

**CHAPTER 31a. TRUST POWERS**

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**Authority**

The provisions of this Chapter 31a issued under section 701(a)(24) of the Savings Association Code of 1967 (7 P. S. § 6020-101(a)(24)), unless otherwise noted.

**Source**

The provisions of this Chapter 31a adopted June 24, 1983, effective June 25, 1983, 13 Pa.B. 1993, unless otherwise noted.

**§ 31a.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Fiduciary*—An association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking. The term includes trustee; executor; administrator; guardian; receiver; managing agent; registrar of stocks and bonds, escrow; transfer, or paying agent; trustee or employe pension, welfare, and profit-sharing trusts, and any other similar capacity.

*Fiduciary records*—All matters which are written, transcribed, recorded, received or otherwise come into the possession of an association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of an association.

*Managing agent*—The fiduciary relationship assumed by an association upon the creation of an account which names the association as agent and confers investment discretion upon the association.

*Trust department*—That group of officers and employes of an association or of an affiliate of an association to whom are assigned the performance of fiduciary services by the association.

*Trust powers*—The power to act in any fiduciary capacity authorized by section 701(a)(24) of the Savings Association Code of 1967 (7 P. S. § 6020-101(a)(24)).

### § 31a.2. Applications.

(a) An association desiring to exercise fiduciary powers, either through a trust department or through an affiliate, shall file with the Department an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations under subsection (b).

(b) In addition to any other facts or circumstances deemed proper, the Department, in passing upon an application to exercise trust powers, will give consideration to:

- (1) the financial condition of the association;
- (2) the needs of the community for fiduciary services and the probable volume of such fiduciary business available to the association;
- (3) the general character and ability of the management of the association;
- (4) the nature of the supervision to be given to the fiduciary activities, including the qualifications, experience and character of the proposed officer or officers of the trust department; and
- (5) whether the association has available legal counsel to advise and pass upon fiduciary matters wherever necessary.

### § 31a.3. Administration of trust powers.

(a) The responsibility of the board of directors and the administration of accounts shall be as follows:

(1) *Responsibility of the board of directors.* The board of directors is responsible for the proper exercise of fiduciary powers by the association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees and committees utilized by the association in the exercise of its fiduciary powers are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the association's trust powers as it may consider proper to assign to such director, officer, employee, or committee as it may designate.

(2) *Administration of accounts.* No fiduciary account shall be accepted without the prior approval of the board or of the director, officer, or committee to whom the board may have assigned the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptances of an account for which the association has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets

held in or for each fiduciary account for which the association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. The board of directors should act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(b) The trust department may utilize personnel and facilities of other departments of the association, and other departments of the association may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

(c) Every association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the association and its trust department.

(d) All institutions shall meet the minimum bond coverage set out in the regulations of the Federal Savings and Loan Insurance Corporation, 12 CFR 563.19. In addition, directors, officers, and employees of an association engaged in the operation of a trust department shall acquire such additional bond coverage as the Department may require.

#### **§ 31a.4. Books and accounts.**

(a) *General.* Every association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the association. All fiduciary records shall be kept and retained for such time as to enable the association to furnish such information or reports with respect thereto as may be required by the Department. The fiduciary records shall contain full information relative to each account.

(b) *Record of pending litigation.* Every association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

#### **§ 31a.5. Audit of trust department.**

At least once during each calendar year, the association's trust department shall be audited by auditors in a manner consistent with section 1407 of the Banking Code (7 P. S. § 1407). A copy of the report of the audit shall be promptly filed with the Department.

#### **§ 31a.6. Funds awaiting investment or distribution.**

(a) *General.* Funds held in a fiduciary capacity by an association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(b) *Use by association in regular business.*

(1) Funds held in trust by an association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in another department of the asso-

ciation if the association first sets aside under control of the trust department as collateral security one of the following:

- (i) Direct obligations of the United States, the Commonwealth or other obligations fully guaranteed by the United States as to principal and interest.
  - (ii) Other readily marketable securities approved by the Department.
- (2) Collateral securities or securities substituted as collateral shall at all times be at least equal in market value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds deposited are insured by the Federal Savings and Loan Insurance Corporation or the Pennsylvania Savings Association Insurance Corporation.
- (3) Any funds held by an association as fiduciary awaiting investment or distribution and deposited in another department of the association shall be made productive.

#### § 31a.7. Investment of funds held as fiduciary.

(a) *Private trusts.* Funds held by an association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and State law. When such instrument does not specify the character or class of investments to be made and does not vest in the association, its directors, or its officers investment discretion in the matter, funds held under such instrument shall be invested in any investment in which the trust departments of Pennsylvania state-chartered banking institutions may invest.

