

# Chapter 709

2013 EDITION

## Regulation of Trust Business

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**ORGANIZATION**

**709.005 Certificate of authority to transact trust business; application; contents; fee; exceptions.** (1) Except as provided in ORS 709.030 (4) or in subsection (4) of this section, no company shall transact any trust business in this state until the company has obtained a certificate of authority from the Director of the Department of Consumer and Business Services under this section, authorizing the company to transact trust business in this state.

(2) To procure a certificate of authority to transact trust business in this state, a company to whom this section applies shall file a written application with the director, which shall contain or be accompanied by:

- (a) The name of the company.
- (b) The state or country under the laws of which the company is organized.
- (c) The date of incorporation or other organization of the company.
- (d) The period of duration of the company, if the duration is not perpetual.
- (e) A mailing address to which the director may send notices.

(f) The address of the principal office of the company in the state or country under the laws of which it is organized.

(g) The street address of the proposed registered office of the company in this state and the name of its proposed registered agent, who shall be amenable to service of process at that address.

(h) A brief statement setting forth any background and experience of the company in conducting a trust business in the state or country in which it is organized, and its qualifications to transact trust business in this state.

(i) The names and addresses of the chief executive officer and the secretary of the company.

(j) Any additional information that the director may by rule require.

(k) The verified signature of the chief executive officer of the company, certifying that all information contained in the application is true, accurate and complete.

(L) A certificate of existence, a certificate of good standing, a status certificate or a document of similar import, current within 60 days of making application under this section and duly authenticated by the official with custody of the corporate or other records in the state, province or country under the laws of which the company is organized.

(m) A certificate of authorization for a foreign corporation, or a copy of the application for authority to transact business in this

state as a foreign corporation as filed with the Secretary of State, current within 60 days of making application under this section and duly authenticated by the Secretary of State evidencing the authorization of the company, or application for authorization, to transact business as a foreign corporation under ORS chapter 60.

(n) An application fee of \$2,500, provided that no application fee shall be charged under this paragraph:

(A) If the applicant is concurrently applying for a charter under ORS chapter 707; or

(B) If the director reduces or waives the application fee.

(3) If the director finds that the application conforms to the requirements of subsection (2) of this section and that the applicant is qualified by experience to transact trust business in this state, the director shall direct the applicant to make the security deposit required under ORS 709.030, and when the deposit is made, the director shall issue and send to the company a certificate of authority to transact business.

(4) The requirement to procure a certificate of authority under this section shall not apply to the extent preempted by federal law, or to any bank lawfully transacting trust business in this state on October 4, 1997. [1997 c.631 §229; 1999 c.107 §3]

**709.010** [Repealed by 1973 c.797 §428]

**709.015 Organization as limited liability company.** (1) As an alternative to being organized as a corporation pursuant to the provisions of ORS chapter 707 and this chapter, an Oregon trust company may be organized as a limited liability company.

(2) With respect to any Oregon trust company that is organized as a limited liability company, as used in the Bank Act:

(a) "Articles of incorporation" means the Oregon trust company's articles of organization, as defined in ORS 63.001.

(b) "Bylaws" means the Oregon trust company's operating agreement, as defined in ORS 63.001.

(c) "Certificate of incorporation" means a certificate of organization issued to the Oregon trust company.

(d) "Corporation" means a limited liability company, as defined in ORS 63.001.

(e) "Director," "directors" or "board of directors" means the Oregon trust company's manager or managers, as defined in ORS 63.001.

(f) "Dividends" means distributions, as defined in ORS 63.001, declared or paid by the Oregon trust company.

(g) "Incorporator" means the Oregon trust company's organizer, as defined in ORS 63.001.

(h) "Share" or "stock" means a membership interest in the Oregon trust company, as defined in ORS 63.001.

(i) "Stockholder," "stockholders," "shareholder" or "shareholders" means the Oregon trust company's member or members, as defined in ORS 63.001.

(3) An Oregon trust company organized as a limited liability company shall be organized under the authority of the Director of the Department of Consumer and Business Services under this chapter and ORS chapter 707. Except as set forth in subsection (4) of this section, with respect to all other aspects of its operation and existence, an Oregon trust company that is organized as a limited liability company is subject to the provisions of ORS chapter 63, to the extent that ORS chapter 63 does not conflict with the Bank Act. In the event of any conflict between the Bank Act and ORS chapter 63, the Bank Act controls.

(4)(a) Notwithstanding any provision of ORS chapter 63, the articles of organization of an Oregon trust company that is organized as a limited liability company shall:

(A) State that the existence of the Oregon trust company is perpetual; and

(B) Provide that the Oregon trust company is to be managed by a board of not fewer than five managers.

(b) Notwithstanding any provision of ORS chapter 63, an Oregon trust company that is organized as a limited liability company shall be managed exclusively by its board of managers in substantially the same manner as an Oregon trust company that is organized as a corporation is managed by its board of directors. The board of managers of an Oregon trust company that is organized as a limited liability company has substantially the same rights, powers, privileges, duties and responsibilities as the board of directors of an Oregon trust company that is organized as a corporation and is subject to the provisions of ORS chapter 707 and this chapter pertaining to directors.

(c) Notwithstanding any provision of ORS chapter 63, membership interests in an Oregon trust company that is organized as a limited liability company are freely transferable, and consent of the Oregon trust company or its members or managers is not required for a person to acquire or transfer a membership interest in the Oregon trust company. Immediately upon the completion of the transfer of the membership interest to a person, the person becomes a member, and has all the rights of a member.

(d) ORS 63.621 (2) to (4) do not apply to an Oregon trust company organized as a limited liability company.

(5) The articles of organization of an Oregon trust company that is organized as a limited liability company shall require that liquidation of the Oregon trust company conform with the requirements of the Bank Act.

