§ 79-a. Misappropriation of funds of trust. 1. Any trustee of a trust arising under this article, and any officer, director or agent of such trustee, who applies or consents to the application of trust funds received by the trustee as money or an instrument for the payment of money for any purpose other than the trust purposes of that trust, as defined in section seventy-one, is guilty of larceny and punishable as provided in the penal law if

(a) such funds were received by the trustee as owner, as the term "owner" is used in article three-a of this chapter, and they were so applied prior to the payment of all trust claims as defined in such article three-a, arising at any time; or

(b) such funds were received by the trustee as contractor or subcontractor, as such terms are used in article three-a of this chapter, and the trustee fails to pay, within thirty-one days of the time it is due, any trust claim arising at any time; provided, however, that if the trustee who received such funds as contractor or sub-contractor disputes in good faith the existence, validity or amount of a trust claim or disputes that it is due, the application of trust funds for a purpose other than a trust purpose, or the consent to such application, shall not be deemed larceny by reason of failure to pay the disputed claim within thirty-one days of the date when it is due if the trustee pays such claim within thirty-one days after the final determination of such dispute.

2. Notwithstanding subdivision one of this section, if the application of trust funds for a purpose other than the trust purposes of the trust is a repayment to another person of advances made by such other person to the trustee or on his behalf as trustee and the advances so repaid were actually applied for the purposes of the trust as stated in section seventy-one, or if the trustee has made advances of his personal funds for trust purposes and the amount of trust funds applied for a purpose other than the trust purposes of the trust does not exceed the amount of advances of personal funds of the trustee actually applied for the purposes of the trust, such application or consent thereto shall be deemed justifiable and the trustee, or officer, director or agent of the trustee, shall not be deemed guilty of larceny by reason of such application or by reason of his consent thereto.

3. Failure of the trustee to keep the books or records required by section seventy-five shall be presumptive evidence that the trustee has applied or consented to the application of trust funds received by him as money or an instrument for the payment of money for purposes other than a purpose of the trust as stated in section seventy-one.

4. Notwithstanding any other provision of law, no act of the trustee in relation to the assets of the trust shall, by reason of any express covenant as provided in section thirteen or section twenty-five of this chapter, be deemed larceny in a case in which it is not declared by subdivision one of this section to be larceny or in a case in which the act is deemed justifiable as provided in subdivision two of this section.