

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

– FINANCIAL INSTITUTIONS

ARTICLE 8. TRUST COMPANIES

R20-4-801. Definitions

In addition to the definitions provided in A.R.S. § 6-851, the following terms apply to this Article unless the context otherwise requires:

“Account” means the trust, estate, or other fiduciary relationship established with a trust department or trust company.

“Affiliate” has the meaning stated at A.R.S. § 6-801.

“Director” has the meaning stated at A.R.S. § 20-102.

“Governing instrument” means a document, and all its operative amendments, that:

- a. Creates a trust and regulates the trustee’s conduct,
- b. Creates an agency relationship between a trust department or trust company and a client, or
- c. Otherwise evidences a fiduciary relationship between a trust department or trust company and a client.

“Investment responsibility” means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.

“Person” has the meaning stated at A.R.S. § 20-105.

“Trust asset” means any property or property right held by a trust department or trust company for the benefit of another.

“Trust department” means a permittee under both A.R.S. § 6-201 et seq. and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.

“Trust funds” means any money held by a trust department or trust company for the benefit of another.

“Trustor” means a person who creates or funds a trust, or both.

R20-4-805. Reports

A. Within 90 days following each December 31, each trust department and trust company shall file an annual report of trust assets with the Director on the form prescribed by the Director. The annual report shall include the current market value of all trust assets held by the trust department or trust company as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by subsections R20-4-812(E) through R20-4-812(G).

B. Each trust company shall deliver a copy of its annual report and certificate of disclosure to the Director within 10 days of filing the report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Director, as required in

this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.

- C. Each trust company shall notify the Director of any change in the directors or officers of the company within 10 days of the change. Any trust company with more than 25 officers may, after obtaining the Director's written approval, limit the officers covered by this subsection to those with substantial involvement in the trust company's corporate operations or in the trust company's trust business in this state.

R20-4-806. Records

- A. Every trust company shall keep its records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. A trust company may keep its records as electronic records if the trust company can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.
- B. A trust department or trust company shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the trust department or trust company, including the following:
 - 1. A file for each account that includes:
 - a. The governing instrument,
 - b. All contracts and other legal documents,
 - c. Copies of all correspondence,
 - d. Accounting records disclosing all the financial transactions, and
 - e. A listing of all the account's assets and liabilities.
 - 2. An investment file for each account that includes:
 - a. All original documentary evidence of the account's assets; or
 - b. Copies of the original documentary evidence of the account's assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
 - c. A record of the initial and annual investment reviews for the account.
 - 3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the trust department or trust company for itself, distinguishing them from those relating to the trust department's or trust company's trust business;
 - 4. Unaudited financial statements. A trust department or trust company shall produce these statements quarterly or more frequently when required by the Director. The financial statements shall include at least:
 - a. A balance sheet; and
 - b. A statement of income, expenses, and retained earnings.
 - 5. Adequate records of all pending litigation that names the trust department or trust company as a party.
- C. A trust department shall keep its fiduciary records separate and distinct from the trust department's corporate records.
- D. A trust department or trust company shall keep records described in subsections (B)(1) and (B)(2) for at least three years after closing an account. If litigation occurs concerning a particular account, the trust department or trust company shall keep that account's records, described in subsections (B)(1) and (B)(2), for three years after the litigation is resolved.

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a trust company conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in Sections R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;
4. Employs an officer or director who violates a corporate fiduciary duty;
5. Is insolvent; or
6. Engages in any conduct that the Director determines constitutes an unsafe or unsound business practice jeopardizing the trust company's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or trust company's principal.

R20-4-808. Administration of Fiduciary Powers

- A. The board of directors and the officers share responsibility for the exercise of fiduciary powers by a trust department or trust company. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the trust department's or trust company's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.
- B. A trust department or trust company shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The trust department or trust company shall keep a written record of each new account approval and of the closing of each account. The trust department or trust company shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The trust department's or trust company's board shall ensure that an annual review of account assets is conducted for each account in which the trust department or trust company has investment responsibility, to determine whether to retain or dispose of the assets.
- C. A trust department or trust company exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona to advise and inform the trust department or trust company on fiduciary matters and all other legal issues presented to the trust department or trust company by the conduct of its trust business.

R20-4-809. Fiduciary Duties

A trust department or trust company shall perform all fiduciary duties imposed upon it by law, including the following:

1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
2. Use reasonable care and skill to make the account productive;

3. Provide complete and accurate information about the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance with this subsection shall be delivered at least quarterly, unless:
 - a. The trust department or trust company and its account's beneficiary, principal, or authorized person agree otherwise in writing;
 - b. The governing instrument provides otherwise; or
 - c. A different frequency is established by a lawful course of dealing before the effective date of this rule; and
4. Comply with all lawful provisions of the governing instrument.

R20-4-810. Funds Awaiting Investment or Distribution

- A. Trust funds held by a trust department or trust company awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.
- B. A trust department or trust company may keep trust funds in deposit accounts maintained by the trust department or trust company unless prohibited by law or by the governing instrument. The trust department or trust company shall set aside collateral security for all deposited trust funds under a third party's control. The collateral shall be the following types of securities, in any combination:
 1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
 2. Any other obligations fully guaranteed by the United States government as to principal and interest;
 3. Obligations of a Federal Reserve Bank;
 4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
 5. Readily marketable securities that either:
 - a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
 - b. Satisfy state pledging requirements under A.R.S. § 6-245(C).
- C. The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

R20-4-811. Investment of Trust Funds

- A. A trust department or trust company shall invest trust funds according to:
 1. The governing instrument; and
 2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7501 through 14-7512.
- B. A trust department or trust company shall make any collective investment of trust funds exclusively under the terms of Section R20-4-815.

R20-4-812. Self-dealing

- A.** A trust department or trust company shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
1. Its own securities;
 2. Other types of property acquired from the trust department or trust company;
 3. Property acquired from the trust department's or trust company's directors, officers, or employees;
 4. Property acquired from the trust department's or trust company's affiliates;
 5. Property acquired from its affiliates' directors, officers, or employees; or
 6. Property acquired from other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- B.** A trust department or trust company may use trust funds to purchase its own securities, or its affiliates' securities:
1. If the trust department or trust company has authority under subsection (A), and
 2. If those securities are offered pro rata to all stockholders of the trust department or trust company.
- C.** A trust department or trust company shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
1. Its directors, officers, or employees;
 2. Its affiliates;
 3. Its affiliates' directors, officers, or employees; or
 4. Other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- D.** However, a trust department or trust company may sell or loan trust property to persons prohibited by subsection (C) if either:
1. Its counsel has advised in writing that, by holding certain property, the trust department or trust company has incurred a contingent or potential liability for breach of fiduciary duty; and
 - a. The proposed sale or loan avoids the contingent or potential liability;
 - b. Its board of directors authorizes the sale or loan by an action duly noted in the trust department's or trust company's minutes;
 - c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
 - d. The affected account is reimbursed, in cash, at no loss to that account; or
 2. The Director requires or approves, in writing, the sale or loan to otherwise prohibited parties.
- E.** A trust department or trust company may sell trust property held in one account to another of its accounts if:
1. The transaction is fair to both accounts; and
 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.

- F. A trust department or trust company may loan trust property held in one account to another of its accounts if:
 - 1. The transaction is fair to both accounts; and
 - 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- G. A trust department or trust company may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
 - 1. The transaction is fair to the borrowing account; and
 - 2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

R20-4-813. Custody of Investments

- A. A trust department or trust company shall keep each account's investments separate from its own assets. A trust department or trust company shall place each account's assets in the joint control of at least two officers or employees of the trust department or trust company designated in writing for that purpose by:
 - 1. The trust department's or trust company's board of directors, or
 - 2. One or more officers authorized by the trust department's or trust company's board of directors to make the designation.
- B. A trust department or trust company shall either:
 - 1. Keep each account's investments separate from all other accounts' investments, except as provided in Section R20-4-815; or
 - 2. Adequately identify each account's property in the trust department's or trust company's records.

R20-4-814. Compensation

- A. A trust department or trust company acting as a fiduciary may charge a reasonable fee for its services. The trust department or trust company shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.
- B. A trust department or trust company shall not permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the trust department or trust company in the administration of an account.

R20-4-815. Collective Investments

- A. All collective investments made by a trust department or trust company shall be in a common trust fund established under A.R.S. § 6-871 and maintained by the trust department or trust company exclusively for the collective investment and reinvestment of funds contributed by the trust department or trust company acting as a fiduciary. A trust department or trust company shall not establish a common trust fund unless it first:
 - 1. Prepares a written plan regarding the common trust fund; and
 - 2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.

- B.** The plan shall describe the common trust fund's operational details, including a description of:
 - 1. The trust department's or trust company's investment powers and investment policy over all funds deposited in the common trust fund,
 - 2. The manner for allocating the common trust fund's income and losses,
 - 3. The criteria for admission to or withdrawal from participating in the common trust fund, and
 - 4. The method for valuing assets in the common trust fund and the frequency of valuation.
- C.** A trust department or trust company shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection (B), and shall provide a copy of the plan upon request.
- D.** The annual report required under Section R20-4-805(A) shall include all common trust funds operated by the trust department or trust company.

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

- A.** Any trust department that wants to surrender its trust powers shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust department has no remaining fiduciary duties, the Director shall notify the trust department that it no longer has authority to exercise trust powers.
- B.** Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Director shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.
- C.** After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Director's supervision shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust company has no further fiduciary duties, the Director shall notify the trust company that it no longer has authority to exercise fiduciary powers.
- D.** Any trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them cancelled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust department or trust company or its stockholders, directors, or officers.