

IC 28-14

ARTICLE 14. CORPORATE FIDUCIARIES

IC 28-14-1

Chapter 1. Definitions

IC 28-14-1-1

Definitions applicable to article

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-2

"Acting as a fiduciary"

Sec. 2. "Acting as a fiduciary" means undertaking to act primarily for the benefit of another. The term includes the following:

- (1) Acting alone and jointly with others.
- (2) Acting:
 - (A) as a trustee;
 - (B) as a personal representative;
 - (C) as a registrar of stocks and bonds;
 - (D) as a guardian or conservator of estates;
 - (E) as an assignee;
 - (F) as a receiver;
 - (G) as a custodian;
 - (H) as an investment manager or agent;
 - (I) as a managing agent; or
 - (J) as in any other, similar capacity.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-3

"Clearing corporation"

Sec. 3. "Clearing corporation" has the meaning set forth in IC 26-1-8-102.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-4

"Corporate fiduciary"

Sec. 4. "Corporate fiduciary" has the meaning set forth in IC 28-1-1-3.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-5

"Department"

Sec. 5. "Department" refers to the department of financial institutions established by IC 28-11-1.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-6

"Director"

Sec. 6. "Director" refers to the director of the department appointed under IC 28-11-2-1.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-7

"Person"

Sec. 7. "Person" means an individual, a corporation, a limited liability company, a partnership, or an unincorporated association.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-8

"The trust business"

Sec. 8. (a) Engaging in "the trust business" means:

- (1) acting as a fiduciary for hire as one's primary business purpose; or
- (2) holding oneself out to the public as being willing to act as a fiduciary for hire as one's primary business purpose.

(b) Notwithstanding subsection (a), the following persons are not engaged in the trust business with respect to fiduciary services customarily performed by the following persons for compensation as traditionally incident to their regular business activities:

- (1) Accountants.
- (2) Attorneys.
- (3) Banks.
- (4) Credit unions.
- (5) Industrial loan companies.
- (6) Insurance brokers.
- (7) Insurance companies.
- (8) Investment advisers.
- (9) National trust companies organized under the laws of the United States.
- (10) Real estate brokers and sales agents.
- (11) Savings and loan associations.
- (12) Savings banks.
- (13) Securities brokers and dealers.
- (14) Real estate title insurance companies.
- (15) Real estate escrow companies.
- (16) Persons acting in a fiduciary capacity in activities relating to:
 - (A) a business organization in which the person is an officer or an employee; or
 - (B) an estate where the person is designated as a fiduciary by a will or a court order.
- (17) Third-party administrators hired by trustees of split-interest charitable trusts, private foundations, charitable pooled income funds, charitable gift annuities, employee benefit plans, or retirement plans.

(c) Notwithstanding subsection (a), any individual or any organization described in Section 501 of the Internal Revenue Code is not engaged in the trust business for the purposes of this article.

(d) The department may determine that a person not specifically provided for under subsection (b) or (c) is not engaged in the trust business for the purposes of this article.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-9

"Subsidiary"

Sec. 9. "Subsidiary" means a foreign or domestic corporation or a limited liability company in which a corporate fiduciary has more than a fifty percent (50%) ownership.

As added by P.L.215-1999, SEC.11.

IC 28-14-2

Chapter 2. Application

IC 28-14-2-1**Applicability to nondepository trust company**

Sec. 1. A nondepository trust company that was organized under the laws of Indiana before July 1, 1995, is considered a corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-2-2**Powers of nondepository trust company**

Sec. 2. A nondepository trust company that is organized under the laws of Indiana after June 30, 1995, has only the powers granted to a corporate fiduciary organized after June 30, 1995.

As added by P.L.262-1995, SEC.90.

IC 28-14-3

Chapter 3. Powers and Duties

IC 28-14-3-1

Scope of chapter

Sec. 1. Subject to the limitations and restrictions set forth in this article and in the articles of incorporation, a corporate fiduciary possesses and may exercise the rights, privileges, and powers provided in this chapter.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-2

Corporate name

Sec. 2. A corporate fiduciary is entitled to perpetual duration and succession of its corporate name.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-3

Articles of incorporation

Sec. 3. The articles of incorporation of a corporate fiduciary must, without limitation, grant the corporate fiduciary the powers described in sections 4 through 8 of this chapter and authorize the corporate fiduciary to do the following:

- (1) Sue and be sued in its corporate name.
- (2) Have a corporate seal.
- (3) Make and amend bylaws that are not inconsistent with the articles of incorporation or Indiana law.
- (4) Purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in real or personal property.
- (5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of the corporate fiduciary's property.
- (6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with the:
 - (A) shares or other interests in; and
 - (B) obligations of;any entity, including the corporate fiduciary, except as otherwise prohibited by this article.
- (7) Borrow money, make contracts and guarantees, incur liabilities, and issue notes, bonds, and other obligations that may be convertible into or include the option to purchase other securities of the corporate fiduciary.
- (8) Mortgage or pledge any of its assets.
- (9) Purchase for its own account and sell investment securities under such limitations as the department prescribes by rule or policy.
- (10) Conduct business, locate offices, and exercise the powers

granted by this article regardless of geographic limitations.

