

523A.203 Financial institution trustees — qualification and investment requirements.

1. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law.

2. A financial institution acting as a trustee of trust funds under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to it. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty proven under this chapter.

3. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes if each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and maintenance of a separate accounting of each purchaser's principal, interest, and income.

4. Subject to a master trust agreement, the seller may appoint an independent investment adviser to advise the financial institution about investment of the trust funds.

5. Subject to agreement between the parties, the financial institution may receive a reasonable fee from the trust funds for services rendered as trustee. The trust shall pay the trust operation costs and any annual audit fees.

6. A financial institution acting as a trustee of trust funds under this chapter shall notify each purchaser within sixty days from the date of deposit confirming that a deposit has been made establishing a trust fund for the purchaser's payments made under the purchase agreement.

7. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee. A financial institution holding trust funds shall not do any of the following:

- a. Be owned, under the control of, or affiliated with a seller.
- b. Use any funds required to be held in trust under this chapter to purchase an interest in any contract or agreement to which a seller is a party.
- c. Otherwise invest, directly or indirectly, in a seller's business operations.
- d. Use any funds required to be held in trust pursuant to section 523A.201 to purchase an insurance policy or annuity.

8. Unless proceeding under section 523A.403, investment and management decisions for all trust funds shall be made in accordance with the provisions of section 633A.4302.

2001 Acts, ch 118, §21; 2005 Acts, ch 128, §3; 2007 Acts, ch 175, §10; 2008 Acts, ch 1103, §2, 3