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CHAPTER 4

LOAN AND TRUST COMPANIES

Section
7-4-1. Status and powers of existing loan and trust companies.
7-4-2. Jurisdiction of department over existing loan and trust companies.

7-4-1. Status and powers of existing loan and trust companies. The repeal of chapter 4 as in effect before July 1, 1981, shall not affect the corporate status or powers of any corporation incorporated under the provisions of this chapter and in good standing under the laws of this state on June 30, 1981, except that any such corporation which is not exercising or has not been authorized to exercise the powers provided in subsection 7-4-3(3) as in effect before July 1, 1981, on or before June 30, 1981, may not thereafter do so.

History: C. 1953, 7-4-1, enacted by L. 1981, ch. 16, § 5.

Compiler's Notes.

Laws 1981, ch. 16, § 1 repealed old sections 7-4-1 to 7-4-8 (R.S. 1898 & C.L. 1907, §§ 423, 424, 426 to 430; L. 1911, ch. 25, § 32; C.L. 1917, §§ 1005, 1200, 1201, 1203 to 1207; L. 1921, ch. 24, § 1; 1923, ch. 15, § 1; R.S. 1933 & C. 1943, 7-4-1 to 7-4-8; L. 1961, ch. 16, § 1; 1977, ch. 19, §§ 1, 2), relating to loan and trust companies. New sections 7-4-1 and 7-4-2 were enacted by § 5 of the act.

7-4-2. Jurisdiction of department over existing loan and trust companies. Any corporation incorporated under chapter 4 as in effect before July 1, 1981, and in good standing on June 30, 1981, shall thereafter be subject to the jurisdiction, supervision and examination of the department as provided in chapter 1.

History: C. 1953, 7-4-2, enacted by L. 1981, ch. 16, § 5.

Cross-References.

Fees payable to commissioner, 7-1-401, 7-1-402.

Jurisdiction of department of financial institutions, 7-1-501.

Supervisor of banks, responsibility for loan and trust companies, 7-1-205.

CHAPTER 5

TRUST BUSINESS

Section
7-5-1. Application of chapter — "Trust business" defined — Representations as to trust business.
7-5-2. Permit required to engage in trust business — Exceptions.
7-5-3. Application for permit — Criteria for granting — Authority of permittee.
7-5-4. Withdrawal from trust business.
7-5-5. Revocation of trust authority — Procedure.
7-5-6. Confidentiality of communications and writings concerning trust — Actions to protect property or authorized under probate laws not precluded.
7-5-7. Management and investment of trust funds.
7-5-8. Segregation of trust assets — Books and records required — Examination — Trust property not subject to claims or debts against trust company.
7-5-9. Registration of investment in name of nominee — Records — Possession of investment.

7-5-10. Lending trust property to trust company, officer, director or employee as felony.
7-5-11. Self-dealing with trust property — Own stock as trust property — Policies for dealing with trust securities.
7-5-12. Directors' audit of trust business — Report available to commissioner or examiners — Examinations in lieu of audit.
7-5-13. Common trust funds.

7-5-1. Application of chapter — "Trust business" defined — Representations as to trust business. (1) This chapter shall apply to all banks and savings and loan associations authorized to do business in this state under chapters 1, 3 and 7 which undertake to engage in the trust business in this state, and, except as otherwise specifically provided in this chapter, to all corporations authorized to engage in the trust business in this state before July 1, 1981.

(2) As used in this chapter, "trust business" means business in which one acts in any agency or fiduciary capacity, such as but not limited to that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depositary, or trustee under appointment as trustee for any purpose permitted by law, not being limited to the definition of "trust" established in subsection 75-1-201 (45), and "trust company" means a bank or savings and loan association authorized under this chapter to engage in the trust business.

(3) After June 30, 1981, no corporation or other business entity shall use the word "trust" as part of its name or hold itself out to the public as being engaged in or authorized to engage in the trust business in this state or shall engage in the trust business in this state unless it has been authorized under this chapter by the commissioner to engage in the trust business, and no corporation or other business entity other than a trust company as defined in this section shall be authorized to engage in the trust business in this state.

(4) The provisions of subsection (3) of this section do not apply to any bank or other corporation authorized to engage and which is lawfully engaged in the trust business in this state before July 1, 1981.

(5) Nothing contained in this chapter prohibits an individual from engaging in the trust business in this state on an isolated or occasional basis, from time to time, but no individual may hold himself or herself out to the public as being engaged in, or authorized to engage in, the trust business and no individual may engage in the trust business on a regular, recurring basis unless he or she complies with the requirements of this chapter.

