

Chapter 22

TRUST COMPANY AMENDMENTS

Original House Bill No. 60

AN ACT relating to trust companies; providing procedures for the judicial dissolution or rehabilitation of a trust company; providing for the appointment of the banking commissioner as a receiver of an insolvent or unsafe trust company as specified; requiring trust companies to post sureties with the commissioner as specified; providing for the voluntary dissolution or reorganization of a trust company; providing procedures for the organization of trust companies as limited liability companies; providing for fees; creating a trust company resolution account; providing rulemaking authority; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 13-5-114 through 13-5-118 are created to read:

13-5-114. Order declaring trust company properly wound up and dissolved.

(a) Upon the completion of the liquidation of a trust company pursuant to W.S. 13-5-113, the commissioner shall petition the court for an order declaring the trust company properly wound up and dissolved.

(b) After notice and hearing, as ordered by the court, if any, the court shall enter an order declaring the trust company wound up and dissolved. The order shall, to the extent applicable, declare the following:

- (i) The trust company has been properly wound up;
 - (ii) All known assets of the trust company have been distributed pursuant to W.S. 13-5-113;
 - (iii) The trust company is dissolved;
 - (iv) If there are known debts or liabilities, describe the provision made for their payment, setting forth all information necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.
- (c) The order shall confirm a plan by the commissioner for the disposition

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or maintenance of any remaining real or personal property or other trust company assets. The plan shall include written notice to all known owners or beneficiaries of the assets, to be sent by first class mail to each individual's address as shown on the records of the trust company.

(d) The court may enter additional orders and grant further relief as it determines appropriate upon the evidence submitted.

(e) Upon the issuance of the order declaring the trust company dissolved, the existence of the trust company as either a corporation or a limited liability company shall cease, except for purposes of any necessary additional winding up. The commissioner shall promptly file a copy of the order, certified by the clerk of the court, with the secretary of state.

13-5-115. Surety bond; pledged investments; investment income; bond or pledge increases; hearings.

(a) Any trust company chartered under this chapter, shall, before transacting any business, pledge or furnish a surety bond to the commissioner to cover costs likely to be incurred by the commissioner in a receivership or liquidation of the trust company should it become unsafe or unsound pursuant to W.S. 13-5-113. The amount of the pledge or the surety bond shall be determined by the commissioner in an amount sufficient to defray the costs of a receiver-ship or liquidation, but shall have a market value of not less than one hundred thousand dollars (\$100,000.00). In lieu of a bond, the trust company may irrevocably pledge its capital account to the commissioner. Any investments pledged to the commissioner shall be held in a state or nationally chartered bank or savings and loan association having a principal or branch office in this state and all costs associated with pledging and holding such investments are the responsibility of the trust company.

(b) Investments pledged to the commissioner shall be of the same nature and quality as those required for state financial institutions in W.S. 9-4-805.

(c) Surety bonds shall run to the state of Wyoming, and shall be approved under the terms and conditions required by W.S. 9-4-804(b) and (c).

(d) The commissioner may promulgate rules pursuant to W.S. 13-1-603 to establish additional investment guidelines or investment options for purposes of the pledge or surety bond required by this section.

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(e) In the event of a receivership of a trust company as provided in W.S. 13-5-113, the commissioner may, without regard to priorities, preferences or adverse claims, reduce the pledged investments to cash as soon as practicable with court approval, and utilize the cash to defray the costs associated with the receivership.

(f) Income from investments pledged under this section shall be paid to the trust company unless the court places the trust company in receivership.

(g) Upon evidence that the current bond or investment pledge is insufficient, the commissioner may require any trust company to increase its investment pledge or surety by providing no less than thirty (30) days written notice to the trust company. The trust company to which notice is given may request a hearing in writing no more than thirty (30) days after receiving notice of the proposed increase. Any hearing before the commissioner shall be held pursuant to the Wyoming Administrative Procedure Act.

