Nebraska Trust Company Act
Chapter 8, Article 2
§§ 8-201 to 8-235

8-201
Charter required; exception; powers of Department of Banking and Finance; rules and regulations; fee.

The Director of Banking and Finance shall have the power to issue to corporations desiring to transact business as trust companies charters of authority to transact trust company business as defined in the Nebraska Trust Company Act. He or she shall have general supervision and control over such trust companies. Any three or more persons may adopt articles of incorporation and become a body corporate for the purpose of engaging in and conducting the business of a trust company, upon complying with the requirements of the act and the general laws of this state relating to the organization of corporations and upon obtaining a charter to transact business as a trust company from the director.

Every corporation organized for and desiring to transact a trust company business shall, before commencing such business, make under oath and transmit to the Department of Banking and Finance a complete statement including:

(1) The name of the proposed trust company;

(2) A certified copy of the articles of incorporation;

(3) The names of the stockholders;

(4) The name of the county, city, or village in which the trust company is located;

(5) The amount of paid-up capital stock; and

(6) A statement sworn to by the president and secretary that the capital stock has been paid in as provided for.

The corporation shall also pay the fee prescribed by section 8-602 for investigation of such statement.

If upon investigation the department is satisfied that the parties requesting the charter are parties of integrity and responsibility, that the corporation will apply safe and sound methods for the purpose of carrying out trust company duties, and that the public necessity, convenience, and advantage will be promoted by permitting the corporation to transact business as a trust company, the department shall issue to the corporation a charter entitling it to transact the business provided for in the act. Upon payment of the required fees, the pledging of assets required by section 8-209, and the receipt of the charter, the corporation may begin to transact

business as a trust company. It shall be unlawful for any corporation, except a foreign corporate trustee to the extent authorized under section 30-3820, to engage in business as a trust company or to act in any other fiduciary capacity unless it has first obtained from the Department of Banking and Finance a charter of authority to do business.

The Department of Banking and Finance may adopt and promulgate rules and regulations to carry out the governance of trust companies under its supervision.

Last amended:
Laws 2003, LB 130, § 111

~ Reissue 2007

8-201.01
Act, how cited.

Sections 8-201 to 8-235 shall be known and may be cited as the Nebraska Trust Company Act.

Last amended:
Laws 1998, LB 1321, § 34

~ Reissue 2007

8-202
Articles of incorporation; filing.

The articles of incorporation shall be filed in the office of the Secretary of State, and a certified copy shall be filed and recorded in the office of the county clerk of the county in which the corporation has its principal office. Articles of incorporation and other records relating to the corporate existence of the trust company shall be maintained as a permanent record of the trust company.

Last amended:
Laws 1993, LB 81, § 15

~ Reissue 2007

8-203
General powers.

The trust company shall have power:

(1) To have a corporate name;

(2) To have a corporate seal;

(3) To sue and be sued and complain and defend in all courts of law and equity;

(4) To receive reasonable compensation for all services performed by it under the Nebraska Trust Company Act;

(5) To make bylaws not inconsistent with the act or its articles of incorporation for the management of its affairs; and

(6) To appoint or elect such officers and agents as the business of the corporation may require.

Last amended:
Laws 1998, LB 1321, § 35

~ Reissue 2007

8-204
Directors; qualifications; duties; vacancies.

The control of the business affairs of a trust company shall be vested in a board of directors of not less than five persons, all of whom shall be elected by and from its stockholders. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy leaves a minimum of five directors, appointment shall be optional. The board shall select from among its number a president and secretary and shall appoint trust officers and committees as it deems necessary. The officers and committee members shall hold their positions at the discretion of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter and shall prepare and maintain complete and accurate minutes of the proceedings at such meetings.

The board of directors shall make or cause to be made each year a thorough examination of the books, records, funds, and securities held for the trust company and customer accounts. The examination may be conducted by the members of the board of directors or the board may accept an annual audit by an accountant or accounting firm approved by the Department of Banking and Finance. Any such examination or audit must comply in scope with minimum standards established by the department.

Unless the department otherwise approves, a majority of the members of the board of directors of any trust company shall be residents of this state. Reasonable efforts shall be made to acquire members of the board of directors from the county in which the trust company is located. Every director shall own at least one share of paid-up capital stock of the trust company or its holding company, if any, in his or her name and right. Directors of trust companies shall be persons of good moral character and known integrity, business experience, and responsibility. No person

shall act as such member of the board of directors of any trust company until the corporation applies for and obtains approval from the Department of Banking and Finance.

Last amended:
Laws 1993, LB 81, § 17

~ Reissue 2007

8-205
Capital stock; amount required; exception; impairment of capital stock; department; powers.

