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Trust Business Modifications

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor:

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LONG TITLE

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General Description:

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This bill amends provisions relating to trust business.

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Highlighted Provisions:

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This bill:

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- ▶ defines terms;
- ▶ reorganizes and renames the sections of Title 7, Chapter 5, Trust Business;
- ▶ exempts a person acting as a trust director from the definition of trust business;
- ▶ prohibits a person acting as a trust director from engaging in trust business;
- ▶ exempts from the definition of trust business an attorney or certified public accountant that engages in fiduciary services that are incident to the attorney's or certified public accountant's business; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

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None

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Other Special Clauses:

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None

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Utah Code Sections Affected:

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AMENDS:

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7-1-401, as last amended by Laws of Utah 2022, Chapter 449

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7-1-701, as last amended by Laws of Utah 2014, Chapter 97

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7-5-11, as last amended by Laws of Utah 2025, Chapter 310

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7-18a-302, as enacted by Laws of Utah 1996, Chapter 63

18

7-22-101, as last amended by Laws of Utah 2020, Chapter 365

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16-15-102, as enacted by Laws of Utah 1995, Chapter 310

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31A-23a-406, as last amended by Laws of Utah 2024, Chapter 120

21

31A-23a-409, as last amended by Laws of Utah 2023, Chapters 111, 194

22

59-10-202, as last amended by Laws of Utah 2025, First Special Session, Chapter 9

31 **75B-1-101**, as last amended by Laws of Utah 2025, Chapters 310, 338

32 **75B-3-107**, as renumbered and amended by Laws of Utah 2025, Chapter 310

33 ENACTS:

34 **7-5-102**, Utah Code Annotated 1953

35 RENUMBERS AND AMENDS:

36 **7-5-101**, (Renumbered from 7-5-1, as last amended by Laws of Utah 2025, Chapters
37 310, 338 and 533)

38 **7-5-103**, (Renumbered from 7-5-2, as last amended by Laws of Utah 2014, Chapter 189)

39 **7-5-104**, (Renumbered from 7-5-3, as last amended by Laws of Utah 2025, Chapter 302)

40 **7-5-105**, (Renumbered from 7-5-4, as last amended by Laws of Utah 2010, Chapter 378)

41 **7-5-106**, (Renumbered from 7-5-5, as last amended by Laws of Utah 2001, Chapter 9)

42 **7-5-107**, (Renumbered from 7-5-6, as last amended by Laws of Utah 2025, Chapter 310)

43 **7-5-108**, (Renumbered from 7-5-7, as last amended by Laws of Utah 2025, Chapter 310)

44 **7-5-109**, (Renumbered from 7-5-8, as last amended by Laws of Utah 2014, Chapter 189)

45 **7-5-110**, (Renumbered from 7-5-9, as last amended by Laws of Utah 2010, Chapter 93)

46 **7-5-111**, (Renumbered from 7-5-10, as last amended by Laws of Utah 2025, Chapter
47 310)

48 **7-5-112**, (Renumbered from 7-5-11, as last amended by Laws of Utah 2025, Chapter
49 310)

50 **7-5-113**, (Renumbered from 7-5-12, as last amended by Laws of Utah 2025, Chapter
51 302)

52 **7-5-114**, (Renumbered from 7-5-13, as last amended by Laws of Utah 2023, Chapter
53 401)

54 **7-5-115**, (Renumbered from 7-5-14, as last amended by Laws of Utah 2007, Chapter
55 277)

56 **7-5-116**, (Renumbered from 7-5-15, as last amended by Laws of Utah 2014, Chapter
57 189)

58 *Be it enacted by the Legislature of the state of Utah:*

60 Section 1. Section **7-1-401** is amended to read:

61 **7-1-401 . Fees payable to commissioner.**

62 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
63 institution under the jurisdiction of the department shall pay an annual fee:

64 (a) computed by averaging the total assets of the depository institution shown on each

quarterly report of condition for the depository institution for the calendar year immediately preceding the date on which the annual fee is due under Section 7-1-402; and

(b) at the following rates:

(i) on the first \$5,000,000 of these assets, the greater of:

(A) 65 cents per \$1,000; or

(B) \$500;

(ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

(iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

(iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

(v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

(vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

(vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

(2) A financial institution with a trust department shall pay a fee determined in accordance with Subsection (7) for each examination of the trust department by a state examiner.

(3) Notwithstanding Subsection (1), a credit union in [its] the credit union's first year of operation shall pay a basic fee of \$25 instead of the fee required under Subsection (1).

(4) A trust company that is not a depository institution or a subsidiary of a depository institution holding company shall pay:

(a) an annual fee of \$500; and

(b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.

Any person or institution under

under Subsections (1) through (4) shall pay:

- (a) an annual fee of \$200; and
- (b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.

(6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703, 7-1-704, 7-1-713, [7-5-3] 7-5-104, or 7-18a-202 shall pay:

(a)(i) a filing fee of \$500 if on the day on which the application or request is filed the person:

(A) is a person with authority to transact business as a depository institution, a trust company, or any other person described in Section 7-1-501 as being subject to the jurisdiction of the department; and

- (B) has total assets in an amount less than \$5,000,000; or
- (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and
- (b) all reasonable expenses incurred in processing the application.

(7)(a) Per diem assessments for an examination shall be calculated at the rate of \$55 per hour:

- (i) for each examiner; and
- (ii) per hour worked.

(b) For an examination of a branch or office of a financial institution located outside of this state, in addition to the per diem assessment under this Subsection (7), the institution shall pay all reasonable travel, lodging, and other expenses incurred by each examiner while conducting the examination.

(8) In addition to a fee under Subsection (5), a person registering under Section 7-23-201, 7-24-201, or 7-27-201 shall pay an original registration fee of \$300.

(9) In addition to a fee under Subsection (5), a person applying for licensure under Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

7-1-701 . Representing and transacting business as financial institution restricted

-- Restricted names -- Penalty.

- (1) As used in this section, "transact business" includes:
 - (a) advertising;
 - (b) representing oneself in any manner as being engaged in transacting business;
 - (c) registering an assumed name under which to transact business; or
 - (d) using an assumed business name, sign, letterhead, business card, promotion, or other indication that one is transacting business.
- (2) Unless authorized by the department or an agency of the federal government to do so, it is unlawful for a person to:
 - (a) transact business as a:
 - (i) bank;
 - (ii) savings and loan association;
 - (iii) savings bank;
 - (iv) industrial bank;
 - (v) credit union;
 - (vi) trust company; or
 - (vii) other financial or depository institution; or

- (b) engage in any other activity subject to the jurisdiction of the department.
- (3)(a) Except as provided in Subsections (3)(b) through (d), only the following may transact business in this state under a name that includes "bank," "banker," "banking," "banque," "banc," "banco," "bancorp," "bancorporation," a derivative of these words, or another word or combination of words reasonably identifying the business of a bank:
 - (i) a national bank;
 - (ii) a bank authorized to do business under Chapter 3, Banks;
 - (iii) a bank holding company; or
 - (iv) an industrial bank.
- (b) A person authorized to operate in this state as a credit card bank, as described in Section 7-3-3:
 - (i) may transact business under the name "credit card bank"; and
 - (ii) may not transact business under the name of "bank" unless it is immediately preceded by "credit card."
- (c) A nonbank subsidiary of a bank holding company may transact business under a name restricted in Subsection (3)(a) if the name:
 - (i) is also part of the name of its parent holding company; or
 - (ii) is used for a group of subsidiaries of the parent holding company.
- (d) A bona fide trade association of authorized banks recognized by the commissioner may transact its affairs in this state under a name restricted under Subsection (3)(a) if it does not operate and does not hold itself out to the public as operating a depository or financial institution.

(4)(a) Except as provided in Subsection (4)(b), only the following may transact business in this state under a name that includes "savings association," "savings and loan association," "building and loan association," "building association," a derivative of these words, or another word or combination of words reasonably identifying the business of a savings and loan association:

- (i) a federal savings and loan association; or
- (ii) a federal savings bank.

(b) A national bank may transact business under a name restricted in Subsection (4)(a) if the restricted words are part of the bank's corporate name.

(5) Only the following may transact business under the name "savings bank":

- (a) a depository institution listed in Subsection (3)(a);

167 (b) a depository institution listed in Subsection (4)(a); or

168 (c) a depository institution authorized under the law of another state to operate in this

169 state as a savings bank.

170 (6)(a) Only an industrial loan company authorized to do business under Chapter 8, Industrial Banks, to the extent permitted by Section 7-8-21, may transact business in this state under a name that includes "industrial loan company," "ILC," or another word, combination of words, or abbreviation reasonably identifying the business of an industrial loan company.

175 (b) Only an industrial bank authorized to do business under Chapter 8, Industrial Banks, may transact business in this state under a name that includes "industrial bank," "thrift," or another word, combination of words, or abbreviation reasonably identifying the business of an industrial bank.

179 (7)(a) Except as provided in Subsection (7)(b), only a credit union authorized to do business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact business in this state under a name that includes "credit union" or another word or combination of words reasonably identifying the business of a credit union.

184 (b) The restriction in Subsection (7)(a) does not apply to a bona fide trade association of authorized credit unions recognized by the commissioner, a credit union chapter, or another association affiliated with a bona fide trade association of authorized credit unions recognized by the commissioner that restricts its services primarily to credit unions.