13-5-116. Voluntary dissolution of trust company; liquidation; reorganization; application for dissolution; filing fee; filing with secretary of state; revocation of charter.

(a) A trust company may voluntarily dissolve in the manner provided herein. Voluntary dissolution shall be accomplished by either liquidating the trust company or reorganizing the trust company into a domestic or foreign corporation, limited liability company, limited partnership or limited liability partnership that does not engage in any activity that is authorized only for a trust company. Upon complete liquidation or completion of the reorganization, the commissioner shall revoke the trust company's charter and thereafter the company may not use the word "trust" in its business name or in connection with its business.

(b) A trust company seeking to dissolve its charter either by liquidation or reorganization shall file an application for dissolution with the commissioner accompanied by a filing fee of one thousand five hundred dollars (\$1,500.00) payable to the commissioner. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities, in reasonable detail to effect a liquidation or reorganization. The plan of dissolution shall provide for the discharge or assumption of all of the trust company's known and unknown claims and liabilities and for the transfer of all of its responsibilities as a trustee to a successor trustee or trustees. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents or information as the commissioner may require demonstrating how assets and liabilities will be disposed, the timetable for effecting disposition of the assets and liabilities and the

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applicant's proposal for addressing any claims that are asserted after the dissolution has been completed. The commissioner shall examine the application for completeness and compliance with the requirements of this section, the business entity laws applicable to the required type of dissolution and applicable rules and regulation. The commissioner may conduct a special examination of the applicant for purposes of evaluating the application.

(c) If the commissioner finds that the application is incomplete, the commissioner shall return it for completion not later than sixty (60) days after it is filed. If the application is found to be complete by the commissioner, not later than thirty (30) days after it is filed, the commissioner shall approve or disapprove the application. If the commissioner approves the application, the applicant may proceed with the dissolution pursuant to the plan outlined in the application, subject to any conditions the commissioner may prescribe. If the applicant subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it shall file an amended plan with the commissioner and obtain approval to proceed under the amended plan. If the commissioner does not approve the application or amended plan, the applicant may appeal the decision to the board pursuant to the Wyoming Administrative Procedure Act.

(d) Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the commissioner, the applicant shall submit a written report of its actions to the commissioner. The report shall contain a certification made under oath that the report is true and correct. Following receipt of the report, the commissioner, no later than sixty (60) days after the filing of the report, shall examine the trust company to determine whether the commissioner is satisfied that all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the commissioner. If all requirements and conditions have been met, the commissioner shall notify the applicant in writing that the dissolution has been completed and issue a certificate of dissolution. Upon receiving a certificate of dissolution, the applicant shall surrender its charter to the commissioner. The applicant shall then file articles of dissolution and other documents required by W.S. 17-16-1401 through 17-16-1440 for a corporation or required by W.S. 17-29-701 through 17-29-708 for a limited liability company, in the office of the secretary of state. In the case of reorganization, the applicant shall also file the documents required by the secretary of state to finalize the reorganization.

(e) If the commissioner is not satisfied that all required actions under the plan for dissolution or as required by the commissioner have been taken, the commissioner shall notify the applicant not later than thirty (30) days in writing what additional actions shall be taken to be eligible for a certificate of

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dissolution. The commissioner shall establish a reasonable deadline for the submission of evidence that the additional actions have been taken. The commissioner may extend the deadline for good cause shown. If the applicant fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the commissioner, the commissioner shall notify the applicant in writing that its voluntary dissolution is not approved, and the applicant may appeal the decision to the board pursuant to the Wyoming Administrative Procedure Act.

(f) The commissioner may adopt rules pursuant to W.S. 13-1-603 to carry out the requirements of this section.

13-5-117. Failure to submit required report; fees; regulations.

(a) If a trust company fails to submit any report required pursuant to this act or any regulation adopted pursuant thereto within the prescribed period, the commissioner may impose and collect a fee of not more than twenty-five dollars (\$25.00) for each day the report is overdue.

(b) The commissioner shall adopt regulations establishing the amount of the fee imposed pursuant to this section.

