Washington and Lee Law Review

Volume 7 | Issue 2 Article 4

Fall 9-1-1950

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# STOCK TRANSFERS UNDER THE UNIFORM FIDUCIARIES ACT AND NOMINEE STATUTES

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At an early date the courts of this country developed the theory that a corporation, in effecting transfer of shares of stock on its books, acts in a fiduciary capacity and must protect beneficial or equitable interests in the stock.[1] The duty of the corporation to the beneficial owner is to exercise due care to determine that the transfer of the stock does not constitute a breach of trust by the legal owner. One outstanding authority has appropriately stated that under the existing law the question of what is due care is a difficult one to determine, and hence, a transfer agent must, in many cases, impose requirements on the transfer of stock which seem beyond reason.[2]

When a trustee submits corporate stock for transfer the original or a guaranteed copy of the trust instrument and all amendments thereto must be submitted for examination by the transfer agent of the corporation so that the transfer agent may ascertain and have in its files evidence that the transfer is not in violation of rights of the beneficial owners.[3]

If an executor submits stock for transfer a court certified copy of the will must be submitted in order that the corporation may be assured that the transfer is in accordance with the terms of the will and the interests of all beneficiaries.[4] Even though a court having jurisdiction of the estate of the decedent orders and authorizes the executor to make transfer to named persons, the corporation, nevertheless, usually requires a certified copy of the will. In theory, constructive knowledge of the terms of the will might be imputed to the corporation and it be held liable to the beneficiaries under the will if it or its transfer agent were to effect a transfer contrary to the terms of the will and rights of the beneficiaries.[5]

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[1]Christy and McLean, The Transfer of Stock (2d ed. 1940) § 2. For a discussion of securities transfer and transfer agents, see 19 Fletcher, Corporations (1933) § 8932, and Christy and McLean, §§ 279-285.

[2]Christy and McLean, The Transfer of Stock (2d ed. 1940) § 41.

[3]Christy and McLean, The Transfer of Stock (2d ed. 1940) § 200.

[4]Christy and McLean, The Transfer of Stock (2d ed. 1940) § 86.

[5]In West v. American Telephone & Telegraph Co., 54 Ohio App. 369, 7 N. E. (2d) 805, 807 (1936), the corporation, in reliance upon a journal entry directing

In the relatively simple case of a distribution of stock by an executor, the transfer agent may require the executor to submit a recently dated certificate from the court having jurisdiction of the estate showing his appointment and present incumbency, a court certified copy of the will under which he is acting, a certified copy of a court order authorizing the distribution if required by local statute, an assignment of the stock certificate by the executor with his signature guaranteed by a bank, broker or trust company and inheritance tax waivers required by applicable statutes.[6]

If stock passes through two estates, that is, if the stock is registered in the name of A who bequeathed it to B, and B subsequently dies leaving C and D as his sole heirs-at-law and next-of-kin, estate papers may be required on both estates before new certificates are issued to C and D. Difficulties and burdens of transfer are further increased where testamentary trusts or powers of appointment are present as the beneficial interests of all *cestuis* must then be recognized and protected.

In recent years, in recognition of the difficulties encountered by fiduciaries and of the burden imposed by law on a corporation where it has notice of beneficial interests in its stock, so-called exemption statutes have been adopted in a majority of the states[7] with an idea

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distribution transferred stock to a beneficiary individually and without limitations in the inscription although the will submitted in support of the transfer provided that the beneficiary should have only a life estate. The beneficiary subsequently sold the stock, and in an action by the remaindermen against the corporation, the court said that since the corporation was aware of the contents of the will, it was "...put upon its guard, and in issuing new certificates of stock did so at its peril, if it did not issue the same in accordance with the rights of the interested parties thereto." This case may be distinguished from Middendorf v. Kansas Power & Light Co., 166 Kan. 610, 203 P. (2d) 156 (1949), wherein no will was submitted, and on somewhat similar facts the corporation was not held liable. Although the Kansas case may be representative of a trend, transfer agents in the East are cautious in effecting transfer if a copy of the will is not submitted.

