

7-5-1 Definitions -- Allowable trust companies -- Exceptions.

(1) As used in this chapter:

- (a) "Business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets.
- (b) "Trust business" means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee for any purpose permitted by law, including the definition of "trust" set forth in Subsection 75-1-201(55).
- (c) "Trust business" does not include the following means of holding money, assets, or other property:
 - (i) money held in a client trust account by an attorney authorized to practice law in this state;
 - (ii) money held in connection with the purchase or sale of real estate by a person licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (iii) money or other assets held in escrow by a person authorized by the department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the Utah Insurance Department to act as an escrow agent in this state;
 - (iv) money held by a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property;
 - (v) money held in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative or otherwise at the sole direction of the person to which the debt or payment is owed, including money held by an escrow agent for payment of taxes or insurance;
 - (vi) money and other assets held in trust on an occasional or isolated basis by a person who does not represent that the person is engaged in the trust business in Utah;
 - (vii) money or other assets found by a court to be held in an implied, resulting, or constructive trust;
 - (viii) money or other assets held by a court appointed conservator, guardian, receiver, trustee, or other fiduciary if:
 - (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the court in the same manner as a personal representative under Title 75, Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure; and
 - (B) the conservator, trustee, or other fiduciary is a certified public accountant or has qualified for and received a designation as a certified financial planner, chartered financial consultant, certified financial analyst, or similar designation suitable to the court, that evidences the conservator's, trustee's, or other fiduciary's professional competence to manage financial matters;
 - (ix) money or other assets held by a credit services organization operating in compliance with Title 13, Chapter 21, Credit Services Organizations Act;
 - (x) money, securities, or other assets held in a customer account in connection with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or
 - (xi) money, assets, and other property held in a business trust for the benefit of holders of certificates of beneficial interest if the fiduciary activities of the business trust are merely incidental to conducting business in the business trust form.

- (d) "Trust company" means an institution authorized to engage in the trust business under this chapter. Only the following may be a trust company:
 - (i) a Utah depository institution or its wholly owned subsidiary;
 - (ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary;
 - (iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103(8);
 - (iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and
 - (v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.
- (2) Only a trust company may engage in the trust business in this state.
- (3) The requirements of this chapter do not apply to:
 - (a) an institution authorized to engage in a trust business in another state that is engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created and administered in another state;
 - (b) a national bank, federal savings bank, federal savings and loan association, or federal credit union authorized to engage in business as a depository institution in Utah, or any wholly owned subsidiary of any of these, to the extent the institution is authorized by its primary federal regulator to engage in the trust business in this state; or
 - (c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

Amended by Chapter 364, 2013 General Session