§ 154. Transfer of fiduciary relationships from affiliated banks or trust companies to subsidiary trust companies. 1. (a) At any time or times after the issuance to it by the superintendent of the authorization certificate specified in article two of this chapter, a subsidiary trust company may apply by verified petition to the supreme court, special term, in and for the county in which its principal office is located requesting that it be substituted for each of its affiliated banks or trust companies specified in the petition (i) in every existing fiduciary capacity designated therein and (ii) in the case of the first such petition, in every fiduciary capacity which may take effect after the date of the hearing provided for below. Each such specified affiliated bank or trust company shall join in such petition. Notice of the filing of such petition shall be given prior to the filing thereof to the superintendent.

(b) Such petition shall indicate the county wherein the principal office of each affiliated bank or trust company joining in the petition is located and shall designate each fiduciary relationship existing at the date thereof with respect to which such subsidiary trust company requests substitution. Such petition shall additionally set forth, with regard to each existing fiduciary relationship designated therein, the name and address last known to the petitioner of each person entitled to receive notice of hearing thereon, to wit:

(i) in the case where an affiliated bank or trust company specified in the petition is acting with one or more cofiduciaries in respect to such fiduciary relationship, each such cofiduciary; and

(ii) in the case where the instrument creating such fiduciary relationship so provides, each person who, alone or together with others, is empowered to revoke, terminate or amend such instrument or to remove the corporate fiduciary; and

(iii) in the case of any fiduciary relationship not specified in subparagraph (ii) of this paragraph, each beneficiary currently receiving income and any other beneficiary interested in the income and any person presumptively entitled to share in distributions of principal were such fiduciary relationship terminated at the date of such petition; and

(iv) in the case of any fiduciary relationship, including those specified in subparagraphs (i), (ii) and (iii) of this paragraph, which

is an estate of a deceased person or which is a guardianship or conservatorship, the clerk of the court in which such estate, guardianship or conservatorship matter is pending, together with a statement that a notice has been, or is being, given to the persons specified in such subparagraphs. If any of the persons specified in subparagraph (i), (ii) or (iii) of this paragraph is an infant or an incompetent, such notice shall be given to the guardian or committee, as the case may be, of his property. If any such infant, or incompetent shall not have a guardian or committee to so represent him, or if any of the persons specified in subparagraph (i), (ii) or (iii) of this paragraph is incapacitated, unknown (or a person whose whereabouts are unknown) or confined as a prisoner in a penal institution, the court may, in its discretion, appoint one or more guardians ad litem to represent any one or more of such persons.

2. When any petition described in subdivision one of this section shall have been filed, the supreme court for the county where filed shall enter an order fixing a date and time for hearing thereon, which date shall not be less than thirty-five days after the filing of the petition, and approving the form of notice to be given by the petitioner as hereinafter provided. At least twenty-five days prior to the hearing date, the petitioner shall cause a copy of such notice to be mailed by first class mail to each person identified in the petition as being entitled to receive notice under the provisions of this article, at such person's address last known to the petitioner as set forth in the petition. In addition, the petitioner shall cause a copy of such notice to be published at least once a week for three successive weeks preceding the hearing date, the first such publication to be at least twenty-five days prior to the hearing date, such publication to be in a newspaper of general circulation published in each county in which the principal office of an affiliated bank or trust company specified in the petition is located, or if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county.

3. The notice to be mailed and published with respect to each such petition shall state (a) the time and place of the hearing thereon, (b) the name of the subsidiary trust company which has filed the petition,

(c) the name of each affiliated bank or trust company which has joined in such petition, (d) that the petition requests that the subsidiary trust company be substituted for each of its affiliated banks or trust companies specified in the petition in every existing fiduciary capacity designated therein and, if appropriate, in every fiduciary capacity which may take effect after such hearing, and (e) that any person to whom such notice is addressed may file an objection as provided in, and in accordance with, subdivision four of this section. All costs incurred in connection with the printing, mailing and publishing of such notice shall be borne by the petitioner.

4. Any person entitled to receive notice under the provisions of this article may, as to the fiduciary relationship by which he is affected, object to the substitution of the subsidiary trust company as fiduciary. Any such person wishing to so object must file a written objection to such substitution, setting forth the reasons therefor, with the clerk of the court in which the hearing is to be held, and serve a copy thereof upon the attorney for the petitioner, at least three days before the date of hearing and must appear at such hearing in person or by attorney.

5. On the date fixed for the hearing on such petition, upon making a determination that notice has been properly given as required by this section, the said supreme court shall enter an order substituting the subsidiary trust company for each of its specified affiliated banks or trust companies in every designated existing fiduciary capacity and, in the case of the first petition by the petitioner, in every fiduciary capacity which may take effect thereafter, excepting fiduciary capacities in any existing relationship with respect to which an objection has been filed pursuant to and in accordance with subdivision four of this section; provided, that in the case of a fiduciary relationship where more than one person would be entitled under this article to object to substitution of the subsidiary trust company, the properly made objection by less than all of such persons shall be considered by the court which shall, in its sole discretion, determine whether such substitution shall be so ordered. In the case of a fiduciary relationship in which an objection has been properly made by

any person who is entitled pursuant to this article to object to such substitution, the court may, in its discretion, determine that the resignation of the affiliated bank or trust company will be accepted in respect of such fiduciary relationship; if the court shall determine that such resignation will be accepted, it shall enter an order substituting a different banking institution or subsidiary trust company, which shall have given its written consent to such substitution prior to the entry of such order. In construing the language of any instrument which is the subject of a proceeding pursuant to this article, nothing contained herein shall be considered to abrogate or affect the intent or written language of the instrument creating the fiduciary relationship. Upon entry of the court's order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity.

6. In respect of each fiduciary capacity, existing and future, as to which substitution has been ordered pursuant to this article, each designation of a petitioning affiliated bank or trust company as fiduciary in any capacity contained in any contract, will or other document or instrument shall be deemed a designation of the subsidiary trust company substituted for such bank or trust company pursuant to this section. Any grant in any such contract, will or other document or instrument of any rights, powers, duties or authorities, whether or not discretionary, shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

7. Upon substitution pursuant to this section, each affiliated bank or trust company shall deliver to the subsidiary trust company all assets held by such trust company as fiduciary (except assets held in capacities with respect to which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance. A trust company shall account, in respect of each of its existing fiduciary relationships designated in the petition and as to which a substitution has been ordered under this section, for that portion of the accounting period in which such substitution was ordered ending on the date of such order; thereafter

the subsidiary trust company which has been substituted as fiduciary for such bank or trust company shall account in respect of each such fiduciary relationship. Notwithstanding any provision in this chapter to the contrary, after a substitution of existing fiduciary capacities pursuant to this article, an affiliated bank or trust company shall remain jointly liable with the subsidiary trust company which has been substituted for it in respect of each of the existing fiduciary relationships as to which such substitution has been ordered, but such affiliated bank or trust company shall be entitled to a right of subrogation against such subsidiary trust company for all amounts paid by such affiliated bank or trust company as a result of such joint liability.