See also: Seymour v. National Biscuit Co., 107 F. (2d) 58, 126 A. L. R. 1288 (C. C. A. 3d, 1939); Rock Island Bank & Trust Co. v. Rhoads, 353 Ill. 131, 187 N. E. 139 (1933).

[6]Inheritance tax statutes are verbose and confusing. They generally provide that no corporation shall transfer stock belonging to or standing in the name of a decedent without the consent of the taxing authorities. The statutes are generally of two types: those providing (1) that no corporation shall transfer stock belonging to a resident decedent, and (2) that no corporation organized under the laws of that state shall transfer stock belonging to any decedent, without the requisite consent. It follows that the statutes of both the state of the domicile of the decedent and the state of incorporation of the corporation whose shares are being transferred must be examined and their requirements met.

[7]Exemption statutes in the form of Section 3 of the Uniform Fiduciaries Act have been adopted in the following states and the District of Columbia: Alabama,

of facilitating transfer of corporate stock. The purpose of these statutes is to relieve the corporation from the duty of investigating a transfer of its stock where it has no notice that the transfer is a breach of trust by the fiduciary and the corporation does not act in bad faith. Of course, such statutes do not relate to a transfer by an unauthorized person. It has been said that these statutes make applicable the English law which has provided from an early period that no notice of any trust, express, implied or constructive, shall be receivable by the registrar (transfer agent in the United States), in the case of companies registered in England.[8] The practice under the English statute is to enter no notice of any trust on the books of the corporation.

The form of exemption statute which has been adopted in most states, including Virginia,[9] is Section 3 of the Uniform Fiduciaries Act, which provides as follows:

> "If a fiduciary in whose name are registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligation, and is liable for registering such transfer only where registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith."[10]

While there are some variations,[11] the statutes fundamentally provide that any transfer of corporate stocks may be made by a fiduciary having the shares registered in his name, and the corporation is not duty bound to inquire into possible beneficial interests or equities. Relief is thus, in theory, given corporations and their

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Arkansas, Colorado, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, Washington, Wisconsin and Wyoming. Similar or modified statutes have been adopted in California, Delaware, Kentucky, Massachusetts, and Ohio.

[8]Companies Act of 1948, § 117, first adopted by Companies Act of 1845, § 20.

[9]Those states which have adopted the Act are listed in note 7, supra. The Virginia statute is Virginia Code Ann. (Michie, 1950) § 13-105.1.

[10]9 Uniform Laws Annotated (Miscellaneous Acts) 303.

[11]The states of Maine, Pennsylvania, and Washington have extended their statutes to include a fiduciary in whose name are to be registered shares. Thus, transfer may be effected without first transferring the shares into the name of a fiduciary. See also note 7, supra.

transfer agents from the necessity of making inquiry, examining wills, trusts instruments and other documents pertinent to the fiduciary relationships, and from questioning a transfer by a fiduciary where there is no actual knowledge of a breach of trust, or knowledge of such facts that the action of transferring amounts to bad faith.

While an exemption statute considered alone may seem to afford complete protection to a corporation acting in good faith, it is often difficult to determine whether the statute governs and for that reason corporations have been reluctant to rely upon the various statutes. This difficulty may arise by reason of the corporation being incorporated under the laws of one state, the fiduciary acting in another state and the transfer agent for the stock acting in still a third state. The adoption of the statute in one state and its absence in another presents the problem of whether its protection is afforded the corporation. No court has yet decided this jurisdictional question, and in view of the potentiality of conflicting laws there are four possibilities which must be considered.