(b) *Court trusts.* If corporate fiduciaries appointed by a court are permitted to exercise discretion in investments, or if an association acting as fiduciary under appointment by a court is vested with discretion in investments by an order of such court, funds of such accounts may be invested in any investments which are permitted by State law for trust departments of Pennsylvania state-chartered banking institutions. Otherwise, an association acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. Such orders in either case shall be preserved with the fiduciary records of the association.

(c) *Collective investment of trust funds.* The collective investment of funds received or held by an association as fiduciary is governed by § 31a.11 (relating to collective investment).

#### § 31a.8. Self-dealing.

(a) *Purchase of obligations from association.* Unless lawfully authorized by the instrument creating the relationship or by court order, funds held by an association as fiduciary shall not be invested in obligations of or property acquired from the association or its directors, officers or employees; individuals with whom there exists such a connection; organizations in which there exists such an inter-

est as might affect the exercise of the best judgment of the association in acquiring the property; or affiliates of the association or their directors, officers or employes.

(b) *Sale or transfer of trust assets to association.* Property held by an association as fiduciary shall not be sold or transferred, by loan or otherwise, to the association or its directors, officers or employes; to individuals with whom there exists such a connection; to organizations in which there exists such an interest as might affect the exercise of the best judgment of the association in selling or transferring such property, or to affiliates of the association or their directors, officers or employes, except as follows:

- (1) When lawfully authorized by the instrument creating the relationship or by court order.
- (2) As provided in § 31a.11 (relating to collective investment).
- (3) When required by the Department.

#### **§ 31a.9. Custody of investments.**

(a) *Segregation of trust assets and joint custody.* The investments of each account shall be kept separate from the assets of the association and shall be placed in the joint custody or control of not fewer than two of the officers or employes of the association designated for that purpose either by the board of directors of the association or by one or more officers designated by the board of directors of the association, and all such officers and employes shall be adequately bonded. To the extent permitted by law, an association may permit the investments of a fiduciary account to be deposited elsewhere.

(b) *Segregation of accounts.* The investments of each account shall be one of the following:

- (1) Kept separate from those of all other accounts, except as provided in § 31a.11 (relating to collective investment).
- (2) Adequately identified as the property of the relevant account.

#### **§ 31a.10. Compensation of associations.**

(a) *General.* If the amount of the compensation for acting in a fiduciary capacity is not regulated by State law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, an association acting in such capacity may charge or deduct a reasonable compensation for its services. When the association is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court or by State law.

(b) *Officer or employe of association as co-fiduciary.* No association shall, except with the specific approval of its board of directors, permit any of its officers or employes, while serving as such, to retain any compensation for acting as a co-fiduciary with the association in the administration of any account undertaken by it.

(c) *Bequests or gifts to trust officers and employes.* No association shall permit an officer or employe engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is made by a relative or is approved by the board of directors of the association.

**§ 31a.11. Collective investment.**

(a) Funds held by an association as fiduciary may be held in one of the following:

(1) A common trust fund maintained by the association exclusively for the collective investment and reinvestment of moneys contributed thereto by the association in its capacity as trustee, executor, administrator, guardian, or custodian under 20 Pa.C.S. §§ 5301—5310 (relating to Pennsylvania Uniform Transfers to Minors Act).

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code.

(b) Collective investments of funds or other property by an association under subsection (a) shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 CFR 9.18; however, any documents required to be filed with the Comptroller of the Currency shall be filed with the Department.

(c) As used in this section, the term association shall include two or more associations which are members of the same affiliated group with respect to any fund established under this section of which any of such affiliated associations is trustee, or of which two or more of such affiliated associations are co-trustees.

**Cross References**

This section cited in 10 Pa. Code § 31a.7 (relating to investment of funds held as fiduciary); 10 Pa. Code § 31a.8 (relating to self-dealing); and 10 Pa. Code § 31a.9 (relating to custody of investments).

**§ 31a.12. Surrender of trust powers.**

(a) Any association which has been granted the right to exercise trust powers and which desires to surrender such rights shall file with the Department a certified copy of the resolution of its board of directors signifying such desire.

(b) Upon receipt of such resolution, the Department will make an investigation; and, if it is satisfied that the association has been discharged from all fiduciary duties which it has undertaken, it will issue a certificate to such association certifying that it is no longer authorized to exercise fiduciary powers.

(c) Upon issuance of such a certificate by the Department, an association may:

(1) No longer be subject to the provisions of this chapter.

(2) Not exercise thereafter any of the powers granted by this chapter without first applying for and obtaining new authorization to exercise such powers.

**§ 31a.13. Revocation of trust powers.**

In addition to the other sanctions available, if, in the opinion of the Department, an association is unlawfully or unsoundly exercising or has unlawfully or unsoundly exercised or for a period of 5-consecutive years has failed to exercise the powers granted by this chapter or otherwise fails or has failed to comply with this chapter, the Department may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this chapter. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, failure to exercise powers, or failure to comply and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

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