

**17-5830. Trust powers; generally.** The commissioner is authorized and empowered to grant by special permit to any savings and loan association organized under the laws of this state whose principal office is located in the state of Kansas, the right to act as trustee, corporate agent or in any other fiduciary capacity in which trust companies and banks incorporated under the laws of Kansas are permitted to act. The commissioner may approve and issue a special permit to such state savings and loan association to act in one or more of such fiduciary capacities. Any state savings and loan association having been granted trust authority by the commissioner may add "and trust company" to its corporate name. Such trust powers shall be subject to the following:

(a) The association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from general assets of the association, and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. Such books and records shall be open to the inspection of, and subject to the supervision of, the commissioner;

(b) the Kansas bank commissioner, may have access to examination reports made by the savings and loan commissioner insofar as such reports relate to the trust department of such association but nothing in this section shall be construed as authorizing such state banking authority to examine the books, records and assets of such associations;

(c) no association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department, United States bonds or other securities approved by the commissioner;

(d) in the event of the failure of such association, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the assets of the association;

(e) if at any time Kansas law requires trustees to deposit securities with the state for the protection of private or court trusts, associations so acting shall be required to make similar deposits, and securities so deposited shall be held for the protection of private or court trusts, as provided by Kansas law. Associations in such cases shall not be required to execute the bond usually required of individuals if corporate trustees under similar circumstances are exempt from this requirement. Associations shall have the power to execute such bond when so required of corporate trustees by the laws of the state of Kansas;

(f) in the event the laws of Kansas require a corporation acting as trustee, executor, administrator, guardian or conservator, to take an oath or make an affidavit, the president, any vice president, or trust officer of such association may take the necessary oath or execute the necessary affidavit;

(g) it shall be unlawful for any association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than \$5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court;

(h) in passing upon applications for permission to exercise the powers enumerated in this section, the commissioner may take into consideration the amount of capital and surplus of the applying association, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to the commissioner proper, and may grant or refuse the application accordingly. In any event no trust authority permit shall be issued to any association having a capital and surplus less than the capital and surplus required by Kansas law applicable to Kansas banks and trust companies;

(i) any association desiring to surrender its right to exercise the powers granted under this section, in order to relieve itself of the necessity of complying with the requirements of this section, or to have returned to it any securities which it may have deposited with the state authorities for the protection of private or court trusts, or for any other purpose, may file with the commissioner a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such resolution, the commissioner may issue to such association a certificate certifying that such association is no longer authorized to exercise the powers granted by this section, subject to compliance with all reasonable terms and conditions set forth by the commissioner as a condition to being relieved. Upon the issuance of such a certificate, the association shall no longer be subject to the provisions of this section and shall be entitled to have returned to the association any securities which it may have deposited;

(j) in addition to the authority conferred by this section and all other applicable laws and regulations, if, in the opinion of the commissioner, an association is unlawfully or unsoundly exercising or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this section or otherwise fails or has failed to comply with the requirements of this section, the commissioner may conduct a hearing in accordance with the provisions of the Kansas administrative procedure act to determine whether an order revoking authority to exercise such powers should issue against the association. In the event the commissioner finds that grounds for revocation have been established, the commissioner may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this section, except that such order shall permit the association to continue to service all previously accepted trust accounts pending the expeditious divestiture or termination. The revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

**History:** L. 1981, ch. 105, § 6; L. 1988, ch. 356, § 64; July 1, 1989.