

CHAPTER 636

SURETIES — FIDUCIARIES — TRUSTS — INVESTMENTS

Referred to in §12.28, 331.301, 331.402, 364.4, 384.24A, 602.8102(123), 633.109

	SUBCHAPTER I	636.26	Security subject to court order.
	SURETY BONDS	636.27	Collection, application of funds, and reinvestment.
636.1	Security to be by bond.	636.28	Annual accounting.
636.2	Payee.		
636.3	Defects rectified.		
636.4	Qualifications of sureties.		
636.5	Attorneys not receivable as surety.		
636.6	New bond required.	636.29	Property or funds in litigation — deposit.
636.7	Surety bound notwithstanding disqualification.	636.30	Enforcement of order.
636.8	Affidavit of sureties — effect of.	636.31	Inability to distribute trust funds — deposit.
636.9	Effect of affidavit.	636.32	Receipt taken.
636.10	Appeal bonds — presumption.	636.33	Final discharge.
		636.34	Notice of deposit.
		636.35	and 636.36 Reserved.
		636.37	Duty of clerk.
		636.38	Liability.
636.11	Authority to act as surety — agent qualifications.	636.39	through 636.44 Reserved.
636.12	Certificate revoked — notice.		
636.13	Record by clerk. Repealed by 2004 Acts, ch 1120, §9.		
636.14	Guaranty company as surety.	636.45	Federally insured loans.
636.15	Payment of premiums.	636.46	Inapplicable statutes.
636.16	Certificate as authority.		
636.17	Limitation on acceptance.		
636.18	Criminal bonds.		
636.19	Release.		
636.20	Suit on bond — service.		
636.21	Commissioner as process agent.	636.47	Deposit and joint control agreements.
636.22	Estoppel — stockholders liable.	636.48	through 636.59 Reserved.
	SUBCHAPTER III		
	INVESTMENT OF FUNDS		
636.23	Authorized securities.		
636.24	Population and indebtedness.	636.60	through 636.61 Repealed by 2005 Acts, ch 38, §50.
636.25	Existing investments.		

SUBCHAPTER I

SURETY BONDS

636.1 Security to be by bond.

Whenever security is required to be given by law or by order or judgment of a court, and no particular mode is prescribed, it shall be by bond.

[C51, §2505; R60, §4113; C73, §246; C97, §355; C24, 27, 31, 35, 39, §12751; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.1]

C93, §636.1

Oath and bond of fiduciaries, see [chapter 633, subchapter III, part 7](#)

636.2 Payee.

Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be secured thereby; if in relation to the public matters concerning the inhabitants of one county or part of a county, it may be made payable to the county; if

concerning the inhabitants of more than one county, it may be made payable to the state, but a mere mistake in these respects will not vitiate the security.

[C51, §2506; R60, §4114; C73, §247; C97, §356; C24, 27, 31, 35, 39, §12752; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.2]

C93, §636.2

Obligees of bond, see §633.181

636.3 Defects rectified.

A defective bond or other security or affidavit in any case shall not prejudice the party giving or making the bond, security, or affidavit, provided that the defect is rectified, within a reasonable time after the defect is discovered, so as not to cause essential injury to the other party.

[C51, §2511; R60, §4119; C73, §248; C97, §357; C24, 27, 31, 35, 39, §12753; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.3]

C93, §636.3

2021 Acts, ch 80, §364

636.4 Qualifications of sureties.

Each personal surety shall execute and file with the clerk an affidavit that the surety owns real estate subject to execution, other than real estate held in joint tenancy between persons other than cosureties, equal to double the amount of the bond, and shall include in the affidavit the total amount of the surety's obligations as surety on other official or statutory bonds. If there are two or more sureties on the same bond, they must in the aggregate have the qualification prescribed in [this section](#).

[R60, §4126; C73, §249; C97, §358; S13, §358; C24, 27, 31, 35, 39, §12754; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.4]

85 Acts, ch 71, §1

C93, §636.4

Referred to in §633.182, 636.5

636.5 Attorneys not receivable as surety.

Attorneys at law shall not be accepted as sureties upon any official bonds provided for in [section 636.4](#).

