ENGROSSED HOUSE
BILL NO. 1993 BY: McCORKELL

AN ACT RELATING TO GUARDIAN AND WARD; AMENDING 6 O.S. 1991, SECTIONS 1001 AND 1002, WHICH RELATE TO POWERS OF TRUST COMPANIES; MODIFYING POWERS RELATING TO GUARDIANS; AMENDING 30 O.S. 1991, SECTION 4-104, WHICH RELATES TO ELIGIBILITY OF CERTAIN ORGANIZATIONS AND PERSONS TO ACT AS GUARDIANS; MODIFYING AND CLARIFYING STATUTORY LANGUAGE; PROVIDING CERTAIN RESTRICTIONS; DEFINING TERMS; PROVIDING EXCEPTIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 6 O.S. 1991, Section 1001, is amended to read as follows:

Section 1001. ~~A.~~ All corporate trust companies now existing or hereafter created shall have the ~~following powers~~ power to:

(1) ~~To~~ receive deposits of trust moneys; to receive upon deposit for safekeeping personal property of every description; to guarantee special deposits; and to own or control safety vaults and rent the boxes therein.

(2) ~~To~~ accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or any corporation, and act as

assignee, receiver, trustee and depository, and to accept and execute all such trusts and perform such duties of every description as may be committed or transferred to them by order, judgment or decree of any of the courts of record of this state or of any state or of the United States.

(3) ~~To~~ take, accept and hold by the order, judgment or decree of any court of this state, or of any state or territory of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all such legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by such order, judgment, decree, gift, grant, assignment, transfer, devise or bequest, and to execute as principal or surety, and to guarantee against loss any principal or surety upon any bond or bonds required by law to be given in any proceeding in law or equity in any of the courts of this state or of any state or of the United States.

(4) ~~To~~ act as agent or attorney-in-fact for any person or corporation in the management and control of real or personal property and the sale or conveyance of the same, and for the investment of money, and to act for and represent corporations or persons under power and letters of attorney, and as agents for persons and corporations for the purpose of issuing, registering, transferring or countersigning the certificates of stock, bonds or other evidences of debt of any corporation, association, municipality, state or public authority, on such terms as may be agreed upon.

(5) ~~To~~ accept from and execute trusts for any married persons in respect to their separate property, whether real or personal, and act as agent for them in the management of such property, and

generally to have and exercise such powers as are usually had and exercised by trust companies.

(6) ~~To~~ act as executor under last will or at the instance of any person entitled to any administration or guardianship of any estate, as administrator of the estate of any deceased person, or as guardian or curator of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary under the appointment of any court of record having jurisdiction of the person or estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict.

(7) ~~To~~ guarantee the fidelity and diligent performance of their duty of persons or corporations holding places of public or private trust, to guarantee or become surety on any bond given by any person or corporation and to reinsure or guarantee any person or corporation against loss or damage by reason of any risk assumed by insuring the fidelity or diligent performance of duty of any such person or corporation, or by guaranteeing or becoming surety on any bond; and to guarantee the principal or interest, or both, of any securities of any kind.

(8) ~~To~~ loan money upon real estate and collateral security, and execute and issue its notes payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor, which notes may be issued to an amount not exceeding, in the aggregate, ten times the amount paid up on the capital stock of the company issuing the same, and shall in no case exceed the amount of the first mortgages pledged to secure their payment.

(9) ~~To~~ buy and sell the bonds and warrants of this state, and all other kinds of government, state or municipal bonds; and to buy and sell all kinds of negotiable and nonnegotiable paper, stocks and other investment securities.

(10) ~~To~~ act as fiscal agent of the United States, or any state, municipality, body politic or corporation, and in such capacity to receive and disburse money, credits, securities and effects.

(11) ~~To~~ act as trustee under trusts created by will or by declaration of trust.

(12) ~~To~~ act as guardian ~~for any number of persons~~ of the property of minors or incapacitated or partially incapacitated persons within this state, and to accept appointment as guardian for persons or property as permitted by the laws of any other state.

(13) ~~To~~ transfer, register and countersign certificates of stock, bonds, or other evidence of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

(14) ~~To~~ act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

(15) ~~To~~ take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(16) ~~To~~ be appointed and accept the appointment of assignee or trustee under any assignment for the benefit of creditors of any debtor made pursuant to any statute or otherwise.

(17) ~~To~~ collect coupons on or interest upon all manner of securities when authorized so to do by the parties depositing the same.

(18) ~~To~~ receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between said corporations and those dealing with it.

(19) ~~Generally to~~ generally execute trusts of every description and escrow agreements and to act and serve in any and all fiduciary capacities not inconsistent with the laws of this state or of the United States.

(20) ~~To~~ prepare, make and certify abstracts of title to real and personal property and to procure and furnish information in relation thereto, where not otherwise inconsistent with the laws of this state; to guarantee or insure the title to real and personal property to persons interested in such property or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon such property, and to make determination of title in connection with the issuance of such guaranties or insurance.

