that such a provision is necessary since a court in all probability is not powerless so to act.

2. *Nominee registration by co-fiduciaries.* In twenty-four<sup>54</sup> jurisdictions provisions are made for the use of the nominee device by co-fiduciaries, provided consent of the co-fiduciary is obtained. All but three<sup>55</sup> of these jurisdictions specifically authorize the co-fiduciary to give his consent. Since consent is required in these three jurisdictions also, authorization has to be implied. Two<sup>56</sup> of the twenty-four jurisdictions require prior written consent. Eleven<sup>57</sup> of the twenty-four jurisdictions provide for use of a nominee where the co-fiduciary is an "individual" or "person,"<sup>58</sup> acting along with usually a corporate fiduciary. The other thirteen<sup>59</sup> jurisdictions speak of a co-fiduciary in broad terms such as "co-fiduciary or co-fiduciaries" or "other fiduciary," and thus do not limit the use of the nominee device to situations where the other fiduciary is an individual.

The Mississippi statute explicitly permits two corporate fiduciaries by agreement to use a nominee. It goes even farther and permits them to register a proportionate part in the name of the nominee of each fiduciary. As a practical matter, this latter provision does not seem to serve any legitimate purpose as it

<sup>52</sup> Connecticut, Massachusetts and Wisconsin.

<sup>53</sup> Colorado, New York and Wisconsin.

<sup>54</sup> Arkansas, California, Colorado, Connecticut, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota (both statutes), Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania (both statutes), Utah, Washington, West Virginia and Wisconsin.

<sup>55</sup> California, Connecticut and Massachusetts.

<sup>56</sup> Connecticut and West Virginia.

<sup>57</sup> California, Idaho, Kentucky, Massachusetts, Minnesota (both statutes), New Hampshire, New York, Pennsylvania, Washington, West Virginia and Wisconsin.

<sup>58</sup> Those statutes which speak of "persons" might be judicially interpreted to include corporations, however.

<sup>59</sup> Arkansas, Colorado, Connecticut, Indiana, Iowa, Kansas, Maine, Mississippi, Nebraska, New Jersey, North Dakota, Ohio and Utah.

requires the issuing corporation to issue two stock certificates<sup>60</sup> and dividend checks instead of one and, no doubt, requires extra bookkeeping on the part of the fiduciaries.

3. *Limitation as to class of fiduciary.* Statutes vary in their application to various classes of fiduciaries, such as trustees, executors or guardians. Twenty-two<sup>61</sup> jurisdictions permit any class of fiduciary the use of nominee registration. Five<sup>62</sup> other jurisdictions extend the use of nominees to fiduciaries as defined in the act. Most of these definitions are so broad that they apply to almost any class of fiduciary. Since, however, these vary considerably, each statute must be consulted for the exact wording. Five<sup>63</sup> additional statutes specifically state which kind of fiduciary is included within the meaning of the statute. Again the individual statute must be consulted. The ten<sup>64</sup> remaining statutes permit the use of the nominee registration only by trustees. It is submitted that there should be no such limitation. If the purpose of the nominee statute is to effectuate ease of transfer, all fiduciaries should be included. No valid distinction can be made, for example, between a trustee and a guardian so far as transferring securities is concerned. The Uniform Trusts Act, of course, applies only to trustees. However, three<sup>65</sup> of the states that have adopted that act have amended their statutes to apply to "fiduciaries" instead of just "trustees."

4. *Who may be a nominee.* Ten<sup>66</sup> jurisdictions permit the fiduciary to hold the investments either in his own name without any indication of a fiduciary relationship or in the name of a nominee. In effect these jurisdictions have gone the farthest in abolishing the requirement of a fiduciary to earmark assets held in his capacity as a fiduciary. The remaining jurisdictions

<sup>60</sup> The Mississippi statute applies only to corporate securities.

<sup>61</sup> Alabama, Colorado, Hawaii, Idaho, Indiana, Iowa, Kansas, Massachusetts, Minnesota (both statutes), Mississippi, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Tennessee, Utah, Vermont, Virginia, Washington and West Virginia. Of these, Mississippi, Nebraska, North Dakota and Tennessee specify certain fiduciaries but then add "any other fiduciary capacity."

<sup>62</sup> Arkansas, Delaware, Maine, Maryland and Pennsylvania. Although one of the two Pennsylvania statutes limits the use of nominee registration to trustees only, it is included in this group of states because the other statute applies to fiduciaries as defined in the latter act.

<sup>63</sup> Connecticut, Kentucky, Michigan, New York and Wisconsin.

<sup>64</sup> California, Florida, Illinois, Louisiana, Nevada, New Mexico, Oklahoma, Oregon, South Dakota and Texas.

<sup>65</sup> North Carolina, Tennessee and Virginia.

<sup>66</sup> Delaware, Florida, Hawaii, Kentucky, Nebraska, North Dakota, Ohio, Oregon, Pennsylvania (both statutes) and West Virginia.

state that the fiduciary may place the investments in the name of a nominee only.

The most desirable kind of nominee is a partnership arrangement.<sup>67</sup> It is superior to the use of an individual nominee because an individual nominee may die, become disqualified, or unavailable at a time when his signature is most needed. It has its advantages over a corporate nominee, also, in that the authority of a partner to transfer is presumed<sup>68</sup> whereas a corporate signature must be accompanied by papers indicating the officer's authority. Massachusetts specifically permits either "a partnership or corporate nominee" while Mississippi specifically permits "a nominee; whether an individual, a corporation or a partnership."

5. *Investments for which nominee registration is available.* In seven<sup>69</sup> jurisdictions nominee registration is restricted to shares of stock; in two,<sup>70</sup> to stocks and bonds; in twelve,<sup>71</sup> to stock, bonds and other securities; in eight,<sup>72</sup> there is no restriction, and in thirteen<sup>73</sup> jurisdictions the provisions vary so that they do not lend themselves to classification. These latter jurisdictions, in effect, place little or no restrictions on kinds of property that may be registered in the name of a nominee.<sup>74</sup>

If the purpose of the nominee statute is to simplify stock transfer,<sup>75</sup> it is submitted that those statutes permitting nominee registration in other than securities go beyond their purpose.<sup>76</sup>

<sup>67</sup> See STEPHENSON, *STUDIES IN TRUST BUSINESS*, 2d series, 386-387 (1944).

<sup>68</sup> That is, the authority of the partner will be presumed if the issuing corporation is aware of the fact that this is a partnership formed expressly for the purpose of acting as nominees. Section 9 of the Uniform Partnership Act states that the act of any partner "for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership. . . ." Therefore, unless the issuing corporation knows that this is a nominee partnership, it will have to inquire to determine whether the act of transferring a share of stock is an act "for apparently carrying on in the usual way the business of the partnership."

<sup>69</sup> Florida, Louisiana, Nevada, New Mexico, Oklahoma, South Dakota and Virginia. All of these statutes, except Florida's, are either identical with or similar to the Uniform Trusts Act which restricts nominee registration to stocks only.

<sup>70</sup> North Carolina and Tennessee.

<sup>71</sup> California, Connecticut, Hawaii, Indiana, Kentucky, Massachusetts, Michigan, New Hampshire, New York, Ohio, Vermont and Wisconsin.

<sup>72</sup> Arkansas, Colorado, Delaware, Iowa, Kansas, Maine, Pennsylvania (both statutes) and Utah.

<sup>73</sup> Alabama, Idaho, Illinois, Maryland, Minnesota (both statutes), Mississippi, Nebraska, New Jersey, North Dakota, Oregon, Washington, West Virginia and Texas.

<sup>74</sup> E.g., Alabama provides for nominee registration in case of securities, including without limitation, bonds, stocks, mortgages, securities or other evidence of title.

<sup>75</sup> See discussion in text above.

<sup>76</sup> See Bogert, "Trust Investments: Earmarking or Nominees?" 24 *TEX. L. REV.* 417 at 433 (1946).

There would seem to be little need for nominees for the transfer of other assets, such as mortgages or deeds. The market does not fluctuate to the extent that a sale at an advantageous price will be lost if the buyer has to investigate the fiduciary's authority to discover whether he is committing a breach. Usually the purchaser investigates the title, and this merely puts a slight additional burden upon him but does not affect the saleability at an advantageous price. Furthermore, in the case of stock transfers it is the third party, the issuing corporation of the stock, who has to investigate the fiduciary's authority, thus slowing up the stock transfers. In the case of mortgages or deeds this problem does not exist.

6. *Fiduciary's duties with respect to property held by a nominee.* The following requirements are imposed upon a fiduciary desiring to avail himself of nominee registration.

(a) Thirty-four<sup>77</sup> jurisdictions require that the fiduciary retain possession of the investments registered in the name of a nominee. This is a desirable practice even when not required by statute, since it assures the fiduciary of safekeeping of the securities and decreases the possibility of the nominee transferring the investments to a bona fide purchaser.

