

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE Z. MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL  
INSTITUTIONS AND BUSINESSES

CHAPTER 274. SUBSTITUTE OR SUCCESSOR FIDUCIARY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 274.001. DEFINITIONS. In this chapter:

(1) "Bank" has the meaning assigned by Section 31.002(a)(2), excluding a bank that does not have its main office or a branch located in this state.

(2) "Bank holding company" has the meaning assigned by Section 2(a), Bank Holding Company Act of 1956 (12 U.S.C. Section 1841(a)), as amended.

(3) "Commissioner" means the banking commissioner of Texas.

(4) "Fiduciary" means an entity responsible for managing a fiduciary account.

(5) "Fiduciary account" means an account with a situs of administration in this state involving the exercise of a corporate purpose specified by Section 182.001(b).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.51, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.030, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 78, eff. September 1, 2007.

Sec. 274.002. AFFILIATED BANK. A bank is affiliated with a subsidiary trust company if more than 50 percent of the bank's voting stock is directly or indirectly owned by a bank holding company that owns more than 50 percent of the voting stock of the subsidiary trust company.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.030, eff. Sept. 1, 1999.

Sec. 274.003. SUBSIDIARY TRUST COMPANY. An entity is a subsidiary trust company of a bank holding company if:

(1) the entity is a:

(A) trust company organized under Subchapter A, Chapter 182; or

(B) bank that is organized to conduct a trust business and any incidental business or to exercise trust powers; and

(2) more than 50 percent of the voting stock of the entity is directly or indirectly owned by the bank holding company. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.52, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.030, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 79, eff. September 1, 2007.

#### SUBCHAPTER B. SUBSIDIARY TRUST COMPANIES AS SUBSTITUTE OR SUCCESSOR FIDUCIARIES

Sec. 274.101. AGREEMENT TO SUBSTITUTE FIDUCIARIES. (a) A subsidiary trust company may enter into an agreement with an affiliated bank of the company to substitute the company as fiduciary for the bank in each fiduciary account listed in the agreement, provided the situs of account administration is not moved outside of this state without the express written consent of all persons entitled to notice under Sections 274.103(a) and (c).

(b) The agreement must include:

(1) a list of each fiduciary account for which substitution is requested;

(2) a statement of whether the substitution will cause a change in the situs of administration of each fiduciary account; and

(3) the effective date of the substitution, which may not be before the 91st day after the date of the agreement.

(c) The agreement must be filed with the commissioner before the date the substitution takes effect.

(d) A fiduciary account may be removed from the operation of the agreement by the filing of an amendment to the agreement with the commissioner before the effective date stated in the agreement. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.031, eff. Sept. 1, 1999.

Sec. 274.102. SITUS OF ACCOUNT ADMINISTRATION. The situs of administration of a fiduciary account is the county in this state in which the fiduciary maintains the office that is primarily responsible for dealing with the parties involved in the account. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.032, eff. Sept. 1, 1999.

Sec. 274.103. NOTICE OF SUBSTITUTION. (a) Not later than the 91st day before the effective date of a substitution under Section 274.101, the parties to the substitution agreement shall send notice of the substitution to:

- (1) any other fiduciary;
- (2) each surviving settlor of a trust relating to the fiduciary account;
- (3) each issuer of a security for which the affiliated bank administers the fiduciary account;
- (4) the plan sponsor of each employee benefit plan relating to the fiduciary account;
- (5) the principal of each agency account; and
- (6) the guardian of the person of each ward that has the fiduciary account resulting from a guardianship.

(b) If the substitution does not cause a change in the situs of administration of a fiduciary account, the parties to the substitution agreement shall also send notice of the substitution to each person who is readily ascertainable as a beneficiary of the account because the person has received account statements or because a parent, conservator, or guardian of a minor beneficiary has received account statements on the minor's behalf.

(c) If the substitution causes a change in the situs of administration of a fiduciary account, the parties to the substitution agreement shall also send notice of the substitution

to:

(1) each adult beneficiary of a trust relating to the account;

(2) each parent, conservator, or guardian of a minor beneficiary receiving or entitled to receive current distributions of income or principal from the account; and

(3) each person who individually or jointly has the power to remove the fiduciary being substituted.

