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P.L. 2003, CHAPTER 33, *approved March 24, 2003*
Senate, No. 1479 (*Second Reprint*)

1 AN ACT concerning ¹[the employment and compensation of
2 accountants by]¹ fiduciaries and amending N.J.S.3B:14-23.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.3B:14-23 is amended to read as follows:

8 3B:14-23. Powers. In the absence of contrary or limiting
9 provisions in the judgment or order appointing a fiduciary, in the will,
10 deed or other instrument or in a subsequent court judgment or order,
11 every fiduciary shall, in the exercise of good faith and reasonable
12 discretion, have the power:

13 a. To accept additions to any estate or trust from sources other
14 than the estate of the decedent, minor, mental incompetent or the
15 settlor of a trust;

16 b. To acquire the remaining undivided interest in an estate or trust
17 asset in which the fiduciary, in his fiduciary capacity, holds an
18 undivided interest;

19 c. To invest and reinvest assets of the estate or trust under the
20 provisions of the will, deed or other instrument or as otherwise
21 provided by law and to exchange assets for investments and other
22 property upon terms as may seem advisable to the fiduciary;

23 d. To effect and keep in force fire, rent, title, liability, casualty or
24 other insurance to protect the property of the estate or trust and to
25 protect the fiduciary;

26 e. With respect to any property or any interest therein owned by an
27 estate or trust, including any real property belonging to the fiduciary's
28 decedent at death, except where the property or any interest therein is
29 specifically disposed of:

30 (1) To take possession of and manage the property and to collect
31 the rents therefrom, and pay taxes, mortgage interest and other
32 charges against the property;

33 (2) To sell the property at public or private sale, and on terms as
34 in the opinion of the fiduciary shall be most advantageous to those
35 interested therein;

36 (3) With respect to fiduciaries other than a trustee, to lease the
37 property for a term not exceeding three years, and in the case of a
38 trustee to lease the property for a term not exceeding 10 years, even
39 though the term extends beyond the duration of the trust, and in either

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted June 6, 2002.

² Senate amendments adopted in accordance with Governor's recommendations January 23, 2003.

1 case including the right to explore for and remove mineral or other
2 natural resources, and in connection with mineral leases to enter into
3 pooling and unitization agreements;

4 (4) To mortgage the property;

5 (5) To grant easements to adjoining owners and utilities;

6 (6) A fiduciary acting under a will may exercise any of the powers
7 granted by this subsection e. notwithstanding the effects upon the will
8 of the birth of a child after its execution;

9 f. To make repairs to the property of the estate or trust for the
10 purpose of preserving the property or rendering it rentable or saleable;

11 g. To grant options for the sale of any property of the estate or
12 trust for a period not exceeding six months;

13 h. With respect to any mortgage held by the estate or trust to
14 continue it upon and after maturity, with or without renewal or
15 extension, upon terms as may seem advisable to the fiduciary and to
16 foreclose, as an incident to collection of any bond or note, any
17 mortgage and purchase the mortgaged property or acquire the
18 property by deed from the mortgagor in lieu of foreclosure;

19 i. In the case of the survivor or survivors of two or more
20 fiduciaries to administer the estate or trust without the appointment of
21 a successor to the fiduciary or fiduciaries who have ceased to act and
22 to exercise or perform all of the powers given unless contrary to the
23 express provision of the will, deed or other instrument;

24 j. As a new, alternate, successor, substitute or additional fiduciary
25 or fiduciaries, to have or succeed to all of the powers, duties and
26 discretion of the original fiduciary or fiduciaries, with respect to the
27 estate or trust, as were given to the original fiduciary or fiduciaries
28 named in or appointed by a will, deed or other instrument, unless the
29 exercise of the powers, duties or discretion of the original fiduciary or
30 fiduciaries is expressly prohibited by the will, deed or other instrument
31 to any successor or substitute fiduciary or fiduciaries;

32 k. Where there are three or more fiduciaries qualified to act, to
33 take any action with respect to the estate or trust which a majority of
34 the fiduciaries shall determine; a fiduciary who fails to act through
35 absence or disability, or a dissenting fiduciary who joins in carrying
36 out the decision of a majority of the fiduciaries if his dissent is
37 expressed promptly in writing to his cofiduciaries, shall not be liable
38 for the consequences of any majority decision, provided that liability
39 for failure to join in administering the trust or to prevent a breach of
40 trust may not thus be avoided;

41 l. To employ and compensate attorneys for services rendered to the
42 estate or trust or to a fiduciary in the performance of his duties;

43 m. To compromise, contest or otherwise settle any claim in favor
44 of the estate, trust or fiduciary or in favor of third persons and against
45 the estate, trust or fiduciary, including transfer inheritance, estate,
46 income and other taxes;

