

## IC 28-1-12

### Chapter 12. Regulation of Bank and Trust Company Fiduciaries

#### IC 28-1-12-1

##### **Authority to serve as fiduciary**

Sec. 1. (a) Any court or officer thereof having jurisdiction to grant letters of guardianship, to appoint a trustee, guardian, receiver, or committee of the estate of any person, to appoint a committee or trustee or a receiver in insolvency or bankruptcy proceedings, or in any other proceeding or action, under state or federal law, or to make any other fiduciary appointment contemplated and provided for in IC 28-1-11, may appoint any bank or trust company qualified under subsection (b) as such fiduciary. However, the bank or trust company is not required to accept the appointment.

(b) A bank or trust company is qualified to act as a fiduciary under subsection (a) if the bank or trust company is:

- (1) organized under the provisions of IC 28;
- (2) a national bank authorized to act as a fiduciary and that bank either:
  - (A) has its principal place of business in Indiana; or
  - (B) has its principal place of business in a state or territory of the United States, including the District of Columbia, that grants authority to serve in similar fiduciary capacities to banks and trust companies organized and doing business under the laws of Indiana; or

(3) organized and doing trust company business under the laws of a state or territory described in subdivision (2)(B).

(c) This section shall be construed to permit a bank or trust company that is organized and doing business under the laws of any state, territory, or district other than Indiana, including a national bank or national trust company doing business in any other state, to establish in Indiana, subject to the approval of the department, a place of business or agency for the conduct of business as a fiduciary if the law of the state, territory, or district in which the bank or trust company is located would allow an Indiana bank or trust company to establish a place of business or agency in that state, territory, or district for the conduct of business as a fiduciary.

*(Formerly: Acts 1933, c.40, s.183.) As amended by Acts 1980, P.L.175, SEC.1; P.L.42-1993, SEC.29; P.L.122-1994, SEC.79.*

#### IC 28-1-12-2

##### **Control by court; accounts, statements, and reports**

Sec. 2. Every bank or trust company appointed as a fiduciary, pursuant to the provisions of this article, shall be subject at all times to the orders, judgments, and decrees of the court from which it shall have accepted any such trust, appointment, or commission, as to such trust or other fiduciary relationship, and shall render to such court such itemized and verified accounts, statements, and reports as may be required by law, or as such court shall determine, in relation to such particular trust or other fiduciary appointment.

*(Formerly: Acts 1933, c.40, s.184.) As amended by P.L.263-1985, SEC.63.*

**IC 28-1-12-3**

**Fiduciary powers and obligations; trusts; holding of securities; segregation; records; transfers; investments in securities of investment companies or trusts having business ties with fiduciary**

Sec. 3. (a) Every bank or trust company exercising trust powers or any powers as a fiduciary shall establish and maintain in its office a trust department in which it shall keep, separate and apart from its other business, separate books and accounts, and shall keep all securities and property, other than money, which is held by its trust department, at all times segregated from and unmingled with its own securities and property.

(b) Notwithstanding any other law, any bank or trust company holding securities as a fiduciary, custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities in a clearing corporation (as defined in IC 26-1-8.1-102(a)(5)). When such securities are deposited in a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation by any person regardless of the ownership of the securities; and certificates of small denomination may be merged into one (1) or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited.

(c) This section applies to any bank or trust company holding securities as a fiduciary, custodian, managing agent or custodian for a fiduciary, regardless of whether it owns capital stock of the clearing corporation.

(d) Title to the securities held by the clearing corporation may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities.

(e) A bank or trust company acting as custodian for a fiduciary, shall, upon demand by the fiduciary, certify in writing to the fiduciary the securities deposited by such fiduciary in such clearing corporation for its account as fiduciary.

(f) Notwithstanding any other law, any bank or trust company holding United States government securities as a fiduciary, custodian or managing agent, and any bank or trust company holding United States government securities as custodian for a fiduciary may use the Federal Reserve Book-Entry procedure for the United States government securities. The records of such fiduciary and the records of such bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the party for whose account the United States government securities are

deposited.

(g) Title to the United States government securities registered by Book-Entry under subsection (f) may be transferred by bookkeeping entry on the books of the Federal Reserve without physical delivery of certificates representing the securities.