(21) ~~To~~ discount and negotiate promissory notes, drafts, bills of exchange and other evidence of debt, buy and sell coin and bullion, to accept for payment at a future date drafts drawn upon it by its customers, and to issue letters of credit, authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one (1) year; provided, that no trust company shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital stock and surplus fund, except with the approval of the Bank Commissioner under such general regulations as to amount of acceptances as the Commissioner may prescribe.

(22) ~~To~~ issue debentures, notes, or other evidences of debt in the manner in which business corporations are authorized to do so and for any legal application of proceeds, but only to the extent of an amount equal to ten times its capital and surplus.

SECTION 2. AMENDATORY 6 O.S. 1991, Section 1002, is amended to read as follows:

Section 1002. All corporations except: (a) state banks in Oklahoma having trust powers, national banking associations located in this state and having trust powers and trust companies incorporated under the laws of this state and having trust powers; and (b) national banks having trust powers, and state banks and trust companies having trust powers located in states which reciprocally allow similar Oklahoma institutions to exercise trust and fiduciary powers therein under no greater restrictions than those imposed under this code on such fiduciary institutions, are prohibited from acting in any of the following fiduciary capacities within this state as:

(1) ~~As~~ executor or administrator of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent be original or ancillary; provided, that if the executor or administrator of the estate of a nonresident decedent be a corporation duly authorized, qualified and acting as such executor or administrator in the jurisdiction of the domicile of the decedent, it may, as a foreign executor or administrator, perform such duties and exercise such powers and privileges as are required, authorized and permitted by Section 1001 of this title.

(2) ~~As~~ guardian of ~~any infant, insane person or person physically or mentally incompetent whether domiciled in this state or not~~ the property of any minors or incapacitated or partially incapacitated persons within this state, or to serve as guardian of the person or property of any person outside this state.

(3) ~~As~~ trustee under any inter vivos trust, will or other testamentary instrument, provided that any corporation which is authorized to act as such trustee under the laws of the place where

it has its principal place of business may receive bequests to it as trustee of money or intangible personal property.

(4) ~~As~~ trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others.

(5) ~~As~~ receiver or trustee under appointment of any court in this state.

(6) ~~As~~ assignee, receiver or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.

(7) ~~As~~ fiscal agent, transfer agent or registrar of any municipal or private corporation; provided, however, that nothing herein shall prevent any Oklahoma corporation not a bank or trust company and not having trust powers from being its own fiscal agent, transfer agent or registrar concerning its own affairs, stock or securities; and, provided, further, that nothing herein shall be construed as authorizing or permitting any foreign bank or trust company to maintain an office within this state.

SECTION 3. AMENDATORY 30 O.S. 1991, Section 4-104, is amended to read as follows:

Section 4-104. ~~No~~ A. 1. Except as otherwise provided by this section, no person who has not been a resident~~, in good faith,~~ of the State of Oklahoma for the past one (1) year ~~past~~ shall be appointed guardian of the property or person of a minor or an incapacitated or partially incapacitated person by the ~~state~~ courts of ~~the State of Oklahoma, and no foreign trust company or institution shall be appointed guardian of the property or person of any minor or an incapacitated or partially incapacitated person by the state courts of the State of Oklahoma. Provided that~~ this state.

2. The provisions of this subsection shall not prevent ~~one~~ a person from being appointed guardian of ~~his~~ the person's own spouse, child, children, grandchild, grandchildren, parent, grandparent,

brother, sister, aunt, uncle, niece or nephew even though ~~he~~ such person ~~be~~ is a nonresident. ~~No domestic corporation or trust company~~ The terms child, children, grandchild, grandchildren, parent, grandparent, brother, sister, aunt, uncle, niece and nephew shall be limited to blood or adopted relations and shall include persons related by marriage.

B. Except as otherwise provided by this section, no organization shall be appointed ~~or qualify~~ to serve as guardian of the property of a minor or incapacitated or partially incapacitated person unless such ~~company is~~ organization shall, at the time ~~a resident of and maintains its usual place of business in the county of the residence of such minor or incapacitated or partially incapacitated person. No such company shall be appointed or act as such guardian unless its principal place of business is located in the county where such proceedings are filed and conducted. Such a domestic corporation or a natural person not a resident of the State of Oklahoma may be appointed as such guardian upon the written request in a will or otherwise of a~~ of appointment, be qualified to conduct restricted fiduciary capacities within this state pursuant to Section 1002 of Title 6 of the Oklahoma Statutes.

C. A person eligible to make ~~such nomination~~ nominations pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act may appoint an organization the guardian of his property or a natural person who is a nonresident of this state a guardian of the person, if such nomination is made upon the written request of the nominator in a will or otherwise.

SECTION 4. This act shall become effective September 1, 1992.

Passed the House of Representatives the 3rd day of March, 1992.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate