

THE BANK OF NOVA SCOTIA TRUST COMPANY ACT, 2001

CHAPTER 50

Assented to August 27, 2001

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpretation

1 In this Act:

“**effective date**” means the date on which The Bank of Nova Scotia Trust Company completes the transaction to acquire the personal trusteeship and personal agency business of National Trust Company;

“**registrar**” means the registrar appointed under the *Land Title Act* of the land title district in which an application in respect of any registered indefeasible title or registered charge in real property is made.

Purpose

- 2** The purpose of this Act is to provide for the transfer of the personal trusteeship and personal agency business of National Trust Company to The Bank of Nova Scotia Trust Company.

Non-application

3 (1) This Act does not apply to

- (a) real or personal property that is owned or held by, vested in or granted to National Trust Company, and that is held by National Trust Company exclusively for its own use and benefit, and not in trust for or for the benefit of any other person or purpose,

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- (b) real or personal property that is located outside of British Columbia and is held by National Trust Company under a record or trust to which section 4 would otherwise apply and any power, right, immunity, privilege or right of action that may be exercised by or against National Trust Company under any such record or trust with respect to that property,
 - (c) trusts relating to moneys received for guaranteed investment and any real or personal property held in trust with respect to any such guaranteed investment of which National Trust Company is trustee including, without limitation, trusts with respect to any registered home ownership savings plan, registered retirement savings plan, retirement income fund, deferred profit sharing plan or income averaging annuity contract, as those terms are defined in the *Income Tax Act* (Canada), or other registered or unregistered deferred income or employee benefit plan, or
 - (d) any real or personal property granted to, held by or vested in National Trust Company under or in respect of
 - (i) any trust indenture or other indenture to which section 4 would otherwise apply in which National Trust Company is or may be a trustee and by virtue of which bonds, debentures or other evidence of indebtedness, warrants or rights have been or may be issued, and
 - (ii) any record or trust to which section 4 would otherwise apply under which National Trust Company acts as manager, advisor, registrar or transfer agent.
- (2) Despite subsection (1) (b),
- (a) if a British Columbia court has appointed or has the power to appoint National Trust Company as personal representative of a deceased person, whether as executor, administrator or otherwise, for property located outside British Columbia, The Bank of Nova Scotia Trust Company may, on application to that court, be appointed as personal representative with respect to that property in place of National Trust Company, and
 - (b) if property located outside British Columbia but not referred to in paragraph (a) is held by National Trust Company under a record or trust to which section 4 applies and if the Supreme Court has jurisdiction under section 31 of the *Trustee Act* to make an order for the appointment of a new trustee with respect to that property, The Bank of Nova Scotia Trust Company may, on application to the Supreme Court, be appointed as trustee with respect to that property in place of National Trust Company.
- (3) An appointment under subsection (2) (b) has for all purposes under the laws of British Columbia the same effect as if made under section 31 of the *Trustee Act*.
- (4) Despite subsection (1), sections 6 and 7 of this Act apply to every record and trust in respect of which an appointment is made under subsection (2) of this section.

Successor trustee

- 4 (1) Subject to section 3, on the effective date, National Trust Company is removed and The Bank of Nova Scotia Trust Company is appointed as successor trustee in or in respect of
- (a) every personal trust, trust deed, declaration of trust, trust agreement, instrument of creation, deed of appointment, settlement, assignment, will, codicil and other testamentary record,
 - (b) every letters testamentary, letters probate, letters of administration, judgment, decree, order, direction, pension plan, benefit plan trust, investment management account, investment administration account, agreement, contract, appointment of any court, judge or other constituted authority and every other record or trust however created, including every incomplete, inchoate or bare trust, and
 - (c) every conveyance, mortgage, assignment, appointment or other record.
- in, by or of which National Trust Company is named as executor, administrator, trustee, personal representative, bailee, committee, tutor, assignee, liquidator, receiver, custodian, guardian, curator, agent or other similar fiduciary, or is named to any other office or position in which any property, interest, or right is vested in, administered or managed by or put in charge of National Trust Company, in trust, or in the custody, care or control of National Trust Company.
- (2) Subsection (1) applies to every record and trust referred to in that subsection even if the real or personal property held by National Trust Company under the record or trust is situated outside British Columbia.
- (3) If a record or an instrument referred to in subsection (1) names National Trust Company to any office or position referred to in that subsection and the record or instrument takes effect after the effective date, The Bank of Nova Scotia Trust Company is deemed to be named to the office or position in that record or instrument in the place of National Trust Company.

**Real and personal property held in trust by
National Trust Company**

- 5 (1) In this section, “National Trust property” means all real and personal property and every interest in real and personal property that is granted to, held by or vested in National Trust Company,
- (a) by way of security or otherwise,
 - (b) in trust, or
 - (c) in the custody, care or control of National Trust Company,
- for or for the benefit of any other person or purpose, under a record or under or in respect of a trust to which section 4 applies, and whether in the form in which it was originally acquired by National Trust Company or otherwise.

