

TRUSTEE ACT

[RSBC 1996] CHAPTER 464

Definitions and interpretation

1 In this Act:

"**assign**" means the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering or otherwise transferring land of which the person is possessed, either for the person's whole estate or for any less estate;

"**business authorization**" has the same meaning as in the *Financial Institutions Act*;

"**contingent right**", in relation to land, means a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of that interest or possibility is or is not ascertained, and a right of entry, whether immediate or future, and whether vested or contingent;

"**convey**" in relation to a person, means the execution by that person of every necessary or suitable assurance for conveying or disposing to another land of or in which that person is seised or entitled to a contingent right, either for that person's whole estate or for any less estate, together with the performance of all formalities required by law to validate the conveyance;

"**court**" means the Supreme Court;

"**decree**" means judgment;

"**deposit business**" has the same meaning as in the *Financial Institutions Act*;

"**devisee**" includes the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the land of a deceased person, not as heir of the deceased person, but by a title dependent solely on the operation of the laws concerning devise and descent;

"**judicial trustee**" means a person appointed under section 97;

"**mortgage**" is applicable to every estate, interest or property in land or personal estate that would in equity be considered merely a security for money;

"**person of unsound mind**" means a person, other than an infant, who is incapable, from infirmity of mind, of managing the person's own affairs;

"**possessed**" is applicable to any vested estate less than a life estate, at law or in equity, in possession or in expectancy, in land;

"**seised**" is applicable to any vested estate for life or of a greater description, and extends to estates at law and in equity, in possession or in futurity, in land;

"**securities**" includes stock, debentures, bonds, shares and guaranteed trust or investment certificates;

"**stock**" includes a share, stock, fund, annuity or security transferable in books kept by a company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and a share or interest in it;

"**transfer**" means the execution and performance of every deed and act by which a person entitled to stock can transfer the stock from the person to another;

"**trust**" includes

- (a) implied and constructive trusts,
- (b) cases where the trustee has some beneficial estate or interest in the subject of the trust, and
- (c) the duties incident to the office of personal representative of a deceased person

but does not include the duties incident to an estate conveyed by way of mortgage;

"**trust business**" has the same meaning as in the *Financial Institutions Act*.

Application

2 Except as provided in this Act, this Act extends to persons entitled or acting under a deed, will, codicil or other instrument irrespective of the date of its execution.

Receipts of trustees

3 The receipt in writing of a trustee for money payable to the trustee, by reason or in the exercise of any trusts or powers reposed or vested in the trustee, is a sufficient discharge for the money expressed to be received, and effectually exonerates the persons paying the money from seeing to its application or from being answerable for its loss or misapplication.

Purchaser not bound to see to application

4 The payment in good faith to and the receipt of any person to whom any purchase or mortgage money is payable on an express or implied trust effectually discharges the person paying it from seeing to its application or being answerable for its misapplication, unless the contrary is expressly declared by the instrument creating the trust or security.

Power to sell vested in trustee for sale

5 (1) If a trust for sale or a power of sale of property is vested in a trustee, the trustee may sell, or concur with any other person in selling, all or part of the property, either

subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to the conditions respecting title or evidence of title or other matter that the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and has effect subject to the terms of that instrument.

(3) This section applies only to a trust or power created by an instrument coming into operation after July 1, 1905.

Power to sell subject to depreciatory conditions

6 (1) A sale made by a trustee must not be impeached by a beneficiary on the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was rendered inadequate by that condition.

(2) A sale made by a trustee must not, after the execution of the conveyance, be impeached as against the purchaser on the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time the contract for sale was made.

(3) A purchaser, on a sale made by a trustee, is not at liberty to make an objection against the title on the ground referred to in subsection (1) and (2).

(4) This section applies only to sales made after July 1, 1905.

Power to authorize receipt of money

7 (1) A trustee may appoint a solicitor to be the trustee's agent to receive and give a discharge for money, or valuable consideration or property receivable by the trustee under the trust, and a trustee is not chargeable with breach of trust merely for having made or concurred in making that appointment.

(2) A trustee may appoint a banker or solicitor to be the trustee's agent to receive and give a discharge for money payable to the trustee under or because of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee, and a trustee is not chargeable with a breach of trust merely for having made or concurred in making that appointment.

(3) This section does not exempt a trustee from any liability the trustee would have incurred if this Act had not been enacted, if the trustee permits the money, valuable consideration or property to remain in the hands or under the control of the banker or

solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer it to the trustee.

(4) This section applies only if the money or valuable consideration or property is received after July 1, 1905.

(5) This section does not authorize a trustee to do anything the trustee is in express terms forbidden to do, or to omit anything the trustee is in express terms directed to do, by the instrument creating the trust.

Power to insure property

8 (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot not exceeding 3/4 of the full value of the building or property, and pay the premiums for that insurance out of the income of the building or property or of any other property subject to the same trusts, without obtaining the consent of a person who may be entitled to all or part of that income.

(2) This section does not apply to a building or property that a trustee is bound to convey absolutely to a beneficiary promptly on being requested to do so.

(3) This section does not authorize a trustee to do anything the trustee is in express terms forbidden to do, or to omit to do anything the trustee is in express terms directed to do, by the instrument creating the trust.

Power to compound

9 (1) An executor or administrator, or 2 or more trustees acting together, or a sole acting trustee if by any instrument creating the trust a sole trustee is authorized to execute the trusts and powers, may, if and as they think fit, accept

(a) a composition or a security, real or personal, for a debt or for property claimed,

(b) allow time for payment of a debt, and

(c) compromise, compound, abandon, submit to arbitration or otherwise settle a debt, account, claim or other thing relating

to the will-maker's or intestate's estate or to the trust.

(2) For any of the purposes referred to in subsection (1), a person referred to in that subsection may enter, give, execute and do the agreements, instruments of composition or arrangement, releases and other things that to the person seems expedient, without being responsible for loss caused by an act or thing so done in good faith.

(3) This section applies only if and as far as a contrary intention is not expressed in any instrument creating the trust, and has effect subject to the terms of that instrument.

Repealed

10 [Repealed 2009-13-258.]

Power to spend money on repairs and improvements

11 If it appears to the court, on petition presented to it by a trustee, executor or administrator, that it is necessary or expedient in the interest of the parties concerned to spend money to prevent the deterioration in value of land belonging to the trust estate or to increase its productive power, the court may by order, subject to the directions and conditions it thinks fit and with due regard to the rights of all persons interested in the trust estate, authorize the trustee, executor or administrator to

(a) spend money of the trust estate, or

(b) borrow or raise money by way of mortgage or charge on all or part of the trust estate, and to spend that money

for the repair or improvement of the land, or for the erection on the land of a building or an addition to or improvement of a building.

Powers of trustees may be exercised by survivor

12 (1) If a power or trust is given to or vested in 2 or more trustees jointly, then, unless the contrary is expressed in any instrument creating the power or trust, it may be exercised or performed by the survivor or survivors of them for the time being.

(2) This section applies only to trusts constituted after or created by instruments coming into operation after July 1, 1905.

Interpretation

13 For the purposes of section 14, a trustee is deemed to be engaged on war service

(a) if the trustee is engaged in connection with a war in which Canada is a participant as a member of the military, naval or air forces of the Crown, or

(b) if in connection with the war the trustee is a prisoner of war in an enemy country, or is interned in the country of a neutral power.