(11) Elect directors, elect and appoint officers, and appoint employees and agents of the corporate fiduciary.

(12) Define the duties of directors, officers, and employees of the corporate fiduciary.

(13) Fix the compensation of directors, officers, and employees of the corporate fiduciary.

(14) Pay or pay for the following:

(A) Deferred compensation.

(B) Employment contracts.

(C) Individual or group life insurance.

(D) Insurance on the life or lives of designated officers.

(15) Make donations for the public welfare or for charitable, scientific, or educational purposes.

(16) Become a member of the Federal Reserve system.

(17) With the approval of the department, convert into a bank.

(18) Cease doing business and dissolve under IC 28-1-9.

(19) Exercise all powers that are incidental to and proper or that may be necessary and usual in carrying on a corporate fiduciary business.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-4

Loans

Sec. 4. (a) A corporate fiduciary may:

(1) lend money; and

(2) receive and hold real and personal property as security for the repayment of loans;

only as authorized in this section.

(b) A corporate fiduciary may make a loan to a fiduciary account it administers and may take security for the loan, unless the governing document prohibits borrowing money and pledging account assets. The terms of a loan described in this subsection must be comparable to the terms available from other lenders.

(c) A corporate fiduciary may make a loan to a director, an officer, or an employee of the corporate fiduciary. A loan made under this subsection must be adequately secured. Loans made under this subsection by a corporate fiduciary may not:

(1) total more than ten thousand dollars (\$10,000) for each individual; or

(2) exceed five percent (5%) of total equity capital when all loans to directors, officers, and employees are aggregated.

(d) Loans made to directors, officers, and employees under subsection (c) must be made exclusively from corporate funds. Funds from a fiduciary account may not be used to make or secure a loan under subsection (c).

As added by P.L.262-1995, SEC.90.

IC 28-14-3-5

Securities held by clearing corporation

Sec. 5. (a) Notwithstanding any other law, a corporate fiduciary holding securities in a fiduciary capacity is authorized to deposit or arrange for the deposit of the securities in a clearing corporation.

(b) When securities are deposited in a clearing corporation under subsection (a), certificates representing securities of the same class of the same issuer may be merged and held in the name of the nominee of the clearing corporation. The records of the corporate fiduciary acting as custodian, managing agent, or custodian for a fiduciary must at all times show the name of the party for whose account the securities are deposited.

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

As added by P.L.262-1995, SEC.90.

IC 28-14-3-6

United States government securities

Sec. 6. (a) Notwithstanding any other law, a corporate fiduciary holding United States government securities in a fiduciary capacity may use the Federal Reserve Book-Entry procedure for United States government securities. The records of the corporate fiduciary must at all times show the name of the party for whose account the United States government securities are deposited.

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

As added by P.L.262-1995, SEC.90.

IC 28-14-3-7

Benefits; incentives; stock purchase programs

Sec. 7. (a) A corporate fiduciary may do the following:

(1) Pay benefits, offer incentives, and establish benefit plans and incentive plans for an existing or a former director, officer, employee, and agent of the corporate fiduciary.

(2) Adopt stock purchase programs for employees and:

(A) grant options to purchase;

(B) issue; and

(C) sell;

shares of the capital stock of the corporate fiduciary to the employees of the corporate fiduciary or to a trustee on behalf of the employees of the corporate fiduciary.

(b) A corporate fiduciary may act as the trustee to whom shares of the capital stock of the corporate fiduciary are issued and sold on behalf of the employees of the corporate fiduciary under subsection (a)(2).

(c) A corporate fiduciary granting options and issuing capital stock in connection with a stock purchase plan for its employees under subsection (a)(2) is not required to first offer the capital stock

to the shareholders of the corporate fiduciary.

(d) A corporate fiduciary granting options and issuing capital stock in connection with a stock purchase plan for its employees under subsection (a)(2) may offer the capital stock to the shareholders for such consideration (but not less than par value), and upon such terms and conditions, as are approved by the:

- (1) board of directors of the corporate fiduciary;
- (2) holders of a majority of the shares of the corporate fiduciary who are entitled to vote with respect to the issuance of the capital stock; and
- (3) director.

(e) In the absence of actual fraud in the transaction, the judgment of the board of directors of a corporate fiduciary as to the sufficiency of the consideration for the issuance of options in connection with a stock purchase plan under subsection (a)(2) is conclusive.

(f) A corporate fiduciary exercising the powers granted in this section may, to the extent approved by the director, have authorized and unissued stock that is required to fulfill a stock option arrangement or another arrangement authorized by this section.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-8

Subsidiaries

Sec. 8. (a) A corporate fiduciary may:

- (1) exercise any power through a subsidiary; and
- (2) purchase, own, and hold shares of stock of a subsidiary.