[S13, §358; C24, 27, 31, 35, 39, §12755; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.5]

C93, §636.5

Referred to in §636.6, 636.7

Qualifications for sureties on probate bonds, see §633.182

Similar provision, §621.7

636.6 New bond required.

Whenever the board of supervisors of any county shall have knowledge that any attorney at law is surety upon any official bond, as prohibited under [section 636.5](#), it shall require the officer to forthwith file a new bond.

[S13, §358; C24, 27, 31, 35, 39, §12756; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.6]

C93, §636.6

2021 Acts, ch 80, §365

Referred to in §331.322, 636.7

636.7 Surety bound notwithstanding disqualification.

Nothing in [sections 636.5](#) and [636.6](#) shall exempt such person from any liability upon the bond signed by the person.

[S13, §358; C24, 27, 31, 35, 39, §12757; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.7]

C93, §636.7

636.8 Affidavit of sureties — effect of.

The officer whose duty it is to take a surety in any bond provided for or authorized by law shall require the person offered as surety to make affidavit of the person's qualification, which affidavit may be made before such officer, or other officer authorized to administer oaths.

[R60, §4125; C73, §250; C97, §359; C24, 27, 31, 35, 39, §12758; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.8]

C93, §636.8

Referred to in [§636.9](#)

636.9 Effect of affidavit.

The taking of an affidavit under [section 636.8](#) shall not exempt the officer from any liability to which the officer might otherwise be subject for taking insufficient security.

[R60, §4125; C73, §250; C97, §359; C24, 27, 31, 35, 39, §12759; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.9]

C93, §636.9

[2021 Acts, ch 80, §366](#)

636.10 Appeal bonds — presumption.

The filing by an approving officer of a duly tendered appeal bond in an appeal to any court shall carry the presumption until the contrary is established that said officer approved the bond even though no formal approval is endorsed on the bond.

[C31, 35, §12759-c1; C39, §12759.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.10]

C93, §636.10

SUBCHAPTER II

SURETY COMPANIES

636.11 Authority to act as surety — agent qualifications.

1. The commissioner of insurance shall annually file with the clerk of the district court of each county a complete list of the corporate sureties to whom the commissioner has issued a current certificate of authority to transact the business of a surety in this state.

2. An agent for a company authorized to engage in the business of becoming surety upon bonds pursuant to [subsection 1](#) must be a resident of this state for the purpose of acting on behalf of the surety company with respect to any bond or bail in criminal cases.

[C97, §359; C24, 27, 31, 35, 39, §12760; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.11]

[88 Acts, ch 1034, §1](#); [91 Acts, ch 213, §33](#)

C93, §636.11

636.12 Certificate revoked — notice.

Should the certificate of authority for a corporate surety be withdrawn at any time, the commissioner of insurance shall at once notify the clerk of each district court to that effect.

[C97, §359; C24, 27, 31, 35, 39, §12761; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.12]

C93, §636.12

[2021 Acts, ch 80, §367](#)

636.13 Record by clerk. Repealed by [2004 Acts, ch 1120, §9](#).**636.14 Guaranty company as surety.**

Whenever any person who now or hereafter may be required or permitted to give a bond applies for the approval thereof, any officer or body who is now or shall hereafter be required to approve the sufficiency of such bond shall accept and approve the same, whenever its conditions are guaranteed by a company or corporation duly organized or incorporated under the laws of this state, or authorized to do business therein, and to guarantee the fidelity of persons holding positions of public or private trust, or secure any bond above referred to, and

which company shall have the certificate of the commissioner of insurance authorizing it to do business therein, as provided in [chapter 515](#).

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12763; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.14]

C93, §636.14

Referred to in [§633.182](#), [636.15](#), [636.18](#)

636.15 Payment of premiums.

The premium for any such guaranty or surety company bond as defined in [section 636.14](#), may, by the approval of the court, be paid out of the trust funds in the hands of the party of whom the bond is required.

[SS15, §360; C24, 27, 31, 35, 39, §12764; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.15]

C93, §636.15

Referred to in [§636.18](#)

636.16 Certificate as authority.

The certificate of the commissioner of insurance, to the effect that such company has complied with the requirements of [chapter 515](#) and is authorized to do business in this state, shall be sufficient evidence to authorize the officer or body having the approval of such bond to accept and approve the same.

