

2001 BILL Pr3

First Session, 25th Legislature, 50 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr3

**THE BANK OF NOVA SCOTIA TRUST COMPANY
AND NATIONAL TRUST COMPANY ACT**

MR. McCLELLAND

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr3
Mr. McClelland

BILL Pr3

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THE BANK OF NOVA SCOTIA TRUST COMPANY AND NATIONAL TRUST COMPANY ACT

(Assented to , 2001)

Preamble

WHEREAS The Bank of Nova Scotia Trust Company is intending to acquire the personal trusteeship and personal agency business of National Trust Company and for such purpose The Bank of Nova Scotia Trust Company must be appointed as successor trustee to National Trust Company;

WHEREAS the petitioners represent that it would be impractical, given the number of trusts and estates comprising the personal trusteeship and personal agency business of National Trust Company, to apply to the Court of Queen's Bench of Alberta under section 16 of the *Trustee Act* to have The Bank of Nova Scotia Trust Company appointed as successor trustee for each such trust and estate;
and

WHEREAS National Trust Company and The Bank of Nova Scotia Trust Company have by their petition prayed that it be enacted as outlined in this Act and it is expedient to grant the prayer of the petition;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definition

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.

Notice of
effective date

2 The Bank of Nova Scotia Trust Company shall publish a notice in *The Alberta Gazette* setting out the effective date and advising that the provisions of this Act take effect as of the effective date.

Successor
Trustee

3(1) Subject to section 8 of this Act, 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 every personal trust, trust deed, declaration of trust, trust agreement, instrument of creation, deed of appointment, settlement, assignment, will, codicil or other testamentary document, and 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 document or trust howsoever created, in each case for the benefit of or that relates to a person, including every incomplete, inchoate or bare trust, and in every conveyance, mortgage, assignment, appointment or other writing, wherein or whereby, or of which National Trust Company is named as executor, administrator, trustee, estate trustee, personal representative, bailee, escrow agent, committee, tutor, assignee, liquidator, receiver, custodian, guardian, curator, agent or other similar fiduciary, or is named to any other office or position whatsoever by virtue of 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, in each case for the benefit of or that relates to a person.

(2) Subsection (1) applies to every document and trust described in that subsection even if the real or personal property held by National Trust Company under the document or trust is situate outside Alberta.

(3) Where an instrument specified or described in subsection (1) names National Trust Company to any office or position described in that subsection and the instrument takes effect after the effective date, The Bank of Nova Scotia Trust Company shall be deemed to be named in the instrument in the place of National Trust Company.

Real and
personal
property

4(1) Subject to section 8 of this Act, all real and personal property and every interest therein that is granted to, held by or vested in

National Trust Company, whether by way of security or otherwise, in trust, or in the custody, care or control of National Trust Company, for or for the benefit of any other person or purpose, pursuant to or in respect of a document or trust to which section 3 applies, and whether in the form in which it was originally acquired by National Trust Company or otherwise, is vested on the effective date in The Bank of Nova Scotia Trust Company, according to the tenor of and at the time indicated or intended by the document or trust, upon the same trusts, and with the same powers, rights, immunities, and privileges, and subject to the same obligations and duties as are thereby provided, granted or imposed.

(2) Subject to section 8, for the purposes of every Act affecting the title to property, both real and personal, the vesting of title in The Bank of Nova Scotia Trust Company of every property affected by subsection (1) is effective without the registration or filing of this Act, or of any other instrument, document or certificate showing the change of title, in any public office whatsoever within the jurisdiction of the Province of Alberta.

Legal
proceedings

5(1) No proceeding being carried on and no power or remedy being exercised by or against National Trust Company as executor, administrator, trustee, estate trustee, personal representative or in any other capacity referred to in section 3(1) in any court of Alberta, or before any tribunal or agency of the Province of Alberta, pursuant to or in respect of a document or trust to which section 3 applies, shall be discontinued or affected on account of this Act but, despite the *Alberta Rules of Court* or the *Surrogate Rules*, may be continued in the name of The Bank of Nova Scotia Trust Company, which shall have the same rights, shall be subject to the same liabilities and shall pay or receive the same costs and awards as if the proceeding had been commenced or defended in the name of The Bank of Nova Scotia Trust Company.

