



CHAPTER 53

ARTICLE 24 - TRUST COMPANIES AND INTERSTATE TRUST BUSINESS

N.C.G.S. § 53-301.

Definitions.

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§ 53-301(a)

Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

- (1) "Account" means the client relationship established with a trust institution involving the transfer of real or personal property to the trust institution or the assumption of duties by the trust institution concerning real or personal property.
- (2) "Act as a fiduciary" means:
 - a. To (i) act as trustee under a written instrument or by judicial appointment or order; (ii) receive money or other property as trustee for investment or reinvestment in real or personal property; (iii) act as custodian or custodial trustee under a gifts to minors act, a transfers to minors act, a custodial trust act, or similar statute; (iv) act as personal representative of the estate of a deceased person; (v) act as trustee, guardian, or conservator for the person or estate of an incompetent such as a minor or incapacitated person, or in other circumstances in which a guardian may be appointed; or (vi) act in a capacity similar to one listed in (i) through (v), however such capacity may be designated under applicable law or governing instrument; or
 - b. To possess, purchase, sell, safekeep, or otherwise manage or administer property in any other fiduciary capacity.
- (3) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with another company.

- (3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of this Article by one trust institution affiliate of that trust institution.
- (4) "Authorized trust institution" means any State trust company and any trust office or representative trust office of a trust institution located in this State that is not a bank.
- (5) "Bank" has the meaning set forth in 12 U.S.C. § 1813(a)(1), except that "bank" does not include a trust company.
- (6) "Bank supervisory agency" means:
 - a. Any agency of another state or a home country with primary responsibility for chartering or supervising a trust institution; and
 - b. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank acting in a supervisory capacity over any bank or bank holding company, the Office of Thrift Supervision, and any successor to these agencies.
- (6a) "Board of directors" means the governing body of a company.
- (7) "Branch" has the meaning set forth in G.S. 53C-1-4(11).
- (8) "Charter" means a charter issued to a State trust company by the Commissioner or a charter, license, or other authority issued by the Commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state or home country, and the issuance of the charter, license, or other authority.
- (9) "Client" means a person to whom a trust institution owes a duty or obligation under an account.
- (10) "Commission" means the North Carolina State Banking Commission.
- (11) "Commissioner" means the Commissioner of Banks for the State of North Carolina.
- (12) "Company" includes a bank, trust company, corporation, partnership, association, limited liability company, trust, business trust, joint venture, foundation, pool, syndicate, unincorporated organization, or other form of entity not specifically listed herein.
- (13) "Control," with respect to a State trust company, means:

a.The ownership of or ability or power to vote directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of a class of voting securities of the State trust company;

b.The ability to control, directly or indirectly, the election of a majority of the board of the State trust company; or

c.The power to exercise, directly or indirectly, a controlling influence over the management or policies of the State trust company.

(14) "Debt security" means a marketable obligation evidencing indebtedness of a company in the form of a bond, note, debenture, or other debt instrument.

(15) "Depository institution" means any company within any of the definitions of "insured depository institution" set forth in 12 U.S.C. § 1813(c).

(15a) "Director" means a member of the board of directors.

(16) "Equity capital" means the amount by which the total assets of a State trust company exceed its total liabilities.

(17) "Equity security" means:

a.Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

b.A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate;

c.A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision;

d.A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and

e.A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(18) "Executive officer" means an officer of a company who is named an executive officer by the company or who participates in major policy-making functions of the company.

(19) "Federally chartered savings association" means a company described in 12 U.S.C. § 1813(b)(2).

- (20) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust institution, whether in physical, electronic, magnetic, or other form, that preserves information concerning an account or a client.
- (21) "Foreign bank" means a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), except for a bank organized under the laws of a territory of the United States.
- (22) "Foreign trust institution" means a trust institution, other than a foreign bank, chartered in a foreign country.
- (23) "Hazardous condition" with respect to a trust institution means:
- a. A refusal by the trust institution to permit examination of its books, papers, accounts, records, or affairs by the Commissioner or a duly appointed or authorized examiner of the Commissioner, or a refusal by the officers or directors of a trust institution to be examined under oath regarding its affairs;
 - b. A material violation by a trust institution of a condition of its chartering or an agreement entered into between the trust institution and the Commissioner; or
 - c. A circumstance or condition in which an unreasonable risk of loss is threatened to clients, creditors, or shareholders of a trust institution because the trust institution:
 - 1. Has equity capital that is, or is in substantial danger of becoming, inadequate for the safe and sound conduct of its business without regard to whether it is, or is in substantial danger of becoming, insolvent;
 - 2. Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;
 - 3. Violates or fails to comply with this Article, another statute or rule applicable to trust institutions, or any duly issued order of the Commissioner;
 - 4. Is in a condition that renders the continuation of a particular business practice hazardous to its clients, creditors, or shareholders; or
 - 5. Conducts business in an unsafe or unsound manner, which includes conducting business with:
 - I. Materially inexperienced or inattentive management;
 - II. Dangerous operating practices;
 - III. Materially infrequent or inadequate audits;

IV. Materially deficient administration of assets in relation to the volume and character of the assets it administers or the trust institution's responsibility for such assets;

V. Materially frequent or serious failures to adhere to sound administrative practices;

VI. Materially frequent or serious violations of applicable laws, rules, or terms of instruments governing accounts; or

VII. Materially serious self-dealing or conflicts of interest.

(24) "Home country" means a foreign country in which a foreign trust institution is chartered.

(25) "Home country regulator" means the bank supervisory agency with primary responsibility for chartering and supervising a foreign trust institution.

