

ASSEMBLY, No. 2018

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1996

By Assemblyman BATEMAN

1 AN ACT concerning fees a qualified bank acting as fiduciary may  
2 charge under certain circumstances and amending N.J.S.3B:14-23.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. N.J.S.3B:14-23 is amended to read as follows:

8 3B:14-23. Powers. In the absence of contrary or limiting  
9 provisions in the judgment or order appointing a fiduciary, in the will,  
10 deed or other instrument or in a subsequent court judgment or order,  
11 every fiduciary shall, in the exercise of good faith and reasonable  
12 discretion, have the power:

13 a. To accept additions to any estate or trust from sources other  
14 than the estate of the decedent, minor, mental incompetent or the  
15 settler of a trust;

16 b. To acquire the remaining undivided interest in an estate or trust  
17 asset in which the fiduciary, in his fiduciary capacity, holds an  
18 undivided interest;

19 c. To invest and reinvest assets of the estate or trust under the  
20 provisions of the will, deed or other instrument or as otherwise  
21 provided by law and to exchange assets for investments and other  
22 property upon terms as may seem advisable to the fiduciary;

23 d. To effect and keep in force fire, rent, title, liability, casualty or  
24 other insurance to protect the property of the estate or trust and to  
25 protect the fiduciary;

26 e. With respect to any property or any interest therein owned by an  
27 estate or trust, including any real property belonging to the fiduciary's  
28 decedent at death, except where the property or any interest therein is  
29 specifically disposed of:

30 (1) To take possession of and manage the property and to collect  
31 the rents therefrom, and pay taxes, mortgage interest and other  
32 charges against the property;

33 (2) To sell the property at public or private sale, and on terms as  
34 in the opinion of the fiduciary shall be most advantageous to those

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

- 1 interested therein;
- 2 (3) With respect to fiduciaries other than a trustee, to lease the  
3 property for a term not exceeding three years, and in the case of a  
4 trustee to lease the property for a term not exceeding 10 years, even  
5 though the term extends beyond the duration of the trust, and in either  
6 case including the right to explore for and remove mineral or other  
7 natural resources, and in connection with mineral leases to enter into  
8 pooling and unitization agreements;
- 9 (4) To mortgage the property;
- 10 (5) To grant easements to adjoining owners and utilities;
- 11 (6) A fiduciary acting under a will may exercise any of the powers  
12 granted by this subsection e. notwithstanding the effects upon the will  
13 of the birth of a child after its execution;
- 14 f. To make repairs to the property of the estate or trust for the  
15 purpose of preserving the property or rendering it rentable or saleable;
- 16 g. To grant options for the sale of any property of the estate or  
17 trust for a period not exceeding six months;
- 18 h. With respect to any mortgage held by the estate or trust to  
19 continue it upon and after maturity, with or without renewal or  
20 extension, upon terms as may seem advisable to the fiduciary and to  
21 foreclose, as an incident to collection of any bond or note, any  
22 mortgage and purchase the mortgaged property or acquire the  
23 property by deed from the mortgagor in lieu of foreclosure;
- 24 i. In the case of the survivor or survivors of two or more  
25 fiduciaries to administer the estate or trust without the appointment of  
26 a successor to the fiduciary or fiduciaries who have ceased to act and  
27 to exercise or perform all of the powers given unless contrary to the  
28 express provision of the will, deed or other instrument;
- 29 j. As a new, alternate, successor, substitute or additional fiduciary  
30 or fiduciaries, to have or succeed to all of the powers, duties and  
31 discretion of the original fiduciary or fiduciaries, with respect to the  
32 estate or trust, as were given to the original fiduciary or fiduciaries  
33 named in or appointed by a will, deed or other instrument, unless the  
34 exercise of the powers, duties or discretion of the original fiduciary or  
35 fiduciaries is expressly prohibited by the will, deed or other instrument  
36 to any successor or substitute fiduciary or fiduciaries;
- 37 k. Where there are three or more fiduciaries qualified to act, to  
38 take any action with respect to the estate or trust which a majority of  
39 the fiduciaries shall determine; a fiduciary who fails to act through  
40 absence or disability, or a dissenting fiduciary who joins in carrying  
41 out the decision of a majority of the fiduciaries if his dissent is  
42 expressed promptly in writing to his cofiduciaries, shall not be liable  
43 for the consequences of any majority decision, provided that liability  
44 for failure to join in administering the trust or to prevent a breach of  
45 trust may not thus be avoided;
- 46 l. To employ and compensate attorneys for services rendered to the