(6) An Oregon trust company that is organized as a limited liability company shall have the officers described in ORS 707.700. The officers shall be elected by the board of managers of the Oregon trust company and shall be subject to the provisions of this chapter and ORS chapter 707.

(7) Each Oregon trust company that is organized as a limited liability company shall have a written operating agreement containing any provisions for the affairs of the Oregon trust company as may be agreed upon by its members and that are consistent with the Bank Act.

(8) Any number of persons, not fewer than five, may act as organizers of an Oregon trust company that is organized as a limited liability company. [2005 c.134 §4]

**709.020** [Amended by 1973 c.428 §10; repealed by 1973 c.797 §428]

**709.030 Approval to transact trust business; exceptions; deposit of cash, securities, letter of credit or surety bond with director; amount.** (1) Except as provided in subsection (4) of this section, no person other than a trust company shall transact a trust business in this state. Except as provided in subsection (4) of this section, before a person transacts any trust business in this state, the person shall obtain the approval of the Director of the Department of Consumer and Business Services if required under ORS 709.005 and shall deposit with the director, as security and as a pledge for the faithful conduct of its trust business:

(a) Cash or interest-bearing securities that have a ready market value;

(b) A surety bond issued by a surety company authorized to transact business in this state and in a form approved by the director, under which the principal and surety indemnify the several owners of the fund held in trust against loss due to the failure of the trust company;

(c) An irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008; or

(d) Any combination of cash, letters of credit, interest-bearing securities and surety bond.

(2) If the cash and securities held in trust amount to less than \$1 million, the deposit,

bond, letters of credit or combination thereof shall be \$50,000. If the cash and securities held in trust amount to at least \$1 million but do not exceed \$1.5 million, the deposit, bond, letters of credit or combination thereof shall be \$100,000. For each \$500,000 or fraction thereof in excess of \$1.5 million held in trust, the deposit, bond, or letters of credit or combination thereof shall be increased an additional \$25,000, except a trust company shall not be required to increase the deposit, bond, letters of credit or combination thereof to an amount in excess of \$1 million.

(3) The securities shall be deposited with the director and held by the director as trustee for the beneficiaries of the trust funds held by the trust company.

(4) A person shall not be required to be a trust company if the person:

(a) Does not and will not regularly transact trust business in the ordinary course of the person's business;

(b) Acts in a manner authorized by law and in the scope of authority as an agent of a trust company;

(c) Is an attorney rendering a service customarily performed by an attorney;

(d) Is acting as trustee under a deed of trust;

(e) Is a licensed real estate broker or principal real estate broker rendering a service customarily performed by a broker;

(f) Is a licensed escrow agent rendering a service customarily performed by an escrow agent; or

(g) Is exempt from the provisions of subsection (1) of this section by rule of the director. [Amended by 1957 c.82 §1; 1967 c.139 §1; 1973 c.797 §183a; 1979 c.88 §12; 1981 c.192 §14; 1985 c.800 §1; 1991 c.331 §114; 1997 c.631 §203; 2001 c.300 §81; 2007 c.71 §228]

#### **709.040 Securities eligible for deposit.**

The securities mentioned in ORS 709.030 may only be of the following classes:

(1) Interest-bearing bonds, notes or obligations of the United States including those of its agencies and instrumentalities, or bonds, notes or obligations for which the faith of the United States is pledged for the payment of the principal and interest.

(2) Bonds or other obligations of the State of Oregon, any county of this state or any incorporated city, town or school or port district of this state having a population of not less than 2,000 as shown by the last federal census, or bonds of any other state, any county, incorporated city, town or school or port district therein having a population of not less than 25,000, as shown by the last federal census, if:

(a) The bonds or obligations are issued in compliance with the constitution and laws of the applicable state;

(b) The bonds or obligations are a general obligation of the state, city, town or school or port district issuing the bonds; and

(c) There has been no default in payment of either principal or interest on any of the general obligations of the state, county, incorporated city, town or school or port district for a period of five years preceding the date of the deposit.

(3) Notes or bonds secured by first liens upon improved real estate in this state or any other state if the obligation, plus taxes not due and bonded indebtedness for public improvements not due, do not exceed 50 percent of the reasonable market value of the real estate. The trust company shall file in support of a real estate obligation, such appraisal, evidence of merchantable title and insurance as may be required by the Director of the Department of Consumer and Business Services. [Amended by 1973 c.797 §184; 1997 c.631 §204]

**709.050 Trust companies depositing securities guaranteed by mortgage insurance and mortgage participation certificates.** A trust company authorized to do a trust business in this state which is required to make any deposit of securities with any public official in order to do business in this state may deposit:

(1) Notes or bonds secured by mortgages or deeds of trust, payment of which are guaranteed by policies of mortgage insurance; and

(2) Mortgage participation certificates issued by a mortgage insurance company authorized to do business in this state in accordance with ORS 742.282 and 742.284. [Amended by 1967 c.359 §703; 1973 c.797 §185; 1997 c.631 §205]

#### **709.060 Primary liability of deposit.**

The deposit mentioned in ORS 709.030 is primarily liable for the malfeasance of a trust company as a fiduciary and is not liable for any debt or other obligation of the company until such malfeasance liability has been discharged. [Amended by 1973 c.797 §186; 1997 c.631 §206]

**709.070 Right of action against deposit.** A person who suffers loss or damage because of the breach of any trust committed to a trust company may recover the amount of the loss or damage out of the moneys or securities deposited under ORS 709.030 with the director by the trust company. [Amended by 1973 c.797 §187; 1997 c.631 §207]

**709.080 Charges for handling securities; collection procedure.** (1) The Director of the Department of Consumer and Business

Services may charge a reasonable amount for any expenses incurred and services rendered in connection with deposits of securities.

