

Chapter 30B.24 RCW
STATE TRUST COMPANIES—PRUDENTIAL FIDUCIARY STANDARDS

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RCW 30B.24.005 Prudential fiduciary standards. (1) Except to the extent federal preemption of state law is applicable in relation to trusts governed under the federal employment retirement income security act, a state trust company shall comply with all applicable provisions of this title and with applicable provisions of Title 11 RCW including, without limitation, chapters 11.97, 11.98, *11.98A, 11.100, 11.102, 11.104B, 11.106, 11.107, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a charitable trust.

(2) The director has broad administrative authority to establish by rule or interpretation principles-based standards for examination, supervision, and enforcement of a state trust company by the department in relation to compliance with this title, including subsection (1) of this section.

(3) A state bank, in relation to its trust department and its exercise of trust powers, shall comply with:

(a) Title 30A RCW, if a state commercial bank, and Title 32 RCW, if a state savings bank;

(b) The applicable provisions of Title 11 RCW including, without limitation, chapters 11.97, 11.98, *11.98A, 11.100, 11.102, 11.104B, 11.106, 11.107, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a charitable trust;

(c) If the state bank is federally insured, any applicable rules and guidance of the federal deposit insurance corporation or other applicable federal law or regulation related to such state bank's exercise of trust powers; and

(d) If the state bank is a member of the federal reserve system, any rules and guidance of the board of governors of the federal reserve system related to such state bank's exercise of trust powers. [2021 c 140 s 2804; 2019 c 389 s 41; 2014 c 37 s 363.]

***Reviser's note:** Chapter 11.98A RCW was repealed in its entirety by 2020 c 303 s 19.

Effective date—2021 c 140 ss 2101-2806: See RCW 11.104B.905.

RCW 30B.24.010 Fee determination. (1) The compensation arrangement between a client and a trustee or any other fiduciary pursuant to this title shall be at arm's length and any compensation

pursuant to such arrangement shall be a reasonable amount with respect to the services rendered.

(2) This section does not apply to arrangements not involving trust or client assets. [2014 c 37 s 364.]

RCW 30B.24.020 Conflicts of interest. (1) In addition to the provisions set out in RCW 11.98.078, if a conflict of interest may reasonably be expected to have a material adverse impact on the trustee's judgment in its provision of services to such client, the trustee must provide a reasonable disclosure of such conflict to such client.

(2) Unless authorized by other law, a state trust company may not invest funds of a fiduciary account over which it has investment discretion in the shares or obligations of, or in assets acquired from: The state trust company or any of its directors, officers, managers, or employees; affiliates of the state trust company or any of their directors, officers, managers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the state trust company.

(3) If retention of shares or obligations of the state trust company or its affiliates in a fiduciary account is consistent with applicable law, the state trust company may:

(a) Exercise rights to purchase additional shares, or securities convertible into additional shares, when offered pro rata to shareholders; and

(b) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a share dividend resulting in fractional share holdings.

(4) A state trust company may not lend, sell, or otherwise transfer assets of a fiduciary account for which a state trust company has investment discretion to itself or any of its directors, officers, managers, or employees, or to affiliates of the state trust company or any of their directors, officers, managers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the state trust company, unless:

(a) The transaction is authorized by other applicable law;

(b) Legal counsel advises the state trust company in writing that the state trust company has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the state trust company, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(c) In the case of a collective investment fund, the state trust company purchases for its own account any defaulted investment held by the fund if, in the judgment of the state trust company, the cost of segregating the investment is excessive in light of the market value of the investment: PROVIDED, That the state trust company purchases the defaulted investment at the greater of market value or the sum of cost and accrued unpaid interest; or

(d) Required in writing by the director.

(5) Notwithstanding any other provision of this section, a state trust company may not lend to any of its directors, officers, managers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found in

section 408 of the employee retirement income security act of 1974, 29 U.S.C. Sec. 1108.

(6) A state trust company may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(7) A state trust company may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(8) A state trust company may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law. [2019 c 389 s 44; 2014 c 37 s 365.]

RCW 30B.24.030 Compliance with fiduciary activities standards equivalent to that of national banks—Statement of principles of trust management—Management of third-party risk. (1) Unless the director shall otherwise set forth by rule, a state trust company and, to the extent applicable, its affiliates, and their respective directors, officers, managers, employees, and agents, shall comply with such federal regulations applicable to the fiduciary activities of a federally insured state bank.

(2) The requirements of subsection (1) of this section, as applicable to a state trust company, shall be at least partially contained in the state trust company's written statement of principles of trust management, the contents of which shall be subject to examination and approval by the department, and upon which the department may further examine a state trust company as to whether it is in compliance with such statement.

(3) A state trust company and, to the extent applicable, its affiliate, shall comply with standards for prudent management of third-party risk under applicable law or as the director may otherwise adopt by rule or by a written interpretive statement including, without limitation, management of third-party risk pursuant to RCW 30B.24.060. [2019 c 389 s 42.]

RCW 30B.24.040 Written statement of principles of trust management required—Contents. (1) The board of directors of a state trust company shall adopt a written statement of principles of trust management at its first organizational meeting or at a meeting of the board called for that purpose, which it must annually reaffirm by written vote, whether or not such statement is sought to be amended.

