



REGULATORY GUIDANCE

USE OF THE TERM “TRUST” IN THE LEGAL NAME AND ADVERTISING BY NON-TRUST COMPANIES

A company's name is extremely important in creating an identity. The company's name will often be the first impression for consumers, is the first step in the creation of a brand that distinguishes the company from its competitors, and informs the consumers what to expect. Likewise, company names are important to state governments and are often regulated by law. For example, in New Mexico, a for-profit company name must “contain the separate word “corporation”, “company”, “incorporated”, or “limited” or shall contain a separate abbreviation of one of these words.” NMSA 1978, § 53-11-7(A)(1) (1983). Also, a limited liability company's name must contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC.” NMSA 1978, § 53-19-3 (2021). Clearly, New Mexico law regulates the names of companies in order to distinguish corporate entities. Likewise, New Mexico law regulates the names of financial institutions based on the services they provide.

For instance, a “credit union” is a “cooperative, nonprofit, financial institution organized under or subject to the Credit Union Act” NMSA 1978 § 58-11-2(C) (2003). If a financial institution does not meet the statutory definition of a “credit union” it cannot be licensed as a credit union and cannot hold itself out to be a credit union. Also, a financial institution cannot be licensed or hold itself out to be a “bank” unless it meets the requirements found at NMSA 1978, § 58-1-2(A) (1985). In fact, a person can be held civilly and criminally liable for violations of the Banking Act. NMSA 1978, § 58-1-84 (1964). What is more, the Credit Union Act declares the misuse of the term “credit union” in the name of a company a fourth-degree felony. NMSA 1978, § 58-11-13(C) (1997). Therefore, a financial institution must use the appropriate legal term that identifies the nature of its business.

As of late, out of state “trust businesses” have applied for licenses to conduct non-trust business in New Mexico. It is understood that the applicant may be licensed as a “trust business” in its home state. However, the applicant is not entering into New



Mexico for the purpose of conducting a “trust business.” The definition of a “trust business” is found at NMSA 1978, Section 58-9-2(B) (2018).

“trust business” means the holding out by a person, legal entity or corporation to the public at large by advertising, solicitation or other means that the person, legal entity or corporation is available to act as a fiduciary in this state or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business[.]

In order to be a “trust business,” the applicant must be available to act as a fiduciary *in this state*. *Id.* Significantly, a “trust business,” is defined as the publicly holding out a person by “advertising, solicitation[.] or other means” that the person is available to act as a fiduciary *in this state*. *Id.* The Trust Company Act requires the Director to carefully investigate an application to ensure, “that the name of the proposed company is not deceptively similar to that of another trust company or bank or is *not otherwise misleading*[.]” NMSA 1978, § 58-9-8(A)(2) (2018) (emphasis added). The Trust Company Act requires the Director to ensure that a trust company is a “trust company.” The Trust Company Act requires that the Director not issue trust company certifications to applicants “other than a corporation organized under the laws of” New Mexico. NMSA 1978, § 58-9-6.1 (1979). Therefore, in order not to mislead New Mexican consumers, a company entering New Mexico for any purpose other than a “trust business” should not use the term “trust” in either its name or advertising.

However, the Director does not have the authority to enforce false advertising or unfair practices. That authority is vested in the Attorney General and the individual consumer who may be deceived by the non-trust company’s representations. NMSA 1978, § 57-12-15 (1967) (the attorney general is responsible for the enforcement of the Unfair Practices Act (UPA)); NMSA 1978, § 57-12-10 (2005) (private remedies are authorized against any person who violates the UPA). In the recent past, the Director has issued guidance to individual non-trust companies regarding the use the word “trust.” That previous guidance is now rescinded.

This guidance serves as notice to any non-trust company applicant who uses the term “trust” in its name. Any such company will be required to execute an affidavit acknowledging this Director’s Guidance as part of the application process. The signatory of the affidavit will be the same official who executes the affidavit required by the initial application or license renewal. The application or renewal will not be complete until the affidavit is received. The acknowledgement form can be found on the “forms and applications” page of our website ([here](#)) under the “use of name requests” section.

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