

A Bill for an Act Relating to Trusts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that current law allows trustees to distribute assets through their general powers under chapter 554A, Hawaii Revised Statutes, and pursuant to any applicable trust agreement. The legislature further finds that such trust agreements allow trustees to distribute trust assets pro rata or non-pro rata in consideration of the wishes of the settlor of the trust as well as the needs and desires of the beneficiaries. However, chapter 554A does not specifically provide such authority to the trustees under their general powers, and thus there may be a conflict between the trustees' general powers and the applicable trust agreements.

Therefore, it is the purpose of this Act to amend chapter 554A to conform the Uniform Trustees Powers Act with existing practices by trustees acting in the best interests of their beneficiaries.

SECTION 2. Section 554A-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) A trustee has the power, subject to subsections (a) and (b):
- (1) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;
  - (2) To receive additions to the assets of the trust;
  - (3) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
  - (4) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;
  - (5) To deposit trust funds in a bank;
  - (6) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;
  - (7) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
  - (8) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;
  - (9) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;
  - (10) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
  - (11) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;
  - (12) To vote a security, in person or by general or limited proxy;

- (13) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (14) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (15) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;
- (16) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;
- (17) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;
- (18) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;
- (19) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;
- (20) To allocate items of income or expense to either trust income or principal, as provided by chapter 557, the Revised Uniform Principal and Income Act, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (21) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;
- (22) To effect distribution of money and property [and money] (that may be made in kind on a pro rata or non-pro rata basis), in divided or undivided interests, and to adjust resulting differences in valuation;
- (23) To employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in performance of the trustee's administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;
- (24) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of trustee duties; and
- (25) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

## **ACT 24**

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 1998.)