History: C. 1953, 7-5-1, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 1.

Compiler's Notes.

Laws 1981, ch. 16, § 1 repealed old sections 7-5-1 to 7-5-20 (L. 1933, ch. 10, §§ 1 to 13; 1939, ch. 20, § 1; 1943, ch. 12, § 1; C. 1943, 7-4a-1 to 7-4a-10, 7-4a-10.10, 7-4a-11 to 7-4a-13, 7-4a-16 to 7-4a-20, 7-4a-22; L. 1951, ch. 9, § 1; 1953, ch. 12, §§ 1, 2; 1959, ch. 13, § 1; 1975, ch. 91, § 1; 1977, ch. 19, §§ 3, 4), relating to trust companies and the common trust fund act. New sections 7-5-1 to 7-5-12 were enacted by § 6 of the act.

The 1982 amendment substituted "business in which one acts in any agency or fiduciary capacity, such as but not limited to that of"

in subsec. (2) for "acting as"; and added subsec. (5).

Collateral References.

Banks and Banking ⟹ 311.

9 CJS Banks and Banking § 1045.

Trust companies as banks for regulatory purposes, 10 AmJur 2d 37, Banks § 11.

Statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 ALR 140.

Law Reviews.

Public Understanding of Fiduciary Responsibility, R. P. Brown, 109 Trusts & Es. 860.

DECISIONS UNDER FORMER LAW

Deposits of money by trust company.

Deposit of moneys by trust company to credit of beneficiaries in banking side of the institution was the deposit of money in trust for them and made them cestuis and not creditors. Leggroan v. Zion's Savings Bank & Trust Co. (1951) 120 U 93, 232 P 2d 746.

7-5-2. Permit required to engage in trust business — Exceptions. (1) No trust company shall accept any appointment to act in any agency or fiduciary capacity, such as but not limited to that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depositary, or trustee under order or judgment of any court or by authority of any law of this state or as trustee for any purpose permitted by law or otherwise engage in the trust business in this state, unless and until it has obtained from the commissioner a permit to act under this chapter. This provision shall not apply to any bank or other corporation authorized to engage and lawfully engaged in the trust business in this state before July 1, 1981.

(2) Nothing in this chapter prohibits: (a) any corporation organized under chapter 6 or 10 of title 16 from acting as trustee of any employee benefit trust established for the employees of the corporation or the employees of one or more other corporations affiliated with the corporation; (b) any corporation organized under chapter 6 of title 16 and owned or controlled by a charitable, benevolent, eleemosynary or religious organization from acting as a trustee for that organization or members of that organization but not offering trust services to the general public; (c) any corporation organized under chapter 6 or 10 of title 16 from holding in a fiduciary capacity the controlling shares of another corporation but not offering trust services to the general public; or (d) any depository institution from holding in an agency or fiduciary capacity individual retirement accounts or Keogh plan accounts established under Section 401 (a) or 408 (a) of Title 26 of the United States Code.

History: C. 1953, 7-5-2, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 2.

Compiler's Notes.

The 1982 amendment substituted "act in any agency or fiduciary capacity, such as but not limited to that of" near the beginning of subsec. (1) for "act as"; substituted "any employee benefit trust" in subd. (2)(a) for "a pension or profit-sharing trust"; inserted "agency or" in subd. (2)(d); and made a minor change in phraseology.

Collateral References.

Banks and Banking ⟹ 311.

9 CJS Banks and Banking § 1045.

Acting as agent, trustee or other fiduciary, 10 AmJur 2d 269 et seq., Banks § 303 et seq.

Construction and application of statutes authorizing the appointment of trust company as guardian, trustee or administrator upon application or consent of one acting as such (or as executor), or one entitled to appointment as such, 105 ALR 1199.

Dealings between bank or trust company and itself acting as executor, administrator or trustee, 112 ALR 780.

Insolvency of, or appointment of receiver or other liquidator for, corporation, as affecting its status as executor, administrator, guardian, or trustee, 102 ALR 124.

Practice of law, trust company's acts as fiduciary as, 69 ALR 2d 404.

