Chapter 709

1971 REPLACEMENT PART

Regulation of Trust Business

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709.010 "Trust business" defined. As used in the Bank Act, "trust business" means the business of doing any or all of the things specified in subsections (1) and (3) to (9) of ORS 709.150.

709.020 Corporations which may conduct trust business; subject to banking laws and superintendent. (1) Any corporation incorporated under the laws of this state providing for the incorporation and organization of banks, and authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, trustee, receiver, depositary, or which has power under its articles of incorporation to discharge any duty, office or position of trust; or any corporation organized under the Bank Act, or any corporation organized prior to May 28, 1925, under the general corporation laws of the State of Oregon, and doing a trust business authorized by its articles of incorporation, shall be known as a trust company and shall be empowered to do a trust business upon compliance with the Bank Act.

(2) All corporations mentioned in subsection (1) of this section are subject to ORS chapters 706, 707, 708, 709, 711, 713, 714, 716, 723 and 724, and Acts amendatory thereof, including examination, supervision and regulation by the Superintendent of Banks regardless of whether the corporation was organized under the general corporation laws or the banking and trust laws of this state and regardless of the date upon which the corporation may have been organized.

(3) Any corporation incorporated under the laws of this state providing for the incorporation of banks and which is not authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, trustee, receiver, depositary, or which has not the power under its articles of incorporation to discharge any duty, office or position of trust, may amend its articles of incorporation by filing supplemental articles of incorporation in the manner provided by law and thereafter may be empowered to do a trust business upon compliance with the Bank Act.

(4) Any corporation organized under the laws of the State of Oregon which has the word "trust" in its corporate name or has trust powers under its articles of incorporation, and which by its charter or articles of incorporation is not entitled to do a banking business, and which is exercising its trust powers or doing business under a name containing the word "trust" on June 3, 1929, is authorized to continue such trust powers and continue the use of such name.

709.030 Deposit of cash, securities or surety bond with superintendent; amount; exemption. (1) Before any bank or trust company shall transact any trust business within this state it shall deposit with the Superintendent of Banks, as security and as a pledge for the faithful performance of its duties as a trust company, either:

(a) Cash or interest-bearing securities, which securities shall have a ready market value, in an amount regulated by the amount of cash and securities held in trust by the bank or trust company; or

(b) A surety bond issued by a surety company authorized to transact business in this state and in a form and amount approved by the Superintendent of Banks, under which the principal and surety shall indemnify the several owners of the fund held in trust against loss due to the failure of the trust company; or

(c) Any combination of cash, interest-bearing securities and surety bond.

(2) Whenever such cash and securities held in trust amount to less than $1,000,000, the deposit, bond, or combination thereof shall be $50,000. Whenever such cash and securities held in trust amount to $1,000,000 but do not exceed $1,500,000, the deposit, bond, or combination thereof shall be $100,000. For each $500,000 or fraction thereof in excess of $1,500,000 so held in trust, the deposit, bond, or combination thereof shall be increased an additional $25,000; provided, no bank or trust company shall be required to increase the deposit, bond, or combination thereof to an amount in excess of $500,000, and no trust company not receiving deposits other than funds held by it in trust shall be required to increase the deposit, bond, or combination thereof to an amount in excess of its capital.

(3) The requirement of making the deposit of cash or securities, bond, or combination thereof is not mandatory on any trust company incorporated prior to June 3, 1913, until such trust company voluntarily makes such deposit.

[Amended by 1957 c.82 §1; 1967 c.139 §1]

709.040 Securities eligible for deposit. The securities mentioned in ORS 709.030 may be of the following classes and not otherwise:

(1) Interest-bearing bonds, notes or obligations of the United States, or those for which the faith of the United States is pledged for the payment of the principal and interest.

(2) Bonds or other obligations of the State of Oregon or of any county of this state, or of any incorporated city, town or school or port district of this state having a population of not less than 2,000 inhabitants as shown by the last federal census, or bonds of any other state of the United States, or any county, incorporated city, town or school or port district therein having a population of not less than 25,000 inhabitants, as shown by the last federal census, provided such bonds were issued in compliance with the constitution and laws of such state, and there has been no default in payment of either principal or interest on any of the general obligations of such state, county, incorporated town, city or school or port district for a period of five years next preceding the date of the deposit, and such bonds are a general obligation of the state, county, school or port district, city or town issuing the same.

(3) Bonds, other than foreign bonds, except as provided in subsections (4) and (5) of this section, listed on the New York stock exchange, provided the total obligation of any one debtor shall not exceed 20 percent of the aggregate deposit.

(4) Bonds of the Kingdom of Great Britain and the Dominion of Canada or any province thereof, provided such bonds are payable in United States dollars, and the countries and provinces enumerated have not defaulted in payment of either the principal or interest of any of their obligations within five years previous to making the deposit.

(5) Notes or bonds secured by first lien upon improved real estate in any of the States of Oregon, Washington, Idaho or California. Such loans may be subsequent to taxes not due and bonded indebtedness for public improvements not due, but any such obligation, plus taxes not due and bonded indebtedness for public improvements not due, shall not exceed 50 percent of the reasonable market value of such real estate. There shall be filed by the bank or trust company in support of such real estate obligation such appraisal, evidence of merchantable title and insurance as may be required by the Superintendent of Banks.