- 1 n. To vote in person or by proxy, discretionary or otherwise,
2 shares of stock or other securities held by the estate or trust;
- 3 o. To pay calls, assessments and any other sums chargeable or
4 accruing against or on account of shares of stock, bonds, debentures
5 or other corporate securities in the hands of a fiduciary, whenever the
6 payments may be legally enforceable against the fiduciary or any
7 property of the estate or trust or the fiduciary deems payment
8 expedient and for the best interests of the estate or trust;
- 9 p. To sell or exercise stock subscription or conversion rights,
10 participate in foreclosures, reorganizations, consolidations, mergers or
11 liquidations, and to consent to corporate sales or leases and
12 encumbrances, and, in the exercise of those powers, the fiduciary is
13 authorized to deposit stocks, bonds or other securities with any
14 custodian, agent, protective or other similar committee, or trustee
15 under a voting trust agreement, under terms and conditions respecting
16 the deposit thereof as the fiduciary may approve;
- 17 q. To execute and deliver agreements, assignments, bills of sale,
18 contracts, deeds, notes, receipts and any other instrument necessary or
19 appropriate for the administration of the estate or trust;
- 20 r. In the case of a trustee:
- 21 (1) To hold two or more trusts or parts of trusts created by the
22 same instrument, as an undivided whole, without separation as
23 between the trusts or parts of the trusts, provided that separate trusts
24 or parts of trusts shall have undivided interests and provided further
25 that no holding shall defer the vesting of any estate in possession or
26 otherwise;
- 27 (2) To divide a trust, before or after its initial funding, into two or
28 more separate trusts, provided that such division will not materially
29 impair the accomplishment of the trust purposes or the interests of any
30 beneficiary. Distributions provided for by the governing instrument
31 may be made from one or more of the separate trusts;
- 32 s. To distribute in kind any property of the estate or trust as
33 provided in article 1 of chapter 23 of this title;
- 34 t. To join with the surviving spouse, the executor of his or her will
35 or the administrator of his or her estate in the execution and filing of
36 a joint income tax return for any period prior to the death of a
37 decedent for which he has not filed a return or a gift tax return on gifts
38 made by the decedent's surviving spouse, and to consent to treat the
39 gifts as being made one-half by the decedent, for any period prior to
40 a decedent's death, and to pay taxes thereon as are chargeable to the
41 decedent;
- 42 u. To acquire or dispose of an asset, including real or personal
43 property in this or another state, for cash or on credit, at public or
44 private sale, and to manage, develop, improve, exchange, partition,
45 change the character of, or abandon an estate asset;

1 v. To continue any business constituting the whole or any part of
2 the estate for so long a period of time as the fiduciary may deem
3 advisable and advantageous for the estate and persons interested
4 therein;

5 w. In the case of a qualified bank as defined in section 1 of
6 P.L.1948, c.67 (C.17:9A-1), ¹and an out-of-State bank as defined in
7 section 1 of P.L.1948, c.67 (C. 17:9A-1), which has established a trust
8 office in this State¹ to purchase, sell and maintain for any fiduciary
9 account, securities issued by an investment company which is
10 operated and maintained in accordance with the "Investment Company
11 Act of 1940," 15 U.S.C.s.80a-1 et seq., and for which the qualified
12 bank ¹or out-of-State bank¹ is providing services as an investment
13 advisor, investment manager, custodian or otherwise, including those
14 for which it receives compensation, if:

15 (1) The investment is otherwise in accordance with applicable
16 fiduciary standards; and

17 (2) The investment is authorized by the agreement or instrument
18 creating the fiduciary account that gives the qualified bank ¹or out-of-
19 State bank¹ investment authority, or by court order; or

20 (3) The qualified bank ¹or out-of-State bank¹ provides written
21 notice not less than annually by prospectus, account statement or
22 otherwise, disclosing to any current income beneficiaries of the trust
23 the services provided by the qualified bank or its affiliate ¹or out-of-
24 State bank¹ to the investment company, and the rate, formula, or other
25 method by which compensation paid to the qualified bank or its
26 affiliate ¹or out-of-State bank¹ is determined and the qualified bank
27 ¹or out-of-State bank¹ does not receive a written objection from any
28 current income beneficiary within 30 days after receipt of this notice.
29 If a written objection is received from any current income beneficiary
30 pursuant to this paragraph (3), no such investment of the trust assets
31 of that fiduciary account shall be made or maintained.

32 Such investment shall not be deemed self-dealing or a fiduciary
33 conflict; nor shall the fact that other beneficiaries of fiduciary accounts
34 of the qualified bank ¹or out-of-State bank¹ have similar investments
35 be deemed to be an improper commingling of assets by the qualified
36 bank ¹or out-of-State bank¹.

