

**CONSOLIDATION OF TRUSTEE ACT**  
R.S.N.W.T. 1988,c.T-8

*(Current to: August 2, 2013)*

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**

R.S.N.W.T. 1988,c.8(Supp.)

In force July 19, 1993: SI-008-93

S.N.W.T. 1994,c.29

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S.N.W.T. 1995,c.11

S.N.W.T. 1998,c.17

**AS AMENDED BY NUNAVUT STATUTES :**

S.Nu. 2011,c.10,s.38

s.38 in force March 10, 2011

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## TRUSTEE ACT

### INTERPRETATION AND APPLICATION

#### Definitions

**1.** (1) In this Act,

"judge" means a judge of the Nunavut Court of Justice; (*juge*)

"trustee" includes an executor, an administrator, a trustee whose trust arises by construction or implication of law, an express trustee and several joint trustees.  
(*fiduciaire*)

#### Application

(2) This Act does not apply to a person named as a trustee or alternate trustee in a trusteeship order made under the *Guardianship and Trusteeship Act* or to a person who becomes a trustee or alternate trustee by the operation of that Act.

S.N.W.T. 1994,c.29, s.67(2),(3),(4); S.Nu. 2011,c.10,s.38(2).

### INVESTMENTS

#### Authority of trustee to invest

**2.** Unless otherwise authorized or directed by an express provision of the law or of the will or other instrument creating the trust or defining the duties and powers of the trustee,

- (a) subject to paragraph (b), a trustee is authorized to invest in every kind of property, real, personal or mixed; and
- (b) in investing money for the benefit of another person, a trustee shall exercise the judgment and care that a person of prudence, discretion and intelligence would exercise as a trustee of the property of others.

#### Power to deposit pending investment of trust moneys

**3.** A trustee may, pending the investment of any trust money, deposit it during the time that is reasonable in the circumstances

- (a) in any bank or trust company; or
- (b) in any other corporation empowered to accept moneys for deposit that has been approved for that purpose by the Commissioner.

#### Application of sections 2 and 3

**4.** Sections 2 and 3 apply to trustees acting under trusts arising before, on or after June 25, 1971.

## RIGHTS AND LIABILITIES OF TRUSTEES

### Indemnity and reimbursement of trustees

**5.** Every deed, will or other document creating a trust either expressly or by implication shall without prejudice to the clauses actually contained in it be deemed to contain a clause in the following words or to the following effect:

That the trustee or trustees for the time being of the said deed, will or other instrument shall be respectively chargeable only for the moneys, stocks, funds and securities that they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity and shall be answerable and accountable only for their own acts, receipts, neglects or defaults and not for those of each other nor for any banker, broker or other person with whom any trust moneys or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds or securities nor for any other loss unless the same shall happen through their own wilful neglect or default respectively; and also that it shall be lawful for the trustee or trustees for the time being of the said deed, will or other instrument to reimburse himself or herself or themselves or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument.

### Appointment of new trustees

**6.** (1) Whenever it is expedient to appoint one or more trustees, and it is inexpedient, difficult or impracticable to do so without the assistance of the Nunavut Court of Justice, a judge may make an order

- (a) for the appointment of a new trustee or trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee; and
- (b) in particular, and without limiting the generality of paragraph (a), for the appointment of a new trustee in substitution for a trustee who is convicted of an indictable offence or is insolvent.

### Effect of order

(2) No order under subsection (1) or a consequential vesting order or conveyance shall operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under a power for that purpose contained in an instrument would have operated.

### Personal representative

(3) Nothing in this section gives the power to appoint a personal representative.  
S.Nu. 2011,c.10,s.38(3).

### Appointment of new trustees

**7.** (1) Where a trustee dies or wishes to be discharged from the trust or refuses or becomes unfit to act or incapable of acting in respect of the trust,



- (a) the person nominated for that purpose by the deed, will or other instrument creating the trust, if any, or
  - (b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or the personal representative of the last surviving and continuing trustee,
- may appoint a person or persons to be a trustee or trustees in place of that trustee.