189 (8)(a) Except as provided in Subsection (8)(b), only a person granted trust powers under Chapter 5, Trust Business, may transact business in this state under a name that includes "trust," "trustee," "trust company," or another word or combination of words reasonably identifying the business of a trust company.

193 (b) A business entity organized as a business trust, as defined in Section [7-5-1] 7-5-101, may use "business trust" in its name if it does not hold itself out as being a trust company.

196 (9) The restrictions of Subsections (3) through (8) do not apply to:

197 (a) the name under which an out-of-state depository institution operates a loan production office in this state, if the commissioner approves the name as not being reasonably likely to mislead the public;

199 (b) the name under which a service organization of a financial institution transacts

201 business, if the commissioner approves the name as not being reasonably likely to
202 mislead the public;

203 (c) the name under which a subsidiary of a depository or financial institution transacts
204 business, if the commissioner approves the name as not being reasonably likely to
205 mislead the public; or

206 (d) a trade association or other nonprofit organization composed of members of a
207 particular class of financial institutions using words applicable to that class.

208 (10)(a) Upon written request, the commissioner may grant an exemption to this section
209 if the commissioner finds that the use of an otherwise restricted name or word is not
210 reasonably likely to cause confusion or lead the public to believe that the person
211 requesting the exemption is a depository or financial institution or is conducting a
212 business subject to the jurisdiction of the department.

213 (b) In granting an exemption under Subsection (10)(a), the commissioner may restrict or
214 condition the use of the name or word or the activities of the person or business as the
215 commissioner considers necessary to protect the public.

216 (11)(a) A person and a principal and officer of a business entity violating this section is
217 guilty of a class A misdemeanor. Each day of violation constitutes a separate offense.

218 (b) In addition to a criminal penalty imposed under Subsection (11)(a), the
219 commissioner may issue a cease and desist order against a person violating this
220 section. The commissioner may impose a civil penalty of up to \$500 for each day the
221 person fails to comply with the cease and desist order.

222 Section 3. Section **7-5-11** is amended to read:

223 **7-5-11 . Self-dealing with trust property -- Own stock as trust property -- Policies
224 for dealing with trust securities.**

225 (1) Except as provided in Section [7-5-7] 7-5-109, in Title 75B, Trusts, or as authorized
226 under the instrument creating the relationship, a trust company may not invest funds
227 held as an agent or fiduciary in stock or obligations of, or with such funds acquire
228 property from, the trust company or any of its directors, officers or employees, nor shall
229 a trust company sell property held as an agent or fiduciary to the company or to any of
230 its directors, officers, or employees.

231 (2) A trust company may retain and vote stock of the trust company or of any of its
232 affiliates received by it as assets of any trust account or in any other fiduciary
233 relationship of which it is appointed agent or fiduciary, unless the instrument creating
234 the relationship otherwise provides.

235 (3)(a) Every trust company shall adopt written policies and procedures regarding
236 decisions or recommendations to purchase or sell any security to facilitate
237 compliance with federal and state securities laws.

238 (b) [–]These policies and procedures, in particular, shall prohibit the trust company from
239 using material inside information in connection with any decision or recommendation
240 to purchase or sell any security.

241 Section 4. Section **7-5-101**, which is renumbered from Section 7-5-1 is renumbered
242 and amended to read:

243 **Part 1. General Provisions**

244 **[7-5-1] 7-5-101 . Definitions.**

245 [(1)] As used in this chapter:

246 [(a)] (1) "Business trust" means an entity engaged in a trade or business that is created by a
247 declaration of trust that transfers property to trustees, ~~to be held and managed by them~~
248 ~~that the trustees hold and manage~~ for the benefit of ~~persons~~ one or more persons
249 holding certificates representing the beneficial interest in the trust estate and assets.

250 (2) "Power of direction" means the same as that term is defined in Section 75B-3-102.

251 [(b)] (3) "Trust" means the same as that term is defined in Section 75B-1-101.

252 [(e)] (4)(a) "Trust business" means~~[-except as provided in Subseetion (1)(d);]~~ a business
253 in which ~~one~~ a person acts in ~~any~~ an agency or a fiduciary capacity, including ~~[that~~
254 ~~of]~~ as a personal representative, an executor, an administrator, a conservator, a
255 guardian, an assignee, a receiver, a depositary, or a trustee under appointment as
256 trustee for ~~any~~ a purpose permitted by law.

257 [(d)] (b) "Trust business" does not include:

258 (i) [-]the following means of holding money, assets, or other property:

259 [(i)] (A) money ~~[held]~~ that an attorney authorized to practice law in this state holds
260 ~~in a client trust account[by an attorney authorized to practice law in this state];~~

261 [(ii)] (B) money ~~[held]~~ that a person licensed as a principal broker in accordance
262 with Title 61, Chapter 2f, Real Estate Licensing and Practices Act, holds in
263 ~~connection with the purchase or sale of real estate[by a person licensed as a~~
264 ~~principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing~~
265 ~~and Practices Act];~~

266 [(iii)] (C) money or other assets ~~[held]~~ that a person the department, in accordance
267 with Chapter 22, Regulation of Independent Escrow Agents, authorizes to act
268 as an escrow agent or that the Insurance Department authorizes to act as an

269 escrow agent holds in escrow[~~by a person authorized by the department in~~
270 ~~accordance with Chapter 22, Regulation of Independent Escrow Agents, or by~~
271 ~~the Insurance Department to act as an escrow agent in this state~~];
272 [(iv)] (D) money [held by a] that a homeowners' association or similar organization
273 holds to pay maintenance and other related costs for commonly owned
274 property;
275 [(v)] (E) money [held] that a person, acting solely as the agent or representative or
276 otherwise at the sole direction of the person to which the debt or payment is
277 owed, holds in connection with the collection of debts or payments on loans[
278 ~~by a person acting solely as the agent or representative or otherwise at the sole~~
279 ~~direction of the person to which the debt or payment is owed~~], including
280 money [held by] an escrow agent holds for payment of taxes or insurance;
281 [(vi)] (F) money [and] or other assets [held] that a person holds in trust on an
282 occasional or isolated basis[~~by a person who does not represent that the person~~
283 ~~is engaged in the trust business in Utah~~] if the person does not represent that
284 the person engages in the trust business in this state;
285 [(vii)] (G) money or other assets [found by a court to be held] that a court finds that
286 a person holds in an implied, resulting, or constructive trust;
287 [(viii)] (H) money or other assets [held by a court appointed conservator, guardian,
288 ~~receiver, trustee, or other fiduciary~~] that a court appointed conservator,
289 guardian, receiver, trustee, or other fiduciary holds if[:]
290 [(A)] the conservator, receiver, guardian, trustee, or other fiduciary is responsible
291 to the court in the same manner as a personal representative under Title 75,
292 Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66,
293 Utah Rules of Civil Procedure[:] and
294 [(B)] the conservator, trustee, or other fiduciary is a certified public accountant or [
295 has qualified] qualifies for and [received] receives a designation as a certified
296 financial planner, chartered financial consultant, certified financial analyst, or
297 similar designation suitable to the court, that evidences the conservator's,
298 trustee's, or other fiduciary's professional competence to manage financial
299 matters;
300 [(ix)] (I) money or other assets [held by] that a credit services organization
301 operating in compliance with Title 13, Chapter 21, Credit Services
302 Organizations Act, holds;

303 [({x}) (J) money, securities, or other assets [held in] that a customer account in
304 connection with the purchase or sale of securities by a regulated securities
305 broker, dealer, or transfer agent holds; or
306 [({xi}) (K) money, assets, and other property [held] that a person holds in a business
307 trust for the benefit of holders of certificates of beneficial interest if the
308 fiduciary activities of the business trust are merely incidental to conducting
309 business in the business trust form[.];
310 (ii) a person exercising power of direction while acting as a trust director; or
311 (iii) an attorney or certified public accountant who engages in fiduciary services that:
312 (A) are incident to the attorney's or certified public accountant's traditional
313 business activities; and
314 (B) are not the principal purpose of the attorney's or certified public accountant's
315 business activities.

316 [({e}) (5) "Trust company" means [an institution] a person authorized to engage in [the]trust
317 business under this chapter.[-Only the following may be a trust company:]
318 [({i}) a Utah depository institution or its wholly owned subsidiary;]
319 [({ii}) an out-of-state depository institution authorized to engage in business as a
320 depository institution in Utah or its wholly owned subsidiary;]
321 [({iii}) a corporation, including a credit union service organization, owned entirely by
322 one or more federally insured depository institutions as defined in Subsection
323 7-1-103(8);]
324 [({iv}) a direct or indirect subsidiary of a depository institution holding company that
325 also has a direct or indirect subsidiary authorized to engage in business as a
326 depository institution in Utah; and]
327 [({v}) any other corporation continuously and lawfully engaged in the trust business in
328 this state since before July 1, 1981.]

329 (6) "Trust director" means the same as that term is defined in Section 75B-3-102.

330 [({2}) Only a trust company may engage in the trust business in this state.]

331 [({3}) The requirements of this chapter do not apply to:]

332 [({a}) an institution authorized to engage in a trust business in another state that is engaged
333 in trust activities in this state solely to fulfill its duties as a trustee of a trust created
334 and administered in another state;]
335 [({b}) a national bank, federal savings bank, federal savings and loan association, or
336 federal credit union authorized to engage in business as a depository institution in

337 Utah, or any wholly owned subsidiary of any of these, to the extent the institution is
338 authorized by its primary federal regulator to engage in the trust business in this state;
339 or]

340 [(e) a state agency that is otherwise authorized by statute to act as a conservator,
341 receiver, guardian, trustee, or in any other fiduciary capacity.]