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12765; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.16]

C93, §636.16

Referred to in [§636.18](#)

636.17 Limitation on acceptance.

No such security shall be accepted on any bond for an amount in excess of ten percent of the paid-up cash capital of such company or corporation unless the excess shall be reinsured in some other company or corporation authorized to do business in the state and in no case to exceed ten percent of the capital of the reinsuring company and provided that a certificate of such reinsurance shall be furnished to the insured.

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12766; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.17]

C93, §636.17

Referred to in [§636.18](#)

636.18 Criminal bonds.

Nothing contained in [sections 636.14 through 636.17](#) shall apply to bonds in criminal cases.

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12767; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.18]

C93, §636.18

[2019 Acts, ch 59, §222](#)

636.19 Release.

Such company or corporation may be released from its liability as such surety on any bond on the same terms and conditions, and in the same manner, as is by law prescribed for the release of natural persons as such sureties; it being the intent of [this chapter](#) to enable companies created, incorporated, or chartered for such purposes to become surety on bonds required by law, subject to all the rights and liabilities of natural persons.

[C97, §361; C24, 27, 31, 35, 39, §12768; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.19]

C93, §636.19

636.20 Suit on bond — service.

Whenever suit is required to be brought on any bond given by such company, service shall be had upon any agent of such company in this state, and if there is no agent in the state, then

service may be had by serving the commissioner of insurance fifteen days before the term of court in which the suit is sought to be brought.

[C97, §362; C24, 27, 31, 35, 39, §12769; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.20] C93, §636.20

Suit on bond under probate code, see §633.186

636.21 Commissioner as process agent.

It shall be the duty of the commissioner of insurance, upon service being made upon the commissioner, to immediately mail a copy of the notice to the company at the company's principal place of business, and any notice so served shall be deemed to be good and sufficient service on any such company.

[C97, §362; C24, 27, 31, 35, 39, §12770; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.21] C93, §636.21

2016 Acts, ch 1011, §112

Suit on bond under probate code, see §633.186

636.22 Estoppel — stockholders liable.

Any company which shall execute any bond as surety under the provisions of [this chapter](#) shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability; and the private property of the stockholders shall be liable for the debts of the corporation to the full amount of the capital stock held by such stockholders.

[C97, §363; C24, 27, 31, 35, 39, §12771; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.22] C93, §636.22

SUBCHAPTER III

INVESTMENT OF FUNDS

636.23 Authorized securities.

All proposed investments of trust funds by fiduciaries shall first be reported to the court or a judge for approval and be approved and unless otherwise authorized or directed by the court under authority of which the fiduciary acts, or by the will, trust agreement, or other document which is the source of authority, a trustee, executor, administrator, or guardian shall invest all moneys received by such fiduciary, to be by the fiduciary invested, in securities which at the time of the purchase thereof are included in one or more of the following classes:

1. *Federal bonds.* Bonds or other interest-bearing obligations of the United States for the payment of which the faith and credit of the United States is pledged.

2. *Federal bank bonds.* Bonds, notes or other obligations issued by any federal land bank, federal intermediate credit bank, bank for cooperatives, or any or all of the federal farm credit banks, and in bonds issued by any federal home loan bank under the Act of Congress known and cited as the federal Home Loan Bank Act, 12 U.S.C. §1421 – 1449 and the Acts amendatory thereof.

3. *State bonds.* Bonds or other interest-bearing obligations of any state in the United States for the payment of which the faith and credit of such state is pledged and which state has not defaulted in the payment of any of its bonded debts within the ten preceding years.

4. *Municipal bonds.* Bonds, or other interest-bearing obligations, which are a direct obligation of a county, township, city, school district, or other municipal corporation or district, having power to levy general taxes in the state of Iowa, and also bonds or other interest-bearing obligations which are a direct obligation of a county, township, city, village, school district, or other municipal corporation or district, having power to levy general taxes in any adjoining state, and having a population of not less than five thousand. However, the total funded indebtedness of a municipality enumerated in [this subsection](#) shall not exceed ten percent of the assessed value of the taxable property in the municipality, as ascertained by the last assessment for tax purposes, and the municipality or district shall not have defaulted in the payment of any of its bonded indebtedness within the ten preceding years.

5. *Real estate mortgage bonds.* Notes or bonds of any individual secured by a first mortgage on improved real estate located in this state, provided the aggregate amount of such notes or bonds secured by such first mortgage, does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary; any such loan may be made in an amount not to exceed seventy-five percentum of the appraised value of the real estate offered as security and for a term not longer than twenty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity.

6. *Corporate mortgages.* Notes or bonds of any corporation secured by a first mortgage on improved real estate located in this or any adjoining state upon which no default in payment of principal or interest shall have occurred within five preceding years provided the aggregate amount of such notes or bonds secured by such first mortgage does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary.

7. *Railroad bonds.* Bonds of any railroad corporation which are secured by a first lien mortgage or trust deed upon not less than one hundred miles of main track in the United States and which mortgage or trust deed has been outstanding not less than fifteen years and upon which bonds issued thereunder there has been no default in the payment of principal or interest since the date of said such trust deed.

8. *Bonds guaranteed by railroad.* Bonds of any corporation secured by a first lien upon any railroad terminal depot, tunnel, or bridge in the United States used by two or more railroad companies which have guaranteed the payment of principal and interest of such bonds and have otherwise covenanted or agreed to pay the same, provided at least one of said railroad companies meets the following requirements:

- a. Has earned net income equal to at least four percent of the par value of its outstanding capital stock for five preceding years, and
- b. Has regularly and punctually paid interest and maturing principal on all of its mortgage indebtedness for five preceding years.
- c. Has outstanding capital stock of the par value of at least one-third of its total mortgage indebtedness.

9. *Public utility bonds.* Bonds of any corporation supplying either water, electric energy, or artificial manufactured gas or two or more thereof for light, heat, power, water, or other purposes, or furnishing telephone or telegraph service, provided that such bonds are secured by a first mortgage on all property used in the business of the issuing corporation or by a first and refunding mortgage containing provision for retiring all prior liens, and provided further, that the issuing corporation is incorporated within the United States, and if operating entirely outside this state is operating in a state or other jurisdiction having a public utilities commission with regulatory powers, and providing such operating corporation has annual gross earnings of at least one million dollars, seventy-five percent of which gross earnings have come from the sale of water, gas, or electricity, or the rendering of telephone or telegraph service and not more than fifteen percent from any other one kind of business and which corporation has a record on its behalf or for its predecessors or constituent companies, of having officially reported net earnings at least twice its interest charges on all mortgage indebtedness for the period of five years immediately preceding the investment and having outstanding stock the book value of which is not less than two-thirds of its total funded debt, and which corporation shall have all franchises to operate in the territory it serves in which at least seventy-five percent of its gross income is earned, which franchise shall extend at least five years beyond the maturity of such bonds or which have indeterminate permits or agreements with duly constituted public authorities, or in the bonds of any constituent or subsidiary company of any such operating company which are secured by a first mortgage on all property of such constituent or subsidiary company, provided such bonds are to be retired or refunded by a junior mortgage, the bonds of which are eligible hereunder.

10. *Savings associations.* Shares of federal savings associations organized under the laws of the United States of America.

11. *Bonds and debentures guaranteed by the federal government.* Bonds, debentures, or

other interest-bearing obligations, the payment of which is guaranteed by the United States of America.

12. *Stock in federal government instrumentalities.* Stock in any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States, when the purchase of said stock is necessary or required as an incident or condition of obtaining a loan from any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States.

13. *Life, endowment, or annuity contracts of legal reserve life insurance companies authorized to do business in Iowa.* The purchase of contracts authorized by [this subsection](#) shall be limited to executors or the successors to their powers when specifically authorized by will, and to guardians and trustees, in an amount not to exceed twenty-five percent of the value of the protected person's property in possession of the fiduciary. Such contract may be issued on the life or lives of a protected person or protected persons or beneficiary or beneficiaries of a trust fund created by will or trust agreement, or upon the life or lives of persons in whose life or lives such protected person or beneficiary has an insurable interest. The proceeds or avails of such contract shall be the sole property of the person or persons whose funds are invested therein.

