

Memorandum 84-27

Subject: Study L-640 - Trusts (Conduct of Trust Business and Qualification by Foreign Trustees)

Existing California Law

At the last meeting the Commission requested the staff to further investigate the law regarding the extent to which foreign corporations may act as trustees in California. In summary, a foreign corporation may conduct a trust business in California only through the mechanism of a domestic subsidiary corporation. All other conduct of a trust business is forbidden except for certain very limited actions. There is no way that a foreign trust corporation can qualify to do its business, as can a corporation generally, nor is there any way to establish a branch office for the purpose of conducting a trust business.

The statutes supporting these conclusions are attached to this memorandum as Exhibit 1. The staff has also discussed these matters with lawyers and a trust examiner in the State Banking Department. A more detailed discussion follows.

Financial Code Section 1503 sets up two prohibitions against foreign corporations: they may not (1) "have or exercise the powers of a trust company" nor (2) "directly or indirectly transact or conduct in this state a trust business as defined in Section 106." The definition of "trust business" in Financial Code Section 106 is very broad (see copy in Exhibit 1) and consequently does not appear to leave open any course of conduct by a trustee that would not be considered as transacting or conducting a trust business. Note that the prohibition against foreign corporations in Financial Code Section 1503 is not limited to conducting a "trust business"--it also forbids having or exercising the powers of a trust company.

Notwithstanding this broad prohibition, Section 1503 permits a limited type of action in California by a corporation authorized by its articles to exercise trust powers, namely delivering, registering, paying interest on, certifying, redeeming, and cancelling bonds. It has been suggested that these exceptions relate to 19th Century problems involving railroad trusts; they are obviously of little utility in the

administration of a trust. Section 1503 also excepts actions by a trustee under a mortgage, deed of trust, or other instruments, and railroad obligations.

Financial Code Section 1750(a) (copy in Exhibit 1), enacted in 1981, also forbids transacting business in this state by a foreign state bank. See also Fin. Code § 1755(b) (foreign nation bank precluded from transacting trust business at California branch). The broad prohibition of Section 1750(a) is qualified in Section 1750(b) which permits foreign banks to carry on activities listed in Corporations Code Section 191(d), to loan money secured by liens on real property, and to transact business permitted under Financial Code Section 1503 (discussed above). Corporations Code Section 191(d) (copy in Exhibit 1) permits certain activities that are not considered as transacting intrastate business. These activities include purchasing property, making and enforcing loans, and hiring agents. The last paragraph of Section 191 makes clear that its provisions do not excuse foreign banks from compliance with other laws. Subdivision (a) of Section 191 provides a more meaningful definition of transacting business than does Financial Code Section 106; for the purposes of qualifying to do business in California, "transact intrastate business" means "entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce." However, banks and trust companies are not permitted by the Financial Code to conduct a trust business in this state, so the general provisions in the Corporations Code for qualifying to conduct intrastate business applicable to corporations generally are not available to institutional trustees.

The only alternative is to establish a subsidiary corporation in California and this is recognized in Financial Code Section 1750(c). It is through the subsidiary corporation device that foreign banks and trust companies are currently entering California. Hence, for example, Fiduciary Trust Co. of California, which has an office in Los Angeles, is a California corporation that is a wholly owned subsidiary of Fiduciary Trust Co. of New York.

A reading of the statutes may raise an implication that a foreign state bank might establish a branch office and conduct a trust business from it. However, this is not possible because the sort of branch offices authorized by Financial Code Sections 1700-1701 involve the conduct of a "commercial banking business" which is distinguished in

Financial Code Sections 102, 103, 105, and 106 from trust business. The situation is not crystal clear, however, since Section 107 defines a trust company to include a commercial bank. Nevertheless, a reading of the branch banking statutes does not lend concrete support to any idea that a foreign corporation might establish a trust business through branch operations.

As for national banks which are exempted from the prohibition of Financial Code Section 1503, the interpretation given this provision is that it treats national banks authorized to conduct business in California as domestic corporations.

Alternative Approaches

1. Keep Existing Law

The current scheme which bars almost all activity by foreign corporate trustees could be retained without change. As noted, a foreign corporation which wants to conduct a trust business in California can accomplish that goal by setting up a California corporation. This alternative does not answer the problem that arises where a foreign corporation is named as a trustee in a California trust instrument, however.

California falls within a large group of states which effectively bar foreign corporations from acting as trustees. See G. Bogert, *The Law of Trusts and Trustees* § 132, at 644 (2d ed. 1965) (Alaska, Florida, Hawaii, Idaho, Kentucky, Louisiana, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, South Dakota, Utah, Virginia, Washington, and West Virginia). However, a number of states in this group allow certain significant actions by a foreign corporate trustee such as receiving, holding, and transferring property. See, e.g., Fla. Stat. Ann. § 664.41(3) (West Supp. 1984) (copy in Exhibit 2).

2. Expand The List of Permitted Activities

In order to avoid the expense and inefficiency of appointing a domestic ancillary trustee where a California trust names a foreign corporate trustee or where a foreign trust involves California real property, the law might be revised to permit occasional administration by a foreign trustee just as the statutes now permit very limited activities in Corporations Code Section 191(d) and Financial Code Section 1503. Section 7-105 of the Uniform Probate Code permits a foreign corporate (or individual) trustee "to receive distribution from a local

estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation." These acts are permitted without running afoul of the state's laws forbidding the conduct of a trust business. The Comment to UPC Section 7-105 explains the thinking behind the provision as follows:

Section 7-105 deals with nonresident trustees in a fashion which should correct a widespread deficiency in present regulation of trust activity. Provisions limiting business of foreign corporate trustees constitute an unnecessary limitation on the ability of a trustee to function away from its principal place of business. These restrictions properly relate more to continuous pursuit of general trust business by foreign corporations than to isolated instances of litigation and management of the assets of a particular trust. The ease of avoiding foreign corporation qualification statutes by the common use of local nominees or subtrustees, and the acceptance of these practices, are evidence of the futility and undesirability of more restrictive legislation of the sort commonly existing today. The position embodied in this section has been recommended by important segments of the banking and trust industry through a proposed model statute, and the failure to adopt this reform has been characterized as unfortunate by a leading trust authority. See 5 Scott on Trusts § 558 (3d ed. 1967).

This alternative avoids the question of whether foreign corporations should be able to conduct a trust business in California and how they should qualify to do so. It serves the interests of the trustor without impinging unfairly on the business interests of domestic trust companies. This type of revision of the law seems to the staff to be the best alternative in view of the various interests involved.

A scheme based on UPC Section 7-105 could also provide for automatic appointment of the Secretary of State as agent for service of process and could require a bond of the foreign trustee, either in every case or as required by the court.

It is interesting to consider Corporations Code Section 191(c) on the subject of actions that do not constitute doing business in California. Under this provision (see copy in Exhibit 1), a foreign corporation is not considered to be conducting intrastate business where it maintains an action or "conducts an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature."

3. Permit Foreign Corporate Trustees to Act on Reciprocal Basis

Many states permit foreign corporations to act as trustees if the state in which the corporation is organized permits foreign corporations to act as trustees. Approximately 20 states have enacted reciprocity

schemes. Bogert, supra, § 132, n. 36 (2d ed. 1965 & Supp. 1982) (Alabama, Connecticut, Delaware, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, and Texas). It appears that the number of states adopting reciprocity schemes has increased from 15 to 21 during the last 20 years.

Reciprocity schemes really have nothing to do with the interests of the trustor or beneficiaries. As Professor Scott noted, a refusal to permit administration by a foreign trustee

clearly defeats the testator's intention and can be justified only on some ground of public policy. One ground may be the protection of local trust companies against competition. This is the obvious purpose of the reciprocal statutes. But trusts are not created for the benefit of the trustees. The interest of a testator in disposing of his estate, and the interests of the beneficiaries, are far more important than those of the trust companies of the state in which the testator happens to be domiciled when he dies.

5 A. Scott, *The Law of Trusts* § 558, at 3784-85 (3d ed. 1967).

Reciprocity may be objectionable as an overly protective scheme, but, on the other hand, if reciprocity is adopted universally, the goal of lowering the protective barriers will be achieved. It should be remembered that reciprocity statutes do not permit the conduct of a trust business by a foreign corporation, but rather remove the impediment to acting as trustee in a given case, typically involving a testamentary trust. See the statutes of Kansas, Minnesota, New York, Oklahoma, and Pennsylvania in Exhibit 2.

4. Permit Qualification of Corporate Trustees in Manner of Other Corporations

In theory at least, a foreign corporate trustee could be treated in the same manner as any other foreign corporation that wants or needs to qualify to do business in California. This would entail satisfying the qualification requirements of Corporations Code Section 2105 (see copy in Exhibit 1). Such qualification would also involve satisfying the requirements applicable to corporate trustees set forth in the Financial Code.

The staff thinks that this alternative is unlikely to be acceptable to local interests. It might also be argued that such a scheme is unnecessary in view of the existing alternative of setting up a California subsidiary corporation to conduct a trust business. Making general

qualification statutes available to foreign trustees would not solve the problem faced by a foreign trustee that does not want to qualify generally to do business but only to act as trustee in a particular case.

Conclusion

The Commission has expressed interest in permitting foreign corporate trustees to act in California on some limited basis. The staff favors the Uniform Probate Code approach of expanding the types of occasional activities that can take place without offending the prohibition on conducting a trust business in California. A reciprocity scheme would accomplish the same result as to states that have their own reciprocity statutes. The law should not remain as it is because of the unnecessary burden imposed on the interests of the trustor and the beneficiaries. Nor is it particularly useful to permit foreign corporations to qualify under the general corporation laws.

If the UPC scheme or a reciprocity scheme is recommended to the Legislature, the statute should also require appointment of an agent for service of process and satisfaction of any bonding requirements.

Respectfully submitted,

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EXHIBIT 1

Selected Statutes Relating to Conduct
of Trust Business by Foreign
Corporations

Corporations Code

§ 191. Transact intrastate business; foreign corporation

(a) For the purposes of Chapter 21 (commencing with Section 2100), "transact intrastate business" means entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce.

(b) A foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business.

(c) Without excluding other activities which may not constitute transacting intrastate business, a foreign corporation shall not be considered to be transacting intrastate business within the meaning of subdivision (a) solely by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its board or shareholders or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange and registration of its securities or depositaries with relation to its securities.

(5) Effecting sales through independent contractors.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(7) Creating evidences of debt or mortgages, liens or security interests on real or personal property.

(8) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

(d) Without excluding other activities which may not constitute transacting intrastate business, any foreign lending institution, including, but not limited to; any foreign banking corporation, any foreign corporation all of the capital stock of which is owned by one or more foreign banking corporations, any foreign savings and loan as-

sociation, any foreign insurance company or any foreign corporation or association authorized by its charter to invest in loans secured by real and personal property, whether organized under the laws of the United States or of any other state, district or territory of the United States, shall not be considered to be doing, transacting or engaging in business in this state solely by reason of engaging in any or all of the following activities either on its own behalf or as a trustee of a pension plan, employee profit sharing or retirement plan, testamentary or inter vivos trust, or in any other fiduciary capacity:

(1) The acquisition by purchase, by contract to purchase, by making of advance commitments to purchase or by assignment of loans, secured or unsecured, or any interest therein, if such activities are carried on from outside this state by the lending institution.

(2) The making by an officer or employee of physical inspections and appraisals of real or personal property securing or proposed to secure any loan, if the officer or employee making any physical inspection or appraisal is not a resident of and does not maintain a place of business for such purpose in this state.

(3) The ownership of any loans and the enforcement of any loans by trustee's sale, judicial process or deed in lieu of foreclosure or otherwise.

(4) The modification, renewal, extension, transfer or sale of loans or the acceptance of additional or substitute security therefor or the full or partial release of the security therefor or the acceptance of substitute or additional obligors thereon, if the activities are carried on from outside this state by the lending institution.

(5) The engaging by contractual arrangement of a corporation, firm or association, qualified to do business in this state, which is not a subsidiary or parent of the lending institution and which is not under common management with the lending institution, to make collections and to service loans in any manner whatsoever, including the payment of ground rents, taxes, assessments, insurance and the like and the making, on behalf of the lending institution, of physical inspections and appraisals of real or personal property securing any loans or proposed to secure any loans, and the performance of any such engagement.

(6) The acquisition of title to the real or personal property covered by any mortgage, deed of trust or other security instrument by trustee's sale, judicial sale, foreclosure or deed in lieu of foreclosure, or for the purpose of transferring title to any federal agency or instrumentality as the insurer or guarantor of any loan, and the retention of title to any real or personal property so acquired pending the orderly sale or other disposition thereof.

(7) The engaging in activities necessary or appropriate to carry out any of the foregoing activities.

Nothing contained in this subdivision shall be construed to permit any foreign banking corporation to maintain an office in this state otherwise than as provided by the laws of this state or to limit the powers conferred upon any foreign banking corporation as set forth in the laws of this state or to permit any foreign lending institution to maintain an office in this state except as otherwise permitted under the laws of this state.

(Added by Stats.1975, c. 682, p. —, § 7, eff. Jan. 1, 1977. Amended by Stats.1976, c. 641, p. —, § 4.9, eff. Jan. 1, 1977.)

§ 2104. Foreign lending institution; appointment of secretary of state as agent for service of process

Any foreign lending institution which has not qualified to do business in this state and which engages in any of the activities set forth in subdivision (d) of Section 191 shall be considered by such activities to have appointed the Secretary of State as its agent for service of process for any action arising out of any such activities, and, on or before June 30th of each year, shall file a statement showing the address to which any notice or process may be sent in the manner and with the effect provided in Section 2111.

No foreign lending institution solely by reason of engaging in any one or more of the activities set forth in subdivision (d) of Section 191 shall be required to qualify to do business in this state nor be subject to (a) any of the provisions of the Bank and Corporation Tax Law (commencing with Section 23001) of the Revenue and Taxation Code or (b) any of the provisions of this code or the Financial Code or Insurance Code relating to qualifications for doing or transacting business in this state or to requirements pertaining thereto or to the effects or results of failure to qualify to do business in this state.

(Added by Stats.1976, c. 682, p. —, § 7, eff. Jan. 1, 1977. Amended by Stats.1976, c. 641, p. —, § 30.2, eff. Jan. 1, 1977.)

§ 2105. Transacting intrastate business; certificate of qualification; insurers; corporate process agent; annexations

(a) A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain such certificate it shall file, on a form prescribed by the Secretary of State, a statement and designation signed by a corporate officer stating:

- (1) Its name and the state or place of its incorporation or organization.
- (2) The address of its principal executive office.
- (3) The address of its principal office within this state.

(4) The name of an agent upon whom process directed to the corporation may be served within this state. Such designation shall comply with the provisions of subdivision (b) of Section 1502.

(5) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.

(6) If it is a corporation which will be subject to the Insurance Code as an insurer, it shall so state such fact.

(b) Annexed to such statement and designation shall be a certificate by an authorized public official of the state or place of incorporation of the corporation to the effect that such corporation is an existing corporation in good standing in that state or place or, in the case of an association, an officers' certificate stating that it is a validly organized and existing business association under the laws of a specified foreign jurisdiction.

(c) Before it may be designated by any foreign corporation as its agent for service of process, any corporate agent must comply with Section 1505.

(Amended by Stats.1979, c. 737, p. 2576, § 3.)

Financial Code

§ 101. Applicability of corporation laws

All provisions of law applicable to corporations generally (including, but not limited to, the General Corporation Law (Division 1 (commencing with Section 100), Title 1 of the Corporations Code) shall * * * apply to banks. * * * However, whenever any provision of this division or of any regulation or order issued under any provision (other than this section) of this division applicable to banks is inconsistent with any provision of law applicable to corporations generally, such provision of this division or of such regulation or order shall apply and such provision of law applicable to corporations generally shall not apply.

