

## ORPHANS' COURT DIVISION RULE 12.16H

### **RULE 12.16H      CORPORATIONS SERVING AS FIDUCIARIES**

#### **Sec. 1.      Petitions.**

Subject to the provisions of Section 6 of this Rule 12.16E, a petition of a corporation organized under the laws of the Commonwealth or of the United States having fiduciary powers, doing business for one year or longer and desiring to exercise fiduciary powers, shall set forth the following:

(a) the corporate name, the location of its business, the statutory authority for its existence, the date and purpose of its incorporation, any changes therein and the number of years it has been in operation;

(b) the names and addresses of its executive officers and directors and the stock in the petitioner held by each;

(c) the interest, direct or indirect, which the petitioner has in the capital stock of any other corporation organized for the conduct of a similar business; and the name of any corporation or group of allied persons or both holding or controlling a majority of the stock of the petitioner;

(d) if the petitioner is a national banking association, the grant of fiduciary powers to it by the Comptroller of the Currency;

(e) that the petitioner will make a deposit of the sum of \$500 with the Clerk on presentation of the petition, to be used so far as necessary to pay the fees of the Examiner of Fiduciaries and will make any further deposit in excess thereof that may be ordered by the Court; and

(f) the passage of a resolution by the board of directors of the petitioner providing:

(i) that it will submit to a preliminary examination of all its books, assets and liabilities, and, if approved, will submit to all other examinations directed by the Court and will pay all costs and expenses of examination fixed by the Court;

(ii) that fiduciary funds and investments under the control of the Court will not be mingled with assets owned by the petitioner or other assets in which it has any interest except as fiduciary,

(iii) that investments made by the petitioner as fiduciary shall be so designated that the estate or trust to which such investments belong shall be clearly shown;

(iv) that uninvested capital trust funds and income to be invested shall be segregated and designated as directed by applicable state and federal law;

(v) that it will submit to the Court in January and July of each year a statement duly verified showing its financial condition at the close of business on December 31st and June 30th of each year in the form required by the Examiner of Fiduciaries;

(vi) that it accept the provisions of the Acts of Assembly relating to corporate fiduciaries now or hereafter in existence, and of all orders and rules of court relating to the petitioner;

(vii) that the petitioner will not become surety on any bond, except as otherwise allowed by law;

(viii) that designated officers will execute any and all petitions, writings and obligations necessary in the exercise of fiduciary powers and that

their names and any changes therein will be filed of record with the Examiner of Fiduciaries:

(ix) that its counsel of record shall be the agent of the petitioner to receive all notices issuing from the Court; and

(x) that the gross amount loaned by it to all its officers and directors and to the firms or houses in which they may be interested, directly or indirectly, shall not exceed the amount allowed by applicable state and federal law.

(g) whether the petitioner has applied to any other court in Pennsylvania for approval to exercise fiduciary powers, and the results of any such applications.

**Sec. 2. Exhibits.**

Exhibits shall be attached in the following order:

(a) a certified copy of its charter, amendments and renewals;

(b) the approval of the State Banking Department or a certified copy of the certificate from the Comptroller of the Currency granting it the right to exercise fiduciary powers;

(c) a certified copy of the resolution of the petitioner embodying the allegations of Section 1(f), of this Rule;

(d) a current financial statement of the petitioner showing its total assets and liabilities in the form required by the Secretary of Banking or the Comptroller of the Currency; and

(e) the certificate of approval, or order for authority to exercise fiduciary powers by the Court of Common Pleas of the county where the corporate petitioner's principal office is located as well as all certificates of approval or orders for authority to exercise fiduciary powers which have been issued by any other court of any other county in Pennsylvania.

**Sec. 3. Officer's Oath to Petition - Records for Examiner.**

The petition shall be sworn to by an officer of the petitioner authorized by resolution. When the petition is presented to the Court, counsel shall deliver to the Examiner:

- (a) a certified copy of the last report of the petitioner's examination by the Secretary of Banking or the Comptroller of the Currency; and
- (b) a copy of the petitioner's by-laws.

**Sec. 4. Preliminary Order.**

Upon presentation of the petition, a preliminary order will be made in the following form:

And now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , the within petition having been presented in open Court, upon consideration thereof it is ordered, adjudged and decreed that the petition be referred to \_\_\_\_\_  
\_\_\_\_\_, Examiner of Fiduciaries, who is directed to make a report thereon to the Court.

**Sec. 5. Final Order.**

After examination and report by the Examiner and consideration by the Court, a final order of approval may be made in the following form:

And now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , it appearing to the Court that the petition of \_\_\_\_\_  
\_\_\_\_\_, a corporation, for authority to exercise fiduciary powers, was presented in open Court and referred to \_\_\_\_\_  
\_\_\_\_\_, Examiner, who has filed a report, and it further appearing from such petition and report that the petitioner has complied with the applicable laws and the rules of this Court, and has subjected itself to all orders and rules of this Court hereafter to be made, upon motion of \_\_\_\_\_, counsel for petitioner, it is ordered, adjudged and decreed that \_\_\_\_\_ be and is hereby authorized to act as fiduciary, when designated, chosen or appointed according to law.

**Sec. 6. Suspension of Rule with Respect to Certain Corporations  
or Entities**

The application of this Rule shall be suspended with respect to corporations or entities desiring to exercise fiduciary powers in Allegheny County, Pennsylvania, if such corporation or entity is one of the following:

(a) a national bank authorized to exercise fiduciary powers pursuant to 12 U.S.C. 92(a) and to perform fiduciary services in this Commonwealth;

(b) a bank, a bank and trust company, a trust company or to the extent provided under the Pennsylvania Banking Code of 1965, a savings bank which is authorized to perform fiduciary services under Section 106 of the Pennsylvania Banking Code of 1965;

(c) a federal savings bank which is authorized to exercise trust powers by the Office of Thrift Supervision pursuant to 12 U.S.C. §1464(n); or

(d) a bank, a bank and trust company, a trust company or savings bank which is regulated by the Office of Thrift Supervision, chartered under laws of another state or territory of the United States and satisfies the requirements of Section 106(b) of the Pennsylvania Banking Code of 1965.

Such corporation or entity shall submit to the Orphans' Court a copy of its charter, and for corporations or entities described under subsection (d) above an approval letter from the Pennsylvania Department of Banking under Section 106.

Corporations or entities qualifying under any of the above requirements need not comply with the requirements of this Rule, but shall file annually with the Court a statement that they continue to be authorized to exercise fiduciary powers by their governing regulatory entity. In the event the corporation or entity has its authorization to exercise fiduciary powers revoked or suspended, the Court shall be immediately notified.