(2) If a trust company does not, after due notice, pay to the director any charge assessed against it under this section, the director may:

(a) Apply in payment of the charges, with interest at the legal rate, as much as necessary of the interest or other earnings accruing on any securities deposited with the director; or

(b) Report the facts to the Attorney General, who shall, in the name of the director, institute appropriate action against the trust company. [Amended by 1973 c.797 §188; 1997 c.631 §208]

**709.090** [Repealed by 1973 c.797 §428]

**709.100** [Repealed by 1973 c.797 §428]

**709.110 Deposit of documents with notes or bonds.** All mortgages or deeds of trust and all insurance policies, abstracts of title, certificates of title or title insurance policies and appraisements required by the Director of the Department of Consumer and Business Services under ORS 709.040 (3) shall be deposited with the notes or bonds. When less than the whole of a bond issue is deposited, the director shall not require the deposit of the abstract of title, certificates of title or title insurance policies and appraisements, but may require a certificate from the trustee of the mortgage or bond issue that the documents have been deposited with the trustee. [Amended by 1973 c.797 §189]

**709.120 Substitution of deposit securities; income of securities deposited.** (1) The Director of the Department of Consumer and Business Services may require the immediate substitution of other securities when the director has reason to believe that the market value of securities which have been deposited under ORS 709.030 have depreciated below the amount required under ORS 709.030. Substitution of securities with the director at the request of the depositing trust company may be permitted if approved by the director.

(2) All interest, income or dividends from all securities deposited with the director belong to the depositing trust company, and if the trust company is solvent, it may receive and retain the interest, income or dividends. [Amended by 1973 c.797 §190; 1997 c.631 §209]

**709.130 Indemnity bond when cash and securities of one trust exceed stockholders' equity of trust company.** If the cash and securities belonging to any single fiduciary account exceed the amount of the trust company's stockholders' equity, the court appointing the trust company to the

position of trust may require an indemnity bond from the trust company for the amount of cash and securities exceeding stockholders' equity. [Amended by 1973 c.797 §191; 1999 c.59 §219]

**709.140 Return of deposit; liability of state.** The State of Oregon is liable for the return of any funds or securities deposited in accordance with ORS 709.030. [Amended by 1973 c.797 §192]

**709.145 Investment of capital.** The capital of a trust company may be invested in the securities specified in ORS 709.040. [1973 c.797 §193]

## GENERAL POWERS

**709.150 General powers of trust companies.** A trust company may:

(1) Act as fiscal or transfer agent of the United States or of any state, county, municipality, political subdivision or corporation, and in that capacity receive and disburse money; transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness; authenticate and certify the bonds and certificates of indebtedness, and act as attorney-in-fact or agent of a person for any lawful purpose.

(2) Lease, hold, purchase and convey any real property necessary or convenient in the transaction of its business.

(3) Receive deposits of moneys, securities and other personal property in trust from any person and loan trust funds on real or personal securities.

(4) Act as trustee under any mortgage or bonds and accept and execute any lawful municipal or corporate trusts.

(5) Be appointed by a court and act as a fiduciary.

(6) Accept and execute any lawful trust.

(7) Rent receptacles for safe deposits of personal property and receive personal property upon deposit for safekeeping.

(8) Purchase, invest in and sell bills of exchange, bonds and mortgages, and other evidences of indebtedness.

(9) In the management of trust properties, discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, and accept for payment at a future date drafts drawn upon it and issue letters of credit authorizing the holders to draw drafts upon it or its correspondents at sight or on time, not exceeding one year.

(10) Exercise all other powers given to trust companies under the Bank Act. [Amended by 1961 c.344 §106; 1973 c.797 §194; 1973 c.823 §141; 1974 c.36 §24; 1997 c.631 §210]

**709.160 Solicitation and performance of legal business.** (1) A trust company shall not advertise to furnish or furnish to the public legal advice or hold itself out as practicing law.

(2) A trust company that violates subsection (1) of this section is ineligible for one year thereafter to be judicially appointed as a fiduciary in this state. [Amended by 1973 c.797 §195; 1975 c.544 §28; 1997 c.631 §211]

**709.170 Establishment of and investment in common trust funds; rules; accounting.** (1) "Common trust fund" as used in this section, means any fund maintained by a trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the trust company or an affiliated trust company as a fiduciary. For the purposes of this section, two or more trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the Internal Revenue Code.

(2) A trust company may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, to an affiliated trust company as fiduciary, or to itself or an affiliated trust company and others as cofiduciaries. A trust company may, as a fiduciary or cofiduciary, invest funds that it lawfully holds for investment, in interests in the common trust fund or a common trust fund of an affiliated trust company, if the investment is not prohibited by the instrument, judgment or order creating the fiduciary relationship, and if, in the case of cofiduciaries, the trust company procures the consent of its cofiduciary or cofiduciaries to the investment.

(3) The Director of the Department of Consumer and Business Services, in accordance with ORS chapter 183, may adopt rules necessary to control the establishment and operation of common trust funds and to protect the investors. A trust company except a national bank that is qualified to conduct a trust business pursuant to the laws of the United States shall, in the operation of the common trust fund, comply with the rules.

(4) Unless ordered by a court a trust company operating common trust funds is not required to render a court accounting with respect to the funds, but it may, upon application to the circuit court of the county in which it has its principal office in this state, obtain a settlement of its common trust fund accounts on conditions specified by the court. When application for the settlement is presented to a circuit court for approval, the circuit court shall assign a time and place for hearing and order notice thereof by:

(a) Publication once a week for three successive publications, the first publication to be not less than 20 days prior to the date of hearing, of a notice in a newspaper having a general circulation in the county in which the trust company operating the common trust fund has its principal office;

(b) Mailing, not less than 14 days prior to the date of the hearing, a copy of the notice to all beneficiaries of the trusts participating in the common trust fund whose names are known to the trust company from the records kept by it in the regular course of business in the administration of the trust, directed to them at the addresses shown by the records; and

(c) Such further notice, if any, as the court may order. [Amended by 1953 c.258 §2; 1959 c.91 §1; 1963 c.56 §1; 1973 c.797 §196; 1973 c.823 §142; 1974 c.36 §25; 1983 c.367 §3; 1985 c.762 §41; 1997 c.631 §212; 2003 c.576 §546]

**709.175 Limitation on investment of trust funds; exceptions.** (1) Except as provided in ORS 709.220, subsection (2) of this section, or as lawfully authorized by the instrument creating the trust relationship or by court order, funds held by a trust company as fiduciary shall not be invested in stock or obligations of, or property acquired from:

(a) The trust company or its directors, officers or employees;

(b) Individuals connected to the trust company or its directors, officers or employees;

(c) Organizations in which the trust company or its directors, officers or employees hold an interest;

(d) Affiliates of the trust company or their directors, officers or employees;

(e) Individuals with whom there exists an interest that might affect the exercise of the best judgment of the trust company in making the investment or acquiring the property; or

(f) Organizations in which there exists an interest which might affect the exercise of the best judgment of the trust company in making the investment or acquiring the property.

(2) Subsection (1) of this section shall not apply if the trust company invests funds held by it as fiduciary in any open-end or closed-end management type investment company or investment trust for which the trust company, or an affiliate of the trust company, acts as investment advisor or custodian or provides other services, for which services the trust company and its affiliates may receive reasonable fees.

(3) For the purposes of this section, companies are affiliated if they are members of the same affiliated group under Section 1504 of the Internal Revenue Code. [1989 c.604 §3; 1991 c.353 §1; 1997 c.631 §213]

**709.180** [Repealed by 1973 c.797 §428]

**709.190 Trust department kept separate; records of securities; retention of records.** (1) Each banking institution and each non-Oregon institution authorized to transact a trust business in this state shall establish and maintain in its office a trust department, in which separate books and accounts shall be maintained. All property of the trust department shall be segregated from and unmingled with other property.

(2) The books and accounts of the trust department shall show the ownership of all moneys, funds, investments and property held by the trust department. Securities may be kept by the trust department in either of the following ways:

(a) All certificates representing the securities of an account may be held separate from those of all other accounts; or

(b) Certificates representing securities of the same class of the same issuer held for particular accounts may be held in bulk without certification as to ownership attached and, to the extent feasible, certificates of small denomination may be merged into one or more certificates of larger denomination. Upon demand by any person to whom it has a duty to account, a trust department shall certify in writing the securities held by it for an account. A trust department, if operating under the method of safekeeping security certificates described in this paragraph, is subject to such rules as may be issued by:

(A) In the case of a banking institution, the Director of the Department of Consumer and Business Services;

(B) In the case of an out-of-state bank, the appropriate state supervisor;

(C) In the case of an extranational institution, the official charged with supervising the extranational institution in the country under the laws of which it was organized; or

(D) In the case of a national bank, the Comptroller of the Currency.

(3) All records shall be kept and retained for such time as to enable the banking institution or non-Oregon institution to furnish information or reports with respect to the records that may be required by the director or other regulator specified in subsection (2)(b) of this section. The records shall contain full information relative to each account and nothing contained in this subsection shall require a banking institution or non-Oregon institution to maintain the records

required by this section in any given manner, provided that the information required is clearly and accurately reflected and provides an adequate basis for the audit of the information.

(4) A banking institution transacting trust business in this state shall retain the records required by this section for a period of three years from the termination of the relationship to which the records relate. A non-Oregon institution or federal bank transacting trust business in this state shall retain such records pertaining to the trust business transacted by it for such periods of time as may be required by applicable laws of the jurisdiction under which the non-Oregon institution or federal bank is organized, or if the applicable laws of the jurisdiction do not specify a period for retaining the records, the non-Oregon institution or federal bank shall retain the records required by this section for a period of three years. The records shall be available for examination by the director or, in the case of:

(a) Federal banks, the Comptroller of the Currency or other federal supervisor;

(b) Out-of-state banks and out-of-state trust companies, the appropriate state supervisor; or

(c) Extranational institutions, the official charged with supervising the extranational institution in the country under the laws of which it was organized. [Amended by 1971 c.263 §1; 1973 c.797 §197; 1975 c.544 §29; 1985 c.762 §42; 1991 c.336 §1; 1997 c.631 §214]

**709.200 Acquisition or investment of trust property in own name or name of nominee.** (1) In the acquisition or investment of trust property, a trust company may take in its own name, or in the name of its nominee, any assets in which it may be authorized to invest or hold trust property.

(2) Upon the satisfaction, conveyance or investment of trust property, whether the trust property is held in the name of the trust company, individually, or in its name as trustee or in a specified fiduciary capacity or otherwise, the instrument of satisfaction or transfer may be executed by the trust company in its own name. [Amended by 1973 c.797 §198; 1997 c.631 §215]

**709.210 Disclosure of fiduciary character or terms of trust instrument.** In acquiring, holding, satisfying and conveying trust property, a trust company is not required to disclose that it is acting in a fiduciary capacity, the terms or conditions of the instrument under which it acts, the nature or extent of its authority or the application of the proceeds of the transaction. A person dealing with a trust company may not inquire into the matters, except to the

extent specified in ORS 709.270. [Amended by 1973 c.797 §199]

**709.220 Handling of funds awaiting investment or distribution; security for use of funds.** (1) Funds placed or held in trust by a trust company awaiting investment or distribution shall not be held uninvested or undistributed for a longer period than is reasonable for the proper management of the account, shall be carried in a separate account and shall not be used by the trust company, bank or extranational institution in the conduct of its business or in the conduct of the business of any of its affiliates, except that such funds may be deposited in the commercial or savings or other department of the trust company, bank or extranational institution if the trust company, bank or extranational institution first obtains and sets aside in its trust department:

(a) Bonds or other securities eligible for the investment of trust funds;

(b) A surety bond;

(c) An irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008; or

(d) A combination of the securities, letters of credit and surety bond.