342 Section 5. Section **7-5-102** is enacted to read:

343 **7-5-102 . Allowable trust companies -- Exceptions.**

344 (1) Only the following may be a trust company:

- 345 (a) a Utah depository institution or the Utah depository institution's wholly owned
346 subsidiary;
- 347 (b) an out-of-state depository institution authorized to engage in business as a depository
348 institution in this state or the out-of-state depository institution's wholly owned
349 subsidiary;
- 350 (c) a corporation, including a credit union service organization, owned entirely by one or
351 more federally insured depository institutions as defined in Subsection 7-1-103(8);
- 352 (d) a direct or indirect subsidiary of a depository institution holding company that also
353 has a direct or indirect subsidiary authorized to engage in business as a depository
354 institution in this state; and
- 355 (e) any other corporation continuously and lawfully engaged in the trust business in this
356 state since before July 1, 1981.

357 (2) Only a trust company may engage in the trust business in this state.

358 (3) The requirements of this chapter do not apply to:

- 359 (a) an institution authorized to engage in trust business in another state that engages in
360 trust activities in this state solely to fulfill the institution's duties as a trustee of a trust
361 created and administered in another state;
- 362 (b) a national bank, federal savings bank, federal savings and loan association, or federal
363 credit union authorized to engage in business as a depository institution in this state,
364 or a wholly owned subsidiary of a national bank, federal savings bank, federal
365 savings and loan association, or federal credit union authorized to engage in business
366 as a depository institution in this state, to the extent the institution is authorized by
367 the institution's primary federal regulator to engage in trust business in this state; or
- 368 (c) a state agency that is otherwise authorized by statute to act as a conservator, receiver,
369 guardian, trustee, or in any other fiduciary capacity.

370 Section 6. Section **7-5-103**, which is renumbered from Section 7-5-2 is renumbered

371 and amended to read:

372 **[7-5-2] 7-5-103 . Permit required to engage in trust business -- Exceptions.**

373 (1)(a) [No-] Unless a trust company [shall] obtains from the commissioner a permit to

374 engage in trust business in this state, the trust company may not accept [any] an

375 appointment to act in [any] an agency or a fiduciary capacity by order or judgment of

376 a court or by authority of any law of this state, including [that of] as a:

377 (i) personal representative[,-] ;

378 (ii) executor[,-] ;

379 (iii) administrator[,-] ;

380 (iv) conservator[,-] ;

381 (v) guardian[,-] ;

382 (vi) assignee[,-] ;

383 (vii) receiver[,-] ;

384 (viii) depositary[,-] ; or[-]

385 (ix) trustee[under order or judgment of any court or by authority of any law of this
386 state or as trustee for any purpose permitted by law or otherwise engage in the
387 trust business in this state, unless and until it has obtained from the commissioner
388 a permit to act under this chapter.] .

389 (b) This [provision] Subsection (1) does not apply to [any] a bank or other corporation
390 authorized to engage and lawfully engaged in the trust business in this state before
391 July 1, 1981.

392 (2) Nothing in this chapter prohibits:

393 (a) [any-] a corporation, organized under Title 16, Chapter 6a, Utah Revised Nonprofit
394 Corporation Act, or Title 16, Chapter 10a, Utah Revised Business Corporation Act,
395 from acting as trustee of [any] an employee benefit trust established for the employees
396 of the corporation or the employees of one or more other corporations affiliated with
397 the corporation;

398 (b) [any-] a corporation, organized under Title 16, Chapter 6a, Utah Revised Nonprofit
399 Corporation Act,[and owned or controlled by] and that a charitable, benevolent,
400 eleemosynary, or religious organization owns or controls, from acting as a trustee for
401 that organization or members of that organization but not offering trust services to the
402 general public;

403 (c) [any-] a corporation, organized under Title 16, Chapter 6a, Utah Revised Nonprofit
404 Corporation Act, or Title 16, Chapter 10a, Utah Revised Business Corporation Act,

405 from holding in a fiduciary capacity the controlling shares of another corporation but
406 not offering trust services to the general public; or
407 (d) [any] a depository institution from holding in an agency or fiduciary capacity
408 individual retirement accounts or Keogh plan accounts established under [Section
409 401(a) or 408(a) of Title 26 of the United States Code] 26 U.S.C. Sec. 401(a) or 26
410 U.S.C. Sec. 408(a).

411 Section 7. Section **7-5-104**, which is renumbered from Section 7-5-3 is renumbered
412 and amended to read:

413 **[7-5-3] 7-5-104 . Application for authorization to engage in trust business --**
414 **Criteria for granting -- Authority of trust company.**

415 (1) A person seeking authorization to become a trust company and engage in [the]trust
416 business in this state shall[-] :
417 (a) file an application with the commissioner in the manner provided in Section 7-1-704[;] ;
418 and[-shall-]
419 (b) pay the fee [prescribed] described in Section 7-1-401.

420 (2) [The commissioner shall, in] When deciding whether [or not] to approve [the
421 application, take into account] an application described in Subsection (1), the
422 commissioner shall consider:
423 (a) the character and condition of the applicant's assets;
424 (b) the adequacy of [its] the applicant's capital;
425 (c) [its] the applicant's earnings record;
426 (d) the quality of [its] the applicant's management;
427 (e) the qualifications of [any person proposed] an individual the applicant proposes to be
428 an officer in charge of the trust operations;
429 (f) the needs of the community for fiduciary services;
430 (g) the volume of business that the applicant will probably do; and
431 (h) any other relevant facts and circumstances, including the availability of legal counsel
432 to advise and pass upon matters relating to the trust business.

433 (3) The commissioner may not apply criteria [making it] that makes the process to obtain
434 approval to engage in trust business in this state more difficult for a state chartered
435 depository institution [to obtain approval to engage in the trust business] than for a
436 federally chartered depository institution of the same class.

437 (4) [The] Notwithstanding Subsection (3), the commissioner may impose [such conditions]
438 criteria the commissioner considers appropriate to protect the public interest when

439 authorizing a person to engage in [the-]trust business[as the commissioner considers
440 appropriate to protect the public interest].

441 (5) Upon receiving authorization from the commissioner to become a trust company and
442 engage in [the-]trust business, the trust company [is qualified to] may act as fiduciary in
443 any capacity without bond.

444 Section 8. Section **7-5-105**, which is renumbered from Section 7-5-4 is renumbered
445 and amended to read:

446 **[7-5-4] 7-5-105 . Withdrawal from trust business.**

447 (1) [Any] A trust company [which] that desires to withdraw from and discontinue doing [
448 a]trust business shall furnish to the commissioner satisfactory evidence of [its] the trust
449 company's release and discharge from all the obligations and trusts [undertaken by it,
450 and] the trust company undertakes.

451 (2) [after the company has furnished that evidence] After the trust company provides the
452 evidence required by Subsection (1) to the commissioner, the commissioner shall revoke [
453 his certificate of authority] the trust company's permit to [do a] engage in trust business [
454 previously issued to that trust company, and] in this state.

455 (3) [thereafter that] After the commissioner revokes a trust company's permit in accordance
456 with Subsection (2), the trust company may not[-] :

457 (a) [be permitted to use and may not] use the word "trust" in [its] the trust company's
458 corporate name or in connection with [its] the trust company's business[,-nor-] ; or
459 (b) undertake the administration of any trust business.

460 Section 9. Section **7-5-106**, which is renumbered from Section 7-5-5 is renumbered
461 and amended to read:

462 **[7-5-5] 7-5-106 . Revocation of trust authority -- Procedure.**

463 (1)(a) The commissioner may issue and serve upon a trust company a notice of intent to
464 revoke the authority of the trust company to exercise the powers granted by this
465 chapter, if, in the commissioner's opinion, the trust company:

466 (i) is unlawfully or unsoundly exercising the powers granted under this chapter;
467 (ii) has unlawfully or unsoundly exercised the powers granted under this chapter;
468 (iii) has failed, for a period of five consecutive years, to exercise the powers granted
469 by this chapter;
470 (iv) fails or has failed to comply with requirements upon which [its] the trust
471 company's permit is conditioned; or
472 (v) fails or has failed to comply with any rule of the commissioner.

473 (b) The notice shall:

474 (i) contain a statement of the facts constituting the alleged unlawful or unsound
475 exercise of powers, or failure to exercise powers, or failure to comply; and

476 (ii) fix the time and place at which the commissioner shall hold a hearing [will be
477 held] to determine whether the commissioner should issue an order revoking
478 authority to execute [those] the powers [should issue against the trust company]
479 described in the notice.

480 (2)(a) If the trust company or [its] the trust company's representative does not appear at
481 the hearing, the commissioner may consider the trust company to be in default, and
482 may issue a revocation order.

483 (b) If default has occurred, or if upon the record made at any hearing the commissioner
484 finds that any allegation specified in the notice of charges has been established, the
485 commissioner shall issue and serve upon the trust company [an] a revocation order:

486 (i) prohibiting [it] the trust company from accepting any new or additional trust
487 accounts; and

488 (ii) revoking [its] the trust company's authority to exercise any powers granted under
489 this chapter.