> "*First,* the situs of the trust or the fiduciary relationship. There seems to be no sound reason why an exemption statute in this jurisdiction should govern the transfer of stock by the corporation. Such jurisdiction may confer or govern the powers which the fiduciary exercises and the rights of the equitable owner against the fiduciary, but an exemption statute has nothing to do with these matters. It does not change the relationship or status as between the equitable owner and the fiduciary.
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> "*Second,* the place where the assignment and delivery of the certificate by the fiduciary takes place. This is the place where the fiduciary commits the breach of trust in which the corporation participates by recognizing the assignment and delivery and making a transfer on the books or by permitting a registration by the fiduciary which enables him to commit the breach of trust. It should be noted, however, that the exemption statutes do not relate to the transaction between the fiduciary and the assignee of the certificate and there is no exemption in favor of the assignee. The equitable owner may pursue the assignee, even though he may not be able, because of an exemption statute, to pursue the corporation. The Uniform Stock Transfer Act and the decisions which merge the stock in the certificate do not change the situation, as such merger affects the transaction between the assignor and the assignee of the certificate, and the law of the domicile of the corporation still governs the transaction as between the corporation and the holder of the certificate. It is concluded, therefore, that an exemption statute in the jurisdiction where the

assignment and delivery of the certificate by the fiduciary takes place is no protection to a corporation domiciled in another jurisdiction.

"*Third,* the domicile of the corporation. This is the jurisdiction which controls the transfer on the books and which directs the method in which such transfer may be made. If the transfer books are kept at the domicile of the corporation and the stock is transferred and the new certificate is issued in such jurisdiction, there would seem to be no question as to the application of the exemption statute in that jurisdiction. A difficult question is presented, however, where the stock is transferred on the books and a new certificate is issued by a transfer agent outside the domicile of the corporation. The question is whether a corporation domiciled in State 'A,' which has an exemption statute, is protected by the statute where the stock is transferred on the books and a new certificate is issued by its transfer agent in State 'B,' which has no exemption statute. The answer to this question depends somewhat on the answer to the question raised by the fourth possibility.

"*Fourth,* the jurisdiction where the stock is transferred on the books and the new certificate is issued. If this jurisdiction is also the domicile of the corporation, then there is no question. Suppose, however, that the stock is transferred on the books and the new certificate is issued by a transfer agent in State 'A,' which has an exemption statute, and the corporation is domiciled in State 'B,' which has no exemption statute. Is the corporation protected in such case? This is the converse of the question presented under the third possibility."[12]

Until the Uniform Fiduciaries Act or similar statutes have been adopted in all states or until the courts have determined the jurisdictional application of such statutes, a fiduciary handling a large estate will receive little comfort or relief from exemption statutes alone. In some cases, however, a fiduciary handling a small estate or a large estate holding stock in only a few corporations may find that exemption statutes have been adopted in all the states involved in his particular transfer. For example, a Virginia fiduciary holding in his name as fiduciary stock of a corporation incorporated under the laws of a state having the Uniform Fiduciaries Act, which stock is transferable on the books of the corporations in New York, might proceed under the exemption statutes as such statutes have been adopted in all the states concerned. Similarly, if all four aspects to be considered are situated in Virginia, the benefits of the Act would be available.

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[12]Christy and McLean, The Transfer of Stock (2d ed. 1940) § 232.

Ordinarily it is a relatively easy matter to have stock transferred into the fiduciary's name; a certificate evidencing his appointment and necessary inheritance tax waivers are the usual requirements. And if the fiduciary has his eye on the applicable exemption statute provisions he will not impart to the corporation or its transfer agent any knowledge of his fiduciary obligations. Too often the corporation or its transfer agent is put on notice of the fiduciary's obligations by a letter of inquiry or by the fiduciary sending in a copy of the will or trust instrument or court order under which he is acting. It has often been said that large transfer agents are too cautious and in many cases exercise suspicious watchfulness. It can also be said that in many cases the fiduciary is too careless and imparts too much knowledge to the transfer agent. In such a case the transfer agent cannot at a later date close its eyes to such notice, particularly if such notice imparts any knowledge of a possible breach of trust or failure to comply with fiduciary obligations, for even with protective legislation a transfer agent must exercise care in transferring stock in reliance upon an assignment by a fiduciary.

In connection with the problem of a fiduciary taking advantage of the provisions of the statute, an important case to be considered is *Harris v. General Motors Corporation*.[13] It appeared in that case that a duly appointed executor presented stock together with the usual formal documents to the defendant corporation and requested that the stock be transferred to the plaintiffs. Since the plaintiffs were not named in the will, the corporation requested the facts of any sale, whereupon the executor replied stating that the transfer represented a sale of stock at 56 3/8, the then market price. The corporation then advised the executor that it would complete the transfer upon receipt of his affidavit showing that the stock had been sold to the plaintiff for cash at 56 3/8 per share and that the proceeds were paid into the estate for its purposes. The executor then delivered to the corporation his affidavit stating that said stock had been sold to the plaintiffs at a price of more than $20 per share. Upon the refusal of the defendant to effect transfer as requested, action was brought to compel transfer, for injunctive relief and for damages. In denying relief, the court said:

> "In making the transfer of stock under Section 359-k [Fiduciaries Act] the transfer agent is not liable for damages arising out of a breach of fiduciary obligation unless such agent had

[13] 263 App. Div. 261, 32 N. Y. S. (2d) 556 (1942), aff'd 288 N. Y. 691, 43 N. E. (2d) 84 (1942).

> actual knowledge of such breach or unless the transfer was made in bad faith. While Section 359-k does not bind the transfer agent to make inquiry as to the facts of the sale, it does not prohibit the agent from making the inquiry so as to protect the agent from the imputation of actual knowledge of a breach of fiduciary obligation in the making of the sale or * * * transfer. While the executor in this instance could have ignored the request for information he did not choose to do so. Having undertaken to supply the requested information, it was incumbent upon him to state the facts fully and fairly. This he did not do. This he refused to do."[14]

One can readily see that even though the applicability of the exemption statute is resolved, the major fear confronting the transfer agent is that there is a possible imputation to it of knowledge of a proposed transfer by the fiduciary in breach of his obligation. The knowledge of a fiduciary obligation which the transfer agent received from documents in its files and through the handling of other transactions might be said to be constructive knowledge of a fiduciary obligation for purposes of a later transaction in which supporting documents are not required.[15] A question is then presented as to whether this type of knowledge constitutes such notice of a fiduciary obligation that a transfer in disregard of it would constitute "bad faith" as defined by the statute or whether this type of knowledge would fall within the "actual knowledge" category of the statute.

Although there have been no cases decided thereunder, it cannot be denied that any holding which would make a transfer agent liable for what it constructively knows through its files or previous examination of documents would to a large extent defeat the purpose of Section 3 of the Uniform Fiduciaries Act. The aim of the section is to promote negotiability by removing from a corporation whose stock is being transferred the burden that has been placed upon all corporations by the courts of carrying on a time-consuming investigation of transfers by fiduciaries. And, the cases in which large transfer agents do have at least constructive knowledge of the extent of the fiduciary's obligation could constitute a large percentage of the cases where stock is to be transferred from the name of a fiduciary of a large estate. In one important case, *Stark v. National City Bank*,[16] the

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[14]263 App. Div. 261, 262, 32 N. Y. S. (2d) 556, 558 (1942).

[15]In Marbury v. Ehlen, 72 Md. 206, 19 Atl. 648 (1890), stock was transferred from decedent's name to trustees under the will. Fourteen years later, there was a transfer in breach of trust, and the corporation was held liable for making the transfer on the ground that, once having had notice of the will, it was charged with notice of its contents from then on.