(b) The fiduciary must keep such investments separate and apart from any other assets held by him in seventeen<sup>78</sup> jurisdictions. This overcomes, partially at least, any objections that may be raised concerning the abolition of the common law requirement of a fiduciary to earmark assets.

(c) The fiduciary is required to keep records pertaining to the nominee registration in thirty-eight<sup>79</sup> jurisdictions. Statutes vary as to what kind of records must be kept. The usual require-

<sup>77</sup> Alabama, Arkansas (by implication), California, Colorado, Connecticut, Delaware (by implication), Hawaii, Idaho (by implication), Illinois, Indiana, Iowa, Kansas, Kentucky (by implication), Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York (by implication), North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, Virginia and West Virginia.

<sup>78</sup> Arkansas, California, Colorado, Delaware, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Nebraska, New Jersey, New York, North Dakota, Utah, West Virginia and Wisconsin.

<sup>79</sup> Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania (both statutes), South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia and Wisconsin.

ment is that the records and reports or accounts rendered by the fiduciary show the ownership of the investments held by the fiduciary and the facts regarding its holding. Individual statutes should be consulted as to the exact requirements. This, again, is directed at any objections that may be raised against abolishing the earmark rule.

7. *Nominee's duties with respect to nominee registration.* The following requirements are imposed upon the nominee, usually stated as conditions precedent:

(a) A deposit with the fiduciary of a signed statement showing the actual ownership of the investments is required in eight<sup>80</sup> jurisdictions.

(b) Seven<sup>81</sup> jurisdictions require the nominee to endorse the investments in blank before placing them in the possession of the fiduciary. In two<sup>82</sup> other jurisdictions the nominee is given a choice of endorsing the investment in blank or of executing a conveyance or assignment to the fiduciary. Three<sup>83</sup> jurisdictions require the nominee to execute and deliver to the fiduciary a proper instrument transferring title to each investment so held. In Texas the nominee is required either to execute an appropriate stock-power in blank and attach it thereto, or to execute a conveyance or assignment of the title to said property. The West Virginia statute requires the fiduciary to secure from the nominee such writings or other evidences of ownership necessary to effect retransfer of the securities without notice. The latter statute also requires the fiduciary to enter into such contracts or agreements with its nominee as may be necessary to afford full protection to the ownership of its fiduciary account and the beneficiaries thereof.

The reasons for such provisions are to assure quick transfer, especially in respect to securities which are subject to a fluctuating market, and also to give the fiduciary complete control over such investments.

The West Virginia statute also provides that the writings necessary to effect retransfer shall be valid and effective as of the

<sup>80</sup> Louisiana, Nevada, New Mexico, North Carolina, Oklahoma, South Dakota, Tennessee and Texas.

<sup>81</sup> Louisiana, Nevada, New Mexico, North Carolina, Oklahoma, South Dakota and Tennessee.

<sup>82</sup> Idaho and Michigan.

<sup>83</sup> Hawaii, Nebraska and North Dakota.



date of delivery thereof whether the nominee dies before transfer is perfected or not. It is unlikely that this provision is necessary since the Uniform Stock Transfer Act<sup>84</sup> provides that the death of the endorser of a stock certificate, delivered by him prior to his death, has no effect on the validity of the assignment.<sup>85</sup> The Uniform Stock Transfer Act has been enacted in fifty jurisdictions including West Virginia.<sup>86</sup>

8. *Exoneration of issuing corporation and transfer agent from liability.* Only seven<sup>87</sup> nominee statutes explicitly relieve the corporation, its transfer agent and its registrar of liability for any loss occasioned by the acts of the fiduciary or its nominee with respect to stock or other securities registered in the name of the fiduciary's nominee.

The Idaho statute provides that the issuing "corporation and its transfer agent shall be under no obligation to inquire into the propriety of a transfer of any stock or security held in a nominee's name unless the corporation or transfer agent has actual knowledge of a breach of fiduciary duty in connection with the assets so held." Since knowledge of a corporation's agent may, under some circumstances, be imputed to the corporation, this could be very advantageous to the beneficiary if he can show that one of the corporation's employees has actual knowledge of the breach. Logical judicial interpretation of this section would impute knowledge only in the case of an employee acting in his official capacity as a member of the stock transfer department.

Maryland's statute provides that the issuing corporation, its transfer agent or registrar may, without responsibility or investigation, treat the nominee as the actual owner of the registered securities. It is submitted that this exoneration provision is too broad. Since the nominee is treated as the actual owner of the registered securities, the issuing corporation is protected no matter what the nominee does with the securities. That is, since the nominee is treated as the actual owner, he can go so far as to make a gift of the securities, and the corporation will be protected even though it has actual knowledge that a gift is being made. If an employee of the corporation while acting in his official capacity as a member of the stock transfer department is aware

<sup>84</sup> Section 6(c) of the Uniform Stock Transfer Act.

<sup>85</sup> See CHRISTY AND McLEAN, *THE TRANSFER OF STOCK*, 2d ed., §64 (1940).

<sup>86</sup> W. Va. Code Ann. (1955) §§3053-3074.

<sup>87</sup> Arkansas, California, Hawaii, Idaho, Kentucky, Maryland and West Virginia.

that the nominee is misappropriating assets registered in his name as a mere nominee, the corporation should be held liable for participating in a breach of trust. As stated elsewhere in this comment, the nominee holds securities in the capacity of a trustee; therefore, the corporation should be liable where it consciously participates in a breach of trust.

The other five<sup>88</sup> jurisdictions relieve the corporation, its transfer agent and its registrar of liability for any loss occasioned by the acts of the fiduciary or its nominee with respect to stock or other securities registered in the name of the fiduciary's nominee. The same criticism can be made of these statutes as that of the Maryland statute. Four<sup>89</sup> of these require that the registration in the name of the nominee be done in accordance with the provisions of the statute as a condition for exoneration. Of these, only one<sup>90</sup> provides that certification of the bank or trust company that it has complied with the provisions of the statute shall be prima facie evidence of its compliance so far as the transfer agent, registrar of the corporation or other interested person is concerned. It is submitted either that this provision, or one similar to it, will have to be judicially read into the other three statutes or that the court will have to decide that this provision is repugnant to the purpose of the statute and must, therefore, be read out of the act. To hold otherwise would put a heavy burden upon the issuing corporation to investigate whether such requirements have been complied with and would, in effect, defeat the purpose of the nominee registration, namely, to simplify the transfer of stock and other securities.

In jurisdictions other than these seven, the exonerative effect of the statute, under the circumstances described above, will have to be implied.<sup>91</sup> That is, the issuing corporation and its agent should have no duty to inquire into a transfer from the nominee acting under the nominee statute; otherwise, the purpose which it intends to accomplish will once again be defeated.

9. *Provision to the contrary.* Eleven<sup>92</sup> jurisdictions do not permit the use of nominee registration if there is a provision to the

<sup>88</sup> Arkansas, California, Hawaii, Kentucky and West Virginia.

<sup>89</sup> Arkansas, California, Kentucky and West Virginia.

<sup>90</sup> West Virginia.

<sup>91</sup> See 3 SCOTT, TRUSTS, 2d ed., §325 (1957).

<sup>92</sup> California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Michigan, New Jersey, Pennsylvania and Wisconsin.

contrary in the instrument or court order creating the fiduciary relationship. This means that where the trustee wishes to transfer securities registered in his own name into the name of a nominee, the issuing corporation must investigate to determine whether there is a provision to the contrary in the instrument or court order creating the trust relationship. The same kind of investigation is required in other kinds of fiduciary relationships; for example, a committee wishing to transfer securities from the name of its ward into the name of a nominee cannot do so if the court order prohibits such procedure.

It is submitted that this provision is unwarranted because again the purpose of the statute has been thwarted by requiring the issuing corporation to investigate the fiduciary's authority.

10. *Liability assumed by the fiduciary in nominee registration.* All but three<sup>93</sup> of the forty-two jurisdictions that have nominee statutes impose upon the fiduciary some form of liability for loss occasioned by the acts or omissions of the nominee with respect to such investments so registered. Since the nominee is an agent<sup>94</sup> of the fiduciary as well as a trustee of the res so invested, it is submitted that the fiduciary would be responsible for loss occasioned by the act or omission of the nominee according to agency principles. However, because of the statutory wording of the thirty-nine jurisdictions that impose such liability upon the fiduciary, it appears that they are held to strict liability for loss occasioned by any act or omissions of the nominee.

Although this may seem to place a high degree of liability on the fiduciary, the chance of any loss by the acts or omissions of the nominee is minimized if the fiduciary retains possession of the investments after the nominee has endorsed the security in blank or executed a conveyance or assignment to the fiduciary as is required in some jurisdictions.

11. *Miscellaneous provisions.* The Iowa statute requires court approval before the fiduciary may register and hold investments in the name of a nominee if the fiduciary relationship pertains to an estate, trust, guardianship, or receivership involved in an action pending in the district court, or to any other district court matters or proceedings. The Maryland statute provides that, as to any estate which is or shall be administered under the jurisdic-

<sup>93</sup> Delaware, Oregon and Pennsylvania.