709.050 Trust companies depositing securities guaranteed by mortgage insurance and mortgage participation certificates. Any trust company required under the laws of this state to make any deposit of securities in connection with its authorization to do business in this state with any public officials thereof, may for such purposes deposit notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, and mortgage participation certificates, issued by a mortgage insurance company authorized to do business in this state in accordance with ORS 743.702 to 743.708.

[Amended by 1967 c.359 §703]

709.060 Primary liability of deposit. The deposit mentioned in ORS 709.030 is primarily liable for the malfeasance of a company as guardian, executor, administrator, assignee, receiver or trustee under will by an appointment of court, or depository of money in court, and is not liable for any debt or other obligation of the company until such malfeasance liability of the company has been discharged.

709.070 Right of action against deposit. Any person who suffers loss or damage because of the breach of any trust committed to any trust company shall have a right of action to recover the amount of such loss or damage out of the moneys or securities deposited with the Superintendent of Banks by the trust company.

709.080 Charges for handling securities. The Superintendent of Banks may make such charges and assessments for expenses incurred, including insurance, and services rendered in connection with deposits of securities as he deems just and reasonable.

709.090 Appraisal of real estate securing deposit. The Superintendent of Banks shall appraise, or cause to be appraised, every parcel of real estate securing any note or bond offered for deposit with the Superintendent of Banks. If the appraisement is made by the Superintendent of Banks he shall collect from the company offering the mortgages for deposit his actual expenses in making the appraisement. If the appraisement is made by an appraiser selected by the Superintendent of Banks he shall collect a reasonable fee from the company.

709.100 Certificate of title or title insurance on real estate securing deposit. The

Superintendent of Banks may accept a certificate of title or title insurance policy from a title insurance company, or the opinion of the attorney who examined the title to the property for the trust company offering a mortgage and note for deposit, or he may require an opinion as to title from the Attorney General.

709.110 Fire insurance; deposit of documents with notes or bonds. (1) Fire insurance shall be in effect upon all insurable property, for the reasonable value thereof.

(2) All mortgages or deeds of trust and all insurance policies, abstracts of title, certificates of title or title insurance policies and appraisements shall be deposited with the notes or bonds. When less than the whole of a bond issue is deposited, the Superintendent of Banks shall not require the deposit of the abstract of title, certificates of title or title insurance policies and appraisements, but may require in lieu thereof a certificate from the trustee of the mortgage or bond issue that such documents have been deposited with the trustee.

709.120 Substitution of deposit securities; income of securities deposited. (1) The Superintendent of Banks may require the immediate substitution of other securities when he has reason to believe that the market value of securities which have heretofore been deposited have depreciated below their face value. Substitution of securities with the Superintendent of Banks at the request of the depositing bank or trust company may be permitted when approved by the Superintendent of Banks.

(2) So long as the depositing bank or trust company continues solvent it shall be permitted to receive and retain all interest, income or dividends from all securities deposited with the Superintendent of Banks.

709.130 Indemnity bond when cash and securities of one trust exceed capital and surplus of the trust company. If the cash and securities belonging to any single trust exceed the amount of the trust company's capital and surplus, the court or judge thereof, having the appointment of the trust company to such position of trust, may, in his discretion, require an indemnity bond from the trust company for the amount of cash and securities exceeding capital and surplus.

709.140 Return of deposit; liability of state. (1) The State of Oregon is liable for the return of any funds or securities deposited in accordance with ORS 709.030 and 709.040, or 709.310.

(2) The State of Oregon is responsible for the safe return of such securities deposited with the Superintendent of Banks under the Bank Act.

709.150 General powers of trust companies. In addition to the powers conferred by the general corporation laws, every trust company shall have the following powers, subject to the restrictions and limitations contained in the Bank Act:

(1) To act as fiscal or transfer agent of the United States or of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness; to authenticate and certify any such bonds and certificates of indebtedness, and to act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

(2) To lease, hold, purchase and convey any real property necessary or convenient in the transaction of its business, or which the purposes of the corporation may require, or which it anywhere acquires in settlement or partial settlement of indebtedness due to the trust company by any of its debtors or to secure such debts, or through sales under any judgment, decree or mortgage held by it.

(3) To receive deposits of moneys, securities and other personal property in trust from any person or corporation and to loan trust funds on real or personal securities under the Bank Act.

(4) To act as trustee under any mortgage or bonds issued by any person, firm, copartnership, municipality, body politic or corporation, foreign or domestic, and accept and execute any other municipal or corporate trusts not prohibited by the laws of this state.

(5) To accept trusts from and execute trusts for married women in respect to their separate property and to be their agent in the management of such property, or to transact any business in relation thereto.

(6) To be appointed and to act under the order of appointment of any court of competent jurisdiction as guardian of the estate for any person for whom a guardian of the estate may by law be appointed; or as trustee, receiver, conservator or committee of the property or estate of any person, corporation

or company, in insolvency or bankruptcy proceedings, or as depositary of any moneys paid into court, whether for the benefit of any minor, or any person, corporation or party, and in any other fiduciary capacity.

(7) To be appointed and to accept the appointment of executor or trustee under the last will and testament, or administrator, with or without the will annexed, of the estate of any deceased person. Whenever a person is joined with the trust company in any appointment as guardian, trustee, administrator, with or without the will annexed, his appointment may be under such limitation of powers and upon such terms and conditions as to deposit of assets by such person with the trust company, or otherwise, and upon such reduced bond or security to be given by him, as the court or judge making the appointment shall prescribe.