Trustee engaged on war service

14 (1) A trustee, whether or not a sole trustee, who is engaged on war service and intends to leave British Columbia and remain out of British Columbia for a period exceeding one month, or who is engaged on war service out of British Columbia and does not intend to return within one month, may, despite any rule of law or equity to the contrary, by power of attorney delegate to any person, including a trust company, the execution or exercise of all or any trusts, powers and discretions vested in the trustee as trustee, either alone or jointly with any other person or persons, but a person who is the only other co-trustee must not be appointed to be an attorney under this subsection.

(2) The donor of a power of attorney given under this section is liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney does not come into operation unless and until the donor is out of British Columbia and is revoked by the donor's return.

(4) The power of attorney must be attested by at least one witness.

(5) All jurisdiction and powers of any court apply to the donee of a power of attorney given under this Act insofar as respects the execution of the trust in the same manner as if the donee were a trustee of the trust.

(6) A signed statement by the donee of a power of attorney, under which the execution of a trust is delegated, that the donor is engaged on war service within the meaning of this Act and is out of British Columbia, and that in any transaction the donee is acting in execution of the trust, must be accepted as conclusive evidence of those facts by the court and all other persons dealing with the donee.

(7) Subject to subsection (11), the *Power of Attorney Act* applies to powers of attorney given under this section.

(8) In favour of a person dealing with the donee, any act done or instrument executed by the donee is, even though the power has never come into operation or has been revoked by the act of the donor or by the donor's death or otherwise, as valid and effectual as if the donor were alive and of full capacity and had done the act or executed the instrument, unless the person had actual notice that the power had never come into operation or of the revocation of the power before the act was done or instrument executed, or, unless in the case of an instrument within the meaning of section 1 of the *Land Title Act* before the registration of the instrument in the land title office of the land title district in which the land comprised in the instrument is located, notice of revocation by death or otherwise, or notice that the power has never come into operation, is filed in that land title office.

(9) For the purpose of executing or exercising the trusts or powers delegated to the donee, the donee may, subject to any limitation contained in the power of attorney, exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including the power, for the purpose of the transfer of shares or inscribed stock, to delegate to an attorney power to transfer, but not including the power of delegation conferred by this section.

(10) The fact that it appears from a power of attorney given under this section, or from evidence required for the purposes of that power of attorney or otherwise, that in dealing with shares or stock the donee of the power is acting in the execution of a trust must not be considered for any purpose to affect a person in whose books the shares or stock are inscribed or registered with notice of the trust.

(11) The fact that the donor of a power to which this Act applies is reported "missing" or "missing and believed to be killed" does not give persons who have knowledge of such report actual or constructive notice of the death, although in fact the death has occurred.

(12) A person who knowingly provides information that is false or misleading with respect to a material fact contained in a signed statement under subsection (6) commits an offence.

(13) A person who produces or relies upon a signed statement given by another person under subsection (6) while knowing the signed statement to be false or misleading with respect to a material fact contained in that signed statement commits an offence.

Repealed

15 [Repealed 2002-33-23.]

Investment of trust property

15.1 (1) A trustee may invest property in any form of property or security in which a prudent investor might invest, including a security issued by an investment fund as defined in the *Securities Act*.

(2) Subsection (1) does not authorize a trustee to invest in a manner that is inconsistent with the trust.

(3) Without limiting subsection (1), a trustee may invest trust property in a common trust fund managed by a trust company, whether or not the trust company is a co-trustee.

Standard of care

15.2 In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

Trustee not liable if overall investment strategy is prudent

15.3 A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor would adopt under comparable circumstances.

Abrogation of common law rules: anti-netting rules

15.4 (1) The rule of general trust law that requires the assessment of the decisions of a trustee on an investment by investment basis if the decisions are called into question is abrogated.

(2) The rule for the assessment of damages for breach of trust that prohibits losses from being off set by gains is abrogated except in respect of circumstances in which the breach is associated with dishonesty on the part of the trustee.

Delegation of authority with respect to investment

15.5 (1) In this section, "**agent**" means any person to whom a trustee delegates investment responsibility.

(2) A trustee may delegate to an agent the degree of authority with respect to the investment of trust property that a prudent investor might delegate in accordance with ordinary business practice.

(3) A trustee who delegates authority under subsection (2) must determine the investment objectives for the trust and exercise prudence in

(a) selecting an agent,

(b) establishing the terms and limits of the authority delegated,

(c) acquainting the agent with the investment objectives, and

(d) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

(4) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(5) A trustee who complies with the requirements of subsection (3) is not liable to the beneficiaries or to the trust for the decisions or actions of the agents to whom the function was delegated.

(6) This section does not authorize a trustee to delegate authority under circumstances in which the trust requires the trustee to act personally.

(7) Investment in an investment fund referred to in section 15.1 (1) or a common trust fund referred to in section 15.1 (3) is not a delegation of authority with respect to the investment of trust property.

Interpretation of trust instrument in relation to sections 15.1 to 15.5

15.6 For the purposes of sections 15.1 to 15.5 and any investment made after the coming into force of this section, if the terms of the instrument that created a trust express the powers of the trustee as powers to invest property of the trust in the investments permitted under section 15 as that section read at any time before its repeal, the instrument is to be interpreted as authorizing the investments permitted under sections 15.1 to 15.5, unless a particular investment would be expressly authorized or expressly prohibited by the terms of the instrument.

Repealed

16-17 [Repealed 2002-33-24.]

Corporate trustee not to invest trust money in own securities

17.1 Except as provided in section 15.1 (3), a corporation that is a trustee must not invest trust money in its own securities.

Repealed

18 [Repealed 2002-33-24.]

Depositories

19 A trustee may, pending the investment of trust money, deposit it during a time that is reasonable in the circumstances in

(a) a bank, or

(b) a corporation that has a business authorization to carry on deposit business.

Repealed

20 [Repealed 2002-33-24.]

Instrument creating the trust

21 (1) The powers conferred by this Act relating to trustee investments are in addition to the powers conferred by any instrument creating the trust.

(2) Nothing in this Act relating to trustee investments authorizes a trustee to do anything the trustee is in express terms forbidden to do or to omit to do anything the trustee is in express terms directed to do by the instrument creating the trust.

Variation of trustee investments

22 (1) A trustee in the trustee's discretion may

(a) call in trust funds invested in securities other than those authorized by this Act and invest them in securities authorized by this Act, and

(b) vary any investments authorized by this Act.

(2) A trustee is not liable for a breach of trust merely because the trustee continues to hold an investment that since its acquisition by the trustee has ceased to be one authorized by the instrument of trust or by this Act.

(3) If a trustee has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced, the security is deemed to be an authorized investment for the smaller sum, and the trustee is only liable to make good the excess amount advanced, with interest.

Reorganization of corporation

23 (1) If a trustee holds securities of a corporation in which the trustee has properly invested money under this Act, the trustee may concur in a compromise, scheme or arrangement for

- (a) the reconstruction of the corporation or the winding up, sale or distribution of its assets,
- (b) the sale of all or part of the property and undertaking of the corporation to another corporation,
- (c) the amalgamation of the corporation with another corporation, or
- (d) the release, modification or variation of rights, privileges or liabilities attached to the securities or any of them,

in a similar manner as if the trustee were entitled to the securities beneficially, and may, if the securities are in all other respects reasonable and proper investments, accept securities of any denomination or description of the reconstructed, purchasing or new corporation in place of or in exchange for all or any of the original securities.