(Amended by Stats.1978, c. 965, p. 2968, § 1.)

§ 102. Bank defined

The word "bank" as used in this division means any incorporated banking institution which shall have been incorporated to * * * engage in commercial banking business or trust business * * *. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business shall be deemed to be doing a commercial * * * banking business whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing; provided, that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for or on account of his principal. It shall be unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for such purpose.

(Amended by Stats.1973, c. 963, p. 1808, § 2; Stats.1978, c. 965, p. 2968, § 2.)

§ 103. Classes of banks

Banks are divided into the following classes:

(a) Commercial banks.

* * *

(b) Trust companies.

(Amended by Stats.1973, c. 963, p. 1808, § 3.)

§ 105. Commercial bank defined

"Commercial bank" means a bank * * * authorized to receive deposits of money or its equivalent, including demand deposits, savings deposits, and time deposits; to lend money on the security of real or personal property or without security; to discount or deal in bills, notes, or other commercial paper; to buy and sell for the account of customers, and, if eligible for investment, for its own account, securities, gold and silver bullion, foreign coins, and bills of exchange; and generally to transact a commercial banking business.

(Amended by Stats.1973, c. 963, p. 1808, § 5.)

§ 106. Trust business defined

"Trust business" means the business of acting as executor, administrator, guardian or conservator of estates, assignee, receiver, depository or trustee under the appointment of any court, or by authority of any law of this or any other state or of the United States, or as trustee for any purpose permitted by law. (Stats.1951, c. 364, p. 831, § 106, as amended Stats.1959, c. 391, p. 2319, § 3.)

§ 107. Trust company defined

"Trust company" means a corporation or a commercial bank which is authorized to engage in the trust business and the trust department of any title insurance company authorized to engage in the trust business in addition to its title insurance business.

(Amended by Stats.1973, c. 963, p. 1808, § 6.)

§ 109. Bank or banks

* * * "Bank" or "banks" embraces commercial banks * * * and trust companies unless the context otherwise requires.

(Amended by Stats.1973, c. 963, p. 1809, § 8.)

§ 400. Filing; articles of incorporation; bylaws; statement of contributed capital; fee

The articles of incorporation of the proposed bank or trust company shall be submitted to the superintendent for his approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the proposed bank or trust company shall:

(a) File with the superintendent a copy of its articles of incorporation, certified by the Secretary of State, and a copy of its bylaws certified by its secretary.

(b) File with the superintendent a statement in such form and with such supporting data as he may require showing that the entire contributed capital has been fully paid in lawful money, unconditionally, and that the funds representing such contributed capital, less sums spent as authorized by this article for preopening expenditures are on deposit in a state or national bank in this state, subject to withdrawal on demand.

(c) Pay to the superintendent a fee of two thousand * * * five hundred dollars (\$2,500).

(Amended by Stats.1973, c. 858, p. 1551, § 4; Stats.1973, c. 963, p. 1810, § 13.5; Stats.1978, c. 965, p. 2976, § 44; Stats.1981, c. 444, p. 1688, § 2.)

§ 401. Certificate of authorization; issuance; contents

If the superintendent finds that the proposed bank or trust company has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this code or by regulation, he shall, within 30 days after the statement and supporting data specified in Section 400 have been filed with him, issue in duplicate a certificate of authorization to transact business as a bank or trust company, as the case may be, and shall transmit one copy to the bank or trust company and place one copy on file in the department. The certificate of authorization shall state that the corporation named therein has complied with all the provisions of this code governing organization of banks or trust companies and that it is authorized to transact the business specified therein. (Stats.1951, c. 364, p. 842, § 401.)

§ 600. Articles; purposes of corporation

The articles of each bank shall contain the applicable one of the following statements:

(a) In case the bank is, or is proposed to be, a commercial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank;

(b) In case the bank is, or is proposed to be, a commercial bank authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank authorized to engage in trust business;

(c) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business or a corporation authorized to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a trust company; or

(d) In case the bank is a corporation which is, or is proposed to be, a corporation authorized to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business, that the purpose of the corporation is to engage in title insurance business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a corporation authorized to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business.

(Added by Stats.1978, c. 965, p. 2977, § 54.)

§ 1500. Prerequisites to engaging in trust business

No corporation shall engage in the trust business unless:

(a) * * * Its articles * * * comply with the requirements of subdivision (b), (c), or (d) of Section 600; and

(b) It has received from the superintendent a certificate of authority pursuant to Section 401 to engage in the trust business, or, if it is a bank, has received the authorization of the superintendent to engage in the trust business pursuant to Section 1500.1; and

(c) It has * * * deposited with the State Treasurer money or securities in compliance with Article 3 (commencing with Section 1540) of this chapter.

(Amended by Stats.1973, c. 963, p. 1835, § 90; Stats.1978, c. 965, p. 2990, § 104.)

§ 1501. Trust business by title insurance company

A corporation authorized to transact a title insurance business under the Insurance Code may engage in the trust business and maintain a trust department as well as a title insurance department if it complies with the following requirements:

(a) It shall first obtain the consent of both the superintendent and the Commissioner of Insurance. The application for such consent of the superintendent shall be in such form and contain such information as the superintendent may require and be accompanied by a fee of * * * one thousand dollars (\$1,000).

(b) In its application for such consent it shall include a statement making a segregation of its shareholders' equity for each department. When such apportionment is approved by the superintendent and the Commissioner of Insurance the part of such shareholders' equity apportioned to each department shall be segregated and shall be treated as the separate shareholders' equity of each such department as if each such department was a separate business.

(c) (1) It shall amend its articles to comply with the requirements of subdivision (d) of Section 600.
(2) It shall amend its articles to comply with the requirements of subdivision (b) of Section 600.2. Section 904 of the Corporations Code shall not apply to such amendment; however, the amendment must be approved by not less than two-thirds of each class of its outstanding shares which would become assessable under the amendment.

(d) It shall make the deposits of money or securities with the State Treasurer pursuant to Article 3 of this chapter.

(e) As to its trust department it shall be subject to and shall comply with all the requirements of this division applicable to trust companies and the rules and regulations of the superintendent.
(Amended by Stats.1973, c. 858, p. 1554, § 14; Stats.1978, c. 965, p. 2991, § 106; Stats.1981, c. 444, p. 1691, § 16.)

§ 1501.1. Commercial banking business by companies authorized to transact trust and title insurance business

No corporation which is authorized to transact a trust business and which is also authorized to transact a title insurance business shall engage in a commercial banking business.

(Added by Stats.1973, c. 963, p. 1836, § 92.)

§ 1503. Foreign corporations; permissible exercise of trust powers

No foreign corporation, other than a national banking association which is authorized to conduct a trust business in this state, shall have or exercise the powers of a trust company nor directly or

indirectly transact or conduct in this state a trust business as defined in Section 106; but any foreign corporation which is authorized by its articles to exercise trust powers may act as trustee for the following purposes:

- (a) To deliver bonds and receive payments therefor.
- (b) To deliver permanent bonds in exchange for temporary bonds of the same issue.
- (c) To deliver refunding bonds in exchange for those of a prior issue or issues.
- (d) To register bonds or to exchange registered bonds for coupon bonds or coupon bonds for registered bonds.
- (e) To pay interest on such bonds, and take up and cancel coupons representing such interest payment.
- (f) To redeem and cancel bonds when called for redemption or to pay and cancel bonds when due.
- (g) To certify registered bonds for the purpose of exchanging registered bonds for coupon bonds.

A foreign corporation which is authorized by its articles to exercise trust powers may be appointed and may accept appointment and act as trustee under any mortgage, deed of trust, or other instrument securing bonds or other obligations issued or to be issued by any railroad corporation which owns a railroad operating in the State of California and extending into another state.