(b) A subsidiary of a corporate fiduciary may not:

- (1) exercise a power that the corporate fiduciary could not exercise; or
- (2) engage in an activity in which the corporate fiduciary would not be permitted to engage.

(c) A corporate fiduciary may acquire or establish a subsidiary by submitting an application to the department containing a complete description of the corporate fiduciary's investment in the subsidiary and the activity to be conducted.

(d) The department shall review a corporate fiduciary's application to acquire or establish a subsidiary to determine:

- (1) whether the proposed activities are legally permissible; and
- (2) whether the proposal endangers the safety and soundness of the corporate fiduciary.

The director shall either approve or disapprove the application within sixty (60) days after the date on which the department receives the application. The period for approval or disapproval may be extended by the department based on a determination that additional information from the corporate fiduciary or additional time for analysis is required.

(e) Each subsidiary of a corporate fiduciary is subject to examination by the department to the same extent as though the subsidiary were included within the legal entity of the corporate fiduciary.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.12.

IC 28-14-3-9

Investment and reinvestment of assets

Sec. 9. (a) Notwithstanding any other law, a corporate fiduciary, in exercising investment discretion in its fiduciary capacity with respect to the investment and reinvestment of assets, may invest and reinvest the assets, subject to the standard set forth 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. 80a-1 et seq.).

(b) If a corporate fiduciary invests or reinvests assets under subsection (a), the fact that the corporate fiduciary or any affiliate of the corporate fiduciary is:

(1) providing services to the investment company or trust as investment adviser, sponsor, distributor, custodian, transfer agent, registrar, or otherwise; and

(2) receiving reasonable remuneration for the services provided; does not preclude the corporate fiduciary from investing in the securities of the investment company or trust.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-10

Acting as fiscal or transfer agent

Sec. 10. A corporate fiduciary has the power to act as fiscal or transfer agent of the United States or any state, municipality, body politic, or corporation, and may, in that capacity:

(1) receive and disburse money;

(2) transfer, register, and countersign certificates of stocks, bonds, and other evidence of indebtedness;

(3) authenticate and certify bonds and certificates of indebtedness referred to in subdivision (2);

(4) act as agent to buy and sell domestic and foreign transportation;

(5) solicit and write insurance as insurance producer or broker for any insurance company authorized to do business in Indiana; and

(6) act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.13; P.L.178-2003, SEC.94.

IC 28-14-3-11

Acting as insurance producer for sale of annuity contract or life insurance policy

Sec. 11. (a) Notwithstanding any other provision of this title, a corporate fiduciary may act as an insurance producer for the sale of any annuity contract or any life insurance policy issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do

business in Indiana under IC 27-1.

(b) A corporate fiduciary that acts as an agent for the sale of an annuity contract or a life insurance policy:

(1) is subject to all requirements of IC 27 relating to the sale and solicitation of insurance, including licensing as an insurance producer under IC 27-1-15.6; and

(2) must comply with the disclosure requirements under IC 27-1-38.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.14; P.L.132-2001, SEC.21; P.L.130-2002, SEC.9; P.L.178-2003, SEC.95.

IC 28-14-3-12

Appointment as commissioner for sale of real estate; guardian of minor or incapacitated persons; trustee, receiver, conservator, or committee of property or estate in insolvency or bankruptcy proceedings; depository of funds paid into court; other fiduciary capacities

Sec. 12. A corporate fiduciary may be appointed and act under the order of appointment of a court of competent jurisdiction as commissioner for the sale of real estate, guardian of the person and guardian of the estate of a person less than eighteen (18) years of age, and incapacitated persons (as defined in IC 29-3-1-7.5), or as trustee, receiver, conservator, or committee of the property or estate of a person, corporation, or company in insolvency or bankruptcy proceedings, or as depository of money paid into court, whether for the benefit of a person, regardless of age, corporation, or party, and in any other fiduciary capacity.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-13

Appointment as executor, testamentary trustee, or administrator; corporate successor to will nominee; co-fiduciary with natural person; bond or security

Sec. 13. (a) A corporate fiduciary may:

(1) be appointed; and

(2) accept the appointment;

to act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed, of the estate of any deceased person.

(b) A corporate fiduciary may:

(1) be appointed; and

(2) act under the order of appointment of any court of competent jurisdiction;

as executor of or trustee under any last will and testament, whenever the corporate fiduciary is the successor to any corporation appointed in the last will and testament, whether such succession is the result of merger, consolidation, or otherwise.