14. *Limitation as to court-approved investments.* [This section](#) does not prohibit investment of such funds in a savings account or time certificate of deposit of a bank or savings association located within the city or its county of this state and when first approved by the court. However, a city that is the trustee of a cemetery as provided in [section 5231.508](#) may invest perpetual care funds in a savings account or certificates of deposit at a bank located in this state without court approval.

15. *When court approval not required.* Nothing in [this section](#) contained shall be construed as modifying the probate code nor be construed as requiring investments of trust funds by fiduciaries to be reported to any court or judge for approval where the trust agreement or other document under which the fiduciary is acting is not being administered under the jurisdiction of any court or by its terms specifically exempts the fiduciary from reporting any such investments for approval.

16. *Investments included — government obligations.* Federal bonds, federal bank bonds, and bonds and debentures guaranteed by the federal government which are authorized investments under [subsections 1, 2, and 11](#) include investments in an investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., the portfolio of which is limited to the United States government obligations described in [subsections 1, 2, and 11](#) and to repurchase agreements fully collateralized by such United States government obligations, if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

[C51, §2507; R60, §4115; C73, §251; C97, §364; S13, §364; C24, 27, 31, 35, 39, **§12772**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.23]

[86 Acts, ch 1032, §2](#); [89 Acts, ch 296, §85](#)

C93, §636.23

[2005 Acts, ch 128, §72](#); [2012 Acts, ch 1017, §154](#); [2014 Acts, ch 1092, §194](#); [2020 Acts, ch 1063, §365](#); [2024 Acts, ch 1009, §91](#)

Referred to in [§37.24](#), [468.151](#), [5231.602](#), [636.24](#), [636.25](#), [636.26](#)

Establishment of common trust funds, see [§633.127](#)

Trustee standard of care, portfolio strategy, and risk and return objectives, see [§633A.4302](#)

Institutional funds, investment authority; [§540A.103](#)

636.24 Population and indebtedness.

The population specified in [section 636.23](#) shall be determined by the last preceding official federal census. The indebtedness of any municipality or governmental subdivision shall be determined by the official certificate of the officer of such municipality or district in charge of its public accounts.

[C31, 35, **§12772-c1**; C39, **§12772.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.24]

C93, §636.24

Referred to in [§636.25](#)

636.25 Existing investments.

Any fiduciary not governed by the probate code may by and with the consent of the court having jurisdiction over such fiduciary or under permission of the instrument creating the trust, continue to hold any investment originally received by the fiduciary under the trust or any increase thereof. Such fiduciary may also make investments which the fiduciary may deem necessary to protect and safeguard investments already made according to the provisions of [this section](#) and [sections 636.23](#) and [636.24](#).

[C31, 35, §12772-c2; C39, §12772.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.25]
C93, §636.25

[2023 Acts, ch 64, §98](#)

Referred to in [§636.26](#)

Establishment of common trust funds, see [§633.127](#)

Trustee standard of care, portfolio strategy, and risk and return objectives, see [§633A.4302](#)

636.26 Security subject to court order.

1. When any investment is made pursuant to approval of the court as required by [section 636.23](#) or made or held by and with the consent of the court as provided in [section 636.25](#), such investment shall not be transferred and any security taken to secure such investment shall not be discharged or impaired prior to payment or satisfaction thereof without an order of the court to that effect, unless otherwise authorized by the will, trust agreement, or other document under which the fiduciary is acting. Nothing contained in [this section](#) shall be construed as requiring the approval of any court to release or discharge of record any mortgage or other lien held by any fiduciary upon the payment or satisfaction thereof in full.

2. All releases or discharges of record of mortgages or other liens prior to July 4, 1951, by any fiduciary without an order of court where such order was required by [section 682.26, Code 1950](#), are hereby declared to be valid and effective from the filing or recording thereof without such order of court being had and obtained, unless within six months after said date a statement is filed under oath by the claimant or on the claimant's behalf if under disability with the county recorder where such release or discharge was filed or recorded setting forth the claim upon which the invalidity of such release or discharge is based. Nothing contained in [this section](#) shall affect pending litigation.

[C51, §2508; R60, §4116; C73, §252; C97, §365; C24, 27, 31, 35, 39, §12773; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.26]

C93, §636.26

[2016 Acts, ch 1073, §176](#)

Release of liens and mortgages, see [§633.95](#)

636.27 Collection, application of funds, and reinvestment.

The clerk or other person appointed in such cases to make the investment must receive all moneys as they become due thereon, and apply or reinvest the same under the direction of the court, unless the court appoints some other person to do such acts.

[C51, §2509; R60, §4117; C73, §253; C97, §366; C24, 27, 31, 35, 39, §12774; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.27]

C93, §636.27

636.28 Annual accounting.

Once in each year, and more often if required by the court, the person so appointed must, on oath, render to the court an account in writing of all moneys so received by that person, and of the application thereof.

[C51, §2510; R60, §4118; C73, §254; C97, §367; C24, 27, 31, 35, 39, §12775; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.28]

C93, §636.28

[2005 Acts, ch 3, §107](#)

Accounting and reporting provisions, see [§633.469](#), [633.470](#), [633.671](#), [633.752](#)

SUBCHAPTER IV
ESTATE AND TRUST FUNDS

636.29 Property or funds in litigation — deposit.

When it is admitted by the pleadings, or shown by the examination of a party, that the party has in the party's possession, or under the party's control, any money or property capable of delivery, which is in any degree the subject of litigation, and which is held by the party as trustee for another party, the court may order the same to be deposited in the office of the clerk, or delivered to such party, with or without security, subject to the further direction of the court; or may order such money to be deposited in a bank, with the consent of the parties in interest, to the credit of the court in which the action is pending, and the same shall be paid out by such bank only upon the check of the clerk, annexed to a certified copy of the order of the court directing such payment.

[R60, §3416; C73, §255; C97, §368; C24, 27, 31, 35, 39, §12776; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.29]

C93, §636.29

636.30 Enforcement of order.

Whenever a court, in the exercise of its authority, has ordered the deposit or delivery of money or other property, and the order is disobeyed, such court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or property, and deposit or deliver it in conformity with the directions of the court, and in such cases the sheriff has the same power as when acting under an order for the delivery of personal property.

[R60, §3417, 3418; C73, §256, 257; C97, §369; C24, 27, 31, 35, 39, §12777; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.30]

C93, §636.30

Referred to in [§331.653](#)

636.31 Inability to distribute trust funds — deposit.

Whenever any fiduciary not governed by the probate code shall desire to make a final report, and shall then have in the fiduciary's possession or under the fiduciary's control any funds, moneys, or securities due, or to become due, to any heir, legatee, devisee, or other person, whose place of residence is unknown to such fiduciary, or to whom payment of the amount due cannot be made as shown by the report on file, such funds, moneys, or securities may upon order of the court and after such notice as the court may prescribe, be deposited with the clerk of the district court of the county wherein such appointment was made.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §12778; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.31]

C93, §636.31

Referred to in [§636.34](#)

Similar provision, see [§633.109](#)

636.32 Receipt taken.

If a fiduciary not governed by the probate code shall otherwise discharge all the duties imposed upon that fiduciary by such appointment, the fiduciary may take the receipt of the clerk of the district court for such funds, moneys, or securities so deposited, which receipt shall specifically set forth from whom said funds, moneys, or securities, were derived, the amount thereof, and the name of the person to whom due or to become due, if known.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §12779; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.32]

C93, §636.32

[2021 Acts, ch 80, §368](#)

Referred to in [§636.33](#)

Similar provision, see [§633.110](#)

636.33 Final discharge.

A fiduciary not governed by the probate code may file the receipt described in [section 636.32](#) with the fiduciary's final report, and if it shall be made to appear to the satisfaction of the court that the fiduciary has in all other respects complied with the law governing the fiduciary's appointment and duties, the court may approve such final report and enter the fiduciary's discharge.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §12780; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.33]

C93, §636.33

[2015 Acts, ch 30, §186](#); [2021 Acts, ch 80, §369](#)

Fiduciaries' reports, [§422.27](#)

Similar provision, see [§633.111](#)