#### Assignment and transfer of trust property

(2) When a new trustee or trustees is or are appointed under subsection (1), all the trust property that is vested in the surviving or continuing trustee or trustees or in the heirs, executors or administrators of any trustee or trustees shall as quickly as conveniently possible be assigned and transferred so that the trust property may be legally and effectually vested in the new trustee or trustees either solely or jointly with a surviving or continuing trustee or the surviving or continuing trustees as the case may require.

#### New trustees

(3) Every new trustee has before and after a conveyance, assignment or transfer made pursuant to subsection (2), and every trustee appointed by a judge, has the same powers, authorities and discretions, and shall in all respects act as if he or she had originally been nominated a trustee by the deed, will or other instrument creating the trust. S.Nu. 2011,c.10,s.38(3).

#### Effect of appointing new trustee

- 8.** On the appointment of a new trustee for the whole or any part of trust property
- (a) the number of trustees may be increased;
  - (b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part of the trust property notwithstanding that no new trustee or trustees is or are to be appointed for other parts of the trust property and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then one separate trustee may be so appointed for any such part of the trust property;
  - (c) it is not obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, a trustee is not discharged under section 7 from his or her trust unless there remain at least two trustees to perform the trust; and
  - (d) any assurance or thing required for vesting the trust property or any part of the trust property jointly in the persons who are the trustees shall be executed or done.

#### Powers of new trustee

**9.** Every new trustee appointed has before and after all the trust property becomes by law or by assurance or otherwise vested in the new trustee, the same powers, authorities and discretions and may in all respects act as if the new trustee had been originally appointed a trustee by the instrument, if any, creating the trust.

#### Interpretation of certain provisions

**10.** The provisions of this Act relative to a trustee who has died include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of section 7.

#### Application of sections 7 to 10

**11.** Sections 7 to 10 apply only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument.

#### Application

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

#### Discharge of retiring trustee

(2) Where there are more than two trustees, if

- (a) one of the trustees by deed declares that he or she wishes to be discharged from the trust, and
- (b) the co-trustees and any other person, if any, that is empowered to appoint trustees, consent by deed to the discharge and to the vesting of the trust property in the co-trustees alone,

the trustee wishing to be discharged shall be deemed to have retired from the trust and shall, by the deed, be discharged from the trust without any new trustee being appointed in his or her place.

#### Vesting of trust property

(3) Any assurance or thing required for vesting the trust property in the continuing trustees alone shall be executed or done.

#### Vesting of trust property in trustees without conveyance

**13.** (1) Where an instrument by which a new trustee is appointed to perform a trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel subject to the trust, or the right to recover and receive any debt or other thing in action subject to the trust shall vest in the persons who by virtue of the instrument become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment but subject to the *Land Titles Act*, operate to vest in these persons as joint tenants and for the purposes of the trust, that estate, interest or right.

### Operation of declaration

(2) Where an instrument by which a retiring trustee is discharged under this Act contains a declaration made under this section by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, that declaration, without any conveyance or assignment but subject to the conditions in subsection (1), operates 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.

### Transfer in books only

(3) This section does not extend to any share, stock, annuity or property transferable only in books kept by a company or other body, or in a manner established by or under any Act.

### Deeming provision

(4) For the purposes of registration of an instrument, the person or persons making the declaration shall be deemed to be the conveying party or parties and the conveyance shall be deemed to be made by him or her or them under a power conferred by this Act. R.S.N.W.T. 1988,c.8(Supp.),s.249.

### Interpretation

**14.** (1) For the purposes of subsection (2), the executor or administrator of the deceased shall be deemed in law to be his or her heirs and assigns within the meaning of all trusts and powers.

### Death of trustee

(2) Where an estate or interest of inheritance in real property is vested on an express trust in a person solely,

- (a) the estate or interest shall on the death of that person, notwithstanding any testamentary disposition, devolve to and become vested in the executor or administrator of that person in the same manner as if the estate or interest were personal estate vesting in the executor or administrator; and
- (b) accordingly, all the same powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with the estate or interest, belong to the executor or administrator of the deceased with all obligations as if it were personal estate vesting in the executor or administrator of the deceased.