(c) Whenever a natural person is appointed with a corporate fiduciary in an appointment as receiver, guardian, commissioner,

trustee, executor, or administrator with or without the will annexed, the appointment of the natural person may be:

- (1) under such limitation of powers; and
- (2) upon such terms and conditions as to:
 - (A) the possession and control of the trust assets by the corporate fiduciary, or otherwise; and
 - (B) the bond or security, if any, to be given by the natural person;

as the natural person and the corporate fiduciary may agree to and the court making the appointment shall approve.

(d) Whenever a natural person who is appointed in a fiduciary capacity is required to give a bond or security for the faithful performance of the natural person's duties, a corporate fiduciary may guarantee or become surety for the natural person:

- (1) if the corporate fiduciary takes possession and control of the assets belonging to the estate or other fiduciary relationship; and
- (2) if the court having jurisdiction of the corporate fiduciary approves the guaranteeing or becoming surety for the natural person.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-14

Appointment upon application or consent of person acting or entitled to serve as guardian, trustee, executor, or administrator

Sec. 14. (a) A corporate fiduciary may be appointed and may act under the order of appointment of any court of competent jurisdiction as:

- (1) guardian;
- (2) trustee;
- (3) executor; or
- (4) administrator, with or without the will annexed;

on the application or consent of a person who is acting as guardian, trustee, executor, or administrator, or who is entitled to appointment as guardian, trustee, executor, or administrator.

(b) A corporate fiduciary appointed under subsection (a) serves in the place of and instead of the person who applies for or consents to the appointment.

(c) An appointment under subsection (a) must be made:

- (1) upon the notice required by law to the persons interested in the estate or fund; and
- (2) on the consent of the principal beneficiaries or other persons interested in the estate or fund as the court making the appointment considers proper.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-15

Trusts

Sec. 15. A corporate fiduciary has the power to:

- (1) take, accept, and execute any and all legal trusts, duties, and

powers in regard to the holding, management, sale, and disposition of any property or estate, real or personal, wherever located, and the rents and profits of the property or estate, which may be granted or confided to it by any court of competent jurisdiction, or by any person, corporation, municipality, or other authority;

(2) take, accept, and execute any and all trusts and powers of any nature or description that:

(A) may be conferred upon or entrusted or submitted to it by any person, firm, company, or any body politic, corporation, foreign or domestic, or other authority, by grant, assignment, transfer, devise, bequest, or otherwise; or

(B) may be entrusted, committed, or transferred to it or vested in it by order of a court of competent jurisdiction; and

(3) generally execute trusts of every description not inconsistent with the laws of Indiana or the United States.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-16

Power to act in fiduciary capacity; acting as commissioner for sale of real estate without bond or security; administration of oaths

Sec. 16. (a) Except as otherwise provided in this chapter, a corporate fiduciary has the power:

(1) to act:

(A) in every fiduciary capacity permitted by this article; and

(B) as commissioner for the sale of real estate, without bond or other security; and

(2) to administer oaths attested by the signature of its secretary or cashier and its seal whenever it is acting in a fiduciary capacity and whenever an individual acting in the same capacity is authorized by law to administer oaths.

(b) The court having jurisdiction of a corporate fiduciary may at any time, before or after the corporate fiduciary accepts a fiduciary appointment require the corporate fiduciary to give a bond or other security. If the corporate fiduciary fails to give a bond or security as required, the court may remove the corporate fiduciary and revoke the appointment.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-17

Pledge or deposit of assets prohibited

Sec. 17. A corporate fiduciary shall not pledge or deposit any of its assets as a condition to the exercise of its powers as a fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-18

Receipt of property upon deposit for safekeeping or in escrow

Sec. 18. (a) A corporate fiduciary has the power to:

(1) receive, upon terms and conditions prescribed by the corporate fiduciary not inconsistent with the provisions of this

section, upon deposit for safekeeping, or in escrow:

- (A) money;
- (B) bonds;
- (C) mortgages;
- (D) jewelry;
- (E) plate;
- (F) stock;
- (G) securities and valuable papers of any kind; and
- (H) other personal property; and

(2) rent or lease receptacles for the safe deposit of personal property.

(b) Neither a corporate fiduciary nor any of the assets of the corporate fiduciary are liable for:

- (1) the value of property received by the corporate fiduciary under this section; or
- (2) damages for the loss, theft, or misappropriation of the property.

(c) A corporate fiduciary may procure and carry a policy or policies of insurance for the benefit of the owners of property received by the corporate fiduciary under this section.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-19

Compensation for fiduciary services; counsel fees

Sec. 19. (a) A corporate fiduciary has the power to demand and receive, for the faithful performance and discharge of services performed under the powers vested in the corporate fiduciary by this article:

- (1) reasonable compensation, or compensation as fixed by agreement of the parties;
- (2) all advances necessarily paid out and expended in the discharge and performance of its duties; and
- (3) unless otherwise agreed upon, interest at the legal rate on the advances referred to in subdivision (2).

