

### **386A.6-110 Action by beneficial owner.**

- (1) A beneficial owner may maintain a direct action against a statutory trust or a trustee to redress an injury sustained by, or to enforce a duty owed to, the beneficial owner if the beneficial owner can prevail without showing an injury or breach of duty to the trust.
- (2) A beneficial owner may maintain a derivative action to redress an injury sustained by or enforce a duty owed to a statutory trust if:
  - (a) The beneficial owner first makes a demand on the trustees, requesting that the trustees cause the trust to bring an action to redress the injury or enforce the right, and the trustees do not bring the action within a reasonable time; or
  - (b) A demand would be futile.
- (3) A derivative action on behalf of a statutory trust may be maintained only by a person that is a beneficial owner at the time the action is commenced and who:
  - (a) Was a beneficial owner when the conduct giving rise to the action occurred; or
  - (b) Acquired the status as a beneficial owner by operation of law or pursuant to the terms of the governing instrument from a person that was a beneficial owner at the time of the conduct giving rise to the action occurred.
- (4) In a derivative action on behalf of the statutory trust, the complaint must state with particularity:
  - (a) The date and content of the plaintiff's demand and the trustees' response to the demand; or
  - (b) The reason the demand should be excused as futile.
- (5) The derivative proceeding shall not be maintained if:
  - (a) It appears that the person commencing the proceeding does not fairly and adequately represent the interests of the beneficial owners in enforcing the rights of the statutory trust; or
  - (b) The person commencing the proceeding ceases to be a beneficial owner in the statutory trust.
- (6) Except as otherwise provided in subsection (10) of this section:
  - (a) Any proceeds or other benefits of a derivative action on behalf of a statutory trust, whether by judgment, compromise or settlement, are the property of the trust and not of the plaintiff; and
  - (b) If the plaintiff receives any proceeds or other benefits, the plaintiff shall immediately remit them to the trust.
- (7) A derivative action on behalf of a statutory trust may not be voluntarily dismissed or settled without the court's approval.
- (8) The proper venue for a direct action under subsection (1) of this section or a derivative action in which the action is brought solely against one (1) or more trustees shall be an appropriate court.
- (9) A beneficial owner associated with a series, if the series may pursuant to KRS 386A.4-010(4) be sued in its own name, may bring an action pursuant to

subsection (1) or (2) of this section against only that series, the trustees associated with the series, or both. If brought only against a series or the trustees associated with the series, any demand made pursuant to subsection (2)(a) of this section shall be upon the trustees associated with the series.

- (10) On termination of the proceeding brought pursuant to this section, the court may:
- (a) Require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding to the extent it finds that the proceeding or any portion thereof was commenced without reasonable cause or for an improper purpose; and
  - (b) Require the statutory trust, or as appropriate a series thereof, to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the statutory trust or to a series thereof.

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 193, sec. 23, effective June 29, 2017. --  
Created 2012 Ky. Acts ch. 81, sec. 55, effective July 12, 2012.