490 (c) Any order issued under this section permits the trust company to continue to service
491 all previously accepted trust accounts pending [their] the trust accounts' expeditious
492 divestiture or termination.

493 (3) A revocation order [shall become] becomes effective 30 days after [service of the order
494 upon] the day on which the commissioner serves the revocation order to the trust
495 company and [shall remain] remains effective and enforceable, unless [it is stayed,
496 modified, terminated, or set aside by action of the commissioner or by judicial review as
497 provided for in Section 7-1-714.] the commissioner or a court, in accordance with
498 Section 7-1-714, stays, modifies, terminates, or sets aside the revocation order.

499 Section 10. Section **7-5-107**, which is renumbered from Section 7-5-6 is renumbered
500 and amended to read:

501 **[7-5-6] 7-5-107 . Confidentiality of communications and writings concerning**
502 **trust -- Actions to protect property or authorized under probate laws not precluded.**

503 (1) [Any] A trust company exercising the powers and performing the duties described in
504 this chapter shall keep [in violate all communications and writings made to or by that]
505 confidential each communication and writing the trust company makes or receives
506 relating to the existence, condition, management or administration of [any] an agency or

507 fiduciary account confided to [it and] the trust company.

508 (2) [no] A creditor or stockholder of [any such] a trust company [shall be] is not entitled to
509 disclosure or knowledge of [any such] a communication or writing described in
510 Subsection (1), [except that the] unless the creditor or stockholder is:

511 (a) directors,] a director of the trust company;

512 (b) a president[–] of the trust company;

513 (c) a vice president[–] of the trust company;

514 (d) a manager[–] employed by the trust company;

515 (e) a treasurer[–and] employed by the trust company;

516 (f) a trust [officers, and any] officer of the trust company;

517 (g) [employees] an employee of the trust company assigned to work on the trust business[–] ;

518 (h) [and the] an attorney employed by the trust company; or[–]

519 (i) an auditor employed by [it shall be entitled to knowledge of any such communication
520 or writing and except] the trust company.

521 (3) [that in any suit or] In a proceeding relating to the existence, condition, management or
522 administration of [the] an account described in Subsection (1), [the court in which the
523 suit is pending may] a court may require disclosure of [any such] the communication or
524 writing.

525 (4) [–A] Nothing in this section precludes a trust company [is not, however, precluded] from
526 filings an action in court to protect trust account property or as authorized under Title
527 75B, Trusts.

528 Section 11. Section **7-5-108**, which is renumbered from Section 7-5-7 is renumbered
529 and amended to read:

530 **[7-5-7] 7-5-108 . Management and investment of trust money.**

531 (1) [Money received or held by a trust company as agent or fiduciary, whether for
532 investment or distribution, shall be invested or distributed as soon as practicable] A trust
533 company shall invest or distribute money the trust company receives or holds as an
534 agent or a fiduciary, whether for investment or distribution, as soon as practicable as
535 authorized under the instrument creating the account[–] .

536 (2) A trust company may not [be held uninvested] hold the money described in Subsection
537 (1) without investing the money for any longer than is reasonably necessary.

538 [(2)] (3) If the instrument creating an agency or fiduciary account [contains provisions
539 authorizing] authorizes the trust company, [its] the trust company's officers, or [its] the
540 trust company's directors to exercise[their] discretion [in the matter of] over investments,

541 the trust company, the trust company's officers, or the trust company's directors may
542 invest money [held] the trust company holds in the trust account under that instrument [
543 may be invested] only in [those classes] a class of securities [which are approved by the
544 directors of the trust company or a committee of directors appointed for that purpose]
545 that the directors of the trust company, or a committee of directors that the directors
546 appoint, approve.[-]

547 (4) If a trust company acts in [any] an agency or a fiduciary capacity under appointment by a
548 court with jurisdiction, [it] the trust company shall make and account for the investments
549 according to Title 75B, Trusts, unless the underlying instrument provides otherwise.

550 [({3})] (5)(a) [Money received or held] A trust company that is also a depository institution
551 may deposit into the trust company's commercial department or savings department
552 money that the trust company holds or receives as an agent or a fiduciary [by any
553 trust company which is also a depository institution,] whether for investment or
554 distribution, [may be deposited in the commercial department or savings department
555 of that trust company] to the credit of [its] the trust company's trust department.[-]

556 (b) [Whenever the money so deposited in] When the money that a trust company
557 deposits, in accordance with Subsection (5)(a), into a fiduciary or managing agency
558 account [exceeded] exceeds the amount of federal deposit insurance applicable to that
559 fiduciary or managing agency account, the trust company shall deliver to the trust
560 department or put under [its] the trust department's control collateral security as [
561 outlined] described in [Regulation 9.10 of the Comptroller of the Currency] 12 C.F.R.
562 Sec. 9.10.

563 (c) [However, if] If the instrument [creating such] that creates a fiduciary or managing
564 agency account described in Subsection (5)(b) expressly provides that a trust
565 company may deposit money [may be deposited to] into the commercial or savings
566 department of the trust company[, then] :

- 567 (i) the trust company may deposit the money [may be so deposited] without setting
568 aside collateral securities as required under this section; and[-]
- 569 (ii) [the deposits] in the event of insolvency, a deposit of [any such] the trust company
570 shall be treated as other general deposits are treated.

571 (d) [A trust company that deposits trust funds [in its] into the trust company's
572 commercial or savings department [shall be] is liable for interest on the deposits only
573 at the rates, if any, [paid by the trust company] the trust company pays on deposits of
574 like kind not made to the credit of [its] the trust company's trust department.

575 [({b})] (6)(a) [Money received or held] A trust company may deposit in an affiliated
576 depository institution money that a trust company receives or holds as agent or
577 fiduciary[by a trust company], whether for investment or distribution[, may be
578 deposited in an affiliated depository institution].

579 (b) [Whenever the money so deposited in] If money that a trust company deposits, in
580 accordance with Subsection (6)(a), into a fiduciary or managing agency account [
581 exeed] exceeds the amount of federal deposit insurance applicable to that account,
582 the depository institution shall deliver to the trust company or put under [its] the trust
583 company's control collateral security as [outlined in Regulation 9.10 of the
584 Comptroller of the Currency] described in 12 C.F.R. Sec. 9.10.

585 (c) [However, if] If the instrument [creating] that creates the fiduciary or managing
586 agency account described in Subsection (6)(b) expressly permits the trust company to
587 deposit money [to be deposited in] into the affiliated depository institution[-] :
588 (i) the trust company may deposit money [may be so deposited] without setting aside
589 collateral securities [as required under] in accordance with this section; and[-]
590 (ii) [deposits] in the event of insolvency of the depository institution, deposits the
591 trust company makes shall be treated as other general deposits are treated.

592 (d) [-]A trust company that deposits trust money [in] into an affiliated depository
593 institution is liable for interest on the deposits only at the rates, if any, [paid by] the
594 depository institution pays on deposits of like kind.

595 [(4)] (7) In carrying out all aspects of [its] the trust company's trust business, a trust company [
596 shall have] has all the powers, privileges, and duties as set forth in Sections 75B-2-813
597 and 75B-2-814 with respect to trustees, whether [or not] the trust company [is acting] acts
598 as a trustee as defined in Section 75B-1-101.

599 [(5)] (8) Nothing in this section may alter, amend, or limit the powers of a trust company
600 acting in a fiduciary capacity as specified in the particular instrument or order creating
601 the fiduciary relationship.

602 Section 12. Section **7-5-109**, which is renumbered from Section 7-5-8 is renumbered
603 and amended to read:

604 **[7-5-8] 7-5-109 . Segregation of trust assets -- Books and records required --**

605 **Examination -- Trust property not subject to claims or debts against trust company.**

606 (1) A trust company exercising the powers to act as an agent or fiduciary under this
607 chapter shall:[-]

608 (a) segregate all assets [held] the trust company holds in any agency or fiduciary capacity

609 from the general assets of the trust company; and[-shall-]
610 (b) keep a separate set of books and records showing in proper detail [all transactions
611 engaged in under authority of] each transaction in which the trust company engages in
612 accordance with this chapter.
613 (2) [These books and records shall be open to inspection by the commissioner and shall be
614 examined by him or by examiners appointed by him as provided in Chapter 1, General
615 Provisions, or examined by other appropriate regulating agencies or both] The trust
616 company shall allow the commissioner, an examiner the commissioner appoints in
617 accordance with Chapter 1, General Provisions, and an appropriate regulating agency to
618 inspect books and records described in Subsection (1).
619 (3) [Property [held] the trust company holds in an agency or fiduciary capacity [by a trust
620 company] is not subject to claims or debts against the trust company.

621 Section 13. Section **7-5-110**, which is renumbered from Section 7-5-9 is renumbered
622 and amended to read:

623 **[7-5-9] 7-5-110 . Registration of investment in name of nominee -- Records --**
624 **Possession of investment.**
625 (1) As used in this section, "security" means the same as that term is defined in Section
626 75-1-201.
627 [(4)] (2) A trust company may [cause any] require that a person register and hold a security[;]
628 as defined in Section 75-1-201, held in its] that the trust company holds in the trust
629 company's agency or fiduciary capacity [to be registered and held] in the name of a
630 nominee or nominees of the trust company.
631 (3) [The trust company [shall be] is liable for the acts of [any such] a nominee described in
632 Subsection (2) with respect to any investment [so registered] registered in accordance
633 with Subsection (2).[-]
634 (4) [Investments] An investment other than [securities] a security held in the name of a
635 nominee on June 30, 1981, may continue to be held in that manner.
636 [(2)] (5) [The records of the] For an investment described in Subsection (4), the trust
637 company shall:
638 (a) [-]at all times maintain records that show the trust company's ownership of [any such]
639 an investment[;] ;
640 (b) [which investment shall be in the] maintain possession or control [of the trust
641 company] over the investment; and
642 (c) [be kept] keep the investment separate and apart from the assets of the trust

643 company.