(2) A trustee is not responsible for loss caused by an act or thing done in good faith under subsection (1), and the trustee may, if the securities accepted under that subsection are in all other respects reasonable and proper investments, retain them for any period for which the trustee could have properly retained the original securities.

Income for maintenance of infant

24 (1) If property is held by trustees in trust for an infant, either absolutely or contingently on the infant reaching 19 years of age or on the occurrence of any event before the infant reaches that age, the trustees may, at their sole discretion, pay to any guardians of the infant or otherwise apply for or toward the infant's maintenance or education, all or part of the income to which the infant may be entitled in respect of the property, whether or not there is a fund applicable to the same purpose or any other person bound by law to provide for the infant's maintenance or education.

(2) The trustees must accumulate all the residue of the income referred to in subsection (1) by way of compound interest, by investing it and the resulting income of it from time to time in proper securities, for the benefit of the person who will ultimately become entitled to the property from which the accumulation has arisen, but the trustees may at any time, if it appears expedient to them, apply all or part of the accumulations as if they were part of the income arising in the then current year.

Sale of property to maintain infant

25 (1) If any property is held by trustees in trust for an infant, either absolutely or contingently on the infant reaching 19 years of age or on the occurrence of any event before the infant reaches that age, and if the income arising from that property is insufficient for the maintenance and education of the infant, the trustees may, by leave

of the court to be obtained in a summary manner, sell and dispose of any portion of the property, and pay any guardians of the infant or otherwise apply for or toward the infant's maintenance or education all or part of the money arising from the sale.

(2) If all of the money arising from the sale of the property referred to in subsection (1) is not immediately required for the maintenance and education of the infant, the trustees must

(a) invest the surplus money and the resulting income from it from time to time in proper securities,

(b) apply the money referred to in paragraph (a) and the proceeds of it from time to time for the education and maintenance of the infant, and

(c) hold the residue of the money and interest on it not required for the education and maintenance of the infant for the benefit of the person who will ultimately become entitled to the property from which the money and interest have arisen.

Conveyance and receipt of trustees gives good title

26 On any sale made under section 25, the deed of conveyance duly executed by the trustees and the receipt for the purchase money duly signed by the trustees convey a good title to the purchaser of the property purporting to be conveyed, and effectually exonerate the person paying the money from seeing to its application or from being answerable for its loss or misapplication.

Power to appoint new trustees

27 (1) If a trustee, either original or substituted and whether appointed by any court or otherwise, is dead, remains out of British Columbia for more than 12 months, wishes to be discharged from all or any of the trusts or powers reposed in or conferred on the trustee, refuses or is unfit to act in them, or is incapable of acting in them, then the person nominated for the purpose of appointing new trustees by any instrument creating the trust, or if there is no such person or no such person able and willing to act, then the surviving or continuing trustees for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing appoint another person or persons to be a trustee or trustees in the place of the trustee who is dead, remains out of British Columbia, wishes to be discharged, refuses or is unfit or incapable.

(2) On the appointment of a new trustee for all or part of trust property,

(a) the number of trustees may be increased,

(b) a separate set of trustees may be appointed for a part of the trust property held on trusts distinct from those relating to any other part of the trust property, even though no new trustees are to be appointed for other parts of the trust property, and an existing trustee may be appointed or

remain one of the separate set of trustees, or if only one trustee was originally appointed, then one separate trustee may be so appointed for the part of the trust property held on trusts distinct from those relating to any other part of the trust property,

(c) it is not obligatory to appoint more than one new trustee if only one trustee was originally appointed, or to fill up the original number of trustees if more than 2 trustees were originally appointed but, except in a case in which only one trustee was originally appointed, a trustee must not be discharged under this section from the trustee's trust unless there will be at least 2 trustees to perform the trust, and

(d) the assurances or things required for vesting the trust property or any part of it jointly in the persons who are the trustees must be executed or done.

(3) A new trustee appointed under this section, as well before as after all the trust property becomes by law, by assurance or otherwise vested in the trustee, has the same powers, authorities and discretions, and may in all respects act as if the trustee had been originally appointed a trustee by any instrument creating the trust.

(4) The provisions of this section relating to

(a) a trustee who is dead include the case of a person who is nominated a trustee in a will but who dies before the will-maker, and

(b) a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(5) This section applies only if and as far as a contrary intention is not expressed in any instrument creating the trust, and has effect subject to the terms of that instrument.

Retirement of trustee

28 (1) If there are more than 2 trustees and one of them by deed declares a wish to be discharged from the trust, and if the co-trustees and any other person empowered to appoint trustees by deed consent to the discharge, and to the vesting in the co-trustees alone of the trust property, then the trustee who wishes to be discharged is deemed to have retired from the trust, and is, by the deed, discharged from the trust under this Act, without a new trustee being appointed in the trustee's place.

(2) The assurances or things required for vesting the trust property in the continuing trustees alone must be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in any instrument creating the trust, and has effect subject to the terms of that instrument.

Vesting of trust property in trustees

29 (1) If a deed by which a new trustee is appointed to perform a trust contains a declaration by the appointor to the effect that an estate or interest in land subject to

the trust, or in a chattel subject to the trust, or the right to recover and receive a debt or other thing in action subject to the trust, vests in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration operates, without a conveyance or assignment, to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) If a deed by which a retiring trustee is discharged under this Act contains a declaration referred to in this section by the retiring and continuing trustees, and by any other person, if any, empowered to appoint trustees, that declaration operates, without a conveyance or assignment, to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to a share, stock, annuity or property that is only transferable in books kept by a company or other body, or in a manner directed under any Act of the Legislature.

(4) For the purposes of registration of the deed in a land title office, the persons making the declaration are deemed to be the conveying parties, and the conveyance is deemed to be made by them under a power conferred by this Act.

(5) This section applies only to deeds executed after July 1, 1905.

Removal of trustees on application

30 A trustee or receiver appointed by any court may be removed and a trustee, trustees or receiver substituted in place of the trustee or receiver, at any time on application to the court by any trust beneficiary who is not under legal disability, with the consent and approval of a majority in interest and number of the trust beneficiaries who are also not under legal disability.

Power of court to appoint new trustees

31 If it is expedient to appoint a new trustee and it is found inexpedient, difficult or impracticable to do so without the assistance of the court, it is lawful for the court to make an order appointing a new trustee or trustees, whether there is an existing trustee or not at the time of making the order, and either in substitution for or in addition to any existing trustees.

Rights and powers of new trustees

32 The persons who, on the making of an order under section 31, are trustees have the same rights and powers as they would have had if appointed by a decree or judgment in a proceeding.

Power of court to vest land in new trustees

33 The court, on making an order appointing a new trustee, may, by that order or a subsequent order, direct that land subject to the trust vests in the person or persons who on the appointment are trustees for the estate that the court directs and the order has the same effect as if the persons who before the order were the trustees, if any, had duly executed all proper conveyances of the land for the estate.

Power of new trustees to transfer stock or chose in action

34 The court, on making an order appointing a new trustee, may, by that order or a subsequent order, vest the right to call for a transfer of a stock subject to the trust, or to receive the dividends or income of it, or to sue for or recover a chose in action subject to the trust, or any interest in respect of it, in the person or persons who on the appointment are trustees.