(8) To take, accept and execute any such legal trusts, duties and powers in regard to the holdings, management and disposition of any estate, real or personal, wherever located, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of competent jurisdiction, or by any person, corporation, municipality or other authority.

(9) To take, accept and execute any and all trusts and powers of whatever nature or description as may be conferred upon, entrusted or submitted to it by any person, firm, company or any body politic, corporation, foreign or domestic, or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted or committed or transferred to it or vested in it by order of any court of competent jurisdiction; and to receive, take, manage, hold and dispose of, according to the terms of such trust or power, any property or estate, real or personal, which may be subject to the trust power.

(10) To receive, upon terms and conditions to be prescribed by the trust company, upon deposit for safekeeping, bonds, mortgages, jewelry, plate, stock, securities and valuable papers of any kind, and other personal property for hire, and to let out receptacles for safe deposits of personal property.

(11) To purchase, invest in and sell bills of exchange, bonds and mortgages, and other evidences of indebtedness.

(12) To execute the powers and possess the privileges conferred on banks by the banking laws of this state. No corporation organized and existing prior to May 28, 1925, which is authorized by its articles to transact a trust business, as defined by ORS 709.010, or which has not received a charter to transact a banking business prior to May 28, 1925, shall be permitted to receive deposits or engage in the business of banking until it has received a charter or a certificate of authority from the Superintendent of Banks to receive deposits and engage in the banking business.

(13) To purchase and hold, for the purpose of becoming a member of a Federal Reserve Bank, so much of the capital stock thereof as will qualify it for membership in such bank; to become a member of such Federal Reserve Bank, and to have and exercise all powers not in conflict with the laws of this state which are conferred upon any such member by the Federal Reserve Act. The trust company and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all provisions of the Bank Act relating to trust companies.

(14) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; buy and sell coin and bullion, and loan money upon real estate or personal property, and upon collateral or personal security, at a rate of interest not exceeding that allowed by law.

(15) To accept for payment at a future date drafts drawn upon it by customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, not exceeding one year.

(16) Every trust company which, on May 28, 1925, lawfully possessed the power, for hire, to examine titles to real estate, to procure and furnish information in relation thereto, and to guarantee or insure the title to real estate to persons interested in such real estate or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon such real estate, shall continue to possess such power, including the maintaining of branches and the establishment of additional branches for such purposes, but such trust company shall not do any banking or trust business at any branch.

(17) Generally to execute trusts of every description not inconsistent with the laws of this state or of the United States.

[Amended by 1961 c.344 §106]

709.160 Solicitation and performance of

legal business prohibited. (1) No trust company shall advertise to furnish to the public legal services pertaining to the execution of trusts set forth in ORS 709.150, or to the issuance of securities. No trust company shall advertise to furnish or furnish to the public legal advice or practice or hold itself out as practicing law.

(2) Any trust company whose officers or agents solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state.

(3) No trust company shall advertise that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers. No officer, agent or employe of any trust company shall solicit legal business.

709.170 Fiduciaries; establishment and investment in common trust funds; accounting. (1) "Common trust fund," as used in this section, means any fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by such bank or trust company as a fiduciary and includes common trust funds for the investment of small amounts, common trust funds for general investment and common trust funds composed principally of mortgages (mortgage investment funds).

(2) Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries. Such bank or trust company may, as such fiduciary or cofiduciary, whether as administrator, executor, guardian, conservator, trustee by court appointment, trustee by contractual or testamentary appointment, or in other like fiduciary relationships, invest funds which it lawfully holds for investment, in interests in such common trust fund, if such investment is not prohibited by the instrument, judgment, decree or order creating the fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to the investment.

(3) Any bank or trust company qualified to act as fiduciary in this state other than national banks which are qualified to act as fiduciaries pursuant to the laws of the United States and rules and regulations promulgated pursuant thereto shall, in the operation of such common trust fund, comply with such rules and regulations as may, from time to time, be promulgated by the Banking Division, which may issue and promulgate such rules and regulations controlling the establishment and operation of such common trust funds as it deems necessary and appropriate.

(4) Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with respect to such funds, but it may, upon application to the circuit court of the county in which it has its principal office, obtain a settlement of its common trust fund accounts on such conditions as the court may specify. When application for such settlement is presented to a circuit court for approval, the circuit court shall assign a time and place for hearing and order notice thereof by:

(a) Publication once a week for three successive weeks, the first publication to be not less than 20 days prior to the date of hearing, of a notice in a newspaper having a general circulation in the county in which the bank or trust company operating the common trust fund has its principal office;

(b) Mailing, not less than 14 days prior to the date of the hearing, a copy of the notice to all beneficiaries of the trusts participating in the common trust fund whose names are known to the bank or trust company from the records kept by it in the regular course of business in the administration of said trust, directed to them at the addresses shown by such records; and

(c) Such further notice, if any, as the court may order.