[16]278 N. Y. 388, 16 N. E. (2d) 376 (1938).

court remarked as follows concerning the "knowledge" provisions of the Act:

> "The defendants have dealt with a fiduciary in the same manner as they dealt with other stockholders. They were strangers to the estate. The only duty they owed to it was to refrain from interference with its assets in a manner which they knew or should have known might cause injury to the estate. Conflicting considerations of public policy enter into the rule or measure of responsibility which the courts impose upon third parties who deal with a faithless or even imprudent fiduciary. In all jurisdictions third parties are held responsible for loss caused to an estate by transactions with a fiduciary in which they participated with actual knowledge that the fiduciary was committing a breach of trust. In England the courts have hesitated to impose liability upon third parties dealing with a fiduciary in the absence of such actual knowledge of the breach of trust or conduct amounting to bad faith. The courts there have recognized and have given weight to the fact that a rule of responsibility based on notice or even constructive knowledge would to some degree hamper ordinary commercial transactions and delay the legitimate transfer of securities by fiduciaries.
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> "In this country, in most jurisdictions, third parties who knowingly deal with a fiduciary may at times be held liable for loss caused to the estate where there is notice that the fiduciary may be committing a breach of trust.
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> "In those jurisdictions of this country which have adopted the Uniform Fiduciaries Act, the measure of responsibility, at least in cases which come within the purview of that act, is restricted as in England. By Chapter 344 of the Laws of 1937 the Legislature added article 23-B to the General Business Law (Cons. Laws, Ch.20). The note of the Law Revision Commission states that the purpose of the article 'is to expedite the transfer by fiduciaries with title, relieving trust estates from delay resulting from the rule imposing a stringent duty of investigation upon corporations registering transfer.' Section 359-j of that article is identical with section 3 of the Uniform Fiduciaries Act."[17]

In that case, however, there was absence of not only actual knowledge but of constructive knowledge as well so that it was unnecessary for the court to consider the question of whether constructive knowledge would constitute "bad faith" or fall within the "actual knowledge" provision of the statute.

It would seem that a reasonable interpretation of the "knowledge" provisions of the Act warrants the conclusion that a transfer agent

[17]278 N. Y. 388, 400, 16 N. E. (2d) 376, 381 (1938).

should be held liable for effecting a transfer which breaches fiduciary obligations only when such transfer agent has actual knowledge of the breach through information received in connection with the particular transfer, and not where such knowledge is received in connection with some other transaction.[18] Such an interpretation would also warrant imposing liability on the transfer agent only when it had actual notice of such facts concerning the particular transfer that its action constituted bad faith. At least one case decided under another section of the Uniform Fiduciaries Act has stated that the standard of due care or negligence and the doctrine of constructive notice in respect of bank deposits of fiduciary funds finds no recognition in the Act.[19] This interpretation also appears in other cases.[20] It cannot be forgotten, however, that the courts are accustomed to thinking in terms of a high standard of care on the part of a corporation and its transfer agent. This pattern of judicial thinking cannot be expected to change overnight, and consequently, it cannot be expected with any certainty that Section 3 of the Act will be given a uniform liberal interpretation favoring corporations.[21]

In view of the difficulties which are encountered when transfers are contemplated pursuant to the Act, many fiduciaries have resorted to the use of so-called nominee statutes. The application of nominee statutes, which have been adopted in a majority of the states, affect both the scope and application of the exemption statutes, and can be best explained by a hypothetical case.

The First National Bank holds stock as executor of the will of John Jones. Since it might be advisable to sell the shares without delay, it would be to the advantage of the bank to hold the stock

[18]But see Marbury v. Ehlen, note 15, supra, decided before the adoption of the Act, wherein it was held that notice once given continues indefinitely.

[19]New Amsterdam Casualty Co. v. National Newark & Essex Banking Co., 13 N. J. Misc. 171, 175 Atl. 609, 613 (1934), decided under Section 7 of the Uniform Fiduciaries Act, deals with the liability of banks to beneficiaries for losses resulting from fiduciary deposits in the name of the fiduciary.

[20]Union Bank & Trust Co. v. Girard Trust Co., 307, Pa. 488, 161 Atl. 865 (1932); Davis v. Pennsylvania Co. for Insurance on Lives and Granting Annuities, 337 Pa. 456, 12 A. (2d) 66 (1940).

