

IC 28-1-5

Chapter 5. Banks, Trust Companies, and Building and Loan Associations Generally

IC 28-1-5-1

"Corporation" and "shareholder" defined

Sec. 1. (a) As used in this chapter, "corporation" means a bank, trust company, or savings association organized or reorganized under the provisions of this article and any bank of discount and deposit, loan and trust and safe deposit company, trust company, or savings association.

(b) As used in this chapter, "shareholder" means a person who is a holder of record of shares of stock in a corporation, including a member of a share account association or a deposit association, as those terms are defined in IC 28-15-1.

(Formerly: Acts 1933, c.40, s.89.) As amended by P.L.263-1985, SEC.19; P.L.266-1987, SEC.7; P.L.14-1992, SEC.66; P.L.79-1998, SEC.35.

IC 28-1-5-2

Corporate capacity and authority; general rights, powers, and privileges; authority to purchase and hold life insurance

Sec. 2. (a) Every corporation has the capacity to act that is possessed by a natural person, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

(b) Subject to any limitations or restrictions imposed by law or by the articles of incorporation, each corporation has the following general rights, powers, and privileges:

(1) To continue as a corporation, under its corporate name, for the period limited in its articles of incorporation, or, if the period is not so limited, then perpetually.

(2) To sue and be sued in its corporate name.

(3) To have a corporate seal and to alter such seal at its pleasure.

(4) To acquire, own, hold, use, lease, mortgage, pledge, sell, convey, or otherwise dispose of property, real and personal, tangible and intangible, in the manner and to the extent hereinafter provided.

(5) To borrow money and to mortgage or pledge its property to secure the payment thereof, in the manner and to the extent hereinafter provided; but no financial institution having power to accept deposits of money shall pledge any of the assets of such financial institution as security for the safekeeping and prompt payment of any money so deposited, except that any such financial institution may, for the safekeeping and prompt payment of any money so deposited, give security of the kind authorized by any statute of this state or by the Congress of the United States. Notwithstanding this subdivision, a financial institution may receive deposits of state and federal public

funds and may pledge securities or other assets for the repayment of deposits if the pledge is permitted by applicable law or regulation.

(6) To conduct business in this state and elsewhere.

(7) To appoint such officers and agents as the business of the corporation may require and to do the following with respect to any officers or agents appointed:

(A) Define their duties.

(B) Fix their compensation, which may include compensation paid pursuant to any plan of deferred compensation approved by the corporation's board of directors.

(C) Enter into employment contracts with the corporation's officers and agents which set forth terms and conditions of employment.

(D) Provide the corporation's officers, agents, and employees with individual or group life insurance.

(E) Procure and maintain in effect for the benefit of the bank, insurance on the life or lives of designated officers or directors.

(8) To make bylaws for the government and regulation of its affairs.

(9) To cease doing business and to dissolve and surrender its corporate franchise.

(10) To do all acts and things necessary, convenient, or expedient to carry out the purposes for which it is formed.

(c) Subject to any limitations or restrictions that the department or a federal regulator may impose by regulation, rule, policy, or guidance, each corporation may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the corporation's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the corporation's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

(Formerly: Acts 1933, c.40, s.90; Acts 1937, c.33, s.10; Acts 1963, c.179, s.1; Acts 1969, c.280, s.2; Acts 1971, P.L.394, SEC.23; Acts 1974, P.L.128, SEC.2.) As amended by P.L.266-1987, SEC.8; P.L.10-2006, SEC.29 and P.L.57-2006, SEC.29; P.L.35-2010, SEC.111; P.L.27-2012, SEC.37.

IC 28-1-5-3

Principal office; change of location

Sec. 3. Every corporation shall maintain an office or place of business in this state, which shall be known as the "principal office",

and which shall be located in a county in which the corporation conducts business. The post office address of the principal office shall be stated in the original articles of incorporation, at the time of the incorporation. Thereafter, the location of the principal office may be changed at any time or from time to time when authorized by the board of directors and approved by the department, by filing with the secretary of state on or before the day on which the change is to take effect, a certificate signed by the president or a vice president and by the secretary or cashier of the corporation and verified by one of the officers signing the certificate, stating the change to be made and reciting that the change is made pursuant to authorization by the board of directors.

(Formerly: Acts 1933, c.40, s.91.) As amended by P.L.33-1991, SEC.12.

IC 28-1-5-4

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-5

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-6

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-7

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-8

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-8.5

Shareholders' derivative proceedings; procedure

Sec. 8.5. (a) A person may not commence a proceeding in the right of a corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding may not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.

(b) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors, and either that the demand was refused or ignored or why the shareholder did

not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint (including an investigation commenced under subsection (d)), the court may stay any proceeding until the investigation is completed.

(c) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected. On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses (including attorney's fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(d) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of three (3) or more disinterested directors or other disinterested persons to determine:

- (1) whether the corporation has a legal or equitable right or remedy; and
- (2) whether it is in the best interests of the corporation to pursue that right or remedy, if any, or to dismiss a proceeding that seeks to assert that right or remedy on behalf of the corporation.

(e) In making a determination under subsection (d), the committee is not subject to the direction or control of or termination by the board. A vacancy on the committee may be filled by the majority of the remaining members by selection of another disinterested director or other disinterested person.

(f) If the committee determines that pursuit of a right or remedy through a derivative proceeding or otherwise is not in the best interests of the corporation, the merits of that determination shall be presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to such right or remedy, unless such shareholder can demonstrate that:

- (1) the committee was not disinterested, as described in subsection (g); or
- (2) the committee's determination was not made after an investigation conducted in good faith.

(g) For purposes of this section, a director or other person is disinterested if the director or other person:

- (1) has not been made a party to a derivative proceeding seeking to assert the right or remedy in question, or has been made a party but only on the basis of a frivolous or insubstantial claim or for the sole purpose of seeking to disqualify the director or other person from serving on the committee;
- (2) is able under the circumstances to render a determination in the best interests of the corporation; and
- (3) is not an officer, employee, or agent of the corporation or of a related corporation. However, an officer, employee, or agent of the corporation or a related corporation who meets the

standards of subdivisions (1) through (2) shall be considered disinterested in any case in which the right or remedy under scrutiny is not assertable against a director or officer of the corporation or the related corporation.

(h) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf.

As added by P.L.266-1987, SEC.9.

IC 28-1-5-9

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-10

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-11

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-11.5

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-5-11.7

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-5-12

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-13

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-14

Repealed

(Repealed by P.L.143-1984, SEC.1.)

IC 28-1-5-15

Books of accounts; minutes; stock transfer book

Sec. 15. Every corporation shall keep correct and complete books of accounts and minutes of the proceedings of its shareholders, directors, executives and/or finance committees, and it shall likewise keep, at its principal office, an original or a duplicate stock transfer book and/or records giving the names and addresses of all shareholders and the number of shares held by each.

(Formerly: Acts 1933, c.40, s.102; Acts 1935, c.5, s.20.)

IC 28-1-5-16

Requirement to provide property tax information in certain transactions

Sec. 16. With respect to a residential real property financing or refinancing, a corporation shall comply with IC 6-1.1-12-43.

As added by P.L.64-2004, SEC.29.