

17:16 R.1

LEGISLATIVE HISTORY CHECKLIST
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(Fiduciaries--permit succession
between qualified)

NJSA: 17:16R-1

LAWS OF: 1995 CHAPTER: 351

BILL NO: A1143

SPONSOR(S): Lustbader

DATE INTRODUCED: January 27, 1994

COMMITTEE: ASSEMBLY Financial Institutions

SENATE: State Management

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: May 16, 1995

SENATE: December 21, 1995

DATE OF APPROVAL: January 5, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

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P.L.1995, CHAPTER 351, approved January 5, 1996
1994 Assembly No. 1143

1 AN ACT permitting succession between certain qualified
2 fiduciaries and supplementing Title 17 of the Revised Statutes.

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

6 1. A qualified fiduciary (herein "successor fiduciary") may be
7 substituted in the place and stead of another qualified fiduciary
8 (herein "original fiduciary") which is desirous of being discharged
9 from acting further as fiduciary for one or more fiduciary
10 accounts, provided that the successor fiduciary obtains the
11 approval of the Superior Court pursuant to the terms of this act.

12 2. a. The qualified fiduciary desiring to become the successor
13 fiduciary shall make application to the Superior Court, which
14 application may be made ex parte. The application shall contain
15 information sufficient for the court to apply the standards set
16 forth in subsection b. of this section and shall include a
17 certification by the original fiduciary that it understands and
18 agrees that it shall be bound as a party to any order entered by
19 the court in the proceeding on the application.

20 b. Upon such application, the Superior Court, except for good
21 cause shown, shall grant the application for substitution if it finds
22 either:

23 (1) that the fiduciary accounts subject to the substitution
24 constitute all, or substantially all, of a fiduciary category, or
25 categories, and the successor fiduciary has adequate facilities,
26 personnel and locations to provide fiduciary services to those
27 persons with an interest in the fiduciary accounts; or

28 (2) that the primary bank regulator for each fiduciary has
29 approved the transfer as being in the best interest of the
30 fiduciary which the regulator regulates, and that the transfer will
31 not be a disadvantage to the interest of the public.

32 3. a. If the Superior Court approves the application, it shall
33 make an order appointing the applicant qualified fiduciary as
34 successor fiduciary in respect to the fiduciary capacities and
35 relationships set forth in the application, with the same powers
36 and duties in respect to the fiduciary capacities and relationships
37 as those possessed by the original fiduciary. After the order of
38 substitution has been entered, every instrument executed or
39 otherwise effected before or after the entry, which purports to
40 appoint the original fiduciary to any fiduciary capacity or
41 relationship for which a successor fiduciary has been appointed
42 pursuant to this section, shall be deemed to constitute an
43 appointment of the successor fiduciary. The original fiduciary,
44 which has been succeeded by a successor fiduciary as provided in
45 this section, may present an accounting, in which the successor

1 fiduciary may join, of its administration of the fiduciary
2 capacities or relationships to which the successor fiduciary has
3 been appointed.

4 b. Written notice of the substitution shall be given to those
5 persons or entities to whom the original fiduciary would have in
6 due course provided periodic account statements at the address
7 shown on the current account records. The notice may be
8 included with the periodic account statements and in any event
9 shall be mailed within 60 days of the date of the order approving
10 the substitution. The notice shall include the name and telephone
11 number of a person or persons representing the substitute
12 fiduciary to whom questions regarding the substitution may be
13 directed.

14 4. For the purpose of this act:

15 a. "Qualified fiduciary" means a bank or savings bank
16 authorized to exercise fiduciary powers pursuant to section 28 of
17 P.L.1948, c.67 (C.17:9A-28), a federally chartered bank
18 authorized to exercise fiduciary powers pursuant to section 1 of
19 Pub.L.87-722, (12 U.S.C. §92a), a savings and loan association
20 authorized to exercise fiduciary powers pursuant to section 48 of
21 P.L.1963, c.144 (C.17:12B-48) or a federally chartered
22 association authorized to exercise fiduciary powers pursuant to
23 subsection (n) of 12 U.S.C. §1464.

24 b. "Fiduciary category" means one of the following three
25 types of fiduciary accounts or relationships:

26 (1) A guardian, executor, administrator with the will annexed,
27 substituted administrator, administrator, trustee, substituted
28 trustee, or non testamentary trustee, all as referred to in
29 N.J.S.3B:18-8, 3B:18-12 and 3B:18-23; a conservator appointed
30 pursuant to P.L.1983, c.192 (C.3B:13A-1 et seq.); and a custodian
31 if a gift to a minor pursuant to P.L.1963, c.177 (C.46:38-13 et
32 seq.).