(b) The advances referred to in subsection (a) may include the compensation paid for the employment of legal services when necessary for the protection of a trust or other fiduciary relation.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-20

Compensation or commission for loan negotiation or trust execution not considered interest or usury

Sec. 20. The compensation or commission paid or agreed to be paid for the negotiation of any loan or the execution of any trust by a corporate fiduciary is not interest within the meaning of any law of Indiana, and the excess of the compensation or commission over any rate of interest permitted by the laws of Indiana shall not be decreed or held to be usury in any court.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-21

Appointment by court having jurisdiction; power to renounce appointment

Sec. 21. (a) A court or an officer of a court having jurisdiction to:

- (1) grant letters of guardianship;
- (2) appoint a trustee, guardian, receiver, or committee of the estate of a person;
- (3) appoint a committee, trustee, or receiver in insolvency or bankruptcy proceedings, or in any other proceeding or action, under state or federal law; or
- (4) make any other fiduciary appointment provided for in this article;

may appoint a corporate fiduciary. However, the corporate fiduciary is not required to accept the appointment.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-22

Establishment of business or agency within state by nonresident corporate fiduciary, trust company, or bank

Sec. 22. Subject to IC 28-1-22, a corporate fiduciary, trust company, or bank 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 that is primarily domiciled in any other state, may establish an office to conduct business as a fiduciary in Indiana if the law of the state, territory, or district in which the corporate fiduciary, trust company, or bank is primarily domiciled would allow an Indiana bank, an Indiana corporate fiduciary, or an Indiana trust company to establish a place of business or an agency in that state, territory, or district for the conduct of business as a fiduciary.

As added by P.L.262-1995, SEC.90. Amended by P.L.192-1997, SEC.29.

IC 28-14-3-23

Service as successor trustee

Sec. 23. For the purposes of IC 30-4-3-29, a corporate fiduciary may serve as a successor trustee in the same capacity as if the corporate fiduciary were a bank (as defined in IC 28-1-1-3).

As added by P.L.262-1995, SEC.90.

IC 28-14-3-24

Credit union service organizations

Sec. 24. Notwithstanding any other law, a credit union or a group of credit unions may establish a credit union service organization that is a corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-25

Powers relating to common trust funds

Sec. 25. For the purposes of IC 30-1-8, a corporate fiduciary has

the same powers and authority as a bank.
As added by P.L.262-1995, SEC.90.

IC 28-14-4

Chapter 4. Real Estate Powers of Corporate Fiduciaries

IC 28-14-4-1

Power to purchase or convey real estate necessary for convenient transaction of business

Sec. 1. (a) A corporate fiduciary has the power to purchase, hold, and convey real estate as necessary for the convenient transaction of its business.

(b) Real property that may be purchased or held for the convenient transaction of the business of a corporate fiduciary includes the following:

- (1) Real property on which the principal office or a trust office of the corporate fiduciary is located.
- (2) Real property that is the location of facilities supporting the operations of the corporate fiduciary.
- (3) Real property that the board of directors expects, in good faith, to use as an office or a facility in the future.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-2

Real property held without use for one year

Sec. 2. (a) If real property referred to in section 1(b)(3) of this chapter is held for one (1) year without being used by the corporate fiduciary as an office or a facility, the board of directors of the corporate fiduciary shall state by resolution definite plans for the use of the real property.

(b) A resolution adopted under this section shall be made available for inspection by the department.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-3

Real property held without use for more than three years

Sec. 3. Real property referred to in section 1(b)(3) of this chapter may not be held for more than three (3) years without being used as a corporate fiduciary office or a facility, unless:

- (1) the board of directors by resolution:
 - (A) reaffirms annually that the corporate fiduciary expects to use the real property as a corporate fiduciary office or a facility in the future; and
 - (B) explains the reason why the real property has not yet been used as an office or a facility; and
- (2) the director determines that:
 - (A) the continued holding of the real property does not endanger the safety and soundness of the corporate fiduciary; and
 - (B) the corporate fiduciary is holding the real property to use in the future for one (1) of the purposes set forth in section 1(b)(1) and 1(b)(2) of this chapter.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-4**Real property held without use for more than ten years**

Sec. 4. Real property referred to in section 1(b)(3) of this chapter may not be held for more than ten (10) years without being used as a corporate fiduciary office or facility unless the director consents in writing to the continued holding of the real estate by the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-5**Maximum limit of investment in real estate and buildings necessary for convenient transaction of business**

Sec. 5. The sum that a corporate fiduciary invests in real estate and buildings used for the convenient transaction of its business shall not exceed fifty percent (50%) of the capital and surplus of the corporate fiduciary, exclusive of undivided profits of the corporate fiduciary, unless the director gives approval in writing to investments exceeding the limit set forth in this subsection.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-6**Investment in stock of corporation holding real estate and buildings used by corporate fiduciary**

Sec. 6. Investments by a corporate fiduciary under this chapter may be made in the stock of a corporation that is organized to own and hold the real property and building occupied and used wholly or in part by the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-5