[21]The problems of constructive notice, and that of actual knowledge as well, are resolved by the Ohio statute (Ohio Gen. Code, § 8623-33, as amended 1949), which provides that a corporation shall incur no liability if it treats any person in whose name shares or other securities stand of record on its books as the absolute owner thereof, with full competency, capacity and authority to exercise any and all rights of ownership thereof irrespective of any knowledge or notice to the contrary. This statute, which is the broadest from the point of view of a transfer agent, is discussed in Pirtle, The New Ohio Securities Transfer Statute and Conflict of Laws (1941), 22 Ohio Op. 539.

registered in a street name, that is, in an individual or partnership name with no mention of the fiduciary relation in the inscription on the face of the certificate. This form of registration would dispense with the necessity of furnishing estate papers in support of a transfer. For this purpose and within the terms of the statute, First National Bank organizes Finbak Co., a partnership composed of officers and employees of the bank. With the stock registered in the name of "Finbak Co.," notice of the fiduciary relationship is no longer carried on the face of the stock certificate, and the bank may sell or distribute the stock without submitting to the transfer agent any estate papers. It should be noted, however, that nominee statutes usually impose liability on the fiduciary bank for any loss resulting from the use of a nominee.

Most bank nominees are partnerships composed of officers and employees of the bank, and although the validity of nominee partnership agreements under the Uniform Partnership Act has been questioned, it seems in the light of Federal decisions[22] and the nominee statutes that such an agreement is valid for the purposes intended even though it might be said to be organized for nonprofit purposes. It is generally considered that a partnership nominee is preferred over an individual or corporate one, as in the event of death, estate papers and inheritance tax waivers might be required to support a transfer from the name of a deceased individual nominee, and corporate resolutions and evidence of authority of the assigning officer might be required for transfer from the name of a corporate nominee. Where stock is registered in the name of a partnership an assignment in the partnership name is usually acceptable to the transfer agent without a further showing of the authority of the assigning partner.

The Virginia nominee statute, which is similar to those in other states, provides as follows:

> "A bank holding stock as fiduciary may hold it in the name of a nominee without mention of the trust in the stock certificate or stock registry book. A fiduciary registering stock in the name of a nominee as herein permitted shall (1) clearly show upon its trust records the ownership of the stock by the fiduciary and facts regarding its holding, and (2) shall provide that the nominee shall not have possession of the stock certificate nor access thereto except under the immediate supervision of the fiduciary. The fiduciary shall be personally liable for any

[22]Munro v. Huber, 109 F. (2d) 97 (C. C. A. 2d, 1940).

loss to the trust resulting from any act of such nominee in connection with stock so held."[23]

This statute is limited to Virginia banks holding stock as a fiduciary. Others are not so broad, permitting the use of a nominee only by a bank acting as a trustee;[24] thus in these few jurisdictions a bank acting as executor, administrator or guardian is not included within the provisions of the statute. Generally the nominee statutes do not extend to an individual fiduciary acting alone.[25] However, several states[26] have adopted the Uniform Trusts Act[27] which authorizes any trustee to hold stock in the name of a nominee. The New York and Wisconsin statutes among other things authorize designated individual fiduciaries to use the nominee of a bank under a custodian arrangement.[28] Other statutes authorize an individual fiduciary to consent to the use of the nominee of its co-fiduciary bank.[29]

Under the authority granted by the spreading nominee statutes many banks have in the past decade adopted a practice of registering in the name of a nominee of the bank all stock held by the bank in a fiduciary capacity. Partly because of this practice and partly in reliance upon the Uniform Fiduciaries Act, several large banks and trust companies in New York City, acting as transfer agents, have adopted a practice of effecting transfer to a bank's nominee without requiring many of the usual supporting documents to show that there is no prohibition against the use of a nominee. At least one bank will effect such a transfer of stock registered in the name of a bank as fiduciary in reliance upon a satisfactory assignment and a certification by the fiduciary bank requesting that the transfer be made without furnishing supporting documents, warranting the propriety of the transfer and agreeing that if the Uniform Fiduciaries Act does not afford protection, the fiduciary bank will fully indemnify and hold harmless the corporation or its transfer agent for any loss

[23]The Virginia statute is Va. Code Ann. (Michie, 1950) § 6-103.1. Other states which have similar statutes are Arkansas, California, Delaware, Idaho, Indiana, Kentucky, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Washington, West Virginia, and Wisconsin.

