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NOMINATIONS IN RESPECT OF SAVINGS BANK ACCOUNTS

REPORT OF THE CONTRACTS AND COMMERCIAL LAW REFORM COMMITTEE, NEW ZEALAND

Presented to the Honourable the Minister of Justice in July 1971.

REPORT OF THE CONTRACTS AND COMMERCIAL LAW REFORM COMMITTEE ON NOMINATIONS IN RESPECT OF SAVINGS BANK ACCOUNTS

To: The Honourable Minister of Justice

This Committee has had referred to it the question whether the existing law authorising nominations of savings bank accounts should in any way be altered. For the sake of completeness, we refer also to the statutory provisions relating to nominations of funds held in Friendly Societies and shares held in Industrial and Provident Societies.

I. The Present Legislation

A. Nominations of funds held in Savings Banks:

There is provision for nomination of funds held in the three types of savings banks in New Zealand - the Post Office Savings Bank, the trustee savings banks, and the private savings banks. Nominations of funds in the Post Office Savings Bank are governed by s.124 of the Post Office Act 1959 and regulations 45-48 of the Post Office Savings Bank Regulations 1944. Nominations of funds in trustee savings banks are governed by s.19A of the Trustee Savings Banks Act 1948, and regulations 66-71 of the Trustee Savings Banks Regulations 1949. In the case of private savings bank nominations, the governing legislation is s.25(f) of the Private Savings Banks Act 1964 and regulations 45-50 of the Private Savings Bank Regulations 1964.

The Post Office Savings Bank introduced nominations in 1907, and as at July 1970 it had approximately 14,000 nominations registered against savings bank accounts. The trustee savings banks first introduced nominations in 1963, and as at July 1970 they had about 300 nominations. Nominations were introduced by the private savings banks in

1965 and their figure at July 1970 was between 200 and 300 nominations.

The provisions relating to nominations are similar for the three types of banks and they may be summarised as follows:

(1) A nomination may be made by any person who is or has been married or who is over 18 years of age.

(2) A nomination must be in writing. In the case of the trustee and private savings banks it must be made on the form prescribed in the schedule to the regulations.

A Post Office Savings Bank nomination must be on a form of the type approved by the Postmaster-General for the purpose.

(3) Every nomination must be signed by the nominator in the presence of one witness, and the signature of the nominator must be attested by the witness. No person who attests the signature of the nominator may take any benefit under the nomination.

(4) The nomination is of no effect unless it is despatched to the savings bank in the lifetime of the nominator.

(5) A nomination may be of the whole amount in the account of the nominator at death. Alternatively it may be of a specified proportion of that amount, or a specified sum. The nomination may be in favour of more than one person.

(6) A nomination is revoked by the death of the nominee, or by the subsequent marriage of the nominator. Otherwise a nomination can only be revoked by written notice of revocation made in accordance with the requirements of the regulations, or by the

making of a subsequent valid nomination. A nomination cannot be revoked by will or by any other means whatsoever.

(7) There is no provision to permit the making of a nomination in contemplation of marriage.

(8) No payment can be made to a nominee under 20 years of age. The money is held for him, or at the discretion of the bank it may be paid to another person for the maintenance or other benefit of the nominee.

It is of interest to note that Friendly Societies and Industrial and Provident Societies also have provisions for nominations, and these are summarised below. However, it must be remembered that in these instances the money concerned is money that becomes payable on death and is not the absolute property of the person concerned.

B. (i) Friendly Societies

Section 57 of the Friendly Societies Act 1909 empowers a member of a registered friendly society to nominate a person or persons to whom the money (or any portion of the money) payable by the society on the death of that member shall be paid at his decease. The requirements laid down for a nomination under this Act are -

(1) The nominator must be over 16 years of age.

(2) With certain exceptions in the case of some relatives, the nominee may not be an officer or servant of the society.

(3) The nomination must be in writing under the hand of the nominator and must be delivered or sent to the registered office of the society during the lifetime of the member

or made in a book kept at that office. There is no form to be followed.

(4) There is no requirement that the nomination be witnessed.

(5) The nomination is revoked by the subsequent marriage of the nominator, or by "any similar document under the hand of the nominator" which is delivered, sent, or made as aforesaid. Although it is not expressly so stated in the Act, the nomination may be revoked by the nominee's death. Subject to this, a nomination cannot be revoked by will or by any other means whatsoever.

(6) A nomination cannot be made in respect of an amount exceeding $1,000 and each member can only have one valid nomination operating at any given time.

(ii) Industrial and Provident Societies

Nomination is also allowed by s.9(e) of the Industrial and Provident Societies Act 1908. This empowers a member of a society registered under the Act to nominate a person to whom his shares in the society shall be transferred at his death. The requirements for a nomination under this Act are similar to those under the Friendly Societies Act. The nominator must be of or over 16 years of age; there are restrictions on the nominee being an officer or servant of the society; the nomination must be in writing, although in no particular form; there is no requirement for a witness' signature; revocation may be made in the same manner but not by will. There is however no restriction on the actual amount which can be nominated, except that the amount credited to the nominator in the books of the society at the date of the

nomination must not exceed $1,000.