7-5-3. Application for permit — Criteria for granting — Authority of permittee. A bank or savings and loan association seeking a permit to engage in the trust business in this state shall file an application therefor with the commissioner in such form and containing such information as the commissioner by regulation may require. The commissioner shall, in his consideration of the application, take into account the character and condition of the applicant's assets, the adequacy of its capital, its earnings record, the quality of its management, the qualifications of the person or persons proposed to be the officer or officers in charge of the trust operations, the needs of the community for fiduciary services and the volume of business that will probably be done by the applicant and any other facts and circumstances that seem to him proper, including the availability of legal counsel to advise and pass upon matters relating to the trust business and he may grant or refuse the application based on a reasonable assessment of the factors considered. However, no criteria may be applied making it more difficult for a state chartered savings and loan association or bank to obtain approval to engage in the trust business, than for a federally chartered savings and loan association or bank applying for such approval to the federal home loan bank board or comptroller of the currency. The commissioner may impose such conditions on the granting of a permit as he considers appropriate to protect the public interest. Upon receiving a permit from the commissioner, a bank or savings and loan association shall be qualified to act as fiduciary in any capacity without bond.

History: C. 1953, 7-5-3, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 3.

Compiler's Notes.

The 1982 amendment inserted "including the availability of legal counsel to advise and pass upon matters relating to the trust business" in the second sentence; inserted "or bank" in two places in the third sentence; and added "or comptroller of the currency" to the third sentence.

7-5-4. Withdrawal from trust business. Any trust company which desires to withdraw from and discontinue doing a trust business shall furnish to the commissioner satisfactory evidence of its release and discharge from all the obligations and trusts undertaken by it, and after the company has furnished that evidence the commissioner shall revoke his certificate of authority to do a trust business previously issued to that trust company, and thereafter that trust company shall not be permitted to use and shall not use the word "trust" in its corporate name or in connection with its business, nor undertake the administration of any trust business.

History: C. 1953, 7-5-4, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 4.

Compiler's Notes.

The 1982 amendment substituted "trust business" for "trusts" at the end of the section.

Collateral References.

Banks and Banking ⟸ 316.

9 CJS Banks and Banking § 1064.

7-5-5. Revocation of trust authority — Procedure. (1) The commissioner may issue and serve upon a trust company a notice of intent to revoke the authority of the trust company to exercise the powers granted by this chapter, if, in his opinion the trust company is unlawfully or unsoundly exercising or has unlawfully or unsoundly exercised or has failed for a period of five consecutive years to exercise, the powers granted under this chapter, or otherwise fails or has failed to comply with requirements of this chapter upon which its permit is conditioned or any rule or regulation of the commissioner. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix the time and place at which a hearing will be held to determine whether an order revoking authority to execute those powers should issue against the trust company.

(2) If the trust company so served does not appear at the hearing by a duly authorized representative, such non-appearance constitutes consent to the issuance of a revocation order. If consent has been established in this manner, or if upon the record made at any such hearing the commissioner finds that any allegation specified in the notice of charges has been established, the commissioner shall issue and serve upon the trust company an order prohibiting it from accepting any new or additional trust accounts and revoking the authority to exercise any and all powers granted under this chapter, except that the order shall permit the trust company to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(3) A revocation order shall become effective after 30 days after service of the order upon the trust company so served and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated or set aside by action of the commissioner or by a reviewing court as provided in chapter 1.

History: C. 1953, 7-5-5, enacted by L. 1981, ch. 16, § 6.

Cross-References.

Hearings by commissioner, judicial review, 7-1-309.

Collateral References.

Banks and Banking ⟹ 316.

9 CJS Banks and Banking § 1064.

7-5-6. Confidentiality of communications and writings concerning trust — Actions to protect property or authorized under probate laws not precluded. Any trust company exercising the powers and performing the duties described in this chapter shall keep inviolate all communications and writings made to or by that trust company relating to the existence, condition, management or administration of any agency or fiduciary account confided to it and no creditor or stockholder of any such trust company shall be entitled to disclosure or knowledge of any such communication or writing, except that the directors, president, vice president, manager, treasurer, and trust officers, and any employees assigned to work

on the trust business, and the attorney or auditor employed by it shall be entitled to knowledge of any such communication or writing and except that in any suit or proceeding relating to the existence, condition, management or administration of the account, the court in which the suit is pending may require disclosure of any such communication or writing. A trust company is not, however, precluded from filing an action in court to protect trust account property or as authorized under title 75.

History: C. 1953, 7-5-6, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 5.

Compiler's Notes.

The 1982 amendment substituted "agency or fiduciary account" for "private trust"; substituted "any employees assigned to work on the trust business, and the attorney or auditor employed by it" for "their secretaries, and the attorney employed by it with respect to the trust"; substituted "account" for "trust"; and added the last sentence.