(1) No corporation, except a bank authorized by the Director of Banking and Finance to operate a trust department, shall be authorized to transact business as a trust company under the Nebraska Trust Company Act on or after August 1, 2000, unless it has capital stock of at least five hundred thousand dollars, all of which shall be fully paid up in cash before the corporation is authorized to commence business.

(2)(a) Corporations, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, shall, on or after such date, maintain a capital stock of at least two hundred thousand dollars in cities of one hundred thousand inhabitants or more, one hundred thousand dollars in cities of fifty thousand and less than one hundred thousand inhabitants, fifty thousand dollars in cities of more than ten thousand and less than fifty thousand inhabitants, and twenty-five thousand dollars in cities and villages having ten thousand inhabitants or less. The population of a city for purposes of this subsection shall be the population as determined by the most recent federal decennial census.

(b) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of subsection (1) of this section, shall be subject to the capital stock requirement of subsection (1) of this section and shall maintain a capital stock of at least the minimum amount required by subsection (1) of this section.

(c) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of a corporation located in a larger city pursuant to subdivision (2)(a) of this section, shall be subject to the capital stock requirement of such a corporation located in a larger city pursuant to subdivision (2)(a) of this section and shall maintain a capital stock of at least the minimum amount required for such a corporation located in a larger city pursuant to subdivision (2)(a) of this section.

(d) A capital stock requirement once attained by a corporation pursuant to either this subsection or subsection (1) of this section shall not be reduced.

(3) If at any time the department determines that the capital stock of a trust company is impaired, it may require the shareholders of the trust company to make up the capital stock impairment.

Last amended:
Laws 2000, LB 932, § 5

~ Reissue 2007

8-205.01
Fidelity bond; requirements; director; powers and duties.

Each trust company doing business under the Nebraska Trust Company Act shall obtain a fidelity bond, naming the trust company as obligee, in an amount to be fixed by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the trust company from loss of money or other personal property, including that for which the trust company is responsible, which it may sustain through or by reason of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or other dishonest or criminal act of or by any of its officers or employees. The bond may contain a deductible clause in an amount to be approved by the Director of Banking and Finance. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department. The bond shall always be open to public inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the trust company involved.

Last amended:
Laws 1998, LB 1321, § 37

~ Reissue 2007

8-206
Specific powers.

A trust company created under the Nebraska Trust Company Act shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon and to purchase, hold, and lease fireproof and burglar-proof and other vaults and safes from which revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, act as assignee, receiver, trustee, and depositor, and accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order, judgment, or decree of any such court or by gift, grant, assignment, transfer, devise, or bequest any real or personal property in trust, to care for, manage, and convey the same in accordance with such trusts, and to execute and perform any and all such trusts;

(4) To act as attorney in fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, as personal representative, or as conservator or guardian of the estate of any incapacitated person;

(6) To act as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person;

(7) To act as agent or in an agency capacity for any person or entity, public or private;

(8) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for such corporation;

(9) To buy, hold, own, and sell securities issued or guaranteed by the United States Government or any authorized agency thereof, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, or securities secured by obligations of any of the foregoing, securities of any state or political subdivision thereof which possesses general powers of taxation, stock, warrants, bills of exchange, notes, mortgages, banker's acceptances, certificates of deposit in institutions whose accounts are insured by the Federal Deposit Insurance Corporation, securities issued pursuant to the Nebraska Business Development Corporation Act, and other investment securities, negotiable and nonnegotiable, except stock or other securities of any corporation organized under the Nebraska Trust Company Act;

(10) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the cost of such real estate and buildings not to exceed one hundred percent of the paid-up capital stock, and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts;

(11) To borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. With the approval of the Director of Banking and Finance, any trust company may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of trustors and

beneficiaries of estates and trusts and may be subordinated and subject to the claims of other creditors. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the trust company and shall not be held liable for assessments to restore impairments in the capital of the trust company as may be from time to time determined by the director; and

(12) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities granted in the Nebraska Trust Company Act, and all provisions of the act shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to accept deposits or conduct the business of banking as defined in the Nebraska Banking Act.

Last amended:
Laws 2005, LB 533, § 12

Cross References:
Nebraska Banking Act,see section 8-101.01.
Nebraska Business Development Corporation Act,see section 21-2101.

~ Reissue 2007

8-207
Appointment as fiduciary, authorized; oath.

Courts of this state may appoint a trust company receiver, assignee, trustee, guardian, conservator, personal representative, custodian, or administrator. When a trust company is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose, the president, vice president, secretary, or trust officer may, on behalf of the trust company, make and subscribe the required oath.

Last amended:
Laws 1993, LB 81, § 21

~ Reissue 2007

8-207.01
Repealed. Laws 1988, LB 795, s. 8.

~ Reissue 2007

8-208
Conveyances; execution.

All conveyance of or other instruments affecting real estate owned or held in trust by a trust company shall be authorized, prior to or within ninety days after the conveyance or execution of an instrument affecting real estate owned or held in trust, by a resolution of the board of directors or a committee appointed by the board of directors and signed in the name of the trust company by its president or vice president.

