

CHAPTER 223.

TRUST COMPANY BANKS.

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223.01 Trust company banks, capital. Trust company banks may be organized pursuant to the provisions of chapter 221, entitled "State Banks," and shall be subject to all the provisions, requirements, and liabilities of chapters 220 and 221, so far as applicable, except sections 221.29 and 221.32, and except as otherwise hereinafter provided. The capital stock of any such corporation shall be fixed and limited by the articles of association, and must be at least one hundred thousand dollars, and not to exceed five million dollars, except that in cities of less than one hundred thousand inhabitants it may be less than one hundred thousand dollars, but it shall not be less than fifty thousand dollars.

Note: With reference to the liability of guardians and trustees to the extent of bank stockholders it is the policy of Wisconsin to limit the liability of executors, *United States v. Earl- ings*, 39 F Supp. 864.

223.02 Indemnity fund; deposit with state treasurer. (1) Before any such corporation shall commence business it shall deposit with the state treasurer not less than fifty per centum of the amount of its capital stock, provided, however, that no such corporation shall be required to deposit more than one hundred thousand dollars, such deposit to be in cash, or the securities specified in chapter 320, which cash, securities or notes secured by investments legal for trust funds shall be approved by the banking commission and shall be held by the state treasurer in trust as security for the faithful execution of any trust which may be lawfully imposed upon and accepted by it; such corporation may from time to time withdraw the said securities as well as the cash, or any part thereof; provided that securities or cash of the amount and value required by this section shall, at all times, during the existence of such corporation remain in the possession of the state treasurer for the purpose aforesaid and until otherwise ordered by a court of competent jurisdiction, unless released pursuant to subsection (2) of this section. The said treasurer shall pay over to such corporation the interest, dividends or other income which he shall collect upon such securities, or he may authorize the said corporation to collect the same for its own benefit. Upon such deposit being made and approved, the state treasurer shall issue a certificate of such fact and an amount equal to the sum stated in such certificate shall remain with him in the manner provided above; in case the capital stock shall be increased or diminished the amount of such deposit shall be increased or diminished to comply herewith and a new certificate of such fact shall be issued accordingly.

(2) The securities and cash deposited pursuant to subsection (1) by any bank shall be released by the state treasurer and returned to the bank, whenever the commissioner of banking shall certify to the state treasurer that said bank no longer exercises fiduciary powers and that he is satisfied, after examination, that there are no outstanding trust liabilities, and that said bank has filed with the said commissioner a bond to the people of the state, in amount and form as demanded by him, conditioned upon the faithful execution of all trusts lawfully imposed and accepted by said bank.

(3) In lieu of the securities to be deposited with the state treasurer under subsection (1) of this section, such corporation may deposit safekeeping receipts assigned to the state treasurer covering the said securities, issued by any federal reserve bank, or by any banking corporation located in a reserve city or a central reserve city, upon approval of the banking commission of Wisconsin, provided such banking corporation has an authorized capital of not less than \$1,000,000. Every such safekeeping receipt shall describe the securities covered thereby and be payable on demand without conditions to the state treasurer. [1931 c. 389; 1937 c. 284; 1941 c. 278]

Note: A deposit made by a bank with the state treasurer pursuant to 223.02, Stats. 1931, is held, in view of the language and legislative history, not intended to protect a cestui que trust whose rights do not arise under a court appointment but are solely by virtue of a private trust agreement with the bank. Nor do the stipulated facts support a finding that the funds of the plaintiff, intrusted to the bank for investment, constituted a preferred claim against the bank's assets on its insolvency because they were invested by the bank in securities not legal for the investment of a trust fund. *Mahan v. Herreid*, 211 W 79, 247 NW 468. When securities eligible for deposit have market value below par commissioner of banking may approve such securities only to extent of their market value. 20 Atty. Gen. 100.

Securities deposited with state treasurer by bank to secure faithful execution of any trust imposed upon or accepted by bank may be released under provision of (2). 21 Atty. Gen. 554.

Banking commission may require trust companies depositing securities with state treasurer to furnish appraisals by disinterested parties to substantiate value before approving securities. 24 Atty. Gen. 336.

Order of preference in matter of deposit of registered United States government bonds under this section is: (1) assignment on back of bond, (2) assignment by separate instrument, and (3) merely depositing without assignment. All three methods are acceptable. Registered savings bonds are acceptable only when registered in name of state treasurer in trust for depositing bank. 28 Atty. Gen. 254.

223.03 Corporate powers. Any such corporation shall have the following powers:

(1) To make all contracts necessary and proper to effect its purpose and conduct its business.

(2) To sue and be sued, to appear and defend in all actions and proceedings under its corporate name to the same extent as a natural person.

(3) To have a common seal and alter the same at pleasure.

(4) To elect or appoint all necessary officers, agents, and servants, to define their duties and obligations, fix their compensations, dismiss them, fill vacancies, and require bonds.

(5) To make, amend, and repeal by-laws and regulations not inconsistent with law or its articles of organization, for its own government, for the orderly conduct of its affairs and the management of its property, for determining the manner of calling and conducting its meetings, the tenure of office of its several officers; and such others as shall be necessary or convenient for the accomplishment of its purpose.

(6) Any such corporation shall have power, in and by its corporate name, to take, receive, hold, pay for, reconvey, and dispose of any effects and property, real or personal, which may be granted, committed, transferred, or conveyed to it with its consent, upon any terms, or upon any trust or trusts at any time, by any person or persons, including married women and minors, bodies corporate, or any court, including the courts of the United States, and to administer, fulfill, and discharge the duties of such trust or trusts for such remuneration as may be agreed upon. Nothing herein shall be held or construed to give minors or married women any other or different power or right than they now have as to transferring or disposing of any of their property or effects, personal or real; and when any money or other property is entrusted to any such corporation by or in the name of any minor or married woman the same may be held in the manner provided in section 221.44, and the receipt of such minor or married woman shall have the effect provided in said section.

(7) And any such corporation may act generally as agent or attorney for the transaction of business, the management of estates, the collection of rents, interests, dividends, mortgages, bonds, bills, notes, and other securities, or moneys, and also as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning certificates of stock, bonds, or other obligations of any corporation, association, or municipality, and manage any sinking fund therefor, on such terms as may be agreed upon; and may also accept and execute the offices of executor, administrator, trustee, receiver, assignee, or guardian of any minor or insane or incompetent person, lunatic, or any person subject to guardianship; and in all cases in which application shall be made to any court for the appointment of any person in any such capacity, it shall be lawful to appoint such corporation, with its consent, to hold such office or offices.

(8) In case of such appointment, or in case such corporation shall be named as an executor in any will or as assignee in any assignment for the benefit of creditors, it shall not be required to make and file any oath or give any bond or security, except in the discretion of the court making such appointment, or having jurisdiction of such will or assignment.

(9) The accounts of said corporation as such trustee, receiver, assignee, executor, administrator, or guardian shall be regularly settled and adjusted by the proper officers or tribunals; and all proper, legal, usual, and customary charges, costs and expenses shall be allowed to such corporation for the care and management of the estate so committed to it.

(10) Any such corporation may, with the approval of the court having jurisdiction, but without profit to itself, transfer to trust estates any mortgages or other securities owned by it which comply with the requirements of legal investments for trust funds under the statutes. The banking commission shall at each examination of said corporation, examine all mortgages and other securities held by said corporation as assets of trust estates, excepting the trust estates where investment of trust funds is not required of the trustee, and for the purpose of such examination the commission shall possess all the power and authority conferred upon it by this chapter.

(11) Such corporation may loan money upon unincumbered real estate lying and being in the state of Wisconsin and states immediately adjoining the state of Wisconsin, to wit: Michigan, Illinois, Iowa and Minnesota; and upon securities other than personal notes or

commercial paper or obligations secured solely thereby; may receive time deposits and issue its notes, certificates, debentures, and other obligations therefor, payable at a future date only, not earlier than thirty days from the date of such deposit; it shall not receive deposits subject to draft, order, or check, or payable upon demand, issue bills to circulate as money, or deal in bank exchange. All such deposits so received shall at all times be held or invested separate from other funds or property held by the corporation, and in case of insolvency or liquidation, all such funds and investments made therefrom shall be primarily liable and used for the payment of such deposits.

(12) Any such corporation may take and receive from any individual or corporation for safe-keeping and storage gold and silver plate, jewelry, money, stocks, securities, and other valuables or personal property; and rent out the use of safes or other receptacles upon its premises upon such compensation as may be agreed upon. Such corporation shall have a lien for its charges on any gold or silver plate, jewelry, money, stocks, securities, and other valuables and personal property taken or received by it for safe-keeping, and in case such lien shall not be paid within two years from the date it accrues, or in case any property so taken or received by it shall not be called for by the person or persons depositing the same, or his or their legal representatives or assigns, within two years from the date of the accruing of any lien upon the same, such corporation may sell such property at public auction upon like notice as is required by law for sales of personal property on execution, and after retaining from the proceeds of such sale all the liens and charges due and owing and the reasonable expenses of the sale, shall pay the balance thereof to the person or persons so depositing such property, or his or their legal representatives or assigns.

(13) It shall be lawful for any such corporation to lease, purchase, hold and convey such land as may be necessary to carry on its business, and execute any trust committed to it, as well as such real or personal estate as it may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions, and to execute and issue in the transaction of its business all necessary receipts, certificates and contracts, which shall be signed by such person or persons as may be designated by its by-laws. [1937 c. 284 s. 3]

Note: Where each cestui que trust is entitled to an aliquot part of an ascertained and definite trust fund, any one of them may sue the trustee for his own portion thereof without making the other cestuis que trust parties to the action. *Graf v. Seymour State Bank*, 221 W 122, 266 NW 222.

Where a bank had violated its duty as testamentary trustee by selling mortgages, owned by it, to the trust, without even applying for permission from the county court, the bank as trustee would have been subject to having the investment in the mortgages excluded from the trust investment if the distributees of the trust fund

had requested such relief at the hearing on the trustee's final account, but an order of the county court, approving the final account as submitted and assigning the mortgages to the distributees, was only erroneous and was remediable only by appeal in the absence of fraud practiced on the court. *Will of Cosgrove*, 236 W 554, 295 NW 784.

A trust company bank cannot lend money on obligations secured by warehouse receipts. Certificate of deposit bearing clause reserving right to time notice cannot be computed as part of legal cash reserve of trust company bank. 19 Atty. Gen. 270.

223.04 Reserve fund. Every such corporation shall, at all times, maintain the same cash reserve as provided for state banks under section 221.27. [1937 c. 284]

223.05 Trust funds. (1) **ACCOUNTS, HOW KEPT.** Every such corporation shall keep its trust accounts in books separate from its own general books of account. All funds and property held by it in a trust capacity shall, at all times, be kept separate from the funds and property of the corporation, and all deposits by it of such funds in any banking institution shall be deposited as trust funds to its credit as trustee and not otherwise. Trust funds may be deposited with funds belonging to other trusts in one account in any banking institution to the credit of such corporation as trustee. Every security in which trust funds or property are invested shall at once, upon the receipt thereof, be transferred to it, as trustee, executor, administrator, guardian, receiver, assignee or other trustee as the case may be for each particular trust or fund by name and immediately entered in the proper books as belonging to the particular trust whose funds have been invested therein. Any change in such investment shall be fully specified in and under the account of the particular trust to which it belongs, so that all trust funds and property shall be readily identified at any time by any person.

(2) **REGISTRATION OF SECURITIES HELD IN NAME OF NOMINEE.** Any trust company bank, or any state bank or national banking association authorized to exercise trust powers in this state, acting as executor, administrator, guardian or testamentary trustee, whether alone or jointly with an individual or individuals, may with the consent of the individual fiduciary or fiduciaries, if any (who are hereby authorized to give such consent) cause any stock or other securities held in any such capacity to be registered and held in the name of a nominee or nominees of such trust company bank or bank exercising trust powers; and provided further, that any bank, individual or individuals acting as executor, administrator, guardian or testamentary trustee is and are

