

RCW 30B.04.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

The definitions in this section shall be liberally construed to accomplish the purposes of this title. Additional definitions, as applicable, are contained elsewhere in this title. The department may adopt by rule other definitions to accomplish the purposes of this title.

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

(2) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease, insure, safekeep, or otherwise manage the property.

(3) "Affiliate" means a company that controls, is controlled by, or is under common control with a trust institution.

(4) "Agent" has the same meaning as an agent at common law.

(5) "Authorized trust institution" means a trust institution with authority to engage in trust business in Washington state pursuant to federal or state law.

(6) "Bank" has the meaning set forth in 12 U.S.C. Sec. 1813(h); provided that the term "bank" does not include any "foreign bank" as defined in 12 U.S.C. Sec. 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(7) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies.

(8) "Capital" has the meaning ascribed to that term by generally accepted accounting principles and applicable rules of the financial accounting standards board, and includes surplus and undivided profits.

(9) "Charter," "chartered," and "chartering" mean a charter or other certificate of authority issued by a financial services supervisory agency of an applicable governmental entity authorizing a trust institution to engage in business in its home state or other jurisdiction, or the act of granting or having had granted such a charter.

(10) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(11) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

(12) "Conservator" means the director or an agent of the director exercising the powers and duties provided in RCW 30B.46.060.

(13) "Control," "controls," "controlled," and "controlling," except as defined in RCW 30B.53.005 and as used in RCW 30B.04.040(12), 30B.08.030, 30B.12.020 (1) and (2), and 30B.38.080(1), mean and refer to:

(a) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than fifty percent of the outstanding shares of a class of voting securities of a state trust company or other company;

(b) The ability to control the election of a majority of the board of a state trust company or other company;

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the director after notice and an opportunity for hearing; or

(d) The conditioning of the transfer of more than fifty percent of the outstanding shares or participation shares of a class of voting securities of a state trust company or other company on the transfer of more than fifty percent of the outstanding shares of a class of voting securities of another state trust company or other company.

(14) "Custodial account" means an account, established by a person with a bank as defined in 26 U.S.C. Sec. 408(n), or with another person approved by the internal revenue service as satisfying the requirements to be a nonbank trustee or a nonbank passive trustee set forth in United States treasury regulations under 26 U.S.C. Sec. 408, that is governed by an instrument concerning the establishment or maintenance, or both, of an individual retirement account, qualified retirement plan, Archer medical savings account, health savings account, Coverdell education savings account, any similar retirement or savings vehicle permitted under the internal revenue code of 1986, or as otherwise defined by the director by rule.

(15) "Department" means the Washington state department of financial institutions.

(16) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. Sec. 1813(c)(2) and (3).

(17) "Director" means the director of the Washington state department of financial institutions.

(18) "Federal trust institution" means a special purpose national banking association authorized by the office of the comptroller of the currency, pursuant to the national bank act, 12 U.S.C. Sec. 92a, whose charter is granted for the purpose of it engaging primarily or solely in trust or other fiduciary activities.

(19) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust company, whether in physical or electronic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

(20) "Foreign bank" means a foreign bank, as defined in section 1(b)(7) of the international banking act of 1978, chartered to act as a fiduciary in a state other than Washington state. As used in this title, "foreign bank" excludes an alien bank authorized to do business in Washington state under chapter 30A.42 RCW.

(21) "Home state" means:

(a) With respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office; and

(b) With respect to any other trust institution, the state which chartered such institution.

(22) "Home state regulator" means the trust institutions supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(23) "Host state" means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(24) "Insolvent" means a circumstance or condition in which a state trust company:

(a) Has actual cash market value of its assets which are insufficient to pay its liabilities to its creditors;

(b) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(c) Sells or attempts to sell substantially all of its assets other than as provided in RCW 30B.44A.050 or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by chapter 30B.53 RCW; or

(d) Attempts to dissolve or liquidate without approval of the director under chapter 30B.44A RCW;

(e) After demand in writing by the director, fails to cure any deficiency in its reserves as required by statute or rule;

(f) After written demand by the director, the stockholders fail to cure within the time prescribed by the director an impairment of the state trust company's capital or surplus; or

(g) Is insolvent within the meaning of the United States bankruptcy code.

(25) "Instrument" means a revocable or irrevocable trust document created inter vivos or testamentary or any custodial account agreement.

(26) "Internet trust business" means a trust business that holds itself out as a trustee or fiduciary to the general public of Washington state by means of the internet or other electronic means.

(27) "Law firm" means a professional service corporation, professional limited liability company, or limited liability partnership, that is duly organized under the laws of Washington state and whose shareholders, members, or partners, respectively, are exclusively attorneys.

(28) "Limited liability trust company" means an entity organized or reorganized under the provisions of RCW 30B.08.020 to operate as a state trust company in limited liability company form pursuant to the authority of the director under chapter 30B.08 RCW.

(29) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(30) "Manager" means a person elected to the board of a limited liability trust company.

(31) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(32) "Out-of-state trust institution" means a trust institution that is not a state trust company under this title.

(33) "Person" means an individual, a company, or any other legal entity.

(34) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(35) "Private trust" has the meaning set forth in RCW 30B.64.005.

(36) "Private trust company" has the meaning set forth in RCW 30B.64.005.

(37) "Share" means a unit into which a proprietary interest of a trust institution is divided or subdivided by means of class, series, relative rights, or preferences, and includes beneficial interests in a state trust company organized as a corporation or limited liability company.

(38) "Shareholder" means the holder of a share as defined in this section.

(39) "State" means a state of the United States, the District of Columbia, a territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(40) "State bank" means a bank authorized under Title 30A or 32 RCW to engage in trust business or an alien bank chartered or authorized under chapter 30A.42 RCW to exercise trust powers in Washington state.

(41) "State trust company" means a corporation or a limited liability company organized or reorganized under this title, including a trust company organized under the laws of Washington state before January 5, 2015.

(42) "State trust institution," as used in chapter 30B.10 RCW, means a state trust company or an out-of-state trust institution engaged in trust business in Washington state.

(43) "Third-party service provider" includes an independent contractor or other person, which a trust institution has engaged to perform services to facilitate the conduct of its business as a trust institution or affiliate, to perform the following functions:

(a) Noninternet-based data storage;

(b) Internet-related services, mobile applications, system and software development and maintenance, and security architecture, maintenance, and monitoring;

(c) Data processing services;

(d) Fiduciary activities or other contracted-for services constituting "trust business" under RCW 30B.04.005;

(e) Activities related to the trading of securities, derivatives, and other commodities;

(f) Bookkeeping, accounting, or similar functions; or

(g) Data analytics with respect to customers or prospective customers, or use of algorithmic technology by the trust institution in the conduct of fiduciary management.

(44) "Trust business" means the performance of, or holding out by, a person to the public by advertisement, solicitation, or other means that the person is available to perform one or more of the essential functions of trust business set forth in RCW 30B.08.080(1).

(45) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(46) "Trust department" means a division, subdivision, department, or group of officers and employees of a state bank authorized by the board of directors of the state bank to exercise trust powers pursuant to authority of the director granted pursuant to RCW 30A.08.150 or 32.08.210, as applicable.

(47) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client.

(48) "Trust institution" means a depository institution or foreign bank engaged in trust business, or a trust company.

(49) "Unauthorized trust activity" means to engage in trust business in Washington state without authority or exemption under this title. [2019 c 389 § 2; 2014 c 37 § 302.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).