(h) A bank or trust company acting as custodian for a fiduciary, shall, upon demand by the fiduciary, certify in writing to the fiduciary the securities registered in the Federal Reserve for the account of the fiduciary.

(i) Notwithstanding any other law, a bank or trust company, to the extent that it exercises investment discretion as a fiduciary, custodian, managing agent, or otherwise with respect to the investment and reinvestment of assets that it maintains in its trust department, may invest and reinvest the assets, subject to the standard contained in IC 30-4-3-3(c), in the securities of any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a1-64, as amended. The fact that the bank or trust company, or any affiliate of the bank or trust company, is providing services to the investment company or trust as investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and receiving reasonable remuneration for the services, does not preclude the bank or trust company from investing in the securities of such investment company or trust.

*(Formerly: Acts 1933, c.40, s.185.) As amended by Acts 1977, P.L.290, SEC.1; P.L.257-1989, SEC.1; P.L.247-1995, SEC.25.*

#### **IC 28-1-12-4**

##### **Profit or commission on sales; necessity of specific authorization; surcharge**

Sec. 4. No profit or commission, other than interest at the legal rate upon a loan or advancement, shall be taken or received by any bank or trust company or corporate fiduciary, directly or indirectly, out of any sale or purchase to or from any estate, guardianship, or trust of any kind of which it is the fiduciary, unless specifically authorized by agreement with the creator of the trust, or the court having jurisdiction thereof; and upon violation of this section such bank or trust company or corporate fiduciary shall be surcharged any profit so taken or received, and an amount equal thereto, in addition, and may be summarily removed as such fiduciary by the court having jurisdiction.

*(Formerly: Acts 1933, c.40, s.189.) As amended by P.L.262-1995, SEC.31.*

#### **IC 28-1-12-5**

##### **Repealed**

*(Repealed by P.L.262-1995, SEC.91.)*

#### **IC 28-1-12-6**

##### **Liquidation preferences**

Sec. 6. Upon the liquidation of any bank or trust company or corporate fiduciary while it is acting as guardian, trustee, receiver, administrator, executor, commissioner, or assignee for the benefit of creditors the person or persons beneficially entitled to receive property or proceeds thereof held by it, or any successor fiduciary that may be appointed, shall have preference and priority in all assets of such bank or trust company or corporate fiduciary over its general creditors, for all uninvested money held by such bank or trust company or corporate fiduciary in the fiduciary capacities above named, to the extent that such money is commingled with its general assets or is not duly accounted for.

*(Formerly: Acts 1933, c.40, s.192; Acts 1937, c.33, s.25.) As amended by P.L.262-1995, SEC.32.*

### **IC 28-1-12-7**

#### **Violations**

Sec. 7. A person who violates this chapter commits a Class B infraction. In addition, if the person is an officer of any bank or trust company, he is subject to removal from office in the manner prescribed in IC 28-11-4.

*(Formerly: Acts 1933, c.40, s.194; Acts 1937, c.33, s.27.) As amended by Acts 1978, P.L.2, SEC.2807; P.L.33-1991, SEC.15.*

### **IC 28-1-12-8**

#### **Authorization for banks and trust companies to use fiduciary funds in conflict of interest transactions; conditions; notice; required consent**

Sec. 8. (a) Unless otherwise provided in an agreement or a trust, a bank or trust company that holds funds or property as a fiduciary may use the funds or property to purchase from the bank, the trust company, or an affiliate of the bank or trust company a product, service, or security, including an insurance product or security that is underwritten by the bank, the trust company, an affiliate of the bank or trust company, or a syndicate or selling group that includes the bank, the trust company, or an affiliate of the bank or trust company if the:

- (1) purchase price and any ongoing charges and costs are fair, reasonable, and substantially equivalent to the cost of similar products and services; and
- (2) purchase complies with IC 30-4-3.5.

The compensation for the product, services, or security received by the bank, trust company, an affiliate of the bank or trust company, or a syndicate or selling group that includes the bank, the trust company, or an affiliate of the bank or trust company may be in addition to the compensation that the bank or trust company is otherwise entitled to from the fiduciary account.

