

MAINE STATE LEGISLATURE

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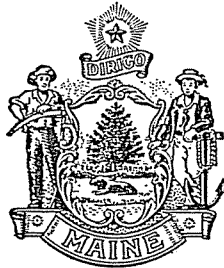
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Sec. 19. Interpretation to give effect to purpose of uniformity. R. S. c. 81, § 19. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 20. General guardianship laws to apply. R. S. c. 81, § 21. Guardians appointed under the provisions of this chapter shall be subject to the general guardianship law of the state except in so far as the same is modified by this chapter.

CHAPTER 147.

TESTAMENTARY TRUSTEES AND VOLUNTARY TRUSTS.

Sections 1-14 Testamentary Trustees.
Sections 15-17 Voluntary Trusts.
Sections 18-20 Appointment of Trustees to Fill Vacancies.

Testamentary Trustees

Sec. 1. Bonds of trustees. R. S. c. 82, § 1. Every testamentary trustee, except those hereinafter exempted, before entering on his duties shall give bond to the judge of probate for the county where the will is proved, with sufficient sureties, resident in the state, or with a surety company authorized to do business in the state, as surety, in such sum as the judge prescribes, conditioned as follows:

I. That he will faithfully execute such trust according to the will of the testator, so far as is consistent with law;

II. That he will make a true and perfect inventory of the real estate, goods and chattels, and rights and credits of such estate to be returned into the probate office at such time as the judge orders;

III. That he will render an account of the income and profits thereof and of his payments and expenses once in 3 years, and oftener if required by the judge;

IV. That at the expiration of such trust he will settle his accounts with the judge; pay and deliver over all balances, sums of money, or other property that are due; and give possession of the other estate, with which he is entrusted, to the persons entitled thereto.

See c. 55, § 91, re authority of trust companies to engage in business of issuing surety bonds; c. 56, § 193, re foreign insurance companies as sureties on bonds; 17 Me. 140; 37 Me. 275; 61 Me. 98; 62 Me. 450; 111 Me. 255.

Sec. 2. Bonds may not be required. R. S. c. 82, § 2. In the following cases bonds shall not be required of such trustees, unless for special reasons the judge determines it to be necessary; but when no bond is required, they shall settle their account with the judge of probate annually:

I. When the testator has requested or directed that a bond should not be required, or that a bond without sureties be accepted;

II. When all the parties interested in the trust fund, if of full age and legal capacity, in writing signify to the judge their request that a bond shall not be required.

84 Me. 48.

Sec. 3. Trustee, neglecting to give bond; examination of bond. R. S. c. 82, § 3. Every person appointed a testamentary trustee, who neglects to give bond within the time allowed therefor by the judge, shall be considered to decline the trust. Whenever any trustee settles an account in probate court, unless such account is a final one, the judge of probate shall examine his bond and the same proceedings shall be had in relation thereto as are provided in section 25 of chapter 145 relating to bonds of guardians.

See c. 151, § 2, re new bond may be required when sureties are insufficient.

Sec. 4. Non-resident testamentary trustee to appoint an agent in the state. R. S. c. 82, § 4. No person residing out of the state shall be appointed a testamentary trustee unless he shall have appointed an agent or attorney in the state. Such appointment shall be made in writing and shall give the name and address of the agent or attorney. Said written appointment shall be filed and recorded in the probate office for the county in which the principal is appointed, and by such appointment the subscriber shall agree that the service of any legal process against him as such testamentary trustee, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such testamentary trustee shall, if made on such agent, have like effect as if made on himself personally within the state, and such service shall have such effect. A testamentary trustee who after his appointment removes from and resides without the state shall so appoint an agent within 30 days after such removal. If an agent appointed under the provisions of this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed, and recorded as above provided. The powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. Neglect or refusal by a testamentary trustee to comply with any provision of this section shall be cause for removal. A testamentary trustee residing out of the state shall not appoint his cotrustee, residing in the state, as his agent.

Sec. 5. Trustee may resign, or be removed, after notice. R. S. c. 82, § 5. 1933, c. 275. Such trustee at his own request may be allowed to resign his trust, when it seems proper to the judge; no person succeeding to such trust as executor or administrator of a former trustee is required to accept or retain it against his will; and when any trustee, appointed either by the testator or the judge, becomes insane or otherwise evidently unsuitable to discharge his trust, the judge, upon personal notice to him and all others interested, if they reside within the state, or by public notice if their residence is out of the state or unknown, may remove him and appoint another.