## PURCHASE AND SALE

### Application

**15.** (1) Subsection (2) 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 and to the provisions contained in that instrument.

### Trust or power of sale

(2) Where 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

- (a) either subject to prior charges or not; and
- (b) either together or in lots by public auction or by private contract subject to any conditions respecting title or evidence of title or any 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.

### Depreciatory conditions

**16.** (1) No sale made by a trustee shall 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 as a result of the condition.

### Collusion

(2) No sale made by a trustee shall 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 when the contract for sale was made.

### Objection against title

(3) No purchaser on a sale made by a trustee shall be at liberty to make any objection against the title on the grounds mentioned in this section.

### Fee simple estates of bare trustee

**17.** On the death of a bare trustee of any corporeal or incorporeal hereditaments of which the trustee was seized in fee simple, the hereditaments vest in the legal personal representative of the trustee.

### Power of judge to make order

**18.** (1) Where in the management or administration of property vested in trustees, a sale, lease, mortgage, surrender, release or other disposition, or a purchase, investment, acquisition, expenditure or other transaction, is in the opinion of a judge expedient, but it cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the judge may by order confer on the

trustees, either generally or in any particular instance, the necessary power for this purpose, on the terms, and subject to the provisions and conditions, if any, that the judge thinks fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

#### Power of judge

(2) A judge may, from time to time, rescind or vary any order made under subsection (1), or may make any new further order.

#### Application to judge

(3) An application to a judge under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.  
S.Nu. 2011,c.10,s.38(3).

#### Discharge on payment

**19.** The *bona fide* payment of money to and the receipt of that money by any person to whom the money is payable on an express or implied trust, or for a limited purpose, and that payment to and receipt by the survivor or survivors of two or more mortgagees or holders or the executors or administrators of the survivor or survivors or his or her or their assigns, effectually discharges the person paying the money from seeing to the application or being answerable for the misapplication of the money, unless the contrary is expressly declared by the instrument creating the trust or security.

### VARIOUS POWERS AND LIABILITIES

#### Appointment of solicitor as agent

**20.** (1) A trustee may appoint a solicitor to be agent of the trustee to receive and give a discharge for any money, valuable consideration or property receivable by the trustee under the trust.

#### Breach of trust

(2) No trustee shall be chargeable with breach of trust by reason only of having made or concurred in making an appointment referred to in subsection (1), but nothing in this section exempts a trustee from any liability that the trustee would have incurred but for this section for permitting the money, valuable consideration or property referred to in subsection (1) to remain in the hands or under the control of the solicitor for a period longer than is reasonably necessary to enable the solicitor to pay or transfer the money, valuable consideration or property to the trustee.

#### Appointment of bank or solicitor of agent

(3) A trustee may appoint a bank or solicitor to be agent of the trustee to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise.

### Breach of trust

(4) No trustee shall be chargeable with a breach of trust by reason only of having made or concurred in making an appointment referred to in subsection (3), but nothing in this section exempts a trustee from any liability that the trustee would have incurred but for this section for permitting the money referred to in subsection (3) to remain in the hands or under the control of the bank or solicitor for a period longer than is reasonably necessary to enable the bank or solicitor to pay the money to the trustee.

### Powers of trustees to insure trust property

**21.** (1) A trustee may insure any building or other insurable property against loss or damage by fire to any amount, including the amount of any insurance then in effect, not exceeding  $\frac{3}{4}$  of the full value of the building or property and to pay the premiums for that insurance out of the income of the building or property or out of the income of any other property subject to the same trusts without obtaining the consent of any person entitled wholly or partly to the income.

### Exemption

(2) Subsection (1) does not apply to any building or property that a trustee is bound to convey without delay absolutely to any *cestui que trust* on being requested to do so.

### Breach of trust

**22.** Where a trustee has committed a breach of trust, at the instigation or request or with the consent in writing of a beneficiary, a judge may, if the judge thinks fit, make an order that to the judge seems just for impounding all or part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through the trustee. S.Nu. 2011,c.10,s.38(3).