A foreign corporation exercising in this state the powers conferred by this section shall not establish or maintain directly or indirectly any branch office or agency in this state unless it has complied with all of the applicable provisions of Chapter * * * 13.5 (commencing with Section * * * 1700).

(Amended by Stats.1973, c. 965, p. 2991, § 107; Stats.1979, c. 373, p. 1289, § 97; Stats.1981, c. 67, p. 124, § 3, urgency, eff. June 16, 1981.)

§ 1580. General powers

A trust company has the following powers:

(a) It may act, or may be appointed by any court to act, in like manner as an individual, as executor, administrator, guardian or conservator of estates, assignee, receiver, depository, trustee, custodian, or in any other fiduciary or representative capacity for any purpose permitted by law, may act as transfer agent or registrar of corporate stocks and bonds, may buy and sell securities for the account of customers, and may accept and execute any trust business permitted by any law of this or any other state or of the United States to be taken, accepted, or executed by an individual; and

(b) A trust company, upon becoming a member of the Federal Reserve System, shall continue to have such powers as may then or thereafter be conferred upon it by the laws of this State, subject to such federal rules, regulations, and laws as may govern state banks exercising trust powers or trust companies which become members of the Federal Reserve System. (Stats.1951, c. 364, p. 909, § 1580, as amended Stats. 1959, c. 391, p. 2319, § 4.)

§ 1585. Title insurance companies; trust department

Any corporation doing a departmental business as a title insurance company and as a trust company shall, as to its trust department, be subject to the requirements and have the benefit of the following provisions:

(a) It shall be subject to supervision and examination by the superintendent. The charges for such supervision and examination shall be determined in accordance with Section 270 of this code.

(b) It shall make all reports required by the superintendent of trust companies under this division.

(c) It shall be subject to and have the benefit of all provisions and requirements of this division and of all rules and regulations of the superintendent applicable to trust companies. (Stats.1951, c. 364, p. 910, § 1585.)

§ 1700. Definitions

In this chapter, unless the context otherwise requires:

- (a) "Agency" means a depository agency or a nondepository agency.
- (b) "Branch office" means a limited branch office, a retail branch office, or a wholesale branch office.
- (c) "Business in this state," when used with respect to a foreign (other nation) bank which is licensed to maintain one or more agencies or branch offices, includes (without limitation) the aggregate business of all such offices.
- (d) "Controlling person," when used with respect to a foreign bank, means any person who, directly or indirectly, controls such bank. For purposes of this subdivision, "control" has the meaning set forth in subdivision (b) of Section 700, and "person" has the meaning set forth in subdivision (d) of Section 700.
- (e) "Depository agency," when used with respect to a foreign bank, means a place in this state at which such foreign bank transacts commercial banking business but at which it does not transact the business of receiving deposits except as permitted under paragraph (2) of subdivision (a) of Section 1755.
- (f) "Executive officer," when used with respect to a foreign bank or a controlling person of a foreign bank, means the chief executive officer, the chief operating officer, the chief financial officer, and any other person who participates or has authority to participate in major policy-making functions of such bank or controlling person. "Executive officer," when used with respect to a foreign (other nation) bank, includes the head of the international division (or, if there is no such division, the closest equivalent division or unit) of such bank.
- (g) "Federal agency" has the meaning set forth in Section 1(b) of the International Banking Act of 1978.¹
- (h) "Federal branch" has the meaning set forth in Section 1(b) of the International Banking Act of 1978.
- (i) "Foreign bank" means a foreign (other nation) bank or a foreign (other state) bank.
- (j) "Foreign nation" means any nation other than the United States, including (without limitation) any subdivision, territory, trust territory, dependency, or possession of any such nation. Also, "foreign nation" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States.
- (k) "Foreign (other nation) bank" means any bank (including, without limitation, any commercial bank, merchant bank, or other institution that engages in banking activities which are usual in connection with the business of banking in the nations where such institution is organized or operating) other than (1) a bank which is organized under the laws of a state of the United States or (2) a national bank which maintains its head office in a state of the United States.
- (l) "Foreign (other state) bank" means a bank which is organized under the laws of any state of the United States other than this state or a national bank which maintains its head office in any state of the United States other than this state.
- (m) (1) "License" means a license issued under this chapter, authorizing a foreign bank to maintain an office.
- (2) To be "licensed" means to be issued or to hold a license.
- (3) To be "licensed to transact business in this state," when used with respect to a foreign (other nation) bank, means that such bank is licensed to maintain an agency or branch office.
- (n) "Limited branch office," when used with respect to a foreign bank, means a place in this state at which such bank transacts commercial banking business but at which it does not transact the business of receiving deposits except as permitted under paragraph (3) of subdivision (a) of Section 1755.
- (o) "Nondepository agency," when used with respect to a foreign bank, means a place in this state at which such bank transacts commercial banking business, except the business of receiving deposits.
- (p) "Office," when used with respect to a foreign bank, means any agency, branch office, or representative office of such bank.
- (q) "Primary office," when used with respect to a foreign (other nation) bank which is licensed to maintain a single agency or branch office, means such agency or branch office and, when used with respect to a foreign (other nation) bank which is licensed to maintain two or more agencies or branch offices, means that one of such offices which such bank has designated as its primary office in accordance with Section 1714.

(r) "Representative office," when used with respect to a foreign bank, means an office in this state at which such bank engages in representational functions but at which it does not transact commercial banking business.

(s) "Retail branch office," when used with respect to a foreign bank, means a place in this state at which such bank transacts commercial banking business, including (without limitation) the business of receiving deposits.

(t) "State of the United States" means any state of the United States or the District of Columbia.

(u) "Wholesale branch office," when used with respect to a foreign bank, means a place in this state at which such bank transacts commercial banking business but at which it does not transact the business of receiving deposits except as permitted under paragraph (4) of subdivision (a) of Section 1755.

(Added by Stats.1981, c. 67, p. 125, § 4, urgency, eff. June 16, 1981.)

§ 1701. Offices; division into classes

For purposes of this chapter, offices of foreign banks are divided into classes and ranked in ascending order, as follows:

- (a) Representative office.
- (b) Nondepository agency.
- (c) Depository agency.
- (d) Limited branch office.
- (e) Wholesale branch office.
- (f) Retail branch office.

(Added by Stats.1981, c. 67, p. 125, § 4, urgency, eff. June 16, 1981.)

§ 1750. Foreign (other state) banks; prohibition against transaction of business in this state; necessity of licensure of foreign (other nation) banks

(a) (1) No foreign (other state) bank shall transact business in this state.

(2) No foreign (other nation) bank shall transact business in this state except at an agency or branch office which it is licensed to maintain and at which it is permitted by this chapter to transact such business.

(b) Subdivision (a) shall not be deemed to prohibit:

(1) Any foreign (other nation) bank which maintains a federal agency or federal branch in this state from transacting at such federal agency or federal branch such business as it may be authorized to transact under applicable federal laws and regulations;

(2) Any foreign bank from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code;

(3) Any foreign bank which does not maintain an agency or branch office from making in this state loans secured by liens on real property located in this state; or

(4) Any foreign bank which does not maintain an agency or branch office from transacting trust business as permitted under Section 1503.

(c) For purposes of subdivision (a), no foreign bank shall be deemed to be transacting business in this state merely because a majority-owned subsidiary transacts business in this state.

(Added by Stats.1981, c. 67, p. 133, § 4, urgency, eff. June 16, 1981.)

§ 1755. Foreign (other nation) bank; transaction of commercial banking; conditions; trust business

(a) A foreign (other nation) bank which is licensed to maintain an agency or branch office may transact commercial banking business at such office, subject to the following:

(1) In case the office is a nondepository agency, the bank shall not transact the business of accepting deposits.

(2) In case the office is a depository agency, the bank shall not transact the business of accepting any deposits other than deposits of (A) a foreign nation, (B) an agency or instrumentality of a foreign nation, or (C) a person which resides, is domiciled, and maintains its principal place of business in a foreign nation. For purposes of this paragraph "person" means any individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, or any other organization or any branch or division thereof.

