

§476. Transfer of fiduciary relationships to and from affiliated financial institutions

A financial institution may transfer its fiduciary relationships to another affiliate if the affiliate to which the fiduciary relationships are being transferred is authorized to conduct trust activities in the manner described in this section. [PL 1997, c. 398, Pt. I, §41 (NEW).]

1. Petition. The following provisions govern the petition process.

A. The transferee affiliate may apply by petition to the Superior Court or Probate Court in and for the county in which its principal office is located requesting that it be substituted for its affiliate specified in the petition in every existing fiduciary capacity designated in the petition and, in the case of the first petition, in every fiduciary capacity that may take effect after the date on which that petition is filed. [PL 1997, c. 398, Pt. I, §41 (NEW).]

B. Each transferor affiliate shall join in the petition. Notice of the filing of the petition must be given to the superintendent prior to the filing. [PL 1997, c. 398, Pt. I, §41 (NEW).]

C. The petition must indicate the county in which the principal office of each transferor affiliate joining in the petition is located and must designate each fiduciary relationship existing at the date of the petition with respect to which the transferee affiliate, referred to in this section as the "petitioner," requests substitution. The petition additionally must set forth, with regard to each existing fiduciary relationship designated in the petition, the name and address last known to the petitioner of each person entitled to receive notice of hearing on the petition, as follows:

(1) In a case in which the transferor affiliate specified in the petition is acting with one or more cofiduciaries in respect to the fiduciary relationship, each cofiduciary;

(2) In a case in which the instrument creating the fiduciary relationship so provides, each person who, alone or together with others, may revoke, terminate or amend the instrument or remove the corporate fiduciary;

(3) In the case of any trust not described in subparagraph (2), each beneficiary entitled or permitted, on the date the petition is filed, to receive income from the trust pursuant to the terms of the trust and each person who would be presumptively entitled to any portion of the principal of the trust if all income interests in the trust terminated on the date the petition was filed;

(4) In the case of the estate of any decedent, each person who would have a claim to succession to any property of the decedent under the testacy status upon which the fiduciary has been authorized to proceed;

(5) In the case of any conservatorship, each person whose assets are the subject of the conservatorship and each guardian of the person, if any guardian has been appointed and is a person other than a transferor affiliate;

(6) In the case of any person described in subparagraphs (1) to (5) that is a charitable institution or a charitable trust located within the State, the Attorney General; and

(7) In all cases, the superintendent. [PL 1997, c. 398, Pt. I, §41 (NEW).]

D. The court may appoint one or more guardians ad litem to represent the interests of a person:

(1) Entitled to receive notice pursuant to paragraph C, who is a minor or who is known by the petitioner or any transferor affiliate to be subject to any other disability, including confinement in a penal institution, and for whom no guardian, other than a transferor affiliate, has been appointed;

(2) Of whose estate a transferor affiliate is conservator and for whom no guardian, other than a transferor affiliate, has been appointed; and

(3) Whose identity or whereabouts is unknown.

Title 18-C, section 1-403 governs in determining the propriety of any such appointments. [PL 2017, c. 402, Pt. C, §25 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. C, §25 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice. When any petition described in subsection 1 has been filed, the court in which the petition has been filed shall enter an order fixing a date and time for hearing on the petition, which may not be earlier than 35 days after the filing of the petition, and approving the form of notice to be given by the petitioner as provided in this section. At least 25 days prior to the hearing date, the petitioner shall cause a copy of the notice to be mailed by first class mail to each person identified in the petition as being entitled to receive notice under this section, at that person's last known address as set forth in the petition. In addition, the petitioner shall cause a copy of the notice to be published at least once a week for 3 successive weeks preceding the hearing date, the first publication to be at least 25 days prior to the hearing date. This publication must be in a newspaper of general circulation in each county in which the principal office of the affiliated bank specified in the petition is located.
[PL 1997, c. 398, Pt. I, §41 (NEW).]

3. Contents of notice. The notice mailed and published with respect to each petition must state the time and place of the hearing, the name of the subsidiary trust company that has filed the petition, the name of each transferor affiliate that has joined in the petition, that the petition requests that the petitioner be substituted for each of its transferor affiliates specified in the petition in every existing fiduciary capacity designated in the petition and, if appropriate, in every fiduciary capacity that may take effect after the petition has been filed and that any person to whom the notice is addressed may file an objection in accordance with subsection 4. All costs incurred in connection with the printing, mailing and publishing of the notice must be borne by the petitioner.
[PL 1997, c. 398, Pt. I, §41 (NEW).]

4. Objections. A person entitled to receive notice under this section may object to the substitution of the petitioner as fiduciary. Any such person wishing to object must file a written objection to the substitution, setting forth the reasons for the objection, with the court in which the petition has been filed and serve a copy upon the attorney for the petitioner at least 3 days before the date of hearing and must appear at the hearing in person or by an attorney.
[PL 1997, c. 398, Pt. I, §41 (NEW).]

5. Order. On the date fixed for the hearing on the petition, upon making a determination that notice has been properly given as required by this section, the court shall enter an order substituting the petitioner for each of its specified affiliated banks in every designated existing fiduciary capacity and, in the case of the first petition by the petitioner, in every fiduciary capacity that takes effect after the filing of the petition, except fiduciary capacities in any existing relationship with respect to which an objection has been filed in accordance with subsection 4. In the case of a fiduciary relationship when more than one person is entitled under this section to object to substitution of the petitioner, the properly made objection by fewer than all of the persons must be considered by the court, which shall in its sole discretion determine whether the substitution will be ordered. In the case of a fiduciary relationship in respect of which an objection has been properly made by any person who is entitled pursuant to this section to object to the substitution, the court may in its discretion determine that the resignation of the transferor affiliate will be accepted in respect of the fiduciary relationship. If the court determines that the resignation will be accepted, it shall enter an order substituting a different financial institution or nondepository trust company that has given its written consent to such a substitution prior to the entry of the order. In construing the language of any instrument that is the subject of a proceeding pursuant to this section, this section may not be considered to abrogate or affect the terms of the instrument creating the fiduciary relationship. Upon entry of the court's order, the petitioner, without further act, is substituted in every such fiduciary capacity.
[PL 1997, c. 398, Pt. I, §41 (NEW).]

6. Substitution. In respect of each fiduciary capacity, existing and future, as to which substitution has been ordered pursuant to this section, each designation of an affiliated bank as fiduciary in any capacity contained in any contract, will, order of any court or other document or instrument is deemed a designation of the petitioner substituted for the transferor affiliate pursuant to this section.

A. Any grant in any such contract, will, order or other document or instrument of any rights, powers, duties or authorities, whether or not discretionary, is deemed conferred upon the petitioner deemed designated as the fiduciary pursuant to this section. [PL 1997, c. 398, Pt. I, §41 (NEW).]

B. Following the entry of an order pursuant to this section, the petitioner, with respect to each fiduciary relationship affected by the order that is an estate of a deceased person, guardianship or conservatorship, shall notify in writing the register of probate for the county in which the affected affiliated bank was appointed to the affected fiduciary relationship of the substitution of the petitioner for the affected affiliated bank in this fiduciary capacity. The notification must contain the name of the affected estate, guardianship or conservatorship, the date on which the order was entered and the name of the court that entered it and must state that the order was entered pursuant to this section. [PL 1997, c. 398, Pt. I, §41 (NEW).]
[PL 1997, c. 398, Pt. I, §41 (NEW).]

7. Assets. Upon substitution pursuant to this section, each transferor affiliate shall deliver to the petitioner all assets held by the transferor affiliate as fiduciary, except assets held in capacities with respect to which there has been no substitution pursuant to this section and, upon substitution, the assets become the property of the petitioner without the necessity of any instrument of transfer or conveyance. Notwithstanding any provision in this Title, after a substitution of existing fiduciary capacities pursuant to this section, a transferor affiliate remains jointly liable with the petitioner that has been substituted for it in respect of each of the existing fiduciary relationships as to which the substitution has been ordered, but the transferor affiliate is entitled to a right of indemnification against the petitioner for all amounts paid by the transferee affiliate as a result of the joint liability.
[PL 1997, c. 398, Pt. I, §41 (NEW).]

SECTION HISTORY

PL 1997, c. 398, §141 (NEW). PL 2017, c. 402, Pt. C, §25 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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