### Receipts of trustee

**23.** The receipt in writing of a trustee for any money, securities or other personal property or effects payable, transferable or deliverable to the trustee under any trust or power is a sufficient discharge for that property and effectually exonerates the person paying, transferring or delivering that property from seeing to the application or being answerable for any loss or misapplication of that property.

### Application

**24.** (1) Subsection (2) applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and has effect subject to the terms of that instrument.

### Certain powers of executors, administrators, trustees

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

- (a) accept any composition or any real or personal security for any debt or for any real or personal property claimed,
- (b) allow any time for payment for any debt, and
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing,

relating to the estate of the testator or intestate or to the trust, and for any of these purposes may enter into, give and execute agreements, instruments of composition or arrangement and releases and do any other thing that to him or her or them seems expedient without being responsible for any loss occasioned by any act or thing so done by him or her or them in good faith.

#### Powers of surviving trustees

**25.** Where a power or trust is given to or vested in two or more trustees jointly, unless the contrary is expressed in the instrument, if any, creating the power or trust, the power or trust may be exercised or performed by the survivor or survivors of them.

#### Exoneration of trustee

**26.** (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 by reason 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 of acting or paying.

#### Rights of creditor

(2) Nothing in subsection (1) affects the right of any person entitled to the money against the person to whom the payment is made and the person so entitled has the same remedy against the person to whom the payment is made as he or she would have had against the trustee.

## MAINTENANCE OF MINORS

#### Maintenance of minor from income from property

**27.** (1) Where property is held by trustees in trust for a minor, either absolutely or contingently on the minor attaining the age of 19 years or on the occurrence of any event previous to the minor attaining that age, the trustees may at their sole discretion pay to the persons who have lawful custody of the minor, or otherwise apply for or towards the maintenance or education of the minor, the whole or part of the income to which the minor may be entitled in respect of that property whether or not there is any fund applicable to the same purpose or any other person bound by law to provide for that maintenance or education.

#### Accumulation of residue

(2) The trustees referred to in subsection (1) shall accumulate all the residue of the income referred to in subsection (1) by way of compound interest by investing it and the resulting income from it from time to time in proper securities for the benefit of the person who ultimately becomes entitled to the property from which the accumulation arose.

### Application of accumulations

(3) The trustees, at any time if it appears to them expedient, may apply the whole or part of the accumulations referred to in subsection (2) as if the accumulations were part of the income arising in the then current year. S.N.W.T. 1998,c.17,s.28(2).

### Selling property held in trust for minor

#### **28.** (1) Where

- (a) real or personal property is held by trustees in trust for a minor either absolutely or contingently on the minor attaining the age of 19 years or on the occurrence of any event previous to the minor attaining that age, and
- (b) the income arising from that property is insufficient for the maintenance and education of the minor,

the trustees by leave of a judge, to be obtained in a summary manner, may sell and dispose of any portion of the real or personal property and pay the whole or any part of the money arising from the sale to the persons who have lawful custody of the minor or otherwise to be applied for or towards the maintenance or education of the minor.

### Investing surplus

(2) In the event of the whole of the money arising from a sale of the real or personal property under subsection (1) not being immediately required for the maintenance and education of the minor, the trustees shall

- (a) invest the surplus moneys and the resulting income from the surplus moneys from time to time in proper securities;
- (b) apply the moneys referred to in paragraph (a) and the proceeds of the moneys from time to time for the education and maintenance of the minor; and
- (c) hold all the residue of the moneys and interest on the moneys not required for the education and maintenance of the minor for the benefit of the person who ultimately becomes entitled to the property from which the moneys and interest have arisen.  
S.N.W.T. 1998,c.17,s.28(3); S.Nu. 2011,c.10,s.38(3).

## PAYMENT INTO COURT AND RELIEF

### Payment into Nunavut Court of Justice

**29.** (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, or to the estate of a deceased person, may as provided in the *Judicature Act* pay the money or securities into Nunavut Court of Justice and the money or securities shall, subject to the Rules of the Nunavut Court of Justice, be dealt with according to the order of a judge.



**Discharge to trustees**

(2) The receipt or certificate of the Clerk of the Nunavut Court of Justice is a sufficient discharge to trustees for the money or securities paid into Nunavut Court of Justice under subsection (1).

**Order for payment into Nunavut Court of Justice**

(3) Where moneys or securities are vested in persons as trustees and the majority wishes to pay the moneys or securities into Nunavut Court of Justice but the concurrence of the other or others cannot be obtained, a judge may order the payment into Nunavut Court of Justice to be made by the majority without the concurrence of the other or others.

**Order for payment to trustees**

(4) Where the moneys or securities referred to in subsection (3) are deposited with a banker, broker or other depositary, a judge may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Nunavut Court of Justice.

**Effect of order**

(5) Every transfer, payment and delivery made in pursuance of an order made under subsection (3) or (4) is valid and takes effect as if it had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid or delivered. S.Nu. 2011,c.10,s.38(3).

**Technical breach of trust**

**30.** Where in any proceeding affecting trustees or trust property it appears to the Nunavut Court of Justice that a trustee, whether appointed by the Nunavut Court of Justice or by an instrument in writing or otherwise, or a person who in law may be held to be fiduciarily responsible as a trustee,

- (a) is or may be personally liable for a breach whether the transaction alleged or found to be a breach of trust occurred before, on or after October 24, 1948, but
- (b) 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 Nunavut Court of Justice in the matter in which he or she committed the breach,

the Nunavut Court of Justice may relieve the trustee either wholly or partly from personal liability for the breach. S.Nu. 2011,c.10,s.38(3).

**RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS****Action by executors and administrators for torts**

**31.** (1) The executors or administrators of a deceased person may maintain an action for all torts or injuries to the person or to the real or personal estate of the deceased, except in case of libel and slander, in the same manner and with the same rights and remedies as the deceased would if living have been entitled to do.

#### Damages

(2) The damages when recovered under subsection (1) form part of the personal estate of the deceased.

#### Limitation period

(3) An action referred to in subsection (1) may not be commenced after two years from the death of the deceased.

#### Tort actions

**32.** (1) Where a deceased person committed a wrong to another in respect of his or her person or of his or her real or personal property, except in cases of libel and slander, the person so wronged may maintain an action against the executors or administrators of the deceased person.

#### Limitation period

(2) An action referred to in subsection (1) may not be commenced after two years from the death of the deceased.

#### Damages in actions under section 31 or 32

**33.** In estimating the damages in any action under section 31 or 32, the benefit, gain, profit or advantage that in consequence of or resulting from the wrong committed may have accrued to the estate of the person who committed the wrong shall be taken into consideration and shall form part or may constitute the whole of the damages to be recovered, whether or not any property or the proceeds of value of property belonging to the person bringing the action or to his or her estate has or have been appropriated by or added to the estate or moneys of the person who committed the wrong.

#### Power to distrain

**34.** (1) The executors or administrators of a lessor may distrain on the lands demised for any term or at will for the arrears of rent due to the lessor in the lifetime of the lessor in the same manner as the lessor might have done if living.

#### Time for distraint

(2) The arrears mentioned in subsection (1) may be distrained for at any time within six months after the determination of the term or lease and during the continuance of the possession of the tenant from whom the arrears became due and the law relating to distress for rent is applicable to the distress so made.

#### Liability of representatives of deceased joint contractors

**35.** Where one or more joint contractors, obligors or partners die, the person interested in the contract, obligation or promise entered into by the joint contractors, obligors or partners may proceed by action against the representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several, notwithstanding that there may be another person liable under the contract, obligation or promise still living and an action pending against that person,

but the property and effects of stockholders in banks or the members of other incorporated companies are not liable to a greater extent than they would have been if this section had not been passed.

#### Raising money by sale or mortgage to satisfy charges

**36.** (1) Where by a will a testator

- (a) charges his or her real estate or any specific portion of it with the payment of the debts of the testator or with the payment of any legacy or other specific sum of money, and
- (b) devises the real estate so charged to any trustee or trustees for the whole of his or her estate and interest in the real estate and does not make any express provision for the raising of those debts, legacy or sum of money out of the estate,

the trustee or trustees notwithstanding any trusts actually declared by the testator may raise the debt, legacy or money by a sale and absolute disposition by public auction or private contract of the real estate or any part of it or by a mortgage of the real estate or any part of it or partly in one mode and partly in the other.

#### Mortgage

(2) A mortgage executed under subsection (1) may reserve a rate of interest and fix the period of repayment that the person or persons executing the mortgage think proper.

#### Extension of powers in section 36

**37.** The powers conferred by section 36 extend

- (a) to every person in whom the estate devised is vested by survivorship, descent or devise; or
- (b) to any person appointed under a power in the will or by the Nunavut Court of Justice to succeed to the trusts created by the will.

S.Nu. 2011,c.10,s.38(3).

#### Exercise of powers under sections 36 and 37

**38.** Purchasers or mortgagees are not bound to inquire whether the powers conferred by sections 36 and 37 or any of them have been duly and correctly exercised by the person or persons acting by virtue of those powers.

#### Exercise of direction in will

**39.** Where

- (a) there is in a will of a deceased person an express or implied direction to sell, dispose of, appoint, mortgage, encumber or lease any real estate, and
- (b) no person is by the will or otherwise by the testator appointed to execute and carry that direction into effect,

the executors, if any, named in the will shall execute and carry into effect every such direction to sell, dispose of, appoint, mortgage, encumber or lease the real estate, and any

estate or interest in the real estate in as full, large and ample a manner and with the same legal effect as if the executors were appointed by the testator to execute and carry the direction into effect.

#### Exercise of executor powers by administrator

**40.** Where

- (a) in a will an express or implied power is given to an executor or executors to sell, dispose of, appoint, mortgage, encumber or lease any real estate, or any estate or interest in any real estate, and
- (b) from any cause letters of administration with that will annexed have been committed by a court of competent jurisdiction to a person and that person has given the security required by this Act,

that person shall exercise every such power and sell, dispose of, appoint, mortgage, encumber or lease the real estate and any estate or interest in the real estate in as full, large and ample a manner and with the same legal effect as if that person had been appointed by the testator to execute that power.

#### Power to execute conveyance

**41.** (1) Where a person

- (a) has entered into a contract in writing for the sale and conveyance of real estate, or any estate or interest in the real estate, and
- (b) has died intestate or without providing by will for the conveyance of the real estate, or estate or interest in the real estate, to the person entitled or to become entitled to the conveyance under the contract,

if the deceased would be liable to execute a conveyance were the deceased alive, the executor, administrator or administrator with the will annexed of the deceased person, shall give to the person entitled to it a good and sufficient conveyance of such estates and of such nature as the deceased if living would be liable to give.

#### Effect of conveyance

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

#### Duties and liabilities of executor and administrator

**42.** Every executor, administrator and administrator with the will annexed is, as respects the additional powers vested in him or her by this Act and any money or assets received by him or her in consequence of the exercise of those powers, subject to all the liabilities and compellable to discharge all the duties of every kind that as respects the acts to be done by him or her under those powers would have been imposed

- (a) on an executor or other person appointed by the testator to execute those powers; or
- (b) in case of there being no such executor or person, by law or by any court of competent jurisdiction.

## Vesting of powers given by this Act

**43.** (1) Where there are several executors, administrators or administrators with the will annexed and one or more of them die, the powers created by this Act vest in the survivor or survivors.

## Deficiency of assets

(2) On the administration of the estate of a deceased person, in case of the deficiency of assets, debts due to the Crown and to the executor or administrator of the deceased person, and debts to others including respectively debts by judgment or order, and other debts of record, debts by specialty, simple contract debts and claims for damages that by any Act are payable in the same order of administration as simple contract debts, shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another.

## Lien

(3) Nothing in subsection (2) prejudices any lien existing during the lifetime of the debtor on any of the real or personal estate of the debtor.

## Action where claims rejected

**44.** (1) Where the executor or administrator gives to a creditor or other person of whose claims against the estate the executor or administrator has notice, or to the solicitor or agent of the creditor or other person, notice in writing that the executor or administrator disputes the claim and intends to avail himself or herself of this section, the creditor or other person must commence his or her action in respect of the claim

- (a) within six months after the notice is given where the debt or part of the debt is due at the time of the notice; or
- (b) within three months from the time the debt or part of the debt falls due if no part of the debt is due at the time of the notice.

## Where claim not commenced

(2) In default of commencing a claim in accordance with subsection (1), the claim is forever barred.

## Order

(3) Unless the creditor or other person within 10 days after the receipt of the notice referred to in subsection (1) notifies the executor or administrator that the creditor or other person withdraws his or her claim,

- (a) the executor or administrator may, if he or she thinks fit, apply to a judge by an originating notice calling on the creditor or other person to establish his or her claim; and
- (b) on the return of the originating notice, the judge may allow or bar the claim or make any other order that to the judge seems proper with or without costs against either party.

S.Nu. 2011,s.10,s.38(3).

## Liability of executor or administrator in respect of leases

**45.** (1) Where an executor or administrator, liable as such to the rents, covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, has

- (a) satisfied all such liabilities under the lease or agreement for a lease as have accrued due and been claimed up to the time of the assignment referred to in paragraph (c),
- (b) set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the sum may not have arrived, and
- (c) assigned the lease or agreement for a lease to a purchaser of the lease or agreement for a lease,

the executor or administrator is at liberty to distribute the residuary estate of the deceased to and among the persons entitled to it respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the lease or agreement for a lease and the executor or administrator shall not, after having assigned the lease or agreement for a lease and having, where necessary, set apart such sufficient fund, be personally liable in respect of any subsequent claim under the lease or agreement for a lease.

## Right of lessor

(2) Nothing in subsection (1) prejudices the right of the lessor or those claiming under the lessor to follow the assets of the deceased into the hands of the person or persons to or among whom the assets may have been distributed.

## Liability of executor or administrator in respect of conveyances or rent charges

**46.** (1) Where an executor or administrator liable as such to the rent, covenants or agreements contained in a conveyance or rent charge, whether the rent be by limitation of use, grant or reservation or agreement for the conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, has

- (a) satisfied all such liabilities under the conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance referred to in paragraph (c),
- (b) set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed, although the period for laying out the sum may not have arrived, and
- (c) conveyed the property or assigned the agreement for that conveyance to a purchaser,

the executor or administrator is at liberty to distribute the residuary estate of the deceased to and among the persons entitled to it respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the conveyance or agreement for a conveyance and the executor or administrator

distributing the residuary estate shall not, after having made or executed the conveyance or assignment and having where necessary set apart such sufficient fund, be personally liable in respect of any subsequent claim under the conveyance or agreement for a conveyance.

#### Right of grantor

(2) Nothing in subsection (1) prejudices the right of the grantor or those claiming under the grantor to follow the assets of the deceased into the hands of the person or persons to or among whom the assets may have been distributed.

#### Notices to creditors

##### **47.** (1) Where

- (a) a trustee or assignee acting under the trusts of a deed or assignment for the benefit of a particular class or classes of creditors in which the creditors are not designated by name, or
- (b) an executor or an administrator,

has given the same or similar notices as in the opinion of the Nunavut Court of Justice in which the trustee, assignee, executor or administrator is sought to be charged, would have been given by the Nunavut Court of Justice in an action for the execution of the trusts of the deed or assignment or in an administration suit, for creditors and others to send in their claims against the person for the benefit of whose creditors the deed or assignment is made or against the estate of the testator or intestate, the trustee, assignee, executor or administrator, at the expiration of the time named in the notices or the last of the notices for sending in claims, is at liberty to distribute all or part of the proceeds of the trust estate or the assets of the testator or intestate, among the persons entitled to it having regard to the claims of which the trustee, assignee, executor or administrator has then notice, and is not liable for the proceeds of the trust estate or assets, or any part of it so distributed to any person of whose claim the trustee, assignee, executor or administrator had notice at the time of the distribution.

#### Rights of creditor

(2) Nothing in subsection (1) prejudices the right of any creditor or claimant to follow the proceeds of the trust estate or the assets, or any part of them, into the hands of the person or persons who may have received them respectively.

S.Nu. 2011,c.10,s.38(3).

### SUMMARY APPLICATION TO COURT FOR ADVICE

#### Application by trustee for advice on management of trust property

**48.** (1) Any trustee, guardian, executor or administrator may without the commencement of an action apply to a judge in the manner set out in the Rules of the Nunavut Court of Justice for the opinion, advice or direction of the judge on any question respecting the management or administration of the trust property or the assets of a testator or intestate.

### Deeming provision

(2) A trustee, guardian, executor or administrator acting on the opinion, advice, or direction given by a judge under subsection (1) shall be deemed, so far as regards his or her own responsibility, to have discharged his or her duty as trustee, guardian, executor or administrator in the subject-matter of the application, unless he or she has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion, advice or direction. S.Nu. 2011,c.10,s.38(3).

## ALLOWANCES

### Allowance

**49.** The following persons, namely,

- (a) a trustee under a deed, settlement or will,
- (b) an executor or administrator,
- (c) a guardian appointed by a court,
- (d) a testamentary guardian, and
- (e) any other trustee, however the trust is created,

are entitled to a fair and reasonable allowance for their care, pains and trouble and time expended in and about the trust estate as may be allowed by a judge. S.Nu. 2011,c.10,s.38(3).

### Settling amount of allowance

**50.** Where application is made to a judge for the purpose of settling the amount of compensation allowed by section 49, the judge may settle the amount although the trust estate is not before a judge in any action. S.Nu. 2011,c.10,s.38(3).

### Order for allowance

**51.** (1) A judge may allow to the executor or trustee or administrator acting under a will or letters of administration a fair and reasonable allowance

- (a) for his or her care, pains and trouble and time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him or her under the will or letters of administration,
- (b) in administering, disposing of and arranging and settling the estate and effects, and
- (c) generally in arranging and settling the affairs of the estate,

and may make orders from time to time for that allowance.

### Compensation

(2) Compensation shall be allowed to an executor, trustee or administrator in passing his or her accounts. S.Nu. 2011,c.10,s.38(3).

### Allowance fixed by instrument

**52.** Sections 49 to 51 do not apply where the allowance is fixed by the instrument creating the trust.



## Services of solicitor

**53.** Where a solicitor

- (a) is a trustee, guardian or personal representative, and
- (b) has rendered necessary professional services to the estate,

regard may be had, in making the allowance of the solicitor, to that circumstance, and the allowance shall be increased by the amount that may be deemed fair and reasonable in respect of these services.

## JUDICIAL TRUSTEES

## Appointment of judicial trustee

**54.** (1) Where application is made to a judge by or on behalf of

- (a) the person creating or intending to create a trust, or
- (b) a trustee or beneficiary,

the judge may, in the discretion of the judge, appoint a judicial trustee to be a trustee of the trust either jointly with any other person or as sole trustee, and if sufficient cause is shown, in place of all or any existing trustees.

## Trusts and trustees

(2) The administration of the property of a deceased person, whether a testator or intestate, is a trust and the executor or administrator is a judicial trustee within the meaning of this section.

## Who may be appointed

(3) Any fit and proper person nominated for the purpose in the application referred to in subsection (1) may be appointed a judicial trustee and in the absence of that nomination or if the judge is not satisfied of the fitness of a person nominated, any other competent person may be appointed.

## Supervision

(4) A judicial trustee is subject to the control and supervision of a judge

## Directions

(5) A judge may either on request or without request give to a judicial trustee any general or special directions in regard to the trust or the administration of the trust.

## Remuneration

(6) Remuneration may be paid to a judicial trustee out of the trust property not exceeding the limits that a judge may assign in each case and the remuneration that is assigned shall cover all the work of the judicial trustee and personal outlay except as the judge may for special reasons otherwise order.

## Accounts

(7) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited and a report on the accounts made to a judge by the

persons selected by the judge and in any case where a judge so directs, an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee shall be made in the manner determined by the judge.

S.Nu. 2011,c.10,s.38(3).