CHAPTER 318

DECLARATION OF TRUST

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318.01 ORGANIZATION; SCOPE OF BUSINESS.

Two or more natural persons, whether residents of this state or not, or two or more corporations which are now organized or may hereafter be organized, which includes all domestic corporations, national banks and only those foreign corporations which hold a certificate of authority to transact business in this state, may organize and associate themselves together for the purpose of transacting business in this state under what is commonly designated or known as a "declaration of trust" or "business trust"; provided, however, no such association shall ever be permitted or authorized to transact in this state any business of insurance except the kind of business of insurance specified in section 60A.06, subdivision 1(7), and all acts amendatory thereof; and further provided, however, no such association shall ever be permitted or authorized to transact a banking or surety business, of any kind, in this state.

History: *1961 c 740 s 2; 1965 c 77 s 1; 1965 c 732 s 1; 1969 c 6 s 40*

318.02 GENERAL PROVISIONS.

Subdivision 1. **Definition.** The term "declaration of trust" as used in this section means the declaration of trust, business trust instrument, trust indenture, contract of custodianship, or other instrument pursuant to which such association is organized. Every such association organized after April 20, 1961, for the purpose of transacting business in this state shall, prior to transacting any business in this state, file in the Office of the Secretary of State a true and correct copy of the "declaration of trust" under which the association proposes to conduct its business. The copy shall also contain a statement that the true and correct copy of the "declaration of trust" is being filed in the Office of the Secretary of State of the state of Minnesota pursuant to this chapter and shall also include the full name and street address of an agent of the business trust in this state. That agent shall be the agent for service of process which shall be made pursuant to the provisions of section 543.08. The "declaration of trust" may provide that the duration of such association shall be perpetual. Upon the filing of the copy of the "declaration of trust," the association is authorized to transact business in this state; provided that all other applicable laws have been complied with. The "declaration of trust" may be amended as provided in the "declaration of trust" or in any amendments thereto but a true and correct copy of all amendments to the "declaration of trust," shall be filed in the Office of the Secretary of State and all amendments shall become effective at the time of said filing. When such copy of the "declaration of trust" and any amendments thereto shall have been filed in the Office of the Secretary of State it shall constitute public notice as to the purposes and manner of the business to be engaged in by such association.

Subd. 2. **Type of association.** Any such association heretofore or hereafter organized shall be a business trust and a separate unincorporated association, not a partnership, joint-stock association, agency, or any other relation except a business trust. A business trust is also known as a common law trust and Massachusetts trust for doing business.

Subd. 3. **Powers.** Any such association heretofore or hereafter organized shall have the power in its name:

(1) To continue as a business trust for the time limited in its "declaration of trust" or in any amendments, or if no time limit is specified, then perpetually;

(2) To sue and be sued;

(3) To adopt, use, and, at will, alter a business trust seal, but failure to affix the business trust seal, if any, shall not affect the validity of any instrument;

(4) To conduct in this state and elsewhere the business to be engaged in by such association and to contract and enter into obligations and do any acts necessary and incidental to the transaction of its business or expedient for the attainment of the purposes stated in its "declaration of trust" or in any amendments;

(5) To acquire including by will or gift, purchase, sell, contract for, hold, lease, mortgage, encumber, convey, transfer, or otherwise deal in and dispose of real and personal property within or without the state by and through its officers, agents or trustees in the manner provided in its "declaration of trust" or in any amendments. All deeds, contracts, mortgages and other legal instruments heretofore or hereafter acquired by or executed by any such association, and whether or not recorded in the office of the county recorder in the office of the registrar of titles, shall have the same force and effect as a like instrument would have if executed, or recorded or filed in said offices, as in the case of corporations.

Subd. 4. **Personal liability.** No personal liability for any debt or obligation of any such association heretofore or hereafter organized shall attach to the owners of the shares of beneficial interests, beneficiaries, shareholders, or trustees of any such association heretofore or hereafter organized, or to any person or party to the "declaration of trust."

Subd. 5. [Repealed, 2011 c 106 s 27]

Subd. 6. **Non-Minnesota trusts.** An association organized under the laws of another state may register by using the process described in subdivision 1. The registration must be accompanied by a certificate from a state authenticating the prior registration of the association in that state. The Minnesota registration does not create a new association and the association continues to be governed by the laws of the state of prior registration with respect to internal governance. Amendments to a declaration of trust will also follow the process described in subdivision 1. The fees stated in subdivision 1 apply to these transactions.

History: *1961 c 740 s 3; 1965 c 77 s 2; 1965 c 732 s 2; 1976 c 181 s 2; 1984 c 618 s 31; 1986 c 444; 1988 c 682 s 36; 1994 c 625 art 8 s 67; 2000 c 395 s 12; 2005 c 4 s 57; 2010 c 379 s 1; 2011 c 106 s 16,17*

318.03 SALE OF SECURITIES; REGISTRATION.

Before any such association may offer for sale, barter or sell any security of such association in this state, such association shall register such securities pursuant to the provisions of chapter 80A, and all acts amendatory thereof, which registration shall be applied for and granted under the same conditions as like registrations are applied for and granted to corporations.

History: *1961 c 740 s 4; 1965 c 732 s 3; 1976 c 2 s 40*

318.04 CERTIFICATE OF AUTHORITY TO TRANSACT THE BUSINESS OF INSURANCE.

Any such association permitted by section 318.01 to organize to transact in this state the kind of business of insurance permitted by section 318.01 shall set out in its "declaration of trust" the kind of business of insurance that it shall transact in this state; and before filing with the secretary of state the copy of the "declaration of trust" and any amendments thereto pursuant to section 318.02 there shall be endorsed upon the "declaration of trust" and any amendments thereto the approval of the commissioner of commerce; and

it shall be subject to the same insurance laws of this state and rules of the commissioner of commerce that an insurance corporation transacting the same kind of business of insurance is subject to except as otherwise provided by law; and it shall obtain from the commissioner of commerce a certificate of authority as an insurer which certificate of authority shall be issued by the commissioner of commerce upon compliance with all the applicable insurance laws of this state and rules of the commissioner of commerce.

History: *1961 c 740 s 5; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70*

318.05 UNLAWFUL TO TRANSACT BUSINESS PRIOR TO COMPLIANCE.

No such association organized after April 20, 1961, may transact or conduct any business, within this state, under any "declaration of trust" or "business trust" without first complying with the provisions and requirements of sections 318.01 and 318.02 and in addition thereto complying with the provisions and requirements of sections 318.03 and 318.04 when applicable.

History: *1961 c 740 s 6; 1965 c 732 s 4*

318.06 PENALTIES.

Any such association, person or party who shall violate any of the provisions of this chapter shall forfeit and pay to this state a penalty, not exceeding $1,000. Such penalties may be recovered in the District Court of Ramsey County by action in the name of the state, brought by the attorney general.

History: *1961 c 740 s 7; 1965 c 732 s 5*