

CHAPTER 10
TRUST POWERS

[Prior to 3/25/87, Auditor of State[130] Ch 10]

197—10.1(534) Definitions.

“*Account*” means the trust, estate or other fiduciary relationship which has been established with an association.

“*Custodian under a Uniform Gifts to Minors Act*” means an account established pursuant to a state law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute and with respect to which the association operating such account has established to the satisfaction of the Secretary of the Treasury that it has duties and responsibilities similar to the duties and responsibilities of a trustee or guardian.

“*Fiduciary*” means an association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, trustee or employee pension, welfare and profit-sharing trusts, and any other similar capacity.

“*Fiduciary records*” means all matters which are written, transcribed, recorded, received or otherwise come into the possession of an association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of an association.

“*Guardian*” means the guardian, conservator, or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

“*Investment authority*” means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

“*Local law*” means the law of the state of Iowa or other jurisdiction governing the fiduciary relationship.

“*Managing agent*” means the fiduciary relationship assumed by an association upon the creation of an account which names the association as agent and confers investment discretion upon the association.

“*State-chartered corporate fiduciary*” means any state bank, trust company, or other corporation which comes into competition with associations and is permitted to act in a fiduciary capacity under the laws of the state of Iowa in which the association is located.

“*Trust department*” means that group or groups of officers and employees of an association or of an affiliate of an association to whom are assigned the performance of fiduciary services by the association.

“*Trust powers*” means the power to act in any fiduciary capacity authorized by Iowa Code section 534.103(6).

197—10.2(534) Authority.

10.2(1) An association is authorized to act, when not in contravention to local law, as trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer and paying agent, trustee of employee pension, welfare, and profit-sharing trusts, or in any other fiduciary capacity which state-chartered corporate fiduciaries exercise under local law. The granting to, and exercise of powers shall not be deemed to be in contravention of local law whenever the laws of Iowa authorize or permit the exercise of any or all of the foregoing powers by state banks, trust companies or other corporations which compete with savings and loan associations.

10.2(2) An association desiring to exercise fiduciary powers, either through a trust department or through an affiliate, shall file with the superintendent an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations under this subrule. In passing upon an application to exercise trust powers, consideration will be given, but not limited to, the following:

- a. The financial condition of the association, provided that in no event shall trust powers be granted to an association if its financial condition is such that the association does not meet the financial standards required by state laws of state-chartered corporate fiduciaries;
- b. The needs of the community for fiduciary services and the probable volume of such fiduciary business available to the association;
- c. The general character and ability of the management of the association;
- d. The nature of the supervision to be given to the fiduciary activities, including the qualifications, experience and character of the proposed officer or officers of the trust department; and
- e. Whether the association has available legal counsel to advise and pass upon fiduciary matters wherever necessary.

10.2(3) Whenever local law requires corporations acting as fiduciary to deposit securities with state authorities for the protection of private or court trusts, associations authorized to exercise trust powers shall, before undertaking to act in any fiduciary capacity, make a similar deposit with the state of Iowa. If the state authorities refuse to accept a deposit, the securities shall be deposited with the Federal Home Loan Bank of Des Moines, and the securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the state of Iowa.

197—10.3(534) Administration of trust powers.

10.3(1) The board of directors is responsible for the proper exercise of fiduciary powers by the association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of the associations' trust powers as it may consider proper to assign to the director(s), officer(s), employee(s), or committee(s) as it may designate.

10.3(2) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have assigned the performance of that responsibility. A written record shall be made of acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the association has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or held for each fiduciary account for which the association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of assets. The board of directors should act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

10.3(3) The trust department may utilize personnel and facilities of other departments of the association, and other departments of the association may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

10.3(4) Every association exercising trust powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. The policies and procedures, in particular, shall ensure that the associations' trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

10.3(5) Every association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the association and its trust department.

10.3(6) In addition to the minimum bond coverage required by Iowa Code section 534.602, directors, officers and employees of an association engaged in the operation of a trust department shall acquire additional bond coverage as the superintendent may require.

197—10.4(534) Funds awaiting investment or distribution.

10.4(1) General. Funds held in a fiduciary capacity by an association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

10.4(2) Use by association in regular business.

a. Funds held in trust by an association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in other departments of the association, provided that the association shall first set aside under control of the trust department as collateral security:

(1) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(2) Readily marketable securities of the classes in which state-chartered corporate fiduciaries are authorized or permitted to invest trust funds under the laws of Iowa; or

(3) Other readily marketable securities as the superintendent may determine.

b. Collateral securities or securities substituted therefor as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but the security shall not be required to the extent that the funds so deposited are insured by the Federal Savings and Loan Insurance Corporation. The requirements of this paragraph are met when qualifying assets of the association are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

c. Any funds held by an association as fiduciary awaiting investment or distribution and deposited in other departments of the association shall be made productive.

197—10.5(534) Investment of funds held as fiduciary.

10.5(1) Private trusts. Funds held by an association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the association, its directors, or its officers investment discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which state-chartered corporate fiduciaries may invest under local law.

10.5(2) Court trusts. If, under local law, corporate fiduciaries appointed by a court are permitted to exercise discretion in investments, or if an association acting as fiduciary under appointment by a court is vested with discretion in investments by an order of the court, funds of the accounts may be invested in any investments which are permitted by local law. Otherwise, an association acting as fiduciary under appointment by a court shall make all investments of funds in accounts under an order of that court. Orders in either case shall be preserved with the fiduciary records of the association.

10.5(3) Collective investment of trust funds. The collective investment of funds received or held by an association as fiduciary is governed by rule 10.9(534).

197—10.6(534) Self-dealing.

10.6(1) Purchase of obligations, etc., from association. Unless lawfully authorized by the instrument creating the relationship, or by court order or local law, funds held by an association as fiduciary shall not be invested in stock or obligations of, or property acquired from, the association or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the association in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the association or their directors, officers or employees.

10.6(2) Sale or transfer of trust assets to association. Property held by an association as fiduciary shall not be sold or transferred, by loan or otherwise, to the association or its directors, officers, or employees, or to individuals with whom there exists a connection, or organizations in which there exists an interest, as might affect the exercise of the best judgment of the association in selling or transferring such property, or to affiliates of the association or their directors, officers or employees, except:

- a. When lawfully authorized by the instrument creating the relationship or by court order or by local law;
- b. In cases in which the association has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from liability, in which case a sale or transfer may be made with the approval of the board of directors and the superintendent. In all cases the association, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;
- c. As provided in the laws and regulations governing collective investments; and
- d. When required by the superintendent.

10.6(3) *Investment in stock of association.* If associations operating under these rules have a stock type of ownership, except as provided by subrule 10.4(2), funds held by an association as fiduciary shall not be invested by the purchase of stock or obligations of the association or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law. However, if the retention of stock or obligations of the association or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless such exercise is forbidden by local law. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, an association's share held by the association as sole trustee, whether in its own name as trustee or in the name of its nominee, may not be voted by the registered owner unless, under the terms of the trust, the manner in which shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.

10.6(4) *Transactions between accounts.*

- a. An association may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if the transaction is not prohibited by the terms of any governing instrument or by local law.
- b. An association may make a loan to an account from the funds belonging to another account, when the making of the loans to a designated account is authorized by the instrument creating the account from which the loans are made, and is not prohibited by local law, and the terms of the transaction are fair to all accounts.
- c. An association may make a loan to an account and may take as security therefor assets of the account, provided the transaction is fair to the account and is not prohibited by law.

197—10.7(534) Custody of investments.

10.7(1) *Segregation of trust assets and joint custody.* The investments of each account shall be kept separate from the assets of the association, and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the association designated for that purpose either by the board of directors of the association or by one or more officers designated by the board of directors of the association, and all officers and employees shall be adequately bonded. To the extent permitted by law, an association may permit the investments of fiduciary account to be deposited elsewhere.

10.7(2) *Segregation of accounts.* The investments of each account shall be either:

- a. Kept separate from those of all other accounts, except as provided in rule 197—10.9(534); or
- b. Adequately identified as the property of the relevant account.

197—10.8(534) Compensation.

10.8(1) *General.* If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, an association acting in this capacity may charge or deduct a reasonable compensation for its services. When the association is acting in a fiduciary capacity under appointment by a court, it shall receive compensation as may be allowed or approved by that court or by local law.

10.8(2) *Officer or employee of association as cofiduciary.* No association shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such,

to retain any compensation for acting as a cofiduciary with the association in the administration of any account undertaken by it.

10.8(3) *Bequests or gifts to trust officers and employees.* No association shall permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative or is approved by the board of directors of the association.

197—10.9(534) Collective investment.