(5) This section applies to fiduciary relationships in existence on August 2, 1951, or thereafter established; and subsection (1) of this section is expository and declaratory of the meaning of "common trust fund" as used in this section since August 2, 1951. [Amended by 1953 c.258 §2; 1959 c.91 §1; 1963 c.56 §1]

709.180 Commercial or savings departments; right to conduct. Where any trust company within this state is authorized to conduct a banking business, under the Bank Act, such trust company may conduct and maintain a commercial department or a savings department, or both commercial and savings department, under the same terms and conditions as any state bank, as defined by ORS 706.040 and 706.050, and shall be

governed by all the provisions of the Bank Act relating to the business of banking.

709.190 Trust department kept separate; records of securities. (1) Every trust company shall establish and maintain in its office a trust department, in which shall be kept separate and apart from its other business separate books and accounts, and shall keep all moneys, funds, investments and property of the department at all times segregated from and unmingled with other funds, moneys, investments, and property.

(2) The books and accounts of the trust department shall at all times show the ownership of all moneys, funds, investments, and property held by the department. Stock or other securities may be kept by the department in either of the following ways:

(a) All certificates representing the securities of an account may be held separate from those of all other accounts; or

(b) Certificates representing securities of the same class of the same issuer held for particular accounts may be held in bulk without certification as to ownership attached and, to the extent feasible, certificates of small denomination may be merged into one or more certificates of larger denomination, provided that the trust department, when operating under the method of safekeeping security certificates described in this paragraph, shall be subject to such rules and regulations as, in the case of state chartered institutions, the state banking department and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue and, upon demand by any person to whom it has a duty to account, it shall certify in writing the securities held by it for an account.

[Amended by 1971 c.263 §1]

709.200 Acquisition or investment of trust funds in own name or name of nominee. (1) In the acquisition or investment of trust funds or property, any trust company may take in its own name, or in the name of such nominee as it may designate or appoint, any bonds, stocks, mortgages, deeds or other securities, or assets, real or personal, in which it may be authorized to invest or hold such funds or property. Any such investments made prior to June 7, 1937, or trust assets acquired, by any trust company in its own name after such date may be held in the name of the trust company.

(2) Upon the satisfaction or conveyance of any trust asset or any investment of trust funds by any trust company, whether such investment or assets are held in the name of such company, individually, or in its name as trustee, or in its name in a specified fiduciary capacity, or otherwise, the instrument of satisfaction or transfer may be executed by the trust company in its own name.

709.210 Disclosure of fiduciary character or terms of trust instrument. In acquiring, holding, satisfying and conveying any trust asset or any investment of trust funds, it is not the duty of any trust company to disclose that it is acting in a fiduciary capacity or the terms or conditions of the instrument pursuant to which it acts or the nature or extent of its authority or the application of the proceeds of such transaction. No person dealing with such trust company shall be required, authorized or permitted to inquire into such matters, or any of them, except to the extent or for the purposes specified in ORS 709.270.

709.220 Separation of funds awaiting investment or distribution. Funds deposited or held in trust by any bank or trust company awaiting investment or distribution shall be carried in a separate account and shall not be used by such bank or trust company in the conduct of its business unless it first obtains and sets aside in its trust department bonds or other securities eligible for the investment of trust funds or a surety bond, or both such securities and such surety bond. The surety bond shall be issued by a surety company authorized to transact business in this state and approved by the Superintendent of Banks, and shall provide that the principal and surety shall indemnify the several owners of the funds held in trust against loss due to the failure of the bank or trust company. Notwithstanding the provisions of ORS 708.230, the securities, or the surety bond, or the securities and the surety bond together, as the case may be, so set aside shall be in an amount equal to the portion of such trust funds not insured by the Federal Deposit Insurance Corporation. In the event of the failure of any such bank or trust company, the several owners of the funds held in trust for investment or distribution shall have a lien on such bonds or other securities so set apart or pledged, or a right of action on such surety bond, as the case may be, in addition to their claim against the estate of the bank or trust company.

[Amended by 1957 c.82 §2]

709.230 Appointment as fiduciary; deposit of money brought into court. (1) When any trust company mentioned in ORS 709.020 is appointed executor in any last will and testament, the court or officer authorized to grant letters testamentary in this state shall, upon proper application, grant letters testamentary thereon to such corporation or its successors by merger.

(2) When application is made to any court or officer having authority to grant letters of administration, with or without the will annexed, upon the estate of any deceased person, such court or officer may, at the request of any party interested in the estate, in its discretion, grant such letters of administration, with or without the will annexed, to any such corporation.

(3) Any court having authority to grant letters of guardianship or conservatorship may appoint any such corporation as a guardian of the estate for or conservator of the estate of any person for whom or for whose estate a guardian of the estate or conservator may by law be appointed.

(4) Any court having jurisdiction to appoint a trustee or receiver of the estate of any person, or to make any fiduciary appointment, may appoint any such corporation to be such trustee or receiver or to act in any other fiduciary capacity.

(5) Any court having jurisdiction to appoint an executor of any estate may appoint any such trust company coexecutor of the estate upon the petition of the executor.

(6) All moneys brought into court by order or judgment of any court of record may be deposited with any corporation that has received a certificate of authority from the Superintendent of Banks to do a trust business as provided in the Bank Act.

[Amended by 1961 c.344 §107]

709.240 Oath and bond on appointment as fiduciary. Neither at the time of the appointment of any trust company, which has deposited cash or securities with the Superintendent of Banks as required or allowed by ORS 709.030, as executor, administrator, guardian, trustee, receiver, assignee, depositary or in any other fiduciary capacity, nor during the administration of any such trust, shall any official oath or indemnity bond or other security be required other than as required by ORS 709.030, 709.130 and 709.230.

