

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

PART 4
TRUSTS

487.14401 Trust powers; conditions, limitations, and restrictions.

Sec. 4401. (1) Upon application, the commissioner may grant to any bank or state foreign bank branch trust powers as provided in this section, subject to the conditions, limitations, and restrictions in this act.

(2) The commissioner shall not grant trust powers to a state agency.

(3) If the commissioner approves an application described in subsection (1), the bank or state foreign bank branch has the power to conduct a trust business. This power includes, but is not limited to, all of the following:

(a) In its corporate name, to take, receive, hold, repay, reconvey, and dispose of any effects and property, both real and personal, that are granted, committed, transferred, or conveyed to it with its consent, according to the terms of any agreement or trust, at any time, by any individual, minor, corporate body, court, or any other person and to administer, fulfill, and discharge the duties of the trust.

(b) To act as agent for the transaction of business, the management of estates, the collection of rents, interest, dividends, and money, and the collection of principal and interest on mortgages, bonds, notes, and securities for money; to enforce the payment of any of these obligations; to act as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality; and to manage any sinking fund of any corporation, association, or municipality on the terms to which the parties have agreed.

(c) To accept and to execute the office of personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship. If an application is made to a court for the appointment of a trustee, receiver, personal representative, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship, the court may appoint the bank or state foreign bank branch, with its consent, to hold that office. The accounts of a bank or state foreign bank branch as trustee, receiver, conservator, liquidating agent, assignee, personal representative, or guardian shall be regularly settled and adjusted by the proper office or tribunals. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to the bank or state foreign bank branch for the care and management of an estate committed to it under this section. If appointed by any court, a bank or state foreign bank branch is not required to give any security except in the discretion of the court. If the court orders the bank or state foreign bank branch to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state, or with personal surety or sureties on the bond satisfactory to the court.

(d) Subject to law, to exercise by its board of directors or authorized officers or agents all incidental powers necessary to carry on a trust business.

(e) A bank or state foreign bank branch acting as a fiduciary may charge a reasonable fee for its services. In any action or proceeding concerning fees, there is a rebuttable presumption that a fee is reasonable if the fee or its method of computation is specified in a fee schedule or fee agreement of the bank or state foreign bank branch in effect at the time the service is provided and if the agency or custody principal, the trust grantor, or any other person who is entitled to be kept reasonably informed of the fiduciary account and its administration under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, received reasonable notice of that fee schedule or fee agreement before the fee is charged.

History: 1999, Act 276, Eff. Mar. 1, 2000;—Am. 2006, Act 581, Imd. Eff. Jan. 3, 2007.

487.14402 Definitions; trust service agreement.

Sec. 4402. (1) As used in this section:

(a) "Host bank" means a bank, national bank, association, savings bank, or other legal entity for which trust services are provided by any other bank, out-of-state bank, national bank, association, or savings bank.

(b) "Trust service provider" means a bank, national bank, association, or savings bank providing trust services to any other bank, out-of-state bank, national bank, association, savings bank, or other legal entity.

(c) "Banking office" means a principal office or authorized branch of a bank, out-of-state bank, national bank, association, or savings bank.

(2) A bank granted full trust powers may contract by written agreement with any other legal entity to carry on trust services in its name and for its account at 1 or more of the offices of the other legal entity.

(3) A bank may contract by written agreement with any other legal entity exercising full trust powers to

carry on trust services at 1 or more of its banking offices but in the name and for the account of the other legal entity.

(4) An agreement provided for in this section, including any lease, or a modification or extension of an agreement, is not effective until it is filed with the commissioner.

(5) Thirty days after a host bank mails a notice of substitution as provided in subsection (6), a trust service provider shall be substituted for a host bank as fiduciary or agent and succeed to the title of assets held by a host bank in a fiduciary capacity for each account in which the host bank, under the terms of a trust service agreement, will no longer serve as fiduciary or agent. A trust service provider shall not be substituted for the host bank for an account in which the recipient of a notice of substitution objects to the substitution in the manner provided in subsection (6).

