

CHAPTER 77

FINANCIAL INSTITUTIONS

HOUSE BILL 17-1157

BY REPRESENTATIVE(S) Kraft-Tharp and Nordberg, Becker K., Danielson, Gray, Hooton, Lontine, Van Winkle, Williams D.;
also SENATOR(S) Priola, Martinez Humenik, Neville T., Smallwood, Tate.

AN ACT**CONCERNING RELIANCE BY A FINANCIAL INSTITUTION ON A CERTIFICATE OF TRUST.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 11-105-111 as follows:

11-105-111. Trust account - limited documentation required - certificate of trust. (1) For any ~~deposit account that is opened~~ TRANSACTION with any bank transacting business in this state by one or more persons expressly acting as a trustee or trustees for one or more other named person or persons pursuant to or purporting to be pursuant to a written trust agreement, a trustee may provide the bank with a certificate of trust to evidence the trust relationship. The certificate of trust ~~shall~~ **MUST be an** A DULY ACKNOWLEDGED affidavit OR OTHER WRITTEN STATEMENT EXPRESSLY MADE UNDER PENALTY OF PERJURY executed by any trustee and ~~shall~~ **MUST include the following:**

- (a) ~~The name of the trust~~ A STATEMENT THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED;
- (b) ~~The effective date of the trust~~ THE IDENTITY OF THE SETTLOR;
- (c) The ~~name~~ IDENTITY and address of ~~each~~ THE CURRENT ACTING trustee;
- (d) ~~The name of each known successor trustee~~ THE POWERS OF THE TRUSTEE IN THE PENDING TRANSACTION;
- (e) A statement ~~that the trustee has authority or that the trustees have authority to open the account on behalf of the trust; and~~ WHETHER THE TRUST IS REVOCABLE AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

THE IDENTITY OF ANY PERSON HOLDING THE POWER TO REVOKE THE TRUST;

(f) THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND WHETHER ALL OR FEWER THAN ALL COTRUSTEES ARE REQUIRED IN ORDER TO EXERCISE THE POWERS OF THE TRUSTEE;

(g) THE NAME IN WHICH TITLE TO TRUST PROPERTY MAY BE TAKEN; AND

~~(f)~~ (h) Any other information that may be required by the bank, including an indemnification that is acceptable to the bank.

(2) If a bank decides to accept a certificate of trust pursuant to this section:

(a) FOR A TRANSACTION THAT CONSISTS OF OPENING A DEPOSIT ACCOUNT, the bank may administer the account in accordance with the certificate of trust without requiring receipt of a copy of the written trust agreement; AND

(b) FOR A TRANSACTION THAT CONSISTS OF OBTAINING, GUARANTEEING, OR ENCUMBERING TRUST PROPERTY TO SECURE A LOAN, OR ENTERING INTO ANY AGREEMENT WITH A BANK, THE TRUSTEE OR TRUSTEES SHALL BE CONCLUSIVELY PRESUMED TO HAVE HAD THE AUTHORITY SPECIFIED IN THE TRUST CERTIFICATE FOR PURPOSES OF DETERMINING WHETHER THE TRUSTEES WERE ACTING WITHIN THEIR AUTHORITY IN ENTERING INTO, OR CAUSING THE TRUST TO ENTER INTO, A TRANSACTION, EVEN IF THE CERTIFICATE OF TRUST IS CONTRARY TO THE TERMS OF THE WRITTEN TRUST AGREEMENT, UNLESS THE BANK HAS ACTUAL KNOWLEDGE THAT THE TERMS OF THE WRITTEN TRUST AGREEMENT ARE CONTRARY TO THE TERMS OF THE CERTIFICATE OF TRUST.