33 (2) Trustee of a qualified retirement plan maintained pursuant
34 to 26 U.S.C.401(k); trustee or custodian under an individual
35 retirement account or annuity created pursuant to 26
36 U.S.C.408(a) and (b); or as custodian under an annuity plan
37 maintained pursuant to 26 U.S.C.403(a) or (b).

38 (3) All other fiduciary relationships and capacities not included
39 in the preceding paragraphs (1) and (2) of this subsection.

40 c. "Substantially all" of any category shall mean all accounts
41 in that category except: (1) those in which substitution pursuant
42 to this act is specifically prohibited by the document or
43 documents creating the fiduciary relationship, or (2) those
44 accounts for which there is a unique relationship or are special
45 circumstances which distinguish the account from others in the
46 same category or which make it impractical to effect the
47 substitution.

48 5. This act shall take effect immediately.

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52 STATEMENT

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54 This bill permits, subject to Superior Court approval and the
specific requirements of the bill, a State or federally chartered

1 bank, savings bank, or savings and loan association which is a
2 qualified fiduciary to be substituted (known as the successor
3 fiduciary) in the place of another qualified fiduciary (known as
4 the original fiduciary) desirous of being discharged from acting
5 further as fiduciary for one or more fiduciary accounts. The
6 successor fiduciary must make application to the Superior Court,
7 which application may be ex parte. The application is to contain
8 certification by the original fiduciary that it understands and
9 agrees to be bound as a party to any order entered into by the
10 court in the proceeding on the application.

11 The Court, except for good cause shown, must grant the
12 application for substitution if it finds that either: (1) the
13 fiduciary accounts subject to the substitution constitutes all, or
14 substantially all, of a fiduciary category, or categories, and the
15 successor fiduciary has adequate facilities, personnel and
16 locations to provide fiduciary services to those persons with an
17 interest in the fiduciary accounts; or (2) the primary bank
18 regulator for each fiduciary has approved the transfer as being in
19 the best interest of the fiduciary which the regulator regulates,
20 and that the transfer will not be a disadvantage to the interest of
21 the public.

22 Written notice of a substitution pursuant to the bill's
23 provisions must be given to those persons to whom the original
24 fiduciary would have sent periodic account statements. This
25 notice may be included with the periodic account statements but
26 nevertheless must be mailed within 60 days of the date of the
27 order approving the substitution and contain the name and
28 telephone number of a representative of the successor fiduciary
29 to whom questions regarding the substitution may be directed.

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ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1143

STATE OF NEW JERSEY

DATED: MAY 2, 1994

The Assembly Financial Institutions Committee reports favorably Assembly, No. 1143

This bill permits, subject to Superior Court approval and the specific requirements of the bill, a State or federally chartered bank, savings bank, or savings and loan association which is a qualified fiduciary to be substituted (known as the successor fiduciary) in the place of another qualified fiduciary (known as the original fiduciary) desirous of being discharged from acting further as fiduciary for one or more fiduciary accounts. The successor fiduciary must make application to the Superior Court, which application may be ex parte. The application is to contain certification by the original fiduciary that it understands and agrees to be bound as a party to any order entered into by the court in the proceeding on the application.

The Court, except for good cause shown, must grant the application for substitution if it finds that either: (1) the fiduciary accounts subject to the substitution constitutes all, or substantially all, of a fiduciary category, or categories, and the successor fiduciary has adequate facilities, personnel and locations to provide fiduciary services to those persons with an interest in the fiduciary accounts; or (2) the primary bank regulator for each fiduciary has approved the transfer as being in the best interest of the fiduciary which the regulator regulates, and that the transfer will not be a disadvantage to the interest of the public.

Written notice of a substitution pursuant to the bill's provisions must be given to those persons to whom the original fiduciary would have sent periodic account statements. This notice may be included with the periodic account statements but nevertheless must be mailed within 60 days of the date of the order approving the substitution and contain the name and telephone number of a representative of the successor fiduciary to whom questions regarding the substitution may be directed.

SENATE STATE MANAGEMENT, INVESTMENTS
AND FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1143

STATE OF NEW JERSEY

DATED: OCTOBER 17, 1994

The Senate State Management, Investments and Financial Institutions Committee reports favorably Assembly Bill No. 1143.

This bill permits, subject to Superior Court approval and the specific requirements of the bill, a State or federally chartered bank, savings bank, or savings and loan association which is a qualified fiduciary to be substituted (known as the successor fiduciary) in the place of another qualified fiduciary (known as the original fiduciary) desirous of being discharged from acting further as fiduciary for one or more fiduciary accounts. The successor fiduciary must make application to the Superior Court, which application may be ex parte. The application is to contain certification by the original fiduciary that it understands and agrees to be bound as a party to any order entered into by the court in the proceeding on the application.

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