Chapter 5. Investments of Corporate Fiduciaries

IC 28-14-5-1

"Total equity capital"

Sec. 1. As used in this chapter, "total equity capital" means unimpaired capital stock, unimpaired surplus, unimpaired undivided profits, and subordinated debt.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-2

Limitations on dealing in investment securities

Sec. 2. Except as otherwise provided in this article, the business of dealing in investment securities by a corporate fiduciary is limited to purchasing and selling securities without recourse, solely upon the order and for the account of customers and not for its own account.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-3

Underwriting or guarantee of issue of securities

Sec. 3. A corporate fiduciary may not underwrite or guarantee all or any part of an issue of securities other than obligations issued or guaranteed by or on behalf of:

- (1) the state;
- (2) a political subdivision of the state; or
- (3) an agency or instrumentality of the state.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-4

Purchase for own account and sale of investment securities

Sec. 4. (a) A corporate fiduciary may purchase for its own account and sell investment securities under the limitations and restrictions the department prescribes by rule or policy. However, the total amount of the investment securities of any one (1) obligor or maker purchased or held by a corporate fiduciary for its own account shall not at any time exceed ten percent (10%) of the amount of the total equity capital of the corporate fiduciary.

(b) The limitations imposed by subsection (a) do not apply to:

- (1) the direct or indirect obligations of the United States; or
- (2) the direct obligations of:
 - (A) a United States territory or insular possession;
 - (B) the state of Indiana; or
 - (C) any municipal corporation or taxing district in Indiana.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-5

Purchase for own account and sale of shares of investment companies and mortgage backed securities

Sec. 5. A corporate fiduciary may purchase for its own account and sell:

- (1) shares of investment companies, the portfolios of which consist solely of securities that are eligible for purchase and sale by national banking associations; and
- (2) mortgage backed securities that are eligible for purchase and sale by national banking associations, only to the extent that a national banking association can purchase and sell mortgage backed securities.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-6

Deposit of funds by corporate fiduciaries

Sec. 6. A corporate fiduciary may deposit funds into accounts, and in amounts, that are federally insured. A credit union service organization established as a corporate fiduciary under IC 28-14-3-24 may deposit its funds in the credit union or credit unions that control the credit union service organization.

As added by P.L.262-1995, SEC.90. Amended by P.L.35-2010, SEC.205.

IC 28-14-5-6.5

Purchase of speculative securities or securities not rated by a generally recognized security rating service

Sec. 6.5. (a) A corporate fiduciary may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

- (1) is rated below the first four (4) rating classes by a generally recognized security rating service;
- (2) is in default; or
- (3) is otherwise considered speculative by the director.

(b) A corporate fiduciary may purchase for its own account a security that is not rated by a generally recognized security rating service if:

- (1) the corporate fiduciary at the time of purchase obtains financial information that is adequate to document the investment quality of the security; and
- (2) the security is not otherwise considered speculative by the director.

As added by P.L.176-1996, SEC.32. Amended by P.L.89-2011, SEC.72.

IC 28-14-5-7

Prohibition on purchases of stock of nonsubsidiaries

Sec. 7. Except as otherwise authorized by this title, a corporate fiduciary may not purchase any share of stock of a corporation that is not a subsidiary of the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-8

Investment in casualty insurance company

Sec. 8. (a) Notwithstanding any other provision of this article, a corporate fiduciary may invest in a casualty insurance company organized solely for the purpose of insuring:

- (1) banks;
- (2) corporate fiduciaries;
- (3) trust companies; and
- (4) bank holding companies and their officers and directors;

from and against liabilities, including those covered by bankers' blanket bonds and director and officer liability insurance and other public liability insurance.

(b) Investments made under subsection (a) must take the form of:

- (1) the purchase for the corporate fiduciary's own account of:
 - (A) shares of stock of the casualty insurance company; or
 - (B) shares of stock of an association of banks organized for the purpose of funding the casualty insurance company; or
- (2) loans to an association of banks referred to in subdivision (1)(B).

(c) The total investment of a corporate fiduciary under subsection (a) may not exceed five percent (5%) of the capital and surplus of the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-9

"Investment security"

Sec. 9. The rules or policies adopted by the department under IC 28-14-8 may define the term "investment security" for the purposes of this chapter.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-10

Purchase records

Sec. 10. A corporate fiduciary that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

As added by P.L.176-1996, SEC.33.

IC 28-14-6

Chapter 6. Books and Records of Corporate Fiduciaries

IC 28-14-6-1

Access and examination by department

Sec. 1. (a) Books and records of the corporate fiduciary must be reasonably accessible to the department.