(d) The notice must be sent by United States mail to the person's current address as shown on the fiduciary's records. The fiduciary shall make a reasonable attempt to ascertain the address of a person who does not have an address shown on the fiduciary's records.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.104. FORM OF NOTICE OF SUBSTITUTION. The notice required under Section 274.103 must be in writing and disclose:

(1) the effect the substitution of fiduciary will have on the situs of administration of the fiduciary account;

(2) the person's rights with respect to objecting to the substitution; and

(3) the liability of the existing fiduciary and the substitute fiduciary for their actions.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.105. FAILURE TO SEND NOTICE OF SUBSTITUTION; DEFECTIVE NOTICE. (a) If the parties to a substitution agreement under Section 274.101 intentionally fail to send the required notice under Section 274.103, the substitution of the fiduciary is ineffective.

(b) If the parties unintentionally fail to send the required notice, the substitution of the fiduciary is not impaired.

(c) If a substitution of a fiduciary is ineffective because of a defect in the required notice, any action taken by a subsidiary trust company before the substitution is determined to be ineffective is valid if the action would have been valid if performed by the affiliated bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.106. EFFECTIVE DATE OF SUBSTITUTION OF FIDUCIARIES. (a) The substitution takes effect on the effective date stated in the substitution agreement unless, not later than the 16th day before the effective date:

(1) each party entitled to receive notice of the substitution under Sections 274.103(a) and (c) provides the affiliated bank with a written objection to the substitution; or

(2) a party entitled to receive notice of the substitution under Section 274.103 files a written petition in a court seeking to have the substitution denied under Section 274.107 and provides the affiliated bank with a copy of the petition.

(b) A substitution that is objected to under Subsection (a)(1) takes effect when:

(1) one of the parties objecting to the substitution removes the party's objection in writing; or

(2) the bank obtains a final court order approving the substitution.

(c) A substitution that is objected to under Subsection (a)(2) takes effect when:

(1) the petition is withdrawn or dismissed; or

(2) the court enters a final order denying the relief sought.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.107. HEARING ON AGREEMENT TO SUBSTITUTE FIDUCIARIES. (a) A court may deny the substitution if the court, after notice and hearing, determines:

(1) if the substitution will not cause a change in the situs of administration of a fiduciary account, that the substitution is materially detrimental to the account or to its beneficiaries; or

(2) if the substitution will cause a change in the situs of administration of a fiduciary account, that the substitution is not in the best interests of the account or its beneficiaries.

(b) The court shall allow a substitution that will cause the situs of administration of a fiduciary account to change if the court, after notice and hearing, determines that the substitution is in the best interests of the account and its beneficiaries.

(c) In a proceeding under this section, the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.108. SUBSIDIARY TRUST COMPANY AS SUBSTITUTE FIDUCIARY. On the effective date of the substitution as prescribed by Section 274.106, the subsidiary trust company:

(1) without the necessity of an instrument of transfer or conveyance, succeeds to all interest in property the affiliated bank holds for the fiduciary account being substituted; and

(2) without the necessity of judicial action or action by the creator of the fiduciary account, becomes fiduciary of the account and shall perform the duties and exercise the powers of a fiduciary in the same manner as if the company had originally been designated fiduciary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.109. NOTICE OF CHANGE IN SITUS OF ADMINISTRATION OF FIDUCIARY ACCOUNT FOLLOWING SUBSTITUTION. (a) If the fiduciary of a fiduciary account has changed as a result of a substitution agreement under Section 274.101, the substitute fiduciary shall send notice of a change in the situs of administration of the account after the substitution to each person entitled to notice under Sections 274.103(a) and (c) not later than the 91st day before the effective date of the change.

(b) The notice must be sent by United States mail to the person's current address as shown on the fiduciary's records. The fiduciary shall make a reasonable attempt to ascertain the address of a person who does not have an address shown on the fiduciary's records.

(c) The notice must disclose:

(1) the effect that the change will have on the situs

of administration of the account;

(2) the effective date of the change; and

(3) the person's rights with respect to objecting to the change.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.110. FAILURE TO SEND NOTICE OF CHANGE IN SITUS OF ADMINISTRATION. (a) If the substitute fiduciary of a fiduciary account intentionally fails to send the required notice under Section 274.109, the change in the situs of administration is ineffective.

(b) If the substitute fiduciary unintentionally fails to send the required notice, the change in the situs of administration is not impaired.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.111. EFFECTIVE DATE OF CHANGE IN SITUS OF ADMINISTRATION OF FIDUCIARY ACCOUNT. (a) A change in the situs of administration takes effect on the effective date stated in the notice under Section 274.109 unless, not later than the 16th day before the effective date:

(1) each party entitled to receive notice for the fiduciary account provides the subsidiary trust company with a written objection to the change; or

(2) a party entitled to receive notice files a written petition in a court seeking to have the change denied under Section 274.112 and provides the subsidiary trust company with a copy of the petition.