644 Section 14. Section **7-5-111**, which is renumbered from Section 7-5-10 is renumbered
645 and amended to read:

646 **[7-5-10] 7-5-111 . Lending trust funds to trust company, officer, director, or
647 employee as felony.**

648 (1) Except as provided in Subsection (2), a trust company may not lend funds that the trust
649 company holds in a trust account in accordance with this chapter to:

650 (a) the trust company;

651 (b) an officer of the trust company;

652 (c) a director of the trust company; or

653 (d) an employee of the trust company.

654 (2) [Unless] A trust company may lend funds to a person described in Subsection (1) if:

655 (a) [expressly permitted in] the instrument creating a trust account authorizes the trust
656 company to lend funds to the person;

657 (b) [or by] a person authorized to [give that permission] grant authorization to the trust
658 company to lend funds to the person grants authorization; or

659 (c) [by a court order as permitted in] a court issues an order in accordance with Section
660 75B-2-802[, a trust company may not lend to itself or to any officer or director or
661 employee of the trust company any funds held in any trust account under the powers
662 conferred in this chapter].

663 [(2)] (3) [Any] An officer, a director, or an employee [making such a loan] is guilty of a third
664 degree felony if the officer, director, or employee:

665 (a) [,] makes a loan in violation of Subsection (1); or[-]

666 (b) [to whom such a loan is made, is guilty of a third degree felony] receives a loan that
667 violates Subsection (1).

668 Section 15. Section **7-5-112**, which is renumbered from Section 7-5-11 is renumbered
669 and amended to read:

670 **[7-5-11] 7-5-112 . Self-dealing with trust property -- Own stock as trust property
671 -- Policies for dealing with trust securities.**

672 (1) Except as provided in Section **[7-5-7] 7-5-109**, [in] Title 75B, Trusts, or as authorized
673 under the instrument creating the relationship, a trust company may not[-] :

674 (a) invest funds [held] the trust company holds as an agent or fiduciary in stock or
675 obligations of[, or with such funds acquire property from,] the trust company or any
676 of [its] the trust company's directors, officers or employees[,-nor shall] ;

677 (b) use funds the trust company holds as an agent or fiduciary to acquire property from
678 the trust company or any of the trust company's directors, officers, or employees; or
679 (c) [a trust company] sell property [held] the trust company holds as an agent or
680 fiduciary to the [e] company trust company or to any of [its] trust company's directors,
681 officers, or employees.

682 (2) A trust company may retain and vote stock of the trust company or of any of [its] the
683 trust company's affiliates [received by it] the trust company receives as assets of any trust
684 account or in any other fiduciary relationship [of] for which [it] the trust company is
685 appointed agent or fiduciary, unless the instrument creating the relationship otherwise
686 provides.

687 (3)(a) [Every] A trust company shall adopt written policies and procedures regarding
688 decisions or recommendations to purchase or sell [any] a security [to facilitate
689 compliance] in accordance with federal and state securities laws.[-]

690 (b) [These policies and procedures, in particular,] The policies and procedures described
691 in Subsection (3)(a) shall prohibit the trust company from using material inside
692 information in connection with any decision or recommendation to purchase or sell
693 any security.

694 Section 16. Section **7-5-113**, which is renumbered from Section 7-5-12 is renumbered
695 and amended to read:

696 **[7-5-12] 7-5-113 . Directors' audit of trust business -- Report available to**
697 **commissioner or examiners -- Examinations in lieu of audit.**

698 (1) A committee of the board of directors, [exclusive of] excluding any active officers
699 of the trust department, of every trust company [authorized to engage in the trust
700 business in this state] shall, at least once during a 15-month period[-] :
701 (a)(i) [make a suitable] conduct an audit of the trust business operations of the [
702 institution] trust company; or
703 (ii) [-]cause that auditors responsible only to the board of directors conduct a suitable
704 audit[to be made by auditors responsible only to the board of directors] ; and[-]
705 (b) [shall] using the findings from the audit, ascertain whether the trust company
706 conducts the trust business operations of the [institution have been administered] trust
707 business in accordance with law and sound fiduciary principles.

708 (2) [A] Upon request, the committee of the board of directors shall make available a report
709 of the audit described in Subsection (1), [together with the action taken thereon]
710 including any action the committee of the board of directors takes as a result of the audit, [

711 shall be made available] to the commissioner, the commissioner's examiners, or the
712 examiners of other trust company regulating agencies[upon request].

713 (3) [An examination by the state or other trust company regulating agencies or both made
714 during the same period may be substituted for this audit.] The requirements of
715 Subsection (1) do not apply if the state or other agency that regulates trust companies
716 conducts an examination of the trust company during the same 15-month period.

717 Section 17. Section 7-5-114, which is renumbered from Section 7-5-13 is renumbered
718 and amended to read:

719 **[7-5-13] 7-5-114 . Collective investment funds.**

720 (1) A [person authorized to engage in the trust business in this state] trust company may:

721 (a) establish collective investment funds that authorize participation by fiduciary or trust
722 accounts of the trust company, [its] the trust company's affiliates, or both; and

723 (b) participate in collective investment funds established by an affiliate of the trust
724 company, if:

725 (i) the affiliate is authorized under the laws of [its] the trust company's chartering
726 authority to establish a collective investment fund in which [its] the trust company's
727 affiliates may participate; and

728 (ii) the plan establishing the collective investment fund specifically authorized the
729 participation.

730 (2) [Funds held by a trust company may be invested] A person may invest funds that a trust
731 company holds collectively in a collective investment fund in accordance with the rules
732 prescribed by the appropriate governmental regulatory agency or agencies, if [this] the
733 instrument, judgment, decree, or order creating the regulatory relationship does not
734 specifically prohibit the investment[is not specifically prohibited under the instrument,
735 judgment, decree, or order creating the regulatory relationship].

736 (3)(a) Unless ordered to do so by a court, a trust company operating collective
737 investment funds is not required to render a court accounting [with regard to those
738 funds] for the collective investment funds.

739 (b) [but the] A trust company may petition a court with jurisdiction under Title 78A,
740 Judiciary and Judicial Administration, to secure approval of [such an] a court
741 accounting on [such conditions as the court may establish] conditions the court
742 establishes.

743 (4) This section applies to all relationships in existence on or after May 1, 1989.

744 Section 18. Section 7-5-115, which is renumbered from Section 7-5-14 is renumbered

745 and amended to read:

746 **[7-5-14] 7-5-115 . Mergers, consolidations, acquisitions, transfers, or**
747 **reorganizations involving entities engaged in trust business -- Succession of rights and**
748 **duties -- Petition for appointment of another trust company.**

749 (1) As used in this section:

750 (a) "Eligible trust company" means any of the following that is authorized under this
751 chapter or the laws of the United States to engage in the trust business in this state:
752 (i) a trust company;
753 (ii) a depository institution; or
754 (iii) a corporation.

755 (b) "Reorganization" [includes] means:

756 (i) the creation by a trust company of a subsidiary corporation that is:
757 (A) wholly owned by that trust company; and
758 (B) organized solely for the purpose of conducting all or any portion of the trust
759 business of that trust company; or
760 (ii) [any] a merger or other combination between a trust company and:
761 (A) a wholly owned trust company subsidiary of that trust company; or
762 (B) a wholly owned trust company subsidiary of the depository institution holding
763 company [which] that owns or controls that trust company.

764 (2) Notwithstanding any provision of law to the contrary, an eligible trust company may,
765 subject to Sections 7-1-702, 7-1-704, and 7-1-705:

766 (a)(i) merge or consolidate with another eligible trust company;
767 (ii) acquire control of another eligible trust company;
768 (iii) acquire all or a portion of the assets and trust business of another eligible trust
769 company;
770 (iv) assume all or any portion of the liabilities of another eligible trust company;
771 (v) transfer control to another eligible trust company;
772 (vi) transfer all or a portion of [its] the trust company's assets and trust business to
773 another eligible trust company; or
774 (vii) transfer all or a portion of [its] the trust company's liabilities to another eligible
775 trust company; or

776 (b) [reorganize] conduct a reorganization.

777 (3)(a) Subject to Subsection (3)(b), upon final approval by the commissioner of [any] a
778 merger, a consolidation, an acquisition of control, an acquisition of assets, an

779 assumption of liabilities, or a reorganization, and upon written notice of [this] the final
780 approval to [all persons] each person entitled to and then receiving trust accountings
781 from the transferring or reorganizing trust company, the resulting or acquiring trust
782 company shall, without court proceedings or a court order, succeed to[-] :

783 (i) [all] the transferring or reorganizing trust company's rights, privileges, duties,
784 obligations, and undertakings under all trust instruments, agency and fiduciary
785 relationships and arrangements[-] ; and[-]

786 (ii) all other trust business the transferring or reorganizing trust company transferred
787 and acquired in [the manner authorized by] accordance with this section.