7-5-7. Management and investment of trust funds. (1) Funds received or held by any trust company as agent or fiduciary, whether for investment or distribution, shall be invested or distributed as soon as practicable as authorized under the instrument creating the account and shall not be held uninvested any longer than is reasonably necessary.

(2) If the instrument creating an agency or fiduciary account contains provisions authorizing the trust company, its officers, or its directors to exercise their discretion in the matter of investments, funds held in the trust account under that instrument may be invested only in those classes of securities which are approved by the directors of the trust company or a committee of directors appointed for that purpose. Whenever a trust company acts in any fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and account for all investments according to the provisions of title 75 unless the underlying instrument provides otherwise.

(3) Funds received or held by any trust company as agent or fiduciary, whether for investment or distribution, may be deposited in the commercial department or savings department of that trust company to the credit of its trust department. However, whenever the funds so deposited in a fiduciary or managing agency account exceed the amount then insured by F.D.I.C. or S.L.I.C the trust company shall deliver to the trust department or put under its control collateral security as outlined in regulation 9.10 of the comptroller of the currency or in regulation 550.8 of the Federal Home Loan Bank Board as amended from time to time. However, if the instrument creating such a fiduciary or managing agency account expressly provides that funds may be deposited to the commercial or savings department of the trust company, then the funds may be so deposited without setting aside collateral securities as required under this section and the deposits in the event of insolvency of any such trust company shall be treated as other general deposits are treated. A trust company which deposits trust funds in its commercial or savings department shall be liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits of like kind not made to the credit of its trust department.

(4) In administrating its trust business, a trust company is governed by the provisions of sections 33-2-1 and 33-2-3, and title 75 and the terms of the instrument. Section 33-1-1 is not applicable to investments by a trust company in the conduct of its trust business authorized by this chapter.

History: C. 1953, 7-5-7, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 6.

Compiler's Notes.

The 1982 amendment inserted "agent or" near the beginning of subsecs. (1) and (3); inserted "as authorized under the instrument creating the account" in subsec. (1); substituted "agency or fiduciary account" for "trust" in the first sentence of subsec. (2); substituted "trust account" in the first sentence of subsec. (2) for "trust"; added "unless the underlying instrument provides otherwise" to the last sentence of subsec. (2); inserted the second and third sentences in subsec. (3); substituted "33-2-1 and 33-2-3, and title 75 and the terms of the instrument" in the first sentence of subsec. (4) for "33-2-1, 33-2-3, 75-7-401 through 75-7-407, 75-7-302, 75-7-303, 75-7-306, and 75-7-307"; and made a minor change in phraseology.

Collateral References.

Banks and Banking ⚿ 315.
9 CJS Banks and Banking § 1054 et seq.

Agreement to pay in cash principal of trust fund invested as ultra vires, 96 ALR 453.

Charitable trust: liability of trustee for permitting trust income to accumulate in noninterest-bearing account, 51 ALR 3d 1293.

Investment of trust funds in share or part of single security or group or pool of securities, 103 ALR 1192, 110 ALR 1166, 125 ALR 669.

Liability of trustee or other fiduciary for loss on investment as affected by the fact that it was taken in his own name without indication of fiduciary capacity, 106 ALR 271, 150 ALR 805.

Right of corporate trustee to invest in or retain its own stock, 157 ALR 1429.

7-5-8. Segregation of trust assets — Books and records required — Examination — Trust property not subject to claims or debts against trust company. A trust company exercising the powers to act as an agent or fiduciary under this chapter shall segregate all assets held in any agency or fiduciary capacity from the general assets of the company and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this chapter. These books and records shall be open to inspection by the commissioner and shall be examined by him or by examiners appointed by him as provided in chapter 1 or examined by other appropriate regulating agencies or both. Property held in an agency or fiduciary capacity by a trust company shall not be subject to claims or debts against the trust company.

History: C. 1953, 7-5-9, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 7.

Compiler's Notes.

The 1982 amendment inserted "agent or" in the first sentence; inserted "agency or" in the first and third sentences; added "or examined by other appropriate regulating agencies or both" to the second sentence; substituted "claims or debts against the trust company" at the end of the third sentence for "claims of shareholders, depositors or other creditors of the company"; and made minor changes in phraseology.

Cross-References.

Examination of institutions by commissioner, 7-1-314.

Collateral References.

Power of bank or trust company to create trust out of its securities and sell participation certificates therein, 97 ALR 1182.

