



**DBF GUIDANCE FOR GEORGIA STATE-CHARTERED BANKS, BANK HOLDING COMPANIES, CREDIT UNIONS, AND TRUST COMPANIES**

**TO:** Supervision Staff

**CC:** Georgia State-Chartered Banks Exercising Fiduciary Powers and Trust Companies

**FROM:** Melissa Sneed  
Deputy Commissioner for Supervision

**SUBJECT:** VOTING OF OWN BANK OR OWN BANK HOLDING COMPANY STOCK HELD IN FIDUCIARY CAPACITY

**DATE:** May 25, 2018

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O.C.G.A. § 14-2-721(c) permits a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity. It is the policy of this Department that all banks exercising fiduciary powers should, through their respective Board of Directors, adopt a specific policy regarding the voting of own bank or own bank holding company stock which is held in a fiduciary capacity. These internal policies should cover steps that will be taken to avoid any actual or potential conflict of interest. In a co-fiduciary situation, it may be appropriate for the bank trust department to permit voting of the stock by the co-fiduciary. A problem does not automatically result when a bank fiduciary votes its own stock, if it is representing the best interests of the beneficiary of the trust. However, a beneficiary could assert that the bank had not acted in the best interests of the beneficiary but rather had voted the stock for its own corporate purposes. These risks and the fact that fiduciaries are frequently subject to litigation by beneficiaries are the basis for the Department's requirement that a bank trust department have a firm policy regarding the voting of its own stock held in a fiduciary capacity prior to any action being taken which could present future problems.

It will continue to be the responsibility of the trust examiner to review the individual situations in each trust department and the internal policies and safeguards in effect in arriving at a conclusion that a conflict of interest appears to exist. Examiners should routinely request copies of all trust policies at the beginning of each examination and should review these policies and discuss them with management of the trust department. If a situation is deemed to be creating a potential conflict of interest, appropriate comments should be made by the examiner in the Examination Report.