Last amended:
Laws 2001, LB 53, § 3

~ Reissue 2007

8-209
Pledge of securities with Department of Banking and Finance; amount required.

(1) Any corporation organized to do business as a trust company under the Nebraska Trust Company Act shall make a pledge with the Department of Banking and Finance of approved securities.

(2) The amount of securities required to be pledged shall be based on the market value of trust assets held by the trust company as follows:

(a) Trust companies with trust assets with a market value of less than twenty-five million dollars shall pledge securities in the amount of one hundred thousand dollars in par value;

(b) Trust companies with trust assets with a market value of at least twenty-five million dollars but less than two hundred fifty million dollars shall pledge securities in the amount of two hundred thousand dollars in par value;

(c) Trust companies with trust assets with a market value of at least two hundred fifty million dollars but less than two billion five hundred million dollars shall pledge securities in the amount of three hundred thousand dollars in par value;

(d) Trust companies with trust assets with a market value of at least two billion five hundred million dollars but less than five billion dollars shall pledge securities in the amount of four hundred thousand dollars in par value; and

(e) Trust companies with trust assets with a market value of five billion dollars or more shall pledge securities in the amount of five hundred thousand dollars in par value.

(3) A trust company shall determine the market value of its trust assets at the end of each calendar year. If such valuation shows that the pledge of securities is less than is required by

subsection (2) of this section, the trust company shall increase the amount of the securities pledged with the department within sixty days following the end of the calendar year.

(4) If at any time the market value of pledged assets is determined to have depreciated to less than ninety percent of par value or the trust company has trust funds deposited with itself or its supporting commercial bank in excess of those deposits referred to by section 8-212, the Director of Banking and Finance may require additional pledges in amounts deemed necessary to fully secure pledging requirements or excessive trust fund depository balances.

(5) Any national bank authorized by the Office of the Comptroller of the Currency or the Board of Governors of the Federal Reserve System to act in a fiduciary capacity in this state, any federal savings association authorized by the Director of the Office of Thrift Supervision to act in a fiduciary capacity in this state, any federally chartered trust company, and any out-of-state trust company authorized under the Interstate Trust Company Office Act shall make similar pledges with the department, and all such deposits of national banks held by the department shall be considered as having been lawfully so pledged and subject to the Nebraska Trust Company Act.

Last amended:
Laws 2009, LB 327, § 7
Operative Date: August 30, 2009

Cross References:
Interstate Trust Company Office Act,see section 8-2301.

~ Supplement 2009

8-210
Securities; kinds authorized; pledge with Department of Banking and Finance.

Securities pledged pursuant to section 8-209 shall consist of any securities which constitute a legal investment for the trust company except for bills of exchange, notes, mortgages, banker's acceptances, or certificates of deposit. State, county, municipal, and corporate bond issues must be of investment quality and be rated in the three top categories of investment by at least one nationally recognized rating service, except that all issues of counties and municipalities of Nebraska shall be acceptable.

Such securities shall not be accepted for purpose of pledge at a rate above par value and if their market value is less than par value they shall not be accepted for such purpose above their actual market value. The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be at the expense of the trust company.

Last amended:
Laws 2009, LB 327, § 8
Operative Date: August 30, 2009

~ Supplement 2009

8-211
Pledge of securities with Department of Banking and Finance; certificate of compliance; effect on obligation to furnish bond as fiduciary.

The required pledges having been made, the Department of Banking and Finance shall issue a receipt and a certificate showing that the trust company has complied with the Nebraska Trust Company Act. Having thus qualified, the trust company may be permitted to act as assignee, receiver, trustee, either by appointment of court or under will, or depository of money in court without bond. Upon presentation of the certificate that the trust company has complied with the act and has made a pledge as provided in section 8-209, the court or other officer charged with the duty of making such appointment or of approving bonds may, in his or her discretion, make the appointment and permit the trust company to qualify without bond or require such bond as is required from natural persons.

Last amended:
Laws 1998, LB 1321, § 40

~ Reissue 2007

8-212
Pledged securities; primarily liable for trust obligations and losses.

Securities pledged as provided in section 8-209 shall be primarily liable for the obligations of the trust company, state or national bank, federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act incurred while acting in any fiduciary capacity, for depository of money in court, and for losses arising from trust funds deposited with failed financial institutions in excess of deposit insurance limits and shall not be liable for any other debt or obligation of the trust company until all such trust liabilities have been discharged.

Last amended:
Laws 1998, LB 1321, § 41

Cross References:
Interstate Trust Company Office Act,see section 8-2301.

~ Reissue 2007

8-213
Pledged securities of insolvent trust companies; transfer to fiduciary; conditions.