(2) The surety bond shall be issued by a surety company authorized to transact business in this state and approved by the Director of the Department of Consumer and Business Services. The bond or letter of credit shall provide that the principal and surety or letter of credit issuer shall indemnify the several owners of the funds held in trust against loss due to the failure of the trust company, bank or extranational institution.

(3) Notwithstanding the provisions of ORS 708A.415, the securities, the surety bond, the letter of credit or the securities, the surety bond and the letters of credit together shall be in an amount equal to the portion of the trust funds not insured by the United States Government or any agency or instrumentality of the United States.

(4) If the trust company, bank or extranational institution fails, the owners of the funds held in trust for investment or distribution have a lien on the bonds or other securities set apart, or a right of action on the surety bond and upon the letter of credit, in addition to their claim against the estate of the trust company, bank or extranational institution. [Amended by 1957 c.82 §2; 1973 c.797 §200; 1975 c.544 §29d; 1983 c.296 §5a; 1987 c.216 §5; 1991 c.331 §115; 1997 c.631 §216]

**709.230** [Amended by 1961 c.344 §107; repealed by 1973 c.797 §428; amended by 1973 c.823 §143; amendment treated as reenactment, see 709.231]

**709.231** [1973 c.823 §143 amending 709.230 treated as reenactment of 709.230 repealed by 1973 c.797 §428; repealed by 1974 c.36 §28]

**709.240 Oath and bond exemption for trust company appointed as fiduciary.** An official oath or indemnity bond or other security shall not be required when a trust company is appointed as fiduciary or during the administration of the trust except as required by ORS 709.030 and 709.130. [Amended by 1973 c.797 §201; 1973 c.823 §144; 1974 c.36 §26]

**709.250** [Repealed by 1973 c.797 §428; amended by 1973 c.823 §145; amendment treated as reenactment, see 709.251]

**709.251** [1973 c.823 §145 amending 709.250 treated as reenactment of 709.250 repealed by 1973 c.797 §428; repealed by 1974 c.36 §28]

**709.260** [Repealed by 1973 c.797 §428]

**709.270 Disclosure of communications and writings.** A trust company shall, except as otherwise provided in this section, keep inviolate all communications and writings made to or by the trustees touching the existence, condition, management and administration of any private trust confided to it. A creditor or stockholder is not entitled to disclosure or knowledge of the communication or writing. However, the officers, manager, trust officer, secretary or attorney of the trust company may know of the communication or writing. In any suit or proceeding touching the existence, condition, management or administration of the trust, the court in which the matter is pending may require disclosure of the communication or writing. [Amended by 1973 c.797 §202; 1997 c.631 §217]

**709.280 Loans to directors, officers, employees or affiliates.** (1) A trust company shall not make any loan to any director, officer or employee of the trust company or to any affiliate or any director, officer or employee of an affiliate from its trust funds, and shall not permit any director, officer, employee or affiliate to become indebted to it in any way out of its trust funds, unless specifically authorized to do so by the terms of the trust.

(2) An officer, director or employee of a trust company shall not knowingly violate any provision of this section, or aid or abet any other person in a violation.

(3) This section shall not prevent the maintenance by a trust company of time or demand deposits of its trust funds in an affiliate that is a bank or extranational institution, provided that the bank or extranational institution complies with the requirements of ORS 709.220 pertaining to obtaining and setting aside bonds, surety bonds and other securities in an amount equal to the portion of the trust funds not insured by the Federal Deposit Insurance Corporation. [Amended by 1973 c.797 §203; 1975 c.544 §29e; 1983 c.296 §5b; 1997 c.631 §218]

**709.290 Closing of trust unduly delayed.** If, as a result of an examination, the Director of the Department of Consumer and Business Services finds that the closing of any trust by a trust company has been unreasonably delayed, the director may initiate proceedings in a court of competent jurisdiction to require the trust company to perform its duties in closing the trust. [Amended by 1973 c.797 §204]

**709.300 Transaction of trust business by national bank.** (1) A national bank authorized to conduct a trust business that has complied with the applicable provisions of this chapter may transact trust business in all respects, as provided by applicable laws of the United States and rules and regulations promulgated pursuant thereto. All acts provided in the Bank Act to be performed by the State Treasurer, the Director of the Department of Consumer and Business Services or other public officials for or in respect to trust companies, shall be performed for national banks equally with trust companies.

(2) Every national bank that is authorized to transact trust business and that has qualified by making the deposit of securities required under ORS 709.030, may:

(a) Act or be appointed by any court to act in any fiduciary capacity to the same extent as any trust company;

(b) Use the word "trust" in its corporate name; and

(c) Advertise its authority to act in fiduciary capacities. [Amended by 1963 c.55 §1; 1965 c.170 §1; 1973 c.797 §205; 1997 c.631 §219]

**709.310** [Amended by 1963 c.55 §2; repealed by 1973 c.797 §428]

**709.320** [Repealed by 1973 c.797 §428]

**709.330 Sale or transfer of assets or liabilities; effect on fiduciary relations.** (1) When a sale or transfer of assets or liabilities becomes effective, the purchasing corporation shall succeed to all the rights, obligations and relations of the selling corporation to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust and in respect to any fiduciary relation, and the rights, obligations and relations shall remain unencumbered.