37 For purposes of this subsection, "fiduciary account" shall include a
38 trust, estate, agency or other account in which funds, property, or
39 both, are held by a qualified bank pursuant to section 28 of P.L.1948,
40 c.67 (C.17:9A-28), or an account for which a qualified bank ¹or out-
41 of-State bank¹ acts as investment advisor or manager ¹or an account
42 held by an out-of-State bank as defined in section 1 of P.L.1948, c. 67
43 (C. 17:9A-1)¹; [and]

44 x. To employ and compensate accountants from the fiduciary fund
45 for services rendered to the estate or trust or to a fiduciary in the
46 performance of the fiduciary's duties, including the duty of a corporate

1 or other fiduciary with respect to the preparation of ²[accounts or]²
2 accountings, without reduction in commissions due to the fiduciary²,
3 so long as such accountings are not the usual, customary or routine
4 services provided by the fiduciary in light of the nature and skill of the
5 fiduciary. In evaluating the actions of the fiduciary under this
6 subsection, the court shall consider the size and complexity of the
7 fiduciary fund, the length of time for which the accounting is rendered,
8 and the increased risk and responsibilities imposed on fiduciaries as a
9 result of revisions to laws affecting fiduciaries including, but not
10 limited to, the "Uniform Principal and Income Act," P.L.2001, c.212
11 (C.3B:19B-1 et seq.) and the "Prudent Investor Act," P.L.1997, c.26
12 (C.3B:20-11.1 et seq.) provided that such revisions of the laws
13 affecting fiduciaries were enacted after the fiduciary responsibilities
14 under the corresponding will, deed or other instrument, or court
15 judgment or order, were imposed on, and assumed by, the fiduciary.
16 For purposes of this subsection, "Accountant" means a person who is
17 registered as a certified public accountant pursuant to the provisions
18 of P.L.1997, c.259 (C.45:2B-42 et seq.), or an accounting firm which
19 is organized for the practice of public accounting pursuant to the
20 provisions of P.L.1997, c.259 (C.45:2B-42 et seq.) and P.L.1969,
21 c.232 (C.14A:17-1 et seq.)²; and

22 y. The powers set forth in this section are in addition to any other
23 powers granted by law, and by a will, deed or other instrument.
24 (cf: P.L.1997, c.250, s.1)

25

26 2. This act shall take effect immediately ²except that the provisions
27 of subsection x. of N.J.S.3B:14-23, as amended by this act shall take
28 effect on the 90th day following enactment².

29

30

31

32

33 _____
34 Permits fiduciary to employ and compensate accountants from
35 fiduciary funds and permits certain out-of-State banks to be treated
similarly as New Jersey banks.

SENATE, No. 1479

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 13, 2002

Sponsored by:
Senator GERALD CARDINALE
District 39 (Bergen)

SYNOPSIS

Permits fiduciaries to employ and compensate accountants from fiduciary funds.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the employment and compensation of accountants
2 by fiduciaries and amending N.J.S.3B:14-23.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. N.J.S.3B:14-23 is amended to read as follows:

8 3B:14-23. Powers. In the absence of contrary or limiting
9 provisions in the judgment or order appointing a fiduciary, in the will,
10 deed or other instrument or in a subsequent court judgment or order,
11 every fiduciary shall, in the exercise of good faith and reasonable
12 discretion, have the power:

13 a. To accept additions to any estate or trust from sources other
14 than the estate of the decedent, minor, mental incompetent or the
15 settlor of a trust;

16 b. To acquire the remaining undivided interest in an estate or trust
17 asset in which the fiduciary, in his fiduciary capacity, holds an
18 undivided interest;

19 c. To invest and reinvest assets of the estate or trust under the
20 provisions of the will, deed or other instrument or as otherwise
21 provided by law and to exchange assets for investments and other
22 property upon terms as may seem advisable to the fiduciary;

23 d. To effect and keep in force fire, rent, title, liability, casualty or
24 other insurance to protect the property of the estate or trust and to
25 protect the fiduciary;

26 e. With respect to any property or any interest therein owned by an
27 estate or trust, including any real property belonging to the fiduciary's
28 decedent at death, except where the property or any interest therein is
29 specifically disposed of:

30 (1) To take possession of and manage the property and to collect
31 the rents therefrom, and pay taxes, mortgage interest and other
32 charges against the property;

33 (2) To sell the property at public or private sale, and on terms as
34 in the opinion of the fiduciary shall be most advantageous to those
35 interested therein;

36 (3) With respect to fiduciaries other than a trustee, to lease the
37 property for a term not exceeding three years, and in the case of a
38 trustee to lease the property for a term not exceeding 10 years, even
39 though the term extends beyond the duration of the trust, and in either
40 case including the right to explore for and remove mineral or other
41 natural resources, and in connection with mineral leases to enter into
42 pooling and unitization agreements;