In the case of national banks and federal savings associations doing business as trust companies, trust companies, federally chartered trust companies, and out-of-state trust companies authorized under the Interstate Trust Company Office Act which upon insolvency are not liquidated by the Department of Banking and Finance, upon the appointment of a receiver, trustee in bankruptcy, or other liquidating agent, the department shall turn over to the receiver, trustee in bankruptcy, or other liquidating agent any securities pledged to it by the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act upon:

(1) The entry of an order by a court having jurisdiction over a receiver, trustee in bankruptcy, or other liquidating agent of the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act ordering the department to turn over to a receiver, trustee in bankruptcy, or other liquidating agent the securities pledged to the department; and

(2) The publication of a notice for three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act is located that all claims for the trust liabilities must be filed with the receiver, trustee in bankruptcy, or other liquidating agent within thirty days. In the case of national banks the notice provided for in 12 U.S.C. 193, and in the case of trust companies liquidated in bankruptcy court, the notice provided for in 11 U.S.C. 94(b), shall be sufficient without further notice being given and shall be in lieu of the notice required in this subdivision. In the case of out-of-state trust companies authorized under the Interstate Trust Company Office Act, an additional notice shall be published in each county in Nebraska where the out-of-state trust company maintains an office or maintained an office within one year prior to the insolvency.

Last amended:
Laws 2005, LB 533, § 13

Cross References:
Interstate Trust Company Office Act,see section 8-2301.

~ Reissue 2007

8-214
Pledged securities; release upon surrender of fiduciary powers; conditions.

Any national bank, federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act which has surrendered its right to exercise such fiduciary powers in this state may have its pledged securities released to it upon furnishing to the Department of Banking and Finance a certificate by its primary financial institution regulator that such national bank, federal savings association,

federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act is no longer authorized to exercise such powers and has been relieved, in accordance with the laws of this state, of all duties and obligations as assignee, receiver, or trustee, either by appointment of court or under will, and for depository of money in court.

Last amended:
Laws 1998, LB 1321, § 43

Cross References:
Interstate Trust Company Office Act,see section 8-2301.

~ Reissue 2007

8-215
Pledged securities; release upon liquidation; conditions.

Any trust company, state or national bank or federal savings association with a trust department, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act doing business in this state, upon liquidating its business and affairs for reasons other than insolvency, may have its pledged securities released to it upon satisfying the Department of Banking and Finance that it has been lawfully relieved of all its duties and obligations as assignee, receiver, or trustee, either by appointment of court or under will, and for depository of money in court, after first having published notice three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the trust company, trust department of a state or national bank or federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act is located that all claims against such securities, whether absolute or contingent, must be filed with the department by a day certain, not less than thirty days after the last publication of such notice.

Last amended:
Laws 1998, LB 1321, § 44

Cross References:
Interstate Trust Company Office Act,see section 8-2301.

~ Reissue 2007

8-216
Pledged securities; interest; company's right to collect.

The trust company may collect and retain the interest of all securities pledged as provided in

section 8-209.

Last amended:
Laws 1993, LB 81, § 30

~ Reissue 2007

8-217
Pledged securities; substitute; when required.

If the interest on any security pledged as provided in section 8-209 remains unpaid for thirty days after maturity, the trust company shall substitute other securities therefor.

Last amended:
Laws 1993, LB 81, § 31

~ Reissue 2007

8-218
Examination; powers and duties of Department of Banking and Finance.

The Department of Banking and Finance or any duly appointed examiner authorized by it may make a full examination into all the books, papers, and affairs of any trust company doing business under the Nebraska Trust Company Act as often as deemed necessary. In so doing, the department shall have power to administer oaths and affirmations and to examine on oath or affirmation the officers, agents, and clerks of the trust company, touching the matter which they may be authorized to inquire into and examine, and to summon and by subpoena compel the attendance of any person or persons in this state to testify under oath in relation to the affairs of the trust company. In lieu of any examination authorized by the laws of this state, the Director of Banking and Finance may accept, in his or her discretion, a report of an examination made of a trust company by the Federal Deposit Insurance Corporation, the Federal Reserve Bank, or the Office of Thrift Supervision or he or she may examine any such trust company jointly with any such federal agency.

Last amended:
Laws 1998, LB 1321, § 45

~ Reissue 2007

8-218.01
Inactive company; charter revoked; when; release of assets.

Any trust company which fails to exercise trust powers for three years or which voluntarily

surrenders duties associated with fiduciary accounts so that no activity is reported for a period of three years, as determined by the consecutive annual reports submitted to the Department of Banking and Finance, shall be deemed inactive. Trust charters determined to be inactive as described in this section shall be revoked and the pledged assets released in accordance with section 8-215.

Last amended:
Laws 1993, LB 81, § 33

~ Reissue 2007

8-219
Liquidation; reorganization; adjudication of insolvency; grounds; powers and duties of Department of Banking and Finance.