(2) The sale or transfer of assets shall not effect a renunciation or revocation of any letters of administration, letters testamentary, letters of guardianship or any other fiduciary relationship.

(3) If any trust requires the approval of the court to a change of the fiduciary, within 90 days after the change becomes effective the successor fiduciary shall file notice of the change with the court having jurisdiction and serve notice of the change upon each

beneficiary. The notice may be served in the manner provided in ORCP 9 or, if the residence of a beneficiary is not known, notice may be published in the manner provided for the publication of summons.

(4) A beneficiary or other person interested in the trust or estate may, within 90 days after the service of the notice, apply to the appropriate court for a change of fiduciary or such other relief as may be proper. [Amended by 1973 c.797 §206; 1979 c.284 §195; 1997 c.631 §219a]

**709.335 Digital signatures.** A trust company may conduct transactions using digital signatures and issue certificates for the purpose of verifying digital signatures. [1997 c.631 §234a; 1999 c.718 §3; 2001 c.535 §35; 2005 c.118 §5]

## TERMINATION OF TRUST BUSINESS

**709.340 Trust company quitting business; examination.** A trust company quitting business shall furnish to the Director of the Department of Consumer and Business Services satisfactory evidence of its release and discharge from all obligations and trusts provided for in the Bank Act. The director shall examine the trust company, and, if the director is satisfied after the examination that the trust company has discharged all its obligations and trusts, the director shall revoke its certificate of authority and deliver up all securities on deposit with the director under ORS 709.030. [Amended by 1973 c.797 §207]

**709.350 Successor trustee upon liquidation or receivership; appointment and qualification; petition by director; applicability of state laws.** (1) If a trust company goes into voluntary or involuntary liquidation or receivership, the appointment of a successor trustee for the trust shall be handled by the court hearing the liquidation proceedings upon petition by the Director of the Department of Consumer and Business Services, the trust company, any interested person or, in the case of a federal bank or extranational institution, by its receiver or liquidating agent.

(2) Upon the filing of the petition, the court shall order all persons interested in any trust to designate and take all necessary steps to appoint a successor trustee within a time fixed in the order, or to show cause why a successor trustee should not be appointed by the court. The order may be general in its terms and need not designate the trusts involved or the nature, purpose or extent of the trusts, or give the name of any of the beneficiaries or interested persons.

(3) In a trust where those interested in the trust fail to cause a successor trustee to be appointed prior to the time fixed in the

order, the court shall appoint a successor trustee.

(4) The successor trustee shall succeed to all the rights, powers, and obligations of the trust company in liquidation, except claims or liabilities arising out of the management of trusts prior to the date of transfer.

(5) A copy of the order provided for in subsection (2) of this section shall be published once a week for four successive weeks in a newspaper of general circulation to be designated by the court and published in the county in which the liquidation proceedings of the trust company are carried on. If there is no newspaper published in the county, or if the court conducting the liquidation proceedings is located outside this state, publication shall be made in a newspaper of general circulation in the State of Oregon designated by the court. Proof of publication shall be made in the same manner as proof of publication of summons is made.

(6) The filing of the petition and the making and entering of the order and the publishing of a copy of the order, gives the court full jurisdiction of the trusts and all parties interested in the trusts. A court having jurisdiction shall require the director to mail, by registered mail or by certified mail with return receipt, postage prepaid, a copy of the order to each living trustor of all private trusts in which the trust company is trustee or to the then directly participating beneficiaries of all private trusts in which there is no living trustor. The notice shall be mailed to the last-known address of each trustor or participating beneficiary as shown by the records of the trust company. Proof of mailing shall be in such form as the court may require. Failure to mail the notice or the nonreceipt of the notice by any trustor or participating beneficiary shall not affect the jurisdiction of the court or invalidate any order or judgment made in the proceedings.

(7) It is unnecessary to require the appearance of minors or other incompetents by guardians ad litem or otherwise.

(8) The provisions of subsections (2) to (6) of this section shall apply only to trust companies that are organized under the laws of this state and to trust companies that are the trust departments of banks having their principal places of business in this state. If any other trust company goes into voluntary or involuntary liquidation or receivership, the proceedings shall be governed by the laws of the state or country in which the proceedings are initiated. The director and any other interested person may participate in the proceedings. Any successor trustee appointed pursuant to the proceedings shall succeed to all the rights, powers and obligations of the trust company, except claims

or liabilities arising out of the management of trusts prior to the date of transfer. [Amended by 1973 c.797 §208; 1991 c.249 §64; 1997 c.631 §220; 2003 c.576 §547]

**709.360** [Repealed by 1973 c.797 §428]

**709.370** [Repealed by 1973 c.797 §428]

**709.380** [Repealed by 1973 c.797 §428]

**709.390 Discontinuance of trust business; determination of claims against deposit of securities.** (1) If a trust company discontinues its trust business, the Director of the Department of Consumer and Business Services shall file in the circuit court for the county in which the principal place of business of the trust company is located a verified petition:

(a) Stating that the trust company is closing, dissolving or transferring its trust business or is in process of voluntary or involuntary liquidation.

(b) Requesting that claims, if any, against the deposit made under ORS 709.030 by the trust company with the director be determined.

(2) Notwithstanding the provisions of subsection (1) of this section, if proceedings for the liquidation of the trust company have been commenced in a court located in a county or state other than the county in this state in which the trust company has its principal place of business, the director shall file the verified petition described in subsection (1) of this section in the court where the proceedings have been commenced. [Amended by 1957 c.115 §1; 1973 c.797 §209; 1997 c.631 §221]

**709.400 Order to start court action; publication of order; jurisdiction over securities; notice to trustor; applicability of state laws.** (1) Upon the filing of the petition under ORS 709.390, the court shall make an order requiring all persons having claims against the deposits to start action in the circuit court hearing the petition of the Director of the Department of Consumer and Business Services within six months after the date of the order. Any claim not filed within the six-month period is barred. The petition or the order need not give the names of any beneficiary or the nature of the trusts protected by the deposit.