7-5-9. Registration of investment in name of nominee — Records — Possession of investment. (1) A trust company may cause any security,

as defined in subsection 75-1-201(37), held in its agency or fiduciary capacity to be registered and held in the name of a nominee or nominees of the trust company. The trust company shall be liable for the acts of any such nominee with respect to any investment so registered. Investments other than securities held in the name of a nominee on June 30, 1981, may continue to be held in that manner.

(2) The records of the trust company shall at all times show the ownership of any such investment, which investment shall be in the possession or control of the trust company and be kept separate and apart from the assets of the trust company.

History: C. 1953, 7-5-9, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 8.

Compiler's Notes.

The 1982 amendment substituted "A trust company may cause any security, as defined in subsection 75-1-201(37), held in its agency or fiduciary capacity" in the first sentence of subsec. (1) for "A trust company acting as a fiduciary or a cofiduciary may, with the consent of its cofiduciaries, if any (who are hereby authorized to give consent), cause any investment held in its fiduciary capacity"; added the last sentence to subsec. (1); and substituted "or control" for "and control" in subsec. (2).

Collateral References.

Banks and Banking ⚿ 315(1).

9 CJS Banks and Banking § 1061.

7-5-10. Lending trust property to trust company, officer, director or employee as felony. Unless expressly permitted in the instrument creating a trust account or by a person authorized to give that permission or by a court order as permitted in section 75-7-404, no trust company shall lend to itself or to any officer or director or employee of the trust company any funds held in any trust account under the powers conferred in this chapter. Any officer, director or employee making such a loan, or to whom such a loan is made, is guilty of a third degree felony.

History: C. 1953, 7-5-10, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 9.

Compiler's Notes.

The 1982 amendment substituted "instrument creating a trust account or by a person authorized to give that permission or by a court order as permitted in section 75-7-404" in the first sentence for "trust instrument"; substituted "any trust account" for "trust" in the first sentence; and made a minor change in phraseology.

Collateral References.

9 CJS Banks and Banking § 1053.

7-5-11. Self-dealing with trust property — Own stock as trust property — Policies for dealing with trust securities. (1) Except as provided in section 7-5-7, in title 75, or as authorized under the instrument creating the relationship, a trust company shall not invest funds held as an agent or fiduciary in stock or obligations of, or with such funds acquire property from, the trust company or any of its directors, officers or employees, nor shall a trust company sell property held as an agent or fiduciary to the company or to any of its directors, officers, or employees.

(2) A trust company may retain and vote stock of the trust company or of any of its affiliates received by it as assets of any trust account or in any other fiduciary relationship of which it is appointed agent or fiduciary, unless the instrument creating the relationship otherwise provides.

(3) Every trust company shall adopt written policies and procedures regarding decisions or recommendations to purchase or sell any security to facilitate compliance with federal and state securities laws. These policies and procedures, in particular, shall prohibit the trust company from using material inside information in connection with any decision or recommendation to purchase or sell any security.

History: C. 1953, 7-5-11, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 10.

Compiler's Notes.

The 1982 amendment inserted "agent or" before "fiduciary" throughout the section; substituted "any trust account" in subsec. (2) for "the trust"; and made minor changes in phraseology.

7-5-12. Directors' audit of trust business — Report available to commissioner or examiners — Examinations in lieu of audit. A committee of the board of directors, exclusive of any active officers of the trust department, of every trust company authorized to engage in the trust business in this state shall, at least once during a 15-month period, make a suitable audit of the trust business operations of the institution or cause a suitable audit to be made by a certified public accountant responsible only to the board of directors and shall ascertain whether the trust business operations of the institution have been administered in accordance with law and sound fiduciary principles. A report of the audit, together with the action taken thereon, shall be made available to the commissioner, his examiners, or the examiners of other trust company regulating agencies upon request. An examination by the state or other trust company regulating agencies or both made during the same period may be substituted for this audit.

History: C. 1953, 7-5-12, enacted by L. 1981, ch. 16, § 6; L. 1982, ch. 6, § 11.

Compiler's Notes.

The 1982 amendment inserted "or the examiners of other trust company regulating agencies" in the second sentence; substituted "by the state or other trust company regulating agencies or both" in the last sentence for "of the federal reserve bank or the federal deposit insurance corporation"; and made minor changes in phraseology and punctuation.