(3) In case the office is a limited branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), or (B) deposits which the bank is permitted to accept pursuant to the agreement or undertaking that it enters into with the Board of Governors of the Federal Reserve System in accordance with Section 5(a)(2)(B) of the International Banking Act of 1978.¹

(4) In case the office is a wholesale branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), (B) deposits of one hundred thousand dollars (\$100,000) or more, or (C) deposits the acceptance of which the superintendent determines by regulation or order do not constitute engaging in domestic retail deposit activities requiring deposit insurance protection.

(5) In case the office is an agency, limited branch office, or wholesale branch office, the bank may, subject to such regulations as the superintendent may prescribe, maintain credit balances.

(6) In any case, the bank shall not transact any business which it is not authorized to transact or is prohibited from transacting under the laws of its domicile or which commercial banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(b) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall transact any trust business at such office except as permitted under Section 1503.

(Added by Stats.1981, c. 67, p. 135, § 4, urgency, eff. June 16, 1981.)

Probate Code

§ 480. Capacity to act as executor, administrator, guardian or conservator of estate, trustee; incapacity as guardian or conservator of ward or conservatee

A corporation or association authorized to conduct the business of a trust company in this State may be appointed to act as an executor, administrator, guardian or conservator of an estate, or trustee, in like manner as an individual; but it shall not be appointed guardian or conservator of the person of a ward or conservatee.

(Amended by Stats.1959, c. 391, p. 2319, § 1.)

§ 481. Bond; liability on security deposited with state treasurer; qualification; oath; affidavits

A corporation or association receiving an appointment under the previous section shall not be required to give any bond or security, but the provisions of * * * Article 3 (commencing with Section 1540) of Chapter 12, Division 1 of, and Section 1587 of, the Financial Code shall govern with respect to its liability and the making of oaths and affidavits.

(Amended by Stats.1963, c. 276, p. 1034, § 1.)

EXHIBIT 2

Selected State Statutes on Foreign
Corporate Trustees

FLORIDA

Fla. Stat. Ann. § 660.41 (West Supp. 1984):

660.41. Corporations, certain fiduciary functions prohibited

All corporations, except banks or associations and trust companies incorporated under the laws of this state and having trust powers and except national banking associations or federal associations located in this state and having trust powers, are prohibited from exercising any of the powers or duties and from acting in any of the capacities, within this state, as follows:

(1) As personal representative of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent is original or ancillary; however, if the personal representative of the estate of a nonresident decedent is a corporation duly authorized, qualified, and acting as such personal representative in the jurisdiction of the domicile of the decedent, it may as a foreign personal representative perform such duties and exercise such powers and privileges as are required, authorized, or permitted by s. 734.101.

(2) As guardian of any infant, insane person, or physically or mentally incompetent person, whether domiciled in this state or not.

(3) As trustee under any will or other testamentary instrument, except that any corporation that is authorized to act as trustee under the laws of the place where it has its principal place of business may receive bequests as trustee of money or intangible personal property and devise of real property located in this state and may sell, transfer, and convey the property.

(4) As trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others.

(5) As trustee under any deed of trust or other instrument executed after June 10, 1937, conveying or encumbering any real or tangible personal property in this state given to secure bonds or other evidence of indebtedness unless in such deed of trust or other instrument a trust company or bank having trust powers and located in this state or an individual residing in this state shall be named as cotrustee. No suit shall be brought to foreclose any such deed of trust or other instrument unless such cotrustee or successor cotrustees of like qualifications be a party plaintiff.

(6) As receiver or trustee under appointment of any court in this state.

(7) As assignee, receiver, or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.

(8) As fiscal agent, transfer agent, or registrar of any municipal or private corporation, except that this prohibition shall not be so construed as to prevent banks, associations, and trust companies not located in this state from acting within the state where located as fiscal agent, transfer agent, or registrar of municipal or private corporations of this state. Nothing herein shall prevent any Florida corporation not a bank, association, or trust company and not having trust powers from being its own fiscal agent, transfer agent, or registrar concerning its own affairs, stock, or securities. Nothing herein shall prevent any Florida corporation registered as a transfer agent with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Securities and Exchange Commission from acting as a transfer agent for any other private corporation. Nothing in this section or in any other law of this state shall be construed to prohibit a foreign bank, foreign association, or foreign trust company as trustee of any charitable foundation or endowment, employees' pension, retirement or profit-sharing trust, alone or together with a cotrustee, from: Contracting in this state or elsewhere, with any person to acquire from such person a part or the

entire interest in a loan which such person purposes to make, has heretofore made, or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan; servicing directly or entering into servicing contracts with persons, and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside this state or in the transaction of any business authorized or permitted hereby; or acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized or permitted hereby. However, no such foreign bank, foreign association, or foreign trust company shall be deemed to be transacting business in this state, shall be required to qualify so to do, or shall be deemed to be unlawfully exercising powers or duties, acting in an unlawful or prohibited capacity, or violating any of the provisions of this section or of any other law of this state solely by reason of the performance of any of the acts or business hereinbefore permitted or authorized hereby; further, nothing herein shall be construed as authorizing or permitting any foreign bank, association, or trust company to maintain an office within this state.

Renumbered and amended by Laws 1980, c. 80-260, § 139, eff. July 1, 1980; Laws 1981, c. 81-250, § 1, eff. July 1, 1981; Laws 1981, c. 81-259, § 462, eff. Aug. 4, 1981.

Fla. Stat. Ann. § 737.105 (West Supp. 1984):

737.105. Qualification of foreign trustee

Unless otherwise doing business in this state, local qualification by a foreign trustee is not required in order for the trustee to receive distribution from a local estate. Nothing in this chapter shall affect the provisions of s. 660.41.

Amended by Laws 1980, c. 80-260, § 150, eff. July 1, 1980.

KANSAS

Kan. Stat. Ann. § 59-1701 (1983):

59-1701. Corporate fiduciaries. (a) No bank or other corporation shall be appointed or authorized directly or indirectly to act as a fiduciary in this state, except:

- (1) A bank or other corporation organized under the laws of, and having its principal place of business in, this state;
- (2) a national bank located in this state;
- (3) a bank or other corporation organized under the laws of, and having its principal place of business in, another state which permits a bank or other corporation which is similarly organized in this state to act in a like fiduciary capacity in the other state under similar conditions;

- (4) a national bank located in another state which permits a national bank located in this state to act in a like fiduciary capacity in the other state under similar conditions;

or

(5) as provided in K.S.A. 59-1707 and 59-1708 and amendments thereto.

(b) No officer, employee or agent of a bank or corporation which is not authorized to act as a fiduciary in this state shall be permitted to act as a fiduciary, whether such officer, employee or agent is a resident or a nonresident of this state, when in fact such officer, employee or agent is acting as a fiduciary on behalf of such bank or corporation.

(c) No bank or other corporation shall be appointed guardian of the person of a ward.

History: L. 1939, ch. 180, § 131; L. 1967, ch. 314, § 11; L. 1981, ch. 226, § 1; April 3.

Kan. Stat. Ann. §§ 59-1706 to 59-1709 (1983):

59-1706. Nonresident fiduciary; appointment of agent required. Every nonresident appointed a fiduciary in this state shall, before entering upon the duties of the trust, appoint in writing an agent residing in the county where the appointment is made, and shall by such writing consent that the service of any notice or process when made upon said agent shall have the same force and effect as if made upon the fiduciary personally within said county and state. Such writing shall state the correct address of such agent and shall be filed in the district court where such appointment is made. Service of notice or process upon such agent shall have the same force and effect as personal service upon the fiduciary.

History: L. 1939, ch. 180, § 136; L. 1976, ch. 242, § 24; Jan. 10, 1977.