43 (4) To mortgage the property;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (5) To grant easements to adjoining owners and utilities;
- 2 (6) A fiduciary acting under a will may exercise any of the powers
3 granted by this subsection e. notwithstanding the effects upon the will
4 of the birth of a child after its execution;
- 5 f. To make repairs to the property of the estate or trust for the
6 purpose of preserving the property or rendering it rentable or saleable;
- 7 g. To grant options for the sale of any property of the estate or
8 trust for a period not exceeding six months;
- 9 h. With respect to any mortgage held by the estate or trust to
10 continue it upon and after maturity, with or without renewal or
11 extension, upon terms as may seem advisable to the fiduciary and to
12 foreclose, as an incident to collection of any bond or note, any
13 mortgage and purchase the mortgaged property or acquire the
14 property by deed from the mortgagor in lieu of foreclosure;
- 15 i. In the case of the survivor or survivors of two or more
16 fiduciaries to administer the estate or trust without the appointment of
17 a successor to the fiduciary or fiduciaries who have ceased to act and
18 to exercise or perform all of the powers given unless contrary to the
19 express provision of the will, deed or other instrument;
- 20 j. As a new, alternate, successor, substitute or additional fiduciary
21 or fiduciaries, to have or succeed to all of the powers, duties and
22 discretion of the original fiduciary or fiduciaries, with respect to the
23 estate or trust, as were given to the original fiduciary or fiduciaries
24 named in or appointed by a will, deed or other instrument, unless the
25 exercise of the powers, duties or discretion of the original fiduciary or
26 fiduciaries is expressly prohibited by the will, deed or other instrument
27 to any successor or substitute fiduciary or fiduciaries;
- 28 k. Where there are three or more fiduciaries qualified to act, to
29 take any action with respect to the estate or trust which a majority of
30 the fiduciaries shall determine; a fiduciary who fails to act through
31 absence or disability, or a dissenting fiduciary who joins in carrying
32 out the decision of a majority of the fiduciaries if his dissent is
33 expressed promptly in writing to his cofiduciaries, shall not be liable
34 for the consequences of any majority decision, provided that liability
35 for failure to join in administering the trust or to prevent a breach of
36 trust may not thus be avoided;
- 37 l. To employ and compensate attorneys for services rendered to the
38 estate or trust or to a fiduciary in the performance of his duties;
- 39 m. To compromise, contest or otherwise settle any claim in favor
40 of the estate, trust or fiduciary or in favor of third persons and against
41 the estate, trust or fiduciary, including transfer inheritance, estate,
42 income and other taxes;
- 43 n. To vote in person or by proxy, discretionary or otherwise,
44 shares of stock or other securities held by the estate or trust;
- 45 o. To pay calls, assessments and any other sums chargeable or
46 accruing against or on account of shares of stock, bonds, debentures

1 or other corporate securities in the hands of a fiduciary, whenever the
2 payments may be legally enforceable against the fiduciary or any
3 property of the estate or trust or the fiduciary deems payment
4 expedient and for the best interests of the estate or trust;

5 p. To sell or exercise stock subscription or conversion rights,
6 participate in foreclosures, reorganizations, consolidations, mergers or
7 liquidations, and to consent to corporate sales or leases and
8 encumbrances, and, in the exercise of those powers, the fiduciary is
9 authorized to deposit stocks, bonds or other securities with any
10 custodian, agent, protective or other similar committee, or trustee
11 under a voting trust agreement, under terms and conditions respecting
12 the deposit thereof as the fiduciary may approve;

13 q. To execute and deliver agreements, assignments, bills of sale,
14 contracts, deeds, notes, receipts and any other instrument necessary or
15 appropriate for the administration of the estate or trust;

16 r. In the case of a trustee:

17 (1) To hold two or more trusts or parts of trusts created by the
18 same instrument, as an undivided whole, without separation as
19 between the trusts or parts of the trusts, provided that separate trusts
20 or parts of trusts shall have undivided interests and provided further
21 that no holding shall defer the vesting of any estate in possession or
22 otherwise;

23 (2) To divide a trust, before or after its initial funding, into two or
24 more separate trusts, provided that such division will not materially
25 impair the accomplishment of the trust purposes or the interests of any
26 beneficiary. Distributions provided for by the governing instrument
27 may be made from one or more of the separate trusts;

28 s. To distribute in kind any property of the estate or trust as
29 provided in article 1 of chapter 23 of this title;

30 t. To join with the surviving spouse, the executor of his or her will
31 or the administrator of his or her estate in the execution and filing of
32 a joint income tax return for any period prior to the death of a
33 decedent for which he has not filed a return or a gift tax return on gifts
34 made by the decedent's surviving spouse, and to consent to treat the
35 gifts as being made one-half by the decedent, for any period prior to
36 a decedent's death, and to pay taxes thereon as are chargeable to the
37 decedent;

38 u. To acquire or dispose of an asset, including real or personal
39 property in this or another state, for cash or on credit, at public or
40 private sale, and to manage, develop, improve, exchange, partition,
41 change the character of, or abandon an estate asset;

