

## Article 14.

### Trust Institutions Acting in a Fiduciary Capacity.

#### Part 1. General Provisions.

##### **§ 53-158.10. Definitions.**

For purposes of this Article, the following definitions apply:

- (1) "Depository institution" has the same meaning as set forth in the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811, et seq.
- (2) "Hazardous condition" has the same meaning as set forth in G.S. 53-301(a)(23).
- (3) "Trust institution" has the same meaning as set forth in G.S. 53-301(a)(52). (2011-339, s. 7.)

##### **§ 53-159. Trust institution may act as fiduciary.**

Any trust institution licensed by the Commissioner of Banks, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator or act in another fiduciary capacity in this State without giving any bond; and the clerks of the superior courts, or other officers charged with the duty or clothed with the power of making such appointments, are authorized to appoint such trust institution to any such office. (1945, c. 743, s. 1; 2001-263, s. 3; 2011-339, s. 7.)

##### **§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.**

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any trust institution holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities with a securities intermediary as defined in G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such securities intermediary with any other such securities deposited in such securities intermediary by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such trust institution acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such securities intermediary without physical delivery of certificates representing such securities. A trust institution so depositing securities pursuant to this section shall be subject to such rules as, in the case of State-chartered institutions, the State Banking Commission and, in the case of other institutions, their regulators may from time to time issue. A trust institution acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such trust institution in such securities intermediary for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such securities intermediary for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any trust institution holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such securities intermediary. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection

with such securities so deposited. (1973, c. 497, s. 4; 1997-181, s. 26; 2001-263, s. 3; 2011-339, s. 7.)

**§ 53-160. License to do business.**

Before any such trust institution is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such license the licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and the Commissioner's agents, shall pay to the Commissioner of Banks an annual license fee of five hundred dollars (\$500.00). (1945, c. 743, s. 1; 1967, c. 789, s. 20; 2001-263, s. 3; 2004-171, s. 5; 2011-339, s. 7.)

**§ 53-161. Examination in connection with license as to solvency.**

The Commissioner of Banks may, at the expense of the trust institution, make or cause to be made an examination of any trust institution, other than a federally chartered trust institution, that applies for or is licensed by the Commissioner of Banks. The Commissioner of Banks may refuse to issue a license to a trust institution that it finds to be in a hazardous condition. (1945, c. 743, s. 1; 2001-263, s. 3; 2011-339, s. 7.)

**§ 53-162:** Repealed by Session Laws 2011-339, s. 7, effective October 1, 2011.

**§ 53-163. Clerk of superior court notified of license and revocation.**

The Commissioner of Banks, upon granting license to any trust institution, shall immediately notify the clerk of the superior court of each county in the State that the trust institution has been licensed under this Article, and, whenever the Commissioner of Banks is satisfied that any trust institution licensed by the Commissioner is in a hazardous condition, the Commissioner shall revoke the license granted to that trust institution and notify the clerk of the superior court of each county in the State of the revocation. (1945, c. 743, s. 1; 2001-263, s. 3; 2011-339, s. 7.)

**§ 53-163.1. Funds held by a trust institution awaiting investment or distribution.**

(a) Funds held in a fiduciary capacity by a trust institution awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. A trust institution has complied with this requirement if such funds awaiting investment or distribution in excess of one thousand dollars (\$1,000) are invested or distributed within 30 days of receipt or accumulation thereof.

(b) Funds held in a fiduciary capacity by a depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the depository institution, provided that it shall first set aside under control of the trust department as collateral security, the classes of securities listed in G.S. 159-30(c) as being eligible for the investment of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of G.S. 53-163.3.

If such funds are deposited in a depository institution insured under the provisions of the Federal Deposit Insurance Act, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that act.

(c) Funds held in a fiduciary capacity by a trust institution awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be invested in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise.

(d) In addition to any other compensation to which it may be entitled under statutes governing the compensation of personal representatives, guardians, or other fiduciaries, or under any other authority, a trust institution shall be allowed to charge a fee for the temporary investment of funds held awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby. The fee authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A trust institution has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the trust institution's periodic account statements set forth the method of computing such fees. (1939, c. 197, s. 4; 1963, c. 243, ss. 1, 2; 1977, c. 502, s. 2; 1989, c. 443; 2004-139, s. 5; 2005-192, s. 1; 2011-339, s. 7; 2012-56, s. 9.)

#### **§ 53-163.2. Investments in securities by trust institutions.**

Unless the governing instrument, court order, or a statute specifically directs otherwise, a trust institution serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate thereof participates or has participated as a member of a syndicate underwriting such security, if:

- (1) The fiduciary does not purchase the security from itself or its affiliate; and
- (2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments. (1985, c. 549, s.1; 2005-192, s. 1; 2007-106, s. 51; 2011-339, s. 7.)

#### **§ 53-163.3. Fiduciary funds awaiting investment.**

A bank that is a trust institution may maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure all such deposits in the name of the trust department, whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits and shall be kept separate and apart from other assets of the trust department. Until all of the deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank. To the extent and in the amount such deposits may be insured by the FDIC, the amount of security required for such deposits by this section may be reduced. The Banking Commission shall have power to make such rules as it may deem necessary for the enforcement of the provisions of this section. (2012-56, s. 10.)

§ 53-163.4: Reserved for future codification purposes.

Part 2. Uniform Common Trust Fund Act.

**§ 53-163.5. Establishment of common trust funds.**

(a) Any trust institution duly authorized to act as a fiduciary in this State may establish and maintain one or more common trust funds for the collective investment of funds held in a fiduciary capacity by such trust institution hereafter referred to as the "maintaining institution." The maintaining institution may include for the purposes of collective investment in such common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any other trust institution duly authorized to act as a fiduciary with which it is affiliated, wherever located, which other trust institution is hereinafter referred to as the "participating institution."

(b) For the purposes of this section, a maintaining institution shall be considered to be affiliated with a participating institution if it controls, is controlled by, or is under common control with the participating institution, as control is determined under the federal Bank Holding Company Act of 1956 or by rule, order, or declaratory ruling of the Commissioner of Banks.

(c) Such common trust funds may include a fund composed solely of funds held under an agency agreement in which the trust institution assumes investment discretion and assumes fiduciary responsibility.

(d) Such trust institution may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment thereof, and (ii) the trust institution has no interest in the assets of the common trust fund other than as a fiduciary. (1939, c. 200, s. 1; 1973, c. 1276; 1977, c. 502, s. 2; 2005-192, s. 1; 2006-259, s. 13(q); 2011-339, s. 7.)

**§ 53-163.6. Court accountings.**

Unless ordered by a court of competent jurisdiction the trust institution operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts. (1939, c. 200, s. 2; 1977, c. 502, s. 2; 2005-192, s. 1; 2011-339, s. 7.)

**§ 53-163.7. Supervision by State Banking Commission.**

All common trust funds established under the provisions of this Part shall be subject to the rules and regulations of the State Banking Commission. (1939, c. 200, s. 3; 1977, c. 502, s. 2; 2005-192, s. 1.)

**§ 53-163.8. Uniformity of interpretation.**

This Part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1939, c. 200, s. 4; 1977, c. 502, s. 2; 2005-192, s. 1.)

**§ 53-163.9. Short title.**

This Part may be cited as the Uniform Common Trust Fund Act. (1939, c. 200, s. 5; 1977, c. 502, s. 2; 2005-192, s. 1.)