

[Passed Both Houses]

[Corrected Copy]

ASSEMBLY, No. 2018

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1996

By Assemblymen BATEMAN, COHEN and Senator Sinagra

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

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

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

1 made by the decedent's surviving spouse, and to consent to treat the
2 gifts as being made one-half by the decedent, for any period prior to
3 a decedent's death, and to pay taxes thereon as are chargeable to the
4 decedent;

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

9 v. To continue any business constituting the whole or any part of
10 the estate for so long a period of time as the fiduciary may deem
11 advisable and advantageous for the estate and persons interested
12 therein;

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

21 (1) the investment is otherwise in accordance with applicable
22 fiduciary standards; **and**

23 (2) **[unless the investment of trust assets in an investment company**
24 **to which the qualified bank provides services as an investment**
25 **manager, custodian or otherwise is provided for by the instrument**
26 **creating the fiduciary account:**

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

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

35 (3) **[unless otherwise specifically permitted by the trust instrument**
36 **creating the fiduciary account:**

37 (a) the investment advisory fees, commissions or similar fees to
38 which the qualified bank is entitled as fiduciary shall be reduced by the
39 amount of any investment advisory fees, commissions or similar fees
40 paid to the qualified bank by the investment company; or

41 (b) the investment advisory fees, commissions or similar fees paid
42 to the qualified bank by the investment company are received in lieu
43 of any investment advisory fees, commissions or similar fees that the
44 qualified bank would otherwise be entitled to receive for the
45 investment management of the fiduciary account] **the qualified bank**
46 **provides written notice not less than annually by prospectus, account**

1 statement or otherwise, disclosing to any current income beneficiaries
2 of the trust the services provided by the qualified bank or its affiliate
3 to the investment company, and the rate, formula, or other method by
4 which compensation paid to the qualified bank or its affiliate is
5 determined and the qualified bank does not receive a written objection
6 from any current income beneficiary within 30 days after receipt of this
7 notice. If a written objection is received from any current income
8 beneficiary pursuant to this paragraph (3), no such investment of the
9 trust assets of that fiduciary account shall be made or maintained.

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

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

19 x. The powers set forth in this section are in addition to any other
20 powers granted by law, and by a will, deed or other instrument.
21 (cf: P.L.1993, c.360)

22
23 2. This act shall take effect immediately.

24 25 26 STATEMENT

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

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45 _____
46 Concerns fees for qualified banks acting as fiduciaries under certain
circumstances.