(2) A copy of the order shall be published in a newspaper designated by the court, having a general circulation in the county of the principal place of business of the trust company at least once a week for as many consecutive weeks as the court orders, but not less than four weeks nor more than 12 weeks. If a newspaper is not published in the county, the copy of the order shall be published in a newspaper of general circulation in the State of Oregon designated by the court. Proof of publication shall be made in the same manner as proof of publication of

summons is made and the proof shall be filed with the clerk of the court.

(3) The filing of the petition, under ORS 709.390, and the making and entering of the order and the publishing of a copy of the order under this section gives the court exclusive jurisdiction of deposited securities and of all parties having an interest in or claim upon the securities.

(4) A court shall require the director to mail, by certified mail with return receipt, postage prepaid, a copy of the order to each living trustor of all private trusts in which the trust company is trustee and which have not been closed or to the directly participating beneficiaries of all private trusts in which there is no living trustor. The notice shall be mailed to the last-known address of each trustor or participating beneficiary as shown by the records of the trust company. Proof of mailing shall be in the form required by the court. Failure to mail the notice or the nonreceipt of the notice by any trustor or participating beneficiary shall not affect the jurisdiction of the court or invalidate any order or judgment made in the proceedings.

(5) The appearance of minors or other incompetents by guardians ad litem or otherwise is not necessary.

(6) The provisions of subsections (1) to (4) of this section shall apply only to trust companies that are organized under the laws of this state and to trust companies that are the trust departments of banks having their principal places of business in this state. If a petition is filed under ORS 709.390 (2), the proceedings shall be governed by the laws of the state or country in which the petition is filed. A copy of any court order requiring persons having claims against the deposits made by the trust company under ORS 709.030 to bring their claims within a specified period of time shall be published in a newspaper of general circulation in the State of Oregon. The director shall mail, by certified mail with return receipt, postage prepaid, a copy of the order to each trustor living in this state of a private trust in which the trust company is trustee and which has not been closed, and to the directly participating beneficiaries who reside in this state of any private trust in which there is no trustor living in Oregon. The notice shall be mailed to the last known address of each such trustor or participating beneficiary as shown by the records of the trust company. Proof of mailing shall be in the form required by the court. Failure to mail the notice or the nonreceipt of notice by any trustor or participating beneficiary shall not affect the jurisdiction of the court or invalidate any order or judgment made in

the proceedings. [Amended by 1973 c.797 §210; 1979 c.284 §196; 1991 c.249 §65; 1997 c.631 §222]

**709.410 Termination of right to do trust business.** The filing by the Director of the Department of Consumer and Business Services of the petition provided for in ORS 709.390 terminates the right of the trust company affected thereby to do a trust business in this state, except as may be necessary to wind up then existing trusts. [Amended by 1973 c.797 §211; 1997 c.631 §223]

**709.420 Actions or suits on claims; service of summons; preference on calendar.** (1) In all actions to determine claims to the deposits, the Director of the Department of Consumer and Business Services shall be a necessary party defendant.

(2) An action shall not be considered to have begun within the time required by the order unless, in the case of defendants within the state, summons is actually served within 60 days after the time limited in the order.

(3) Actions filed to determine claims to the deposits shall have preference upon the calendar of any Oregon trial or appellate court and shall be tried by such courts without unnecessary delay. [Amended by 1973 c.797 §212; 1997 c.631 §224]

**709.430 Release or payment of deposit pending suit; distribution of deposits upon determination of suit.** (1) If any actions on claims against the deposit mentioned in ORS 709.390 are begun within the six-month period, the Director of the Department of Consumer and Business Services shall not release and the court shall not order the payment of any part of the deposit until all actions are determined by final judgment.

(2) When all actions on claims against the deposit are finally determined, so much of the deposit as is necessary shall be paid to the claimants who have established their claims in the sums allowed by the court or, if not sufficient, the deposit shall be distributed pro rata among the claimants establishing their claims.

(3) The court, in the proceeding initiated by the director, shall enter a judgment providing that the balance of the deposit be paid to the trust company or if the trust company is in the process of liquidation, to the official in charge of the liquidation. [Amended by 1973 c.797 §213; 1997 c.631 §225; 2003 c.576 §548]

**709.440 Director's charges as prior lien on deposit.** All unpaid charges owing to the Director of the Department of Consumer and Business Services for expenses and services rendered under ORS 709.080 in connection with the deposit mentioned in ORS 709.030, and all expenses incurred by the director, including services rendered by

the director, attorney fees and necessary court expenses in connection with the determination of claims against the deposit, are a first and prior lien on the deposit, and shall be paid before any part of the deposit is released or paid to any claimant or trust company. [Amended by 1973 c.797 §214; 1997 c.631 §226]

**709.450 Sale and disposition of securities to pay expenses, costs and claims.** The court hearing the proceedings instituted by the Director of the Department of Consumer and Business Services under ORS 709.390 may, upon terms fixed by the court, order the director to sell and reduce to cash the deposited securities as necessary to pay:

(1) The unpaid charges and expenses described in ORS 709.440; and

(2) Claims established against the deposit. [Amended by 1973 c.797 §215]

**709.460 Application of ORS 709.390 to 709.450 to merger or consolidation; return of security deposit after merger or consolidation.** (1) ORS 709.390 to 709.450 do not apply to a merger or consolidation of a trust company with another trust company authorized to conduct a trust business whereby the security deposits and the trust business of the retiring trust company are acquired by the resulting trust company.