10.9(1) When not in contravention of local laws, funds held by an association as fiduciary may be held in:

a. A common trust fund maintained by the association exclusively for the collective investment and reinvestment of moneys contributed thereto by the association in its capacity as trustee, executor, administrator, guardian, or custodian under the Iowa Uniform Gifts to Minors Act, or

b. A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

10.9(2) Collective investments of funds or other property by an association under subrule 10.9(1) shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 CFR 9.18, which specifies the rules regarding collective investments applicable to trust powers of national banks. Any documents required to be filed with the Comptroller of the Currency under that regulation shall also be filed with the superintendent, and the superintendent may review documents for compliance with those regulations and other laws.

10.9(3) As used in this subrule, the term “association” shall include two or more associations which are members of the same affiliated group with respect to any fund established pursuant to this subrule of which any of such affiliated associations is trustee, or of which two or more of the affiliated associations are cotrustees.

197—10.10(534) Books and accounts.

10.10(1) *General.* Every association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the association. All fiduciary records shall be so kept and retained for such time as to enable the association to furnish information or reports with respect thereto as may be required by the superintendent. The fiduciary records shall contain full information relative to each account.

10.10(2) *Record of pending litigation.* Every association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

197—10.11(534) Audit of trust department. At least once during each calendar year, the association’s trust department shall be audited by auditors in a manner consistent with Iowa Code section 534.401(3). A copy of the report of the audit shall be promptly filed with the superintendent. Trust department audits may be made as part of the annual audits required by Iowa Code section 534.41(3).

197—10.12(534) Surrender of trust powers.

10.12(1) Any association which has been granted the right to exercise trust powers and which desires to surrender such rights shall file with the superintendent a certified copy of the resolution of its board of directors signifying such desire.

10.12(2) Upon receipt of the resolution, the superintendent shall make an investigation and if it is satisfied that the association has been discharged from all fiduciary duties which it has undertaken, it shall issue a certificate to the association certifying that it is no longer authorized to exercise fiduciary powers.

10.12(3) Upon issuance of such a certificate by the superintendent an association:

a. Shall no longer be subject to the provisions of these rules,

b. Shall be entitled to have returned to it any securities which it may have deposited with state authorities or a Federal Home Loan Bank under subrule 10.2(3), and

c. Shall not exercise thereafter any of the powers granted by this rule without first applying for and obtaining new authorization to exercise such powers.

197—10.13(534) Effect on trust accounts of appointment of conservator or receiver or voluntary dissolution of association.

10.13(1) *Appointment of conservator or receiver.* Whenever a conservator or receiver is appointed for an association under Iowa Code section 534.405, such receiver or conservator shall, pursuant to the instructions of the superintendent and the orders of the court having jurisdiction, proceed to close the association's trust accounts as can be closed promptly and transfer all other accounts to substitute fiduciaries.

10.13(2) *Voluntary dissolution.* Whenever an association exercising trust powers is placed in voluntary dissolution, the liquidating agent shall, in accordance with local law, proceed at once to liquidate the affairs of the trust department as follows:

a. All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the order of instructions of the court; and

b. All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

197—10.14(534) Consolidation or merger of two or more associations. Where two or more associations consolidate or merge, and any one of such associations has, prior to such consolidation or merger, received a permit from the superintendent to exercise trust powers which permit is in force at the time of the consolidation or merger, the rights existing under this permit pass to the resulting association, and the resulting association may exercise trust powers in the same manner and to the same extent as the association to which the permit was originally issued. No new application to continue to exercise these powers is necessary. However, when the name of the resulting association differs from that of the association to which the right to exercise trust powers was originally granted, the superintendent will issue a certificate to that association showing its right to exercise the trust powers theretofore granted to any of the associations participating in the consolidation or merger.

197—10.15(534) Revocation of trust powers.

10.15(1) In addition to the other sanctions available, if, in the opinion of the superintendent, an association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this rule or otherwise fails or has failed to comply with the requirements of this rule, the superintendent may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this rule. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise these powers should be issued against the association.

10.15(2) The hearing shall be conducted in accordance with the provisions of Iowa Code chapter 17A.

10.15(3) Unless the association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent or if, upon the record made at any hearing, the superintendent shall find that any allegation specified in the notice of charges has been established, the superintendent may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this rule except that the order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

10.15(4) A revocation order shall become effective not earlier than the expiration of 30 days after service of the order upon the association so served (except in the case of a revocation order issued

upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to the extent as it is stayed, modified, terminated, or set aside by action of the superintendent or a reviewing court.

These rules are intended to implement Iowa Code section 534.103(6).

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