(b) If the records of a corporate fiduciary are located outside Indiana:

- (1) the records shall be made available to the department at a convenient location within Indiana; or
- (2) the corporate fiduciary shall pay the reasonable and necessary expenses for the department or its representative to examine the records where they are maintained.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-2

Separate bookkeeping for fiduciary accounts; segregation of securities and property held for fiduciary accounts

Sec. 2. A corporate fiduciary exercising trust powers or any powers as a fiduciary shall:

- (1) keep, separate and apart from its other business, separate books and accounts for its fiduciary accounts; and
- (2) keep all securities and property that is held for its fiduciary accounts (other than money) at all times segregated from and unmingled with its own securities and property.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-3

Fiduciary account information required; timely posting of activities

Sec. 3. (a) The records of a corporate fiduciary must contain full information relative to each fiduciary account, including accounting, correspondence, and legal documentation as needed for the successful administration of the account.

(b) The records of a corporate fiduciary must meet the following requirements:

- (1) Documentation that accountings are made in accordance with general trust and probate statutes must be retained by the corporate fiduciary.
- (2) Records must account for cash funds of each account, and must be constructed in a manner consistent with identification of cash by its origin and ultimate distribution.
- (3) Records must provide information relative to each asset held for each account, and provide sufficient detail to clearly identify each asset.
- (4) Records must be posted in a manner as timely as activity levels dictate.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-4**Duty to keep books of account and minutes of corporate proceedings**

Sec. 4. A corporate fiduciary shall keep correct and complete books of accounts and minutes of the proceedings of shareholders, directors, executives, and finance committees.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-5**Stock transfer book; shareholders list**

Sec. 5. A corporate fiduciary shall keep at its principal office:

- (1) an original or a duplicate stock transfer book; or
- (2) records setting forth:
 - (A) the names and addresses of all shareholders; and
 - (B) the number of shares held by each shareholder; or
- (3) the records described in subdivisions (1) and (2).

As added by P.L.262-1995, SEC.90.

IC 28-14-7

Chapter 7. Requirements and Prohibitions Applying to Corporate Fiduciaries

IC 28-14-7-1

Prohibited transactions; investigatory and enforcement powers of department

Sec. 1. (a) A corporate fiduciary is prohibited from entering into any transaction that would be prohibited for a bank under IC 28-1-18.2.

(b) The department has the same:

- (1) powers of investigation; and
- (2) enforcement authority;

concerning corporate fiduciaries and their affiliates as the department has with respect to banks and their affiliates under IC 28-1-18.2.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-2

Statements of condition

Sec. 2. (a) The department may in any year require a corporate fiduciary to prepare and submit as many statements of condition as the department considers necessary.

(b) Statements of condition required by the department under this section must be:

- (1) verified; and
- (2) prepared and submitted:
 - (A) on the forms; and
 - (B) on the dates;

designated in notices given by the director.

(c) Statements of condition required by the department under this section must include a statement summarizing fiduciary activities engaged in by the corporate fiduciary.

(d) The department is authorized to provide copies of a report submitted under this section upon request at a cost established by the department.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-3

Violations; penalties

Sec. 3. (a) A corporate fiduciary that:

- (1) fails to prepare and submit a statement of condition required by the department under section 2 of this chapter; or
- (2) violates any order of the department with respect to a statement of condition required by the department under section 2 of this chapter;

is subject to a civil penalty of one hundred dollars (\$100) for each day that elapses after the date fixed by the department for compliance with the notice concerning the statement of condition.

(b) A penalty paid under subsection (a) must be deposited in the financial institutions fund established by IC 28-11-2-9.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-4

Duty to report shortages and irregularities

Sec. 4. A corporate fiduciary is subject to the reporting requirements concerning shortages and irregularities that are set forth in IC 28-13-10-10(e).

As added by P.L.262-1995, SEC.90. Amended by P.L.63-2001, SEC.29 and P.L.134-2001, SEC.31.

IC 28-14-7-5

Maintenance of principal office in county in which corporate fiduciary conducts trust business; post office address of principal office

Sec. 5. (a) A corporate fiduciary that engages in the trust business in Indiana shall maintain an office or a place of business in Indiana. The office maintained under this subsection shall be known as the principal office, and must be located in a county in which the corporate fiduciary conducts business.

(b) The post office address of the principal office shall be stated in the original articles of incorporation, at the time of the incorporation. Thereafter, the location of the principal office may be changed at any time or from time to time when authorized by the board of directors and approved by the department, by filing with the secretary of state, before the date on which the change is to take effect, a certificate that:

- (1) is signed by the president or a vice president and by the secretary or cashier of the corporate fiduciary;
- (2) is verified by one (1) of the officers signing the certificate; and
- (3) states that the change is to be made and that it is made under authorization by the board of directors.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-6

Administration of common trust funds

Sec. 6. A corporate fiduciary that administers common trust funds is subject to 12 CFR 9.18.

As added by P.L.262-1995, SEC.90.

IC 28-14-7.5

Chapter 7.5. Conservatorship of Corporate Fiduciaries

IC 28-14-7.5-1

Application of chapter

Sec. 1. This chapter applies to a corporate fiduciary (as defined in IC 28-1-1-3(19)).