788 (b)(i) Except as provided otherwise in the relevant trust instrument, [any] an
789 interested person may, not more than 30 days after [receipt of] the day on which
790 the interested person receives written notice of the merger, consolidation,
791 acquisition, transfer, or reorganization, petition [any] a court [of competent] with
792 jurisdiction to appoint another or succeeding trust company with respect to [any] an
793 agency or fiduciary relationship affecting that interested person[-] .

794 (ii) [and until] Until the court appoints another or succeeding trust company[is so
795 appointed] in accordance with Subsection (3)(b)(i), the acquiring or resulting trust
796 company [is entitled to] may act as agent or fiduciary with respect to the agency or
797 fiduciary relationship.

798 Section 19. Section **7-5-116**, which is renumbered from Section 7-5-15 is renumbered
799 and amended to read:

800 **[7-5-15] 7-5-116 . Assets of trust company in possession of the commissioner.**

801 With respect to the assets of a trust company in the possession of the commissioner
802 under Chapter 2, Possession of Depository Institution by Commissioner, notwithstanding any
803 law to the contrary, the assets [held by] that the trust company holds in a fiduciary capacity as a
804 part of [its] the trust company's trust business[,-as defined in Section 7-5-1,] are not subject to
805 the claims of [any] a secured or unsecured creditor of the trust company.

806 Section 20. Section **7-18a-302** is amended to read:

807 **7-18a-302 . Trust business.**

808 A foreign depository institution may not engage in the trust business, as that term is
809 defined in Section [7-5-1] 7-5-101, in this state.

810 Section 21. Section **7-22-101** is amended to read:

811 **7-22-101 . Definitions -- Exemptions.**

812 (1) As used in this chapter:

813 (a) "Escrow" means an agreement, express or implied, that provides for one or more
814 parties to deliver or entrust money, a certificate of deposit, a security, a negotiable
815 instrument, a deed, or other property or asset to another person to be held, paid, or
816 delivered in accordance with terms and conditions prescribed in the agreement.
817 (b) "Escrow agent" means a person that provides or offers to provide escrow services to
818 the public.
819 (c) "Nationwide database" means the Nationwide Mortgage Licensing System and
820 Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage
821 loan originators.

822 (2) This chapter does not apply to:
823 (a) a trust company authorized to engage in the trust business in Utah in accordance with
824 Chapter 5, Trust Business;
825 (b) a person other than an escrow agent regulated under this chapter that is exempted
826 from the definition of trust business in [Subsektion 7-5-1(1)] Section 7-5-101;
827 (c) a depository institution chartered by a state or the federal government that is engaged
828 in business as a depository institution in Utah;
829 (d) the Utah Board of Higher Education, the Utah Higher Education Assistance
830 Authority, or the [State Treasurer] state treasurer; and
831 (e) a person licensed under Title 31A, Insurance Code.

832 Section 22. Section **16-15-102** is amended to read:

833 **16-15-102 . Definition of business trust.**

834 As used in this chapter:

835 (1) "Beneficiary" means a person holding a certificate representing a beneficial interest in
836 the trust estate and assets.
837 (2) "Business trust" [has the same meaning as] means the same as that term is defined in
838 Section [7-5-1] 7-5-101.
839 (3) "Division" means the Division of Corporations and Commercial Code.
840 (4) "Person" means an individual, general partnership, limited liability partnership, limited
841 partnership, limited liability company, limited association, domestic or foreign trust,
842 estate, association, or corporation.

843 Section 23. Section **31A-23a-406** is amended to read:

844 **31A-23a-406 . Title insurance producer's business.**

845 (1) As used in this section:
846 (a) "Automated clearing house network" or "ACH network" means a national electronic

847 funds transfer system regulated by the Federal Reserve and the Office of the
848 Comptroller of the Currency.

849 (b) "Depository institution" means the same as that term is defined in Section 7-1-103.

850 (c) "Funds transfer system" means the same as that term is defined in Section
851 70A-4a-105.

852 (2) An individual title insurance producer or agency title insurance producer may do escrow
853 involving real property transactions if all of the following exist:

854 (a) the individual title insurance producer or agency title insurance producer is licensed
855 with:

856 (i) the title line of authority; and

857 (ii) the escrow subline of authority;

858 (b) the individual title insurance producer or agency title insurance producer is appointed
859 by a title insurer authorized to do business in the state;

860 (c) except as provided in Subsection (4), the individual title insurance producer or
861 agency title insurance producer issues one or more of the following as part of the
862 transaction:

863 (i) an owner's policy offering title insurance;

864 (ii) a lender's policy offering title insurance; or

865 (iii) if the transaction does not involve a transfer of ownership, an endorsement to an
866 owner's or a lender's policy offering title insurance;

867 (d) money deposited with the individual title insurance producer or agency title
868 insurance producer in connection with any escrow is deposited:

869 (i) in a federally insured depository institution, as defined in Section 7-1-103, that:

870 (A) has a branch in this state, if the individual title insurance producer or agency
871 title insurance producer depositing the money is a resident licensee; and

872 (B) is authorized by the depository institution's primary regulator to engage in
873 trust business, as defined in Section 7-5-1 7-5-101, in this state; and

874 (ii) in a trust account that is separate from all other trust account money that is not
875 related to real estate transactions;

876 (e) money deposited with the individual title insurance producer or agency title
877 insurance producer in connection with any escrow is the property of the one or more
878 persons entitled to the money under the provisions of the escrow;

879 (f) money deposited with the individual title insurance producer or agency title insurance
880 producer in connection with an escrow is segregated escrow by escrow in the records

881 of the individual title insurance producer or agency title insurance producer;

882 (g) earnings on money held in escrow may be paid out of the trust account to any person
883 in accordance with the conditions of the escrow;

884 (h) the escrow does not require the individual title insurance producer or agency title
885 insurance producer to hold:

886 (i) construction money; or

887 (ii) money held for exchange under Section 1031, Internal Revenue Code; and

888 (i) the individual title insurance producer or agency title insurance producer shall
889 maintain a physical office in Utah staffed by a person with an escrow subline of
890 authority who processes the escrow.

891 (3) Notwithstanding Subsection (2), an individual title insurance producer or agency title
892 insurance producer may engage in the escrow business if:

893 (a) the escrow involves:

894 (i) a mobile home;

895 (ii) a grazing right;

896 (iii) a water right; or

897 (iv) other personal property authorized by the commissioner; and

898 (b) the individual title insurance producer or agency title insurance producer complies
899 with this section except for Subsection (2)(c).

900 (4)(a) Subsection (2)(c) does not apply if the transaction is for the transfer of real
901 property from the School and Institutional Trust Lands Administration.

902 (b) This subsection does not prohibit an individual title insurance producer or agency
903 title insurance producer from issuing a policy described in Subsection (2)(c) as part
904 of a transaction described in Subsection (4)(a).

905 (5) Money held in escrow:

906 (a) is not subject to any debts of the individual title insurance producer or agency title
907 insurance producer;

908 (b) may only be used to fulfill the terms of the individual escrow under which the money
909 is accepted; and

910 (c) may not be used until the conditions of the escrow are met.

911 (6) Assets or property other than escrow money received by an individual title insurance
912 producer or agency title insurance producer in accordance with an escrow shall be
913 maintained in a manner that will:

914 (a) reasonably preserve and protect the asset or property from loss, theft, or damages; and

915 (b) otherwise comply with the general duties and responsibilities of a fiduciary or bailee.

916 (7)(a) A check from the trust account described in Subsection (2)(d) may not be drawn,
917 executed, or dated, or money otherwise disbursed unless the segregated trust account
918 from which money is to be disbursed contains a sufficient credit balance consisting of
919 collected and cleared money at the time the check is drawn, executed, or dated, or
920 money is otherwise disbursed.

921 (b) As used in this Subsection (7), money is considered to be "collected and cleared,"
922 and may be disbursed as follows:

923 (i) cash may be disbursed on the same day the cash is deposited;
924 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;
925 (iii) the proceeds of one or more of the following financial instruments may be
926 disbursed on the same day the financial instruments are deposited if received from
927 a single party to the real estate transaction and if the aggregate of the financial
928 instruments for the real estate transaction is less than \$10,000:

929 (A) a cashier's check, certified check, or official check that is drawn on an existing
930 account at a federally insured financial institution;

931 (B) a check drawn on the trust account of a principal broker or associate broker
932 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if
933 the individual title insurance producer or agency title insurance producer has
934 reasonable and prudent grounds to believe sufficient money will be available
935 from the trust account on which the check is drawn at the time of disbursement
936 of proceeds from the individual title insurance producer or agency title
937 insurance producer's trust account;

938 (C) a personal check not to exceed \$500 per closing; or

939 (D) a check drawn on the trust account of another individual title insurance
940 producer or agency title insurance producer, if the individual title insurance
941 producer or agency title insurance producer in the escrow transaction has
942 reasonable and prudent grounds to believe that sufficient money will be
943 available for withdrawal from the account upon which the check is drawn at
944 the time of disbursement of money from the trust account of the individual title
945 insurance producer or agency title insurance producer in the escrow transaction;

946 (iv) deposits made through the ACH network may be disbursed on the same day the
947 deposit is made if:

948 (A) the transferred funds remain uniquely designated and traceable throughout the

entire ACH network transfer process;

(B) except as a function of the ACH network process, the transferred funds are not subject to comingling or third party access during the transfer process;

(C) the transferred funds are deposited into the title insurance producer's trust account and are available for disbursement; and

(D) either the ACH network payment type or the title insurance producer's systems prevent the transaction from being unilaterally canceled or reversed by the consumer once the transferred funds are deposited to the individual title insurance producer or agency title producer; or

(v) deposits may be disbursed on the same day the deposit is made if the deposit is made via:

(A) the Federal Reserve Bank through the Federal Reserve's Fedwire funds transfer system; or

(B) a funds transfer system provided by an association of federally insured depository institutions.

A check or deposit not described in Subsection (7)(b) may be disbursed:

(i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.

individual title insurance producer or agency title insurance producer shall maintain a record of a receipt or disbursement of escrow money.

individual title insurance producer or agency title insurance producer shall comply with:

Section 31A-23a-409;

Title 46, Chapter 1, Notaries Public Reform Act; and

any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.

an individual title insurance producer or agency title insurance producer conducts a search for real estate located in the state, the individual title insurance producer or agency title insurance producer shall conduct a reasonable search of the public records.

Section 24. Section **31A-23a-409** is amended to read:

31A-23a-409 . Trust obligation for money collected.

983 (1)(a) Subject to Subsection (7), a licensee is a trustee for money that is paid to, received
984 by, or collected by a licensee for forwarding to insurers or to insureds.

985 (b)(i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust
986 funds with:

987 (A) the licensee's own money; or
988 (B) money held in any other capacity.

989 (ii) This Subsection (1)(b) does not apply to:

990 (A) amounts necessary to pay bank charges; and
991 (B) money paid by insureds and belonging in part to the licensee as a fee or
992 commission.

993 (c) Except as provided under Subsection (4), a licensee owes to insureds and insurers the
994 fiduciary duties of a trustee with respect to money to be forwarded to insurers or
995 insureds through the licensee.

996 (d)(i) Unless money is sent to the appropriate payee by the close of the next business
997 day after their receipt, the licensee shall deposit them in an account authorized
998 under Subsection (2).

999 (ii) Money deposited under this Subsection (1)(d) shall remain in an account
1000 authorized under Subsection (2) until sent to the appropriate payee.

1001 (2) Money required to be deposited under Subsection (1) shall be deposited:

1002 (a) into a federally insured trust account in a depository institution, as defined in Section
1003 7-1-103, which:

1004 (i) has a branch in this state, if the individual title insurance producer or agency title
1005 insurance producer depositing the money is a resident licensee;

1006 (ii) has federal deposit insurance; and

1007 (iii) is authorized by its primary regulator to engage in the trust business, as defined
1008 by Section [7-5-1] 7-5-101, in this state; or

1009 (b) into some other account, that:

1010 (i) the commissioner approves by rule or order; and
1011 (ii) provides safety comparable to an account described in Subsection (2)(a).

1012 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the
1013 amount of the federal insurance on the accounts.

1014 (4) A trust account into which money is deposited may be interest bearing. The interest
1015 accrued on the account may be paid to the licensee, so long as the licensee otherwise
1016 complies with this section and with the contract with the insurer.

1017 (5) A depository institution or other organization holding trust funds under this section may
1018 not offset or impound trust account funds against debts and obligations incurred by the
1019 licensee.

1020 (6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any portion
1021 of the money held under Subsection (1) to the licensee's own use, is guilty of theft under
1022 Title 76, Chapter 6, Part 4, Theft. Sanctions under Section 31A-2-308 also apply.

1023 (7) A nonresident licensee:

1024 (a) shall comply with Subsection (1)(a) by complying with the trust account
1025 requirements of the nonresident licensee's home state; and

1026 (b) is not required to comply with the other provisions of this section.

1027 Section 25. Section **59-10-202** is amended to read:

1028 **59-10-202 . Additions to and subtractions from unadjusted income of a resident
1029 or nonresident estate or trust.**

1030 (1) There shall be added to unadjusted income of a resident or nonresident estate or trust:

1031 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal
1032 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue
1033 Code, in determining adjusted gross income;

1034 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of
1035 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and
1036 other evidences of indebtedness:

1037 (i) issued by one or more of the following entities:

1038 (A) a state other than this state;

1039 (B) the District of Columbia;

1040 (C) a political subdivision of a state other than this state; or

1041 (D) an agency or instrumentality of an entity described in Subsections (1)(b)(i)(A)
1042 through (C); and

1043 (ii) to the extent the interest is not included in federal taxable income on the
1044 taxpayer's federal income tax return for the taxable year;

1045 (c) any portion of federal taxable income for a taxable year if that federal taxable income
1046 is derived from stock:

1047 (i) in an S corporation; and

1048 (ii) that is held by an electing small business trust;

1049 (d) the amount withdrawn under Title 53H, Chapter 10, Utah Education Savings, from
1050 the account of a resident or nonresident estate or trust that is an account owner as

1051 defined in Section 53H-10-101, for the taxable year for which the amount is
1052 withdrawn, if that amount withdrawn from the account of the resident or nonresident
1053 estate or trust that is the account owner:

1054 (i) is not expended for:

- 1055 (A) higher education costs as defined in Section 53H-10-201; or
- 1056 (B) a payment or distribution that qualifies as an exception to the additional tax
1057 for distributions not used for educational expenses provided in Sections 529(c)
1058 and 530(d), Internal Revenue Code; and

1059 (ii) is:

- 1060 (A) subtracted by the resident or nonresident estate or trust:
 - 1061 (I) that is the account owner; and
 - 1062 (II) on the resident or nonresident estate's or trust's return filed under this
1063 chapter for a taxable year beginning on or before December 31, 2007; or
- 1064 (B) used as the basis for the resident or nonresident estate or trust that is the
1065 account owner to claim a tax credit under Section 59-10-1017; and

1066 (e) any fiduciary adjustments required by Section 59-10-210.

1067 (2) There shall be subtracted from unadjusted income of a resident or nonresident estate or
1068 trust:

1069 (a) the interest or a dividend on obligations or securities of the United States and its
1070 possessions or of any authority, commission, or instrumentality of the United States,
1071 to the extent that interest or dividend is included in gross income for federal income
1072 tax purposes for the taxable year but exempt from state income taxes under the laws
1073 of the United States, but the amount subtracted under this Subsection (2) shall be
1074 reduced by any interest on indebtedness incurred or continued to purchase or carry
1075 the obligations or securities described in this Subsection (2), and by any expenses
1076 incurred in the production of interest or dividend income described in this Subsection
1077 (2) to the extent that such expenses, including amortizable bond premiums, are
1078 deductible in determining federal taxable income;

1079 (b) income of an irrevocable resident trust if:

- 1080 (i) the income would not be treated as state taxable income derived from Utah
1081 sources under Section 59-10-204 if received by a nonresident trust;
- 1082 (ii) the trust first became a resident trust on or after January 1, 2004;
- 1083 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
1084 resident irrevocable trust created by the same settlor or the spouse of the same

1085 settlor;

1086 (iv) the trustee of the trust is a trust company as that term is defined in [Subsection
1087 7-5-1(1)(d)] Section 7-5-101;

1088 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the
1089 settlor or any other person is treated as an owner of any portion of the trust under
1090 Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and

1091 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on
1092 indebtedness incurred or continued to purchase or carry the assets generating the
1093 income described in this Subsection (2)(b), and by any expenses incurred in the
1094 production of income described in this Subsection (2)(b), to the extent that those
1095 expenses, including amortizable bond premiums, are deductible in determining
1096 federal taxable income;

1097 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
1098 nonresident estate or trust derived from a deceased Ute tribal member:

1099 (i) during a time period that the Ute tribal member resided on homesteaded land
1100 diminished from the Uintah and Ouray Reservation; and

1101 (ii) from a source within the Uintah and Ouray Reservation;

1102 (d) any amount:

1103 (i) received by a resident or nonresident estate or trust;

1104 (ii) that constitutes a refund of taxes imposed by:

1105 (A) a state; or

1106 (B) the District of Columbia; and

1107 (iii) to the extent that amount is included in total income on that resident or
1108 nonresident estate's or trust's federal tax return for estates and trusts for that
1109 taxable year;

1110 (e) the amount of a railroad retirement benefit:

1111 (i) paid:

1112 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231
1113 et seq.;

1114 (B) to a resident or nonresident estate or trust derived from a deceased resident or
1115 nonresident individual; and

1116 (C) for the taxable year; and

1117 (ii) to the extent that railroad retirement benefit is included in total income on that
1118 resident or nonresident estate's or trust's federal tax return for estates and trusts;

1119 (f) an amount:

1120 (i) received by a resident or nonresident estate or trust if that amount is derived from
1121 a deceased enrolled member of an American Indian tribe; and

1122 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
1123 part on that amount in accordance with:

1124 (A) federal law;

1125 (B) a treaty; or

1126 (C) a final decision issued by a court of competent jurisdiction;

1127 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
1128 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on
1129 the qualified nongrantor charitable lead trust's federal income tax return for estates
1130 and trusts for the taxable year;

1131 (h) any fiduciary adjustments required by Section 59-10-210;

1132 (i) an amount received:

1133 (i) for the interest on a bond, note, or other obligation issued by an entity for which
1134 state statute provides an exemption of interest on its bonds from state individual
1135 income tax;

1136 (ii) by a resident or nonresident estate or trust;

1137 (iii) for the taxable year; and

1138 (iv) to the extent the amount is included in federal taxable income on the taxpayer's
1139 federal income tax return for the taxable year;

1140 (j) for a taxable year beginning on or after January 1, 2019, but beginning on or before
1141 December 31, 2019, only:

1142 (i) the amount of any FDIC premium paid or incurred by the resident or nonresident
1143 estate or trust that is disallowed as a deduction for federal income tax purposes
1144 under Section 162(r), Internal Revenue Code, on the resident's or nonresident
1145 estate's or trust's 2018 federal income tax return; plus

1146 (ii) the amount of any FDIC premium paid or incurred by the resident or nonresident
1147 estate or trust that is disallowed as a deduction for federal income tax purposes
1148 under Section 162(r), Internal Revenue Code, for the taxable year; and

1149 (k) for a taxable year beginning on or after January 1, 2020, the amount of any FDIC
1150 premium paid or incurred by the resident or nonresident estate or trust that is
1151 disallowed as a deduction for federal income tax purposes under Section 162(r),
1152 Internal Revenue Code, for the taxable year.

