WEST VIRGINIA CODE: §31A-9-2

§31A-9-2. Definitions.

In this article:

(1) "Account agreement" means an agreement that:

(A) Is in a record between a bank and one or more depositors;

(B) May have one or more beneficiaries as additional parties; and

(C) States the intention of the parties to establish a special deposit governed by this article.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, trust company, and a bank as defined in §31A-1-2 of this code. Each branch or separate office of a bank is a separate bank for the purpose of this article.

(3) "Beneficiary" means a person that:

(A) Is identified as a beneficiary in an account agreement; or

(B) If not identified as a beneficiary in an account agreement, may be entitled to payment from a special deposit:

(i) Under the account agreement; or

(ii) On termination of the special deposit.

(4) "Contingency" means an event or circumstance stated in an account agreement that is not certain to occur but must occur before the bank is obligated to pay a beneficiary.

(5) "Creditor process" means attachment, garnishment, levy, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant.

(6) "Depositor" means a person that establishes or funds a special deposit.

(7) "Good faith" means honesty in fact and observance of reasonable commercial standards of fair dealing.

(8) "Knowledge" of a fact means:

(A) With respect to a beneficiary, actual knowledge of the fact; or

(B) With respect to a bank holding a special deposit:

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(i) If the bank:

(I) Has established a reasonable routine for communicating material information to an individual to whom the bank has assigned responsibility for the special deposit; and

(II) Maintains reasonable compliance with the routine, actual knowledge of the fact by that individual; or

(ii) If the bank has not established and maintained reasonable compliance with a routine described in subparagraph (i) of this paragraph or otherwise exercised due diligence, implied knowledge of the fact that would have come to the attention of an individual to whom the bank has assigned responsibility for the special deposit.

(9) "Obligated to pay a beneficiary" means a beneficiary is entitled under the account agreement to receive from the bank a payment when:

(A) A contingency has occurred; and

(B) The bank has knowledge the contingency has occurred.

(10) "Obligation to pay a beneficiary" has a corresponding meaning.

(11) "Permissible purpose" means a governmental, regulatory, commercial, charitable, or testamentary objective of the parties stated in an account agreement. The term includes an objective to:

(A) Hold funds:

(i) In escrow, including for a purchase and sale, lease, buyback, or other transaction;

(ii) As a security deposit of a tenant;

(iii) That may be distributed to a person as remuneration, retirement, or other benefit, or compensation under a judgment, consent decree, court order, or other decision of a tribunal; or

(iv) For distribution to a defined class of persons after identification of the class members and their interest in the funds;

(B) Provide assurance with respect to an obligation created by contract, such as earnest money to ensure a transaction closes;

(C) Settle an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure;

(D) Provide assurance with respect to an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure; or

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(E) Hold margin, other cash collateral, or funds that support the orderly functioning of financial market infrastructure or the performance of an obligation with respect to the infrastructure.

(12) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(13) "Record" means information:

(A) Inscribed on a tangible medium; or

(B) Stored in an electronic or other medium and retrievable in perceivable form.

(14) "Special deposit" means a deposit that satisfies §31A-9-5 of this code.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes an agency or instrumentality of the state.

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