§ 100-b. Investments as fiduciary; when interest is to be paid; preference. 1. Investments. All investments of money received by any trust company as executor, administrator, guardian, trustee of a trust of any kind, receiver, committee, conservator or depositary, shall be at its sole risk, and for all losses of such money the capital stock, property and effects of the trust company shall be absolutely liable, unless the investments are such as are proper when made by an individual acting as trustee, executor, administrator, guardian, receiver, committee, conservator or depositary, or such as are permitted in and by the instrument or words creating or defining the trust. But no corporate fiduciary shall purchase securities from itself. Any moneys of any such estate or fund awaiting investment or distribution may be held on deposit by such trust company in its own name, subject to the provisions of subdivision four of this section; provided that appropriate entries showing the share or interest of each such estate or fund in the moneys so held on deposit shall, at all times, appear upon the records of such trust company.

2. On and after September first, nineteen hundred thirty-six, no trust company shall invest in any part interest in a bond and mortgage or note and mortgage on behalf of any estate or fund held by such trust company as executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary except that if the instrument creating such estate or fund has authorized such trust company as executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary to invest in any part interest in a bond and mortgage or note and mortgage insured by the federal housing commissioner such trust company may so invest and if the instrument creating an employee benefit trust has authorized such trust company to invest in any part interest in a bond and mortgage or note and mortgage, such trust company may so invest. Any part interest in a bond and mortgage or note and mortgage heretofore apportioned to any estate or fund and held by such trust company as executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary, and outstanding at any time in the hands of any estate, fund or person may be repurchased at its face value by such corporation individually. Such trust company, in any case where

it shall have apportioned or transferred a part interest in any bond and mortgage or note and mortgage whether to any estate or fund held by it alone or in conjunction with another person or otherwise, shall be authorized and empowered, in behalf of all persons interested therein, to collect the principal and interest and to satisfy and discharge the mortgage on receiving payment thereof in the amount and in the manner specified in the bond and mortgage or note and mortgage, to pay the said principal and interest to the persons entitled thereto and generally to exercise all of the options reserved to the mortgagee, to enforce in its own name by appropriate action or proceeding, including foreclosure, any and all of the covenants in the said bond and mortgage or note and mortgage, to take such other measures for the protection of the mortgage loan and the preservation of the security and the management of, utilization and sale of any real estate which may be acquired on foreclosure as may be necessary and appropriate and to exercise all other rights of ownership in respect of the entire bond and mortgage or note and mortgage. In case any bond, note or mortgage shall be held by, or in the name of, such trust company and it shall hold any part interest therein, acting as a fiduciary, whether alone, or in conjunction with another person or otherwise, it may, prior to April first, nineteen hundred sixty-nine, waive or modify or agree to waive or modify, either with or without consideration and prior or subsequent to maturity, any terms and conditions thereof, including the rate of interest, and extend or re-extend or agree to extend or re-extend such bond and mortgage or note and mortgage, for a period of not more than five years from the time of such extension, by agreement with the owner of the real property subject to the lien thereof, upon the consent of the holders of such part interests to the extent of sixty-six and two-thirds per centum of the whole amount of such bond and mortgage or note and mortgage, notwithstanding that, at the time of such waiver, modification, extension or agreement, the value of such real property may be less than that required by law for an original investment of such an amount therein by such holder and, in case any such investment is guaranteed, such trust company may also extend or re-extend or agree to extend or re-extend the time of payment under the guaranty for a like period from its due date, and may release or agree to release such guaranty or from time to time waive or modify or agree to waive or

modify any terms and conditions thereof, including the rate of interest; provided however, that no such waiver, modification, extension or agreement shall be made or agreed to unless, at least fifteen days prior thereto, such trust company shall have notified each holder of such a part interest in such bond and mortgage or note and mortgage of the terms and conditions of such contemplated waiver, modification, extension or agreement. Such notice shall be given by mailing the same by registered mail to the address or place of residence of each holder according to the records of such trust company. The notice hereinbefore provided for shall not be required to be given to any holder of such a part interest in such bond and mortgage or note and mortgage (1) who, at the time of the mailing of such notice to holders of part interests in such bond and mortgage or note and mortgage, was not shown on the records of such trust company to be such holder, or (2) who, at any time whether before or after any such waiver, modification, extension or agreement shall have been made or agreed to, shall have consented to such waiver, modification, extension or agreement. Any such consent shall also be binding upon and shall be deemed to be the consent also of each and every holder of the part interest in such bond and mortgage or note and mortgage or of any part of such part interest with respect to which such consent was given who, at the time such consent was given, was not shown on the records of such trust company to be such holder whether or not such holder shall have become such holder before or after such consent was given. Any holder to whom the notice hereinbefore provided for is required to be given as hereinbefore provided and who objects to such waiver, modification, extension or agreement shall have the right to apply, within fifteen days after such notice shall have been mailed to such holder as hereinbefore provided, to the supreme court of the county in which the real property securing such mortgage is located and, subject to the discretion of the supreme court in the premises, to obtain an order enjoining such waiver, modification, extension or agreement. In the event of the granting of such an order, any holder shall have the right to apply to such supreme court and, subject to the discretion of the supreme court in the premises, to obtain an order directing a partition of such bond and mortgage or note and mortgage by a judicial sale thereof. Such sale shall be upon such notice and advertisement and at such time and place and in such manner