(26) "Home state" means:

a. With respect to a federally chartered savings association and a national bank, the state in which the institution maintains its principal office;

b. With respect to a foreign bank, the home state of the foreign bank as determined in accordance with the International Banking Act of 1978, 12 U.S.C. §§ 3101, et seq., and Article 18A of this Chapter or, if there is no such home state, the state in which the foreign bank maintains its principal office in the United States; and

c. With respect to any other trust institution, the state or home country which chartered the institution.

(27) "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(28) "Host state" means a state other than the home state of a trust institution, or a foreign country, in which the trust institution maintains or seeks to establish or acquire and maintain a trust office or representative trust office.

(29) "Initial capital" means the amount of equity capital required for approval of a charter pursuant to G.S. 53-337.

(30) "Insolvent," with respect to a State trust company, means a circumstance or condition in which a State trust company:

a. Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, without regard to whether its assets exceed its liabilities;

b.Has equity capital less than one-fourth of its initial capital, except as otherwise specified by the Commissioner; or

c.Has purported to make a voluntary assignment of its assets for the benefit of creditors or to take any action for protection against creditors under any bankruptcy or insolvency law.

(31) "Jeopardized" means insolvent, in a hazardous condition, or in such other condition as the Commissioner determines warrants the use of procedures set forth in this Article relating to jeopardized State trust companies.

(32) "License", with respect to a State trust company, means the authority granted by the Commissioner pursuant to G.S. 53-160.

(33) "National bank" means a bank chartered under 12 U.S.C. § 21.

(34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a branch. With respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office.

(35) "Out-of-state trust institution" means a trust institution that is neither a State trust institution nor a foreign trust institution.

(36) "Person" means an individual or a company.

(37) "Principal office" means:

a.With respect to a State trust company, a location, registered with the Commissioner as the State trust company's principal office, at which:

1.The State trust company does business; and

2.At least one executive officer of the State trust company maintains a customary place of work; and

b.With respect to a trust institution other than a State trust company, its principal place of business.

(38) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a company.

- (39) "Private trust company" means a State trust company that is organized to engage in business with one or more family members and does not transact business with the general public, as defined in G.S. 53-363.
- (39a) "Registered office" means a registered office as described in G.S. 55D-30.
- (40) "Representative trust office" means an office at which a trust institution engages in trust marketing, but not trust business.
- (41) "Savings association" has the meaning set forth in 12 U.S.C. § 1813(b)(1).
- (42) "State" means any state of the United States, the District of Columbia, and any territory of the United States.
- (43) "State bank" means:
- a.A bank organized under the provisions of this Chapter and authorized to act as a fiduciary by this State or
- b.A foreign bank lawfully doing business in this State pursuant to Article 18A of this Chapter.
- (44) "State savings association" means a savings association organized under the laws of this State and authorized to act as a fiduciary pursuant to Chapter 54B or Chapter 54C of the General Statutes.
- (45) "State trust company" means a company organized under the provisions of this Article and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank.
- (46) "State trust company facility" has the meaning set forth in G.S. 53-340.
- (47) "State trust institution" means a trust institution organized under the laws of, or having its principal office in, this State.
- (48) "Subsidiary" means a company that is controlled by another company, and includes a subsidiary of a subsidiary.
- (49) "Territory of the United States" means any geographic area over which the United States exercises sovereignty.
- (49a) "Transferring trust institution" means a trust institution that proposes to make, or does make, an affiliate transfer.

- (49b) "Transferee trust institution" means a trust institution to which an affiliate transfer is proposed to be made, or is made.
- (50) "Trust business" means acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.
- (51) "Trust company" means a trust institution that is neither a depository institution nor a foreign bank.
- (52) "Trust institution" means any company lawfully acting as a fiduciary in a state or in a foreign country.
- (53) "Trust marketing" means the holding out by a company to the public by advertising, solicitation, or other means that the company is available to act as a fiduciary.
- (54) "Trust office" means an office, other than the principal office, through which a trust institution acts as a fiduciary, including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office.
- (55) "Unauthorized trust activity" means:
- a. Engaging in trust business within this State by a company other than one identified in G.S. 53-303; or
- b. Maintenance of a representative trust office by an out-of-state trust institution without approval from or in violation of an order issued by the Commissioner.

§ 53-301(b) These definitions shall be liberally construed to accomplish the purposes of this Article. The Commission may adopt other definitions to accomplish the purposes of this Article.

§ 53-301(c) References to statutory laws of North Carolina and of the United States of America shall be deemed to refer to recodified, amended, predecessor, or successor statutes. References to agencies of North Carolina and of the United States of America shall be deemed to refer to predecessor or successor agencies. (2001-263, s. 1; 2005-269, ss. 1, 2, 3; 2005-274, s. 1; 2011-339, s. 8; 2012-56, s. 29.)

END OF SECTION TEXT

APPARATUS FOLLOWS — DERIVED, NOT ENACTED

APPARATUS II

Authorities referenced

Every G.S. cross-reference appearing in the text of this section, in order of first appearance. Nothing is characterized; the operative language is quoted from the section itself.

REFERENCE	APPEARS IN	OPERATIVE LANGUAGE IN THIS SECTION
G.S. 53C-1	(a)(7)	<i>"has the meaning set forth in"</i>
G.S. 53-337	(a)(29)	<i>"approval of a charter pursuant to"</i>
G.S. 53-160	(a)(32)	<i>"granted by the Commissioner pursuant to"</i>
G.S. 53-363	(a)(39)	<i>"the general public, as defined in"</i>
G.S. 55D-30	(a)(39a)	<i>"a registered office as described in"</i>
G.S. 53-340	(a)(46)	<i>"has the meaning set forth in"</i>
G.S. 53-331	(a)(50)	<i>"permissible for a trust institution under"</i>
G.S. 53-303	(a)	<i>"company other than one identified in"</i>

Citation

FULL SECTION

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PINPOINT

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