42 v. To continue any business constituting the whole or any part of
43 the estate for so long a period of time as the fiduciary may deem
44 advisable and advantageous for the estate and persons interested
45 therein;

46 w. In the case of a qualified bank as defined in section 1 of

1 P.L.1948, c.67 (C.17:9A-1), to purchase, sell and maintain for any
2 fiduciary account, securities issued by an investment company which
3 is operated and maintained in accordance with the "Investment
4 Company Act of 1940," 15 U.S.C.s.80a-1 et seq., and for which the
5 qualified bank is providing services as an investment advisor,
6 investment manager, custodian or otherwise, including those for which
7 it receives compensation, if:

8 (1) The investment is otherwise in accordance with applicable
9 fiduciary standards; and

10 (2) The investment is authorized by the agreement or instrument
11 creating the fiduciary account that gives the qualified bank investment
12 authority, or by court order; or

13 (3) The qualified bank provides written notice not less than
14 annually by prospectus, account statement or otherwise, disclosing to
15 any current income beneficiaries of the trust the services provided by
16 the qualified bank or its affiliate to the investment company, and the
17 rate, formula, or other method by which compensation paid to the
18 qualified bank or its affiliate is determined and the qualified bank does
19 not receive a written objection from any current income beneficiary
20 within 30 days after receipt of this notice. If a written objection is
21 received from any current income beneficiary pursuant to this
22 paragraph (3), no such investment of the trust assets of that fiduciary
23 account shall be made or maintained.

24 Such investment shall not be deemed self-dealing or a fiduciary
25 conflict; nor shall the fact that other beneficiaries of fiduciary accounts
26 of the qualified bank have similar investments be deemed to be an
27 improper commingling of assets by the qualified bank.

28 For purposes of this subsection, "fiduciary account" shall include a
29 trust, estate, agency or other account in which funds, property, or
30 both, are held by a qualified bank pursuant to section 28 of P.L.1948,
31 c.67 (C.17:9A-28), or an account for which a qualified bank acts as
32 investment advisor or manager; [and]

33 x. To employ and compensate accountants from the fiduciary fund
34 for services rendered to the estate or trust or to a fiduciary in the
35 performance of the fiduciary's duties, including the duty of a corporate
36 or other fiduciary with respect to the preparation of accounts or
37 accountings, without reduction in commissions due to the fiduciary;
38 and

39 y. The powers set forth in this section are in addition to any other
40 powers granted by law, and by a will, deed or other instrument.

41 (cf: P.L.1997, c.250, s.1)

42

43 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill permits fiduciaries to employ and compensate accountants
4 from the fiduciary fund for services rendered to an estate or trust,
5 without reducing the commissions due to the fiduciary.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1479

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 2002

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1479.

This bill permits fiduciaries to employ and compensate accountants from the fiduciary fund for services rendered to an estate or trust, without reducing the commissions due to the fiduciary.

The committee amendments to the bill permit out-of-State banks that operate a trust office in New Jersey to be treated the same under the law as New Jersey banks with respect to the simultaneous fiduciary administration of trusts and administrative work done for operators of mutual funds.

ASSEMBLY, No. 2301

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED MAY 9, 2002

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

SYNOPSIS

Permits fiduciaries to employ and compensate accountants from fiduciary funds.

CURRENT VERSION OF TEXT

As introduced.



A2301 COHEN, IMPREVEDUTO

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10 deed or other instrument or in a subsequent court judgment or order,
11 every fiduciary shall, in the exercise of good faith and reasonable
12 discretion, have the power:

13 a. To accept additions to any estate or trust from sources other
14 than the estate of the decedent, minor, mental incompetent or the
15 settlor of a trust;

16 b. To acquire the remaining undivided interest in an estate or trust
17 asset in which the fiduciary, in his fiduciary capacity, holds an
18 undivided interest;

19 c. To invest and reinvest assets of the estate or trust under the
20 provisions of the will, deed or other instrument or as otherwise
21 provided by law and to exchange assets for investments and other
22 property upon terms as may seem advisable to the fiduciary;

23 d. To effect and keep in force fire, rent, title, liability, casualty or
24 other insurance to protect the property of the estate or trust and to
25 protect the fiduciary;

26 e. With respect to any property or any interest therein owned by an
27 estate or trust, including any real property belonging to the fiduciary's
28 decedent at death, except where the property or any interest therein is
29 specifically disposed of:

30 (1) To take possession of and manage the property and to collect
31 the rents therefrom, and pay taxes, mortgage interest and other
32 charges against the property;

33 (2) To sell the property at public or private sale, and on terms as
34 in the opinion of the fiduciary shall be most advantageous to those
35 interested therein;

36 (3) With respect to fiduciaries other than a trustee, to lease the
37 property for a term not exceeding three years, and in the case of a
38 trustee to lease the property for a term not exceeding 10 years, even
39 though the term extends beyond the duration of the trust, and in either
40 case including the right to explore for and remove mineral or other
41 natural resources, and in connection with mineral leases to enter into
42 pooling and unitization agreements;