(2) Immediately following the completion of a merger or consolidation described in subsection (1) of this section, the Director of the Department of Consumer and Business Services, upon written application of the resulting trust company, shall return to the resulting trust company that portion of the combined security deposits of the trust companies involved in the merger or consolidation which exceeds the deposit required by ORS 709.030 for the combined cash and securities held in trust by the resulting trust company following the merger or consolidation. [Amended by 1957 c.115 §2; 1973 c.797 §216; 1997 c.631 §227]

**709.500** [Formerly 57.830; renumbered 709.600 in 1997]

## CONVERSION, MERGER AND ACQUISITION

**709.520 Conversion to out-of-state trust company; conversion to Oregon trust company; procedures.** (1) An Oregon trust company may convert into an out-of-state trust company subject to the prior approval of the supervisory authority having jurisdiction over the proposed resulting trust company. Upon completion of such a conversion, the Oregon charter shall terminate, except for the purposes specified in ORS 711.190.

(2) An out-of-state trust company that follows the procedures prescribed by the su-

perisory authority having jurisdiction over the converting out-of-state trust company shall be granted a charter as an Oregon trust company by the Director of the Department of Consumer and Business Services if the director finds that the converting trust company meets the standards of the Bank Act for organization as an Oregon trust company. An out-of-state trust company may apply to convert to an Oregon trust company and obtain a charter as an Oregon trust company by filing with the director:

(a) A certificate signed by the chief executive officer of the converting out-of-state trust company certifying that the board of directors has taken all necessary corporate action in compliance with the provisions of the laws of the supervisory authority having jurisdiction over the converting out-of-state trust company.

(b) The articles of incorporation, approved by a majority of the stockholders of the converting out-of-state trust company, for the operation of the out-of-state trust company as an Oregon trust company. [1997 c.631 §230]

**709.525 Merger or acquisition; procedures.** An Oregon trust company may merge with or have its outstanding shares acquired by any other trust company if the merger or acquisition of shares is permitted by the laws of the jurisdiction having supervisory authority over the resulting trust company. An Oregon trust company that merges with or engages in a share exchange with another trust company shall follow the procedures set forth in ORS 711.130 to 711.145. [1997 c.631 §231]

**709.530 Applicability of ORS 711.190, 711.197 and 711.199 to merging or converting trust company.** ORS 711.190, 711.197 and 711.199 shall be applicable to a merging or converting Oregon trust company. [1997 c.631 §232]

**709.535 Sale of assets or transfer of liabilities; approval by stockholders and director; appeal.** (1) Subject to the provisions of this section, and subject to the approval of the Director of the Department of Consumer and Business Services, an Oregon trust company may sell all or any portion of its assets or transfer all or any portion of its liabilities to another trust company outside the ordinary course of business. Any such sale or transfer shall be documented by an acquisition transaction agreement between or among the parties. The agreement must be approved by the board of directors of each party to the transaction.

(2) If an Oregon trust company proposes to transfer all or substantially all of its assets, liabilities or both outside the ordinary

course of business, it shall send notice of the acquisition transaction to each of its stockholders within 30 days after its board approves the acquisition transaction. The notice shall set forth the substantive provisions of ORS 711.175, 711.180 and 711.185. To be effective, each Oregon trust company that is a party to the acquisition transaction shall have the acquisition transaction approved by a two-thirds vote of the outstanding stock of each class of voting shares at a meeting called to consider the acquisition transaction.

(3) The director shall approve an acquisition transaction that is subject to this section if the director finds that the acquisition transaction:

(a) Conforms with the provisions of the Bank Act;

(b) Will not be detrimental to the safety and soundness of an Oregon trust company that is a party to the acquisition transaction;

(c) Is not contrary to the public interest; and

(d) If the acquiring trust company is not an Oregon trust company, the director is satisfied that the acquisition transaction is permitted by the supervisory authority, if any, having jurisdiction over the acquiring trust company.

(4) If the director disapproves an acquisition transaction that is subject to this section, the director shall state any objections in writing and give the parties to the acquisition transaction an opportunity to take action to obviate the objections.

(5) Any party to an acquisition transaction agreement may appeal the decision of the director as provided in ORS 183.415 to 183.500. [1997 c.631 §233; 2007 c.71 §229]

**709.540 Rights of stockholder of trust company party to merger, share exchange or acquisition.** A stockholder of an Oregon trust company that is a party to a merger, share exchange or acquisition transaction shall have the rights granted stock-

holders of Oregon stock banks under ORS 711.175, 711.180 and 711.185. [1997 c.631 §234]

#### MISCELLANEOUS

**709.600 Regulation of trust business by corporations formed prior to adoption of Bank Act; regulation of other business.** (1) Trust business done by corporations created prior to the adoption of the Bank Act (General Laws 1925, chapter 207) shall be subject to regulation by the Director of the Department of Consumer and Business Services and such corporations engaged in trust business are subject to the provisions, including the filing and fee requirements, of ORS chapters 706 to 716.

(2) If a corporation subject to subsection (1) of this section also carries on business other than a trust business, the Corporation Commissioner may retain a copy of the articles of incorporation and other filings. As provided in ORS 60.957, such corporations also shall continue to be subject to the provisions, including the filing and fee requirements, of ORS chapter 60. [Formerly 709.500]

#### PENALTIES

**709.980 Civil penalties.** (1) Any person who violates ORS 709.270 or 709.280 or any rule adopted under ORS 709.170 (3) shall forfeit a civil penalty in an amount determined by the director of not more than \$2,500 for each offense.

(2) All money forfeited under this section shall be paid to the State Treasurer to be deposited in the Consumer and Business Services Fund.

(3) The civil penalty may be recovered as provided in ORS 706.980. [1975 c.544 §29c]

**709.990** [Repealed by 1973 c.797 §428]

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#### CHAPTER 710

[Reserved for expansion]