(b) A change that is objected to under Subsection (a)(1) takes effect when:

(1) one of the parties objecting to the change removes the party's objection in writing; or

(2) the subsidiary trust company obtains a final court order approving the change.

(c) A change that is objected to under Subsection (a)(2) takes effect when:

(1) the petition is withdrawn or dismissed; or

(2) the court enters a final order denying the relief sought.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.112. HEARING ON CHANGE IN SITUS OF ADMINISTRATION OF FIDUCIARY ACCOUNT. (a) A court may allow the change in the situs of administration if the court, after notice and hearing, determines that the change is in the best interests of the fiduciary account and its beneficiaries. The court may deny the change if the court, after notice and hearing, determines that the change is not in the best interests of the account or its beneficiaries.

(b) In a proceeding under this section, the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.113. VENUE. (a) An action under this subchapter for a fiduciary account resulting from a decedent's estate or guardianship must be brought in the county provided for by the Estates Code with respect to the probate of a will, issuance of letters testamentary or of administration, administration of a decedent's estate, appointment of a guardian, and administration of a guardianship.

(b) Except as provided by Subsection (c), an action under this subchapter regarding any other fiduciary account must be brought in the county of the situs of administration of the account, notwithstanding a statute that would set venue in the location of the fiduciary's principal office.

(c) A beneficiary of a fiduciary account described by Subsection (b) may elect to bring the action in the county in which the principal office of the first affiliated bank that transferred the account under this subchapter is located.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. [1296](#)), Sec. 20.019, eff. September 1, 2015.



Sec. 274.114. SUBSIDIARY TRUST COMPANY AS SUCCESSOR FIDUCIARY. For purposes of qualifying as successor fiduciary under a document creating a fiduciary account or a statute of this state relating to fiduciary accounts, a subsidiary trust company:

(1) is considered to have capital and surplus in an amount equal to the total of its capital and surplus and the capital and surplus of the bank holding company that owns the company; and

(2) is treated as a national bank unless it:

(A) is not a national bank under federal law; and

(B) has not entered into a substitution agreement with an affiliated bank of the company that is a national bank under federal law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.115. BOND OF SUCCESSOR FIDUCIARY. If an affiliated bank of a subsidiary trust company has given bond to secure performance of its duties and the company qualifies as successor fiduciary, the company shall give bond to secure performance of its duties in the same manner as the bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.116. RESPONSIBILITY FOR SUBSIDIARY TRUST COMPANY. The bank holding company that owns a subsidiary trust company shall file with the commissioner an irrevocable undertaking to be fully responsible for the fiduciary acts and omissions of the subsidiary trust company.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

#### SUBCHAPTER C. BANKS AFFILIATED WITH SUBSIDIARY TRUST COMPANIES

Sec. 274.201. DESIGNATION OF AFFILIATED BANK AS FIDUCIARY IN WILL. The prospective designation in a will or other instrument of an affiliated bank of a subsidiary trust company as fiduciary is also considered a designation of the company as fiduciary and confers on the company any discretionary power granted in the instrument unless:

(1) the bank and company agree in writing to have the

designation of the bank as fiduciary be binding; or

(2) the creator of the fiduciary account, by appropriate language in the document creating the account, provides that the account is not eligible for substitution under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.202. LIABILITY OF AFFILIATED BANK ACTING AS FIDUCIARY. After a substitution of a subsidiary trust company as fiduciary for an affiliated bank of the company, the bank remains liable for any action taken by the bank as a fiduciary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.203. DEPOSIT OF MONEY WITH AFFILIATED BANK. (a) A subsidiary trust company may deposit with an affiliated bank of the company fiduciary money that is being held pending an investment, distribution, or payment of a debt if:

(1) the company maintains under its control as security for the deposit a separate fund of securities legal for trust investments pledged by the bank;

(2) the total market value of the securities is at all times at least equal to the amount of the deposit; and

(3) the fund of securities is designated as a separate fund.

(b) The bank may make periodic withdrawals from or additions to the fund of securities required by this section only if the required value is maintained.

(c) Income from securities in the fund belongs to the bank.

(d) Security for a deposit under this section is not required to the extent the deposit is insured or otherwise secured under law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.