43 (4) To mortgage the property;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

A2301 COHEN, IMPREVEDUTO

- 1 (5) To grant easements to adjoining owners and utilities;
- 2 (6) A fiduciary acting under a will may exercise any of the powers
3 granted by this subsection e. notwithstanding the effects upon the will
4 of the birth of a child after its execution;
- 5 f. To make repairs to the property of the estate or trust for the
6 purpose of preserving the property or rendering it rentable or saleable;
- 7 g. To grant options for the sale of any property of the estate or
8 trust for a period not exceeding six months;
- 9 h. With respect to any mortgage held by the estate or trust to
10 continue it upon and after maturity, with or without renewal or
11 extension, upon terms as may seem advisable to the fiduciary and to
12 foreclose, as an incident to collection of any bond or note, any
13 mortgage and purchase the mortgaged property or acquire the
14 property by deed from the mortgagor in lieu of foreclosure;
- 15 i. In the case of the survivor or survivors of two or more
16 fiduciaries to administer the estate or trust without the appointment of
17 a successor to the fiduciary or fiduciaries who have ceased to act and
18 to exercise or perform all of the powers given unless contrary to the
19 express provision of the will, deed or other instrument;
- 20 j. As a new, alternate, successor, substitute or additional fiduciary
21 or fiduciaries, to have or succeed to all of the powers, duties and
22 discretion of the original fiduciary or fiduciaries, with respect to the
23 estate or trust, as were given to the original fiduciary or fiduciaries
24 named in or appointed by a will, deed or other instrument, unless the
25 exercise of the powers, duties or discretion of the original fiduciary or
26 fiduciaries is expressly prohibited by the will, deed or other instrument
27 to any successor or substitute fiduciary or fiduciaries;
- 28 k. Where there are three or more fiduciaries qualified to act, to
29 take any action with respect to the estate or trust which a majority of
30 the fiduciaries shall determine; a fiduciary who fails to act through
31 absence or disability, or a dissenting fiduciary who joins in carrying
32 out the decision of a majority of the fiduciaries if his dissent is
33 expressed promptly in writing to his cofiduciaries, shall not be liable
34 for the consequences of any majority decision, provided that liability
35 for failure to join in administering the trust or to prevent a breach of
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38 estate or trust or to a fiduciary in the performance of his duties;
- 39 m. To compromise, contest or otherwise settle any claim in favor
40 of the estate, trust or fiduciary or in favor of third persons and against
41 the estate, trust or fiduciary, including transfer inheritance, estate,
42 income and other taxes;
- 43 n. To vote in person or by proxy, discretionary or otherwise,
44 shares of stock or other securities held by the estate or trust;
- 45 o. To pay calls, assessments and any other sums chargeable or
46 accruing against or on account of shares of stock, bonds, debentures

1 or other corporate securities in the hands of a fiduciary, whenever the
2 payments may be legally enforceable against the fiduciary or any
3 property of the estate or trust or the fiduciary deems payment
4 expedient and for the best interests of the estate or trust;

5 p. To sell or exercise stock subscription or conversion rights,
6 participate in foreclosures, reorganizations, consolidations, mergers or
7 liquidations, and to consent to corporate sales or leases and
8 encumbrances, and, in the exercise of those powers, the fiduciary is
9 authorized to deposit stocks, bonds or other securities with any
10 custodian, agent, protective or other similar committee, or trustee
11 under a voting trust agreement, under terms and conditions respecting
12 the deposit thereof as the fiduciary may approve;

13 q. To execute and deliver agreements, assignments, bills of sale,
14 contracts, deeds, notes, receipts and any other instrument necessary or
15 appropriate for the administration of the estate or trust;

16 r. In the case of a trustee:

17 (1) To hold two or more trusts or parts of trusts created by the
18 same instrument, as an undivided whole, without separation as
19 between the trusts or parts of the trusts, provided that separate trusts
20 or parts of trusts shall have undivided interests and provided further
21 that no holding shall defer the vesting of any estate in possession or
22 otherwise;

23 (2) To divide a trust, before or after its initial funding, into two or
24 more separate trusts, provided that such division will not materially
25 impair the accomplishment of the trust purposes or the interests of any
26 beneficiary. Distributions provided for by the governing instrument
27 may be made from one or more of the separate trusts;

28 s. To distribute in kind any property of the estate or trust as
29 provided in article 1 of chapter 23 of this title;

30 t. To join with the surviving spouse, the executor of his or her will
31 or the administrator of his or her estate in the execution and filing of
32 a joint income tax return for any period prior to the death of a
33 decedent for which he has not filed a return or a gift tax return on gifts
34 made by the decedent's surviving spouse, and to consent to treat the
35 gifts as being made one-half by the decedent, for any period prior to
36 a decedent's death, and to pay taxes thereon as are chargeable to the
37 decedent;