13-5-118. Willful neglect to perform duties imposed by law or failure to conform to material lawful requirement made by commissioner; removal.

(a) Each officer, director, manager, member, employee or agent of a trust company, following written notice from the commissioner sent by certified mail, is subject to removal upon order of the commissioner if he knowingly or willfully fails:

(i) To perform any duty required by this act or other applicable law; or

(ii) To conform to any rule, regulation or requirement of the commissioner.

Section 2. W.S. 13-5-101(a) and (b)(v), 13-5-102(b), 13-5-103(a), 13-5-104(a), 13-5-105, 13-5-110(a)(intro), (i), by creating a new paragraph (vii) and by creating a new subsection (b) and 13-5-113 are amended to read:

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13-5-101. Authority to organize; powers; limitations; prohibitions; exemptions.

(a) Trust companies may be organized under this act as a corporation or a limited liability company to exercise the powers permitted by subsection (b) of this section and powers and rights granted to other corporations and limited liability companies under general law except as provided by this act.

(b) Each trust company may:

(v) Take oaths and execute affidavits by the oath or affidavit of its: ~~president, vice president, secretary, assistant secretary, manager, trust officer or assistant trust officer;~~

(A) Corporate officers if the trust company is organized as a corporation; or

(B) Managing members if the trust company is organized as a limited liability company.

13-5-102. Formation.

(b) The person forming a trust company shall execute articles of incorporation as provided by W.S. 13-2-202 or articles of organization for a limited liability company. These articles shall include the requirements contained in W.S. 17-16-202 for corporations and W.S. 17-29-201 for limited liability companies. The commissioner may establish, by rule and regulation, other documents and materials to be filed by a trust company.

13-5-103. Application for charter; fee.

(a) The incorporator or organizer shall apply to the ~~state banking~~ commissioner for a charter. The application shall be on forms prescribed by the ~~state banking~~ board and shall contain such information as required by rule and regulation of the ~~state banking~~ board. The commissioner shall act upon the application in accordance with the procedures specified for acting upon an application to form a financial institution provided in W.S. 13-2-207.

13-5-104. Procedure for granting charter; failure to open for business.

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(a) Upon receiving the articles of incorporation or the articles of organization, the application for charter and other information required, the ~~state banking~~ commissioner shall investigate and examine the proposed trust company in accordance with procedures for the commissioner to investigate and examine a financial institution provided in W.S. 13-2-211(a).

13-5-105. Capital stock required; statement.

No trust company shall be incorporated or organized for any of the purposes enumerated in this act or possess the rights and franchises provided under this act unless it shall have paid in capital stock of not less than five hundred thousand dollars (\$500,000.00) for a corporation or paid in contribution from its members of not less than five hundred thousand dollars (\$500,000.00) for a limited liability company. Before proceeding to transact business under this act a sworn statement signed and sworn to by the president and secretary of the corporation or managing member or members of the limited liability company shall be filed with the ~~state banking~~ commissioner to the effect that the capital has been paid up in cash and all the provisions of this act complied with.

13-5-110. Powers of the commissioner.

(a) In addition to other powers conferred by this act, the ~~state banking~~ commissioner shall:

(i) Supervise and examine all trust companies organized under the provisions of this act and all such trust companies shall be subject to the laws of this state governing banks and other financial institutions in all cases where the laws do not conflict with the provisions of this act. The commissioner or a duly appointed examiner shall visit and examine each trust company as often as the commissioner deems necessary and at least once every two (2) years, with or without previous notice to the officers or any other party interested in the trust company. All trust companies shall file with the commissioner ~~the Federal Financial Institutions Examination Council Annual Report of trust assets for the company and an annual report of trust assets in a form prescribed by the~~ commissioner, an annual report of the financial condition of the company and other reports as required by the commissioner;

(vii) On or before January 31 of each year, each trust company shall compute and pay supervisory fees to the commissioner as set forth in the rules and regulations of the commissioner. Except as provided in subsection (b) of this section, the supervisory fees shall provide for the general

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administration of the laws and regulations governing the trust company industry. The fees shall be established by regulation of the commissioner and shall be adjusted by regulations issued by the commissioner to assure consistency with the cost of supervision. Other fees assessed for administrative services related to activities attributable to a specific trust company shall be used to pay the costs of special services rendered by or at the direction of the commissioner and shall be recovered from the trust company which required the special services.