Whenever (1) it appears to the Department of Banking and Finance from any examination or report provided for by the Nebraska Trust Company Act that the capital stock of any trust company transacting business under the act is impaired, or that the trust company is conducting its business in an unsafe or unauthorized manner, or that the trust company is endangering the interest of the beneficiaries for whom it holds property in trust, (2) the officers or employees of the trust company refuse to submit its books, papers, and affairs to the inspection of any examiner, (3) any officer thereof refuses to be examined upon oath touching the affairs of the trust company, or (4) from any examination or report provided for by law, the department has reason to conclude that the trust company is in an unsafe or unsound condition to transact the business for which it is organized or that it is unsafe and inexpedient for it to continue its business, the department shall take charge of the trust company and proceed to reorganize or to liquidate the trust company in the manner provided for the liquidation of insolvent banks. If the trust company neglects or refuses to observe any lawful order of the department, then the department may cause a suit to be brought in the name of the State of Nebraska upon the relation of the Department of Banking and Finance against the trust company in the district court of the county in which the trust company is chartered for the purpose of having the trust company adjudged insolvent and its business wound up.

Last amended:
Laws 1998, LB 1321, § 46

~ Reissue 2007

8-220
Liquidation; adjudication of insolvency; procedure; powers of district court; liens dissolved.

The suit referred to in section 8-219 shall be conducted as a civil action under the laws of Nebraska. If in the suit the court finds that the trust company is insolvent, it shall enter a judgment of insolvency and order that the business of the trust company shall be wound up. The

court or any judge thereof may, after notice to the trust company, enjoin the trust company from continuing to transact business pending the hearing and entry of a judgment in the case. If the court finds and adjudges that the trust company is insolvent, the Department of Banking and Finance shall thereupon become the liquidating agent to wind up the business of the trust company, and the department shall be vested with the title to all of the assets and the property of the trust company wherever such property may be situated and whatever the kind and character of the assets and property may be, as of the date of the filing of the petition in court. Any attachment lien against the property of the trust company, acquired within sixty days next preceding the filing of the suit, shall be thereby released and dissolved.

Last amended:
Laws 1993, LB 81, § 35

~ Reissue 2007

8-221
Liquidation; insolvency; injunction to prevent transaction of business.

If the judge of the district court of the county where the suit is filed is absent therefrom, any judge of the Court of Appeals or Supreme Court may grant the injunction as provided in section 8-220 with the same force and effect as if it had been granted by the district judge. All the proceedings for the conduct of the suit and an entry of judgment shall be conducted in the district court of the county where the trust company was chartered. If the trust company is adjudged insolvent, its affairs shall be wound up by the Department of Banking and Finance under and subject to the order of the district court in the manner provided in the case of insolvent banks.

Last amended:
Laws 1993, LB 81, § 36

~ Reissue 2007

8-222
Maximum liability.

The maximum liability which may be incurred by any trust company organized under the Nebraska Trust Company Act, exclusive of money or properties held in trust and exclusive of money borrowed for investment and actually invested in real estate mortgages and other securities in which trust companies are authorized to invest under the act, shall not exceed one hundred percent of the paid-up capital stock.

Last amended:
Laws 1998, LB 1321, § 47

~ Reissue 2007

8-223
Statements required; when; annual report, defined; penalty.

(1) The trust company shall file with the Department of Banking and Finance during the months of January and July of each year a statement under oath of the condition of the trust company on the last business day of the preceding December and June in the manner and form required by the department. For purposes of the Nebraska Trust Company Act, the trust company's annual report shall be deemed to be the report filed with the Department of Banking and Finance during the month of January.

(2) Any trust company that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Trust Company Act shall pay to the department fifty dollars for each day such failure continues, unless the department extends the time for filing such report.

(3) The filing requirements of this section shall not apply to the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Last amended:
Laws 2008, LB 851, § 8

~ Cumulative Supplement 2008

Operative date July 18, 2008

8-224
Reports; form; publication.

(1) The reports required by section 8-223 shall be verified by one of the managing officers, and a summary of the annual report, in a form prescribed by the Department of Banking and Finance, shall, within thirty days after the filing of the statement with the department, be published in a newspaper of general circulation in the county where the trust company is chartered.