709.250 Fiduciaries; deposit of estate assets in trust company; reduction of bond. Whenever, in the judgment of any court having jurisdiction of any estate in process of administration by any assignee, receiver, executor, administrator, guardian, conservator or other trustee, the bond required by law of such officer seems burdensome or excessive, upon application of such officer or trustee, and after such notice to the parties in interest as the court may direct and a hearing on the application, the court may order the officer or trustee to deposit with any trust company, which has deposited cash or bonds with the Superintendent of Banks, as provided in ORS 709.030, for safekeeping, such portion of all the personal assets of the estate as it deems proper. Thereupon the court shall, by order of record, reduce the bond to be given, or theretofore given, by such officer or trustee, so as to cover only the estate remaining in the hands of the officer or trustee. The property so deposited shall thereupon be held by the trust company under the orders and directions of the court.

709.260 Fiduciaries; deposit of moneys in trust companies; reduction of bond. Any court having appointed and having jurisdiction of any executor, administrator, guardian, assignee, receiver, depositary or trustee may, upon application of such officer or trustee or upon the application of any person having an interest in the estate administered by such officer or trustee, after notice to other parties in interest, as the court may direct, and after a hearing upon the application, authorize such officer or trustee to deposit any money then or thereafter, in his hands as such officer or trustee until the further order of the court, in any bank or trust company authorized to take or accept trust deposits. Upon such deposits being made the officer or trustee so depositing the same shall thereafter, and while such moneys remain on deposit in such bank or trust company, be relieved and discharged from all liability and responsibility therefor. The bond required of such officer or trustee, given upon his appointment, shall be thereupon reduced by such court to such an amount as the court may deem reasonable. Such deposit shall be repaid only upon the orders of the court.

709.270 Disclosure of communications and writings prohibited; exceptions. Every trust company or every corporation exercising trust powers and performing the duties provided for in the Bank Act or under its

articles of incorporation shall, except as otherwise provided in this section, keep inviolate all communications and writings made to or by such trustees touching the existence, condition, management and administration of any private trust confided to it. No creditor or stockholder is entitled to disclosure or knowledge of any such communication or writing. However, the president, vice president, manager, trust officer, secretary or regularly employed attorney of such trust company or corporation is entitled to knowledge of any such communication or writing. In any suit or proceeding touching the existence, condition, management or administration of any such trust, the court wherein the same is pending may require disclosure of any such communication or writing.

709.280 Loans to officers or employes prohibited. (1) No corporation doing a trust business shall make any loan to any officer or employe from its trust funds, nor shall it permit any officer or employe to become indebted to it in any way out of its trust funds.

(2) No officer, director or employe of any such corporation shall knowingly violate any provision of this section, or aid or abet any other person in any such violation.

709.290 Closing of trust unduly delayed. Whenever, in the opinion of the Superintendent of Banks as a result of a regular or special examination made at his discretion, the closing of any trust in process of administration by any bank or trust company as executor, administrator, guardian, conservator or other trustee, is found to be unduly delayed, either through the acts or failure to act of any such bank or trust company or through the acts or failure to act of legal counsel employed in such proceedings, the bank or trust company shall, within 30 days after receiving written notice from the Superintendent of Banks, file a report in the premises with the court having jurisdiction of the matter and shall obtain an extension of time under a court order unless such extension is declined by the court. A certified copy of the court's finding in the matter shall be filed by the bank or trust company with the Superintendent of Banks within 10 days from the issuance of the court order.

709.300 National bank as fiduciary. Any national banking association domiciled within this state or having a lawfully established branch office in this state on December 31, 1964, may act in fiduciary capacities in all respects, as provided by applicable laws of the United States and rules and regulations promulgated pursuant thereto. All acts provided in the Bank Act to be performed by the State Treasurer, the Superintendent of Banks or other public officials for or in respect to trust companies, shall be performed for such national banking associations equally with trust companies. Every such national banking association which is authorized to exercise such fiduciary powers and which has qualified by making the deposit of securities required by the laws of this state, may act or be appointed by any court to act in any such capacity in like manner and to the same extent as any trust company which is authorized to transact a trust business under the Bank Act. Every such association shall be permitted to use the word "trust" in its corporate name and to advertise its authority to act in fiduciary capacities.

[Amended by 1963 c.55 §1; 1965 c.170 §1]

709.310 National banks; deposit of securities; interest on securities. (1) The Superintendent of Banks may receive from every national bank which has been authorized to act in fiduciary capacities, a deposit of securities of the kind and in the amount which would be required of a trust company under ORS 709.030.

(2) Such securities shall be registered in the name of the Superintendent of Banks as trustee for the beneficiaries of private and court trust funds held by such national bank.

(3) Securities so deposited shall be held for the protection of such private and court trusts and subject to sale and transfer, and to the disposal of the proceeds thereof by the Superintendent of Banks only on the order of a court of competent jurisdiction.

(4) Such national bank, so long as it continues solvent and complies with the laws of this state applicable thereto, may be permitted by the Superintendent of Banks to collect the interest on the securities so deposited, and from time to time to exchange such securities for others, as provided by ORS 709.120.

