

TITLE 26  
BANKS AND BANKING

CHAPTER 14  
AFFILIATED BANK COMPANY

26-1401. DEFINITIONS. In this chapter:

(1) "Affiliated bank," with respect to a trust company or another bank, means any bank:

(a) That owns, directly or indirectly, eighty percent (80%) or more of the voting stock of such trust company or other bank; or

(b) Eighty percent (80%) or more of the voting stock of which is owned, directly or indirectly, by the same bank holding company that owns, directly or indirectly, eighty percent (80%) or more of the voting stock of such trust company or other bank.

(2) "Affiliated trust company" means a trust company with a principal place of business located within the state of Idaho, and eighty percent (80%) or more of the voting stock of which is owned, directly or indirectly, by the same bank or bank holding company that owns, directly or indirectly, eighty percent (80%) or more of the voting stock of a trust company or a bank with respect to which the affiliated trust company is participating in a transfer of fiduciary capacities as provided in this chapter.

(3) "Bank" means any state bank or national bank whose operations are principally conducted in this state and which is authorized to engage in trust business.

(4) "Bank holding company" means a bank holding company as defined in the United States bank holding company act of 1956, as amended.

(5) "Director" means the director of the department of finance.

(6) "Fiduciary account," with respect to an affiliated bank, affiliated trust company, or trust company, means an estate, trust, or other fiduciary relationship, and includes all rights, privileges, duties, obligations, and undertakings thereof, that have been established or provided for by a written instrument or in any other lawful manner with such affiliated bank, affiliated trust company or trust company.

(7) "Fiduciary capacity" means a capacity resulting from the undertaking to act alone or jointly with others as a personal representative of a decedent's estate, a guardian or conservator of an estate, a receiver, a trustee under appointment of any court or under authority of any law, or a trustee for any other purpose permitted by law.

(8) "Principal place of business," with respect to any affiliated bank, affiliated trust company, or trust company means such entity's principal place of business within the state of Idaho.

(9) "Trust company" means a corporation holding a charter to engage in the trust business in this state, issued pursuant to chapters 32 through 36, title 26, Idaho Code, with a principal place of business located within the state of Idaho.

[26-1401, added 1991, ch. 215, sec. 2, p. 515; am. 1992, ch. 87, sec. 1, p. 271; am. 2000, ch. 288, sec. 6, p. 974.]

26-1402. TRANSFER OF FIDUCIARY CAPACITIES TO AN AFFILIATED BANK OR AN AFFILIATED TRUST COMPANY. (1) A bank or trust company may transfer some or all of its fiduciary capacities to an affiliated bank or an affiliated trust company. To accomplish such a transfer, the bank or trust company shall

file a verified application in the district court of the county in which the bank's or trust company's principal place of business is located, requesting that every fiduciary capacity of the bank or trust company, except as may be expressly excluded in such application, be transferred to an affiliated bank or affiliated trust company specified in the application, and the specified affiliated bank or affiliated trust company shall join in such application. The application shall indicate the county in which the principal place of business of the affiliated bank or affiliated trust company joining in the application is located.

(2) When any application under subsection (1) of this section has been filed, the clerk of the court where the application is filed shall enter an order fixing a date and time (which date shall not be more than sixty (60) days from the date the application is filed) for a hearing on the application. The bank or trust company filing an application under subsection (1) of this section shall prepare a notice as provided in subsection (3) of this section, and shall cause a copy of such notice to be published at least once a week for three (3) successive weeks preceding the hearing date, the first such publication to be at least thirty (30) days preceding the hearing date. Proof of such publication shall be made by certified copy of the notice or by affidavit, and the same shall be filed with the district court wherein the application was filed. Such publication shall be in a newspaper of general circulation published in each county in which the principal place of business of the bank or trust company is located or, if in any case there is no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least thirty (30) days preceding the hearing date, the bank or trust company shall cause a copy of such notice to be mailed by first class mail to all persons entitled to and then receiving trust accountings from the bank or trust company.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing on the application, the name of the bank or trust company that has filed the application, the name of the affiliated bank or affiliated trust company which has joined in the application, that a transfer is requested of fiduciary capacities to the affiliated bank or affiliated trust company specified in the application, and that any interested person may file with the clerk of the court, on or before the date of the hearing, a written objection to the transfer as provided in subsection (4) of this section.

