

West's Tennessee Code Annotated
Title 35. Fiduciaries and Trust Estates
Chapter 50. Miscellaneous Provisions (Refs & Annos)

T. C. A. § 35-50-107

§ 35-50-107. Nonresident fiduciaries; jurisdiction; service of process; bonds

Effective: April 14, 2016

[Currentness](#)

(a)(1) Any person who is not a resident of this state or any corporation that is authorized to exercise fiduciary powers, but is not authorized to do business in this state and does not actually maintain an office in this state, shall not be appointed or allowed to serve as trustee of a corporate or personal trust, personal representative of an estate, guardian, conservator for an incompetent person, guardian for a minor or in any other fiduciary capacity, unless there is also appointed as a fiduciary to serve with such nonresident fiduciary, a person resident in this state or corporation authorized to do business in this state and that maintains an office in this state, except as provided in subdivision (a)(2). In the event the resident cofiduciary ceases for any reason to act, then a new resident cofiduciary shall be appointed.

(2) The following nonresident persons or corporations may serve as fiduciaries, whether the appointment is by will, deed, trust agreement, court order or decree or otherwise:

(A) Except as provided in subdivision (a)(2)(C), a bank or trust company organized and doing business under the laws of any state or territory of the United States, including the District of Columbia, other than this state, or a national bank or trust company, duly authorized so to act, may be appointed and may serve in this state as a fiduciary, when and to the extent that the state, territory or District of Columbia in which the bank or trust company is organized or has its principal place of business grants authority to serve in like fiduciary capacities to a bank or trust company organized and doing business under the laws of this state or a national bank or trust company having its principal office in this state;

(B) Any resident or nonresident person may serve as a personal representative of the estate of a decedent;

(C) Any corporation that is authorized to exercise fiduciary powers may serve as trustee of an inter vivos personal or corporate trust, regardless of the residence of the trustee;

(D) Any person may serve as trustee of a trust, regardless of the residence of the trustee;

(E) Any person may serve as the guardian of the person of a minor, regardless of the residence of the guardian;

(F) Any person may serve as the conservator of the person of an incompetent person, regardless of the residence of the conservator;

(G) Any person or corporation authorized to exercise fiduciary powers may serve as agent or attorney-in-fact under a power of attorney, regardless of the residence of the agent or attorney-in-fact; and

(H) A trust company that is organized under the laws of another state as a bank, trust company or savings bank that:

(i) Has an office in this state that is not its principal office, meets the definition of a trust institution under [12 U.S.C. § 1841\(c\)\(2\)\(D\)](#), and is a direct or indirect subsidiary of a bank holding company that has a direct or indirect bank, trust company or savings bank subsidiary that has an office in this state in which deposits are accepted; or

(ii) Has an office in this state that is not its principal office and accepts deposits at its office in this state.

(b)(1) All fiduciaries appointed and serving under this section who are not residents of this state shall be subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from any estate or trust within this state for which such nonresident person is acting as fiduciary in the manner described in [§§ 20-2-214 -- 20-2-219](#) or in any other manner or matter involving an estate or trust being administered in this state.

(2) Any nonresident person, bank or trust company shall not act in any such capacities, until it has appointed in writing the secretary of state as its agent for service of process, upon whom all process in any suit or proceeding against it may be served in any action or proceeding relating to any trust, estate or matter within this state in respect of which such person, bank or trust company is acting in any such fiduciary capacity, and in the writing shall agree that any process against it, which shall be served upon the secretary of state, shall be of the same legal force and validity as if served on the person, bank or trust company. The appointment must identify the specific trust, estate, or person for which the fiduciary has been appointed, state the name and street address, including zip code, of the fiduciary and be accompanied by a ten dollar (\$10.00) filing fee. This appointment shall continue so long as any liability remains outstanding against the person, bank or trust company pertaining to any such matters. Upon receipt of any such process, it is the duty of the secretary of state forthwith to forward the process by registered or certified mail to the person, bank or trust company at the address furnished in the writing. It shall be the responsibility of the nonresident personal representative to secure appointment of the secretary of state as agent for service of process and to provide the court with a copy of the receipt from the secretary of state.

(c) Unless otherwise provided in the trust agreement or will or by [§ 30-1-201](#), the court having jurisdiction shall require the person, bank or trust company to give bond for the performance of the fiduciary relationship, in which case the statute in such cases shall apply. Even if bond is otherwise waived, the court may, in its discretion, require a nonresident person qualifying as personal representative according to subdivision (a)(2)(B) to furnish bond in an amount equal to the value of assets of the personal estate being removed from this state during the period of estate administration. In the case of intestate succession, no nonresident person qualifying as a personal representative according to subdivision (a)(2)(B) shall be eligible to serve in that capacity without giving bond, unless all heirs at law join in a petition authorizing the person to so serve.

(d) Nothing contained in this section shall apply to trust agreements executed for the purpose of securing loans and guaranties thereof. No out-of-state or foreign corporate fiduciary shall have any more powers or privileges to conduct business or serve in a fiduciary capacity in this state than the laws of the state in which the foreign corporation is organized

confer like powers upon corporations organized and doing business under the laws of this state or having their principal office in this state.

(e) No lack of compliance with this section by any nonresident fiduciary acting as an attorney-in-fact under the power of attorney otherwise executed in accordance with the laws of this state shall be construed to affect the title to any real estate constituting the subject matter of the power of attorney.

Credits

1955 Pub.Acts, c. 164, § 1; 1957 Pub.Acts, c. 52, § 1; 1977 Pub.Acts, c. 416, § 1; 1985 Pub.Acts, c. 140, § 32; 1985 Pub.Acts, c. 312, § 2; 1988 Pub.Acts, c. 854, § 15; 1991 Pub.Acts, c. 187, § 1; 1993 Pub.Acts, c. 453, § 1, eff. May 19, 1993; 1995 Pub.Acts, c. 177, §§ 4 to 12, eff. May 5, 1995; 1996 Pub.Acts, c. 768, § 2, eff. July 1, 1996; 1997 Pub.Acts, c. 426, § 21, eff. Jan. 1, 1998; 2000 Pub.Acts, c. 730, § 1, eff. May 17, 2000; 2005 Pub.Acts, c. 99, §§ 10 to 12, eff. April 22, 2005; 2016 Pub.Acts, c. 809, § 7, eff. April 14, 2016.

Formerly § 35-610.

[Notes of Decisions \(7\)](#)

T. C. A. § 35-50-107, TN ST § 35-50-107

Current through end of the 2018 Second Regular Session of the 110th Tennessee General Assembly.