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-2

Applications of definitions

Sec. 2. Except as otherwise provided, the definitions in IC 28-14-1 apply throughout this chapter.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-3

Appointment of conservator; bond or security

Sec. 3. (a) The department may appoint a conservator for a corporate fiduciary if the department determines that:

(1) one (1) or more grounds for the appointment of a receiver under IC 28-1-3.1-2(a) exist with respect to the corporate fiduciary; or

(2) the appointment of a conservator is necessary to conserve the assets of the corporate fiduciary for the benefit of:

(A) creditors of the corporate fiduciary;

(B) the beneficiaries of trusts and other fiduciary accounts administered by the corporate fiduciary; or

(C) other persons for whom the corporate fiduciary acts in a fiduciary capacity.

(b) A conservator appointed under this section shall give any bond or security that the department considers appropriate.

(c) The department may appoint any competent and disinterested person as a conservator under this section.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-4

Reimbursement of department; administrative expenses; payment from assets

Sec. 4. (a) A conservator appointed by the department under this chapter shall reimburse the department for all amounts expended by the department in connection with the conservatorship. Amounts reimbursed to the department under this subsection shall be paid from the assets of the corporate fiduciary as administrative expenses. Upon approval of the department, the conservator shall pay all other administrative expenses of the conservatorship from the assets of the corporate fiduciary.

(b) Administrative expenses described in this section constitute a first charge against the assets of the corporate fiduciary. The conservator shall pay the administrative expenses in full before any:

(1) final distribution of the corporate fiduciary's assets; or

(2) payments to any person described in section 3(a)(2) of this chapter.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-5

Possession of books, records, and assets; conservation of assets; powers and obligations of conservator; rights of parties

Sec. 5. (a) Under the direction of the department, a conservator appointed under this chapter shall:

(1) take possession of the books, records, and assets of the corporate fiduciary; and

(2) take any action necessary to conserve the assets of the corporate fiduciary pending:

(A) a liquidation under IC 28-1-3.1; or

(B) other disposition of the corporate fiduciary's business as provided by law.

(b) A conservator appointed under this chapter:

(1) has all the rights, powers, and privileges of a receiver appointed under IC 28-1-3.1, except the power to liquidate a corporate fiduciary; and

(2) is subject to those obligations and liabilities to which a receiver is subject, to the extent the obligations and liabilities are consistent with this chapter.

(c) Throughout the time a conservator is in possession of a corporate fiduciary under this chapter, the rights of all parties with respect to the corporate fiduciary are the same as if a receiver had been appointed under IC 28-1-3.1.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-6

Amounts available to creditors and beneficiaries; assets received after placement in conservatorship

Sec. 6. (a) While a corporate fiduciary is in conservatorship under this chapter, the department may require the conservator to set aside and make available for payment to any persons described in section 3(a)(2) of this chapter, on a pro rata basis, any amounts that, in the opinion of the department, may be safely and prudently used for such payments.

(b) Any assets received or acquired after a corporate fiduciary is placed in conservatorship under this chapter shall be:

(1) kept in cash;

(2) invested in direct obligations of the United States; or

(3) deposited in depository institutions designated by the department.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-7

Loans in aid of operation or reorganization; security

Sec. 7. With the prior approval of the department, a conservator appointed under this chapter may borrow money as necessary or

expedient to aid in the operation or reorganization of the corporate fiduciary. Any loan obtained by the conservator under this section may be secured by the pledge or mortgage of, or through a lien upon or security interest in, any assets:

- (1) belonging to the corporate fiduciary; and
- (2) not held in trust for the benefit of another person.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-8

Termination of conservatorship; appointment of receiver; liquidation

Sec. 8. (a) The department may:

- (1) terminate a conservatorship ordered under this chapter; and
- (2) permit the corporate fiduciary subject to the conservatorship to resume the transaction of the corporate fiduciary's business, subject to any terms, conditions, restrictions, and limitations that the department may prescribe;

if the department is satisfied that a termination of the conservatorship may be done safely and is in the public interest.

(b) Subject to subsection (c), the department may:

- (1) terminate a conservatorship ordered under this chapter; and
- (2) apply for the appointment of a receiver for the corporate fiduciary under IC 28-1-3.1;

if the department determines that the appointment of a receiver for the corporate fiduciary is in the public interest.

(c) If the department determines that the liquidation of a corporate fiduciary placed in conservatorship under this chapter is in the public interest, the department shall:

- (1) terminate the conservatorship ordered under this chapter; and
- (2) apply for the appointment of a receiver for the corporate fiduciary under IC 28-1-3.1.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-9

Adoption of rules

Sec. 9. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-8

Chapter 8. Rule Making

IC 28-14-8-1

Rules

Sec. 1. The department may adopt rules under IC 4-22-2 or policies to administer this article.

As added by P.L.262-1995, SEC.90.