(2) The publication required by this section shall not apply to any trust company that makes an annual disclosure statement available to any member of the general public upon request in accordance with the following provisions:

(a) The annual disclosure statement shall be in a form prescribed by the department;

(b) In the lobby of its main office, in every branch trust office, and in every representative trust office, the trust company shall at all times display a notice that the annual disclosure statement may be obtained from the trust company;

(c) If the trust company maintains an Internet web site, the home page of the web site shall at all times contain a notice that the annual disclosure statement may be obtained from the trust company;

(d) The notice described in subdivisions (b) and (c) of this subsection shall include, at a minimum, an address and telephone number to which requests for an annual disclosure statement may be made;

(e) The first requested copy of the annual disclosure statement shall be provided to a requester free of charge; and

(f) A trust company shall make its annual disclosure statement available to the public beginning not later than the following March 31 or, if the trust company mails an annual disclosure statement to its shareholders, beginning not later than five days after the mailing of the disclosure statement, whichever occurs first. A trust company shall make its annual disclosure statement available continuously until (i) the annual disclosure statement for the succeeding year becomes available or (ii) a summary of its annual report is published for the succeeding year in accordance with this section.

(3) The publication required by this section shall not apply to reports of the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Last amended:
Laws 2008, LB 137, § 9

~ Cumulative Supplement 2008

Operative date July 18, 2008

8-224.01
Prohibited acts; violation; penalties.

(1) No charge shall be allowed against an estate or trust for legal services performed by an attorney who is a salaried employee of the trust company or when a portion of the charge for legal service is retained by the trust company. Any officer or employee of the trust company causing or consenting to such division of fee for legal service shall be guilty of a Class I misdemeanor. No investments of an estate or trust shall be made in the capital stock or securities of the trust company, in the stock or securities of its affiliated companies, or in obligations, either direct or indirect, of any director, officer, or employee of the trust company. The trust company shall not substitute any of the assets of an estate or trust under its control for securities of the

trust company. A trust company may administer, in a fiduciary capacity, an estate or trust which contains such capital stock, securities, or obligations as part of its assets if such assets are received in kind from the grantor of the estate or trust and retention of such capital stock, securities, or obligations is properly authorized by the terms of the governing document. Any officer or employee of the trust company making such an investment or consenting to such an investment or causing such substitution or consenting to such substitution shall be guilty of a Class III felony.

(2) No loan of the assets of the trust company shall be made to any officer or director of such corporation. No trust company shall cause or allow funds of any account entrusted to the trust company to be loaned, directly or indirectly, to any director, officer, or employee of the trust company except when the director, officer, or employee has a specific beneficial interest in the account and such loans are allowed in governing account documents and are not prohibited by other state or federal law. Any director, officer, or employee of the trust company causing, consenting to, or receiving funds from a loan made in violation of this section shall be guilty of a Class III felony.

Last amended:
Laws 1993, LB 423, § 3

~ Reissue 2007

8-225
False statement or book entry; destruction or secretion of records; penalty.

Any person who swears to any of the statements required by the Nebraska Trust Company Act, knowing them to be false, who subscribes to, makes, or causes to be made any false statement or false entry in the books of any trust company transacting a business under the act, who subscribes to or exhibits false papers or fails to make true and correct entry in the books and records of the trust company of its business and transactions in the manner and form prescribed by the Department of Banking and Finance, who mutilates, alters, destroys, secretes, or removes any of the books or records of the trust company without the written consent of the Director of Banking and Finance, or who makes, states, or publishes any false statement of the amount of the assets or liabilities of the trust company shall be guilty of a Class IV felony.

Last amended:
Laws 1998, LB 1321, § 49

~ Reissue 2007

8-226
Trust terms; use restricted; penalty.

(1) No individual, firm, corporation, or association doing business directly or indirectly in the

State of Nebraska shall use the words trust, trust company, trust association, or trust fund as any part of its title except:

(a) A trust company as defined in section 8-230;

(b) A trust company chartered and supervised under the laws of the United States or any other state;

(c) A bank or savings association chartered and supervised under the laws of the United States or any other state, if such bank or savings association has been further chartered to conduct a trust company business;

(d) A limited partnership to the extent authorized by subdivision (5) of section 67-234;

(e) An entity required by any other law to use such words; or

(f) Except as provided in subsection (2) of this section.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the code may use the words trust or trust fund;

(b) A trust created by a testamentary or fiduciary document may use the word trust; and

(c) An account in a financial institution established by or on behalf of trusts referenced in subdivision (b) of this subsection may use the words trust or trust fund.

(3) A violation of this section is a Class V misdemeanor.

Last amended:
Laws 1997, LB 44, § 1
Effective date September 13, 1997.

~ Reissue 2007

8-227
State trust company; merger or consolidation with national banking association; procedure.

Any state trust company, with the approval of the Department of Banking and Finance, may, upon a vote of the holders of at least two-thirds of its capital stock, merge or consolidate with a national banking association, as provided by federal law, by causing a certificate to be filed with the Department of Banking and Finance setting forth the resolution of the stockholders of the state trust company and that the resolution has been duly adopted by the holders of at least two-thirds of the capital stock of the trust company.

Last amended:
Laws 1993, LB 81, § 43

~ Reissue 2007

8-228
State trust company; merger or consolidation with a national bank; effect.

