

SUBCHAPTER 16K - TRUST POWERS

04 NCAC 16K .0101 DEFINITIONS

For purposes of this Section:

- (1) "Account" shall mean the trust, estate, or other fiduciary relationship that has been established with a savings institution.
- (2) "Custodian Under the Uniform Transfers to Minors Act" shall mean an account established pursuant to the North Carolina Uniform Transfers to Minors Act codified in Chapter 33A of the North Carolina General Statutes.
- (3) "Fiduciary" shall mean a savings institution undertaking to act alone or jointly with others for the benefit of another in all matters connected with its undertaking and includes acting as trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer or paying agent, trustee of employee pension, welfare and profit sharing trusts, and any other similar capacity.
- (4) "Fiduciary Records" shall mean all matters that are written, transcribed, recorded, received, or otherwise coming into the possession of a savings institution and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of the savings institution.
- (5) "Guardian" shall mean the conservator or committee of the estate of an infant, an incompetent individual, or a competent individual over whose estate a court has taken jurisdiction other than under bankruptcy or insolvency laws.
- (6) "Investment Authority" shall mean 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.
- (7) "Managing Agent" shall mean the fiduciary relationship assumed by a savings institution upon the creation of an account that names the savings institution as agent and confers investment discretion upon the savings institution.
- (8) "Trust Department" shall mean that group or groups of officers and employees of a savings institution who perform fiduciary services by the savings institution.
- (9) "Trust Powers" shall mean the power to act in any fiduciary capacity authorized under this Section.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146; Eff. November 1, 1982; Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Amended Eff. November 1, 2017; February 15, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0102 APPLICATIONS

(a) A savings institution desiring to exercise fiduciary powers shall submit to the Commissioner of Banks a letter indicating which trust services it wishes to offer, together with the information required under Paragraph (b) of this Rule.

(b) The Commissioner of Banks, in determining whether to authorize the exercise of trust powers, shall consider the following:

- (1) the financial condition of the savings institution, provided that in no event shall trust powers be granted to a savings institution if its financial condition is such that the savings institution does not meet the requirements of the federal regulatory authority;
- (2) the general character and ability of the management of the savings institution;
- (3) 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
- (4) whether the savings institution has available legal counsel to advise and review fiduciary matters when necessary.

(c) Approval by the Commissioner of Banks of an application under this Section authorizes the applicant to exercise only those trust powers specified in the approval.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0103 CONSOLIDATION OR MERGER OF TWO OR MORE SAVINGS INSTITUTIONS

When two or more savings institutions consolidate or merge, and any one of the savings institutions prior to the consolidation or merger, has a valid approval from the Commissioner of Banks to exercise trust powers, the rights existing under the approval shall pass to the resulting savings institution.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0104 ADMINISTRATION OF TRUST POWERS

(a) The board of directors shall be responsible for the exercise of fiduciary powers by the savings institution. All matters pertinent 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 savings institution in the exercise of its fiduciary powers, shall be the responsibility of the board of directors. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of the savings institution's trust powers to directors, officers, employees, or committees.

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

(c) The trust department may use personnel and facilities of other departments of the savings institution, and other departments of the savings institution may use personnel and facilities of the trust department only to the extent not prohibited by North Carolina law.

(d) Every savings institution 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, shall ensure that the savings institution's trust department shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(e) Every savings institution exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be available to review fiduciary matters and to advise the savings institution and its trust department.

(f) The directors, officers, and employees of a savings institution engaged in the operation of a trust department shall acquire additional bond coverage as the Commissioner of Banks may require.

(g) The savings institution shall comply with rules applicable to State Trust Entities in 04 NCAC 03D and the FDIC Statement of Principles on Trust Department Management, which is hereby incorporated by reference and shall include any later amendments and editions of the referenced material available free of charge, at the time of publication, at: <https://www.fdic.gov/news/news/inactivefinancial/1998/fil98100b.html>.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;

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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0105 BOOKS AND ACCOUNTS

(a) Every savings institution exercising trust powers shall keep its fiduciary records separate and distinct from other records of the savings institution. The fiduciary records shall contain full information relative to each account. The record retention schedule set forth in 04 NCAC 03D .0303 shall apply to the fiduciary records of a savings institution exercising trust powers.

(b) Every savings institution shall keep a record of all pending litigation to which it is a party in connection with its exercise of trust powers.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0106 AUDIT OF TRUST DEPARTMENT

At least once during each calendar year, the savings institution's trust department shall be audited by independent auditors. A copy of the report of the audit shall be filed with the Commissioner of Banks.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
Amended Eff. July 1, 1990;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0107 FUNDS AWAITING INVESTMENT OR DISTRIBUTION

(a) Unless prohibited by the instrument creating the trust, funds held in trust by a savings institution, including managing agency accounts, awaiting investment or distribution may be deposited in other departments of the savings institution. The savings institution shall first set aside under control of the trust department collateral security of a kind and in an amount as specified in G.S. 53-163.1(b) for funds held in trust by a bank, except that no collateral shall be required to the extent that the funds are insured by an agency of the United States government.