Sec. 6. Power of a trustee thus appointed. R. S. c. 82, § 6. Every trustee appointed by the judge shall have and exercise the same powers, rights, and duties as sole or joint trustee, as if he had been appointed by the testator, and the trust estate vests in him accordingly; and the judge may order such conveyances to be made by the former trustee or his representatives, or by the remaining trustees, as are proper to vest in the new trustee, solely or jointly, such estate and effects.

65 Me. 106; 84 Me. 329; 111 Me. 523.

Sec. 7. Bond. R. S. c. 82, § 7. Every trustee appointed by the judge shall, before entering on his duties, give bond as aforesaid; but the judge may dispense with the making and returning of an inventory by any substituted trustee when he thinks it unnecessary, and the condition of the bond shall be altered accordingly; but without such bond, accepted by the judge, no right or authority vests in such trustee.

Sec. 8. Inventory and appraisal. R. S. c. 82, § 8. When a trustee is required to return an inventory, the estate and effects shall be appraised by disinterested appraisers appointed and sworn as in case of the estates of deceased persons. Only 1 appraiser may be appointed if in the opinion of the judge or register the nature of the property makes it desirable to do so; otherwise 3 appraisers shall be appointed. Warrants for inventories may be revoked by the judge for cause and new ones issued if deemed necessary.

Sec. 9. Reference or compromise. R. S. c. 82, § 9. The judge may authorize any trustee to refer or compromise claims by or against the trust estate.

Sec. 10. Courts may direct trust estates to be sold, and moneys to be invested. R. S. c. 82, § 10. 1937, c. 79. Any judge of probate having jurisdiction of the trust, and the superior court in any county, or the supreme judicial court in equity, on application of the trustee or of any person interested in the trust estate, after notice to all interested, may authorize or require him to sell any real or personal estate held by him in trust and to invest the proceeds thereof, with any other trust moneys in his hands, in real estate or in any other manner most for the interest of all concerned therein; and may give such further directions as the case requires for managing, investing, and disposing of the trust fund, as will best effect the objects of the trust.

See c. 95, § 4, sub-§ X, re equity powers in determining construction of wills; 33 Me. 553; 50 Me. 541; 84 Me. 555; 120 Me. 431; 122 Me. 468; 124 Me. 225; 127 Me. 104; 131 Me. 446; 138 Me. 1.

Sec. 11. Equity power as to trusts. R. S. c. 82, § 11. Either of said courts may hear and determine, in equity, all other matters relating to the trusts herein mentioned.

See c. 140, § 2, re jurisdiction in equity of courts of probate; 50 Me. 541; 94 Me. 346; 111 Me. 131; 120 Me. 431; 122 Me. 468; 124 Me. 225; 127 Me. 104; 128 Me. 324; 133 Me. 195; 134 Me. 175; 135 Me. 190.

Sec. 12. Suits on bonds of trustees. R. S. c. 82, § 12. Any bond given by a trustee may be put in suit by order of the judge of probate for the benefit of any person interested in the trust estate; and the proceedings in such suit shall be conducted in the manner prescribed with respect to bonds of administrators.

120 Me. 456.

Sec. 13. Executors becoming trustees by operation of law. R. S. c. 82, § 13. The foregoing provisions are applicable to executors who by the provisions of a will become trustees by operation of law without express appointment; but they are not required to return another inventory.

37 Me. 275; 50 Me. 548; *111 Me. 255.

Sec. 14. Investment forming part of estate, may be retained. 1937, c. 145. In the absence of instructions from the court or direction in the will, a testamentary trustee may retain as a part of the estate any investment which formed a part of the estate of a deceased person at the time of his death.

A guardian or conservator may likewise retain investments which formed part of the estate of his ward. Nothing herein contained shall relieve such

fiduciary from the exercise of reasonable business judgment as to the supervision of such investments and the sale thereof when such judgment so requires.

Voluntary Trusts

Sec. 15. Trustee, appointment in case of voluntary trusts; bond; filing of inventory. R. S. c. 82, § 14. 1939, c. 24. A person placing property for any purpose in the hands of a trustee, or any person resident of the state, having property in this state in his hands as trustee, may, on petition to the judge of probate in the county where he resides, have the appointment of trustee confirmed by the judge; and said trustee shall file a bond, with sureties resident in the state, or with a surety company authorized to do business in the state, as surety, to be approved by the judge, for the fulfilment of said trust, according to the terms and conditions of the trust deed or declaration, unless the same be waived in the instrument creating said trust, and shall file inventory, and thereafter, at least once in 3 years, account to the said judge or his successor in office, after such public notice as said judge may order thereon. The provisions of section 19 are applicable to cases of voluntary trusts, arising under this section.

Sec. 16. Trustee accountable to judge of probate. R. S. c. 82, § 15. 1939, c. 24. The trustee shall file inventory and account to the judge in the same manner as testamentary trustees, unless excused or released therefrom by the person creating the trust or for whose benefit it was created; and at the termination of such trust, the money or property held by the trustee shall be paid or delivered to the person legally entitled thereto.

Sec. 17. Remedies, if trustee fails to fulfil his bond. R. S. c. 82, § 16. If said trustee at any time fails to fulfil the conditions of the trust or of his bond, parties interested have the same remedies, and like proceedings shall be had, as in case of other probate bonds.

Appointment of Trustees to Fill Vacancies

Sec. 18. Vacancies under deed of trust or mortgage, how filled; property to vest in new trustee; record of decree. R. S. c. 82, § 17. Whenever vacancies shall occur by the death or resignation of any or all of the trustees named in any deed of trust or mortgage, and from any cause such vacancy cannot be filled by appointment by the surviving trustee or trustees named therein, or such trustees neglect or refuse to make such appointment, the probate court or the superior court, or any judge thereof, in term time or vacation, on the petition of any party interested in said trust, and upon such notice to all persons interested by publication or otherwise as the court shall order, and after hearing thereon, may appoint a trustee or trustees to fill such vacancy or vacancies, and upon and by virtue of said appointment the property described in said deed of trust or mortgage, held by said trustees at the time of such decease or resignation, shall vest in said trustees so appointed without further conveyance thereof, and they shall have the rights and powers and be subject to the duties relating to such trust to the same extent and for the same purpose as the same were held by the original trustees in said trust; the decree making such appointment shall confirm the transfer of title as hereinbefore provided and shall be recorded as the original trust deed was recorded. The heirs at law and personal representatives of any deceased trustee shall not be necessary as parties to said petition nor any proceedings thereunder, but may appear

and be heard in relation to the matters therein contained, and such notice of said petition and hearing shall be given them by publication or otherwise as the court may order.

See c. 154, § 19, re trustees in mortgage hold in joint tenancy.

Sec. 19. Vacancy in trusts, how filled; bond. R. S. c. 82, § 18. When a trustee under a written instrument declines, resigns, dies, or is removed before the objects thereof are accomplished, if no adequate provision is made therein for supplying the vacancy, the probate court or superior court shall, after notice to all persons interested, appoint a new trustee to act alone or jointly with the others, as the case may be. Such new trustee, upon giving the bonds and security required, shall have and exercise the same powers, rights, and duties, whether as a sole or joint trustee, as if he had been originally appointed, and the trust estate vests in him in like manner as it had or would have vested in the trustee in whose place he is substituted.

See c. 154, § 19, re trustees in mortgage hold in joint tenancy; 69 Me. 398; *85 Me. 88; 94 Me. 311; 111 Me. 255, 523; 130 Me. 14, 322; 135 Me. 190.

Sec. 20. Court may order conveyance to be made to him. R. S. c. 82, § 19. Upon the appointment of a trustee under the provisions of the preceding section, the court may order such conveyance to be made by the former trustee, or by his representatives, or by the other remaining trustees, as is proper or convenient to vest in such trustee, either alone or jointly with the others, the estate and effects to be held in trust.

See c. 42, §§ 30, 54, re bondholders under mortgage given by a corporation may elect trustees to fill vacancies; c. 54, § 14, re city or town appointed trustee not required to give bond in certain cases; c. 140, § 44, re compensation of trustees; c. 154, § 6, re jurisdiction of probate court in matters relating to trusts for sale of contingent remainders; 69 Me. 399; 85 Me. 90.

CHAPTER 148.

ESTATES OF DECEASED PARTNERS.

Sec. 1. Partnership property, how appraised and administered. R. S. c. 83, § 1. The executor or administrator of a deceased member of a partnership shall include in the inventory the property of the partnership, appraised as in other cases, except that an amount is to be carried out equal only to the share of the deceased. This property shall be retained and administered, unless the surviving partner gives bond to the judge as provided in the following section.

*36 Me. 343; 55 Me. 236; 56 Me. 229; 59 Me. 243; 61 Me. 17; 65 Me. 163; 74 Me. 339; 79 Me. 160; *81 Me. 228; 130 Me. 338.

Sec. 2. Bond to be given; conditions. R. S. c. 83, § 2. The bond shall be for such sum and with such sureties resident in the state, or with a surety company authorized to do business in the state, as surety, as the judge approves, conditioned to use fidelity and due diligence in closing the affairs of the late partnership; to apply the property thereof towards payment of partnership debts; to render an account, on oath, when required, of all partnership affairs, including property owned, debts due to and from, the amount received and collected, and the amount paid; and to pay to the executor or administrator of