(3) If a bank decides to accept a certificate of trust IN OPENING A DEPOSIT ACCOUNT pursuant to this section, upon the death, resignation, or adjudication of incompetence of all named trustees and successor trustees noted on the certificate of trust, the bank may withhold disposition of any funds on deposit in the account until receipt of one of the following:

(a) An order by a court of competent jurisdiction directing the disposition of funds;

(b) A newly executed certificate of trust created pursuant to this section from a person acting or purporting to act as a newly appointed successor trustee under the same trust; or

(c) Other documentation that establishes to the satisfaction of the bank the manner in which the funds are to be administered or distributed.

(4) If a bank decides to accept a certificate of trust IN OPENING A DEPOSIT ACCOUNT pursuant to this section, the bank shall not be liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(5) Nothing in this section ~~shall obligate~~ OBLIGATES a bank to ~~establish a deposit account for~~ ENTER INTO A TRANSACTION WITH a trustee who refuses to furnish the bank with a copy of a written trust agreement. In addition, nothing in this section shall be construed to prohibit a bank from requesting additional information in order to ~~establish a deposit account for~~ ENTER INTO A TRANSACTION WITH a trustee, including a request that the certificate of trust be executed by all trustees.

(6) KNOWLEDGE OF THE TERMS OF A WRITTEN TRUST AGREEMENT MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR PART OF A WRITTEN TRUST AGREEMENT IS HELD BY THE PERSON RELYING UPON THE CERTIFICATION OR AFFIDAVIT.

SECTION 2. In Colorado Revised Statutes, **add** 11-30-126 as follows:

11-30-126. Trust account - limited documentation required - certificate of trust. (1) FOR ANY TRANSACTION WITH ANY CREDIT UNION IN THIS STATE BY ONE OR MORE PERSONS EXPRESSLY ACTING AS A TRUSTEE OR TRUSTEES FOR ONE OR MORE OTHER NAMED PERSON OR PERSONS PURSUANT TO OR PURPORTING TO BE PURSUANT TO A WRITTEN TRUST AGREEMENT, A TRUSTEE MAY PROVIDE THE CREDIT UNION WITH A CERTIFICATE OF TRUST TO EVIDENCE THE TRUST RELATIONSHIP. THE CERTIFICATE OF TRUST MUST BE A DULY ACKNOWLEDGED AFFIDAVIT EXECUTED BY ANY TRUSTEE AND MUST INCLUDE THE FOLLOWING:

(a) A STATEMENT THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED;

(b) THE IDENTITY OF THE SETTLOR;

(c) THE IDENTITY AND ADDRESS OF THE CURRENT ACTING TRUSTEE;

(d) THE POWERS OF THE TRUSTEE IN THE PENDING TRANSACTION;

(e) A STATEMENT WHETHER THE TRUST IS REVOCABLE AND THE IDENTITY OF ANY PERSON HOLDING THE POWER TO REVOKE THE TRUST;

(f) THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND WHETHER ALL OR FEWER THAN ALL COTRUSTEES ARE REQUIRED IN ORDER TO EXERCISE THE POWERS OF THE TRUSTEE;

(g) THE NAME IN WHICH TITLE TO TRUST PROPERTY MAY BE TAKEN; AND

(h) ANY OTHER INFORMATION THAT MAY BE REQUIRED BY THE CREDIT UNION, INCLUDING AN INDEMNIFICATION THAT IS ACCEPTABLE TO THE CREDIT UNION.

(2) IF A CREDIT UNION DECIDES TO ACCEPT A CERTIFICATE OF TRUST PURSUANT TO THIS SECTION:

(a) FOR A TRANSACTION THAT CONSISTS OF OPENING A DEPOSIT ACCOUNT, THE CREDIT UNION MAY ADMINISTER THE ACCOUNT IN ACCORDANCE WITH THE CERTIFICATE OF TRUST WITHOUT REQUIRING RECEIPT OF A COPY OF THE WRITTEN TRUST AGREEMENT; AND