authorized respectively to request any bank or trust company bank incorporated under the laws of the state of Wisconsin or any national bank located in this state to cause any stock or other securities deposited with such bank or trust company bank by such individual or individuals as fiduciary or fiduciaries to be registered and held in the name of a nominee or nominees of such bank or trust company bank. Such bank or trust company bank shall not redeliver such stock or other securities to such individual fiduciary or fiduciaries causing any stock or other securities to be so registered in the name of the nominee of such bank or trust company bank without first causing such stock or other securities to be registered in the name of such individual fiduciary or fiduciaries as such. But any sale or transfer of such stock or other securities made by such bank or trust company bank at the direction of such individual fiduciary or fiduciaries shall not be construed to be redelivery; and any such bank or trust company bank or any nominee or nominees in whose name such securities shall be registered, shall be deemed to have fully discharged its, his or their responsibilities if any such securities are sold or transferred in accordance with the direction of individual fiduciary or fiduciaries making such deposit, and the proceeds of such sale or transfer are accounted for and delivered to such individual fiduciary or fiduciaries. Such bank or trust company bank may make any disposition of such stock or other securities authorized or directed in an order or decree of any court having jurisdiction. Any such bank or trust company bank shall be absolutely liable for any loss occasioned by the acts of any nominee of such bank or trust company bank with respect to such stock or other securities so registered. The records of such bank or trust company bank shall at all times show the ownership of any such stock or other securities. Such stock or other securities shall at all times be kept separate and apart from the assets of such bank or trust company bank. [1941 c. 243, 247]

Note: Trust account cash of trust company banks operating under chapter 223, should not be included as assets or liabilities in computing ratio of quick assets to deposits or in computing legal reserves of such companies. Neither is such cash to be included in determining resources of trust company for purpose of levying assessment provided by 220.05 (2). 26 Atty. Gen. 520.

223.055 Common trust funds. (1) **ESTABLISHMENT OF COMMON TRUST FUNDS.** Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciaries to such investment; and the provisions of this section shall apply to trusts now in existence or hereafter created.

(2) **COURT ACCOUNTINGS.** Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the circuit court of the county in which it has its principal office, secure approval of such an accounting on such conditions as the court may establish.

(3) **INVESTMENTS.** The bank or trust company operating such common trust fund may buy, sell, hold, invest and reinvest the funds and assets thereof in its discretion and shall not be limited or restricted by the provisions of chapter 320 or any amendment thereof, but the bank or trust company shall not invest the funds of any fiduciary account in any common trust fund unless every investment in such fund is one that would then be a permissible investment for such fiduciary account.

(4) **UNIFORMITY OF INTERPRETATION.** This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(5) **SHORT TITLE.** This section may be cited as the "Uniform Common Trust Fund Act".

(6) **TAXATION.** No common trust fund established pursuant to this section shall be subject to taxation as a corporation, association, partnership or individual, but it shall be a fiduciary within the provisions of section 71.095 (3), (4) and (5). All income of such trust and all capital gains and losses shall be income received or loss realized, as the case may be, to the fiduciary account holding a participation in such common trust fund in accordance with its participation. [1943 c. 274]

223.06 Loans to officers; branch banks prohibited. It shall not loan its funds, trust or otherwise, to any salaried officer or employe, nor shall any such officer or employe become, in any manner, indebted to it by means of an overdraft, promissory note, account, indorsement, guaranty or any other contract; nor shall such corporation establish more than one office of deposit nor establish nor maintain branches.

223.07 Existing trust companies; continuance; reorganization. Any existing trust company heretofore organized under the laws of this state may continue its existence under the provisions of this chapter by the adoption by unanimous vote of all its stockholders, of a resolution at a duly convened meeting of its stockholders, present in person, or by proxy specifically authorizing such action, accepting the provisions of this chapter and filing a copy of such resolution, with a certificate under the corporate seal, verified by the president and secretary, showing such unanimous vote and the other facts herein required, with the banking commission and secretary of state, at any time on or before February 1, 1910; or may surrender its existing charter and reorganize hereunder in the same manner as state banks are organized, except that no incorporation or filing fee shall be required to be paid for such reincorporation. In case of continuance or reorganization in either manner aforesaid, all powers, trusts, rights and liabilities of any such existing corporation, and the corporate existence of such corporation, shall be deemed continuous and all such powers, trusts, rights and liabilities shall ipso facto vest in and attach to such continued or reorganized corporation. Stock of such continued or reorganized corporation may be substituted for stock in any such existing corporation held in trust or otherwise. [1937 c. 284 s. 3]

223.08 Name of corporation; penalty. Any such corporation so continued or reorganized may continue its present name without change. The word "trust" shall form part of the name of every such corporation hereafter organized under this chapter, but the word "bank" shall not be used as a part of such name. All persons, partnerships, associations, or corporations not organized under the provisions of this chapter, except state banks vested with trust powers under and pursuant to the provisions of subsection (6) of section 221.04, are hereby prohibited from using the word "trust" in their business, or as portion of the name or title of such person, partnership, association, or corporation. Any person or persons violating any of the provisions of this section, either individually or as an interested party in any copartnership, association, or corporation, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail not less than sixty days, nor more than one year, or by both such fine and imprisonment. [Spl. S. 1931 c. 26 s. 1]

Note: Trust company may use word "savings" as part of its corporate name. 20 Atty. Gen. 99.

223.09 Assessment of stock. The capital stock and property of corporations organized, continued, or reorganized under this chapter shall after January 1, 1910, be assessed and taxed in the same manner as the stock and property of state banks.

223.10 Domestic corporations as fiduciaries. Except as provided in section 222.21, no court of this state shall appoint any corporation as trustee, executor, administrator, guardian, assignee, receiver, or in any other fiduciary capacity unless such corporation is organized under sections 223.01 to 223.09 or is a state bank entitled under section 221.04 (6) to exercise fiduciary powers, or is a national bank with authority to exercise such powers. [1943 c. 275 s. 56]

223.11 Consolidation of trust company banks. (1) Any trust company bank organized, continued or reorganized under this chapter may consolidate with any other similar corporation within the same county, city, town or village in the manner provided for the consolidation of banks under section 221.25; and in the event of such consolidation the consolidated corporation, by whatever name it may assume or be known, shall be a continuation of the entity of each and all of the corporations so consolidated for all purposes whatsoever, including holding and performing any and all trusts and fiduciary relations of whatsoever nature of which the corporations so consolidating, or either or any of them, was fiduciary at the time of such consolidation, and also including its appointment in any fiduciary capacity by any court or otherwise, and the holding, accepting and performing of any and all trusts and fiduciary relations whatsoever as to or for which either or any one of the corporations so consolidating may have been appointed, nominated or designated by any will or conveyance or otherwise, whether or not such trust or fiduciary relation shall have come into being or taken effect at the time of such consolidation.

223.12 Foreign trust company, executor or trustee here, when. (1) Any trust company, incorporated under the laws of any other state, named by any resident of this state, as executor or trustee, or both, under his last will and testament or any codicil thereto, may be appointed and may accept appointment and may act as executor of, or trustee under, the last will and testament of any such person in this state, or both, provided trust companies of this state are permitted to act as such executor or trustee, or both, in the state where such foreign corporation has its domicile, and such foreign corporation shall have executed and filed in the office of the banking commission a written instrument

appointing such commission in its name of office its true and lawful attorney upon whom all process may be served in any action or proceeding against such executor or trustee, affecting or relating to the estate represented or held by such executor or trustee, or the acts or defaults of such corporation in reference to such estate, with the same effect as if it existed in this state and had been lawfully served with process therein, and shall also have filed in the office of such commission a copy of its charter, articles of organization and all amendments thereto certified to by the secretary of state or other proper officer of said foreign state under the seal of office together with the post-office address of its principal office and shall further have complied with the provisions of section 223.02 of the statutes.

(2) Any trust company, incorporated under the laws of any other state, duly acting and qualified as executor or trustee under any foreign will, shall have the same rights and authority under such will as to real estate within this state which any natural person duly acting as such foreign executor or trustee may have under the laws of this state, without such foreign trust company being required to do any act qualifying it to do business within this state not required of a natural person acting as such foreign executor or trustee.

(3) No such foreign corporation, having authority to act as executor or trustee under the last will and testament of any person, shall establish or maintain directly or indirectly any branch office or agency in this state or shall in any way solicit directly or indirectly any business as executor or trustee therein. If any such foreign corporation violates this provision, such foreign corporation shall not thereafter be appointed or act as executor or trustee in this state.

(4) No such trust company shall be appointed as the executor or trustee under the last will and testament or any codicil thereto of a resident of this state until it shall comply with this section and with sections 223.02 and 323.01.

(5) The provisions of this section are only intended to supersede any existing laws in so far as said laws may be inconsistent with the provisions of this section. [1937 c. 284 s. 3; 1941 c. 250]

Note: Foreign trust company may not sell securities in Wisconsin through medium of one of its agents licensed as Wisconsin dealer. Except as permitted by 223.12 (1), Stats. 1937, foreign trust company may not qualify to do business in this state. 27 Atty. Gen. 235.