(b) A trust company resolution fund account is established. A portion of each supervisory fee paid pursuant to paragraph (a)(vii) of this section shall be paid to the resolution fund account and shall be used by the commissioner in the event of an involuntary dissolution of a trust company. The amount paid to the resolution fund account shall be established by regulation of the commissioner. All amounts paid shall be remitted to the state treasurer and deposited and credited to the trust company resolution fund account. Expenditures from the account shall be made using warrants drawn by the state auditor, upon vouchers issued and signed by the director of the department of audit or commissioner. Funds from the account shall be expended only to carry out the duties of the commissioner in the involuntary dissolution of a trust company.

13-5-113. Insolvency; unsafe condition; receivership.

(a) If the commissioner finds a deficiency in capital or other unsafe or unsound condition of a trust company that has not been remedied within the time prescribed under an order of the commissioner issued pursuant to W.S. 13-10-201 through 13-10-209, or if the trust company is insolvent, the commissioner ~~may~~ shall apply to the district court, in the county in which the principal office of the company is located, to be appointed receiver for the liquidation or rehabilitation of the company. The expense of the receivership shall be paid out of the assets of the trust company.

(b) A trust company is insolvent when any of the following conditions exist:

(i) When the actual cash market value of a trust company's assets is less than its liabilities;

(ii) When a trust company fails to pay, in the manner commonly accepted by business practices, its obligations when due.

(c) A trust company is operating in an unsafe and unsound condition when any of the following conditions exist:

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(i) A trust company fails to safely manage its operations and provide fair and equitable services to its trust customers;

(ii) It fails to effectively manage and monitor its operational and financial risks.

(d) Title to all of the trust company's assets shall vest in the commissioner upon appointment by the court pursuant to subsection (a) of this section of the commissioner as receiver, without the execution of any instrument of conveyance, assignment, transfer or endorsement.

(e) Subject to the approval of the appointing court, as receiver, the commissioner shall have all of the following powers:

(i) To take possession of all books, records of account and assets of the trust company;

(ii) To collect debts, claims and judgments belonging to the trust company and to take any other action necessary to preserve and liquidate the assets of the trust company;

(iii) To appoint a special assistant to take charge of the affairs of the trust company. The special assistant shall qualify, give bond, and receive compensation in the same manner as the commissioner acting as a receiver, but compensation for the special assistant shall be paid by the trust company being liquidated or rehabilitated;

(iv) To execute in the name of the trust company any instrument necessary or proper to effectuate the receiver's powers or perform its duties as receiver;

(v) To initiate, pursue, compromise and defend litigation involving any right, claim, interest or liability of the trust company;

(vi) To exercise all fiduciary functions of the trust company as of the date of appointment as receiver;

(vii) To borrow money as necessary in the liquidation of the trust company and to secure those borrowings by the pledge or mortgage of assets of the trust company;

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(viii) To sell any and all assets, to compromise any debt, claim, obligation or judgment due to the trust company, to discontinue any pending action or other proceeding and to sell or otherwise transfer all or any portion of the asset or liabilities of the trust company;

(ix) To establish ancillary receivership in any jurisdiction the receiver determines necessary;

(x) To distribute assets in accordance with court approval after notice to all claimants, beneficiaries, shareholders or members. Subject to the approval of the court, the receiver may make periodic and interim liquidating dividends or payments; and

(xi) To take any other action incident to the powers set forth above.

Section 3. W.S. 13-5-106 is repealed.

Section 4. This act is effective July 1, 2015.

Approved February 25, 2015.