[Amended by 1963 c.55 §2]

709.320 Expense of national bank securities deposit; collection; priority. The Superintendent of Banks may make such charges and assessments for expenses incurred and services rendered in connection

with deposits of securities mentioned in ORS 709.310 as he deems just and reasonable. If any such national bank does not, after due notice, pay to the Superintendent of Banks any charge assessed against it pursuant to the authority given by this section, the Superintendent of Banks may apply in payment thereof, with interest at the legal rate, so much as may be necessary of the interest accruing on any securities deposited with him by the national bank, or he may, in his discretion, report the facts to the Attorney General, who shall thereupon, in the name of the Superintendent of Banks, institute such action or proceeding as the facts may warrant against the national bank. In case of insolvency or voluntary or involuntary liquidation of any such national bank all unpaid charges lawfully assessed against it by the Superintendent of Banks are entitled to a priority of payment from the proceeds of the bonds deposited with the Superintendent of Banks.

709.330 Sale or transfer of assets or liabilities; effect on fiduciary relations. (1) At the time when a sale or transfer of assets or liabilities becomes effective, as provided in ORS 711.210, 711.245 and 711.320, the purchasing corporation shall ipso facto, by operation of law and without further transfer, substitution, act or deed and in all courts and places be deemed and held to have succeeded and shall become subrogated and shall succeed to all the rights, obligations and relations of the selling corporation to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust and in respect to any executorship, trusteeship or other trust or fiduciary relation, and such rights, obligations and relations shall remain unencumbered.

(2) The purchasing corporation shall perform each and every such trust or relation in the same manner as if the purchasing corporation had itself expressly assumed the trust or relation, including the obligations and liabilities connected therewith.

(3) If the selling corporation is acting in any fiduciary capacity under court order in respect to any estate or trust which is being administered under the laws of this state, such relation and all rights, privileges, duties and obligations connected therewith shall remain unimpaired and shall continue in the purchasing corporation from and as of the time of taking effect of the sale or transfer irrespective of the date when any such relation was created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being administered.

(4) The purchasing corporation shall succeed to and be entitled to take, execute and receive the appointment of all executorships, trusteeships, guardianships and other fiduciary capacities in which the selling corporation is then or thereafter named in wills theretofore or thereafter probated or in any other instruments.

(5) Such sale or transfer shall not effect a renunciation or revocation of any letters of administration, letters testamentary, letters of guardianship or any other relationship.

(6) In connection with any trust which requires the approval of the court to a change of the trustee or other fiduciary the successor trustee or other fiduciary shall file notice of such change with the court having jurisdiction within 90 days after the change has become effective and within the same period of time shall serve notice of the change upon each beneficiary of the trust or estate, which notice may be served in the manner provided in ORS 16.760 to 16.820 or, where the residence of a beneficiary is not known, notice may be published in the manner provided by law for the publication of summons.

(7) Any such beneficiary or other person interested in the trust or estate may, within 90 days after the service of such notice, apply to the appropriate court for a change of fiduciary or such other relief as may be proper. Unless such application is made within such period of time every such beneficiary or party interested shall be deemed to have consented to the change of trustee.

709.340 Trust company retiring from business; examination. Any trust company desiring to retire from business under the Bank Act shall furnish to the Superintendent of Banks satisfactory evidence of its release and discharge from all obligations and trusts provided for in the Bank Act. The Superintendent of Banks shall thereupon examine, or cause to be examined, such trust company, and, if he is satisfied after such examination that such trust company has discharged all its obligations and trusts, he shall revoke its certificate of authority and deliver up all securities on deposit with him.

709.350 Successor trustee upon liquidation or receivership; appointment and qualification; petition by superintendent. Whenever any bank or trust company or national banking association doing a trust business goes into voluntary or involuntary liquidation or receivership, successor trustee or trustees shall be appointed and shall qualify in the following manner:

(1) After the Superintendent of Banks has taken possession of any such bank or trust company, he shall file in the liquidation proceedings of the bank or trust company a petition setting forth in general terms that the bank or trust company is trustee under certain trusts and that it is desirable and necessary that a successor trustee or trustees be appointed under such trusts. It is not necessary for the Superintendent of Banks in such petition to designate the parties to any such trust or the nature, purpose or extent of the trusts or the trust properties.

(2) Upon the filing of the petition, the court shall make and enter an order requiring all persons interested in any and all such trusts either to designate and provide and take all necessary steps to appoint successor trustee or trustees within a time to be fixed in the order, or to show cause why a successor trustee or trustees should not be appointed by the court. Such order may be general in its terms and need not designate the trusts involved or the nature, purpose or extent thereof, or give the name of any of the beneficiaries or others interested therein.

(3) In all trusts where all persons interested, or the court having jurisdiction of court trusts, take the steps to provide for the appointment and qualification of a successor trustee or trustees within the time limited in such order, or such further time as the court may allow, the successor trustee or trustees shall, with relation to such trusts, succeed to all the rights, powers, privileges and obligations of the bank or trust company in liquidation, except claims or liabilities arising out of the management of the trust prior to the date of transfer.

(4) In any trust where those interested therein fail to cause a successor trustee or trustees to be appointed prior to the time fixed in such order, the court shall, by order and decree, appoint a successor trustee or trustees, and such successor trustee or trustees shall, with relation to such trusts, succeed to all the rights, powers, privileges and obligations of the bank or trust company so in liquidation, except claims or liabilities arising out of the management of the trust prior to the date of transfer.