[24]Connecticut, Florida, Louisiana, Nevada, Oklahoma, South Dakota and Texas.

[25]Only the Nebraska statute authorizes an individual acting alone in a fiduciary capacity to use a nominee. See also note 28, infra.

[26]Louisiana, Nevada, Oklahoma, and South Dakota. The Florida and Texas statutes provide for nominee use by individual trustees under certain conditions.

[27]9 Uniform Laws Annotated (Miscellaneous Acts) 717.

[28]New York Surrogate's Court Act, § 231, New York Personal Property Law, § 25, and Wisconsin Statutes, §223.05 (2). Also Mass. Gen. Laws, c. 167 § 54, Pa. Fiduciaries Act of 1949 §§ 511, 943.

[29]A typical statute of this nature is New York Surrogate's Court Act, § 231.

or cost which either may suffer by reason of effecting the requested transfer. If the stock is registered in the name of a decedent and the local statute authorizes a bank to use a nominee, some transfer agents will effect transfer to the bank's nominee without examining a certified copy of the will of the decedent.

A certificate in the name of the nominee of a fiduciary is in good form for transfer without any supporting legal papers. And certainly it cannot be said that the transfer agent acted in bad faith or with knowledge of a breach of trust when it effected transfer at the instance of the fiduciary bank and in reliance upon the applicable exemption statutes and the nominee statute of the state where the fiduciary bank was acting. This procedure puts some added burdens on the fiduciary bank but removes the transfer agent one step further from a possible transfer in breach of trust, since no matter what happens to the stock certificate at some future time it cannot be said that a transfer to the bank's nominee in reliance on the nominee's statute is in itself a transfer in breach of trust.

It does not seem likely that a large number of states will adopt statutes authorizing all individual fiduciaries acting alone to use nominees. It should be noted, however, that most nominee statutes are construed to authorize the use of a nominee where an individual is acting with a bank, and a person planning a trust or preparing a will can take advantage of the nominee statute by designating a bank as one of the fiduciaries. Through years of experience banks have learned the answers to many fiduciary problems and in considering that fact the person contemplating the use of a bank as fiduciary should also consider the saving in paper work and time in obtaining certified copies of documents that may be effected by taking advantage of the provisions of the nominee statute.

A further point is that if legislators should adopt statutes similar to New York's, the advantages of using a nominee would be available to individual fiduciaries who wished to use banking facilities.[30] In many instances an individual fiduciary finds it necessary to use a bank for the safe keeping of securities, but outside of Massachusetts, New York, Pennsylvania and Wisconsin he has no statutory authority to use the bank's nominee. In some instances such authority might not exist though given by will or trust instruments.[31]

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[30]See note 28, supra.

[31]In Matter of Harris, 169 Misc. 943, 9 N. Y. S. (2d) 508 (1938), decided before the present Section 231 of New York Surrogate's Court Act was adopted, it was held that a testator could not by his will override the statutory provisions requiring that stock belonging to estates be kept separate and clearly registered to identify the trust.

While the Uniform Fiduciaries Act and similar exemption statutes have been in effect for a number of years, the absence of litigation and resulting case law indicates that until nominee statutes came into prominence few large transfer agents were willing to rely upon them. Now that the nominee statutes have opened the door partially, great possibilities exist in the field for new statutes for saving time, duplication of efforts and expensive paper work. But until the humps created by early case laws and ridges relative to the "knowledge" interpretation of the Act have been further smoothed by court decisions or legislative action, neither will transfer agents be relieved from the onerous and time consuming burden that has been placed upon them, nor will the fiduciary be able expeditiously to effect transfer of corporate stock without seemingly unnecessary burdens and meaningless technicalities.