<sup>94</sup> See STEPHENSON, *STUDIES IN TRUST BUSINESS*, 2d series, 391 (1944).

tion of a court, the registration of securities in the name of a nominee may be made only by order of such court.

The Iowa provision may be warranted in that the fiduciary probably cannot dispose of the investments during the pendency of the court action without court approval, in any case. As for the Maryland provision, however, it seems to indicate either a distrust by the legislature of court-appointed fiduciaries or a reluctance on its part to permit court-appointed fiduciaries any independent freedom of action. Requiring court approval of nominees of court-appointed fiduciaries again has defeated the main purpose of nominee registration. If the statute is to be read literally, the fiduciary has the added expense of court approval plus the necessity of submitting the proper papers to the issuing corporation. Otherwise, the issuing corporation may be liable to the beneficiary under the principle of the *Lowry* decision if the fiduciary does not live up to this statutory requirement, since the Maryland provision exonerating the issuing corporation and its agents applies only to securities properly registered in the name of a nominee.

None of the other statutes require court approval before a court-appointed fiduciary may avail himself of nominee registration. The Maine statute specifically states that the nominee registration statute shall govern fiduciaries acting under court orders.<sup>95</sup> Some of the other statutes by implication provide court-appointed fiduciaries the same prerogative without a court order by including a court appointed official in the definition of a fiduciary. For example, those statutes<sup>96</sup> which permit an executor, who is a court appointed fiduciary, to avail himself of nominee registration by implication permit the executor so to act without court order, there being no provision to the contrary.

The West Virginia statute prohibits a bank or trust company using its name or the name of its nominee for the purpose of registering property to evade, avoid, minimize or relieve itself or certain specified others or the property from taxation. This provision, it is submitted, is unnecessary since it is implicit in the nominee registration statutes themselves.

The West Virginia statute has still another provision that,

<sup>95</sup> Provided the fiduciary is not prohibited by the terms of the court order or instrument creating or defining the fiduciary's duties and powers. See the prior discussion on this proviso.

<sup>96</sup> E.g., Nebraska.

perhaps, is already implied. The statute provides that every nominee registration shall, ipso facto, constitute a declaration of trust upon the registered owner<sup>97</sup> so far as the fiduciary and the beneficiaries of the fiduciary are concerned. As noted above, the nominee is a trustee of the fiduciary and the beneficiary and therefore responsible to both the fiduciary and the beneficial owners of the investments so registered. The West Virginia provision merely makes this explicit.

12. *Penalty for violation of provisions of the statute.* Of those statutes identical with or similar to section 9 of the Uniform Trusts Act, five<sup>98</sup> also have section 20 of the act which is the penalty section. That section provides that a trustee who violates any of the provisions of the act may be removed and denied compensation and the beneficiary, co-trustee or successor trustee may treat the violation as a breach of trust. One<sup>99</sup> of these statutes requires the violation to be a violation of a duty which as trustee he owes to a beneficiary.

Three other statutes impose various penalties for violation. The Kentucky statute states any person violating the provisions of the statute shall be guilty of a misdemeanor and fined not less than fifty dollars nor more than two thousand dollars. New Hampshire's statute imposes upon the violator a fine of not more than one thousand dollars, or imprisonment for not more than one year, or both. The West Virginia statute declares the violator to be guilty of a misdemeanor punishable by a fine of not less than fifty dollars nor more than one thousand dollars in addition to imposing civil liability for restitution.

#### IV. Conclusion

No court has been willing to overrule the *Lowry* case which held that a corporation, in making transfers of its stock on its books, acts in a fiduciary capacity and must protect equitable as well as legal interests in its stock. The various legislatures attempted by various statutes to relieve the corporation of this burden and, thus, simplify transfer of securities held in a fiduciary capacity. As has been noted, with the exception of the recently passed

<sup>97</sup> Which, according to the West Virginia statute, can be either a nominee or the fiduciary himself.

<sup>98</sup> Louisiana, Nevada, New Mexico, North Carolina and South Dakota.

<sup>99</sup> Louisiana.

statutes modelled after the Model Fiduciaries Securities Transfer Act, these statutes were ineffective for one reason or another. Transfer agents still required fiduciaries to submit documented proof of their authority to effectuate a transfer. The fiduciary was reluctant to register the securities in his own name without any indication of his fiduciary capacity because of the common law "earmarking" rule which stated this was a technical breach of trust; and if loss occurred, he might be held liable. Therefore, the fiduciary was forced to provide the documented proof required by transfer agents. The legislatures attempted to alleviate this by another statute permitting the fiduciary to register securities in the name of a nominee. The question remains whether this was the proper method to handle the situation or whether the legislatures should have enacted a statute flatly repudiating the *Lowry* doctrine.

Although the nominee registration statutes have, in most instances, attempted to overcome any objections to relaxing the earmarking requirements by requiring the fiduciary to maintain possession of the securities registered in the name of a nominee, by requiring him to keep them separate and apart from his other assets, and by requiring him to keep proper records and accounts showing the ownership thereof, it is doubtful that this is the proper method of abrogating the *Lowry* doctrine. Among the various faults of the nominee statutes are: since the statutes vary considerably in provisions, a conflict of laws question may arise; some statutes do not permit individuals acting as fiduciaries to use the nominee device unless certain requirements are met; not all classes of fiduciaries are permitted to use nominee registration in some jurisdictions; some statutes do not permit the use of nominee registration if there is a provision to the contrary in the instrument or court order creating the fiduciary relationship, thus thwarting the purpose of the statute by requiring the issuing corporation to investigate the fiduciary's authority; a few jurisdictions permit nominee registration only for stocks when it should be broadened to include other securities; a few others are too broad in their scope and permit any kind of investments to be held in the name of a nominee; all but seven of the statutes do not exonerate the issuing corporation from a duty to investigate whether the fiduciary is committing a breach of trust, and this lack of exoneration may defeat the very purpose for which the statute was enacted, unless by judicial determination it is held that exoneration is necessary.

Nevertheless, the nominee device has been accepted and widely used,<sup>100</sup> and until the legislatures have enacted the Model Fiduciaries Securities Transfer Act, this seems to be the only way in which a fiduciary can avoid the necessity of providing documented proof when seeking to transfer securities.

*Joseph T. de Nicola, S.Ed.*

<sup>100</sup> See Conard, "Simplification of Security Transfers by Fiduciaries," 94 TRUSTS AND ESTATES 835 at 836 (1955); Bogert, "Trust Investments: Earmarking or Nominees?" 24 TEX. L. REV. 417 at 433-435 (1946); STEPHENSON, STUDIES IN TRUST BUSINESS, 2d series, 379-380, 393 (1944).

# APPENDIX-STATUTORY PROVISIONS

Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>103</sup> MFSTA <sup>103</sup> or Similar Acts
Uniform Trusts Act, §§9, 20	trustee owning stock	trustee	stock	(1) "the nominee . . . shall not have possession of the stock certificate or access thereto except under the immediate supervision of the trustee" (2) "the trust records and all reports or accounts rendered by the trustee clearly show the ownership of the stock by the trustee and the facts regarding its holding" (3) "the nominee shall deposit with the trustee a signed statement showing the trust ownership, shall endorse the stock certificate in blank"	no provision	(1) "trustee shall be personally liable for any loss to the trust resulting from any act of such nominee in connection with stock so held" (2) "If a trustee violates any of the provisions of this Act, he may be removed and denied compensation in whole or in part; and any beneficiary, co-trustee, or successor trustee may treat the violation as a breach of trust" (Uniform Trusts Act, §20)	
Ala. Code (Supp. 1955) tit. 58, §7(1)	"bank or trust company . . . duly authorized to [act] as a fiduciary, and as a nominee"	(1) fiduciary (2) co-fiduciary	"securities, including without limitation, bonds, stocks, mortgages, securities or other evidences of title"	(1) "instrument evidencing said security shall at all times be held by the fiduciary in its immediate and exclusive possession" (2) "records of such corporate fiduciary shall at all times clearly show that such securities are held by the corporate fiduciary in the capacity of a fiduciary, and show the beneficial owners thereof, and all facts relating to its ownership, possession or holding thereof"	no provision	"corporate fiduciary shall not be relieved of liability for the safe custody, control and proper distribution of such security by reason of the registration of same in the name of a nominee"	Ala. Code (Supp. 1955) tit. 19A, §4 (same as UFA §3)
Ariz.							Ariz. Code Ann. (1956) §14-1103 (same as UFA, §3, except that "actual constructive knowledge" replaces "actual knowledge")

<sup>101</sup> In this column is included, where the statute so indicates, the provision permitting fiduciary to hold investments in his own name, as well as that of a nominee, without any indication of any fiduciary relationship. All other statutes state that the fiduciary may hold the investments in the name of a nominee (or "nominee or nominees"). Space does not permit the inclusion of such provisions in this chart.

<sup>102</sup> Section 3 of the Uniform Fiduciaries Act.

<sup>103</sup> Model Fiduciaries Securities Transfer Act.



Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>102</sup> MFSTA <sup>103</sup> or Similar Acts
Ark. Stat. (1947) §§58-106 to 58-108, 58-112	"state or national bank or trust company, authorized to do business in this state"	(1) fiduciary (2) "may with the consent of co-fiduciary or co-fiduciaries, if any (who are hereby authorized to give such consent)" (3) "generally 'fiduciary' includes a trustee under any express trust, executor, administrator, guardian, or curator"	any investment	(1) such investments shall at all times be kept separate and apart from the assets of such bank or trust company (2) records of such bank or trust company shall at all times show the ownership of any such investment	(1) no liability for any loss occasioned by the acts of any such bank or trust company, or the nominee of either of them with respect to such investment so registered, shall be imposed upon any corporation, its transfer agent or registrar, which registers its stock or other securities in the name of such bank or trust company, or the nominee of either of them, in accordance with the provisions of this section (2) §58-109 is same as §3 of the UFA except that it includes nominees	any such bank or trust company shall be absolutely liable for any loss occasioned by the acts of any nominees of such bank or trust company with respect to any such investment so registered	Ark. Stat. (1947) §§58-109 (same as UFA, §3, except includes nominees)
Calif. Fin. Code (Deering, Supp. 1957) §1563	(1) "any trust company" (2) "or when acting . . . with one or more persons as co-fiduciary or co-fiduciaries" (3) "any trust company when acting as depository or custodian for the trustee of any other court or private trust . . . may, with the consent of the trustee of such other trust"	(1) "any capacity under a court or private trust" (2) "or when acting . . . with one or more persons . . . may, with the consent of such co-fiduciary or co-fiduciaries"	any stock or other securities	(1) "stock or other securities shall at all times be kept by such trust company separate and apart from its other assets" (2) "records of such trust company shall at all times show the ownership of any such stock or other securities so registered"	"no domestic or foreign corporation or the registrar or transfer agent of any such corporation shall be liable for registering or causing to be registered on the books of such corporation any share or shares or other securities in the name of any nominee of such trust company or for transferring or causing to be transferred on the books of any such corporation any share or shares or other securities theretofore registered by such corporation in the name of any nominee of such trust company as herein provided when the transfer is made upon the authorization of such nominee"	(1) "unless the instrument creating such trust contains a provision to the contrary" (2) "such trust company shall be liable for any loss occasioned by the acts of any nominee of such trust company with respect to such stock or other securities so registered"	Cal. Corp. Code Ann. (Deering, 1953) §2411 (creates presumption in favor of issuing corporation and its transfer agent that the fiduciary or his nominee has the power to accept and transfer title to securities with no duty to inquire) (see statute for further provisions)

Colo. Rev. Stat.  
Ann. (Supp. 1957)  
§§57-5-1 to 57-5-5

(1) bank or trust company  
(2) "alone, or jointly with the consent of the other fiduciary, who is hereby authorized to give such consent"

when acting as a fiduciary

any property

(1) "such property shall at all times be kept separate and apart from the property of such bank or trust company"  
(2) records of such bank or trust company shall at all times show the ownership of any such property"

no provision

"bank or trust company shall be liable for any loss occasioned by any act or omission of any nominee of such bank or trust company with respect to such property so registered"

Colo. Rev. Stat. Ann. (1953) §57-1-3 (same as UFA, §3)

"fiduciary may direct any bank or trust company to cause any property deposited with such bank or trust company by such fiduciary, to be registered or held in the name of a nominee"

any fiduciary

any property

(1) "the bank or trust company shall not redeliver such property to such fiduciary without first causing such property to be registered in the name of such fiduciary"  
(2) "any sale of such property at the direction of the fiduciary shall not be construed to be a redelivery"

no provision

"bank or trust company may make any disposition of such property authorized or directed in an order or decree of any court of competent jurisdiction or authorized by the fiduciary under powers possessed by such fiduciary"

Conn. Gen. Stat.  
Supp. (1955)  
§266od

"state bank and trust company or a national banking association having its main office in this state"

(1) held by it or in its custody as trustee, whether alone or jointly with co-trustees . . . provided every co-trustee of such trust shall give his prior written consent  
(2) "trustee . . . shall include an executor, administrator, guardian, conservator, agent and a trustee of an inter vivos or testamentary trust"

stocks and other securities

(1) "trustee shall retain possession of such stocks and other securities so held"  
(2) "shall maintain adequate records indicating the correct ownership thereof"

no provision

(1) "in the absence of an express provision to the contrary in the instrument or court order creating such trust"  
(2) "trustee shall be personally liable for any loss occasioned by the acts of any such nominee of such bank or association in connection with the holding of stock and other securities in the name of such nominee"

Conn. Pub. Act 573 (1957 session) (same as MFSTA except it does not contain the following: "Sec. 5. A corporation making a transfer of a security under this Act incurs no liability to any person.")  
Conn. Gen. Stat. Ann. (Supp. 1955) §2911d.

"all the individual trustees of a trust may . . . deliver stock or other securities of the trust to a bank or association and authorize such bank or association to register and hold the same in the name of a nominee or nominees of such bank or association, as provided in subsection (2) hereof"

(1) trustee  
(2) "trustee . . . shall include an executor, administrator, guardian, conservator, agent and a trustee of an inter vivos or testamentary trust"

stock or other securities

(1) "such bank or association shall not redeliver such stock or other securities to such individual trustee or trustees without first causing such stock or other securities to be registered in the name of such individual trustee or trustees as such"  
(2) "but this provision shall not apply to other transfers or sales made by a bank or association at the direction of such individual trustee or trustees"

no provision

(1) "in the absence of an express provision to the contrary in the instrument or court order creating such trust"  
(2) "such bank or association and its nominee shall be held to have discharged their liabilities by accounting for or paying over the proceeds of any sale or transfer made as so directed"

Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>102</sup> MFSTA <sup>103</sup> or Similar Acts
Del. Code Ann. (1953) tit. 5, §915	(1) "any bank or trust company" (2) "may register and hold . . . in its name or in the name of its nominee without disclosing its fiduciary capacity"	fiduciary . . . whether as executor, administrator, guardian, trustee, or otherwise	any fund or other property belonging to the estate by it administered	"it shall deal with such fund as a separate trust and shall preserve the identity thereof"	no provision	"unless otherwise provided in the instrument or order appointing such bank or trust company"	Del. Code Ann. (Supp. 1957) tit. 12, §§4301-4307. (same as MFSTA)
D.C.							D.C. Code (1951) §28-2303 (same as UFA, §3)
Fla. Stat. Ann. (1953) §§691.02, 691.03-13	(1) "corporations . . . authorized to act and that is acting as a trustee" (2) "individuals and any other legal entity authorized to act and that is acting as a trustee" (3) "to hold . . . in his own name or in the name of a nominee, with or without disclosing any fiduciary relationship"	(1) trustee of an express trust (2) "'trust' . . . includes any express trust, except trust deeds in the nature of a mortgage to secure the payment of money due on notes, bonds or other like obligations, and also excepting what are commonly known as voting trusts"	any corporate stock		no provision	(1) "in the absence of contrary or limiting provisions in the trust instrument or a subsequent order or decree of a court of competent jurisdiction" (2) "trustee . . . shall be responsible for all acts and omissions of such nominee relating to such property"	
Hawaii Rev. Laws (1955) §179-15	(1) trust company (2) "fiduciary acting as a co-fiduciary with a trust company" (3) "to be registered or held in the name of a nominee or nominees of such trust company, or in the name of the trust company, without disclosing such fiduciary capacity"	fiduciary	stock, bond or other security	(1) "shall not permit the nominee to have possession of or access to such stock, bond or other security" (2) "shall clearly show on its records that the security is so held" (3) "trust company shall require that each such nominee shall execute and deliver to it a proper instrument transferring title to each such stock, bond or other security"	"no liability for any loss occasioned by the acts of any such trust company or its nominee or nominees, with respect to any stock, bond or other security so registered or held, shall be imposed upon any corporation the stock, bond or other security of which shall be registered in the name of such trust company or such nominee or nominees, or upon the transfer agent or registrar of such corporation"	(1) "unless expressly otherwise provided by the instrument, decree or order creating the fiduciary relationship" (2) "shall be responsible for any loss resulting from the act of any such nominee"	Hawaii Rev. Laws (1955) §189-3 (same as UFA, §3)
Idaho Code Ann. (Supp. 1957) §§68-601 to 68-603	(1) any bank or trust company (2) whether alone or jointly with an individual fiduciary or fiduciaries, if any (who are hereby authorized to give consent)	any fiduciary capacity	"any bond, stock, mortgage, deed or other security or asset, real or personal, including a fractional interest thereof"	(1) "provided, that the trust company's records for and all reports or accounts rendered concerning the fiduciary relationship clearly show the ownership of the property by the bank or trust company"	"a corporation and its transfer agent shall be under no obligation to inquire into the propriety of a transfer of any stock or security held in a nominee's name unless the corporation or transfer agent has actual knowledge	"a bank or trust company shall be responsible for the acts of any nominee with respect to any property held in the name of a nominee"	Idaho Code Ann. (1948) §68-303 (same as UFA, §3)

