

## Chapter 5 Trust Business

### 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

**7-5-2 Permit required to engage in trust business -- Exceptions.**

- (1) No trust company shall accept any appointment to act in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under order or judgment of any court or by authority of any law of this state or as trustee for any purpose permitted by law or otherwise engage in the trust business in this state, unless and until it has obtained from the commissioner a permit to act under this chapter. This provision does not apply to any bank or other corporation authorized to engage and lawfully engaged in the trust business in this state before July 1, 1981.
- (2) Nothing in this chapter prohibits:
- (a) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or Chapter 10a, Utah Revised Business Corporation Act, from acting as trustee of any employee benefit trust established for the employees of the corporation or the employees of one or more other corporations affiliated with the corporation;
  - (b) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and owned or controlled by a charitable, benevolent, eleemosynary, or religious

organization from acting as a trustee for that organization or members of that organization but not offering trust services to the general public;

- (c) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or Chapter 10a, Utah Revised Business Corporation Act, from holding in a fiduciary capacity the controlling shares of another corporation but not offering trust services to the general public; or
- (d) any depository institution from holding in an agency or fiduciary capacity individual retirement accounts or Keogh plan accounts established under Section 401(a) or 408(a) of Title 26 of the United States Code.

Amended by Chapter 189, 2014 General Session

**7-5-3 Application for authorization to engage in trust business -- Criteria for granting -- Authority of trust company.**

- (1) A person seeking authorization to become a trust company and engage in the trust business in this state shall file an application with the commissioner in the manner provided in Section 7-1-704, and shall pay the fee prescribed in Section 7-1-401.
- (2) The commissioner shall, in deciding whether or not to approve the application, take into account:
  - (a) the character and condition of the applicant's assets;
  - (b) the adequacy of its capital;
  - (c) its earnings record;
  - (d) the quality of its management;
  - (e) the qualifications of any person proposed to be an officer in charge of the trust operations;
  - (f) the needs of the community for fiduciary services;
  - (g) the volume of business that the applicant will probably do; and
  - (h) any other relevant facts and circumstances, including the availability of legal counsel to advise and pass upon matters relating to the trust business.
- (3) The commissioner may not apply criteria making it more difficult for a state chartered depository institution to obtain approval to engage in the trust business than for a federally chartered depository institution of the same class.
- (4) The commissioner may impose such conditions when authorizing a person to engage in the trust business as he considers appropriate to protect the public interest.
- (5) Upon receiving authorization from the commissioner to become a trust company and engage in the trust business, the trust company is qualified to act as fiduciary in any capacity without bond.

Amended by Chapter 200, 1994 General Session

**7-5-4 Withdrawal from trust business.**

Any trust company which desires to withdraw from and discontinue doing a trust business shall furnish to the commissioner satisfactory evidence of its release and discharge from all the obligations and trusts undertaken by it, and after the company has furnished that evidence the commissioner shall revoke his certificate of authority to do a trust business previously issued to that trust company, and thereafter that trust company may not be permitted to use and may not use the word "trust" in its corporate name or in connection with its business, nor undertake the administration of any trust business.

Amended by Chapter 378, 2010 General Session

**7-5-5 Revocation of trust authority -- Procedure.**

- (1)
  - (a) The commissioner may issue and serve upon a trust company a notice of intent to revoke the authority of the trust company to exercise the powers granted by this chapter, if, in the commissioner's opinion, the trust company:
    - (i) is unlawfully or unsoundly exercising the powers granted under this chapter;
    - (ii) has unlawfully or unsoundly exercised the powers granted under this chapter;
    - (iii) has failed, for a period of five consecutive years, to exercise the powers granted by this chapter;
    - (iv) fails or has failed to comply with requirements upon which its permit is conditioned; or
    - (v) fails or has failed to comply with any rule of the commissioner.
  - (b) The notice shall:
    - (i) contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply; and
    - (ii) fix the time and place at which a hearing will be held to determine whether an order revoking authority to execute those powers should issue against the trust company.
- (2)
  - (a) If the trust company or its representative does not appear at the hearing, the commissioner may consider the trust company to be in default, and may issue a revocation order.
  - (b) If default has occurred, or if upon the record made at any hearing the commissioner finds that any allegation specified in the notice of charges has been established, the commissioner shall issue and serve upon the trust company an order:
    - (i) prohibiting it from accepting any new or additional trust accounts; and
    - (ii) revoking its authority to exercise any powers granted under this chapter.
  - (c) Any order issued under this section permits the trust company to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.
- (3) A revocation order shall become effective 30 days after service of the order upon the trust company and shall remain effective and enforceable, unless it is stayed, modified, terminated, or set aside by action of the commissioner or by judicial review as provided for in Section 7-1-714.

Amended by Chapter 9, 2001 General Session

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

Any trust company exercising the powers and performing the duties described in this chapter shall keep inviolate all communications and writings made to or by that trust company relating to the existence, condition, management or administration of any agency or fiduciary account confided to it and no creditor or stockholder of any such trust company shall be entitled to disclosure or knowledge of any such communication or writing, except that the directors, president, vice president, manager, treasurer, and trust officers, and any employees assigned to work on the trust business, and the attorney or auditor employed by it shall be entitled to knowledge of any such communication or writing and except that in any suit or proceeding relating to the existence, condition, management or administration of the account, the court in which the suit is pending may require disclosure of any such communication or writing. A trust company is not, however,

precluded from filing an action in court to protect trust account property or as authorized under Title 75, Utah Uniform Probate Code.

Amended by Chapter 189, 2014 General Session

**7-5-7 Management and investment of trust money.**

- (1) Money received or held by a trust company as agent or fiduciary, whether for investment or distribution, shall be invested or distributed as soon as practicable as authorized under the instrument creating the account and may not be held uninvested any longer than is reasonably necessary.
- (2) If the instrument creating an agency or fiduciary account contains provisions authorizing the trust company, its officers, or its directors to exercise their discretion in the matter of investments, money held in the trust account under that instrument may be invested only in those classes of securities which are approved by the directors of the trust company or a committee of directors appointed for that purpose. If a trust company acts in any agency or fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and account for the investments according to Title 75, Utah Uniform Probate Code, unless the underlying instrument provides otherwise.
- (3)
  - (a) Money received or held as agent or fiduciary by any trust company which is also a depository institution, whether for investment or distribution, may be deposited in the commercial department or savings department of that trust company to the credit of its trust department. Whenever the money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the trust company shall deliver to the trust department or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency. However, if the instrument creating such a fiduciary or managing agency account expressly provides that money may be deposited to the commercial or savings department of the trust company, then the money may be so deposited without setting aside collateral securities as required under this section and the deposits in the event of insolvency of any such trust company shall be treated as other general deposits are treated. A trust company that deposits trust funds in its commercial or savings department shall be liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits of like kind not made to the credit of its trust department.
  - (b) Money received or held as agent or fiduciary by a trust company, whether for investment or distribution, may be deposited in an affiliated depository institution. Whenever the money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the depository institution shall deliver to the trust company or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency. However, if the instrument creating the fiduciary or managing agency account expressly permits money to be deposited in the affiliated depository institution, the money may be so deposited without setting aside collateral securities as required under this section and deposits in the event of insolvency of the depository institution shall be treated as other general deposits are treated. A trust company that deposits trust money in an affiliated depository institution is liable for interest on the deposits only at the rates, if any, paid by the depository institution on deposits of like kind.
- (4) In carrying out all aspects of its trust business, a trust company shall have all the powers, privileges, and duties as set forth in Sections 75-7-813 and 75-7-814 with respect to trustees,

whether or not the trust company is acting as a trustee as defined in Title 75, Utah Uniform Probate Code.

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

Amended by Chapter 97, 2014 General Session  
Amended by Chapter 189, 2014 General Session

**7-5-8 Segregation of trust assets -- Books and records required -- Examination -- Trust property not subject to claims or debts against trust company.**

A trust company exercising the powers to act as an agent or fiduciary under this chapter shall segregate all assets held in any agency or fiduciary capacity from the general assets of the company and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this chapter. These books and records shall be open to inspection by the commissioner and shall be examined by him or by examiners appointed by him as provided in Chapter 1, General Provisions, or examined by other appropriate regulating agencies or both. Property held in an agency or fiduciary capacity by a trust company is not subject to claims or debts against the trust company.

Amended by Chapter 189, 2014 General Session

**7-5-9 Registration of investment in name of nominee -- Records -- Possession of investment.**

- (1) A trust company may cause any security, as defined in Section 75-1-201, held in its agency or fiduciary capacity to be registered and held in the name of a nominee or nominees of the trust company. The trust company shall be liable for the acts of any such nominee with respect to any investment so registered. Investments other than securities held in the name of a nominee on June 30, 1981, may continue to be held in that manner.
- (2) The records of the trust company shall at all times show the ownership of any such investment, which investment shall be in the possession or control of the trust company and be kept separate and apart from the assets of the trust company.

Amended by Chapter 93, 2010 General Session

**7-5-10 Lending trust funds to trust company, officer, director, or employee as felony.**

Unless expressly permitted in the instrument creating a trust account or by a person authorized to give that permission or by a court order as permitted in Section 75-7-802, no trust company shall lend to itself or to any officer or director or employee of the trust company any funds held in any trust account under the powers conferred in this chapter. Any officer, director or employee making such a loan, or to whom such a loan is made, is guilty of a third degree felony.

