

## [Restat 2d of Trusts, § 204](#)

[Restatement 2d and 3d, Trusts - Rule Sections](#) > [Restatement 2d Rules \(Superseded by the Restatement 3d Rules\)](#) > [Chapter 7- The Administration of the Trust](#) > [Topic 4- Remedies of the Beneficiary and Liabilities of the Trustee](#)

### **§ 204 Non-Liability For Loss in the Absence of a Breach of Trust [as Revised]**

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The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property, or for a failure to make a profit, not resulting from a breach of trust.

#### **COMMENTS & ILLUSTRATIONS**

##### **Comment:**

*a. Loss or depreciation.* The trustee is not liable for a loss or depreciation in value of the trust property which does not result from a violation of his duty as trustee. Thus, if he exercises reasonable care and skill to preserve the trust property and does not otherwise commit a breach of trust, he is not liable for the loss of the trust property. See § 176. If, for example, the subject matter of the trust is stolen from him without his fault, he is not liable. Similarly, he is not liable if he makes an investment in property which depreciates in value, if he was not guilty of a breach of trust in making or in continuing the investment. The trustee is not liable if he makes a deposit in a bank and the bank fails, if he was not guilty of a breach of trust in making or in continuing the deposit. See § 180.

*b. Failure to make profit.* A failure to make a profit which does not result from a breach of trust does not subject the trustee to liability. Thus, if the trustee is authorized but is not under a duty to invest in certain securities, he is not liable for failure to make the investment although the securities appreciate in value.

### **Cross Reference**

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Digest System Key Numbers:

Trusts 218(1), 234

ALR Annotations:

Liability of trustee for payments or conveyances under a trust subsequently held to be invalid. 77 ALR4th 1177.

Trustee's liability for payments of trust funds to one whose interest has terminated. 48 ALR2d 1252.

Validity, construction, and effect of provision of trust instrument relieving trustee from duty to account. 171 ALR 631.

Remedies in event of executor's or testamentary trustee's delay in exercise of power to sell real estate conferred by will. 132 ALR 1473.

Effect of beneficiary's consent to, acquiescence in, or ratification of, improper investments or loans (including failure to invest) by trustee or other fiduciary. 128 ALR 4.

Liability of trustee, guardian, executor, or administrator for loss of funds as affected by failure to obtain order of court authorizing investment, in absence of mandatory statute. 116 ALR 437.

Liability of trustee or other fiduciary for loss on investment as affected by the fact that it was taken in his own name without indication of fiduciary capacity. 106 ALR 271, supp 150 ALR 805.

Liability of executor, administrator, or trustee, or his bond, for loss of funds after final order for distribution. 100 ALR 1126.

Liability of trustee, guardian, executor, or administrator for loss of funds invested, as affected by order of court authorizing the investment. 88 ALR 325.

Restat 2d of Trusts, § 204

Provisions of will or other trust instrument exempting trustee from or limiting his liability. 83 ALR 616, supp 158 ALR 276.

Liability of trustee for losses due to delay in selling securities. 80 ALR 1124.

Liability of executor, administrator, or trustee and his sureties for depreciation in value of corporate stock or other corporation securities held by estate or trust, because of his conduct, for which he is directly responsible to the corporation. 62 ALR 563.

Liability of trustee for interest on loan or investment made by him. 51 ALR 1263.

Restatement of the Law, Second, Trusts

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