59-1707. Powers of nonresident fiduciaries. Upon the filing for record in the district court of the proper county of an authenticated copy of his or her letters or other record of his or her authority and a certificate that the same are still in force, a fiduciary appointed by a court of competent jurisdiction in another state or country may assign, extend, release, satisfy, or foreclose any mortgage, judgment, or lien, or collect any debts secured thereby belonging to the estate represented by such fiduciary. The sale, lease, or mortgage of any real estate acquired on execution or judicial sale by a foreign representative shall be made pursuant to article 23 of this chapter.

History: L. 1939, ch. 180, § 137; L. 1976, ch. 242, § 25; Jan. 10, 1977.

59-1708. Nonresident fiduciary may sue and be sued. A fiduciary duly appointed in any other state or country may sue or be sued in any court in this state, in his or her capacity of fiduciary, in like manner and under like restrictions as a nonresident may sue or be sued.

History: L. 1939, ch. 180, § 138; July 1.

59-1709. Accounting on resignation. A fiduciary may resign his or her trust at any time, but the fiduciary's resignation shall not be effective until the court shall have examined and allowed his or her final account and shall have made an order accepting such resignation.

History: L. 1939, ch. 180, § 139; July 1.

MINNESOTA

Min. Stat. Ann. § 303.25 (West Supp. 1984):

303.25. Foreign trust associations, powers

Subdivision 1. Appointments. Any foreign trust association may accept appointment and act as executor of the will or administrator of the estate of any decedent who was a resident of this state at the time of his death, as trustee of any trust created by a resident of this state by will or otherwise, and as guardian or conservator of the person or estate, or both, of any resident of this state if banking or trust associations or corporations organized under the laws of this state or national banking associations maintaining their principal offices in this state are permitted to act as executors, administrators, trustees, guardians, or conservators in the state in which the foreign trust association maintains its principal office. Any foreign trust association may accept appointment and act as executor of the will or administrator of the estate of a decedent, who was a resident of the state in which the foreign trust association maintains its principal office at the time of his death, in ancillary probate proceedings in this state, as trustee of any trust created by the decedent by will or otherwise of property situated in this state, and as guardian or conservator in ancillary proceedings in this state with respect to the property of a resident of the other state if banking or trust associations or corporations organized under the laws of this state and national banking associations maintaining their principal offices in this state are permitted to act as executors, administrators, trustees, guardians, or conservators in the state in which the foreign trust association maintains its principal office.

Subd. 2. Designation of attorney for service of process. Before accepting appointment or acting as executor, administrator, trustee, guardian, or conservator, a foreign trust association shall appoint the secretary of state, his successor or successors in office, its true and lawful attorney upon whom may be served all legal process in any action or proceeding against it, or in which it may be a party, in relation to or involving any acts or defaults by it as executor, administrator, trustee, guardian, or conservator. This appointment is irrevocable. Service upon the attorney is as valid and binding as if due personal service had been made upon the foreign trust association.

Subd. 3. Bond must be filed. Before accepting appointment or acting as executor, administrator, trustee, guardian, or conservator, every foreign trust association shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned upon the faithful discharge of its duties as executor, administrator, trustee, guardian, or conservator, or, in lieu of the bond, shall deposit securities with the state treasurer in the same manner and in the same amount as would be required under section 48.67, of a trust company organized under the laws of this state. This deposit shall be maintained until the foreign trust association shall cease to act as an executor, administrator, trustee, guardian, or conservator under this section. However, except as otherwise ordered by a court of competent jurisdiction, the requirements of this subdivision do not apply to a trustee with respect to a trust created otherwise than by will if the trust instrument requests or directs that a bond need not be required of the trustee.

Subd. 4. Rights and duties. Any foreign trust association acting as executor, administrator, trustee, guardian, or conservator has the rights, authority, and duties that a natural person resident in this state duly acting as executor, administrator, trustee, guardian, or conservator has under the laws of this state.

Subd. 5. Solicitation of business. A foreign trust association may not maintain an office within this state, but it may solicit business within this state if banking or trust associations or corporations organized under the laws of this state or national banking associations maintaining their principal offices in this state may solicit business in the state in which the foreign trust association maintains its principal office.

Subd. 6. Service of process. Service of process under this section may be made by delivering a copy to the secretary of state personally or by filing the same in his office, accompanied by one additional copy for each person so served, and by the mailing by the secretary of state of a copy by certified mail, not later than the business day following the day of the service, to each person so served at the address of each person as shown by the records in the office of the secretary of state.

Amended by Laws 1978, c. 674, § 60; Laws 1981, c. 162, § 4, eff. May 12, 1981.

NEW YORK

N.Y. Banking Law § 131 (McKinney 1971 & Supp. 1983):

§ 131. Prohibitions against encroachments upon certain powers of banks and trust companies

1. No person unauthorized by law shall subscribe to or become a member of, or be in any way interested in any association, institution or company formed or to be formed for the purpose of issuing notes or other evidences of debt to be loaned or put in circulation as money; nor shall any such person subscribe to or become in any way interested in any bank or trust company or fund created or to be created for the like purposes or either of them. No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, making discounts, receiving for transmission or transmitting money in any manner whatsoever, or issuing notes or other evidences of debt to be loaned or put into circulation as money, except that a small business investment company as defined in and operating pursuant to the provisions of an act of congress entitled "Small Business Investment Act of 1958,"¹ may act as depository or fiscal agent of the United States when so designated by the secretary of the treasury without violating the provisions of this section, except that a corporation duly licensed by the superintendent under article thirteen-A of this chapter or therein expressly excepted from the application of said article may engage in the business of selling or issuing checks or the business of receiving money for transmission or transmitting the same and except that services of an agent or representative may be performed in connection with the obligations of issuers including, without limitation, those mentioned in section six hundred seventy of this chapter where each such marketable obligation has a face value of not less than one hundred thousand dollars. No corporation, domestic or foreign,

other than a corporation formed under or subject to this chapter or the banking laws of the United States except an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph company, or a corporation incorporated prior to the year eighteen hundred and fifty, to promote the welfare of immigrants, shall possess the power of receiving money for transmission or of transmitting the same, by draft, traveler's check, money order or otherwise. The discounting of bills, notes or evidences of debt by a corporation organized solely for the purpose of enabling producers of farm, dairy, horticultural or other agricultural products or cooperative corporations of such producers to avail themselves of the provisions of an act of congress approved March fourth, nineteen hundred and twenty-three, known as the agricultural credits act of nineteen hundred and twenty-three, same being subchapter three of chapter seven of title twelve of the code of laws of the United States as adopted by congress January third, nineteen hundred thirty-five,² and amendments thereto, where such discounting is solely in connection with the rediscount of such bills, notes or evidences of debt under the provisions of said act of congress shall not be deemed or construed to be a form of banking, nor shall the making of such discounts be deemed to violate any provisions of law pertaining to banking. Except as otherwise provided in article twelve-D of this chapter, engaging in the business of loaning money in this state on bonds, notes or other evidences of indebtedness, secured by deeds of trust or mortgages upon real property or personal property situated in, upon or appurtenant thereto, and/or purchasing of or otherwise acquiring existing bonds, notes or other evidences of indebtedness, deeds of trust or mortgages of or upon such properties, or any interest therein, and the holding of the same, or the endorsing, selling, assigning, transferring or disposing of the same to another corporation, by a domestic business corporation, or by a foreign corporation which is authorized to transact business in this state, shall not be deemed or construed to violate any of the provisions of this chapter. The purchase or other acquisition on original issue or subsequent transfer for less than the principal amount thereof or otherwise at a discount of any evidences of indebtedness or other obligations for the payment of money shall not by reason of such discount be or be deemed to be a violation of the provisions of this section.

2. No person, association of persons or corporation, unless expressly authorized by law, shall keep any office for the purpose of issuing any evidences of debt, to be loaned or put in circulation as money; nor shall they issue any bills or promissory notes or other evidences of debt for the purpose of loaning them or putting them in circulation as money, unless thereto specially authorized by law.

