

a fiduciary capacity permitted for state fiduciaries in Missouri without obtaining any express qualification from the state of Missouri.

Analysis

The Bank's fiduciary powers are governed by federal law and derive from 12 U.S.C. § 92a and Part 9 of the OCC's regulations. Section 92a permits national banks to exercise fiduciary powers with OCC approval,² and directs that the types of fiduciary powers available to a national bank are to be determined by reference to state law. Section 92a(a) provides:

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

Section 92a(b) provides that whenever state law permits state fiduciaries to exercise any of the eight fiduciary powers set forth in Section 92a(a), a national bank's exercise of those powers is deemed not to be "in contravention of State or local law."

The grant of statutory authority in Section 92a does not limit where a national bank may act in a fiduciary capacity. Accordingly, our regulations expressly provide that a national bank may act in a fiduciary capacity in any state, and may establish trust offices or trust representative offices in any state.³ Our regulations further provide that with the exception of those state laws specifically referenced in Section 92a, any other state laws limiting or establishing preconditions on the exercise of fiduciary powers by a national bank are not applicable to national banks.⁴

The requirement for an out-of-state national bank to obtain a Reciprocity Certificate under Missouri state law prior to acting in a fiduciary capacity in the state clearly limits or preconditions the exercise of the Bank's federally authorized fiduciary powers, and, therefore, would be preempted because it directly conflicts with the powers of national banks to act in a fiduciary capacity, granted under federal law.

² See 12 C.F.R. § 5.26 (licensing requirements for fiduciary powers).

³ 12 C.F.R. § 9.7(a) and (c). For a discussion of the analysis on which § 9.7 is based, see 66 Fed. Reg. 34792, 34794-96 (July 2, 2001) (preamble to final rule adopting § 9.7). See also OCC Interpretive Letter No. 695 (December 8, 1995) (IL 695) (analyzing national banks' authority to engage in fiduciary activities in multiple states); OCC Interpretive Letter No. 872 (October 28, 1999) (IL 872) (concluding that a national bank in Ohio may solicit and conduct a trust business in California and that state laws that purport to prohibit the bank from engaging in these activities are preempted).

⁴ 12 C.F.R. § 9.7(e)(2).

I trust that the foregoing is responsive to your request. Please feel free to contact Andra Shuster, Special Counsel, at (202) 874-4694 should you have further questions.

Sincerely,

/s/

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel