

114CSR60

WEST VIRGINIA PROCEDURAL RULE
INSURANCE COMMISSIONER

SERIES 60
AFFIDAVITS OF CUSTODIAN BANKS

Section

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TITLE 114
WEST VIRGINIA PROCEDURAL RULE
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SERIES 60
AFFIDAVITS OF CUSTODIAN BANKS

§114-60-1. General.

1.1. Scope. -- This procedural rule prescribes the form for affidavits of custodian banks for use in the following situations:

- a. Where securities entrusted to its care have not been redeposited elsewhere;
- b. Where a custodian bank maintains securities on deposit with the depository trust company or like entity; and
- c. Where ownership of the securities is evidenced by book entry at a federal reserve bank.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-8A-3(b).

1.3. Filing Date. -- July 26, 2002.

1.4. Effective Date. -- August 25, 2002.

§114-60-2. Definitions.

2.1. "Custodian" means a national bank, state bank or trust company that shall at all times during which it acts as a custodian pursuant to this regulation be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the federal reserve system and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to this regulation be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities.

2.2. "Federal reserve book-entry procedure" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks, through banks which are members of the federal reserve system or which otherwise have access to such computerized systems.

2.3. "Securities" means certificated securities as defined in W. Va. Code §46-8-102a(4) and uncertificated securities as defined in subdivision (18) of that subsection.

§114-60-3. Custodian Affidavit Forms.

3.1. The affidavit forms attached to this rule, and made a part hereof as exhibit a, exhibit b and exhibit c, shall be used by a custodian when a written request has been made by an appropriate officer of the insurance company for an affidavit of the custodian in connection with a custody agreement.

APPENDIX A

Clearing Corporation Use

[This form affidavit is for use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere.]

STATE OF _____)
)SS: _____
COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is

_____ of _____ a
banking corporation organized under and pursuant to the laws of the
_____ with the principal place of business at

_____. (hereinafter called "the bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto; That the bank is custodian for certain securities of _____, having a place of business at _____

_____, (hereinafter called "the insurance company") pursuant to an agreement between the bank and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the bank for the account of the insurance company as of the close of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the bank or its nominee, or were in the process of being registered in such form;

That the bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims or encumbrances whatsoever.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by

(Name of officer or agent, title of officer or agent)
of _____,
(Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation.
(state or place of incorporation)

Notary: _____

My commission expires _____

APPENDIX B

Clearing Corporation Use

[This form affidavit is for use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity.]

STATE OF _____)

)SS: _____

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is

_____ of _____, a banking corporation organized under and pursuant to the laws of the _____, with the principal place of business at _____

_____ (hereinafter called "the bank");

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of

_____, having a place of business at _____

_____, (hereinafter called "the insurance company") pursuant to an agreement between the bank and the insurance company;

That the bank has caused certain of such securities to be deposited with

_____ and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of

which the bank was custodian as of the close of business on _____, and which were so deposited on such date;

That the bank as custodian has the responsibility for the safekeeping of the securities both in the possession of the bank or deposited with _____ as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims or encumbrances whatsoever.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (Name of officer or agent, title of officer or agent) of _____ (Name of corporation acknowledging) a _____ corporation, on behalf of the corporation. (state or place of incorporation)

Notary: _____

My commission expires _____

APPENDIX C

Clearing Corporation Use

[This form affidavit is for use where ownership is evidenced by book entry at a Federal Reserve Bank.]

STATE OF _____)
)SS: _____
COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____, with the principal place of business at _____

_____ (hereinafter called "the bank");

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____, with a place of business at _____

_____, (hereinafter called "the insurance company") pursuant to an agreement between the bank and the insurance company;

That it has caused certain securities to be credited to its bond entry account with the Federal Reserve Bank of _____ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on _____, which were in a "General" book-entry account maintained in the name of the bank on the books and records of the Federal Reserve Bank of _____ at such date;

That the bank has the responsibility for the safekeeping of such securities both in the possession of the bank or in said "General" book-entry account as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____

(Name of officer or agent, title of officer or agent)
of _____,
(Name of corporation acknowledging)
a _____ corporation, on behalf of the corporation.
(state or place of incorporation)

Notary: _____

My commission expires _____