CHAPTER 15

Bank Acting as Fiduciary

**SECTION 34‑15‑10.** General authority to act as fiduciary.

 Subject to the provisions of Section 62‑3‑203, a banking corporation or trust company with at least two hundred fifty thousand dollars total unimpaired capital may be appointed executor of a will, codicil, or writing testamentary, administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian or trustee under a will or instrument creating a trust for the care and management of property, under the same circumstances, in the same manner, and subject to the same control by the court having jurisdiction of the appointment as a legally qualified person. An appointment as guardian applies to the estate and not to the person of the ward. The corporation is not required to receive or hold property or money or assume or execute a trust pursuant to this section without its assent.

HISTORY: 1962 Code Section 8‑241; 1952 Code Section 8‑241; 1942 Code Section 7838; 1932 Code Section 7864; Civ. C. ‘22 Section 3994; Civ. C. ‘12 Section 2656; 1911 (27) 8; 1934 (38) 1245; 1972 (57) 2141; 1990 Act No. 521, Part II, Section 101, eff June 5, 1990; 2005 Act No. 66, Section 4, eff January 1, 2006.

Effect of Amendment

The 1990 amendment added “Subject to the provisions of Sections 62‑3‑203 and 62‑7‑207,” at the beginning of the section.

The 2005 amendment, in the first sentence, substituted “Section 62‑3‑203, a” for “Sections 62‑7‑203 and 62‑7‑207, any” and made nonsubstantive changes throughout.

CROSS REFERENCES

Banks, etc., doing a trust business, see Sections 34‑21‑10 et seq.

Chapter not applicable to national banks, see Section 34‑3‑20.

Nominee registration of securities held by corporate fiduciaries, see Sections 35‑5‑10 et seq.

Provisions of the South Carolina Probate Code relative to trust administration, see Sections 62‑7‑101 et seq.

When a bond is required of a banking corporation or trust company, qualified under this section, which is appointed a personal representative under the South Carolina Probate Code, see Section 62‑3‑603.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 157.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 104, Bank Acting as Fiduciary.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Ex parte Michie, 167 SC 1, 165 SE 359 (1932). Monteith v Harby, 193 SC 349, 8 SE2d 629 (1940).

Section does not relieve corporation from liability. This and the following sections do not relieve a corporation acting as executor or trustee, or the officers and directors thereof, from losses because of negligence, mismanagement or fraudulent acts. Winn v Harby, 159 SC 257, 156 SE 767 (1931). Strauss v United States Fidelity & G. Co., 63 F2d 174 (1933, CA4 SC), cert den 289 US 747, 77 L Ed 1492, 53 S Ct 690.

**SECTION 34‑15‑20.** Fiduciary bonds.

 Every such banking corporation appointed administrator, receiver, assignee, guardian or trustee, when fiduciary bonds are required of individual persons under like circumstances, shall be required to execute and file approved fiduciary bonds similar in every respect to the bonds required by law of private persons acting as such fiduciaries.

HISTORY: 1962 Code Section 8‑242; 1952 Code Section 8‑242; 1942 Code Sections 7838, 7839; 1932 Code Sections 7864, 7865; Civ. C. ‘22 Sections 3994, 3995; Civ. C. ‘12 Sections 2656, 2657; 1903 (24) 70; 1911 (27) 8; 1934 (38) 1245.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 15.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 151, Oath, Bond, and Letters of Trusteeship.

**SECTION 34‑15‑30.** Capital stock shall be held security for fiduciary obligations.

 The capital stock of such corporation shall be held as security for the faithful performance of the duties undertaken by virtue of Section 34‑15‑10 or of any similar provision of law.

HISTORY: 1962 Code Section 8‑243; 1952 Code Section 8‑243; 1942 Code Section 7839; 1932 Code Section 7865; Civ. C. ‘22 Section 3995; Civ. ‘12 Section 2657; 1903 (24) 70.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Ex parte Michie (S.C. 1932) 167 S.C. 1, 165 S.E. 359.

**SECTION 34‑15‑40.** Papers may be executed by authorized officer.

 In all proceedings in the probate court or elsewhere connected with any authority exercised under the provisions of Section 34‑15‑10 or under any similar provisions of law all accounts, returns and other papers may be signed and sworn to in behalf of the corporation by any officer thereof duly authorized by it. The answer and examination under oath of such officer shall be received as the answer and examination of the corporation. The court may order and compel an officer of such corporation to answer and attend the examination in the same manner as if he, instead of the corporation, were a party to the proceeding.

HISTORY: 1962 Code Section 8‑244; 1952 Code Section 8‑244; 1942 Code Section 7840; 1932 Code Section 7866; Civ. C. ‘22 Section 3996; Civ. C. ‘12 Section 2658; 1903 (24) 70.

**SECTION 34‑15‑50.** Liability when acting as trustee of partnership interest for minors.

 Any banking corporation or trust company authorized under this chapter to act as a fiduciary which acts or is acting as trustee of a partnership interest for minor beneficiaries shall not be liable as a partner except to the extent of the assets in the trust, the provisions of Sections 33‑41‑350 to 33‑41‑390 to the contrary notwithstanding; provided, however, nothing in this section shall waive, limit or restrict the duty and liability otherwise of the bank as trustee of a partner’s interest.

HISTORY: 1962 Code Section 8‑245; 1955 (49) 321.