Amended by Chapter 89, 2004 General Session

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

- (1) Except as provided in Section 7-5-7, in Title 75, Utah Uniform Probate Code, or as authorized under the instrument creating the relationship, a trust company may not invest funds held as an

agent or fiduciary in stock or obligations of, or with such funds acquire property from, the trust company or any of its directors, officers or employees, nor shall a trust company sell property held as an agent or fiduciary to the company or to any of its directors, officers, or employees.

- (2) A trust company may retain and vote stock of the trust company or of any of its affiliates received by it as assets of any trust account or in any other fiduciary relationship of which it is appointed agent or fiduciary, unless the instrument creating the relationship otherwise provides.
- (3) Every trust company shall adopt written policies and procedures regarding decisions or recommendations to purchase or sell any security to facilitate compliance with federal and state securities laws. These policies and procedures, in particular, shall prohibit the trust company from using material inside information in connection with any decision or recommendation to purchase or sell any security.

Amended by Chapter 189, 2014 General Session

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

A committee of the board of directors, exclusive of any active officers of the trust department, of every trust company authorized to engage in the trust business in this state shall, at least once during a 15-month period, make a suitable audit of the trust business operations of the institution or cause a suitable audit to be made by auditors responsible only to the board of directors and shall ascertain whether the trust business operations of the institution have been administered in accordance with law and sound fiduciary principles. A report of the audit, together with the action taken thereon, shall be made available to the commissioner, his examiners, or the examiners of other trust company regulating agencies upon request. An examination by the state or other trust company regulating agencies or both made during the same period may be substituted for this audit.

Amended by Chapter 9, 1983 General Session

**7-5-13 Collective investment funds.**

- (1) A person authorized to engage in the trust business in this state may:
  - (a) establish collective investment funds that authorize participation by fiduciary or trust accounts of the trust company, its affiliates, or both; and
  - (b) participate in collective investment funds established by an affiliate of the trust company, if:
    - (i) the affiliate is authorized under the laws of its chartering authority to establish a collective investment fund in which its affiliates may participate; and
    - (ii) the plan establishing the collective investment fund specifically authorized the participation.
- (2) Funds held by a trust company may be invested collectively in a collective investment fund in accordance with the rules prescribed by the appropriate governmental regulatory agency or agencies, if this investment is not specifically prohibited under the instrument, judgment, decree, or order creating the regulatory relationship.
- (3) Unless ordered to do so by a court of competent jurisdiction, a trust company operating collective investment funds is not required to render a court accounting with regard to those funds; but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.
- (4) This section applies to all relationships in existence on or after May 1, 1989.

Amended by Chapter 267, 1989 General Session

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

(1) As used in this section:

(a) "Eligible trust company" means any of the following that is authorized under this chapter or the laws of the United States to engage in the trust business in this state:

- (i) a trust company;
- (ii) a depository institution; or
- (iii) a corporation.

(b) "Reorganization" includes:

- (i) the creation by a trust company of a subsidiary corporation that is:
  - (A) wholly owned by that trust company; and
  - (B) organized solely for the purpose of conducting all or any portion of the trust business of that trust company; or
- (ii) any merger or other combination between a trust company and:
  - (A) a wholly owned trust company subsidiary of that trust company; or
  - (B) a wholly owned trust company subsidiary of the depository institution holding company which owns or controls that trust company.

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

(a)

- (i) merge or consolidate with another eligible trust company;
- (ii) acquire control of another eligible trust company;
- (iii) acquire all or a portion of the assets and trust business of another eligible trust company;
- (iv) assume all or any portion of the liabilities of another eligible trust company;
- (v) transfer control to another eligible trust company;
- (vi) transfer all or a portion of its assets and trust business to another eligible trust company; or
- (vii) transfer all or a portion of its liabilities to another eligible trust company; or

(b) reorganize.

(3)

(a) Subject to Subsection (3)(b), upon final approval by the commissioner of any merger, consolidation, acquisition of control, acquisition of assets, assumption of liabilities, or reorganization, and upon written notice of this approval to all persons entitled to and then receiving trust accountings from the transferring or reorganizing trust company, the resulting or acquiring trust company shall, without court proceedings or a court order, succeed to all rights, privileges, duties, obligations, and undertakings under all trust instruments, agency and fiduciary relationships and arrangements, and other trust business transferred and acquired in the manner authorized by this section.

(b) Except as provided otherwise in the relevant trust instrument, any interested person may, not more than 30 days after receipt of written notice of the merger, consolidation, acquisition, transfer, or reorganization, petition any court of competent jurisdiction to appoint another or succeeding trust company with respect to any agency or fiduciary relationship affecting that interested person, and until another or succeeding trust company is so appointed, the acquiring or resulting trust company is entitled to act as agent or fiduciary with respect to the agency or fiduciary relationship.

Amended by Chapter 277, 2007 General Session

**7-5-15 Assets of trust company in possession of the commissioner.**

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

Amended by Chapter 189, 2014 General Session