



TRUSTEE.

No. 65 of 1973.

ANALYSIS.

1. Short title and citation.
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AN ACT to amend the *Trustee Act 1898*.

[28 November 1973.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Trustee Act 1973*.

Short title and
citation.

(2) The *Trustee Act 1898*, as subsequently amended, is in this Act referred to as the Principal Act.

2 After section twenty-five of the Principal Act the following section is inserted:—

Distribution of property or estate after notice by trustee or executor or administrator.
Cf. Imp. s. 27. No. 2270 (S.A.), s. 29. 26 Geo. V No. 38, s. 54.

“ 25A—(1) Where a trustee or an executor or administrator who has taken out representation of an estate has given notice in accordance with this section—

- (a) that he intends to distribute the property subject to the trust or the estate to which the notice relates or any part thereof among the persons entitled thereto; and
- (b) requiring any person interested in that property or estate to send to the trustee, executor, or administrator, on or before the date specified in the notice, particulars of his claim in respect of that property or estate,

the trustee, executor, or administrator may, at any time after that date, distribute the property or estate or any part thereof, having regard only to the claims of persons of which he then has notice and without being liable for the property or estate or any part thereof so distributed to any person of whose claim he had no notice at the time of the distribution.

“(2) Subject to subsection (3) of this section, the notice required to be given by a trustee or an executor or administrator for the purposes of subsection (1) of this section shall be in accordance with, or to the like effect of, the form in the second schedule, and shall be advertised once in each of the following publications, namely:—

- (a) *The Gazette*;
- (b) A daily newspaper published in the Southern Division; and
- (c) A daily newspaper published in the Northern Division.

“(3) Where a trustee or an executor or administrator has reason to believe that any person who has a claim against the property or estate that he wishes to distribute pursuant to subsection (1) of this section resides in a place outside this State, the trustee, executor, or administrator shall, after applying by summons to a judge in chambers for directions with respect to the notice that he is required to give for the purposes of that subsection, give the notice by causing it to be advertised in such newspaper as the judge orders.

“(4) For the purposes of subsection (1) of this section, the date specified in a notice under that subsection as the date on or before

which claims in respect of the relevant property or estate are to be sent to the trustee, executor, or administrator who gave the notice—

- (a) shall be the same in every advertisement relating to the property or estate; and
- (b) shall, if those advertisements are published—
 - (i) only in this State, be not less than one nor more than two;
 - (ii) in another State or a Territory of the Commonwealth or in New Zealand, be not less than two nor more than four; and
 - (iii) in any other place, be not less than four nor more than eight, months after the last of those publications.

“(5) Where a trustee or an executor or administrator disputes a claim particulars of which he has received after giving notice in accordance with this section, the trustee, executor, or administrator may give to the person making the claim a notice in writing that the claim is disputed and requiring the claimant to withdraw the claim or to institute proceedings to enforce it within six months of the service of the last-mentioned notice.

“(6) If a claim to which subsection (5) of this section relates is not withdrawn or prosecuted as provided in that subsection, the trustee, executor, or administrator may apply by summons to a judge in chambers, on affidavit setting out the facts, for an order that, as against the trustee, executor, or administrator, the claim shall be absolutely barred, and the judge may make such order as he deems just, and the order binds every person whom it purports to affect.

“(7) Where a trustee distributes property subject to a trust or an executor or administrator distributes an estate as provided by this section, nothing in this section prejudices the right of any person to follow the property or estate or any part thereof into the hands of any other person other than a purchaser who has received it, or frees the trustee, executor, or administrator from any obligation to make searches similar to those which an intending purchaser would be advised to make.

“(8) This section applies to a trust or estate notwithstanding anything to the contrary in the will or other instrument (if any) creating the trust or relating to the estate.

“(9) In this section, ‘representation’ means the probate of a will or letters of administration.”.

The first
schedule.

3 The schedule to the Principal Act is amended by inserting in the heading, after the word “THE”, the word “FIRST”.

The second
schedule.

4 The Principal Act is amended by adding at the end thereof the following schedule:—

“ THE SECOND SCHEDULE.

(Section 25A.)

“ NOTICE FOR CLAIMS.

A.B., late of _____, [set out the usual residence and addition or other description of the deceased]. Creditors, next of kin, and others having claims in respect of the property [estate] of the deceased, who died [set out the date of death with such accuracy as the information of the trustee, executor, or administrator permits] are required by the trustee [or executor or administrator] _____, of

[set out name and address of trustee, executor, or administrator] to send particulars to him by [set out the closing date for the notice in accordance with section 25A], after which date the trustee [or executor or administrator] may distribute the assets, having regard only to the claims of which he then has notice.

Dated this _____ day of _____ 19 ____.”.

Application
of Act.

5 This Act applies in relation to the property subject to a trust or to an estate, whether or not the property or estate was awaiting distribution at the date of the commencement of this Act.