When a state trust company has merged or consolidated with a national bank, the resulting national bank and trust company shall be considered the same business and corporate entity as the former national bank and the former trust company and as a continuation thereof and the ownership and title to all properties, assets, obligations, and liabilities of the merging or consolidating trust company shall automatically pass to and become the properties, assets, obligations, and liabilities of the resulting national bank and trust company and shall be deemed to be transferred to and vested in the resulting national bank and trust company without any deed or other transfer. The resulting national bank and trust company, by virtue of such consolidation or merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, personal representative, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such merging or consolidating trust company at the time of such merger or consolidation. Upon the merger or consolidation, the state charter of the merging or consolidating state trust company shall automatically terminate and the charter shall be returned to the Department of Banking and Finance. Securities pledged to the department in accordance with section 8-209 shall be transferred to the name of the resulting national bank and trust company.

Last amended:
Laws 1993, LB 81, § 44

~ Reissue 2007

8-229
State trust company; merger or consolidation with a national bank; redemption of stock; when; value, how determined.

When the merger or consolidation becomes effective, the owner of shares of a state trust company which were voted against a merger or consolidation with a national bank shall be entitled to receive the value of the stock in cash from the assets of the state trust company when the merger or consolidation becomes effective, upon written demand made to the resulting national bank and trust company at any time within thirty days after the effective date of the merger or consolidation, accompanied by the surrender of the stock certificates. The value of the

shares shall be determined as of the date of the shareholders' meeting approving the merger or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the merger or consolidation, one by the board of directors of the resulting national bank and trust company, and the third by the two so chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective, the Department of Banking and Finance may cause an appraisal to be made and the resulting appraisal shall then govern. The expenses of the appraisal caused to be made by the department shall be paid by the resulting national bank and trust company.

Last amended:
Laws 1993, LB 81, § 45

~ Reissue 2007

8-229.01
State trust company; merger or consolidation with state bank; procedure.

Any state trust company, with the approval of the Department of Banking and Finance, may, upon a vote of the holders of at least two-thirds of its capital stock, merge or consolidate with any state bank which has obtained powers to conduct a trust business pursuant to the Nebraska Trust Company Act. The merging trust company must file with the department a certificate of the stockholders of the trust company that the resolution to merge or consolidate has been duly adopted by the holders of at least two-thirds of the capital stock of the trust company.

Last amended:
Laws 1998, LB 1321, § 50

~ Reissue 2007

8-229.02
State trust company; merger or consolidation with a state bank; effect.

When a state trust company has merged or consolidated with a state bank, the resulting state bank and trust company shall be considered the same business and corporate entity as the former state bank and the former trust company and as a continuation thereof. The ownership and title to all properties, assets, obligations, and liabilities of the merging or consolidating trust company shall automatically pass to and become the properties, assets, obligations, and liabilities of the resulting state bank and trust company and shall be deemed to be transferred to and vested in the resulting state bank and trust company without any deed or other transfer. The resulting state bank and trust company, by virtue of such consolidation or merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all right of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, personal representative, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, in the same

manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such merging or consolidating trust company at the time of such merger or consolidation. Upon the merger or consolidation, the state charter of the merging or consolidating state trust company shall automatically be transferred to the resulting state bank and trust company.

Last amended:
Laws 1993, LB 81, § 47

~ Reissue 2007

8-229.03
State trust company; merger or consolidation with a state bank; redemption of stock; when; value, how determined.

When the merger or consolidation becomes effective, the owner of shares of a trust company which were voted against a merger or consolidation with a state bank shall be entitled to receive the value of the stock in cash from the assets of the state trust company upon written demand made to the resulting state bank and trust company at any time within thirty days after the effective date of the merger or consolidation accompanied by the surrender of the stock certificates. The value of the shares shall be determined as of the date of the shareholders' meeting approving the merger or consolidation. An appraisal shall be conducted by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the merger or consolidation, one by the board of directors of the resulting state bank and trust company, and the third by the two so chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective, the Department of Banking and Finance may cause an appraisal to be made and the resulting appraisal shall then govern. The expenses of the appraisal caused to be made by the department shall be paid by the resulting state bank and trust company.

Last amended:
Laws 1993, LB 81, § 48

~ Reissue 2007

8-230
Terms, defined.

For purposes of the Nebraska Trust Company Act, unless the context otherwise requires:

(1) Agency capacity means a capacity resulting from a trust company undertaking to act alone or jointly with others primarily as agent for another in all matters connected with its undertaking, including the capacities of registrar, paying agent, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state, or public authority, escrow agent, or agent for the investment of money or any other similar capacity;

(2) Branch trust office means an office of a trust company, other than the main or principal office of a trust company, at which a trust company may act in any fiduciary capacity or conduct any activity permitted under the Nebraska Trust Company Act;

(3) Fiduciary capacity means a capacity resulting from a trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with the undertaking and includes the capacities of trustee, including trustee of a common trust fund, administrator, personal representative, guardian of an estate, conservator, receiver, attorney in fact, and custodian and any other similar capacity;

(4) Representative trust office means an office at which a trust company does not act in any fiduciary capacity or conduct or engage in any activity related to its fiduciary capacities but may otherwise engage in any other activity permitted under the Nebraska Trust Company Act; and

(5) Trust company means any trust company which is incorporated under the laws of this state, any national banking association having its principal office in this state and authorized to conduct a trust company business as defined in the Nebraska Trust Company Act, any bank authorized to conduct a trust company business in a trust department pursuant to sections 8-159 to 8-162, any federal savings association authorized to conduct a trust company business, and any federally chartered trust company.

Last amended:
Laws 1998, LB 1321, § 51

~ Reissue 2007

8-231
Trust company; substituted in fiduciary capacity for affiliated bank; application; court order; filing.

(1) Any trust company which has been duly authorized to commence the business for which it is organized and which has made the pledge of securities required by sections 8-209 and 8-210 may file an application in the county court of the county in which an affiliated bank is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank specified in the application, and such specified affiliated bank shall join in such application. Such application may be made by the trust company seeking substitution and need not list the fiduciary capacities in which substitution is proposed to be made. For purposes of this section, affiliated bank with respect to a trust company shall mean any bank incorporated under the laws of this state and any national banking association having its principal office in this state, more than fifty percent of the voting stock of which is owned directly or indirectly by the same bank holding company as defined in the United States Bank Holding Company Act, as amended, that owns directly or indirectly more than fifty percent of the voting stock of such trust company. The county court may require such notice as it deems necessary.

(2) When the county court finds that such trust company has been duly authorized to commence the business for which it is organized and that it has made a pledge of securities in accordance with sections 8-209 and 8-210, the county court may enter an order substituting such trust company in every fiduciary capacity for the specified affiliated bank except as may be otherwise specified in the application.

(3) Upon entry of such order, such trust company shall, without further act, be substituted in every such fiduciary capacity, and such application may be evidenced by filing a copy of the order with the clerk of any county court in this state.

Last amended:
Laws 1993, LB 81, § 50

~ Reissue 2007

8-232
Designation of bank as fiduciary in a will or other instrument; effect.

Each designation in a will or other instrument executed either before, on, or after September 9, 1993, in which a bank is designated as fiduciary shall be deemed a designation of the trust company substituted for the bank pursuant to sections 8-230 to 8-233 except when the will or other instrument is executed after such substitution. Any grant in a will or other instrument of any discretionary power shall be deemed conferred upon the trust company deemed designated as the fiduciary pursuant to this section.

Last amended:
Laws 1993, LB 81, § 51

~ Reissue 2007

8-233
Trust company; substituted as fiduciary; accounting; transfer of assets.

A bank shall account jointly with the trust company which has been substituted as fiduciary for the bank pursuant to sections 8-230 to 8-233 for the accounting period during which the trust company is initially so substituted. Upon substitution pursuant to sections 8-230 to 8-233, the bank shall deliver to the trust company all assets held by the bank as fiduciary, except assets held for accounts with respect to which there has been no substitution pursuant to sections 8-230 to 8-233, and upon substitution all the assets shall become the property of the trust company without the necessity of any instrument of transfer or conveyance.

Last amended:
Laws 1993, LB 81, § 52

8-234
Branch trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch trust office would be located and (b) give notice of such application for a branch trust office to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. If the director receives a substantive objection to the proposed branch trust office within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch trust office would be located. The expense of any publication and certified mailing required by this section shall be paid by the applicant. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking

shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Last amended:
Laws 2008, LB 851, § 10

~ Cumulative Supplement 2008

Operative date March 20, 2008

8-235
Representative trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain representative trust offices within this state and in any other state pursuant to section 8-2304.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a representative trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Within sixty days after receipt of a substantially complete application, the director shall notify the trust company of his or her decision on the application. If the director does not act on the application, the application shall be deemed approved on the sixty-first day after receipt of a substantially complete application.

(3) The director shall approve the application for a representative trust office if he or she finds that:

(a) The establishment of the representative trust office would not adversely affect the financial condition of the trust company;

(b) The activities at the representative trust office will be limited to nonfiduciary trust activities; and

(c) Establishment of the representative trust office would be in the public interest.

(4) A state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain representative trust offices within this state and in any other state pursuant to section 8-2304. The procedure for the establishment of any representative trust offices under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the representative trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, except that no fiduciary activities may be conducted at the

representative trust offices. The general business of banking shall not be conducted at the representative trust offices.

(5) A representative trust office shall not be closed unless the trust company or state-chartered bank provides sixty days' prior written notice to the director.

Last amended:
Laws 1998, LB 1321, § 53

~ Reissue 2007