(2) 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, estate trustee, personal representative or in any other capacity referred to in section 3(1) pursuant to or in respect of a document or trust to which section 3 applies, may be brought or exercised by or against The Bank of Nova Scotia Trust Company, which shall have the same rights and shall be subject to the same liabilities in respect thereof as those which National Trust Company would have had or been subject to if this Act had not been enacted.

(3) In a proceeding that has been continued or commenced in the name of The Bank of Nova Scotia Trust Company under subsection (1) or (2), National Trust Company and its officers and employees shall be 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 document or trust to which section 3 applies, and for purposes of examination for discovery or production of documents in relation to any such proceeding, National Trust Company and its officers or employees shall be subject to the same obligations as if this Act had not been enacted.

Rights of third parties

6 Nothing in this Act affects the rights of any person having a claim against National Trust Company in respect of a document or trust to which section 3 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 Alberta may be asserted against The Bank of Nova Scotia Trust Company, which shall be responsible for all debts, liabilities and obligations of National Trust Company, as the case may be, in respect of any such document or trust.

Notice

7(1) Where a person is under an obligation to make payments in relation to property that is vested in The Bank of Nova Scotia Trust Company by section 4(1), 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 payments shall be made to The Bank of Nova Scotia Trust Company, and thereupon the person's obligation is owed to The Bank of Nova Scotia Trust Company.

(2) Any instrument dealing with property that is vested in The Bank of Nova Scotia Trust Company by section 4(1), but that 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 Province of Alberta or in respect of which National Trust Company is shown by a document of title as having legal ownership thereof, may be executed by The Bank of Nova Scotia Trust Company and may contain a recital referring to the vesting under this Act.

(3) An instrument executed by The Bank of Nova Scotia Trust Company containing the recital permitted by subsection (2) may be accepted for registration by any public office within the jurisdiction of the Province of Alberta without further proof of the accuracy of the

recital, and every such instrument shall be deemed to be effective in passing title to the property described in the instrument despite any inaccuracy contained in the recital.

(4) In order to show the vesting in The Bank of Nova Scotia Trust Company by section 4(1) of any interest in personal property that constitutes a security interest within the meaning of the *Personal Property Security Act* and for 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 under that Act in respect of the vesting as if National Trust Company had assigned its interest to The Bank of Nova Scotia Trust Company.

Property and
trusts not
affected

8(1) This Act does not apply to the following property and trusts:

- (a) real or personal property 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;
- (b) real or personal property held by National Trust Company under a document or trust to which section 3 would otherwise apply, that is situate outside Alberta, and any power, right, immunity, privilege or right of action that may be exercised by or against National Trust Company under any such document or trust with respect to that property;
- (c) trusts relating to money 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;
- (d) any real or personal property granted to or held by or vested in National Trust Company pursuant to or in respect of
 - (i) any trust indenture or other indenture to which section 3 would otherwise apply wherein National Trust

Company is or may be a trustee and by virtue of which bonds, debentures or other evidences of indebtedness, warrants or rights have been or may be issued, and

- (ii) any document or trust to which section 3 would otherwise apply pursuant to which National Trust Company acts as manager, advisor, registrar or transfer agent.

(2) Despite subsection (1)(b), this Act does apply to

- (a) all real or personal property situate outside Alberta for which National Trust Company has been appointed, or is entitled to be appointed, by a court of Alberta as personal representative of a deceased person, whether as executor, administrator, estate trustee or otherwise and The Bank of Nova Scotia Trust Company may, upon application to that court, be appointed personal representative in the place of National Trust Company with respect to that property; and
- (b) all real or personal property situate outside Alberta not coming within clause (a), but held by National Trust Company under a document or trust to which section 3 applies, for which the Court of Queen's Bench of Alberta has jurisdiction under section 16 of the *Trustee Act* to make an order for the appointment of a new trustee, and The Bank of Nova Scotia Trust Company may, upon application to that court, be appointed trustee in the place and stead of National Trust Company with respect to that property, and such appointment has for all purposes of the laws of Alberta the same effect as if it had been made under section 16 of the *Trustee Act*.

(3) Sections 5 and 6 apply to every document and trust in respect of which an appointment is made under subsection (2).