(6) For each account in which a trust service provider is substituted for a host bank under the terms of a trust service agreement, a written notice of substitution shall be sent by the host bank by certified mail. The notice of substitution shall include the date the notice was mailed and explain that the trust service provider will not be substituted for the host bank for the account if the recipient of the notice sends a written objection to the host bank by first-class mail within 30 days after the date the notice was mailed. The notice of substitution shall be sent to the following as appropriate:

(a) For employee benefit plans, to the plan sponsors.

(b) For individual retirement accounts and retirement accounts for the self-employed, to the account owners.

(c) For agency and escrow accounts, to the principals.

(d) For securities for which a host bank serves as trustee, registrar, transfer agent, or paying agent, to the issuers.

(e) For revocable trusts under agreement, to the settlors.

(f) For irrevocable trusts under agreement, to any co-fiduciary, to the settlor, to each current income beneficiary who is an adult, and, if a current income beneficiary is a minor, to a parent of the minor with whom the minor resides or to the conservator or guardian of the minor. The notice to the settlor shall not grant to the settlor any authority over the trust or trustee that the settlor does not already have, including the authority to object to the substitution of a trust service provider for a host bank. For purposes of this subdivision, "current income beneficiary" means a person currently entitled to income or a person to whom the trustee, in the trustee's discretion, may pay principal or income.

(g) For testamentary trusts, to the persons notified under subdivision (f) and to the probate court that appointed the host bank as trustee.

(h) For conservatorships, to any co-fiduciary, to the protected person for whom the conservatorship was created or, if the conservatorship was created for a minor, to a parent of the minor with whom the minor resides or to the guardian of the minor, and to the probate court that appointed the host bank as conservator.

(i) For guardianships, to any co-fiduciary, to the minor or legally incapacitated person for whom the guardian was appointed if the ward is at least 14 years of age, and to the probate court that appointed the host bank as guardian.

(j) For probate estates, to any co-fiduciary, to any interested person as defined by section 1105 of the estates and protected individuals code, 1998 PA 386, MCL 700.1105, and to the probate court that appointed the host bank as personal representative.

(7) Subsections (1), (5), and (6) apply to trust service agreements in effect on or after December 6, 1985.

History: 1999, Act 276, Eff. Mar. 1, 2000;—Am. 2000, Act 62, Eff. Apr. 1, 2000.

487.14403 Trust powers; segregation of assets held in fiduciary capacity; separate books and records; commingling and consolidation.

Sec. 4403. (1) A bank exercising a trust power as provided in this section and sections 4401, 4402, 4404, and 4405 shall segregate all assets held in a fiduciary capacity from the general assets of the bank, shall keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of this section and sections 4401, 4402, 4404, and 4405, and at all times shall keep the bank's trust department business separate and distinct from the bank's commercial banking business.

(2) Funds, at any time and from time to time, held in trust by the bank awaiting investment or other disposition, may be commingled and consolidated, and may be deposited in other banks as designated by the board of directors or may be held at any time and from time to time by the bank under a deposit relationship and used by the bank in the conduct of the bank's individual corporate business, but only to the extent and when the bank shall set aside for the protection of the owners of the funds obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, general obligations of this state or of any political subdivision of this state, surety bonds, or other securities approved by the

commissioner equal at face value to the amount of the funds held and so used less the amount of the funds that are insured by the federal deposit insurance corporation. If the bank fails, the owners of the funds held in trust, awaiting investment or other disposition, shall have a lien on the securities set apart in addition to any other claims against the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.14404 Application for full fiduciary powers; considerations; limited trust power.

Sec. 4404. (1) In acting upon applications for permission to exercise full fiduciary powers as provided in section 4401, the commissioner shall take into consideration the sufficiency of the capital and surplus of the applying bank and any other facts or circumstances the commissioner considers proper.

