

INTERPRETIVE LETTER 95-12 (NOVEMBER 21, 1995)

A common law assignee for the benefit of creditors, whether court supervised or not, is not required to obtain a certificate of authority from the Commissioner to act as such in Illinois.

We are writing in response to your letter to the Illinois Commissioner of Banks and Trust Companies ("Commissioner") requesting a confirmation of the Agency's opinion concerning recent amendments to the Corporate Fiduciary Act ("Act"), 205 ILCS 620 (1994). Public Act 89-364 became effective on August 18, 1995, and expanded the Act to apply to any entity that publicly offers to act in a trust capacity, or accepts trusts as a significant part of its regular business. As a result of these legislative changes, the Act could be interpreted to require common law assignees for the benefit of creditors to apply for and obtain a certificate of authority from the Commissioner to continue to act as such in Illinois. It is the Commissioner's opinion that the Act does not apply to individuals who routinely act as common law assignees for the benefit of creditors, whether court supervised or not, and that consequently, such individuals are not required to apply for or obtain a certificate of authority pursuant to the Act.

The amendments to the Act contain an exemption for a person, "acting as either a receiver under the supervision of a court or as an assignee for the benefit of creditors under the supervision of a court..." 205 ILCS 620/2-4.5(9) (1994) (emphasis added). In Illinois, assignees for the benefit of creditors, rarely, if ever, act under court supervision. The reference to a "receiver" being "under the supervision of a court" accurately reflects the legal environment and customary practice of receivers. However, because assignees are rarely subject to the supervision of a court, the Commissioner is of the opinion that the highlighted language, to the extent it suggests that assignees must act under court supervision, was inadvertent and not actually intended. Therefore, the Commissioner concludes that an assignee for benefit of creditors, whether court supervised or not, is not required to obtain a certificate of authority from the Commissioner. The intent of the exemption was to exclude all assignees for the benefit of creditors from the Act. Therefore, the Commissioner interprets the exemption to exclude all such assignees as if the limiting language, "under the supervision of a court," was not present.

The Commissioner intends to correct this unintended result by legislative change or by rulemaking. In the interim, the Commissioner will take no action against any individuals acting in an assignee for the benefit of creditors capacity.