7-5-13. Common trust funds. (1) Any trust company chartered by this state or by a federal agency, qualified to engage in the trust business in this state, may establish common trust funds. Funds held by a trust company may be invested collectively in a common trust fund maintained by it in accordance with the rules prescribed by the Comptroller of the Currency or Federal Home Loan Bank Board or both, if such investment is not specifically prohibited under the instrument, judgment, decree or order governing the funds.

(2) Unless ordered to do so by a court of competent jurisdiction a trust company operating common trust funds is not required to render a court accounting with regard to those funds; but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

(3) This section shall apply to all relationships in existence on July 1, 1981, or thereafter established.

History: C. 1953, 7-5-13, enacted by L. 1982, ch. 6, § 12.

Title of Act.

An act relating to trust business; making certain revisions in the law governing trust business; providing for the establishment of common trust funds; and providing for effective and operative dates.

This act amends sections 7-5-1, 7-5-2, 7-5-3, 7-5-4, 7-5-6, 7-5-7, 7-5-8, 7-5-9, 7-5-10, 7-5-11, and 7-5-12, Utah Code Annotated 1953, as enacted by chapter 16, Laws of Utah 1981; and enacts section 7-5-13, Utah Code Annotated 1953. — Laws 1982, ch. 6.

Effective Date.

Section 13 of Laws 1982, ch. 6 provided that the act should take effect upon approval, and should operate retrospectively to July 1, 1981. Effective April 1, 1982. Failed to obtain two-thirds vote required for earlier effect.

Collateral References.

Banks and Banking ⇐ 311.

9 CJS Banks and Banking § 1045.

Uniform Common Trust Fund Act, 64 ALR 2d 268.

Law Reviews.

Accounting Records for Common Trust Funds, G. C. Robinson, 79 Trusts & Es. 457.

Use and Limitations of Common Trust Funds, 23 Trust Bull. 21.

CHAPTER 6

MERGER, CONSOLIDATION AND CONVERSION OF NATIONAL AND STATE BANKS

Section

7-6-1. Definitions.
7-6-2. Merger of state and national banks — Law governing.
7-6-3. Merger agreements — Contents — Approval.
7-6-4. Submission of agreement to bank commissioner — Necessity of and time for approval — Statement of disapproval.
7-6-5. Necessity of approval by stockholders — Contents of notice of meeting — Rights of dissenting stockholders.
7-6-6. Effective date of merger — Charters of constituent banks — Certificate of merger — Operation, effect and recordation of certificate.
7-6-7. Status of resulting state bank — Rights, powers, duties — Reference in writings.
7-6-8. Conversion of state bank into national or national into state — Status and rights following conversion.
7-6-9. Time for conformity of assets to state law.

7-6-1. Definitions. As used in this title:

(1) "Bank" means a state or a national bank.

(2) "Constituent Bank" means a party to a merger.

(3) "Converting Bank" means a bank converting from a state to a national bank, or the reverse.

(4) "Converted Bank" means the same bank after the conversion.

(5) "Merger" includes consolidation.

(6) "Resulting Bank" means the combined banks and trust companies carrying on business upon completion of a merger.

(7) "State Bank" means a bank or loan and trust company incorporated under the laws of this state.

History: C. 1943, 7-4b-1, added by L. 1951, ch. 11, § 1.

Title of Act.

An act relating to the merger, consolidation and conversion of national and state

banks and loan and trust companies, amending Title 7, Utah Code Annotated 1943, by adding thereto a new chapter consisting of sections to be known as sections 7-4b-1, 7-4b-2, 7-4b-3, 7-4b-4, 7-4b-5, 7-4b-6, 7-4b-7, 7-4b-8 and 7-4b-9, Utah Code Annotated 1943. — Laws 1951, ch. 11.

Collateral References.

Banks and Banking ⟹ 65-67.
9 CJS Banks and Banking §§ 466-468.
10 AmJur 2d 51-54, Banks §§ 27-29.

7-6-2. Merger of state and national banks — Law governing. A. Upon approval of the state bank commissioner banks may be merged with a resulting state bank as hereafter prescribed, except that the action by a constituent national bank shall be taken in the manner prescribed by and shall be subject to any limitations or requirements imposed by any law of the United States which shall also govern the rights of its dissenting shareholders.

B. Nothing in the law of this state shall restrict the right of a state bank to merge with a resulting national bank. The action to be taken by a constituent state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the applicable law of the United States and not by the law of this state.

History: C. 1943, 7-4b-2, added by L. 1951, ch. 11, § 1.

Compiler's Notes.