(b) Any funds held by a savings institution as fiduciary awaiting investment or distribution and deposited in other departments of the savings institution shall be placed in an interest-bearing account.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0108 INVESTMENT OF FUNDS HELD AS FIDUCIARY

(a) Funds held by a savings institution in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship. When the instrument does not specify the character or class of investments to be made and does not vest investment discretion in the matter in the savings institution, its directors, or its officers, funds held pursuant to the instrument shall be invested in accordance with Article 7 of Chapter 32 of the North Carolina General Statutes.

(b) A savings institution appointed as a fiduciary by a court may invest funds of the account in any investment permitted to be made by fiduciaries by Article 7 of Chapter 32 of the North Carolina General Statutes unless the appointing court limits the investment authority of the fiduciary. If the investment authority of the fiduciary is limited by the court, the savings institution shall make all investments of funds in these accounts consistent with the terms of the order of that court. The orders in either case shall be preserved with the fiduciary records of the savings institution.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0109 SELF-DEALING

(a) Unless authorized by the instrument creating the relationship or by court order, property held by a savings institution as fiduciary shall not be sold or transferred, by loan or otherwise, to the savings institution or its affiliates; or the directors, executive officers, or employees of either of them; 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 savings institution in selling or transferring the property, except:

- (1) in cases in which the savings institution has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability, and it desires to relieve itself from the liability, a sale or transfer may be made with the approval of the board of directors and the Commissioner of Banks, provided that, in all such cases, the savings institution, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;
- (2) as provided G.S. 53-163.5, et seq. governing collective investment; or
- (3) when required by the Commissioner of Banks.

(b) If the purchase or retention of stock or obligations of the savings institution is authorized by the instrument creating the relationship or by court order, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders. 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, a savings institution's share held by the savings institution as sole trustee, whether in its own name as trustee or in the name of its nominee, shall not be voted by the registered owner unless, under the terms of the trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary directs how the shares will be voted.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0110 CUSTODY OF INVESTMENTS

(a) The investments of each fiduciary account shall be kept separate from the assets of the savings institution and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the savings institution designated for that purpose either by the board of directors of the savings institution or by one or more officers designated by the board of directors of the savings institution. All officers and employees designated as

custodians of trust investments shall be bonded. To the extent permitted by G.S. 53-159.1, a savings institution may permit the investments of a fiduciary account to be deposited elsewhere.

(b) The investment of each fiduciary account shall be either:

- (1) kept separate from those of all other accounts, except as provided in Rule .0112 of this Section; or
- (2) identified as the property of the relevant account.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0111 COMPENSATION OF SAVINGS INSTITUTION

(a) If the amount of the compensation for acting in a fiduciary capacity is not provided for in the instrument creating the fiduciary relationship, set forth in Chapter 32 of the General Statutes, or otherwise agreed to by the parties, a savings institution acting in such capacity may charge or deduct a reasonable compensation for its services. When the savings institution is acting in a fiduciary capacity under appointment by a court, it shall receive compensation as may be allowed or approved by the court.

(b) No savings institution shall, permit any of its officers or employees, while serving as such, to act as co-fiduciary with the savings institution in the administration of any account undertaken by it.

(c) No savings institution 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 of the officer or employee or is approved by the Board of Directors of the savings institution.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16K .0112 COLLECTIVE INVESTMENT

(a) Funds held as fiduciary may be held in:

- (1) a common trust fund maintained by the savings institution for the collective investment and reinvestment of moneys contributed thereto by the savings institution in its capacity as trustee, executor, administrator, guardian, or custodian under the North Carolina Uniform Transfers to Minors Act; or
- (2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from Federal income taxation pursuant to the Internal Revenue Code.

(b) Collective investments of funds or other property by a savings institution under Paragraph (a) of this Rule shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 C.F.R. 9.18, which is hereby incorporated by reference and shall include any later amendments and editions of the referenced material. This information is available at the U.S. Printing Office website at http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8. Any documents filed with the Comptroller of the Currency pursuant to 12 C.F.R 9.18 shall also be filed with the Commissioner of Banks.

History Note: Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
Eff. November 1, 1982;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
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04 NCAC 16K .0113 SURRENDER OF TRUST POWERS
04 NCAC 16K .0114 EFF. OF APPT.: CONSERVATOR/RECEIVER: VOLUNTARY DISSOLUTION
04 NCAC 16K .0115 REVOCATION OF TRUST POWERS
04 NCAC 16K .0116 APPLICABILITY OF GENERAL LAWS REGARDING TRUST OPERATIONS

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Eff. November 1, 1982;
Amended Eff. February 15, 1992;
Repealed Eff. November 1, 2017.

04 NCAC 16K .0117 REPORTS AND FEES

Savings institutions engaging in trust operations shall make reports regarding those operations as the Commissioner of Banks requires to evaluate the integrity of the operations. In addition to any other fees, savings institutions acting as fiduciaries shall pay an examination fee for examination of its fiduciary activities, in an amount to be determined by the Commissioner of Banks in accordance with G.S. 54B-57 or 54C-55.

History Note: *Authority G.S. 54B-55; 54B-57; 54B-77; 54C-53; 54C-55; 54C-146;*
Eff. November 1, 1982;
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