(b) FOR A TRANSACTION THAT CONSISTS OF OBTAINING, GUARANTEEING, OR ENCUMBERING TRUST PROPERTY TO SECURE A LOAN, OR ENTERING INTO ANY AGREEMENT WITH A CREDIT UNION, THE TRUSTEE OR TRUSTEES SHALL BE CONCLUSIVELY PRESUMED TO HAVE HAD THE AUTHORITY SPECIFIED IN THE TRUST CERTIFICATE FOR PURPOSES OF DETERMINING WHETHER THE TRUSTEES WERE ACTING WITHIN THEIR AUTHORITY IN ENTERING INTO, OR CAUSING THE TRUST TO ENTER INTO, A TRANSACTION, EVEN IF THE CERTIFICATE OF TRUST IS CONTRARY TO THE TERMS OF THE WRITTEN TRUST AGREEMENT, UNLESS THE CREDIT UNION HAS ACTUAL KNOWLEDGE THAT THE TERMS OF THE WRITTEN TRUST AGREEMENT ARE CONTRARY TO THE TERMS OF THE CERTIFICATE OF TRUST.

(3) IF A CREDIT UNION DECIDES TO ACCEPT A CERTIFICATE OF TRUST IN OPENING A DEPOSIT ACCOUNT PURSUANT TO THIS SECTION, UPON THE DEATH, RESIGNATION, OR ADJUDICATION OF INCOMPETENCE OF ALL NAMED TRUSTEES AND SUCCESSOR TRUSTEES NOTED ON THE CERTIFICATE OF TRUST, THE CREDIT UNION MAY WITHHOLD DISPOSITION OF ANY FUNDS ON DEPOSIT IN THE ACCOUNT UNTIL RECEIPT OF ONE OF THE FOLLOWING:

(a) AN ORDER BY A COURT OF COMPETENT JURISDICTION DIRECTING THE DISPOSITION OF FUNDS;

(b) A NEWLY EXECUTED CERTIFICATE OF TRUST CREATED PURSUANT TO THIS SECTION FROM A PERSON ACTING OR PURPORTING TO ACT AS A NEWLY APPOINTED SUCCESSOR TRUSTEE UNDER THE SAME TRUST; OR

(c) OTHER DOCUMENTATION THAT ESTABLISHES TO THE SATISFACTION OF THE CREDIT UNION THE MANNER IN WHICH THE FUNDS ARE TO BE ADMINISTERED OR DISTRIBUTED.

(4) IF A CREDIT UNION DECIDES TO ACCEPT A CERTIFICATE OF TRUST IN OPENING A DEPOSIT ACCOUNT PURSUANT TO THIS SECTION, THE CREDIT UNION SHALL NOT BE LIABLE FOR ADMINISTERING THE ACCOUNT AS PROVIDED BY THE CERTIFICATE OF TRUST, EVEN IF THE CERTIFICATE OF TRUST IS CONTRARY TO THE TERMS OF THE WRITTEN TRUST AGREEMENT, UNLESS THE CREDIT UNION HAS ACTUAL KNOWLEDGE THAT THE TERMS OF THE WRITTEN TRUST AGREEMENT ARE CONTRARY TO THE TERMS OF THE CERTIFICATE OF TRUST.

(5) NOTHING IN THIS SECTION OBLIGATES A CREDIT UNION TO ENTER INTO A TRANSACTION WITH A TRUSTEE WHO REFUSES TO FURNISH THE CREDIT UNION WITH A COPY OF A WRITTEN TRUST AGREEMENT. IN ADDITION, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A CREDIT UNION FROM REQUESTING ADDITIONAL INFORMATION IN ORDER TO ENTER INTO A TRANSACTION WITH A TRUSTEE, INCLUDING A REQUEST THAT THE CERTIFICATE OF TRUST BE EXECUTED BY ALL TRUSTEES.

(6) KNOWLEDGE OF THE TERMS OF A WRITTEN TRUST AGREEMENT MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR PART OF A WRITTEN TRUST AGREEMENT IS HELD BY THE PERSON RELYING UPON THE CERTIFICATION OR AFFIDAVIT.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 23, 2017