

PROPERTY CODE
SUBTITLE B. FIDUCIARIES
CHAPTER 161. MANAGEMENT AND CONTROL OF SECURITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. In this chapter:

(1) "Fiduciary" means an executor, administrator, or trustee of an express trust, including a corporation or a natural person acting as fiduciary, and a successor or substitute, whether or not designated in a trust instrument.

(2) "Clearing corporation" has the meaning assigned by Section 8.102, Business & Commerce Code, as amended. Acts 1983, 68th Leg., p. 3715, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.002. DECREE OR GOVERNING INSTRUMENT CONTROLS. The authority granted in this chapter is subject to contrary or limiting provisions in the instrument or court order appointing the fiduciary of the securities or in a subsequent court order. Acts 1983, 68th Leg., p. 3715, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. CUSTODIAN OF SECURITIES

Sec. 161.021. AUTHORITY OF FIDUCIARY. A fiduciary who holds a security in a fiduciary capacity may:

(1) employ a bank incorporated in this state or a national bank located in this state as custodian of the security; and

(2) whether the fiduciary is an individual or a bank and if any individual who is a cofiduciary with the bank consents, authorize the security to be registered and held in the name of a nominee of the bank without disclosing the fiduciary relationship. Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.022. SEPARATE ASSETS. (a) A bank holding a security under this subchapter, whether in registered or bearer form, at all times shall keep the security separate from the bank's assets. The bank may:

(1) hold separately the certificates representing securities that periodically comprise the assets of a particular fiduciary account from those of all other accounts; or

(2) without certification as to ownership attached, hold in bulk certificates representing the same class of securities of the same issuer that periodically comprise the assets of different fiduciary accounts and, to the extent feasible, merge certificates of small denomination into one or more certificates of large denomination.

(b) A bank that holds security certificates in bulk is subject to the regulations issued by the Finance Commission of Texas if the bank is chartered by this state or by the comptroller of the currency if the bank is a national banking association. Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.023. EXPENSE OF CUSTODIANSHIP. Unless the fiduciary is a corporation, the cost of employing a bank as a custodian of securities under this subchapter is a charge against the estate or trust.

Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.024. RECORDS. A bank holding a security under Section 161.021, whether in registered or bearer form, at all times shall keep records showing the ownership of the security.

Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.025. REDELIVERY OF SECURITY HELD BY NOMINEE. (a) A bank holding a security in the name of a nominee of the bank under this subchapter may not redeliver the security to the individual fiduciary who authorized its registration in the name of the nominee without registering the security in the name of the individual fiduciary, as fiduciary.

(b) A sale of the security by the bank at the direction of the individual fiduciary is not a redelivery.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.026. DISPOSITION OF SECURITY HELD BY NOMINEE. A bank holding a security in the name of a nominee under this subchapter may make any disposition of the security that is authorized or ordered by a court having jurisdiction of the estate or trust.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.027. LIABILITY. A bank holding a security in the name of a nominee under this subchapter is liable for a loss resulting from the acts of the bank's nominee with respect to the security.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.028. CERTIFICATION. (a) On the demand of a fiduciary employing a bank to hold a security as custodian under this subchapter, the bank shall identify in a written certification the securities it holds for the fiduciary.

(b) On the demand of a party, or the attorney of a party, to an accounting by a bank holding a security in the name of a nominee under this subchapter, the bank shall identify in a written certification the securities it holds as fiduciary.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. DEPOSIT OF SECURITY WITH FEDERAL RESERVE BANK OR
CLEARING CORPORATION

Sec. 161.051. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to a fiduciary holding a security in its fiduciary capacity and to a bank, trust company, or private banker holding a security as a fiduciary, custodian, custodian for a fiduciary, or managing agent, regardless of:

(1) the date of the agreement, instrument, or court order by which the fiduciary, custodian, or managing agent is appointed; and

(2) ownership by the fiduciary, custodian, or managing agent of capital stock of the clearing corporation.

(b) This subchapter does not apply to a security held by a fiduciary, bank, trust company, or private banker on behalf of a domestic insurance company, unless the prior express approval of the State Board of Insurance is obtained. The board may grant approval to all domestic insurance companies generally, or to specific insurance companies on a case-by-case basis.

(c) For the purposes of this subchapter, "fiduciary" includes a state or national bank acting in a fiduciary capacity.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.052. AUTHORITY OF FIDUCIARY. A fiduciary holding a security in its fiduciary capacity and a bank, trust company, or private banker holding a security as a custodian for a fiduciary, a managing agent, or a custodian may deposit or arrange for the deposit of the security with:

(1) the Federal Reserve Bank of Dallas if the United States has agreed to pay or has guaranteed payment of the security's principal and interest; or

(2) a clearing corporation, either in this state or elsewhere, regardless of whether the clearing corporation conducts or is authorized to conduct business in this state.

Acts 1983, 68th Leg., p. 3718, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.053. BULK HOLDINGS. A clearing corporation may merge and hold in bulk certificates representing the same class of securities of the same issuer that are deposited with it under this subchapter, together with any other securities deposited with the clearing corporation by any person in the name of the nominee of the clearing corporation, regardless of the ownership of the securities. Certificates of small denomination may be merged into one or more certificates of larger denomination.

Acts 1983, 68th Leg., p. 3718, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.054. RECORDS. A fiduciary, bank, trust company, or private banker depositing a security under this subchapter shall show in its records at all times the ownership of the securities deposited in the account.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.055. REGULATION. A bank, trust company, or private banker depositing securities under this subchapter is subject to the regulations issued by the Finance Commission of Texas if the institution is chartered by this state or is private or by the comptroller of the currency if the institution is a national banking association.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.056. BOOK TRANSFERS. The Federal Reserve Bank of Dallas or a clearing corporation holding securities deposited under this subchapter may transfer ownership of or other interests in the securities by making entries in the books of the bank or corporation and without physical delivery of certificates representing the securities.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.057. LIABILITY. A fiduciary who deposits securities in a clearing corporation is liable to the beneficial owner of the securities for a loss resulting from the acts or omissions of the clearing corporation. This subchapter does not affect a liability between the fiduciary and the clearing

corporation.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.058. CERTIFICATION. (a) On the demand of a fiduciary for whom a bank, trust company, or private banker is acting as custodian, the bank, trust company, or private banker shall identify in a written certification the securities deposited by the bank, trust company, or private banker with the federal reserve bank or in the clearing corporation for the account of the fiduciary.

(b) On the demand of a party, or the attorney of a party, to an accounting by a fiduciary or by a bank, trust company, or private banker that is acting as a fiduciary, a custodian, a custodian for a fiduciary, or a managing agent, the fiduciary, bank, trust company, or private banker shall identify in a written certification to the party the securities deposited by the fiduciary, bank, trust company, or private banker with the federal reserve bank or the clearing corporation.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.