New trustees in place of persons convicted of indictable offence

35 (1) If a person is jointly or solely seised or possessed of land, or entitled to stock on a trust, and the person has been or is convicted of an indictable offence, the court may, on proof of the conviction, appoint a person to be a trustee in the place of the convict, and make an order for vesting the land, or the right to transfer the stock, and to receive the dividends or income of it, in the person appointed.

(2) An order made under subsection (1) has the same effect with respect to land as if the convict trustee had been free from any disability, and had duly executed a conveyance or assignment of the convict trustee's estate and interest in it.

Persons who may apply for orders

36 (1) An order under any of the above provisions for the appointment of a new trustee, or concerning land, stock or a chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or chose in action, whether under disability or not, or on the application of a person duly appointed as a trustee of it.

(2) An order under any of the above provisions concerning land, stock or a chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Old trustees not discharged from liability

37 The appointment by the court of new trustees, and any conveyance, assignment or transfer mentioned above, operates no further or otherwise as a discharge to a former or continuing trustee than an appointment of new trustees under a power for that purpose contained in an instrument would have done.

Repealed

38 [Repealed 2009-13-258.]

Distribution of estate under direction of court

39 (1) A trustee, executor or administrator may, without commencing any other proceeding, apply by petition to the court for an order that

(a) the trustee, executor or administrator be at liberty to distribute the proceeds of the estate the trustee, executor or administrator is administering among the parties entitled to them, having regard only to the claims of the persons the trustee, executor or administrator has been able to ascertain to be entitled and whose residence or address the trustee, executor or administrator has been able to find out, and

(b) the trustee, executor or administrator is not be liable for the proceeds of the estate or assets, or any part of them, so distributed to persons of whose claim and residence or address the trustee did not have notice at the time of the distribution.

(2) On an application made under subsection (1), the court may give directions with regard to the time for distribution and the notice that must be given to bring the fact of distribution to the notice of persons who may possibly be interested in the distribution.

(3) This section does not prejudice the right of any creditor or claimant to follow the proceeds of the trust estate or assets, as the case may be, or any part of them, into the hands of the person or persons who may have received them.

Payment by trustees

40 (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, other than a trust in favour of a minor, may pay the money or securities into the court, and the money or securities must, subject to the Rules of Court, be dealt with according to the orders of the court.

(2) The receipt or certificate of the proper officer is a sufficient discharge to trustees for the money or securities paid into court under subsection (1).

(3) If money or securities are vested in persons as trustees, the money or securities do not belong to a trust in favour of a minor and the majority of those persons wish to pay the money or securities into court, but the concurrence of the others cannot be obtained, the court or a judge may order the payment into court to be made by the majority without the concurrence of the others.

(4) If the money or securities for which payment into court is or may be ordered under subsection (3) are deposited with a banker, broker or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court, and every transfer, payment and delivery made

under that order is valid and takes effect as if made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

(5) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust in favour of a minor may pay the money or securities to the Public Guardian and Trustee in trust for the minor.

(6) If money or securities referred to in subsection (5) are vested in persons as trustees, and the majority of those persons wish to pay the money or securities to the Public Guardian and Trustee, but the concurrence of the others cannot be obtained, the court or a judge may order the payment to the Public Guardian and Trustee to be made by the majority without the concurrence of the others.

(7) If the money or securities for which payment to the Public Guardian and Trustee is or may be ordered under subsection (6) are deposited with a banker, broker or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment to the Public Guardian and Trustee, and every transfer, payment and delivery made under that order is valid and takes effect as if made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

Supreme Court orders for application of trust assets in court

41 (1) On a petition made in a summary way by the parties that to the court appear competent and necessary for that purpose, the court may make the orders it considers fit

(a) in respect of the trust money, stocks or securities paid in, transferred and deposited under section 40,

(b) for the investment and payment of the money, or of any dividends or interest on the stock or securities,

(c) for the transfer and delivery out of the stocks and securities, and

(d) for the administration of the trusts generally.

(2) Service of the petition must be made on the persons that the court directs.

(3) An order made on the petition has the same effect, and must be enforced and is subject to rehearing and appeal, as if made in an action regularly commenced in the court.

(4) If it appears that the trust funds cannot be safely distributed without commencing an action, the court may direct that an action be commenced.

Power to make orders on application by majority of trustees

42 (1) If on any petition presented to the court in the matter of this Act it appears to the court before which the petition is heard that

(a) money, annuities, stocks or securities are vested in persons as trustees, executors or administrators or otherwise, on trusts within the meaning of this Act,

(b) the majority of those persons wish to pay that money into court, or to transfer or deliver the annuities, stocks or securities to or into the name of the registrar of the court, under this Act, and

(c) for any reason the concurrence of the others of them cannot be had,

the court may order and direct the transfer, payment or delivery to be made by the majority of those persons without the concurrence of the others of them.

(2) If the money or government or parliamentary securities are deposited with a banker, broker or other depository, the court may make the order that seems proper for payment or delivery of the money or government or parliamentary securities to the majority of the trustees, executors, administrators or other persons, for the purpose of being paid into court, or transferred or delivered to or into the name of the registrar of the court.

(3) A transfer of annuities, stocks or securities, and every payment of money or delivery of securities, under the order

(a) is as valid and effectual as if made on the authority or by the act of all the persons entitled to the annuities, stocks or securities so transferred, or the money or securities so paid or delivered, and

(b) fully protects and indemnifies all persons acting under the order.

Power to vest land of person of unsound mind

43 (1) If a person of unsound mind is seised or possessed of land on a trust or by way of mortgage, the court may order that the land be vested in the persons, in the manner and for the estate that it directs.

(2) The order has the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment of the land in the same manner for the same estate.

Power to deal with contingent rights of person of unsound mind

44 (1) If a person of unsound mind is entitled to a contingent right in land on a trust or by way of mortgage, the court may make an order wholly releasing the land from that contingent right, or disposing of the same to the persons the court directs.

(2) The order has the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

Power to deal with stock of person of unsound mind

45 (1) If a person of unsound mind is solely entitled to a stock or chose in action on a trust or by way of mortgage, the court may make an order vesting in any person the right to transfer the stock, or to receive the dividends or income of it, or to sue for and recover the chose in action or an interest in respect of it.

(2) If a person is entitled jointly with a person of unsound mind to a stock or chose in action on a trust or by way of mortgage, the court may make an order vesting the right to transfer the stock, or to receive the dividends or income of it, or to sue for and recover the chose in action or an interest in respect of it, in the person jointly entitled or in that person together with any other person the court appoints.

Power to deal with stock vested in personal representative

46 If a stock is standing in the name of a deceased person whose personal representative is a person of unsound mind, or if a chose in action is vested in a person of unsound mind as the personal representative of a deceased person, the court may make an order vesting the right to transfer the stock, or to receive the dividends or income of it, or to sue for and recover the chose in action or an interest in respect of it, in any person the court appoints.

Power to deal with stock of infant trustee

47 (1) If an infant is solely entitled to a stock on a trust, the court may make an order vesting in any person the right to transfer the stock, or to receive the dividends or income of it.

(2) If an infant is entitled jointly with another person to a stock on a trust, the court may make an order vesting the right to transfer the stock or to receive the dividends or income of it, either in the persons jointly entitled with the infant, or in the infant or the persons jointly entitled together with any other person the court appoints.

