

1974

## Postscript to a Note on Trust Powers after Termination

Bernard D. Meltzer

Follow this and additional works at: [http://chicagounbound.uchicago.edu/journal\\_articles](http://chicagounbound.uchicago.edu/journal_articles)



Part of the [Law Commons](#)

---

### Recommended Citation

Bernard D. Meltzer, "Postscript to a Note on Trust Powers after Termination," 56 Chicago Bar Association Record 52 (1974).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact [unbound@law.uchicago.edu](mailto:unbound@law.uchicago.edu).

# Postscript To A Note On Trust Powers After Termination

By Bernard D. Meltzer\*

In "A Note on Trust Powers After Termination," which appeared in the May-June 1974 issue of this journal,<sup>1</sup> I discussed the uncertainties with respect to the authority of trustees and the investment difficulties, that may result from the failure of a trust agreement to deal specifically with trust powers during the winding-up period. After the preparation of that article, the Illinois General Assembly enacted the Trusts and Trustees Act.<sup>2</sup> Section 4.18 of that act, with respect to trusts to which it is applicable, obviates the difficulties referred to above.<sup>3</sup> It should be observed that Section 3(2) provides that the statute is applicable only to trusts created by instruments, including wills, executed on or after October 1, 1973.

Section 3(2) may, of course, be read as implying that the broad powers conferred by Section 4.18 do not extend to trusts created by instruments executed prior to October 1, 1973. That implication is, however, far from a necessary one; for Section 3(2) could properly be read as negating a retroactive application of the 1973 act. Under that view, trust powers during the winding-up period of antecedent trusts would be determined on the basis of the common law and without any restrictive inferences drawn from the 1973 legis-

lation. Indeed, the policy reflected in that legislation could properly be considered in giving content to the common law.<sup>4</sup> That policy, together with the considerations urged in my earlier article, would justify a construction of the common law that would confer on all trustees the salutary authority conferred prospectively by the 1973 act. Nevertheless, the implication in the denial of retroactivity embodied in Section 3(2) of the act may, of course, be a factor in the refusal of trustees to adopt that construction prior to a judicial resolution of the question involved.

## FOOTNOTES

1. 55 Chicago Bar Record 286 (1974).
2. Public Act 78-625 (approved Sept. 10, 1973), Ill. Legis. Service 1234 (1973).
3. Section 4.18, together with Section 4, provides that a trustee is:  
To have all of the rights, powers and duties given to or imposed upon the trustee by law and the provisions of the trust instrument during the period between the termination of the trust and the distribution thereof and during any period in which any litigation is pending which may void or invalidate the trust in whole or in part or affect the rights, powers, duties or discretions of the trustee except as otherwise directed by the court.  
Section 4.18 appears to operate "during the period between the termination of the trust and the distribution thereof" regardless of whether "any litigation is pending, etc."; in other words, "and" after "distribution thereof" is to be read as "or." See K. Llewellyn, *The Common Law Tradition* 527, par. 25 (1960).
4. See *In re Arens*, 41 N.J. 364, 371, 379, 381, 384-85, 197 A. 2d 1, 5, 9, 10, 12-13 (1964).

\* James Parker Hall Professor of Law, University of Chicago.

# We can help add a couple of hours to your day.

When you handle real estate transactions you know that taking care of the myriad of details yourself can soak up hours of your valuable time. Time you could use to solve the more complicated problems your clients face.

## Here's a better way.

Just bring your title needs to Chicago Title Insurance.

We'll do the time-consuming tasks for you. Attorneys all over the country have found out what a blessing that is. In fact, we've processed more than 600,000 title policies last year alone. So it's pretty clear, we know how to do it the way you want it. Title insurance also gives your client the added protection he needs against

title failure and other unforeseeable risks. And that makes it easier for him to resell in the future.

## Another way we help you.

Over the past few years, we've been telling people how important an attorney's services are. Ads in TIME and SPORTS ILLUSTRATED recommend they turn to you before their personal matters become legal matters. We know how crucial that can be, so we're trying to spread the word.

## So take a little time.

And save yourself a lot of time by calling your nearest Chicago Title Insurance representative. When you're talking title protection, he's the expert.



## Chicago Title Insurance Company

Building on more than 125 years of experience  
111 West Washington Street, Chicago, Illinois 60602, 312/332-7700  
Member of the Lincoln National family of corporations

July-August, 1974

53