(2) The statement of principles of trust management shall set forth the minimum requirements for sound fiduciary management in the operation of a state trust company. Such minimum requirements shall provide for sound fiduciary practices in the operation of a state trust company and provide safeguards for the protection of fiduciary beneficiaries, principals of agency relationships, creditors, stockholders, and the public, and shall provide for:

(a) Involvement by the board of directors in providing for the establishment and continuing fiduciary operations;

(b) Operation of fiduciary activities separate and apart from every other activity of the state trust company, with trust assets separated from other assets owned by the state trust company, and the

assets of each trust account separated from the assets of every other trust account; and

(c) Maintenance of separate books and records for the fiduciary business in sufficient detail to properly reflect all fiduciary activities.

(3) The statement of principles of trust management shall provide that the board of directors, by resolution included in its minutes:

(a) Designate a competent and qualified officer or manager to be responsible for and administer the fiduciary activities of the state trust company;

(b) Define such officer's or manager's duties;

(c) Name a trust committee consisting of at least three directors to be responsible for and supervise the fiduciary activities of the state trust company or state banking institution, which shall include, if feasible, one or more directors who are not officers of the state trust company or state banking institution;

(d) Receive reports from such trust committee and record actions taken in its minutes;

(e) Review the examination reports of the state trust company by the department or other applicable financial services regulatory authority having jurisdiction over the state trust company; and

(f) Record all actions taken in its minutes.

(4) Nothing in this section is intended to prohibit the board of directors from authorizing itself to act as the trust committee, or from authorizing itself to appoint additional committees and officers to oversee account administration and the operation of the state trust company and its fiduciary activities.

(5) When such statement provides for delegating duties to a subcommittee or officers, the statement shall indicate that the board and the trust committee remain responsible for the oversight of all trust company and fiduciary activities. Such statement shall also reflect that sufficient reporting and monitoring procedures are required to fulfill this responsibility.

(6) The statement of principles of trust management shall provide that the trust committee:

(a) Meet at least quarterly, and more frequently if considered necessary and prudent to fulfill its supervisory responsibilities;

(b) Approve and document:

(i) The opening of all new fiduciary accounts;

(ii) Purchases and sales of, and changes in, trust assets; and

(iii) The closing of trust and agency relationship accounts;

(c) Provide for a comprehensive review of all new accounts, for which the state trust company or trust department has investment responsibility, promptly following acceptance;

(d) Provide for a review of each fiduciary and agency account, including collective investment funds, at least once during each calendar year, the scope, frequency, and level of review of which should be addressed in appropriate written policies that give consideration to the state trust company's fiduciary responsibilities, type and size of account, and other relevant factors, including coverage of both administration of the account and suitability of the account's investments, distinguishing as between the scope and components of discretionary and nondiscretionary reviews;

(e) Keep comprehensive minutes of meetings held and actions taken; and

(f) Make periodic reports to the board of directors of its actions.

(7) The statement of principles of trust management shall also require:

(a) Comprehensive written policies which address all important areas of the state trust company's fiduciary activities;

(b) Competent legal counsel to advise trust officers and the trust committee on legal matters pertaining to fiduciary activities;

(c) Adequate internal controls, including appropriate controls over fiduciary assets; and

(d) An adequate annual audit of all fiduciary activities by an internal or external auditor, as required by the department, the findings of which, including actions taken as a result of the audit, must be recorded in its minutes.

(8) Notwithstanding subsection (7)(d) of this section, the statement of principles of trust management may provide that, if a state trust company adopts a continuous audit process instead of performing annual audits, such audits may be performed, on an activity-by-activity basis, at intervals commensurate with the level of risk associated with that activity. In such case, the statement must reflect that audit intervals are to be supported and reassessed regularly to ensure appropriateness, given the current risk and volume of the activity. [2019 c 389 s 43.]

RCW 30B.24.050 Call report. (1) A state trust company shall file no later than forty-five days after the end of each calendar quarter a statement of its financial condition and a summary of the condition of its fiduciary accounts, known as a call report, in a form and content as prescribed by the director by rule or written policy from which at least ninety days' advance written notice has been given.

(2) Unless otherwise established by rule, such call report shall be deemed confidential examination information and shall be subject to RCW 30A.04.075. [2019 c 389 s 45.]

RCW 30B.24.060 Compliance with the bank secrecy act—Management of third-party risk—Cybersecurity—Examination. (1) A state trust institution and its affiliate or third-party service provider, if applicable, shall comply with the federal financial recordkeeping and reporting of currency and foreign transactions act, 31 U.S.C. Sec. 5311 et seq., also known as the bank secrecy act, and with associated federal regulations including, without limitation, any requirements under 31 C.F.R. Part 103.

(2) A state trust institution and its affiliate or third-party service provider, if applicable, shall maintain the federal standards for safeguarding customer information, required pursuant to Title V of the federal Gramm-Leach-Bliley act, P.L. 106-10, 113 Stat. 1338, as amended, and shall comply with applicable federal and state laws and rules related to cybersecurity, or written interpretive statement of the department to which the state trust institution, affiliate, or third-party service provider has been furnished notice.

(3) A state trust company shall be subject to examination by the department for compliance with subsections (1) and (2) of this section. An affiliate of a state trust company may be subject to examination for compliance with subsections (1) and (2) of this section upon notice to the state trust company and to the applicable

affiliate. A third-party service provider may be subject to direct examination in relation to compliance with subsections (1) and (2) of this section as may be required pursuant to RCW 30B.10.045 (3) and (4). [2019 c 389 s 46.]