It will be seen that the procedural requirements for valid nominations under the Friendly Societies Act and the Industrial and Provident Societies Act, are considerably less onerous than those under the savings bank legislation. On the other hand, under the savings bank legislation there is no limit on the amount in respect of which a nomination may be made.

II. Advantages and Disadvantages of the Provisions

It would appear that the basic reason for such provisions is to enable a person to dispose of what was anticipated as being generally small sums without the necessity of making a will or even of obtaining administration. It is difficult to envisage what other purpose there could be for departing from the long-established formalities required to constitute a valid disposition on death, unless possibly it is to make money readily available immediately after death. This particular aspect will be referred to later.

The number of people who -

(a) Have a savings bank account as their only or principal asset; and
(b) Die intestate; and
(c) Leave an estate of such a value that the imposition of normal administration charges would create an injustice,

must be very small.

It seems plain that the legislation is providing for something that is no longer necessary. Today people are more likely to make wills than say 20 years ago. A large percentage of young couples come into contact with a solicitor either through the purchase of their own house or through the complexities of modern life. This contact

creates opportunities to make a will. The cost is comparatively small and for those people who are concerned with this aspect, the Public Trust Office is available. Furthermore, we are of the view that it is important to promote the public acceptance of the desirability of making a will.

On the other hand there are serious disadvantages inherent in the practice of nominations. These are as follows:

(a) There is no protection equivalent to that provided by the requirements of the Wills Act. This we consider very important. As the law stands a depositor can dispose of unlimited cash on a comparatively informal basis.

(b) There is no limit on the amount that can be nominated.

(c) A nomination may have the effect of limiting the amount of an estate which would otherwise be available to proper claimants. This question arose specifically in Re McDonough [1968] N.Z.L.R. 615, where it was held that a nominated savings account of some $4,000 had to be brought into the deceased's estate and was the subject of an order made under the Family Protection Act 1955. However the general application of this principle is not certain, and there must be grave doubts as to the effect of claims under, for example, the Matrimonial Property Act 1963, the Matrimonial Proceedings Act 1963 and the Law Reform (Testamentary Promises) Act 1949. There are also the

rights of creditors to be considered, and although there is some protection for them (e.g. regulation 48(1)(c) of the Post Office Savings Bank Regulations 1944) the practical effect of this is probably illusory as a bank is unlikely to have knowledge of the depositor's debts before being called upon to make payment under the nomination. There is certainly no right vested in a creditor.

(d) Revocation by will is not possible. It is most unlikely that this is fully appreciated by depositors. Moreover the fact that a nomination has been made could well be overlooked after a period of years has elapsed, or when a depositor's financial position has changed, and he has decided to make a will.

(e) The possibility of effectively assigning a nomination and the ramifications thereof.

It is convenient to make reference at this point to s.65 of the Administration Act 1969. This section provides that in the event of the death of any person to whom any sum of money not exceeding $1,000 is payable by certain persons and bodies, including banks and savings banks, those persons and bodies may, without requiring administration of the estate of that deceased person to be obtained in New Zealand, pay the sum or any part thereof to certain classes of person. This we regard as a desirable provision and one which should be retained. It is also a sufficient answer to the claim that immediate availability of funds is a valid reason for permitting nominations, provided the present legislation is amended,

as we think it should be, to permit payment to those same persons of an amount not exceeding $1,000 from a bank account regardless of its total credit as at the date of the depositor's death.

III. Conclusions

Having regard to the above matters we have considered whether there is any acceptable basis upon which nominations in respect of savings bank accounts could be retained. If it be thought that provisions should continue then the following restrictions, additional to those already existing, are in our view the absolute minimum which should be imposed:

(a) That no more than $1,000 can be nominated from any one account.

(b) That a nominated account be subject to the provisions of:
- (i) the Matrimonial Property Act 1963,
- (ii) the Matrimonial Proceedings Act 1963,
- (iii) the Law Reform (Testamentary Promises) Act 1949,
- (iv) the Family Protection Act 1955.

(c) That a nominated account be not protected as against creditors of the depositor.

(d) That revocation by subsequent will be effective, whether by a general revocation of previous testamentary dispositions, the disposition of a whole estate, or the express revocation of a nomination.

(e) That the witness must be a responsible person (e.g. a solicitor, postmaster, or Justice of the Peace).

However, even taking into account such additional restrictions, we have come to the clear conclusion that there are insufficient reasons to retain any provision as to nominations in respect of savings bank accounts, and our strong recommendation is that the provisions relating to such nominations be revoked. Their possible benefit is minimal, and the disadvantages we have mentioned are so compelling as to override them. It is worth emphasising the very small number of nominations that have been lodged with the trustee savings banks and private savings banks, and even the number lodged with the Post Office Savings Bank shows a use which is far from extensive when regard is had to the volume of that bank's business and the length of time the provisions have been in force.

There remains the question of existing nominations if the present provisions are revoked. These would of course remain in force, but would immediately have to be made subject to the restrictions (b), (c) and (d) above.

For the Committee

Chairman

DATED at Wellington this 30th day of July 1971.

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