38 u. To acquire or dispose of an asset, including real or personal
39 property in this or another state, for cash or on credit, at public or
40 private sale, and to manage, develop, improve, exchange, partition,
41 change the character of, or abandon an estate asset;

42 v. To continue any business constituting the whole or any part of
43 the estate for so long a period of time as the fiduciary may deem
44 advisable and advantageous for the estate and persons interested
45 therein;

46 w. In the case of a qualified bank as defined in section 1 of

1 P.L.1948, c.67 (C.17:9A-1), to purchase, sell and maintain for any
2 fiduciary account, securities issued by an investment company which
3 is operated and maintained in accordance with the "Investment
4 Company Act of 1940," 15 U.S.C. s.80a-1 et seq., and for which the
5 qualified bank is providing services as an investment advisor,
6 investment manager, custodian or otherwise, including those for which
7 it receives compensation, if:

8 (1) The investment is otherwise in accordance with applicable
9 fiduciary standards; and

10 (2) The investment is authorized by the agreement or instrument
11 creating the fiduciary account that gives the qualified bank investment
12 authority, or by court order; or

13 (3) The qualified bank provides written notice not less than
14 annually by prospectus, account statement or otherwise, disclosing to
15 any current income beneficiaries of the trust the services provided by
16 the qualified bank or its affiliate to the investment company, and the
17 rate, formula, or other method by which compensation paid to the
18 qualified bank or its affiliate is determined and the qualified bank does
19 not receive a written objection from any current income beneficiary
20 within 30 days after receipt of this notice. If a written objection is
21 received from any current income beneficiary pursuant to this
22 paragraph (3), no such investment of the trust assets of that fiduciary
23 account shall be made or maintained.

24 Such investment shall not be deemed self-dealing or a fiduciary
25 conflict; nor shall the fact that other beneficiaries of fiduciary accounts
26 of the qualified bank have similar investments be deemed to be an
27 improper commingling of assets by the qualified bank.

28 For purposes of this subsection, "fiduciary account" shall include a
29 trust, estate, agency or other account in which funds, property, or
30 both, are held by a qualified bank pursuant to section 28 of P.L.1948,
31 c.67 (C.17:9A-28), or an account for which a qualified bank acts as
32 investment advisor or manager; [and]

33 x. To employ and compensate accountants from the fiduciary fund
34 for services rendered to the estate or trust or to a fiduciary in the
35 performance of the fiduciary's duties, including the duty of a corporate
36 or other fiduciary with respect to the preparation of accounts or
37 accountings, without reduction in commissions due to the fiduciary;
38 and

39 y. The powers set forth in this section are in addition to any other
40 powers granted by law, and by a will, deed or other instrument.

41 (cf: P.L.1997, c.250, s.1)

42

43 2. This act shall take effect immediately.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2301

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 16, 2002

The Assembly Banking and Insurance Committee reports favorably, and with committee amendments, Assembly Bill No. 2301.

This bill, as amended by the committee, permits fiduciaries to employ and compensate accountants from the fiduciary fund for services rendered to an estate or trust, without reducing the commissions due to the fiduciary. In addition, the bill also permits an out-of-State bank operating a trust office in New Jersey to be treated the same under the law as New Jersey banks with respect to the simultaneous fiduciary administration of trusts and administrative work done for operators of mutual funds.

COMMITTEE AMENDMENTS:

The committee amended the bill to include the provisions concerning out-of-State banks that operate a trust office in New Jersey. The amendment permits such banks to be treated the same under the law as New Jersey banks with respect to the simultaneous fiduciary administration of trusts and administrative work done for operators of mutual funds.

SENATE BILL NO. 1479
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1479 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill amends current law by permitting fiduciaries to employ and compensate accountants from the fiduciary fund for services rendered to an estate or trust or to a fiduciary in the performance of the fiduciary's duties, including the duty of a corporate or other fiduciary with respect to the preparation of accounts or accounting, without reduction in commissions due to the fiduciary.

Under current law, professionals such as lawyers are directly retained by the fiduciary and paid out of the fiduciary funds without need for specific authorization in the estate, trust or other comparable instrument. Conversely, accountants, who also provide valuable services, are prohibited from direct retention and payment, absent specific reference in the applicable instrument. In practice, when the fiduciary is not in a position to perform the accounting, regardless of the propriety and reasonableness of the accounting service, the corresponding accountant's fee must be paid out of the fiduciary's compensation.

The bill was also amended to include the provisions concerning out-of-State banks that operate a trust office in New Jersey. The amendment permits out-of-State banks to receive equal treatment under State law as New Jersey banks with respect to the simultaneous fiduciary administration of trusts and administrative work done for operators of mutual funds. Currently, New Jersey is the only state where trust modernization changes only apply to qualified banks, thus precluding an out-of-

State bank with a trust office in New Jersey from relying upon the proprietary mutual fund provisions under State law. Senate Bill 1479 (First Reprint) will allow out-of-state banks with branch or trust offices to provide the same mutual fund level of services as New Jersey banks.