The name of the state bank commissioner was changed to the commissioner of financial institutions by Laws 1967, ch. 12, § 3, which was repealed by Laws 1981, ch. 16, § 1. For present provisions regarding the duties of the commissioner of financial institutions, see 7-1-301 to 7-1-322.

Collateral References.

Antimonopoly or antitrust laws, application to banks and banking institutions of, 83 ALR 2d 374.

7-6-3. Merger agreements — Contents — Approval. Where there is to be a resulting state bank, the board of directors of each constituent state bank shall, by a majority of the entire board, approve a merger agreement which shall contain

(1) the name of each constituent bank and the location of each office.

(2) with respect to the resulting bank; (a) the name and the location of each proposed office; (b) the name and residence of each director to serve until the next annual meeting of the stockholders; (c) the name and residence of each officer; (d) the amount of capital, the number of shares and the par value of each share; (e) whether preferred stock is to be issued and the amount, terms and preferences; (f) amendments to the articles of incorporation and bylaws.

(3) the terms for the exchange of shares of the constituent banks for those of the resulting bank or of those of a bank holding company.

(4) a statement that the agreement is subject to approval by the state bank commissioner and by the stockholders of each constituent bank.

(5) provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of constituent banks.

(6) such other provisions as the state bank commissioner requires to enable him to discharge his duties with respect to the merger.

History: C. 1943, 7-4b-3, added by L. 1951, ch. 11, § 1; L. 1971, ch. 9.

Compiler's Notes.

The name of the state bank commissioner was changed to the commissioner of financial institutions by Laws 1967, ch. 12, § 3, which was repealed by Laws 1981, ch. 16, § 1. For present provisions regarding the duties of the commissioner of financial institutions, see 7-1-301 to 7-1-322.

The 1971 amendment added "or of those of a bank holding company" to subd. (3).

7-6-4. Submission of agreement to bank commissioner Necessity of and time for approval — Statement of disapproval. A. After approval by the board of directors of each constituent bank, the merger agreement shall be submitted to the state bank commissioner for approval, together with certified copies of the authorizing resolutions of the several boards of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any constituent national bank.

B. Without approval by the state bank commissioner no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of the constituent bank at the time of the last examination by a state or national bank examiner before the effective date of the merger.

C. Within thirty days after receipt by the state bank commissioner of the papers specified in subsection A, the state bank commissioner shall approve or disapprove the merger agreement. The state bank commissioner shall approve the agreement if it appears that

(1) the resulting state bank meets all the requirements of state law as to the formation of a new state bank.

(2) the agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

(3) the agreement is fair.

(4) the merger is not contrary to the public interest.

If the state bank commissioner disapproves an agreement, he shall state his objections and give an opportunity to the constituent banks to amend the merger agreement to obviate such objections.

D. Where the resulting state bank is not to exercise trust powers, the state bank commissioner shall not approve a merger until satisfied that adequate provision has been made for successors to fiduciary positions held by constituent banks.

History: C. 1943, 7-4b-4, added by L. 1951, ch. 11, § 1.

Compiler's Notes.

The name of the state bank commissioner was changed to the commissioner of financial institutions by Laws 1967, ch. 12, § 3, which was repealed by Laws 1981, ch. 16, § 1. For present provisions regarding the duties of the commissioner of financial institutions, see 7-1-301 to 7-1-322.

Cross-References.

Final decisions on mergers, consolidations, acquisitions and changes in control of financial institutions, 7-1-305.

7-6-5. Necessity of approval by stockholders — Contents of notice of meeting — Rights of dissenting stockholders. A. To be effective, a merger must be approved by the stockholders of each constituent state bank by a vote of two-thirds of the outstanding voting stock at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments set forth in the merger agreement.

B. The notice of the meeting of stockholders shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan.

C. The owner of shares which were voted against the approval of the merger shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand, made to the resulting state bank at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of such shares shall be determined as of the date of the shareholders' meeting approving the merger by three appraisers, one to be selected by the owners of two-thirds of the shares involved, one by the board of directors of the resulting state bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective the state bank commissioner shall cause an appraisal to be made.

D. The expenses of appraisal shall be paid by the resulting state bank.

E. The resulting state bank may fix an amount which it considers to be not more than the fair market value of the shares of a constituent bank at the time of the stockholders' meeting approving the merger, which it will pay dissenting shareholders of that constituent bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state bank.

History: C. 1943, 7-4b-5, added by L. 1951, ch. 11, § 1.

Compiler's Notes.