(5) A copy of the order provided for in subsection (2) of this section, shall be published once a week for four successive weeks in a newspaper of general circulation to be designated by the court and published in the county in which the liquidation proceedings of the bank or trust company are carried on. If there is no newspaper published in such county, publication shall be made in a newspaper of general circulation in the State of Oregon designated by the court. Proof of publication shall be made in the same manner as proof of publication of summons is made.

(6) The filing of such petition and the making and entering of such order and the publishing of a copy thereof, gives the court full jurisdiction of the trusts and all parties interested therein. A court so having jurisdiction in such matter shall require the Superintendent of Banks to mail, by registered mail postage prepaid, a copy of such order to each living trustor of all private trusts in which such bank or trust company is trustee or to the then directly participating beneficiaries of all private trusts in which there is no living trustor. Such notice shall be mailed to the last known address of each such trustor or participating beneficiary as shown by the records of the bank or trust company. Proof of mailing shall be in such form as the court shall require. Failure to mail such notice or the nonreceipt thereof by any such trustor or participating beneficiary shall not affect the jurisdiction of the court or invalidate any order or decree made in the proceedings.

(7) It is unnecessary to require the appearance of minors or other incompetents by guardians ad litem or otherwise.

709.360 Successor trustee; petition by liquidating agent or receiver. Whenever a national banking association doing a trust business goes into voluntary or involuntary liquidation, the liquidating agent or the receiver thereof may file a petition in the circuit court of the county in which the national banking association has or had its principal office and place of business, setting forth the same matters as are required to be set forth in the petition filed by the Superintendent of Banks under ORS 709.350. Thereafter, successor trustee or trustees for the trusts of such national banking association

shall be appointed in the same manner and the same procedure followed and the same jurisdiction acquired as set forth in ORS 709.350.

709.370 Successor trustee; petition by bank or trust company. When any bank or trust company doing a trust business goes into voluntary liquidation, such bank or trust company may file a petition in the circuit court of the county in which it has its principal office or place of business, setting forth the same matters as are required to be set forth in the petition filed by the Superintendent of Banks under ORS 709.350. Thereafter successor trustee or trustees for the trusts of such bank or trust company shall be appointed in the same manner and the same procedure followed and the same jurisdiction obtained as set forth in ORS 709.350.

709.380 Transfer of trust property to successor trustee. Upon the appointment of any successor trustee or trustees, in the manner provided in ORS 709.350 to 709.370, the Superintendent of Banks, the liquidating agent, the receiver or the bank in voluntary liquidation, as the case may be, may execute such deeds, conveyances, transfers and assignments as are necessary to transfer to and vest in the successor trustee or trustees all right, title, interest, power and authority in, over and to the trust property theretofore vested in the bank or trust company or national banking association so in liquidation.

709.390 Discontinuance of trust business; determination of claims against deposit of securities. (1) Whenever a bank, trust company or national banking association doing a trust business discontinues such trust business, all claims of whatsoever kind and nature against the security deposit of such trust company, bank or national banking association required by law to be made with the Superintendent of Banks shall be determined, established and adjudicated in the manner provided in ORS 709.390 to 709.450. If not so determined, established and adjudicated, such claims shall forever be barred and foreclosed.

(2) The method of determining, establishing and adjudicating such claims shall be as follows: The Superintendent of Banks shall file in the circuit court for the county in which is located the principal office and place of business in the State of Oregon of such trust company, bank or national banking association, a verified petition setting forth:

(a) That such trust company, bank or national banking association desires to retire from the trust business, dissolve, transfer its trust business, or that it is in process of voluntary or involuntary liquidation.

(b) That it is necessary that claims, if any, against the deposit made by such trust company, bank or national banking association with the Superintendent of Banks be determined.

[Amended by 1957 c.115 §1]

709.400 Order to bring suit; publication of order; jurisdiction over securities; notice to trustor; appearance of minors and incompetents unnecessary. (1) Upon the filing of the petition mentioned in subsection (2) of ORS 709.390, the court shall make an order requiring all persons, copartnerships, associations or corporations having claims against the securities to commence action or suit thereon in such circuit court within six months from the date of the order, or forever be barred and foreclosed of any claim on such deposit. It is not necessary that either the petition or the order give the names of any beneficiary or the nature of the trusts protected by the deposit.

(2) A copy of the order shall be published in a newspaper designated by the court, having a general circulation in the county of the principal office and place of business in the State of Oregon of such trust company, bank or national banking association, at least once a week for as many consecutive weeks as the court shall determine, not less than four weeks nor more than 12 weeks. If no newspaper is published in such county, the copy of the order shall be published in such newspaper in this state as the court designates. Upon completion of publication, proof thereof shall be made in the same manner as proof of publication of summons is made and such proof shall be filed with the clerk of such court.

(3) The filing of the petition, the making and entering of the order, and the publishing of a copy thereof, as provided in ORS 709.390 and this section gives the court full jurisdiction of securities so deposited and of all parties having an interest in or claim upon such securities. A court so having jurisdiction in such matter shall require the Superintendent of Banks to mail, by registered mail postage prepaid, a copy

of such order to each living trustor of all private trusts in which the bank or trust company is trustee and which have not been closed or to the then directly participating beneficiaries of all such private trusts in which there is no living trustor. Such notice shall be mailed to the last-known address of each such trustor or participating beneficiary as shown by the records of the bank or trust company. Proof of mailing shall be in such form as the court requires. Failure to mail such notice or the nonreceipt thereof by any such trustor or participating beneficiary shall not affect the jurisdiction of the court or invalidate any order or decree made in the proceedings.

