

## **CHAPTER 6-05.1 SUBSIDIARY TRUST COMPANIES**

### **6-05.1-01. Definitions.**

As used in this chapter, unless the context plainly requires otherwise:

1. "Affiliated bank", with respect to a subsidiary trust company, means any of the following:
  - a. A bank incorporated under the laws of this state, or a national banking association having its main office in this state, more than fifty percent of the voting stock of which is owned by the same owning bank holding company that owns more than fifty percent of the voting stock of such subsidiary trust company.
  - b. A bank which owns shares of voting stock of such subsidiary trust company.
2. "Fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes the capacities of trustee, including trustee of a common trust fund, executor, administrator, personal representative, registrar, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state or public authority, guardian of estates, conservator, receiver, escrow agent, agent for the investment of money, attorney in fact, and any other similar capacity.
3. "Main office", with respect to a subsidiary trust company or an affiliated bank, is the place designated in the articles of incorporation or articles of association of such subsidiary trust company or affiliated bank at which its principal functions are to be conducted.
4. "Owning bank holding company", with respect to a subsidiary trust company or an affiliated bank, means a bank holding company as defined in the United States Bank Holding Company Act of 1956, as amended.
5. "Subsidiary trust company" means any trust company incorporated under the laws of this state, or any national banking association formed under the laws of the United States solely for the purpose of engaging in trust business with its main office in this state, more than fifty percent of the voting stock of which is owned by an owning bank holding company or by a bank having its main office in this state or by two or more banks each of which has its main office in this state, and which has as its sole purpose the conduct of trust business as defined in section 6-05-08. A subsidiary trust company may not conduct commercial banking business but may maintain deposits of funds of fiduciary accounts not currently invested.
6. "Trust office", with respect to a subsidiary trust company, means an office, including the main office, of such subsidiary trust company maintained for the purpose of conducting its business.

### **6-05.1-02. Organization of subsidiary trust companies.**

A subsidiary trust company may be incorporated under the laws of this state or formed under the laws of the United States. To the extent not inconsistent with the provisions of sections 6-05.1-01 through 6-05.1-05, any subsidiary trust company incorporated under the laws of this state is subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States is, to the extent provided by the laws of the United States, subject to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state.

### **6-05.1-03. Permissible business of subsidiary trust companies.**

The permissible business of a subsidiary trust company is to engage in such trust business as may be engaged in by a trust company pursuant to section 6-05-08. A subsidiary trust company may not exercise any of the powers provided in subsection 7 of section 6-03-02, nor conduct commercial banking business, but may maintain deposits of funds of fiduciary accounts not currently invested.

#### **6-05.1-04. Trust offices of subsidiary trust companies.**

A subsidiary trust company may establish and maintain for itself and its subsidiary entities one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States. The regulatory process by which a subsidiary trust company obtains authority to establish and maintain offices in addition to a main office must be the same as the process that applies to a trust company under chapter 6-05.

#### **6-05.1-05. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies.**

1. Any subsidiary trust company which has been duly authorized to commence the business for which it is organized, and which has made any deposit of securities required by law, may at any time file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in the application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each such specified affiliated bank shall join in the application. Any such application must indicate the county wherein the main office of each affiliated bank joining in the application is located and must designate each fiduciary account existing at the date thereof with respect to which the applicant requests substitution, but fiduciary capacities in other cases need not be listed. Any such application must additionally set forth, with regard to each existing fiduciary account with respect to which the applicant requests substitution, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who are as follows:
  - a. In the case of an existing fiduciary account which may be revoked, terminated, or amended, each person who, alone or together with others, is empowered to revoke, terminate, or amend the same.
  - b. In the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary.
  - c. In the case of an existing fiduciary account which is an estate of a deceased person or which is a guardianship or conservatorship, the clerk of the court in which such estate, guardianship, or conservatorship matter is pending.
  - d. In the case of an existing fiduciary account not described in any of the foregoing subdivisions, each income beneficiary of such account and each beneficiary who, were such account terminated at the date of the application respecting such account, would be entitled to share in distributions of income or principal thereof.
  - e. In the case of an existing fiduciary account wherein an affiliated bank specified in the application is acting with a cofiduciary, to each such cofiduciary.
2. When any such application has been filed with the district court, the court shall make an order fixing a date and time for hearing thereon and directing that notice thereof be given as hereinafter provided. The applicant shall cause a copy of such notice to be published at least once a week for three successive weeks preceding the hearing date, the last such publication to be at least ten days preceding the hearing date. Such publication must be made in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located. In addition, at least fourteen days preceding the hearing date, the applicant shall cause a copy of such notice to be mailed by first-class mail to each person identified in the application as being entitled to mailed notice under the provisions of this section, at that person's address last known to the applicant as set forth in the application. Proof of the giving of such notice must be made on or before the hearing date and filed in the proceeding.
3. The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the subsidiary trust company which has filed the application, the name of each affiliated bank which has joined in the

- application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person entitled to receive mailed notice pursuant to this section with respect to any existing fiduciary account may appear on or before the date of hearing and file written objection to such substitution as to such account, and such notice must refer to such application for further particulars.
4. On or before the date and time of hearing any such application, any person entitled to receive mailed notice pursuant to this section with respect to any existing fiduciary account may appear and file objection to substitution of the applicant in such account and is then entitled to be heard with respect to such objection. The court may not apply the provisions of this section to substitute a subsidiary trust company as fiduciary of any existing fiduciary account with respect to which a person entitled to receive mailed notice pursuant to this section has filed objection to substitution and has appeared and been heard in support thereof.
  5. On such date of hearing, upon finding that due notice has been given as required by this section and upon finding that the applicant subsidiary trust company has been duly authorized to commence the business for which it is organized by the state banking board, or by the comptroller of the currency if the applicant is a national banking association, and that the applicant has made such deposit of securities as may be required by law, the district court shall enter an order substituting the applicant in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application, and excepting fiduciary capacities in any account with respect to which a person entitled to receive mailed notice pursuant to this section has filed objection to substitution and has appeared and been heard in support thereof. Upon entry of such order, or at such later date as may be specified in such order, the applicant subsidiary trust company must, without further act, be substituted in every such fiduciary capacity. The substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the recorder of any county of this state to be recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.
  6. Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary is deemed a designation of the subsidiary trust company substituted for such bank pursuant to this section except when such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other instrument of any discretionary power is deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.
  7. A bank shall account jointly with the subsidiary trust company which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the subsidiary trust company is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary, except assets held for fiduciary accounts with respect to which there has been no substitution pursuant to this section, and upon such substitution all such assets become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance.