

**CHAPTER 443a. TRUSTEESHIP**

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**Authority**

The provisions of this Chapter 443a issued under the Pennsylvania Gaming Control Board, 4 Pa.C.S. §§ 1102(1), (3), (5), (8) and (11), and 1202(a)(1), (b)(12), (14) and (15) and (b)(30), unless otherwise noted.

**Source**

The provisions of this Chapter 443a adopted January 2, 2009, effective January 3, 2009, 39 Pa.B. 21, unless otherwise noted.

**§ 443a.1. Definitions.**

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

*Trustee*—A fiduciary appointed by the Board for the purpose of preserving the viability of a licensed gaming entity, and the integrity of gaming in this Commonwealth.

*Trusteeship action*—An action brought before the Board for the appointment of a trustee.

**§ 443a.2. Appointment of trustees.**

(a) Upon the revocation or suspension of a slot machine license or a principal license of an individual who the Board has determined controls a slot machine licensee, the Board may appoint a trustee to assure compliance with the act, this part, and any conditions imposed upon the slot machine license under § 423a.6 (relating to license, permit, registration and certification issuance and statement of conditions).

(b) Upon the failure to renew a slot machine license or a principal license of an individual who the Board has determined controls a slot machine licensee, the Board may appoint a trustee who shall have all of the power and duties granted by the Board until the discontinuation of trusteeship as provided in § 443a.12 (relating to discontinuation of trusteeship).

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(c) The Board will have the power to appoint and remove one or more trustees as necessary.

**§ 443a.3. Qualifications of trustees.**

(a) A trustee shall be required to file an application for and obtain a principal license.

(b) The Board may appoint a trustee and award the trustee a temporary principal credential under § 435a.8 (relating to temporary credentials for principals and key employees) when necessary.

**§ 443a.4. Bonding of trustees.**

(a) Before assuming duties, a trustee shall execute and file a bond for the faithful performance of the trustee's duties.

(b) The bond required under subsection (a) must be payable to the Board with sureties and in the amount and form as required by Board order.

(c) The cost of the bond required under subsection (a) shall be paid by the former or suspended licensee.

**§ 443a.5. Effect of the trusteeship on slot machine and principal licensees.**

After the adoption of a trusteeship action, the former or suspended slot machine or principal licensee may not exercise any of its privileges, collect or receive any debts and pay out, sell, assign or transfer any of its property to anyone without prior approval of the Board.

**§ 443a.6. Powers and duties of trustees.**

(a) The Board's order appointing a trustee will set forth the powers, duties and responsibilities of the trustee. The trustee shall exercise only those powers and perform those duties expressly conferred on the trustee by the Board or this chapter.

(b) A trustee shall have the duty to conserve and preserve the assets of the slot machine licensee.

(c) Subject to the direct supervision of the Board, the written order of the Board described in subsection (a) may vest a trustee with the following powers:

(1) Maintaining and operating the licensed facility in a manner that complies with the act, this part, the slot machine licensee's statement of conditions and the Board's order appointing the trustee.

(2) Maintaining and operating the licensed facility consistent with the measures generally taken in the ordinary course of business including:

(i) Entering into contracts.

(ii) Borrowing money.

(iii) Pledging, mortgaging or otherwise encumbering the slot machine licensee's property; provided that power shall be subject to any provisions and restrictions in any existing credit documents.

- (iv) Hiring, firing and disciplining employees.
- (v) Settling or compromising with any debtor or creditor of the former or suspended licensee, including any taxing authority.
- (3) Exercising the rights and obligations of the former or suspended licensee.
- (4) Taking possession of all of the property of the former or suspended licensee, including its books, records and papers.
- (5) Establishing accounts with financial institutions, which are not affiliated, owned or otherwise influenced by the former or suspended licensee, to carry out the business of the former or suspended licensee.
- (6) Meeting with the former or suspended licensee.
- (7) Meeting with principals and key employees at the licensed facility.
- (8) Meeting with the independent audit committee, if there is one.
- (9) Meeting with the Board's Executive Director and keeping the Board's Executive Director apprised of actions taken and the trustee's plans and goals for the future.
- (10) Hiring legal counsel, accountants or other consultants or assistants, with approval of the Board, as necessary to carry out the trustee's duties and responsibilities.
- (11) Reviewing outstanding agreements to which the former or suspended licensee is a party and advising the Board as to which, if any, of the agreements should be the subject of scrutiny, examination or investigation by the Board.
- (12) Obtaining Board approval prior to any sale, change of ownership, change of control, financial status, restructuring, transfer of assets, execution of a contract or any other action taken outside of the ordinary course of business.
- (13) Obtaining Board approval for any payments outside of those in the ordinary course of business.

#### Cross References

This section cited in 58 Pa. Code § 443a.2 (relating to appointment of trustees); and 58 Pa. Code § 443a.7 (relating to compensation of trustees and payment of costs associated with the trusteeship).

#### **§ 443a.7. Compensation of trustees and payment of costs associated with the trusteeship.**

- (a) The Board will establish the compensation of the trustee.
- (b) The Board will review and approve reasonable costs and expenses of the trustee, the legal counsel, accountants, or other consultants or assistants hired by the trustee under § 443a.6(a)(10) (relating to powers and duties of trustees) and other persons the Board may appoint in connection with the trusteeship action.
- (c) The costs in subsections (a) and (b) shall be paid by the former or suspended licensee.

**§ 443a.8. Required reports of the trustees.**

(a) A trustee shall file reports with regard to the administration of the trusteeship with the Board in the form and at intervals as the Board orders.

(b) The Board may direct that copies or portions of the trustee's reports be mailed to creditors or other parties in interest and make summaries of the reports available to the public and post them on the Board's web site [www.pgcb.state.pa.us](http://www.pgcb.state.pa.us).

**§ 443a.9. Review of actions of the trustees.**

(a) A creditor or party in interest aggrieved by any alleged breach of a delegated power or duty of a trustee in the discharge of the trustee's duties may request a review of the trustee's action or inaction by filing a petition in accordance with § 493a.4 (relating to petitions generally).

(b) The petition must set forth in detail the pertinent facts and the reasons why the facts constitute the alleged breach.

(c) The Board will review any petition filed under this section and take whatever action, if any, it deems appropriate.

**§ 443a.10. Disposition of net earnings during the period of trusteeship.**

(a) During the period of trusteeship, net earnings, if any, shall be deposited in an escrow account maintained for that purpose.

(b) Distributions of net earnings during the period of trusteeship may not be made by the trustee without the prior approval of the Board.

(c) A suspended or former principal or slot machine licensee may request a distribution of all or a portion of the net earnings during the period of trusteeship by filing a petition in accordance with § 493a.4 (relating to petitions generally). The suspended or former principal or slot machine licensee shall have the burden of demonstrating good cause for the distribution of the net earnings requested.

**§ 443a.11. Payments following a bulk sale.**

Following the sale, assignment, conveyance or other disposition in bulk of all the property subject to a trusteeship and the payment of all obligations to the Commonwealth and political subdivisions and other funds set forth in the act, the Board will conduct a hearing to determine the distribution of the remaining assets.

**§ 443a.12. Discontinuation of trusteeship.**

(a) The Board may direct the discontinuation of a trusteeship when:

(1) The Board determines that the cause for which the trusteeship action was instituted no longer exists.

(2) The trustee has, with the prior approval of the Board, consummated the sale, assignment, conveyance or other disposition in bulk of all the property of the former principal or slot machine licensee relating to the slot machine license.

(b) Upon the discontinuation of the trusteeship and with the approval of the Board, the trustee shall take steps as may be necessary to affect an orderly transfer of the property of the former or suspended principal or slot machine licensee.

**Cross References**

This section cited in 58 Pa. Code § 443a.2 (relating to appointment of trustees).

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