3. Except as otherwise provided in article five of this chapter,³ no corporation other than a trust company shall have or exercise in this state the power of receiving deposits of money, securities or other personal property from any person or corporation in trust, or have or exercise in this state any of the powers specified in section one hundred of this article, or have or maintain an office in this state for the transaction of, or transact, directly or indirectly, any such or similar business, except that a federal reserve bank may exercise the powers conferred by subdivision one of such section if authorized so to do by the laws of the United States and any domestic corporation legally exercising any of the powers conferred by such subdivision at the time this act takes effect may continue to exercise such powers, and a foreign banking corporation or trust company incorporated under the laws of another state, which by the law of the state of its incorporation may act as trustee, guardian, executor, administrator, or in any other fiduciary capacity under any last will and testament or codicil thereto or other testamentary writ-

ing or under any deed of trust inter vivos or other written instrument establishing a trust, or by the appointment of any court of said state, may act in this state in any such fiduciary capacity, provided similar domestic corporations which have the power under the law of this state to act herein in any such fiduciary capacity, are permitted to act in like fiduciary capacity in the state where such foreign corporation has its domicile, provided that if such foreign corporation proposes to act in any fiduciary capacity in this state and to do so is required to file its qualification in the surrogate's court of this state, it shall file in the office of the clerk of the surrogate's court of the county in which application for such appointment is pending (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing such clerk and his successors its true and lawful attorney, upon whom all process in any action or proceeding against such fiduciary, affecting or relating to the estate, trust or fund represented or held by such fiduciary or the acts or defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (b) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office; provided further that if such foreign corporation proposes to act in any other fiduciary capacity in the state, it shall file in the office of the superintendent (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the superintendent and his successors its true and lawful attorney, upon whom all process in any action or proceeding against such fiduciary affecting or relating to the estate, trust or fund held or represented by such fiduciary or the acts or defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, (b) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the superintendent, and (c) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office.

4. Except as otherwise provided in article five of this chapter, no foreign corporation, having authority to act in this state as trustee, guardian, executor, administrator, or in any other fiduciary capacity shall establish or maintain, directly or indirectly, any branch office or agency in this state. If any such foreign corporation violates this provision, such foreign corporation shall not thereafter be appointed or act in any such fiduciary capacity in this state. The validity of any mortgage heretofore given by a foreign corporation to a trust company doing business within a foreign domicile of such mortgagor to secure the payment of an issue of bonds shall not be affected by any of the provisions of this section and such mortgage shall be enforceable in accordance with the laws of this state against property covered thereby within the state of New York.

5. Every person, and every corporation, director, agent, officer or member thereof, who shall violate any provision of this section, directly or indirectly or assent to such violation, shall forfeit one thousand dollars to the people of the state.

As amended L.1974, c. 768, § 3; L.1978, c. 704, § 1; L.1981, c. 864, § 3.

¹ 15 U.S.C.A. § 661 et seq.

² 12 U.S.C.A. §§ 1021 to 1129. Subject matter now covered by 12 U.S.C.A. § 2071 et seq.

N.Y. Banking Law § 201 (McKinney 1971 & Supp. 1983):

§ 201. Conditions to be complied with by foreign banking corporations applying for license

Every foreign banking corporation before being licensed by the superintendent to transact in this state the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making loans, or receiving deposits, and before being authorized by the superintendent to exercise the fiduciary powers specified in section two hundred one-b of this chapter, or any part of such business, or before maintaining in this state any agency or branch for carrying on such business or any part thereof, shall subscribe and acknowledge and submit to the superintendent at his office, a separate application certificate in duplicate for each agency or branch which such foreign corporation proposes to establish in this state, which shall specifically state:

1. The name of such foreign banking corporation.
2. The place where its business is to be transacted in this state; and if such business is to be conducted through an agency in this state, the name of the agent or agents through whom such business is to be transacted; and if such business is to be transacted in this state by a branch of said foreign banking corporation, the name of the person who shall be in charge of the business and affairs of such branch.
3. The amount of its capital actually paid in cash and the amount subscribed for and unpaid.
4. The actual value of the assets of such corporation, which must be at least one million dollars in excess of its liabilities; and a complete and detailed statement of its financial condition as of a date within sixty days prior to the date of such application, except that the superintendent in his discretion, may, when necessary or expedient, accept such statement of financial condition as of a date within one hundred twenty days prior to the date of such application.

At the time such application certificate is submitted to the superintendent, such corporation shall also submit a duly exemplified or otherwise authenticated copy of its charter and a verified or otherwise authenticated copy of its by-laws, or an equivalent thereof satisfactory to the superintendent, and pay an investigation fee to be collected by the superintendent in the sum of two thousand dollars. If such application is denied or withdrawn, the superintendent shall return to the applicant the sum paid by the applicant as a license fee.

As amended L.1977, c. 509, § 8.

1977 Amendment. Closing par. L. increased the investigation fee from 1977, c. 509, § 8, eff. Aug. 1, 1977, \$750 to \$2,000.

OKLAHOMA

Okla. Stat. Ann. tit. 6, §§ 1001-1002 (West Supp. 1983):

§ 1001. Powers of trust companies

Powers of corporate trust companies now existing or hereafter created

A. All corporate trust companies now existing or hereafter created shall have the following powers:

(1) To receive deposits of trust moneys; to receive upon deposit for safekeeping personal property of every description; to guarantee special deposits; and to own or control safety vaults and rent the boxes therein.

(2) To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or any corporation, and act as assignee, receiver, trustee and depository, and to accept and execute all such trusts and perform such duties of every description as may be

committed or transferred to them by order, judgment or decree of any of the courts of record of this state or of any state or of the United States.

(3) To take, accept and hold by the order, judgment or decree of any court of this state, or of any state or territory of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all such legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by such order, judgment, decree, gift, grant, assignment, transfer, devise or bequest, and to execute as principal or surety, and to guarantee against loss any principal or surety upon any bond or bonds required by law to be given in any proceeding in law or equity in any of the courts of this state or of any state or of the United States.

(4) To act as agent or attorney-in-fact for any person or corporation in the management and control of real or personal property and the sale or conveyance of the same, and for the investment of money, and to act for and represent corporations or persons under power and letters of attorney, and as agents for persons and corporations for the purpose of issuing, registering, transferring or countersigning the certificates of stock, bonds or other evidences of debt of any corporation, association, municipality, state or public authority, on such terms as may be agreed upon.

(5) To accept from and execute trusts for any married persons in respect to their separate property, whether real or personal, and act as agent for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

(6) To act as executor under last will or at the instance of any person entitled to any administration or guardianship of any estate, as administrator of the estate of any deceased person, or as guardian or curator of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary under the appointment of any court of record having jurisdiction of the person or estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict.

(7) To guarantee the fidelity and diligent performance of their duty of persons or corporations holding places of public or private trust, to guarantee or become surety on any bond given by any person or corporation and to reinsure or guarantee any person or corporation against loss or damage by reason of any risk assumed by insuring the fidelity or diligent performance of duty of any such person or corporation, or by guaranteeing or becoming surety on any bond; and to guarantee the principal or interest, or both, of any securities of any kind.

(8) To loan money upon real estate and collateral security, and execute and issue its notes payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor, which notes may be issued to an amount not exceeding, in the aggregate, ten times the amount paid up on the capital stock of the company issuing the same, and shall in no case exceed the amount of the first mortgages pledged to secure their payment.

(9) To buy and sell the bonds and warrants of this state, and all other kinds of government, state or municipal bonds; and to buy and sell all kinds of negotiable and nonnegotiable paper, stocks and other investment securities.

(10) To act as fiscal agent of the United States, or any state, municipality, body politic or corporation, and in such capacity to receive and disburse money, credits, securities and effects.

(11) To act as trustee under trusts created by will or by declaration of trust.

(12) To act as guardian for any number of persons.

(13) To transfer, register and countersign certificates of stock, bonds, or other evidence of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

(14) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

(15) To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and

the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(16) To be appointed and accept the appointment of assignee or trustee under any assignment for the benefit of creditors of any debtor made pursuant to any statute or otherwise.

(17) To collect coupons on or interest upon all manner of securities when authorized so to do by the parties depositing the same.

