

Chapter 208-594 WAC

SAVINGS AND LOAN TRUST POWERS

(Formerly chapter 419-56 WAC)

WAC

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WAC 208-594-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means the fiduciary relationship in which title to the property constituting the agency does not pass to the trust department but remains in the owner of the property, who is known as the principal, and in which the agent is charged with certain specific duties with respect to the property.

(2) "Agency coupled with an interest" means an agency in which the agent has a legal interest in the subject matter. Such an agency is not terminated automatically, as are other agencies, by the death of the principal but continue in effect until the agent can realize upon its legal interest.

(3) "Fiduciary powers" means the power to act in any fiduciary capacity authorized by the state of Washington including, but not limited to; trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, agent, custodian, escrow agent, corporate bond paying and transfer agent, escrow holder, managing agent, depository, committee of estates of incompetents.

(4) "Managing agent" means the fiduciary relationship assumed by a trust department upon the creation of an account which names the association as agent and confers investment discretion upon the association.

(5) "Director" means the director of the department of financial institutions.

(6) "Trust business" means the business of doing any or all of the activities specified in RCW 30.08.150 (2) through (11).

(7) "Trust department" means that group or groups of officers and employees of a savings and loan association to whom are designated by the board of directors the performance of the fiduciary responsibilities of the association, whether or not the groups or groups are so named.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-010, filed 1/6/88.]

WAC 208-594-020 Administration of fiduciary powers. (1)(a) The board of directors of the savings and loan association is responsible for the proper exercise of fiduciary

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powers by the trust department. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the savings and loan association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the association's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s), or committee(s) as it may designate.

(b) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the trust company has investment responsibilities a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within fifteen months of the last review, all the assets held in or for each fiduciary account where the association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(2) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(3) Every qualified fiduciary subject to this chapter and exercising fiduciary powers in this state shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the savings and loan association and its trust department.

(4) The trust department may utilize personnel and facilities of other departments of the savings and loan association, and other departments of the savings and loan association may utilize the personnel and facilities of the trust department only to the extent not prohibited by law and as long as the separate identity of the trust department is preserved.

(5) Fiduciary records shall be kept separate and distinct from other records of the savings and loan association and maintained in compliance with the provisions of RCW 30.04.240. All fiduciary records shall be kept and retained for such time as to enable the fiduciary to furnish such information or reports with respect thereto as may be required by the director of the department of financial institutions.

(6) Every such fiduciary shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-020, filed 1/6/88.]

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WAC 208-594-030 Application process. Associations desiring to establish trust departments shall complete an application establishing the scope of the intended operation. Upon receiving an application from an association to engage in trust business pursuant to this chapter, the director may request such additional information as he deems necessary for the informed disposition of the application. If supplementary information is requested by the director, the application will not be complete until the supplementary information is supplied.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-030, filed 1/6/88.]

WAC 208-594-040 Director action on application. After receiving an application from a savings and loan association to engage in trust business and after having considered it, the director shall grant, grant conditionally, grant in modified form, or deny the application and shall inform the applicant in writing of his action and of the reasons therefor. Any application not acted upon within six months after its receipt by the supervisor shall be deemed denied unless the director, in writing, informs the applicant that he is holding the application for further review.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-040, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-040, filed 1/6/88.]

WAC 208-594-050 Engagement in unauthorized trust business prohibited. No savings and loan association shall engage in any trust business not authorized in advance by the director in accordance with this rule, unless the director informs an applicant in writing that it may engage in a trust business provisionally while he reviews the application. Failure of a savings and loan association to comply with the terms of this chapter may be grounds for supervisory action against the savings and loan, its directors, or officers.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-050, filed 1/6/88.]

WAC 208-594-060 Modification or revocation of investment practices previously authorized. The director may find that a trust business previously authorized by him is no longer a safe and prudent practice for savings and loan associations generally to engage in, or has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent practice in one or more particular savings and loan associations in light of their financial condition or management. Upon such a finding, the director may in writing inform the board of directors of any or all of the associations engaging in such a trust business that the authority to engage in the activity has been revoked or modified. When the director so notifies any savings and loan association, its directors and officers shall forthwith take steps to cease the trust business (if authority to engage in the activity has been revoked) or to make such modifications as the director requires. The director may for cause shown grant a savings and loan association some definite period of time within in

which to arrange its affairs to comply with the director's orders. Savings and loan associations which continue to engage in a trust business where their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be grounds for supervisory action against the association, its directors, or officers.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-060, filed 1/6/88.]

WAC 208-594-070 Investigation fee for new trust applications. The investigation fee charged under RCW 33.28.020 in connection with applications to establish a new savings and loan trust department shall be one thousand dollars. In the event the actual costs of the investigation conducted with respect to a particular application are less than the amount of the fee, such difference between the fee and the actual costs submitted shall be refunded, provided that in no event shall more than five hundred dollars be refunded. Expansion of the originally approved scope of trust business must also be approved by the director by additional application and fee. In the event that actual costs of processing additional applications are less than the amount of the fee, such difference between the fee and the actual cost shall be refunded, provided that in no event shall more than seven hundred dollars be refunded. For the purposes of this section, actual costs include travel and per diem expenses paid to division personnel in connection with the investigation.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-070, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-070, filed 1/6/88.]

WAC 208-594-080 Audit of the trust department. A committee of directors, exclusive of any active officers of the savings and loan association shall at least once during each calendar year and within fifteen months of the last such audit, make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors, and at such time shall ascertain whether the department has been administered in accordance with law, this rule, and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-594-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-080, filed 1/6/88.]

WAC 208-594-090 Examinations and fees. The director shall have the power to examine the affairs of a trust department of a state-chartered savings and loan association under the same general powers as outlined in RCW 33.04.-020. The report of examination of any trust department will be subject to the same restrictions as those of the parent association as outlined in RCW 33.04.110. Fees for such exami-

nations will be charged on the same hourly basis as those for the parent association as established by administrative rule.

[Statutory Authority: RCW 33.04.025 and 43.320.040.00-17-140, amended and recodified as § 208-594-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-090, filed 1/6/88.]