- 1 estate or trust or to a fiduciary in the performance of his duties;
- 2 m. To compromise, contest or otherwise settle any claim in favor  
3 of the estate, trust or fiduciary or in favor of third persons and against  
4 the estate, trust or fiduciary, including transfer inheritance, estate,  
5 income and other taxes;
- 6 n. To vote in person or by proxy, discretionary or otherwise,  
7 shares of stock or other securities held by the estate or trust;
- 8 o. To pay calls, assessments and any other sums chargeable or  
9 accruing against or on account of shares of stock, bonds, debentures  
10 or other corporate securities in the hands of a fiduciary, whenever the  
11 payments may be legally enforceable against the fiduciary or any  
12 property of the estate or trust or the fiduciary deems payment  
13 expedient and for the best interests of the estate or trust;
- 14 p. To sell or exercise stock subscription or conversion rights,  
15 participate in foreclosures, reorganizations, consolidations, mergers or  
16 liquidations, and to consent to corporate sales or leases and  
17 encumbrances, and, in the exercise of those powers, the fiduciary is  
18 authorized to deposit stocks, bonds or other securities with any  
19 custodian, agent, protective or other similar committee, or trustee  
20 under a voting trust agreement, under terms and conditions respecting  
21 the deposit thereof as the fiduciary may approve;
- 22 q. To execute and deliver agreements, assignments, bills of sale,  
23 contracts, deeds, notes, receipts and any other instrument necessary or  
24 appropriate for the administration of the estate or trust;
- 25 r. In the case of a trustee:
- 26 (1) to hold two or more trusts or parts of trusts created by the  
27 same instrument, as an undivided whole, without separation as  
28 between the trusts or parts of the trusts, provided that separate trusts  
29 or parts of trusts shall have undivided interests and provided further  
30 that no holding shall defer the vesting of any estate in possession or  
31 otherwise;
- 32 (2) To divide a trust, before or after its initial funding, into two or  
33 more separate trusts, provided that such division will not materially  
34 impair the accomplishment of the trust purposes or the interests of any  
35 beneficiary. Distributions provided for by the governing instrument  
36 may be made from one or more of the separate trusts;
- 37 s. To distribute in kind any property of the estate or trust as  
38 provided in article 1 of chapter 23 of this title;
- 39 t. To join with the surviving spouse, the executor of his or her will  
40 or the administrator of his or her estate in the execution and filing of  
41 a joint income tax return for any period prior to the death of a  
42 decedent for which he has not filed a return or a gift tax return on gifts  
43 made by the decedent's surviving spouse, and to consent to treat the  
44 gifts as being made one-half by the decedent, for any period prior to  
45 a decedent's death, and to pay taxes thereon as are chargeable to the  
46 decedent;

1 u. To acquire or dispose of an asset, including real or personal  
2 property in this or another State, for cash or on credit, at public or  
3 private sale, and to manage, develop, improve, exchange, partition,  
4 change the character of, or abandon an estate asset;

5 v. To continue any business constituting the whole or any part of  
6 the estate for so long a period of time as the fiduciary may deem  
7 advisable and advantageous for the estate and persons interested  
8 therein;

9 w. In the case of a qualified bank as defined in section 1 of  
10 P.L.1948, c.67 (C.17:9A-1), to purchase, sell and maintain for any  
11 fiduciary account, securities issued by an investment company which  
12 is operated and maintained in accordance with the "Investment  
13 Company Act of 1940," 15 U.S.C. §80a-1 et seq., and for which the  
14 qualified bank is providing services as an investment advisor,  
15 investment manager, custodian or otherwise, [provided that] including  
16 those for which it receives compensation, if:

17 (1) the investment is otherwise in accordance with applicable  
18 fiduciary standards; and

19 (2) [unless the investment of trust assets in an investment company  
20 to which the qualified bank provides services as an investment  
21 manager, custodian or otherwise is provided for by the instrument  
22 creating the fiduciary account:

23 (a) all current income beneficiaries are provided with 30 days'  
24 written notice of the qualified bank's intent to so invest the assets prior  
25 to the initial investment; and

26 (b) the qualified bank does not receive written objection thereto  
27 from any such beneficiary within the 30 day period; and] the  
28 investment is authorized by the agreement or instrument creating the  
29 fiduciary account that gives the qualified bank investment authority,  
30 or by court order; or

31 (3) [unless otherwise specifically permitted by the trust instrument  
32 creating the fiduciary account:

33 (a) the investment advisory fees, commissions or similar fees to  
34 which the qualified bank is entitled as fiduciary shall be reduced by the  
35 amount of any investment advisory fees, commissions or similar fees  
36 paid to the qualified bank by the investment company; or

37 (b) the investment advisory fees, commissions or similar fees paid  
38 to the qualified bank by the investment company are received in lieu  
39 of any investment advisory fees, commissions or similar fees that the  
40 qualified bank would otherwise be entitled to receive for the  
41 investment management of the fiduciary account] the qualified bank  
42 provides written notice not less than annually by prospectus, account  
43 statement or otherwise, disclosing to any current income beneficiaries  
44 of the trust the services provided by the qualified bank or its affiliate  
45 to the investment company, and the rate, formula, or other method by  
46 which compensation paid to the qualified bank or its affiliate is

1 determined and the qualified bank does not receive a written objection  
2 from any current income beneficiary within 30 days after receipt of this  
3 notice. If a written objection is received from any current income  
4 beneficiary pursuant to this paragraph (3), no such investment of the  
5 trust assets of that fiduciary account shall be made or maintained.

6 Such investment shall not be deemed self-dealing or a fiduciary  
7 conflict; nor shall the fact that other beneficiaries of fiduciary accounts  
8 of the qualified bank have similar investments be deemed to be an  
9 improper commingling of assets by the qualified bank.

10 For purposes of this subsection, "fiduciary account" shall include a  
11 trust, estate, agency or other account in which funds, property, or  
12 both, are held by a qualified bank pursuant to section 28 of P.L.1948,  
13 c.67 (C.17:9A-28), or an account for which a qualified bank acts as  
14 investment advisor or manager; and

15 x. The powers set forth in this section are in addition to any other  
16 powers granted by law, and by a will, deed or other instrument.

17 (cf: P.L.1993, c.360)

18  
19 2. This act shall take effect immediately.

20  
21  
22 STATEMENT

23  
24 This bill amends the section of law governing the fiduciary powers  
25 of qualified banks, including State and federally chartered banks  
26 authorized to act as fiduciaries. More specifically, the bill amends the  
27 provisions governing fees for services to provide that a bank may  
28 collect a reasonable advisory fee or commission for investing assets of  
29 a fiduciary account in an investment company from which that same  
30 qualified bank is collecting advisory fees or commissions. The fee and  
31 the basis for calculating the fee must be disclosed not less than  
32 annually to the current income beneficiaries of the fiduciary account  
33 in a notice to such beneficiaries. If a qualified bank receives a written  
34 objection from any current income beneficiary within 30 days after that  
35 beneficiary received the notice from the qualified bank, no investment  
36 of the assets of the fiduciary account shall then be made or maintained  
37 in the investment company.

38  
39  
40 \_\_\_\_\_  
41  
42 Concerns fees for qualified banks acting as fiduciaries under certain  
43 circumstances.