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- (2) Subject to section 3, all National Trust property is vested on the effective date in The Bank of Nova Scotia Trust Company,
- (a) according to the tenor of each record or trust referred to in subsection (1) and the respective certificate or certificates of indefeasible title of real property in the applicable land title office must be amended to be in the name of "The Bank of Nova Scotia Trust Company, In Trust",
 - (b) at the time indicated or intended by that record or trust, and
 - (c) on the same trusts and with the same powers, rights, immunities and privileges and subject to the same debts, liabilities, obligations and duties as are provided, granted or imposed on National Trust Company by that record or trust.
- (3) Subject to section 8, for the purposes of every enactment affecting the title to property, both real and personal, the vesting of title in The Bank of Nova Scotia Trust Company of every property referred to in subsection (2) is effective without the registration or filing of this Act or any further or other instrument or record showing the change of title in any public office of the government.
- (4) The Bank of Nova Scotia Trust Company may, under section 191 of the *Land Title Act*, make an application in respect of any registered indefeasible title or registered charge in the same manner as if this Act effected an amalgamation of National Trust Company and The Bank of Nova Scotia Trust Company if the Bank of Nova Scotia Trust Company files a copy of this Act in the applicable land title office where the certificate of indefeasible title or the charge is filed.
- (5) An application contemplated under subsection (4) must contain a description of the titles or charges affected by the application that is sufficient for the registrar to identify them in the records.
- (6) Nothing in subsections (4) and (5) affects the operation of subsection (1), (2) or (3) or any other provision of this Act.

Legal proceedings

- 6 (1) A proceeding that is being carried on or a power or remedy that is being exercised by or against National Trust Company as executor, administrator, trustee, personal representative or in any other capacity referred to in section 4 (1) in any British Columbia court or before any tribunal or agency, under or in respect of a record or trust to which section 4 applies is not discontinued and is not affected as a result of the enactment of this Act.
- (2) Despite the Rules of Court applicable to the Supreme Court, a proceeding, power or remedy referred to in subsection (1) may be continued in the name of The Bank of Nova Scotia Trust Company, which has the same rights, is subject to the same debts, liabilities and obligations and must pay or may receive the same costs and awards as if the proceeding had been brought in the name of or against The Bank of Nova Scotia Trust Company.

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- (3) A proceeding or a power, right, remedy or right of distress that might have been brought or exercised by or against National Trust Company as executor, administrator, trustee, personal representative or in any other capacity referred to in section 4 (1) under or in respect of a record or trust to which section 4 applies, may be brought or exercised by or against The Bank of Nova Scotia Trust Company, which company has the same rights and is subject to the same debts, liabilities and obligations in respect of these matters as National Trust Company would have had or been subject to if this Act had not been enacted.
- (4) For the purposes of a proceeding that has been continued or brought in the name of or against The Bank of Nova Scotia Trust Company under subsection (2) or (3), National Trust Company and its officers and employees are deemed to have been acting on behalf of The Bank of Nova Scotia Trust Company in performing any act, whether before or after this Act comes into force, involving the administration of a record or trust to which section 4 applies, and for the purposes of examination for discovery or production of documents in relation to that proceeding, National Trust Company and its officers and employees are subject to the same obligations as if this Act had not been enacted.

Rights of third parties

- 7 Nothing in this Act affects the rights of any person having a claim against National Trust Company in respect of a record or trust to which section 4 applies, or releases, modifies or affects the liability of National Trust Company to any such person, but all such rights as may be enforceable in British Columbia may be asserted against The Bank of Nova Scotia Trust Company, which company is responsible for all debts, liabilities and obligations of National Trust Company in respect of any such record or trust.

Notice

- 8
- (1) If a person is under an obligation to make payments in relation to property that is vested in The Bank of Nova Scotia Trust Company under section 5 (2), the person may make the payments to National Trust Company until The Bank of Nova Scotia Trust Company gives or causes to be given notice in writing to the person that payment must be made to The Bank of Nova Scotia Trust Company.
- (2) If a person receives a notice referred to in subsection (1) the obligation of the person to make payments is owed to The Bank of Nova Scotia Trust Company.
- (3) The Bank of Nova Scotia Trust Company may execute any instrument that purports to transfer any interest in, encumber or otherwise affect the title to property that is vested in The Bank of Nova Scotia Trust Company under section 5 (2) even though
- (a) the property remains registered in the name of National Trust Company or any predecessor trust or loan company of National Trust Company in any public office of the government, or

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- (b) National Trust Company is shown by a record of title as having legal ownership of the property.
- (4) An instrument referred to in subsection (3) may contain a recital referring to the vesting of title to the property in The Bank of Nova Scotia Trust Company under this Act.
- (5) An instrument executed by The Bank of Nova Scotia Trust Company containing the recital permitted by subsection (4)
 - (a) may be accepted for registration by any public office of the government without further proof of the accuracy of the recital, and
 - (b) is effective to do that which it purports to do despite any inaccuracy contained in the recital.
- (6) In order to show the vesting in The Bank of Nova Scotia Trust Company under section 5 (2) of any interest in personal property that constitutes collateral within the meaning of the *Personal Property Security Act* and in respect of which National Trust Company is shown as the secured party in any financing statement registered under that Act, a financing change statement may be registered in respect of the vesting as if National Trust Company had assigned its interest to The Bank of Nova Scotia Trust Company.

Publication of effective date

- 9 The Bank of Nova Scotia Trust Company must publish a notice in the Gazette setting out the effective date and advising that the provisions of this Act take effect as of the effective date.