1153 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of
1154 indebtedness issued by an entity described in Subsections (1)(b)(i)(A) through (D) may
1155 not be added to unadjusted income of a resident or nonresident estate or trust if, as
1156 annually determined by the commission:

1157 (a) for an entity described in Subsection (1)(b)(i)(A) or (B), the entity and all of the
1158 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax
1159 based on income on any part of the bonds, notes, and other evidences of indebtedness
1160 of this state; or

1161 (b) for an entity described in Subsection (1)(b)(i)(C) or (D), the following do not impose
1162 a tax based on income on any part of the bonds, notes, and other evidences of
1163 indebtedness of this state:

1164 (i) the entity; or

1165 (ii)(A) the state in which the entity is located; or

1166 (B) the District of Columbia, if the entity is located within the District of
1167 Columbia.

1168 (4)(a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

1169 (i) the income is derived from a deceased Ute tribal member; and

1170 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
1171 requirements of this Subsection (4).

1172 (b) The agreement described in Subsection (4)(a):

1173 (i) may not:

1174 (A) authorize the state to impose a tax in addition to a tax imposed under this
1175 chapter;

1176 (B) provide a subtraction under this section greater than or different from the
1177 subtraction described in Subsection (2)(c); or

1178 (C) affect the power of the state to establish rates of taxation; and

1179 (ii) shall:

1180 (A) provide for the implementation of the subtraction described in Subsection
1181 (2)(c);

1182 (B) be in writing;

1183 (C) be signed by:

1184 (I) the governor; and

1185 (II) the chair of the Business Committee of the Ute tribe;

1186 (D) be conditioned on obtaining any approval required by federal law; and

1187 (E) state the effective date of the agreement.

1188 (c)(i) The governor shall report to the commission by no later than February 1 of each
1189 year regarding whether or not an agreement meeting the requirements of this
1190 Subsection (4) is in effect.

1191 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
1192 subtraction permitted under Subsection (2)(c) is not allowed for taxable years
1193 beginning on or after the January 1 following the termination of the agreement.

1194 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3, Utah
1195 Administrative Rulemaking Act, the commission may make rules:

1196 (i) for determining whether income is derived from a source within the Uintah and
1197 Ouray Reservation; and
1198 (ii) that are substantially similar to how adjusted gross income derived from Utah
1199 sources is determined under Section 59-10-117.

1200 Section 26. Section **75B-1-101** is amended to read:

1201 **75B-1-101 . Definitions for title.**

1202 As used in this title:

1203 (1) "Agent" means the same as that term is defined in Section 75-1-201.

1204 (2) "Beneficiary" means a person that:

1205 (a) has a present or future beneficial interest in a trust, vested or contingent; or

1206 (b) in a capacity other than that of trustee, holds a power of appointment over trust
1207 property.

1208 (3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose
1209 described in Subsection 75B-2-405(1).

1210 (4) "Child" means, except as provided in Sections 75B-2-503 and 75B-2-504, the same as
1211 that term is defined in Section 75-1-201.

1212 (5) "Claims" means the same as that term is defined in Section 75-1-201.

1213 (6) "Conservator" means the same as that term is defined in Section 75-1-201.

1214 (7) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial
1215 Administration.

1216 (8) "Descendant" means the same as that term is defined in Section 75-1-201.

1217 (9) "Devise" means the same as that term is defined in Section 75-1-201.

1218 (10) "Distributee" means the same as that term is defined in Section 75-1-201.

1219 (11) "Estate" means the same as that term is defined in Section 75-1-201.

1220 (12) "Fiduciary" means the same as that term is defined in Section 75-1-201.

1221 (13) "Governing instrument" means the same as that term is defined in Section 75-1-201.

1222 (14) "Guardian" means the same as that term is defined in Section 75-1-201.

1223 (15) "Incapacitated" means the same as that term is defined in Section 75-1-201.

1224 (16) "Income" means the same as that term is defined in Section 75A-5-102.

1225 (17) "Interested person" means, except as provided in Section 75B-2-110, the same as that
1226 term is defined in Section 75-1-102.

1227 (18) "Lease" means the same as that term is defined in Section 75-1-201.

1228 (19) "Minor" means an individual who is younger than 18 years old.

1229 (20) "Mortgage" means the same as that term is defined in Section 75-1-201.

1230 (21) "Nongeneral power of appointment" means the same as that term is defined in Section
1231 75A-4-102.

1232 (22) "Organization" means the same as that term is defined in Section 75-1-201.

1233 (23) "Parent" means the same as that term is defined in Section 75-1-201.

1234 (24) "Person" means the same as that term is defined in Section 75-1-201.

1235 (25) "Personal representative" means the same as that term is defined in Section 75-1-201.

1236 (26) "Petition" means the same as that term is defined in Section 75-1-201.

1237 (27) "Power of appointment" means the same as that term is defined in Section 75A-4-102.

1238 (28) "Principal" means the same as that term is defined in Section 75A-5-102.

1239 (29) "Property" means the same as that term is defined in Section 75-1-201.

1240 (30) "Protected person" means the same as that term is defined in Section 75-1-201.

1241 (31) "Record" means the same as that term is defined in Section 75-1-201.

1242 (32) "Security" means the same as that term is defined in Section 75-1-201.

1243 (33)(a) "Settlor" means a person, including a testator, who creates, or contributes
1244 property to, a trust.

1245 (b) If more than one person creates or contributes property to a trust, each person is a
1246 settlor of the portion of the trust property attributable to that person's contribution
1247 except to the extent another person has the power to revoke or withdraw that portion.

1248 (34) "Sign" means the same as that term is defined in Section 75-1-201.

1249 (35) "State" means the same as that term is defined in Section 75-1-201.

1250 (36) "Successor" means a person, other than a creditor, that is entitled to property of a
1251 decedent under the decedent's will or Title 75, Utah Uniform Probate Code.

1252 (37) "Testator" means the same as that term is defined in Section 75-1-201.

1253 (38)(a) "Trust" means:

1254 (i) a health savings account, as defined in Section 223 of the Internal Revenue Code;

1255 (ii) an express trust, private or charitable, with additions thereto, wherever and
1256 however created; or
1257 (iii) a trust created or determined by judgment or decree under which the trust is to be
1258 administered in the manner of an express trust.

1259 (b) "Trust" does not include:

1260 (i) a constructive trust;
1261 (ii) a resulting trust;
1262 (iii) a conservatorship;
1263 (iv) a personal representative;
1264 (v) a trust account as defined in Title 75, Chapter 6, Nonprobate Transfers;
1265 (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To
1266 Minors Act;
1267 (vii) a business trust providing for certificates to be issued to beneficiaries;
1268 (viii) a common trust fund;
1269 (ix) a voting trust;
1270 (x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;
1271 (xi) a security arrangement;
1272 (xii) a liquidation trust;
1273 (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries,
1274 wages, profits, pensions, or employee benefits of any kind; or
1275 (xiv) any arrangement under which a person is nominee or escrowee for another
1276 person.

1277 (39) "Trust company" means the same as that term is defined in Section [7-5-1] 7-5-101.

1278 (40) "Trustee" means an original, additional, and successor trustee, and cotrustee, whether
1279 or not appointed or confirmed by the court.

1280 (41) "Trust instrument" means an instrument executed by the settlor that contains terms of
1281 the trust, including any amendments thereto.

1282 (42) "Ward" means the same as that term is defined in Section 75-1-201.

1283 (43) "Will" means the same as that term is defined in Section 75-1-201.

1284 Section 27. Section **75B-3-107** is amended to read:

1285 **75B-3-107 . Limitations on trust director.**

1286 (1) A trust director is subject to the same rules as a trustee in a like position and under
1287 similar circumstances in the exercise or nonexercise of a power of direction or further
1288 power under Subsection 75B-3-106(2)(a) regarding:

1289 [①] (a) a payback provision in the terms of a trust necessary to comply with the
1290 Medicaid reimbursement requirements in Section 1917 of the Social Security Act, 42
1291 U.S.C. Sec. 1396p(d)(4)(A), as amended, and any related regulations; and
1292 [②] (b) a charitable interest in the trust, including notice regarding the interest to the
1293 attorney general.

1294 (2) A trust director may not engage in trust business, as that term is defined in Section
1295 7-5-101.

1296 **Section 28. Effective Date.**

1297 This bill takes effect on May 6, 2026.