(18) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between said corporations and those dealing with it.

(19) Generally to execute trusts of every description and escrow agreements and to act and serve in any and all fiduciary capacities not inconsistent with the laws of this state or of the United States.

(20) To prepare, make and certify abstracts of title to real and personal property and to procure and furnish information in relation thereto, where not otherwise inconsistent with the laws of this state; to guarantee or insure the title to real and personal property to persons interested in such property or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon such property, and to make determination of title in connection with the issuance of such guaranties or insurance.

(21) To discount and negotiate promissory notes, drafts, bills of exchange and other evidence of debt, buy and sell coin and bullion, to accept for payment at a future date drafts drawn upon it by its customers, and to issue letters of credit, authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one (1) year; provided, that no trust company shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital stock and surplus fund, except with the approval of the Bank Commissioner under such general regulations as to amount of acceptances as the Commissioner may prescribe.

(22) To issue debentures, notes, or other evidences of debt in the manner in which business corporations are authorized to do so and for any legal application of proceeds, but only to the extent of an amount equal to ten times its capital and surplus.

Amended by Laws 1975, c. 46, § 1, emerg. eff. March 31, 1975; Laws 1975, c. 362, § 1, emerg. eff. June 12, 1975.

§ 1002. Restrictions on acting in certain fiduciary capacities—Reciprocity

All corporations except: (a) state banks in Oklahoma having trust powers, national banking associations located in this state and having trust powers and trust companies incorporated under the laws of this state and having trust powers; and (b) national banks having trust powers, and state banks and trust companies having trust powers located in states which reciprocally allow similar Oklahoma institutions to exercise trust and fiduciary powers therein under no greater restrictions than those imposed under this code on such fiduciary institutions, are prohibited from acting in any of the following fiduciary capacities within this state:

(1) As executor or administrator of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent be original or ancillary; provided, that if the executor or administrator of the estate of a nonresident decedent be a corporation duly authorized, qualified and acting as such executor or administrator in the jurisdiction of the domicile of the decedent, it may, as a foreign executor or administrator, perform such duties and exercise such powers and privileges as are required, authorized and permitted by Section 1001 of this title.

(2) As guardian of any infant, insane person or person physically or mentally incompetent whether domiciled in this state or not.

(3) As trustee under any inter vivos trust, will or other testamentary instrument, provided that any corporation which is authorized to act as such trustee under the laws of the place where it has its principal place of business may receive bequests to it as trustee of money or intangible personal property.

(4) As trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others.

(5) As receiver or trustee under appointment of any court in this state.

(6) As assignee, receiver or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.

(7) As fiscal agent, transfer agent or registrar of any municipal or private corporation; provided, however, that nothing herein shall prevent any Oklahoma corporation not a bank or trust company and not having trust powers from being its own fiscal agent, transfer agent or registrar concerning its own affairs, stock or securities; and, provided, further, that nothing herein shall be construed as authorizing or permitting any foreign bank or trust company to maintain an office within this state.

Amended by Laws 1967, c. 258, § 8, emerg. eff. May 8, 1967; Laws 1968, c. 15, § 1, emerg. eff. Feb. 19, 1968; Laws 1969, c. 257, § 1, emerg. eff. April 24, 1969.

PENNSYLVANIA

Pa. Stat. Ann. tit. 7, § 106 (Purdon 1967 & Supp. 1983):

§ 106. Corporations authorized to act as fiduciary

(a) **Restriction of domestic corporations**—No corporation existing under the laws of this Commonwealth may lawfully act as fiduciary except:

(i) a bank and trust company, a trust company and, to the extent provided in this act, a savings bank,

(ii) a non-profit corporation,

(iii) an incorporated institution or other corporation, to the extent that it executes a trust for its own use, or for the benefit of its own employees or for a purpose in connection with its business,

(iv) a corporation to the extent it engages in liquidating and winding-up the business and affairs of another corporation, other than an incorporated institution, for the benefit of the creditors and shareholders of such other corporation, and

(v) an association to the extent it acts as a trustee, as authorized by the act of December 14, 1967 (P.L. 746, No. 345), known as the "Savings Association Code of 1967," under a trust plan or instrument which satisfies the requirements of the Self-employed Individuals Tax Retirement Act.²

As amended 1980, May 21, P.L. 173, No. 51, § 2, imd. effective.

(b) **Foreign fiduciaries**—No corporation existing under the laws of a state other than this Commonwealth or national bank located in another state may act in this Commonwealth as fiduciary unless:

(1) it shall be appointed fiduciary by will or other testamentary writing, by a deed of trust or by a court or register of wills of this Commonwealth or it shall be designated as fiduciary by the beneficiaries or by one or more other fiduciaries of the estate or trust pursuant to the terms of the instrument, or

(ii) it shall be the successor by merger or consolidation to a corporation lawfully acting as fiduciary in this Commonwealth at the time of such merger or consolidation and unless the laws of such other state confer like powers on corporations existing under the laws of this Commonwealth. No corporation of another state or national bank located in another state authorized to act as fiduciary pursuant to this subsection (b) shall be authorized to establish a place of business in this Commonwealth.

(c) National banks—A national bank located in this Commonwealth which has authority under the laws of the United States to act as fiduciary may act as fiduciary in this Commonwealth.

(d) Penalties—A violation of subsection (a) or subsection (b) of this section shall be subject to the penalty provisions of this act. 1965, Nov. 30, P.L. —, No. 356, § 106.

¹ Section 5001 et seq. of Title 15.

² Generally dispersed throughout 26 U.S.C.A.

Comment—Banking Law Commission

Comment

Subsection (a) (iii) deletes the requirement of the prior Code that an institution or other corporation acting as trustee do so pursuant to appointment by a court or testator and expands the exception to cover not only trusts for the benefit of the corporation but also trusts for the benefit of its own employees or for a purpose in connection with its business. These changes are intended to clarify the right of corporations to act as trustees of their own pension and profit-sharing trusts and similar trusts.

Subsection (a) (v) recognizes an addition made to the Building and Loan Code [Title 15, Corporations] in 1964 which was not at that time accompanied by a corresponding exception to the general prohibition in the prior Banking Code of the conduct of fiduciary business by corporations. An association is authorized by the Building and Loan Code [Title 15, Corporations] to act as a trustee, in accordance with the requirements of the Self-employed Individuals Tax Retirement Act, of funds which may be invested only in insured shares of the association.

Subsection (b) continues the reciprocity requirement of the prior Code with respect to out-of-state corporations acting in a fiduciary capacity in this Commonwealth and extends the requirement to make it applicable to national banks located outside this Commonwealth.

In subsection (b) (i) an out-of-state corporation is authorized to act as fiduciary if it is designated pursuant to the terms of the trust by the beneficiaries or one or more other trustees. This is intended to change the result under the prior Code in *In re Frank's Trust*, 162 A.2d 680, 400 Pa. 614, 82 A.L.R.2d 937, 1960, which held that a foreign corporate fiduciary, appointed by individual trustees pursuant to the terms of a trust deed, was not authorized to act as fiduciary in this Commonwealth.

This section 106 restricts the exercise of fiduciary powers by corporations to those authorized by the section. However, those corporations which are authorized to act in a fiduciary capacity under this act as a bank and trust company, a trust company and, to a limited extent, a savings bank are given other representative powers as well as fiduciary powers under chapters 4 and 5.

Subsection (c) omits the requirement of section 1506(E) of the prior Code [7 P.S. § 819—1506(E)] that a national bank acting as fiduciary in this Commonwealth place its trust department under supervision of the department. That section was in conflict with, and ineffective under, former section 11(k) of the Federal Reserve Act, 12 U.S.C. § 248, which has been replaced by a substantially similar provision in 12 U.S.C. § 92a(c).

Except for these changes, this section 106 restates section 1506 of the prior Code [7 P.S. § 819—1506] without change in substance.

A violation of the provisions of this section 106 is subject to the penalty provisions of chapter 21.