636.34 Notice of deposit.

Notice of a contemplated deposit under [section 636.31](#), and of final report, shall be given for the same time and in the same manner as is now required in cases of final report by personal representatives under the probate code.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §12781; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.34]

C93, §636.34

[2015 Acts, ch 30, §187](#)

Notice, [§633.478](#), [633.487](#)

Inability to distribute estate funds, see [§633.109](#)

636.35 and 636.36 Reserved.**636.37 Duty of clerk.**

1. The clerk of the district court with whom any deposit of funds, moneys, or securities shall be made, as provided by any law or an order of court, shall enter in a book, to be provided and kept for that purpose, the amount of such deposit, the character thereof, the date of its deposit, from whom received, from what source derived, to whom due or to become due, if known.

2. A separate book shall be maintained for all certificates of deposit not in the name of the clerk of the district court that are being held by the clerk on behalf of a conservatorship, trust, or estate. The book shall list the relevant details of the transaction, including but not limited to the name of the conservator, trustee, or executor, and cross references to the court orders opening and closing the conservatorship, trust, or estate.

[C97, §371; S13, §371; C24, 27, 31, 35, 39, §12782; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.37]

C93, §636.37

[2009 Acts, ch 21, §13](#)

Referred to in [§602.8104](#)

636.38 Liability.

The clerk shall be liable upon the clerk's bond for all such funds, moneys, or securities which may be deposited with the clerk and shall make complete verified statements thereof as required by the supreme court.

[C97, §371; S13, §371; C24, 27, 31, 35, 39, §12783; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.38]

[91 Acts, ch 258, §63](#)

C93, §636.38

636.39 through 636.44 Reserved.

SUBCHAPTER V

FEDERAL SECURITIES

636.45 Federally insured loans.

1. Insurance companies, savings associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations:

a. May make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance pursuant to Tit. I, §2, of the National Housing Act (1934), codified at 12 U.S.C. ch. 13, and may obtain such insurance;

b. May make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Tit. II of the National Housing Act (1934), and may obtain such insurance; and

c. May make real property loans which are guaranteed or insured by the secretary of the United States department of veterans affairs under the provisions of 38 U.S.C. §3701 et seq.

2. It shall be lawful for insurance companies, savings associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations, subject to the laws of this state, to originate real estate loans which are guaranteed or insured by the secretary of the United States department of veterans affairs under the provisions of 38 U.S.C. §3701 et seq., and originate loans secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Tit. II of the National Housing Act (1934), and may obtain such insurance and may invest their funds, and the moneys in their custody or possession, eligible for investment, in bonds and notes secured by mortgage or trust deed insured by the federal housing administrator, and in the debentures issued by the federal housing administrator pursuant to Tit. II of the National Housing Act (1934), and in securities issued by national mortgage associations or similar credit institutions now or hereafter organized under Tit. III of the National Housing Act (1934), and in real estate loans which are guaranteed or insured by the secretary of the United States department of veterans affairs under the provisions of 38 U.S.C. §3701 et seq.

[C35, §12786-g1; C39, §12786.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.45]

C93, §636.45

2009 Acts, ch 26, §24; 2010 Acts, ch 1061, §78; 2011 Acts, ch 34, §142; 2012 Acts, ch 1017, §155, 156

Referred to in §636.46

636.46 Inapplicable statutes.

No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments which may be made, shall be deemed to apply to loans or investments pursuant to [section 636.45](#).

[C35, §12786-g2; C39, §12786.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.46]

C93, §636.46

Referred to in §533.316, 535.2

SUBCHAPTER VI

VOLUNTARY AGREEMENTS

636.47 Deposit and joint control agreements.

It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with the party's surety or sureties for the deposit of any or all moneys and assets for which the party and the party's surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court if such deposit is otherwise proper, for

the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court made on such notice to such surety or sureties as such court may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.47]

C93, §636.47

Authority for fiduciary and surety to enter into agreement for deposit of property or joint control, see [§633.183](#)

636.48 through 636.59 Reserved.

SUBCHAPTER VII TRUSTS NOT IN PROBATE COURT

636.60 through 636.61 Repealed by 2005 Acts, ch 38, §50.