

15-5-1003. Damages in absence of breach.

(a) A TRUSTEE IS ACCOUNTABLE TO AN AFFECTED BENEFICIARY FOR ANY PROFIT MADE BY THE TRUSTEE

ARISING FROM THE ADMINISTRATION OF THE TRUST, EVEN ABSENT A BREACH OF TRUST.

(b) ABSENT A BREACH OF TRUST, A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR A LOSS OR

DEPRECIATION IN THE VALUE OF TRUST PROPERTY OF FOR NOT HAVING MADE A PROFIT.

NCCUSL comments:

Subsection (a)

- A trustee should not be allowed to use the trust as a means for personal profit other than for routine compensation earned.
- Not all cases of personal profit involve a breach of trust. Example: receipt by the trustee of a commission or bonus from a third party for actions relating to the trust's administration.
- Subsection (a) is based on R2d Trusts 203 and also R3d Trusts 204.

Subsection (b)

- A trustee is not an insurer. This section is similar to R2d Trusts 204.

The *Heller* court held that in reviewing investments made by a trustee, a court may not use the advantage of hindsight. Subsection (b) is consistent with this.

2005 UTC committee recommended adopting 1003 as is.