(4) On or before the date and time of the hearing on the application, any interested person, who is authorized by a will or relevant trust instrument to prohibit, challenge, amend or revoke a transfer of a fiduciary capacity otherwise allowed under this chapter and arising from a fiduciary account in which the person is interested, may file an objection to such transfer with the clerk of the court. Failure to file an objection on or before the date and time of the hearing on the application shall constitute a waiver by such interested person of the right to object under this subsection, and waiver of any power under a will or relevant trust instrument to prohibit, challenge, amend, or revoke with respect to any transfer of fiduciary capacity otherwise authorized under this chapter.

(5) At the hearing, upon finding that notice has been given as required in this section, and upon finding that the affiliated bank or affiliated trust company has been duly authorized by the director to commence the business for which it is organized, the district court shall enter an order transferring to the affiliated bank or affiliated trust company every

fiduciary capacity of the bank or trust company, excepting as may be otherwise specified in the application and excepting fiduciary capacities with respect to which a proper objection has been filed pursuant to subsection (4) of this section. Upon entry of the order, the affiliated bank or affiliated trust company shall, without further act and by operation of law, be substituted in every such fiduciary capacity. The transfer may be made a matter of record in any county of this state by filing a certified copy of the order of transfer in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the recorder of any county in this state, to be recorded and indexed by such officer in like manner and with like effect as other orders and decrees of courts are recorded and indexed. Any fiduciary capacities of the bank or trust company excepted from the order of transfer shall remain with such bank or trust company.

(6) Each designation of the bank or trust company as fiduciary in a will or other relevant trust instrument executed before or after the date the order of transfer is entered shall be deemed a designation of the affiliated bank or affiliated trust company substituted for such bank or trust company pursuant to this section, except when such will or other relevant trust instrument is executed after the order of transfer and expressly negates the application of the provisions of this section. Any grant in any such will or other relevant trust instrument of any discretionary power shall be deemed conferred upon the affiliated bank or affiliated trust company deemed designated as the fiduciary pursuant to an order of transfer under the provisions of this section.

(7) Each bank or trust company shall account jointly with the affiliated bank or affiliated trust company which has been substituted as fiduciary pursuant to this section for the accounting period during which the affiliated bank or affiliated trust company is initially so substituted. Upon a transfer of fiduciary capacities pursuant to the provisions of this section, each bank or trust company shall deliver to the affiliated bank or affiliated trust company all related fiduciary accounts and assets held by such bank or trust company (except assets held for accounts with respect to which there has been no transfer of fiduciary capacities pursuant to this section), and upon such transfer the affiliated bank or affiliated trust company shall, without the necessity of any instrument of transfer or conveyance, succeed to all rights, privileges, duties, obligations and undertakings under any fiduciary capacity and fiduciary account transferred in the manner authorized in this chapter.

[26-1402, added 1991, ch. 215, sec. 2, p. 516; am. 1992, ch. 87, sec. 2, p. 272.]

26-1403. TRANSFERS OF FIDUCIARY CAPACITIES NOT PROHIBITED BY SECTION 68-107, IDAHO CODE. No transfer of fiduciary capacities pursuant to the provisions of this chapter shall be deemed to be a transfer or delegation prohibited by the provisions of section 68-107, Idaho Code.

[26-1403, added 1991, ch. 215, sec. 2, p. 518.]

26-1404. COMPLIANCE AND APPROVAL WITH FINANCIAL INSTITUTION ACQUISITION ACT REQUIRED. No out-of-state financial institution or out-of-state financial institution holding company shall be allowed to join in an application for transfer of fiduciary capacities pursuant to the provisions of this chapter unless such out-of-state financial institution or out-of-state

financial institution holding company first complies in full with the provisions of chapter 26, title 26, Idaho Code, and obtains approval of the director as specified in chapter 26, title 26, Idaho Code.

[26-1404, added 1991, ch. 215, sec. 2, p. 518.]