



ANALYSIS

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1968, No. 24

An Act to amend the Trustee Act 1956

[15 November 1968]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Trustee Amendment Act 1968, and shall be read together with and deemed part of the Trustee Act 1956 (hereinafter referred to as the principal Act).

2. Interpretation—Section 2 of the principal Act is hereby amended by omitting from the definition of the term “trust” in subsection (1) the words “a personal representative”, and substituting the words “an administrator within the meaning of the Administration Act 1952”.

3. Authorised investments—Section 4 of the principal Act is hereby amended by inserting in paragraph (i) of subsection (1), after the words “Christchurch-Lyttelton Road Tunnel Authority”, the words “or by any other body or person”.

4. Company securities—Section 12 of the principal Act is hereby amended by adding the following subsection:

“(4) In this section the term ‘securities’ includes stock, funds, shares, and registered convertible notes.”

5. Power to purchase dwellinghouse or flat—(1) Section 14 of the principal Act is hereby amended by omitting from paragraph (b) of subsection (2) the words “and the whole of that money is derived from the sale of another dwellinghouse and the land appurtenant thereto which the trustee had power to retain”.

(2) Section 14 of the principal Act is hereby further amended by omitting from subsection (2A), as inserted by section 4 of the Trustee Amendment Act 1957, the words “and if the whole of the money is derived from the sale of another dwellinghouse and the land appurtenant thereto which the trustee had power to retain”.

(3) Section 14 of the principal Act is hereby further amended by inserting, after the said subsection (2A), the following subsection:

“(2B) In any case where a trustee is authorised by or under this Act or any other enactment, or by the instrument creating the trust, to provide or acquire a home for any person, he shall have power, in addition to any authority so conferred,—

“(a) To acquire a flat or apartment or the right to occupy a flat or apartment by any means which he may consider appropriate (whether by acquiring shares in a limited liability company or an undivided share or interest in the land on which the premises are erected or in any other way); and

“(b) To enter into any lease, licence, agreement, or other arrangement under which he or his nominee or the beneficiary who is to occupy the flat or apartment has the right to occupy it (including an arrangement whereby any shares in a limited liability company and the benefit of any such lease, licence, or agreement may be held by that beneficiary or by some other nominee of the trustee upon trust for him).”

6. Power to sell, exchange, or partition—(1) Section 14 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended by omitting from subsection (6) the words “ten thousand dollars” in each place where they appear, and substituting in each case the words “fifteen thousand dollars”.

(2) Section 14 of the principal Act is hereby further amended by inserting, after subsection (6), the following subsections:

“(6A) Where a person dies intestate as to any personal chattels within the meaning of the Administration Act 1952 and leaves a husband or wife, the trustee of his estate shall not, without the consent of the Court or of the husband or wife, sell those chattels, unless a sale is required for purposes of administration owing to want of other assets.

“(6B) Where upon inquiry the Court is satisfied that a partition of the real estate of a deceased person would be advantageous to the parties interested therein, the Court may order a partition or may appoint one or more arbitrators to effect a partition, and to exercise in regard thereto, under its directions and control, such powers as it thinks fit; and if the report and final award of the arbitrator are approved by the Court, the trustee shall, by conveyance or transfer, give effect to the same accordingly.”

(3) Section 19 of the Administration Act 1952 is hereby repealed.

Cf. 1952, No. 56, s. 19

7. Power of trustee to improve title or tenure—Section 15 of the principal Act is hereby amended by inserting in paragraph (b) of subsection (1), after the word “property”, the words “or in improving his title to the property or his tenure thereof, whether by the acquisition of an interest in reversion or otherwise”.

8. Power to release mortgage—Section 20 of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

“(dd) Release wholly or in part any mortgage or other security, if no person will be detrimentally affected by the release; or”.

9. Power to raise money by sale or mortgage—Section 21 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Without restricting the generality of the foregoing provisions of this section, the power conferred on the trustee by this section to raise any money that is required as aforesaid by the sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession shall extend and be deemed always to have extended so as to confer on the trustee power so to raise money required for the purpose of meeting any debt or other liability of the trustee, whether secured or unsecured and whether owing or incurred at or before the commencement of the trust or subsequently.”

10. Protection of purchasers, etc., dealing with trustee—

(1) The principal Act is hereby amended by repealing section 22, and substituting the following section:

“22. (1) Where an instrument is made or executed in professed exercise of the power to sell, exchange, lease, or mortgage conferred by the instrument (if any) creating the trust or by this Act or any other Act, the title of the purchaser, transferee, lessee, or mortgagee shall not be impeachable except on the ground of fraud, or be affected on the ground that no case has arisen to authorise the sale, exchange, lease, or mortgage, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power, and no purchaser, transferee, lessee, or mortgagee shall be concerned to see to the application of the money paid by him, or be responsible for the misapplication thereof.

“(2) Nothing in this section shall restrict the provisions of the Land Transfer Act 1952.”

(2) Section 17 of the Administration Act 1952 is hereby repealed.

Cf. 1952, No. 56, s. 17

11. Power to employ trustee corporation as agent for investment—Section 29 of the principal Act is hereby amended, as from the commencement of the Trustee Companies Act 1967, by inserting, after subsection (2), the following subsection:

“(2A) Without restricting the other powers conferred by this section, a trustee may—

“(a) Employ a trustee corporation to be his agent for the purpose of investing any trust funds in his possession, whether at the commencement of the employment in a state of investment or not, whether

they came into his possession before or after the commencement of this section, and whether they comprise the whole or any part of the trust estate to which they belong; and

“(b) Pay or transfer any such trust funds to the trustee company so employed.”

12. Trustee to have lien on policy money for premiums—

(1) The principal Act is hereby amended by inserting, after section 34, the following section:

“34A. Where a trustee pays any premiums in respect of any policy of insurance he shall have a lien on the policy money for the amount of the premiums so paid, together with interest thereon at the rate of six percent or such other rate as the Governor-General may for the time being by Order in Council prescribe.”

(2) Section 109 of the Public Trust Office Act 1957 is hereby consequentially repealed.

Cf. 1957, No. 36, s. 109

13. Power of appointing new trustees—Subsection (5) of section 43 of the principal Act is hereby amended—

(a) By omitting the words “other than a trustee corporation”:

(b) By omitting the words “(none of them being a trustee corporation)”:

(c) By adding the following proviso:

“Provided that an additional trustee or additional trustees shall not be appointed under this subsection without the consent of—

“(a) The trustee or trustees for the time being; or

“(b) The Court.”

14. Advisory trustees—Section 49 of the principal Act is hereby amended—

(a) By inserting in paragraph (c) of subsection (2), after the word “By”, the words “the responsible trustee or”:

(b) By omitting from subsection (3) the word “hereafter”.

15. Remuneration of custodian trustee—Section 50 of the principal Act is hereby amended by repealing paragraph (b) of subsection (4), and substituting the following paragraphs:

“(b) As regards the custodian trustee in any case where the custodian trustee is a trustee company within the

meaning of the Trustee Companies Act 1967, in accordance with the scale of charges for the time being of the trustee company:

“(c) Except as provided in paragraphs (a) and (b) of this subsection, by the managing trustees if they are entitled to fix their own remuneration, or by the Court.”

16. Protection of trustee while acting under direction of Court—Section 69 of the principal Act is hereby amended by omitting the word “substantially”, and substituting the word “subsequently”.

This Act is administered in the Department of Justice.