B. Recommended Action

I commend the sponsors of this bill and the Legislature for recognizing the need to update current law pertaining to out-of-State banks that operate a trust office in New Jersey. The Trust Modernization Act of 1999 was enacted to address the fact that the relevant statutes are found in two titles of the New Jersey Statutes - Title 3B, which was inadvertently left out of the 1999 Act, and Title 17, which was the focus of the 1999 changes. This bill makes the appropriate change to Title 3B in conformance with the modernization efforts intended under the 1999 Act. Uniform application of laws upon banks operating a trust office in New Jersey, resulting in increased competition in the market, makes sense.

Additionally, for those New Jersey chartered banks that conduct such business in other states, this bill will facilitate increased competitiveness since it permits reciprocal application of other states' laws upon New Jersey banks.

As for the employment of accountants by the fiduciary where the estate, trust or other comparable instrument is silent in this regard, I am concerned that this portion of the bill may result in a disservice to consumers.

A fiduciary is currently permitted to engage an accountant at its discretion. The accountant's compensation, however, must to be paid out of the fiduciary's commission, unless the underlying instrument directs otherwise or the fiduciary obtains court approval. Traditionally, the grantor's expectation is that, at a minimum, a corporate fiduciary will perform basic

fiduciary accounting internally. For performing this service, the corporate fiduciary is paid a fee. Notably, the minimum fiduciary commission payable in the State, as set by statute, is generous. Moreover, corporate fiduciaries are specifically entitled to additional commissions, when deemed reasonable by the court.

In those instances where hiring an accountant for services beyond preparing routine fiduciary accounting is necessary and appropriate, the fiduciary may make application to the court to pay the corresponding accounting costs and fees out of the fiduciary funds, without any reduction in the fiduciary's commission. The existing laws protect consumers from the unscrupulous corporate fiduciary that would otherwise delegate even the most basic and simple fiduciary accounting task to an accountant, in an effort to decrease its responsibilities with no change to the fiduciary compensation.

Additionally, this bill would have a limiting effect on challenges to a fiduciary's compensation. Because the bill, as passed by the Legislature, would permit all fiduciary accounting services to be summarily delegated, it would become impractical for the court, or an interested party, to challenge the propriety of the fiduciary's compensation, since basic fiduciary accounting is a routine service currently provided by most fiduciaries.

However, I am also mindful that, during the period of time involved in some fiduciary account, substantial changes in circumstance may have impacted the degree of accounting essential for proper administration by the fiduciary. In the event a fiduciary charges an accountant's fee out of the corpus funds without a reduction in fiduciary fees, the Court should include in its consideration of the propriety and reasonableness of the accountant's fee whether the accounting is an additional, non-routine service necessitated by unforeseen complications due to changes in the corpus amount, the duration of the period covered by the accounting, and revisions in the laws governing fiduciary responsibilities.

Therefore, I herewith return Senate Bill No. 1479 (First Reprint) and recommend that it be amended as follows:

Page 5, Line 44:

Delete "accounts or"

Page 5, Line 45:

After "fiduciary" insert ",so long as such accountings are not the usual, customary or routine services provided by the fiduciary in light of the nature and skill of the fiduciary. In evaluating the

actions of the fiduciary under this subsection, the court shall consider the size and complexity of the fiduciary fund, the length of time for which the accounting is rendered, and the increased risk and responsibilities imposed on fiduciaries as a result of revisions to laws affecting fiduciaries including, but not limited to, the "Uniform Principal and Income Act," P.L. 2001,c.212 (C.3B:19B-1 et seq.) and the **"Prudent Investor Act,"** P.L.1997, c.26 (C.3B:20-11.1 et seq.) provided that such revisions of the laws affecting fiduciaries were enacted after the fiduciary responsibilities under the corresponding will, deed or other instrument, or court judgment or order, were imposed on, and assumed by, the fiduciary. For purposes of this subsection, "Accountant" means a person who is registered as a certified public accountant pursuant to the provisions of P.L.1997, c.259 (C.45:2B-42 et seq.), or an accounting firm which is organized for the practice of public accounting pursuant to the provisions of P.L.1997, c.259 (C.45:2B-42 et seq.) and P.L.1969, c.232 (C.14A:17-1 et seq.)."

Page 6, Line 5:

After "immediately" insert "except that the provisions of subsection x. of N.J.S.3B:14-23, as amended by this act shall take effect on the 90th day following enactment"

Respectfully,

/s/ James E. McGreevey
Governor

[seal]

Attest:

/s/ Paul A. Levinsohn

Chief Counsel to the Governor