(4) It is unnecessary to require the appearance of minors or other incompetents by guardians ad litem or otherwise.

709.410 Termination of right to do trust business. The filing by the Superintendent of Banks of the proceedings provided for in ORS 709.390 shall operate to terminate the right of the bank or trust company or national bank affected thereby to do a trust business, except such business as may be necessary to wind up then existing trusts.

709.420 Actions or suits on claims; limitation of actions; service of summons; preference on calendar. (1) All persons, copartnerships, associations or corporations, including minors, incompetents and all others under any legal disability, having any claim against the deposit mentioned in ORS 709.390, shall file action or suit within six months from the date of the court order, and in default thereof shall be forever barred and foreclosed of any and all claim and interest in, to or against the deposit.

(2) The circuit court making the order shall have exclusive jurisdiction of all actions or suits brought to determine claims to the deposit.

(3) In all actions or suits filed pursuant to this action, the Superintendent of Banks shall be a necessary party defendant.

(4) No action or suit shall be deemed to have been commenced within the time required by the order unless, in the case of defendants within the state, summons is actually served within 60 days from the time limited in the order.

(5) Actions or suits filed pursuant to this section shall have preference upon the calendar of both the trial court and the Supreme Court, and shall be tried by such courts without unnecessary delay.

709.430 Release or payment of deposit pending suit; distribution of deposits upon determination of suit. (1) If any actions or suits on claims against the deposit mentioned in ORS 709.390 are commenced within the time limited by the court order, the Superintendent of Banks shall not release the deposit, or any part thereof, nor shall the court order the release thereof nor the payment of any part thereof until such time as all such actions or suits are determined by final judgment or decree.

(2) When such actions or suits are finally determined, so much of the deposit as is necessary shall be paid over to such of the claimants as have established their rights thereto in the sums allowed by the court or, if not sufficient, the deposit shall be distributed pro rata among such claimants as have established, by final judgment or decree, their claims thereto.

(3) The court, in the proceeding to be commenced by the Superintendent of Banks, shall decree that the balance, if any, or the entire deposit, in case no claims are established in the manner provided, be paid over and delivered to the trust company, bank or national banking association making the deposit or its successors or assigns, except that in the case of any such trust company, bank or national banking association which is in process of voluntary or involuntary liquidation, the deposit or balance thereof, if any, shall be paid over to the official lawfully in charge of the liquidation.

709.440 Superintendent's charges and assessments as a prior lien on deposit. All unpaid charges and assessments owing to the Superintendent of Banks for expenses and services rendered in connection with the deposit mentioned in ORS 709.390, and all expenditures incurred or made by the Superintendent of Banks, including services rendered by him, attorney's fees and necessary court expenses in connection with the determination of claims against the deposit, shall be a first and prior lien on the deposit, and be first paid before the deposit, or any part thereof, is released or paid over to any claimant or trust company, bank or national banking association.

709.450 Sale and disposition of securities to pay expenses, costs, attorney's fees and claims. The court having jurisdiction

of the proceedings instituted by the Superintendent of Banks may, upon such terms as the court shall fix, authorize and order the Superintendent of Banks to sell, dispose of and reduce to cash such portion of the securities deposited by such bank or trust company or national banking association as may be necessary to pay for the services rendered and expenses incurred by the Superintendent of Banks in connection with such deposit and the proceedings contemplated by ORS 709.390 to 709.460, including attorney's fees and court costs, and to pay claims established against such deposit.

709.460 Application of ORS 709.390 to 709.450. (1) Except as provided in subsection (2) of this section, ORS 709.390 to 709.450 apply to security deposits of banks, trust companies and national banking associations which retire from the trust business, transfer such business or go into voluntary or involuntary liquidation or receivership, or other method of liquidation.

(2) ORS 709.390 to 709.450 do not apply to a merger or consolidation, occurring before or after August 20, 1957, of a trust company, bank or national banking association into or with another trust company, bank or national banking association authorized under the laws of this state to conduct a trust business whereby the security deposits required by law together with the trust business of the retiring bank or trust company are acquired by the resulting bank or trust company.

(3) Immediately following the completion of a merger or consolidation described in subsection (2) of this section, and in the case of a merger or consolidation occurring prior to August 20, 1957, immediately following August 20, 1957, the Superintendent of Banks, upon written application of the resulting bank or trust company, shall release and return to it that portion of the combined security deposits of the banks or trust companies involved in the merger or consolidation which exceeds the deposit required by ORS 709.030 in respect of the combined cash and securities held in trust by the resulting bank or trust company following the merger or consolidation.

[Amended by 1957 c.115 §2]

709.990 Penalties. (1) Violation of subsection (3) of ORS 709.160 is punishable, upon conviction, by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for not more than one year, or both.

(2) Violation of subsection (2) of ORS 709.280 is punishable, upon conviction, by a fine of not less than $500 nor more than $1,000, or by imprisonment in the county jail for not less than one month nor more than one year, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel

CHAPTER 710

[Reserved for expansion]