(2) Without regard to the capital and surplus requirements specified in subsection (1), the commissioner may grant to a bank the limited trust power to act as executor, administrator, or guardian and to serve as a testamentary trustee.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.14405 Investment of trust funds or property; "registered investment company" defined; bank considered as fiduciary.

Sec. 4405. (1) A bank shall invest any money or property held by the bank as fiduciary and available for investment at the time and in the manner specified in the agreement, instrument, or order creating or defining the trust or other capacity in which the bank is acting or, if the bank holds the money or property as agent, as directed or permitted by the bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, the bank shall invest any money or property held by the bank as fiduciary within a reasonable time in real or personal property, of whatever type or nature, that a prudent investor would purchase, taking into account the purposes, terms, and distribution requirements expressed in the governing instrument, in the exercise of reasonable care, skill, and caution under conditions existing at the time of purchase. A bank's compliance with the prudent investor rule described in this subsection is determined in light of the facts and circumstances that exist at the time of the bank's decision or action as a fiduciary and requires a standard of conduct, not outcome or performance.

(2) A bank shall not invest any money or property held as fiduciary in any securities or other properties, real or personal, purchased from the bank in its individual capacity or from any affiliate of the bank unless 1 of the following applies:

(a) The investment is otherwise permitted by law, a court order, or the agreement, instrument, or order that creates or defines the trust or other fiduciary capacity in which the bank is acting.

(b) All interested parties or their representatives consent to the investment.

(c) The bank holds the money or property as an agent and the bank's principal directs or permits the investment.

(3) Except when the agreement, instrument, or order creating or defining the trust or other capacity in which the bank, or the bank and 1 or more cofiduciaries, is acting prohibits the investment or transaction, a bank or a bank and 1 or more cofiduciaries may do any of the following with any money or property over which the bank or the bank and 1 or more cofiduciaries exercises investment discretion:

(a) Invest the money or property in a registered investment company even though either or both of the following apply:

(i) The bank or 1 or more affiliates of the bank provide services as investment adviser, sponsor, distributor, manager, custodian, transfer agent, registrar, or otherwise, to the investment company and receives reasonable remuneration for those services.

(ii) The bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the bank as fiduciary otherwise controls the election of a majority of the investment company's directors or trustees.

(b) With the written consent of the revocable trust grantor or agency principal, or if the trust is irrevocable or the trust grantor is deceased or reasonably believed by the trustee to be incapacitated, after providing advance notice at least 45 days before the use of the money or property to any person then entitled to be kept reasonably informed of the fiduciary account and its administration under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank, including, but not limited to, an insurance product or a security that is underwritten or distributed by the bank or an affiliate of the bank or by a syndicate or selling group that includes the bank or an affiliate of the bank, if the purchase price is reasonable. Any advance notice required under this subdivision shall list the type of products, services, or securities available for purchase from or through the bank or an affiliate of the bank and shall provide the

name and address of an individual at the bank to whom a beneficiary receiving the notice may direct any objection. If the bank receives a written objection to a notice provided under this subdivision, and the objection is not resolved or withdrawn, the bank shall not use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank for at least 60 days after the bank receives the written objection. A bank or 1 or more affiliates of the bank may receive reasonable compensation in connection with the purchase of the product, service, or security under this subdivision.

(4) As used in subsection (3), "registered investment company" means an investment company that is registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64.

(5) For purposes of this section, a bank is considered to hold funds or property in a fiduciary capacity if it is holding the assets as trustee, personal representative, custodian, conservator, guardian, agent, or in any other fiduciary capacity.

History: 1999, Act 276, Eff. Mar. 1, 2000;—Am. 2006, Act 581, Imd. Eff. Jan. 3, 2007.

487.14406 Repealed. 2005, Act 195, Imd. Eff. Nov. 7, 2005.

Compiler's note: The repealed section pertained to filing suspicious activity report by bank with federal agency.