(b) A bank or trust company that makes a purchase or sale described in subsection (a) shall disclose, at least annually, to each person entitled to receive statements of account activity from the bank or trust company any purchase or sale made by the bank or trust

company during the year. The disclosure must be in writing or an electronic format and include the following:

(1) Any capacity in which the bank, the trust company, or an affiliate of the bank or trust company acts for:

(A) the issuer of the securities; or

(B) the provider of the products or services;

that is the subject of the purchase or sale.

(2) A statement that the bank, the trust company, or an affiliate of the bank or trust company has an interest in the subject of the purchase or sale, if applicable.

(3) The rate and method by which that compensation was determined.

(4) The name, telephone number, street address, and mailing address of an officer of the bank or trust company who may be contacted for further information.

(5) A notice that the bank's or trust company's ability to make transactions described in subsection (a) ends upon receipt at any time of a notice of objection by a majority of the persons entitled to receive statements of account activity.

(c) The following apply to a purchase or sale under subsection (a):

(1) Except as provided in subdivisions (2) and (3), if the fiduciary relationship is a trust or an agency, the trustee or agent shall treat the purchase or sale under subsection (a) as if it were a conflict of interest transaction under IC 30-4-3-5 and shall give any notice and obtain any consent that may be required under IC 30-4-3-5, subject to the following:

(A) IC 30-2-14-16 applies to any notice required to be given by a trustee or an agent under this subdivision, subject to the following:

(i) If the fiduciary relationship is a revocable trust with one (1) or more living grantors, the trustee must give notice only to the living grantors, who shall be considered to have all income and principal interests in the trust at the time the notice is given. If a grantor is incapacitated, the trustee shall give notice to the grantor's court appointed guardian, the principal under a durable power of attorney, or a co-trustee of the revocable trust, unless the guardian, principal, or co-trustee is the bank or trust company that seeks the consent. If the representative of the incapacitated grantor is the bank or trust company that seeks the consent to a purchase or sale under subsection (a), the trustee shall obtain consent from the court.

(ii) If the fiduciary relationship is a revocable trust and the assets of the revocable trust are distributable to one (1) or more other trusts, notice shall be given to the trustees of the other trusts. However, if the bank or trust company that seeks the consent to a purchase or sale under subsection (a) is the trustee of another trust to which the assets of the revocable trust are distributable, the bank or trust company shall give notice to those beneficiaries of the other trust

who are entitled to receive statements of account activity from the bank or trust company.

(iii) If the fiduciary relationship is an agency, the principal must consent to the purchase or sale under subsection (a) in writing in advance of the transaction. The principal shall be considered to have all income and principal interests in the account at the time the notice of the proposed transaction is given. If the principal is incapacitated, consent must be obtained from the principal's court appointed guardian, unless the guardian of the incapacitated principal is the bank or trust company that seeks the consent. If the guardian of the incapacitated principal is the bank or trust company that seeks the consent, consent to a purchase or sale under subsection (a) must be obtained from the court supervising the principal's guardianship.

(B) If the fiduciary relationship is a trust, the following apply with respect to any consent required to be obtained under IC 30-4-3-5(a)(2):

(i) Notwithstanding the requirement under IC 30-4-3-5(a)(2)(A) that all interested persons provide written consent to the proposed action, and subject to subdivision (2), a trustee, for a proposed purchase or sale under subsection (a), need only obtain the written consent of a majority of the persons entitled to notice under IC 30-2-14-16, as modified by subdivision (1)(A). However, the trustee must obtain the written consent of at least one (1) beneficiary who is receiving income under the trust at the time of the notice and at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time notice is given.

(ii) Upon obtaining the written consents required under item (i), the trustee need not wait until the period to make written objections under IC 30-2-14-16 ends in order to take the proposed action.

(2) Any consent granted under subdivision (1)(B)(i) may be revoked by a writing signed by a majority of the persons entitled to notice under IC 30-2-14-16, as modified by subdivision (1)(A). However, the revocation must be signed by:

(A) at least one (1) beneficiary who is receiving income under the trust at the time the revocation is signed; and

(B) at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time the revocation is signed.

(3) The notice and consent otherwise required under subdivision (1) are not required if the purchase or sale under subsection (a) is specifically authorized:

(A) in the document creating the fiduciary relationship; or

(B) under IC 30-4-3-7.

*As added by P.L.202-2007, SEC.1; P.L.226-2007, SEC.5. Amended*

*by P.L.3-2008, SEC.219.*