Power to vest land of infant trustee or mortgagee

48 (1) If an infant is seised or possessed of land on a trust or by way of mortgage, the court may make an order vesting the land in the persons, in the manner and for the estate that the court directs.

(2) The order has the same effect as if the infant trustee or mortgagee had been 19 years of age, and had duly executed a conveyance or assignment of the land in the same manner for the same estate.

Power to deal with contingent rights of infant trustee or mortgagee

49 (1) If an infant is entitled to a contingent right in land on a trust or by way of mortgage, the court may make an order wholly releasing the land from the contingent right, or disposing of it to the persons the court directs.

(2) The order has the same effect as if the infant had been 19 years of age, and had duly executed a deed so releasing or disposing of the contingent right.

Payment of money of minors and persons of unsound mind

50 (1) If a person of unsound mind is entitled to money payable in discharge of any land, stock or chose in action conveyed, assigned or transferred under this Act, the person by whom the money is payable may pay it into the court, under the Rules of Court in that behalf, in trust in any cause then pending concerning that money, or, if there is no such cause, to the credit of the person of unsound mind, subject to the order or disposition of the court.

(2) The court may, on petition in a summary way, order money that is paid into court under subsection (1) to be invested, and may order payment or distribution of it, or payment of the dividends of it, that seems reasonable to the court.

(3) An officer of the court who receives the money referred to in subsection (1) must give to the person paying it a receipt for the money, and the receipt is an effectual discharge for the money expressed to have been received.

(4) If a minor is entitled to money payable in discharge of any land, stock or chose in action conveyed, assigned or transferred under this Act, the person by whom the money is payable may pay it to the Public Guardian and Trustee in trust for the minor.

Court may convey estate of trustee out of jurisdiction

51 (1) If a person solely seised or possessed of land on a trust is out of the jurisdiction of the court or cannot be found, the court may make an order vesting the land in the persons, in the manner and for the estate that the court directs.

(2) The order has the same effect as if the trustee had duly executed a conveyance or assignment of the land in the same manner and for the same estate.

Order if parties seised of land jointly with parties out of jurisdiction

52 (1) If a person is seised or possessed of land jointly with a person who is out of the jurisdiction of the court or who cannot be found, the court may make an order vesting the land in the person jointly seised or possessed, or in that person together with any other person, in the manner and for the estate that the court directs.

(2) The order has the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance or assignment of the land in the same manner and for the same estate.

Contingent rights of sole trustee out of jurisdiction

53 (1) If a person solely entitled to a contingent right in land on a trust is out of the jurisdiction of the court or cannot be found, the court may make an order wholly releasing the land from the contingent right, or disposing of it to the persons the court directs.

(2) The order has the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

Order if persons are jointly entitled with others out of jurisdiction to contingent right

54 (1) If a person jointly entitled with any other person to a contingent right in land on a trust is out of the jurisdiction of the court or cannot be found, the court may make an order disposing of the contingent right of the person who is out of the jurisdiction, or who cannot be found, to the person jointly entitled or to that person together with any other person.

(2) The order has the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

Uncertainty as to survivorship

55 (1) If there have been 2 or more persons jointly seised or possessed of land on a trust, and it is uncertain which of the trustees was the survivor, the court may make an order vesting the land in the persons, in the manner and for the estate that the court directs.

(2) The order has the same effect as if the survivor of the trustees had duly executed a conveyance or assignment of the land in the same manner and for the same estate.

Uncertainty whether last trustee alive

56 (1) If one or more persons have been seised or possessed of land on a trust, and it is not known whether the trustee last known to have been seised or possessed is alive or dead, the court may make an order vesting the land in the persons, in the manner and for the estate that the court directs.

(2) The order has the same effect as if the last trustee had duly executed a conveyance or assignment of the land in the same manner and for the same estate.

If trustee dies without heir

57 (1) If a person seised of land on a trust has died intestate as to that land and without an heir, or has died and it is not known who is the person's heir or devisee, the court may make an order vesting the land in the persons, in the manner and for the estate that the court directs.

(2) The order has the same effect as if the heir or devisee of the trustee had duly executed a conveyance of the land in the same manner and for the same estate.

Releasing contingent right of unborn trustee

58 If any land is subject to a contingent right in an unborn person or class of unborn persons, who on coming into existence would, in respect of it, become seised or possessed of the land on a trust, the court may make an order that

(a) wholly releases and discharges the land from the contingent right in the unborn person or class of unborn persons, or

(b) vests in any person the estate that the unborn person or class of unborn persons would, on coming into existence, be seized or possessed of in the land.

Order for vesting estate on refusal of trustee to convey or release

59 (1) If a person is jointly or solely seized or possessed of any land or entitled to a contingent right in it on a trust, and a demand has been made on the trustee by a person entitled to require a conveyance or assignment of the land, or the person's duly authorized agent, requiring the trustee to convey or assign it, or to release the contingent right, the court, if satisfied that the trustee has wilfully refused or neglected to convey or assign the land for 28 days after the demand, may make an order

(a) vesting the land in the person, in the manner and for the estate that the court directs, or

(b) releasing the contingent right in the manner the court directs.

(2) The order has the same effect as if the trustee had duly executed a conveyance or assignment of the land, or a release of the right, in the same manner and for the same estate.

Court may make decree in absence of trustee

60 (1) If in a proceeding commenced or to be commenced in the court it is made to appear to the court, by affidavit, that a diligent search and inquiry has been made after a person made a defendant, who is only a trustee, to serve the person with the process of the court, and that the person cannot be found, the court may hear and determine the cause, and may make an absolute decree in it against every person who appears to the court to be only a trustee, and not otherwise concerned in interest in the matter in question, in the same manner as if the trustee had been duly served with the process of the court, had appeared and filed the trustee's answer to it, and had appeared by counsel at the hearing of the cause.

(2) A decree made under subsection (1) does not bind, affect or in any way prejudice any person against whom it is made, without service of process on the person, the person's heirs, executors or administrators, for or in respect of an estate, right or interest which that person has at the time of making the decree for the person's own use or benefit, or otherwise than as trustee.

Power to convey in place of mortgagee

61 (1) If a person to whom land has been conveyed by way of mortgage has died without having entered into possession or into the receipt of the rents and profits of the land, and the money due in respect of the mortgage has been paid to a person entitled to receive it or the person entitled consents to an order for reconveyance of the

land, then in the following cases the court may make an order vesting the land in the persons, in the manner and for the estate that the court directs:

(a) an heir or devisee of the mortgagee is out of the jurisdiction of the court or cannot be found;

(b) an heir or devisee of the mortgagee has, on a demand by a person entitled to require a conveyance of the land or by the authorized agent of that person, stated in writing that the heir or devisee will not convey it or will not convey it for 28 days after a proper deed for conveying the land has been tendered to the heir or devisee by the person entitled or by the agent;

(c) it is uncertain which of several devisees of the mortgagee was the survivor;

(d) it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir of the mortgagee, whether the survivor or heir is living or dead;

(e) the mortgagee has died intestate as to the land and without an heir, or has died and it is not known who is the mortgagee's heir or devisee.

(2) The order of the court made under subsection (1) has the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance or assignment of the land in the same manner and for the same estate.

Power to appoint person to convey

62 (1) If the court is, under this Act, able to make an order having the effect of a conveyance or assignment of land, or having the effect of a release or disposition of the contingent right of a person, born or unborn, it is also lawful for the court, if it is considered more convenient, to make an order appointing a person to convey or assign the land or release or dispose of the contingent right.

(2) The conveyance, assignment, release or disposition of the person appointed under subsection (1) has, when acting in accordance with the terms of the order by which the person is appointed, the same effect in conveying or assigning the land or releasing or disposing of the contingent right, as an order of the court would have had in the particular case under this Act.

(3) If the court is, under this Act, able to make an order vesting in a person the right to transfer stock of a corporation, joint stock company or incorporated society, it is also lawful for the court, if it is considered more convenient, to make an order directing the registrar or one of the district registrars of the court at once to transfer or join in transferring the stock to the person to be named in the order.

(4) This Act is a full and complete indemnity and discharge to all persons for all acts done or permitted to be done under it.

Failure to transfer stock for 28 days

63 If a person neglects or refuses to transfer stock, receive the dividends or income of it, or sue for or recover a chose in action or an interest in respect of the stock, for 28 days after an order of the court or a judge for that purpose has been served on the person, the court may make an order vesting all the right of that person to transfer the stock, receive the dividends or income of the stock, or sue for and recover the chose in action or an interest in respect of the stock, in the persons the court appoints.

Executor's failure to transfer stock

64 If a stock is standing in the sole name of a deceased person, whose personal representative neglects or refuses to transfer the stock or receive the dividends or income of it for 28 days after an order of the court for that purpose has been served on the personal representative, the court may make an order vesting the right to transfer the stock or to receive the dividends or income of it, in any person the court appoints.

Trustee of stock out of jurisdiction

65 (1) If a person is jointly entitled to a stock or chose in action on a trust with a person

- (a) who is out of the jurisdiction of the court,
- (b) who cannot be found, or
- (c) with respect to whom it is uncertain whether the person is alive or dead,

the court may make an order vesting the right to transfer the stock, receive the dividends or income of it, or to sue for or recover the chose in action or an interest in respect of it, in the persons so jointly entitled, or in the persons together with any person the court appoints.

(2) If a sole trustee of a stock or chose in action is out of the jurisdiction of the court, or cannot be found, or it is uncertain whether the sole trustee is alive or dead, the court may make an order vesting the right to transfer the stock, receive the dividends or income of it, or to sue for and recover the chose in action or an interest in respect of it, in any person the court appoints.

Trustee of stock refusing to transfer

66 If a sole trustee of a stock or chose in action neglects or refuses to transfer the stock, receive the dividends or income of it, or sue for or recover the chose in action or an interest in respect of it, according to the direction of the person absolutely entitled to it, for 28 days next after a request in writing for that purpose has been made to the trustee by the person absolutely entitled to it, the court may make an order vesting the sole right to transfer the stock, or to receive the dividends or income of it, or to sue for and recover the chose in action or an interest in respect of it, in the persons as the court appoints.

One of several trustees of stock refusing to transfer or deal with dividends

67 If any one of the trustees of a stock or chose in action neglects or refuses to transfer the stock, receive the dividends or income of it, or sue for or recover the chose in action according to the directions of the person absolutely entitled to it, for 28 days next after a request in writing for that purpose has been made to the trustee by that person, the court may make an order vesting the right to transfer the stock, receive the dividends or income of it, or sue for and recover the chose in action, in the other trustees of the stock or chose in action, or in any person whom the court may appoint jointly with the other trustees.

Stock standing in name of deceased person

68 If stock is standing in the sole name of a deceased person whose personal representative is out of the jurisdiction of the court, or cannot be found, or it is uncertain whether the personal representative is alive or dead, or the personal representative neglects or refuses to transfer the stock or receive the dividends or income of it, according to the direction of the person absolutely entitled to the stock, for 28 days after a request in writing for that purpose has been made to the personal representative by the person so entitled, the court may make an order vesting the right to transfer the stock or to receive the dividends or income of it, in any person the court appoints.

Effect of order vesting legal right to transfer stock

69 (1) If an order has been made vesting the right to a stock in a person appointed by the court, the legal right vests accordingly and the person appointed is authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of the stock into the person's name or otherwise, or relating to the receipt of the dividends of the stock, to the extent and in accordance with the terms of the order.

(2) All companies and associations, and all persons, are equally bound and compellable to comply with the requisitions of a person appointed under subsection (1), to the extent and in accordance with the terms of the order as they would have been bound and compellable to comply with the requisitions of the person in whose place the appointment has been made, and are equally indemnified in complying with the requisition of a person so appointed as they would have been indemnified in complying with the requisition of the person in whose place the appointment has been made.

(3) After notice in writing of the order of the court concerning stock has been given, it is not lawful for a company or association, or a person having received that notice, to act on the requisition of the person in whose place an appointment has been made in any matter relating to the transfer of the stock or the payment of the dividends or produce of the stock.

Effect of order vesting chose in action

70 If an order has been made by the court, vesting the legal right to sue for or recover a chose in action or an interest in respect of it in a person, that legal right vests accordingly, and it is lawful for the person appointed to carry on, commence and prosecute in the person's own name, any proceeding at law or in equity for the recovery of the chose in action, in the same manner that the person in whose place an appointment has been made could have sued for or recovered the chose in action.

Inheritance if person holds in trust or by mortgage

71 (1) If an estate or interest of inheritance, or limited to the heir as special occupant in any tenements or hereditaments, corporeal or incorporeal, is vested on a trust or by way of mortgage in a person solely, then on the person's death and despite any testamentary disposition, it devolves to and becomes vested in the person's personal representative as if it were a chattel real vesting in the personal representative.

(2) The personal representative referred to in subsection (1) has all the similar powers for one only of several joint personal representatives, for a single personal representative, and for all the personal representatives together, to dispose and otherwise deal with the estate or interest referred to in that subsection, with all the similar incidents, but subject to all the similar rights, equities and obligations, as if the estate or interest were a chattel real vesting in the representative.

(3) For the purpose of this section, the personal representative of the deceased is deemed in law to be the heir and assign within the meaning of all trusts and powers.

(4) This section applies only in cases of deaths after April 17, 1896.

Conveyance of real estate or agreement for sale by deceased

72 (1) If a person has entered a contract in writing for the sale and conveyance of land or for an estate or interest in the land, and the person has died intestate, or without providing by will for the conveyance of the land, estate or interest to the person entitled or to become entitled to the conveyance under the contract, then, where if the deceased were alive, the person would be liable to execute a conveyance, the executor, administrator or administrator with the will annexed, as the case may be, of the deceased must make and give to the person entitled to it a good and sufficient conveyance of the estate and of a nature that the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor.

(2) A conveyance under subsection (1) is as valid and effectual as if the deceased were alive at the time of its making and had executed it, but does not have any further validity.

Court to declare trusts in certain cases

73 (1) If a decree is made by the court for the specific performance of a contract concerning land or for the partition or exchange of land, or generally if a decree is made

for the conveyance or assignment of land, either in cases arising out of the doctrine of election or otherwise, the court may order

(a) that any party to the proceeding in which the decree is made is a trustee of the land or part of it, within the meaning of this Act, or

(b) with respect to the interests of unborn persons who might claim under

- (i) any party to the proceeding referred to in paragraph (a), or
- (ii) the will or voluntary settlement of a person deceased who was during the person's lifetime a party to the contract or transactions concerning which the decree is made,

that the interests of unborn persons are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act.

(2) After making an order under subsection (1), the court may make the order, as to the estates, rights and interests of those persons, born or unborn, that the court might under this Act make concerning the estates, rights and interests of trustees born or unborn.

Power to direct stock transfers

74 (1) The court may make orders and give directions concerning the manner in which the right to a stock or chose in action vested under the *Wills, Estates and Succession Act* or this Act must be exercised.

(2) A person in whom a right referred to in subsection (1) is vested is then compellable to obey the directions and orders by the same process as that by which other orders under this Act are enforced.

Presentation of petition, evidence and notice

75 A person entitled as described above to apply for an order from the court may present a petition to the court for the order to which the person believes to be entitled, and may give evidence by affidavit or otherwise in support of the petition before the court, and may serve notice of the petition on any other person who the person believes to be entitled to service of it.

Procedure on hearing

76 On hearing the motion or petition, the court, if it is considered necessary, may direct a reference to inquire into any facts that require an investigation, or the court may direct the motion or petition to stand over, to enable the petitioner to adduce evidence before the court, or to enable notice of the motion or petition to be served on any person.

Court may dismiss petition

77 On hearing the motion or petition, the court may dismiss it with or without costs, or make an order in accordance with this Act.

Power to make order in a cause

78 If in a cause or matter, either by the evidence there adduced, by the admission of the parties, or by a report of the registrar or one of the district registrars of the court, the facts necessary for an order under this Act appear to the court to be sufficiently proved, the court, either on the hearing of the cause or of a petition or motion in the cause or matter, may make the order under this Act.

Order of court as conclusive evidence

79 (1) If an order is made under this Act by the court for the purpose of conveying or assigning land, or of releasing or disposing of a contingent right, and the order is founded on

- (a) an allegation of the personal incapacity of a trustee or mortgagee,
- (b) an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the court or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee, is alive or dead, or
- (c) an allegation that a trustee or mortgagee has died intestate without an heir, or has died and it is not known who is the trustee's or mortgagee's heir or devisee,

then the fact that the court has made an order on the allegation is conclusive evidence of the matter so alleged in all courts on a question as to the legal validity of the order.

(2) Subsection (1) does not prevent the court from directing a reconveyance or reassignment of land conveyed or assigned by an order under this Act, or a redistribution of a contingent right conveyed or disposed of by the order.

(3) The court may direct any party to a proceeding concerning the land or contingent right referred to in subsection (1) to pay any costs occasioned by an order under this Act, if the order appears to have been improperly obtained.

Application to trustees of charities and societies

80 The court may exercise the powers conferred by this Act for the purpose of vesting any land, stock or chose in action in the trustees of a charity or society over which the court would have jurisdiction on an action brought, whether the trustees have been duly appointed

- (a) by a power contained in a deed or instrument,
- (b) by the decree of the court, or
- (c) by order made on a petition to the court under a statute authorizing the court to make an order to that effect in a summary way on petition.

Court may order vesting of estate after decree or order for sale

81 (1) If a decree or order is made by the Supreme Court, or by any other court of competent jurisdiction in British Columbia, directing the sale of land for any purpose, a person seised or possessed of the land, or entitled to a contingent right in it, who is a party to the action or proceeding in which the decree or order has been made, and bound by it, or being otherwise bound by the decree or order, is deemed to be so seised, possessed or entitled, as the case may be, on a trust within the meaning of this Act.

(2) In that case, the Supreme Court, if it thinks it expedient to carry the sale into effect, may make an order vesting the land or a part of it for the estate the court thinks fit, either in a purchaser or in any other person the court directs.

(3) An order under subsection (2) has the same effect as if the person seised, possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of the land for that estate.

Effect of orders vesting rights to stock

82 (1) If an order that is, or purports to be, made under this Act is made by the court vesting the right to a stock, the right to transfer a stock or the right to call for the transfer of a stock, in a person, the legal right to transfer the stock vests accordingly.

(2) A person appointed under subsection (1) is authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of the stock into the person's name or otherwise, to the extent and in accordance with the terms of the order.

(3) All companies and associations, and all persons, are equally bound and compellable to comply with the requisitions of a person appointed under subsection (1), to the extent and in accordance with the terms of the order, as they would have been bound and compellable to comply with the requisitions of the person in whose place the appointment is made.

Indemnity to companies obeying

83 (1) An order made or to be made, that is or purports to be made under this Act by the court, and duly passed and entered, is a complete indemnity to all companies, associations and persons for an act done under it.

(2) It is not necessary for a company, association or person to inquire concerning the propriety of an order referred to in subsection (1), or whether the court had jurisdiction to make the order.

Trial of petitioners rights

84 The court may postpone making an order on a petition presented to the court under this Act until the right of the petitioner has been declared in a proceeding commenced for that purpose.

Costs of proceedings

85 The court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, assignments and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the land or personal estate, or the rents or produce of them, in respect of which they must be made, or in the manner the court thinks proper.

Application for directions

86 (1) A trustee, executor or administrator may, without commencing any other proceeding, apply by petition to the court, or by summons on a written statement to a Supreme Court judge in chambers, for the opinion, advice or direction of the court on a question respecting the management or administration of the trust property or the assets of a will-maker or intestate.

(2) The application under subsection (1) must be served on, or the hearing attended by all persons interested in the application, or by those that the court thinks expedient.

(3) The costs of an application under subsection (1) are in the discretion of the court.

Effect and exception

87 (1) The trustee, executor or administrator, acting on the opinion, advice or direction given by the court, is deemed, so far as regards their own responsibility, to have discharged their duty as trustee, executor or administrator in the subject matter of the application.

(2) This Act does not extend to indemnify a trustee, executor or administrator in respect of an act done in accordance with the opinion, advice or direction referred to in subsection (1) if the trustee, executor or administrator has been guilty of fraud, wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

Setting remuneration of trustees and guardians

88 (1) A trustee under a deed, settlement or will, an executor or administrator, a guardian appointed by any court, a testamentary guardian, or any other trustee, however the trust is created, is entitled to, and it is lawful for the Supreme Court, or a registrar of that court if so directed by the court, to allow them a fair and reasonable allowance, not exceeding 5% on the gross aggregate value, including capital and income, of all the assets of the estate by way of remuneration for their care, pains and trouble and their time spent in and about the trusteeship, executorship, guardianship or administration of the estate and effects vested in them under any will or grant of administration, and in administering, disposing of and arranging and settling the same, and generally in arranging and settling the affairs of the estate as the court, or a registrar of the court if so directed by the court thinks proper.

(2) The court or a registrar of the court if so directed by the court, may make an order under subsection (1) from time to time, and the amount of remuneration must be allowed to an executor, trustee, guardian or administrator, in passing their accounts, in addition to any other allowances for expenses actually incurred to which the trustee, executor, guardian or administrator may by law be entitled.

(3) A person entitled to an allowance under subsection (1) may apply annually to the Supreme Court for a care and management fee and the court may allow a fee not exceeding 0.4% of the average market value of the assets.

Application for remuneration

89 The court may, on application to it for the purpose, settle or direct the registrar to settle the amount of the compensation, although the estate is not before the court in an action.

Application

90 Nothing in section 88 or 89 applies in any case in which the allowance is set by the instrument creating the trust.

Review of order or certificate of registrar

91 (1) An order or certificate made by a registrar under section 88 or 89 is subject to review by the court on application by summons to be made before the expiration of 14 clear days after the entering of the order or the filing of the certificate.

(2) Unless varied or discharged by the court, the order or certificate is binding on the trustee, executor, administrator or guardian, and all parties interested in the trust estate.

Loans by trustees not breach of trust

92 (1) A trustee lawfully lending money on the security of property is not chargeable with breach of trust merely because of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court that

(a) in making the loan the trustee was acting on a report of the value of the property made by a person whom the trustee reasonably believed to be a valuator who was competent and independent of any owner of the property, whether the valuator carried on business in the locality where the property is located or elsewhere,

(b) the amount of the loan did not exceed 75% of the value of the property stated in the report, and

(c) the loan was made on the advice of the valuator expressed in the report.

(2) A trustee lending money on the security of any leasehold property is not chargeable with breach of trust only on the ground that in making the loan the trustee dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee is not chargeable with breach of trust only on the ground that in effecting the purchase of or in lending money on the security of any property the trustee has accepted a shorter title than the title that a purchaser is, in the absence of a special contract, entitled to require if, in the opinion of the court, the title accepted is such as a person acting with prudence and caution would have accepted.

Improper advance of trust money on mortgage

93 If a trustee improperly advances trust money on a mortgage security that would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced, the security is deemed to be an authorized investment for the smaller sum, and the trustee is only liable to make good the excess sum advanced, with interest.

Exoneration of trustees on powers of attorney

94 (1) A trustee acting or paying money in good faith under or in pursuance of a power of attorney is not liable for the act or payment because of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time the trustee acted or paid.

(2) This section does not affect the right of a person entitled to the money against the person to whom the payment is made, and the person entitled has the same remedy against the person to whom the payment is made as the person entitled would have had against the trustee.

Implied indemnity of trustees

95 A trustee, without prejudice to the provisions of any instrument creating the trust, is chargeable only for money and securities actually received by the trustee even though the trustee signed a receipt for the sake of conformity, and is answerable and accountable only for the trustee's own acts, receipts, neglects or defaults, and not for those of other trustees or a banker, broker or other person with whom trust money or securities may be deposited, nor for the insufficiency or deficiency of securities or any other loss, unless it happens through the trustee's own wilful default, and may reimburse themselves, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of the trustee's trusts or powers.

Jurisdiction of court to relieve trustee of breach of trust

96 If it appears to the court that a trustee, however appointed, is or may be personally liable for a breach of trust, whenever the transaction alleged to be a breach of trust occurred, but

has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which the trustee committed the breach, then the court may relieve the trustee either wholly or partly from that personal liability.

Appointment and remuneration of judicial trustees

97 (1) If an application is made to the court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a judicial trustee to be a trustee of that trust, either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all existing trustees.

(2) The administration of the property of a deceased person, whether a will-maker or intestate, is a trust, and the executor or administrator a trustee, within the meaning of this section and sections 96 and 98.

(3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, and in the absence of a nomination, or if the court is not satisfied of the fitness of a person so nominated, an official of the court may be appointed, and in any case a judicial trustee is subject to the control and supervision of the court as an officer of it.

(4) The court may, either on request or without request, give to a judicial trustee general or special directions in regard to the trust or its administration.

(5) A judicial trustee may be paid out of the trust property the remuneration, not exceeding the prescribed limits, that the court assigns in each case, subject to any rules under this Act respecting the application of that remuneration where the judicial trustee is an official of the court, and the remuneration so assigned to a judicial trustee, except as the court may for special reasons otherwise order, must cover all the judicial trustee's work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed must be audited, and a report on them made to the court by the persons specified by the rules made under section 98, and, in any case if the court so directs, an inquiry into the administration by a judicial trustee of a trust, or into a dealing or transaction of a judicial trustee, must be made in the manner specified by those rules.

(7) Until the rules are made and promulgated, the accounts of a judicial trustee must be audited and passed in accordance with this Act and the rules made under section 100.

Power to make rules

98 The Lieutenant Governor in Council may make rules for carrying section 97 into effect, and particularly

(a) for requiring judicial trustees, who are not officials of the court, to give security for the due application of trust property under their control,

- (b) respecting the safety of the trust property and its custody,
- (c) respecting the remuneration of judicial trustees and for setting and regulating the fees to be taken under this Act, so as to cover the expenses of the administration of this Act, and respecting the payment of such remuneration and fees out of the trust property, and, if the judicial trustee is an official of the court, respecting the application of the remuneration and fees payable to that official,
- (d) for dispensing with formal proof of fact in proper cases,
- (e) for facilitating the discharge by the court of administrative duties under this Act without judicial proceedings and otherwise regulating procedure under this Act and making it simple and inexpensive,
- (f) respecting the suspension or removal of a judicial trustee, the succession of another person to the office of a judicial trustee who may cease to hold office and the vesting in that person of trust property,
- (g) respecting the classes of trusts in which officials of the court are not to be judicial trustees, or are to be judicial trustees temporarily or conditionally,
- (h) respecting the procedure to be followed if the judicial trustee is executor or administrator,
- (i) for preventing employment by judicial trustees of other persons at the expense of the trust, except in cases of strict necessity, and
- (j) for the filing and auditing of the accounts of a trust of which a judicial trustee has been appointed.

Passing of trustee's accounts

- 99** (1) Subject to subsections (3), (4) and (7), an executor, administrator, trustee under a will and judicial trustee must
- (a) within 2 years from the date of the grant of probate or the grant of administration or from the date of their appointment, obtain an order for passing their first accounts, and
 - (b) at the times the court directs, pass their subsequent accounts.
- (2) Subject to subsection (3), every trustee, other than an executor, administrator, trustee under a will or judicial trustee,
- (a) may, at any time, obtain from the court an order for passing the trustee's first accounts, and
 - (b) must, at the times the court directs, pass the trustee's subsequent accounts.
- (3) Subsections (1) and (2) do not apply if

- (a) the accounts are approved or consented to in writing by all beneficiaries,
or
- (b) the court otherwise directs.

(4) An executor, administrator and trustee, including a judicial trustee, must pass their accounts annually within one month from the anniversary of the grant of probate, of the grant of administration or of their appointment, if so required by notice served on them at the instance of a person beneficially interested in the property covered by the trust.

(5) Despite subsection (4), the court may, on application, make an order it considers proper as to the time and manner of passing the accounts.

(6) If an executor, administrator or trustee fails to pass any accounts under this section or if the executor, administrator or trustee's accounts are incomplete or inaccurate,

- (a) the executor, administrator or trustee may be required to attend before the court to show cause why the account has not been passed or a proper proceeding in connection with it taken, and

- (b) proper directions, including the removal of a trustee and appointment of another and payment of costs, may be given at chambers or by adjournment into court.

(7) Subsections (1) and (2) do not apply to

- (a) the Public Guardian and Trustee, if appointed under Division 11 of Part 6 of the *Wills, Estates and Succession Act*, and

- (b) any executor, administrator or trustee under a will if the date of the grant of probate or grant of administration or of the appointment of the executor, administrator or trustee is before May 1, 1949.

Power to make rules

100 The Lieutenant Governor in Council may make rules for carrying into effect the provisions of sections 88, 89, 91 and 99.