Ill. Rev. Stat. (1957) c. 148, §36	trustee of any trust	trustee of any trust	stocks, bonds and other property, real or personal	(2) "and [provided] that the nominee or nominees of the bank or trust company endorse in blank, or execute a conveyance or assignment to the bank or trust company for, each item of property held in its name"	of a breach of fiduciary duty in connection with assets so held"		Ill. Rev. Stat. (1957) c. 32, §§439.50-439.57 (same as MFSTA)
				(1) "stocks, bonds and other similar investments shall be in the possession and control of the trustee" (2) "stocks, bonds and other similar investments shall be . . . kept separate and apart from assets which are the individual property of the trustee" (3) "records of the trustee shall at all times show the ownership of the investment by the trustee"	no provision	(1) "unless it is otherwise provided by the instrument creating the trust" (2) "trustee shall be liable for the acts of the nominee with respect to any investment so registered"	
Ind. Stat. Ann. (Burns, 1950) §18-1213	(1) "any bank or trust company incorporated under the laws of this state" (2) "any national banking association incorporated under the laws of the United States and having its principal banking office in this state"	(1) any fiduciary capacity (2) whether as sole fiduciary or as co-fiduciary (3) "provided, however, that: (1) if such bank, trust company or national banking association be acting as a co-fiduciary, it shall secure the consent of its co-fiduciary or co-fiduciaries, who is or are hereby authorized to give such consent"	stocks, bonds or other securities	(1) "investments so registered shall at all times be in the possession and under the control of the fiduciary" (2) "the records of the fiduciary or fiduciaries shall at all times clearly show the ownership of such stocks, bonds or other securities"	no provision	"bank, trust company or national banking association shall be liable in its individual capacity for any loss to the trust or estate resulting from any of the acts, or omissions to act, of such nominee or nominees in connection with the stocks, bonds or other securities so held to the same extent as if such stocks, bonds or other securities had been held in the name of such bank, trust company or national banking association as fiduciary"	Ind. Stat. Ann. (Burns, 1949) §31-103 (same as UFA, §3, except specifies particular, named fiduciaries or the nominee of a fiduciary and is applicable to registration or transfer of securities held by such fiduciaries)
Iowa Code (Laws of the 57th Gen. Assembly) c. 250	(1) "state or national bank or trust company, when acting in this state as a fiduciary or a co-fiduciary with others" (2) "may with the consent of its co-fiduciary or co-fiduciaries, if any (who are hereby authorized to give such consent)"	(1) fiduciary (2) co-fiduciary	any investment	(1) "investment shall be in the possession and control of such bank or trust company" (2) "kept separate and apart from the assets of such bank or trust company" (3) "records of such bank or trust company shall at all times show the ownership of any such investment"	no provision	(1) "bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered" (2) "reports or accounts rendered by the fiduciary shall clearly show the ownership of the investment and the facts regarding its holding, and if the fiduciary re-	

Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>102</sup> MFSTA <sup>103</sup> or Similar Acts
Kan. Gen. Stat. Ann. (Corrick, Supp. 1957) §§9-1607, 9-1608	(1) "state or national bank or trust company, when acting in this state as a fiduciary or a co-fiduciary with others" (2) "may with the consent of its co-fiduciary or co-fiduciaries, if any, who are hereby authorized to give such consent"	(1) fiduciary (2) co-fiduciary	any investment	(1) "investment shall be in the possession and control of such bank or trust company" (2) "kept separate and apart from the assets of such bank or trust company" (3) "records of such bank or trust company shall at all times show the ownership of any such investment"	no provision	relationship pertains to an estate, trust, guardianship, or receivership pending in the district court, or to any other district court matters or proceedings, court approval shall be first obtained to register and hold investments in the name of a nominee or nominees, and all reports or accounts rendered by the fiduciary or fiduciaries in such matters pending in the district or probate court shall require court approval"  "bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered"	Kan. Gen. Stat. Ann. (Corrick, Supp. 1957) §17-4902 (same as UFA, §3, except applies to "nominee of a fiduciary" as well as a fiduciary and includes securities "to be registered" as well as those "registered")
Ky. Rev. Stat. (1955) §§287.225, 287.990- (13)	(1) bank or trust company (2) "whether alone or jointly with an individual or individuals, may with the consent of the individual fiduciary or fiduciaries, if any (who are hereby authorized to give such consent)" (3) "to be registered and held in the name of a nominee or nominees of such bank or trust company, or in its own name"	(1) executor, administrator, guardian, committee, agent, or trustee (2) whether alone or jointly with an individual or individuals	any stock or other securities	(1) "stock or other securities shall at all times be kept separate and apart from the assets of such bank or trust company" (2) "records of such bank or trust company shall at all times show the ownership of any such stock or other securities"	"no liability for any loss occasioned by the acts of any such bank or trust company, or the nominee of either of them with respect to such stock or securities so registered, shall be imposed upon the corporation, its transfer agent or registrar, which registers its stock or other securities in the name of such bank or trust company, or the nominee of either of them in accordance with the provisions of this section"	(1) "bank or trust company shall be absolutely liable for any loss occasioned by the acts of any nominees of such bank or trust company with respect to such stock or other securities so registered" (2) "any person violating any of the provisions of KRS 287.225 shall be guilty of a misdemeanor and fined not less than fifty dollars nor more than two thousand dollars" §287.990(13)	
La. Rev. Stat. Ann. (1950) tit. 9, §§2002, 2038	(same as §§9 and 20 of the Uniform Trusts Act, except penalty section also contains the following: "and if his violation is a violation of a duty which as trustee he owes to a beneficiary"						La. Rev. Stat. Ann. (1950) tit. 9, §3803 (same as UFA, §3)

Mc. Rev. Stat. (Supp. 1957) c. 59, §§246-248	(1) "state or national bank or trust company, when acting in this state" (2) "may with the consent of its co-fiduciary or co-fiduciaries, if any, who are hereby authorized to give such consent"	(1) fiduciary (2) co-fiduciary with others (3) "fiduciary" . . . shall include, but shall not be limited to, executors, administrators, guardians, conservators, trustees, agents, custodians and each of them"	any investment	(1) "investment shall be in the possession and control of such bank or trust company" (2) "kept separate and apart from the assets of such bank or trust company" (3) "records of such bank or trust company shall at all times show the ownership of any such investment"	no provision	(1) "provisions of sections 246 to 248, inclusive, shall govern fiduciaries and co-fiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made, provided that nothing contained in sections 246 to 248, inclusive, shall be construed as authorizing any departure from or variation of the express words or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers" (2) "bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered"	Mc. Rev. Stat. (1954) c. 53, §73 (same as UFA, §3, except applies to "nominee of a fiduciary" as well as a fiduciary and includes securities "to be registered" as well as those "registered")
Md. Code Ann. (1957) art. 16, §198	(1) corporate fiduciary acting alone (2) co-fiduciaries one of which is a corporate fiduciary	(1) fiduciary, as herein defined (2) "fiduciary" shall apply only to a corporate fiduciary acting alone or to co-fiduciaries one of which is a corporate fiduciary, and shall include such fiduciaries named in or acting under a deed, will, declaration of trust or other instrument creating or evidencing a trust or acting as trustee, committee or guardian appointed by any court or as executor or administrator"	(1) "stocks, bonds, or other corporate securities as herein defined" (2) "corporate securities" shall include, but not by way of limitation, stocks, bonds, debentures, notes, voting trust certificates, equipment trust certificates, certificates of deposit, certificates of participation, certificates of beneficial interest, stock rights, stock warrants issued by or in connection with any corporation, joint stock association or similar organization and any other instruments evidencing rights of a similar character"	(1) "fiduciary shall see that such nominee shall not have possession or control of the same except under the supervision of such fiduciary, and where there is more than one fiduciary, this duty shall apply only to the fiduciary having custody of the same" (2) "fiduciary shall show the same on its records"	"corporation whose stocks, bonds, or other securities are so registered, its transfer agent or registrar, may, without responsibility or investigation, treat such nominee as the actual owner thereof"	(1) "fiduciary shall be responsible for any loss resulting from any act or default of such nominee or nominees" (2) "as to any estate which is or shall be administered under the jurisdiction of a court including any orphan's court (which shall include estates which are or shall be administered by trustees, committees, guardians, executors, or administrators) the registration of stocks, bonds, or other corporate securities in the name of a nominee may be made, only by order of such court; and such court may pass an order authorizing the fiduciary so to register in the name of a nominee any or all of the stocks, bonds, or other corporate securities then held or thereafter to be held by the fiduciary"	Md. Code Ann. (1957) art. 37A, §3 (same as UFA, §3)

Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>103</sup> MFSTA <sup>103</sup> or Similar Acts
Mass. Laws Ann. (Supp. 1957) c. 167, §54	(1) "individual, partnership, association or corporation authorized to do a banking business and to exercise trust powers in the commonwealth" (2) "any resident of the commonwealth appointed a trustee by a probate court or who is required to file an account in a probate court" (3) "to be registered and held in the name of a partnership or corporate nominee residing or having a principal place of business within the commonwealth named by him or it" (4) "provided that every individual trustee of the same estate or trust consents thereto"	held in fiduciary capacity	stock or security	(1) "fiduciary holding securities in the manner authorized by this section shall retain possession of said securities" (2) "fiduciary holding securities in the manner authorized by this section . . . shall segregate the same from his or its own assets" (3) "fiduciary holding securities in the manner authorized by this section . . . shall maintain adequate records indicating the ownership thereof"	no provision	"fiduciary holding securities in the manner authorized by this section . . . shall be absolutely liable for any loss occasioned by the acts of a nominee"	Mass. Laws Ann. (1955) c. 203, §21 Mass. Laws Ann. (Spec. Supp. 1957) c. 106, §§8-401 to 8-403 (part of the Uniform Commercial Code)
	"fiduciary may deposit stocks or other securities held in a fiduciary capacity with one so exercising trust powers, with authority to register and hold the same in the name of a partnership or corporate authority to register and hold the same in the name of a partnership or corporate nominee residing or having a principal place of business within the commonwealth"	held in fiduciary capacity	stocks or other securities			(1) "depository shall not, without first causing the stock or security to be registered in the name of the depositing fiduciary as such, redeliver the same to him, but this provision shall not apply to other transfers or to sales made by the depository pursuant to directions of the depositing fiduciary" (2) "depository and his or its partnership or corporate nominee residing or having a principal place of business within the commonwealth shall be held to have discharged their responsibilities by accounting for or paying over the proceeds of any sale or transfer made as so directed"	

Mich. Stat. Ann. (Supp. 1957) §§21.313(1)-21.313- (3)	corporation	trustee, executor, administrator, agent or guardian	stock or other registerable securities	(1) "corporation at all times shall keep possession of the certificate representing the shares of stock or other registerable securities, but, when necessary, the nominee may have access thereto for the purpose of examination under the supervision of the corporation" (2) "corporation shall keep adequate records so as to show at all times the real interest in the certificate of the trust, estate, agency or principal for whom the corporation is acting" (3) "nominee, upon the request of such corporation, shall indorse the certificate representing shares of stock or other registerable securities in blank or by assignment separate from the certificate"	no provision	(1) "in the absence of a direction to the contrary contained in any will or other instrument transferring shares of stock or other registerable securities to any corporation acting as trustee, executor, administrator, agent or guardian" (2) "acts of any nominee in connection with any property held by the nominee shall be deemed to be the acts of the corporation acting as fiduciary"	
Minn. Stat. Ann. (Supp. 1957) §48.39	(1) any state bank (2) "either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent"	fiduciary	any stocks, securities or other property now held or hereafter acquired		no provision	"state bank shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered"	Minn. Stat. Ann. (1947) §520.03
Minn. Stat. Ann. (1946) §48.74	(1) "trust company incorporated under the laws of this state . . ." (2) "national banking association authorized to act in a fiduciary capacity in this state" (3) "either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent"	fiduciary	any stocks, securities or other property now held or hereafter acquired	.....	no provision	"such [trust company or national banking association] shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered"	



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Miss. Gen. Laws 1956, c. 144	(1) "bank or trust company organized under the laws of this state or any national bank doing business in this state . . . and has a nominee, whether an individual, a corporation or a partnership" (2) "whenever any such bank or trust company is acting jointly with others as trustee or executor of a trust or estate it shall be lawful by agreement with such other fiduciary to register the securities of such trust or estate in the name of such bank or trust company's nominee" (3) "in the event two such banks or trust companies shall be acting as co-fiduciaries it shall be lawful to register the securities of the trust or estate in the name of the nominee of either fiduciary or by agreement to register a proportionate part thereof in the name of the nominee of each fiduciary"	trustee, guardian, executor, administrator, or other fiduciary	stocks, bonds, debentures, or any other corporate securities	(1) "securities registered in the name of the nominee shall at all times be retained in the possession of the fiduciary and the nominee shall have no access thereto except under the immediate supervision of the fiduciary" (2) "books and records kept by the fiduciary and the accounts rendered by it shall clearly reflect the ownership of such securities by the fiduciary"	no provision	"fiduciary shall be personally liable for any loss to the trust or estate resulting from any act or neglect of such nominee with respect to any securities registered in the name of the nominee"	
Neb. Rev. Stat. (1943) §§24-604, 24-605	(1) "person or any corporation . . . may cause the same to be registered in his or its own name or in the name of a nominee" (2) "corporation acting as one of two or more fiduciaries, with the consent of its cofiduciary or cofiduciaries, who are hereby authorized to give such consent, may register a security held by said fiduciaries in the name of its nominee"	executor, administrator, trustee, guardian, conservator or in any other fiduciary capacity	stock, bond, note, debenture, or any other security or property, the title to which may be registered	(1) "provided . . . such fiduciary at all times has possession of such security and, if registered in the name of a nominee, before or promptly after such registration, secures from the nominee all such instruments as may be necessary to transfer the same without any further act of such nominee" (2) "provided . . . said security is kept separate and apart from the property held by such person or corporation in his or its	no provision	"provided . . . the fiduciary shall be liable individually and in his or its own right for any loss resulting to the fiduciary estate because said security was so registered instead of being registered in his or its name as such fiduciary"	

				own right or in any other fiduciary capacity" (3) "provided . . . the accounts and records of such person or corporation at all times clearly show that such security was held by such person or corporation in such fiduciary capacity"			
Nev. Rev. Stat. (1957) §§163.090, 163.190	(same as §§9 and 20 of the Uniform Trusts Act)						Nev. Comp. Laws (1929) §2987 (same as UFA, §3)
N.H. Rev. Stat. Ann. (1955) §§390:18, 390:19	(1) "trust company or similar corporation, incorporated under the laws of this state" (2) "national bank duly authorized and located within the state" (3) "either alone or jointly with an individual or individuals, may, with the consent of the individual fiduciary or fiduciaries, if any, who are hereby authorized to give such consent"	(1) fiduciary (2) either alone or jointly with an individual or individuals	stock or other securities	(1) "the nominee shall not have possession of the stock certificate or other security or access thereto except under the immediate supervision of the fiduciary" (2) "the records of the fiduciary and all accounts rendered by it clearly show the ownership of the stock or other securities"	no provision	(1) "fiduciary shall be liable for any loss resulting from any act of such nominee in connection with such stock or other securities so held" (2) "whoever violates any provision of this subdivision shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both"	
N.J. Stat. Ann. (1953) §3A:15-7	(1) "bank, trust company or savings bank incorporated under the laws of this state" (2) "national bank located in this state" (3) "bank, trust company or savings bank incorporated under the laws of another state which is authorized to act as a fiduciary in this state in accordance with the provisions of article 44 of 'An Act concerning banking and banking institutions (Revision of 1948)' approved April 29, 1948, (L. 1948 c. 67)" (4) "when acting as sole fiduciary or when acting as co-fiduciary, with the consent of its co-fiduciary or co-fiduciaries. . . Such co-fiduciaries are authorized to give the consent herein required"	(1) fiduciary (2) co-fiduciary	certificates for shares of stock, bonds, debentures, notes or other securities	(1) "nominee shall not have possession of or access to the securities" (2) "securities shall at all times be kept separate and apart from the assets of such bank, trust company, savings bank or national bank" (3) "records of the fiduciary or fiduciaries and all accounts rendered by it or them shall at all times clearly show the ownership of the securities so registered"	no provision	(1) "provisions hereof shall not apply where any will or trust instrument or any order appointing or relating to any fiduciary or fiduciaries prohibits such securities from being registered in the name of a nominee" (2) "corporate fiduciary shall be liable for any loss occasioned by the acts of the nominee with respect to securities so registered"	N.J. Stat. Ann. (1953) §3A:41-3 (same as UFA, §3)

Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>102</sup> MFSTA <sup>103</sup> or Similar Acts
N.M. Stat. Ann. (1953) §§33-3-9, 33-3-20	(same as §§9 and 20 of the Uniform Trusts Act)						N.M. Stat. Ann. (1953) §§33-1-3 (same as UFA, §3)
40 N.Y. Consol. Laws (McKinney, 1949) §25	(1) any bank or trust company (2) "whether alone or jointly with an individual or individuals, may with the consent of the individual fiduciary or fiduciaries, if any, (who are hereby authorized to give such consent)"	(1) trustee of an express trust, or . . . committee of the property of an incompetent person (2) whether alone or jointly with an individual or individuals	stock or other securities	(1) "stock or other securities shall at all times be kept separate and apart from the assets of such bank, trust company or private banker" (2) "records of such bank, trust company or private banker shall at all times show the ownership of any such stock or other securities"	no provision	"bank, trust company or private banker shall be absolutely liable for any loss occasioned by the acts of any nominee of such bank, trust company or private banker with respect to such stock or other securities so registered"	19 N.Y. Consol. Laws Ann. (McKinney, 1957) §359-k (similar to UFA, §3)
	"individual or individuals . . . is and are authorized respectively to direct any bank or trust company incorporated under the law of the state of New York, or any national bank located in this state or any private banker duly authorized by the superintendent of banks of this state to engage in business in this state (who keeps in such business as a private banker a permanent capital of not less than \$250,000) to cause any stock or other securities deposited with such bank, trust company or private banker by such individual or individuals as fiduciary or fiduciaries to be registered and held in the name of a nominee or nominees of such bank, trust company or private banker"	trustee of an express trust, or committee of the property of an incompetent person	any stock or other securities	(1) "bank, trust company or private banker shall not re-deliver such stock or other securities to such individual fiduciary or fiduciaries causing any such stock or other securities to be so registered in the name of a nominee of such bank, trust company or private banker without first causing such stock or other securities to be registered in the name of such individual fiduciary or fiduciaries as such" (2) "any sale of such stock or other securities made by such bank, trust company or private banker at the direction of such individual fiduciary or fiduciaries shall not be construed to be a re-delivery"	.....	"bank, trust company or private banker may make any disposition of such stock or other securities authorized or directed in an order, judgment or decree of any court having jurisdiction thereof"	
N.C. Gen. Stat. (1949) §§36-32, 36-43	(same as §§9 and 20 of the Uniform Trusts Act along with stock)						N.C. Gen. Stat. (1949) §32-4 (same as UFA, §3)

(same as §§9 and 20 of the Uniform Trusts Act except it refers to "a bank . . . as fiduciary" instead of a "trustee" and includes bonds

N.D. Code (Supp. 1957) §§10-18022, 10-18023	(1) "person or any corporation . . . may cause the same to be registered in his or its own name or in the name of a nominee" (2) "corporation acting as one of two or more fiduciaries, with the consent of its co-fiduciary or co-fiduciaries, who are hereby authorized to give such consent, may register a security held by said fiduciaries in the name of its nominee"	executor, administrator, trustee, guardian, conservator or in any other fiduciary capacity	"stock, bond, note, debenture, or any other security or property, the title to which may be registered"	(1) "fiduciary at all times has possession of such security and, if registered in the name of a nominee, before or promptly after such registration, secures from the nominee all such instruments as may be necessary to transfer the same without any further act of such nominee" (2) "security is kept separate and apart from the property held by such person or corporation in his or its own right or in any other fiduciary capacity" (3) "accounts and records of such person or corporation at all times clearly show that such security was held by such person or corporation in such fiduciary capacity"	no provision	"fiduciary shall be liable individually and in his or its own right for any loss resulting to the fiduciary estate because said security was so registered instead of being registered in his or its name as such beneficiary"	N. D. Rev. Code (Supp. 1957) §10-18021 (same as UFA, §3, except applies to "nominee of a fiduciary" as well as a fiduciary and includes securities "to be registered" as well as those "registered")
Ohio Rev. Code Ann. (Page, 1953) §1115.11	(1) "bank or trust company incorporated under the laws of this state" (2) "national bank located in this state" (3) "may . . . register and hold, in the name of such bank, trust company, or national bank, or a nominee thereof" (4) "if when acting as a co-fiduciary it secures the consent of its co-fiduciaries, who are hereby authorized to give such consent"	(1) any fiduciary capacity (2) as sole fiduciary or as a co-fiduciary	any stocks, bonds, or other securities	"if the records of the fiduciaries at all times clearly show the ownership of such securities"	no provision	"corporate fiduciary shall be liable for any loss to the trust or estate resulting from any acts or omissions to act of such corporate fiduciary, and shall be liable for any such loss resulting from the acts or omissions to act of such nominee, in connection with the securities so held by such nominee, to the same extent as if such securities had been held in the fiduciary's own name as fiduciary"	Ohio Rev. Code Ann. (Supp. 1957) §1701.28
Okla. Stat. Ann. (1941) tit. 60, §175.15	(same as §9 of the Uniform Trusts Act) (does not contain the penalty section, §20, of the Uniform Trusts Act)						Okla. Stat. Ann. (1953) tit. 18, §1118 [substantially identical with Cal. Corp. Code Ann. (Deering, 1953) §2411]

Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>102</sup> MFSTA <sup>103</sup> or Similar Acts
Ore. Rev. Stat. (1953) §709.200	"trust company may take in its own name, or in the name of such nominee as it may designate or appoint"	"in the acquisition or investment of trust funds or property"	"bonds, stocks, mortgages, deeds or other securities, or assets, real or personal"		no provision	"upon the satisfaction or conveyance of any trust asset or any investment of trust funds by any trust company, whether such investment or assets are held in the name of such company, individually, or in its name as trustee, or in its name in a specified fiduciary capacity, or otherwise, the instrument of satisfaction or transfer may be executed by the trust company in its own name"	Ore. Rev. Stat. (1953) §709.210 ("no person dealing with such trust company shall be required, authorized or permitted to inquire into such matters, or any of them, except as stated in [Ore. Rev. Stat.] 709.270") (see statute for further provisions)
Pa. Stat. Ann. (Purdon, Supp. 1957) tit. 7, §§819-1108, 819-1109c, 819-1190d	(1) a bank and trust company or a trust company (2) "individual acting as co-fiduciary with a bank and trust company, or trust company, is hereby authorized with respect to investments received, held or made by said bank and trust company, or trust company, and said individual, as co-fiduciaries, to consent to the holding of said investments in the name of a nominee of said bank and trust company, or trust company, to the same extent that said bank and trust company or trust company, as a sole fiduciary, would be authorized to hold such investments in the name of its nominee" (3) may be held in the name or names of the fiduciaries, or in the name of a nominee of such bank and trust company or trust company	(1) fiduciary (2) "co-fiduciary . . . provided the consent of the co-fiduciary or co-fiduciaries, if any, is obtained to such nominee registration" (3) "fiduciary" . . . shall mean an executor, an administrator, or a trustee of a trust, created by will, deed, declaration of trust, court order, or other instrument, a guardian of a minor, or incompetent, or a committee of the estate of a lunatic, or habitual drunkard" (4) co-fiduciary defined in similar terms	"all investments including fractional interests in investments"	"all such investments shall be so designated, upon the records of such bank and trust company or trust company, that the estate to which such investments belong shall be clearly shown upon such records at all times"	no provision	"nothing contained herein shall be construed to authorize any fiduciary to consent to the doing of any act contrary to the directions in regard to investments contained in the will, deed or other instrument under which such fiduciary is acting"	Pa. Stat. Ann. (Purdon, Supp. 1957) tit. 20, §3351 (same as UFA, §3, except applies to "nominee of a fiduciary" as well as a fiduciary and includes securities "to be registered" as well as those "registered" and is subject to §§8-403, which is part of the Uniform Commercial Code) Pa. Stat. Ann. (Purdon, 1954) tit. 12A, §§8-401 to 8-403 (part of the Uniform Commercial Code)

Pa. Stat. Ann. (Pur-  
don, 1950) tit. 20,  
§320.943

(1) "bank and trust company or a trust company incorporated in the Commonwealth"  
(2) "national bank with trust powers having its principal office in the Commonwealth"  
(3) "in the name or names of the trustees or in the name of a nominee of the corporate trustee"  
(4) "trustee serving jointly with a bank and trust company or a trust company incorporated in the Commonwealth, or with a national bank having its principal office in the Commonwealth, may authorize or consent to the corporate trustee having exclusive custody of the assets of the trust and to the holding of such investments in the name of a nominee of such corporate trustee, to the same extent and subject to the same requirements that the corporate trustee, if it were the sole trustee, would be authorized to hold such investments in the name of its nominee"  
(5) "individual trustee may employ a bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, to act as his attorney-in-fact in the performance of ministerial duties, including the safe-keeping of trust assets, and such attorney-in-fact, when so acting, may be authorized to hold such investments in the name

(1) as sole trustee  
(2) "or as co-trustee . . . provided, the consent hereto of the co-trustees, if any, is obtained . . ."

investments or fractional interest in investments

"all such investments shall be so designated upon the records of the corporate trustee that the trust to which they belong shall appear clearly at all times"

no provision

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	of its nominee to the same extent and subject to the same requirements that such attorney-in-fact, if it were the trustee, would be authorized to hold such investments in the name of its nominee"						
R.I.							R.I. Gen. Laws, 1938, c. 116, §92(b) (same as UFA, §3)
S.D. Code (Supp. 1952) §§59.0509, 59.0520	(same as §§9 and 20 of the Uniform Trusts Act)						S.D. Code (Supp. 1952) §6.0703 (same as UFA, §3)
Tenn. Code Ann. (Supp. 1957) §35-325	(same as §9 of the Uniform Trusts Act except that it includes bonds, and the 1957 amendment substitutes "trustees, guardians and other fiduciaries" for "trustees" at the beginning of the section, fiduciary relationship" for "trust" and in other places "fiduciary" for "trustee" (no penalty provision)						Tenn. Code Ann. (1955) §35-204 (same as UFA, §3)
Tex. Civ. Stat. Ann. (Vernon, 1951) art. 7425b-16	(same as §9 of the Uniform Trusts Act except that it includes "property" as well as stock and requires that the nominee either "executes an appropriate stock-power in blank and attaches thereto, or executes a conveyance or assignment of the title to said property" instead of endorsing the stock certificate in blank as provided in the Uniform Act) (no penalty provision)						
Utah Code Ann. (Supp. 1957) §§5-14.1, 7-5-14.2	(1) "state or national bank or trust company, when acting in this state as a fiduciary or a co-fiduciary with others" (2) "may with the consent of its co-fiduciary or co-fiduciaries, if any (who are hereby authorized to give such consent)"	(1) fiduciary (2) co-fiduciary	any investment	(1) "investment shall be in the possession and control of such bank or trust company" (2) "kept separate and apart from the assets of such bank or trust company" (3) "records of such bank or trust company shall at all times show the ownership of any such investment"	no provision	bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered"	Utah Code Ann. (1953) §22-1-3 (substantially identical with the UFA, §3)
Vt. Rev. Stat. (1947) §§8871, 8872	(1) bank (2) "securities jointly held in a fiduciary capacity by a bank and another, individual or corporate, may be registered in the name of a nominee mutually satisfactory to the co-fiduciaries" (3) "fiduciary acting jointly with a bank may authorize and direct in writing such bank to register securities provided herein"	any fiduciary capacity	stocks or other securities	"both legal and equitable ownership of all securities in its possession or subject to its control shall be fully revealed by the bank's records"	no provision	(1) "fiduciary bank shall be absolutely liable for any loss occasioned by the acts of the nominee of such bank with respect to any securities registered in his name" (2) "bank having caused securities to be registered in the name of a nominee as provided herein and wishing or being required by the terms of its fiduciary agreement to	

	(4) "individual or corporate fiduciary may deliver any such securities to a bank as custodian and may authorize and direct in writing such bank to register such securities in the name of a nominee"					deliver them to one legally entitled thereto shall first cause them to be transferred into the name of the one to receive delivery" (3) "sales of any such securities made by a bank pursuant to its fiduciary authority may be completed by delivery of the security, endorsed by the nominee without the necessity of transfer through a joint fiduciary, the trust-creator or the beneficiary"	
Va. Code (1950) §6-103.1	(same as §9 of the Uniform Trusts Act except (does not require the nominee to deposit with the bank a signed statement showing the ownership, nor does it require the nominee to endorse the stock certificate in blank) (no penalty provision)	that it applies to "a bank holding stock as a fiduciary" instead of "a trustee owning stock")					
Wash. Rev. Code (1951) §30.08.170	(1) "trust company incorporated under the laws of this state" (2) "national banking association authorized to act in a fiduciary capacity in this state"	(1) fiduciary (2) either alone or jointly with an individual or individuals (3) "may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent"	any stocks, securities, or other property		no provision	"any fiduciary shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered"	Wash. Rev. Code (1951) §§21.16.010, 21.16.020 (same as UFA, §3 except applies to "nominee of a fiduciary" as well as a fiduciary and includes securities "to be registered" as well as those "registered")
W. Va. Code Ann. (1955) §§3142(25)-3142(29)	(1) "bank or trust company authorized to exercise trust powers under the laws of this State" (2) "may cause . . . to be registered and held in the name of a nominee or nominees of such bank or trust company, or in its own name, without disclosing the fiduciary relationship" (3) "where such bank or trust company is acting jointly with some other individual or individuals, it shall first secure the written consent of such individual fiduciary or fiduciaries which consent such individual fiduciary or fi-	(1) fiduciary (2) co-fiduciary	"stock, bond, debenture, note, warrant, certificate or other security evidencing ownership or interest, either whole or fractional, in fully paid and non-assessable intangible personal property"	"Every such bank or trust company making use of nominee registration as provided in this article shall: (a) At all times maintain such records as may be necessary to show the actual beneficial ownership of the property so held; (b) At all times retain possession and control of such securities or other evidences of ownership which shall be kept separate and apart from the assets of such bank or trust company and assets held in other fiduciary capacities; (c) Secure from such nominee or nominees such endorsements, as-	"no liability for any loss caused by the acts of the nominee of a bank or trust company shall attach to any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, who, in compliance with the directions of any such bank or trust company acting under the provisions of this article, transfers or changes the registration of any such property. The certification of the bank or trust company that it has complied with the provisions of this article shall be prima facie evidence of its compliance so far	(1) "The placing of property in the name of a nominee, nominees, or in the name of the bank or trust company, without disclosure of the fiduciary capacity, shall be deemed to be nominee registration under this article and every such registration shall ipso facto constitute a declaration of trust upon the part of the registered owner so far as the fiduciary and the beneficiaries of the fiduciary status are concerned." (2) "No bank or trust company shall cause or permit the use of its name or the name of	



Statute	To whom Applicable <sup>101</sup>	In what Capacity	Property	Possession and Records	Exoneration of Issuer and Agent	Miscellaneous Provisions	UFA, <sup>102</sup> MFSTA, <sup>103</sup> or Similar Acts
	duciaries are hereby authorized to give"			signments or other writings as may be necessary to effect retransfer of the securities or other evidences of ownership without notice, and such endorsements, assignments or other writings shall be valid and effective as of the date of delivery thereof whether the nominee die before transfer is perfected, or not; (d) Enter into such contracts or agreements with its nominee or nominees as may be necessary to afford full protection to the ownership of its fiduciary account and the beneficiaries thereof; (e) Clearly show in all of its reports and accounts the form of registration under which such securities or evidences of ownership are held"	as any such transfer agent, registrar, corporation, officer or agent of a corporation, or other person, is concerned"	its nominee or nominees for the purpose of registering property to evade, avoid, minimize or relieve itself or any other person, firm or corporation, or the property, from taxation." (3) "Any such bank or trust company which places property in nominee registration under this article shall be absolutely liable in civil actions or suits for any or all loss or damage to its fiduciary account or the beneficiaries thereof occasioned by the acts of any of its nominees, or any of its agents, employees, or other persons acting for it with respect to such property, including reasonable attorney fees." (4) "Any bank or trust company or its officers, employees, nominees or agents placing property in nominee registration in violation of any of the provisions of this article shall be guilty of a misdemeanor, and in addition to civil liability for restitution, shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars."	
Wis. Stat. Ann. (West, 1957) §223.05(2)	(1) "any trust company bank, or any state bank or national banking association authorized to exercise trust powers in this state" (2) "whether alone or jointly with an individual or individuals,	(1) executor, administrator, guardian, testamentary trustee or trustee of any inter vivos trust (2) co-fiduciaries	any stock or other securities	(1) "stock or other securities shall at all times be kept separate and apart from the assets of such bank or trust company bank" (2) "records of such bank or trust company bank shall at all times	no provision	(1) unless prohibited by the terms of the trust instrument (2) "bank or trust company bank shall be absolutely liable for any loss occasioned by the acts of any nominee of such bank or trust	Wis. Stat. Ann. (West, 1957) §180.85 Wis. Stat. Ann. (West, 1957) §112.01(4) (same as UFA, §3)

	may with the consent of the individual fiduciary or fiduciaries, if any (who are hereby authorized to give such consent)"			show the ownership of any such stock or other securities"		company bank with respect to such stock or other securities so registered"
.....	(1) "any bank, individual or individuals . . . is and are authorized respectively to request any bank or trust company bank incorporated under the laws of the state of Wisconsin or any national bank located in this state to cause any stock or other securities deposited with such bank or trust company bank by such individual or individuals as fiduciary or fiduciaries to be registered and held in the name of a nominee or nominees of such bank or trust company bank"	acting as executor, administrator, guardian, testamentary trustee or trustee of any inter vivos trust	any stock or other securities	(1) "bank or trust company bank shall not redeliver such stock or other securities to such individual fiduciary or fiduciaries causing any stock or other securities to be so registered in the name of the nominee of such bank or trust company bank without first causing such stock or other securities to be registered in the name of such individual fiduciary or fiduciaries as such" (2) "sale or transfer of such stock or other securities made by such bank or trust company bank at the direction of such individual fiduciary or fiduciaries shall not be construed to be delivery"	.....	(1) unless prohibited by the terms of the trust instrument (2) "bank or trust company bank or any nominee or nominees in whose name such securities shall be registered shall be deemed to have fully discharged its, his or their responsibilities if any such securities are sold or transferred in accordance with the direction of individual fiduciary or fiduciaries making such deposit, and the proceeds of such sale or transfer are accounted for and delivered to such individual fiduciary or fiduciaries" (3) "bank or trust company bank may make any disposition of such stock or other securities authorized or directed in an order or decree of any court having jurisdiction"
Wyo.						Wyo. Comp. Stat. Ann. (1945) §8-103 (same as UFA, §3)