

ESTATES, TRUSTS AND PROBATE LAW SECTION

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The District of Columbia Bar
February 11, 1988

Mr. Ronald D. Larson
Vice President and Senior
Trust Officer
American Security Bank
1501 Pennsylvania Avenue, N.W.
Washington, D.C. 20013

Dear Ron:

As you requested, the members of the Steering Committee of the D.C. Bar's Estates, Trusts and Probate Law Section have reviewed your draft legislation concerning succession of fiduciary responsibilities. A copy of your draft with a number of our suggested changes or additions is enclosed.^{1/}

Our primary concern is with paragraph (d) which requires notice and authorizes an interested party to remove the successor fiduciary. Specifically, we are concerned that the class of persons entitled to notice be clearly defined in order to avoid the possibility of lawsuits long after the fact. In this connection, we feared that the phrase "beneficiary . . . entitled as a matter of right to receive a distribution of principal or income. . ." might be ambiguous since it is not clear whether it is intended to include trust remaindermen. In addition, we recommend that the court be specifically authorized to appoint a new fiduciary, as well as to remove the substituted fiduciary.

When you are ready to introduce the legislation, please let me know. I will be happy to raise with the Steering Committee the possibility of our submitting a letter to the Council expressing our support.

Best regards.

Sincerely,

Carol A. Rhees

^{1/} The views expressed herein represent only those of the Estates, Trusts and Probate Law Section of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

TITLE 26
CHAPTER 4

SECTION 26-437 CORPORATE FIDUCIARIES - SUBSTITUTION OF CORPORATE FIDUCIARIES BY MERGER, CONSOLIDATION, PURCHASE, SUCCESSION, OR CREATION OF TRUST SUBSIDIARY

(a) If a corporate fiduciary merges into, or with respect to its trust business becomes consolidated with, another corporation qualified to administer trusts or is succeeded in its trust business by any such corporation by purchase or otherwise; or if a bank or a bank holding company causes a subsidiary, qualified to administer trusts, to succeed to part or all of the trust business of itself or any other subsidiary of the same bank or bank holding company, the surviving, or purchasing, or consolidated, or successor bank or trust company or subsidiary trust company shall ~~become~~ a fiduciary in place of the predecessor corporate fiduciary, ~~with~~ all the rights, powers, and duties, which were granted to or imposed on the predecessor corporate fiduciary. The successor corporate fiduciary shall also be deemed named as fiduciary in all writings, including, but not limited to, wills, trusts, court orders and similar documents and instruments naming the predecessor organization as fiduciary, whether signed before or after the successor corporate fiduciary is created or succeeds to the trust business of the predecessor company, unless the document or instrument expressly provides otherwise.

, without further action and
(without any order or approval
of any court or public officer
and
shall
have

substituted as

automatically

and obligation,

(b) For the purposes of qualification as a fiduciary or a successor fiduciary under any requirements contained in any document creating or relating to a fiduciary account, any surviving, purchasing, consolidated, successor bank or trust company or subsidiary trust company is considered to have capital and surplus equal to its capital and surplus plus the capital and surplus of its owning bank, bank holding company, and their affiliates.

(c) Definitions. For the purposes of this section, the following words have the meanings indicated:

(1) The word "fiduciary" includes the terms "trustee", "executor", "executrix", "personal representative", "receiver", "special administrator", "guardian", "conservator", "committee", and any other term denoting a fiduciary relationship and normally performed by trust companies and trust departments of banks.

"Custodian"
under a Transfers
or Gifts to Minors
Act,

(2) The word "bank" means a commercial bank or a national banking association.

(3) The words "national banking association" means an institution that is organized under Federal law as a bank.

(4) The words "bank holding company" means any company that is a bank holding company under the Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).

(5) The words "trust company" or "subsidiary trust company" means a corporation organized under the laws of the District of Columbia to carry on a trust business or a national banking association organized under the laws of the United States, which is authorized to transact trust business and business incidental thereto, in the District of Columbia.

(6) The word "affiliate" means a company which is affiliated with a bank or bank holding company by reason of the power of the bank or bank holding company to vote 5 per centum or more of the outstanding voting securities of such company.

(d) Not sooner than thirty days before nor later than thirty days after the date on which the succession of fiduciary responsibilities becomes effective, pursuant to paragraph (a), the successor corporate fiduciary shall cause notice of such succession to be published in a newspaper of general circulation in the District of Columbia, and shall mail notice of the same to each co-fiduciary of the successor corporate fiduciary, to each surviving settlor of a trust, to each person, who alone or in conjunction with others has the power to remove the corporate fiduciary, and to each ~~adult beneficiary currently receiving or entitled to as a matter of right to receive a distribution of principal or income from~~ a trust, estate, or fund with respect to which a substitution of corporate fiduciary under this section is to be effected, except in the case of a trust described in "The Internal Revenue Code of 1954", 68 stat. 134, 26 U.S.C. 401(a), as amended, notice shall be sent to the employer or employee organization, or both, responsible for the maintenance of such trust. ~~A successor corporate fiduciary hereunder may be removed as fiduciary or the substitution may be denied, upon the filing of a complaint in accordance with Court Rules by a co-fiduciary, by a beneficiary of a trust or estate, by the settlor of the trust or on behalf of a ward under a guardianship, conservatorship or committeehip, to the Superior Court of the District of Columbia within 180 days after the mailing of the notice referred to herein, if the court, upon notice and hearing, grants the relief requested as in the best interests of the petitioner and all other parties interested in the trust, estate or guardianship.~~

(7) The word "beneficiary" means a person currently receiving or entitled as a matter of right to receive a current distribution of principal or income from a trust, estate or fund with respect to which a substitution of corporate fiduciary under this section is to be effected, and shall include:

- (i) in the case of a minor beneficiary, such beneficiary's natural or legal guardian; and
- (ii) in the case of an incompetent beneficiary, any person acting on behalf of such incompetent under a guardianship, conservatorship, or committee.

Notice shall be sent by first class mail to the addressee at the address last known to the sender. A co-fiduciary, settlor of a trust, or beneficiary may, within 180 days after the date on which the succession of a fiduciary responsibilities becomes effective pursuant to paragraph (a), apply to the Superior Court of the District of Columbia for the appointment of a new fiduciary to replace the successor corporate fiduciary under paragraph (a). The court shall have the discretion to appoint a new fiduciary to replace the successor corporate fiduciary if it finds, upon hearing after notice to all parties in interest, that the succession of fiduciary responsibilities will adversely affect the administration of the fiduciary account and that the appointment of a new fiduciary will be in the best interests of the petitioner and all other interested parties. This provision shall be in addition to any other provision of law governing the removal of fiduciaries and shall be subject to

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the terms upon which the original corporate fiduciary was designated as fiduciary.