

CHAPTER 33

AN ACT concerning fiduciaries and amending N.J.S.3B:14-23.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.3B:14-23 is amended to read as follows:

Powers.

3B:14-23. Powers. In the absence of contrary or limiting provisions in the judgment or order appointing a fiduciary, in the will, deed or other instrument or in a subsequent court judgment or order, every fiduciary shall, in the exercise of good faith and reasonable discretion, have the power:

- a. To accept additions to any estate or trust from sources other than the estate of the decedent, minor, mental incompetent or the settlor of a trust;

- b. To acquire the remaining undivided interest in an estate or trust asset in which the fiduciary, in his fiduciary capacity, holds an undivided interest;

- c. To invest and reinvest assets of the estate or trust under the provisions of the will, deed or other instrument or as otherwise provided by law and to exchange assets for investments and other property upon terms as may seem advisable to the fiduciary;

- d. To effect and keep in force fire, rent, title, liability, casualty or other insurance to protect the property of the estate or trust and to protect the fiduciary;

- e. With respect to any property or any interest therein owned by an estate or trust, including any real property belonging to the fiduciary's decedent at death, except where the property or any interest therein is specifically disposed of:

- (1) To take possession of and manage the property and to collect the rents therefrom, and pay taxes, mortgage interest and other charges against the property;

- (2) To sell the property at public or private sale, and on terms as in the opinion of the fiduciary shall be most advantageous to those interested therein;

- (3) With respect to fiduciaries other than a trustee, to lease the property for a term not exceeding three years, and in the case of a trustee to lease the property for a term not exceeding 10 years, even though the term extends beyond the duration of the trust, and in either case including the right to explore for and remove mineral or other natural resources, and in connection with mineral leases to enter into pooling and unitization agreements;

- (4) To mortgage the property;

- (5) To grant easements to adjoining owners and utilities;

- (6) A fiduciary acting under a will may exercise any of the powers granted by this subsection e. notwithstanding the effects upon the will of the birth of a child after its execution;

- f. To make repairs to the property of the estate or trust for the purpose of preserving the property or rendering it rentable or saleable;

- g. To grant options for the sale of any property of the estate or trust for a period not exceeding six months;

- h. With respect to any mortgage held by the estate or trust to continue it upon and after maturity, with or without renewal or extension, upon terms as may seem advisable to the fiduciary and to foreclose, as an incident to collection of any bond or note, any mortgage and purchase the mortgaged property or acquire the property by deed from the mortgagor in lieu of foreclosure;

- i. In the case of the survivor or survivors of two or more fiduciaries to administer the estate or trust without the appointment of a successor to the fiduciary or fiduciaries who have ceased to act and to exercise or perform all of the powers given unless contrary to the express provision of the will, deed or other instrument;

- j. As a new, alternate, successor, substitute or additional fiduciary or fiduciaries, to have or succeed to all of the powers, duties and discretion of the original fiduciary or fiduciaries, with respect to the estate or trust, as were given to the original fiduciary or fiduciaries named in or appointed by a will, deed or other instrument, unless the exercise of the powers, duties or discretion of the original fiduciary or fiduciaries is expressly prohibited by the will, deed or other instrument to any successor or substitute fiduciary or fiduciaries;

- k. Where there are three or more fiduciaries qualified to act, to take any action with respect to the estate or trust which a majority of the fiduciaries shall determine; a fiduciary who fails to

act through absence or disability, or a dissenting fiduciary who joins in carrying out the decision of a majority of the fiduciaries if his dissent is expressed promptly in writing to his cofiduciaries, shall not be liable for the consequences of any majority decision, provided that liability for failure to join in administering the trust or to prevent a breach of trust may not thus be avoided;

l. To employ and compensate attorneys for services rendered to the estate or trust or to a fiduciary in the performance of his duties;

m. To compromise, contest or otherwise settle any claim in favor of the estate, trust or fiduciary or in favor of third persons and against the estate, trust or fiduciary, including transfer inheritance, estate, income and other taxes;

n. To vote in person or by proxy, discretionary or otherwise, shares of stock or other securities held by the estate or trust;

o. To pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures or other corporate securities in the hands of a fiduciary, whenever the payments may be legally enforceable against the fiduciary or any property of the estate or trust or the fiduciary deems payment expedient and for the best interests of the estate or trust;

p. To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers or liquidations, and to consent to corporate sales or leases and encumbrances, and, in the exercise of those powers, the fiduciary is authorized to deposit stocks, bonds or other securities with any custodian, agent, protective or other similar committee, or trustee under a voting trust agreement, under terms and conditions respecting the deposit thereof as the fiduciary may approve;

q. To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust;

r. In the case of a trustee:

(1) To hold two or more trusts or parts of trusts created by the same instrument, as an undivided whole, without separation as between the trusts or parts of the trusts, provided that separate trusts or parts of trusts shall have undivided interests and provided further that no holding shall defer the vesting of any estate in possession or otherwise;

(2) To divide a trust, before or after its initial funding, into two or more separate trusts, provided that such division will not materially impair the accomplishment of the trust purposes or the interests of any beneficiary. Distributions provided for by the governing instrument may be made from one or more of the separate trusts;

s. To distribute in kind any property of the estate or trust as provided in article 1 of chapter 23 of this title;

t. To join with the surviving spouse, the executor of his or her will or the administrator of his or her estate in the execution and filing of a joint income tax return for any period prior to the death of a decedent for which he has not filed a return or a gift tax return on gifts made by the decedent's surviving spouse, and to consent to treat the gifts as being made one-half by the decedent, for any period prior to a decedent's death, and to pay taxes thereon as are chargeable to the decedent;

u. To acquire or dispose of an asset, including real or personal property in this or another state, for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

v. To continue any business constituting the whole or any part of the estate for so long a period of time as the fiduciary may deem advisable and advantageous for the estate and persons interested therein;

w. In the case of a qualified bank as defined in section 1 of P.L.1948, c.67 (C.17:9A-1), and an out-of-State bank as defined in section 1 of P.L.1948, c.67 (C.17:9A-1), which has established a trust office in this State to purchase, sell and maintain for any fiduciary account, securities issued by an investment company which is operated and maintained in accordance with the "Investment Company Act of 1940," 15 U.S.C.s.80a-1 et seq., and for which the qualified bank or out-of-State bank is providing services as an investment advisor, investment manager, custodian or otherwise, including those for which it receives compensation, if:

- (1) The investment is otherwise in accordance with applicable fiduciary standards; and
- (2) The investment is authorized by the agreement or instrument creating the fiduciary account that gives the qualified bank or out-of-State bank investment authority, or by court order; or
- (3) The qualified bank or out-of-State bank provides written notice not less than annually by prospectus, account statement or otherwise, disclosing to any current income beneficiaries of the trust the services provided by the qualified bank or its affiliate or out-of-State bank to the investment company, and the rate, formula, or other method by which compensation paid to the qualified bank or its affiliate or out-of-State bank is determined and the qualified bank or out-of-State bank does not receive a written objection from any current income beneficiary within 30 days after receipt of this notice. If a written objection is received from any current income beneficiary pursuant to this paragraph (3), no such investment of the trust assets of that fiduciary account shall be made or maintained.

Such investment shall not be deemed self-dealing or a fiduciary conflict; nor shall the fact that other beneficiaries of fiduciary accounts of the qualified bank or out-of-State bank have similar investments be deemed to be an improper commingling of assets by the qualified bank or out-of-State bank.

For purposes of this subsection, "fiduciary account" shall include a trust, estate, agency or other account in which funds, property, or both, are held by a qualified bank pursuant to section 28 of P.L.1948, c.67 (C.17:9A-28), or an account for which a qualified bank or out-of-State bank acts as investment advisor or manager or an account held by an out-of-State bank as defined in section 1 of P.L.1948, c. 67 (C.17:9A-1);

x. To employ and compensate accountants from the fiduciary fund for services rendered to the estate or trust or to a fiduciary in the performance of the fiduciary's duties, including the duty of a corporate or other fiduciary with respect to the preparation of accountings, without reduction in commissions due to the fiduciary, so long as such accountings are not the usual, customary or routine services provided by the fiduciary in light of the nature and skill of the fiduciary. In evaluating the actions of the fiduciary under this subsection, the court shall consider the size and complexity of the fiduciary fund, the length of time for which the accounting is rendered, and the increased risk and responsibilities imposed on fiduciaries as a result of revisions to laws affecting fiduciaries including, but not limited to, the "Uniform Principal and Income Act," P.L.2001, c.212 (C.3B:19B-1 et seq.) and the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.) provided that such revisions of the laws affecting fiduciaries were enacted after the fiduciary responsibilities under the corresponding will, deed or other instrument, or court judgment or order, were imposed on, and assumed by, the fiduciary. For purposes of this subsection, "Accountant" means a person who is registered as a certified public accountant pursuant to the provisions of P.L.1997, c.259 (C.45:2B-42 et seq.), or an accounting firm which is organized for the practice of public accounting pursuant to the provisions of P.L.1997, c.259 (C.45:2B-42 et seq.) and P.L.1969, c.232 (C.14A:17-1 et seq.); and

y. The powers set forth in this section are in addition to any other powers granted by law, and by a will, deed or other instrument.

2. This act shall take effect immediately except that the provisions of subsection x. of N.J.S.3B:14-23, as amended by this act shall take effect on the 90th day following enactment

Approved March 24, 2003.