The name of the state bank commissioner was changed to the commissioner of financial institutions by Laws 1967, ch. 12, § 3, which was repealed by Laws 1981, ch. 16, § 1. For present provisions regarding the duties of the commissioner of financial institutions, see 7-1-301 to 7-1-322.

Collateral References.

Constitutionality of recent legislation relating to merger, consolidation, or reorganization of banks as affected by rights of dissenting creditors or stockholders, 92 ALR 1337, 96 ALR 1445, 104 ALR 1203.

Construction and effect of provisions for payment of dissenting stockholders in statutes relating to merger, consolidation, or reorganization of banks or other corporations, 87 ALR 597, 162 ALR 1237, 174 ALR 960.

Dominant shareholder's accountability to minority for profit, bonus, or the like, received on sale of stock to outsiders, 38 ALR 3d 738.

Timeliness and sufficiency of dissenting stockholder's notice of his objection to consolidation or merger and his demand for payment for his shares, 40 ALR 3d 260.

Valuation of stock of dissenting stockholders in case of consolidation or merger of corporation, sale of its assets, or the like, 48 ALR 3d 430.

7-6-6. Effective date of merger — Charters of constituent banks — Certificate of merger — Operation, effect and recordation of certificate. A. A merger shall, unless a later date is specified in the agreement,

become effective upon the filing with the secretary of state of the executed agreement together with copies of the resolutions of the stockholders of each constituent bank approving it, certified by such bank's president or a vice-president and a secretary, together with a certificate by the state bank commissioner that he has approved the merger agreement. The charters of the constituent banks, other than the resulting bank, shall thereupon be deemed surrendered.

B. The secretary of state shall thereupon issue to the resulting bank a certificate of merger setting forth the name of each constituent bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the constituent banks is held.

History: C. 1943, 7-4b-6, added by L. 1951, ch. 11, § 1.

Compiler's Notes.

The name of the state bank commissioner was changed to the commissioner of financial institutions by Laws 1967, ch. 12, § 3, which was repealed by Laws 1981, ch. 16, § 1. For present provisions regarding the duties of the commissioner of financial institutions, see 7-1-301 to 7-1-322.

7-6-7. Status of resulting state bank — Rights, powers, duties — Reference in writings. A. The resulting state bank shall be considered the same business and corporate entity as each constituent bank with all the rights, powers, and duties of each constituent bank except as limited by the charter and bylaws of the resulting state bank.

B. The resulting state bank shall have the right to use the name of any constituent bank whenever it can do any act under such name more conveniently.

C. Any reference to any constituent bank in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the resulting state bank if not inconsistent with the other provisions of such writing.

History: C. 1943, 7-4b-7, added by L. 1951, ch. 11, § 1.

7-6-8. Conversion of state bank into national or national into state — Status and rights following conversion. A. Nothing in the law of this state shall restrict the right of a state bank to convert into a national bank upon compliance with the laws of the United States, and upon completion of such conversion it shall surrender its charter as a state bank.

B. A national bank located in this state which follows the procedure prescribed by federal law to convert into a state bank, may be granted a state charter if it meets the requirements for the incorporation of a state bank. Any requirement that shares must be paid for in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at not more than their

fair cash market value. The procedure for incorporation of a state bank may be modified to the extent made necessary by the difference between an ordinary incorporation and a conversion.

C. The converted bank shall be considered the same business and corporate entity as the converting bank with all the rights, powers and duties of the converting bank except as limited by the charter and bylaws of the resulting bank. It may use the name of the converting bank whenever it can do any act under such name more conveniently.

D. Any reference to the converting bank in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the converted bank if not inconsistent with the other provisions of such writing.

History: C. 1943, 7-4b-8, added by L. 1951, ch. 11, § 1.

7-6-9. Time for conformity of assets to state law. If a constituent bank has assets which do not conform to the requirements of state law for the resulting bank or if a converting national bank has assets which do not conform to the requirements of state law for the converted state bank, or in either case there are business activities which are not permitted for the resulting or converted state bank, the state bank commissioner may permit a reasonable time to conform with state law.

History: C. 1943, 7-4b-9, added by L. 1951, ch. 11, § 1.

Compiler's Notes.

The name of the state bank commissioner was changed to the commissioner of financial institutions by Laws 1967, ch. 12, § 3, which was repealed by Laws 1981, ch. 16, § 1. For present provisions regarding the duties of the commissioner of financial institutions, see 7-1-301 to 7-1-322.

CHAPTER 7

SAVINGS AND LOAN ASSOCIATIONS

Section

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