as the court or a justice thereof may direct, but at least fifteen days' notice thereof shall be given to each holder. The proceeds of the sale of such bond and mortgage or note and mortgage after deducting the expenses of such sale, shall be paid into the supreme court and shall be distributed among such holders according to their respective interests therein. Such trust companies shall have all the powers heretofore had under this section or any other provision of law with respect to investments in part interests in bonds and mortgages or notes and mortgages for the protection, preservation and liquidation of the trust property. It is the intent of this subdivision to prohibit after August thirty-first, nineteen hundred thirty-six, any future apportionments or investments of any part interests in bonds and mortgages and notes and mortgages to or investments in part interests of bonds and mortgages and notes and mortgages for any estate or fund of which such trust company is executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary, except as permitted by this subdivision. Such trust company, however, shall not transfer to any estate or fund any part interests in bonds and mortgages or notes and mortgages heretofore purchased, or invested in, from itself or from any other estate or fund.

Nothing contained in this act shall be construed to affect any investments in part interest in bonds and mortgages apportioned or transferred, prior to September first, nineteen hundred thirty-six, to any estate or fund of which such trust company is executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary, nor to affect any action heretofore taken in accordance with law with respect to such bonds and mortgages or part interests in said bonds and mortgages; nor to affect the right of any such trust company to transfer or apportion any such investment from an estate or fund to a succeeding interest created by the same instrument under which the investment was made; nor shall it be construed to impair or otherwise affect the power of such trust company to apportion to any estate, fund or person interested in such mortgage its or his proportionate share of the consideration, consisting in whole or in part of evidences of indebtedness secured by mortgages on real property received by such trust company on the sale of real property

acquired by foreclosure of such mortgage, or otherwise, and to exercise with respect to such mortgages on behalf of such estates, funds, or persons the same powers reserved with respect to the original mortgage.

3. Preference. If dissolved by the legislature or the court, or otherwise, or liquidated by the superintendent or otherwise, the debts from any trust company as guardian, trustee, executor, administrator, committee, conservator or depositary, shall be entitled to priority of payment from the assets of such trust company on an equality with any other priority given by this chapter.

4. Interest. On all sums of money not less than one thousand dollars, which shall be collected, received and held as principal by a trust company acting as executor, administrator, guardian, trustee, receiver, committee or conservator under the appointment of any court or officer, or in any fiduciary capacity under such appointment, or as a depositary of moneys paid into court, interest shall be paid by such trust company from sixty days after the receipt thereof until the moneys so received shall be duly expended or distributed, at a rate equal to the maximum rate per annum then being paid by such trust company on savings deposits, except that in the case of a trust company acting as executor or administrator interest shall not be paid, and the grace period of sixty days herein provided for shall not be deemed to begin, until five months after the date of issuance of letters testamentary or of administration to it; provided however that such trust company shall not be required to allow any interest upon any such moneys payment of which is prohibited under any order, regulation or ruling issued under or pursuant to the "Trading with the Enemy Act" and any amendments thereto, or under or pursuant to any other law, so long as such prohibition shall remain in force and effect. If income be accumulated for a minor or surplus income in excess of expenditures be held for investment by the committee of an incompetent or the conservator of a conservatee, but not otherwise, any uninvested balance of such income shall be treated as principal upon which interest shall be paid as provided in this subdivision. If interest moneys payable hereunder or any part thereof shall not annually be expended or distributed pursuant to the terms or provisions of the trust under which such moneys are held, the amount

thereof not so expended or distributed shall be accumulated by such trust company for the benefit of the parties interested in such trust fund, and shall be added to the principal to constitute a new principal upon which interest shall thereafter be computed. The word "trustee" as used in this subdivision shall mean a trustee appointed by will or by any court, and the words "savings deposits" as used in this subdivision shall mean time deposits with respect to which the depositor is not required by the deposit contract, but may at any time be required by such trust company, to give notice in writing of an intended withdrawal not less than fourteen days before such withdrawal is made, and which is not payable on a specified date or at the expiration of a specified time after the date of deposit. For the purposes of this subdivision only, moneys on which interest is payable as provided herein shall not be deemed to be demand deposits.