FUNCTIONS OF A TRUST COMPANY

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There is a certain amount of popular confusion regarding the range of functions of trust companies in Canada. This may be partly due to the fact that trust companies of the United States fill a different field than do the Canadian companies. There the powers of the trust company include practically those of commercial banking business, whereas trust companies in Canada are restricted by law in the investment of their own funds to mortgages on real estate in Canada, government and municipal debentures and certain classes of stocks and bonds, and in the investment of trust funds in their possession they are still more narrowly restricted, being confined to first mortgages and to government and municipal debentures, unless the creator of the trust authorizes other investments.

A Canadian company may not accept money on deposit subject to withdrawal without notice, and may not lend on personal security and by these prohibitions it is forbidden to carry on what are the essential parts of a commercial banking business.

American companies also enjoy pretty much the same powers as Canadian companies do, and these are broadly to act as a trustee for the fulfilling of any lawful trust, which includes all the following powers or functions: (1) Acting as executor of wills; (2) administrator of estates; (3) trustee under bond mortgage; (4) transfer agent of stocks; (5) escrow agent; (6) trustee of marriage or other settlement agreement; (7) liquidator of insolvent companies; (8) assignee for the benefit of creditors; (9) receiver; (10) committee of a lunatic; (11) guardian of orphan children; (12) fiscal agent; (13) agents for management of property; (14) agents for the sale and purchase of real estate; (15) custodian of property.

I think that in the popular mind trust companies are somewhat confused with loan companies. In Canada loan companies have none of the above powers. Their business is simply that of lending money on real estate mortgages, and they are empowered by law to issue their debentures for given terms of years for funds which they may use for the purpose of mortgage investment. The Loan Corporations Act provides that these debentures shall be a first charge against all the assets of the company. Trust companies, however, are forbidden by law to issue debentures as well as to receive money on deposit.

Let me now briefly describe the functions which I have enumerated above:—

Executor of Wills

First, and most important, is that of executor of wills. Every business man recognizes the necessity of giving his best ability and constant attention to the work of providing an estate for the maintenance after his death of those who are dependent upon him, but how many of them give the same attention to arrangements for handling and conserving that estate in the interest of his dependants after his death? The making of a will is a matter that should be given most careful consideration, and inasmuch as this document is to govern the conduct of its executor, it is highly important that it should be carefully and skilfully drawn. Two prolific sources of trouble exist in connection with the making of wills. First, the improper drawing of the document and second, the naming of the wrong person to administer it. Your lawyer should draw your will and a trust company should be executor, especially if it creates trusts extending over a term of years.

A personal executor may die before his duties are performed. A trust company does not die. An individual executor may become incompetent through sickness, infirmities of age, or failure of his powers; these things do not befall a trust company. His own affairs may become embarrassed; he may move away to other parts and above all he may have no experience regarding the more or less technical duties of an executor. A trust company is not only experienced, but has financial responsibility beyond that of the great majority of personal executors. Indeed, every advantage is with the corporate executor, provided one is satisfied of the honesty and competency of its officers, particularly as the remuneration allowed by the court is no more than that given to an individual executor.

Indeed, most trust companies are prepared to give an estimate of the cost of administering the estate in advance if the nature and extent of the estate and the terms of the will are given. A trust company maintains a staff of men experienced in the special duties involved in administering estates.

Administrator of Estates

If no will is made and an estate is left, the courts perforce appoint an administrator and in a great many of such cases a trust company is appointed. Those trust companies, who are approved by order-in-council of the provincial government, may be appointed by the courts without giving security, whereas a private administrator is required to give bonds, usually twice the amount of the estate involved. An administrator is bound to administer the estate promptly and to distribute it among the heirs strictly in accordance with the Devolution of Estates Act. The law does not allow any deviation from the prescribed basis of division no matter what the special needs or claims of one heir may be as against the others, hence the great importance of making a will.

I have in mind the case of a man who died without making a will whose estate amounted to several hundred thousand dollars. Our company was appointed administrator and were unable to make any provision for an aged maiden sister to whom he had always given a monthly allowance, because having left a widow and children the law provides that all the estate should go to them. If this man had made a will, beyond a doubt he would have made provision for this sister and also have made ample provision for his own widow and children.

Trustee of Bond Issue

Where a company or individual desires to borrow a large sum from a number of people and give each of them the security of a mortgage on his property without one having priority over the other, the method is to give a bond mortgage or trust deed to a trust company for the total amount. The trust company then issues bonds to the investors to the amount of their loan and these bonds are really certificates that the investor has an interest to that extent in the trust company's mortgage, and, in addition the trust company represents the bondholders and in case of default acts in their behalf and on their instructions. A corporation bond is really a part interest in a mortgage on real or personal property or both.

Transfer Agent for Stock Issue

A company whose shareholders are numerous and whose stock changes hands frequently, usually appoints a trust company to keep its stock ledgers and make its transfers. The advantage is that the trust company knows what constitutes a proper transfer; knows what is required in case of the transfer of the stock of a deceased person; when stock may not be transferred; what the Government Transfer Tax Act requires, etc. It is also a guarantee to the public against the over-issue of stocks or the fraudulent issue by dishonest officials.

Escrow Agent

A trust company is usually named to hold documents or other valuables that are the subject of some contract, when the valuables are not to be delivered until certain conditions are fulfilled. The purchaser knows by this arrangement that he can be assured of the delivery of his property when he has fulfilled the conditions and that the vendor is unable to make any use of the property in the meantime.

Where property is set aside for the benefit of a person, but it is not desired that this person should have control of the corpus or principal, it is usual to commit the property to the care of a trust company by a trust deed setting out

a/o P 36