



# Trustee Act 1925

1925 CHAPTER 19 15 and 16 Geo 5

## PART II

### GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

#### *General Powers*

#### **12 Power of trustees for sale to sell by auction, &c.**

- (1) Where [<sup>F1</sup>a trustee has a duty or power to sell property], he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the Trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.
- (2) A [<sup>F2</sup>duty] or power to sell or dispose of land includes a [<sup>F2</sup>duty] or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.
- (3) This section does not enable an express power to sell settled land to be exercised where the power is not vested in the tenant for life or statutory owner.

#### **Textual Amendments**

- F1** Words in s. 12(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(2)(a)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F2** Words in s. 12(2) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(2)(b)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

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### 13 Power to sell subject to depreciatory conditions.

- (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.
- (2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.
- (3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.
- (4) This section applies to sales made before or after the commencement of this Act.

### 14 Power of trustees to give receipts.

- (1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.
- (2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—
  - [<sup>F3</sup>(a) proceeds of sale or other capital money arising under a trust of land;]
  - (b) capital money arising under the <sup>M1</sup>Settled Land Act, 1925.
- (3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

#### Textual Amendments

**F3** S. 14(2)(a) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(3)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

#### Marginal Citations

**M1** 1925 c. 18.

### 15 Power to compound liabilities.

A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or

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- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

## **16 Power to raise money by sale, mortgage, &c.**

- (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.
- (2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the <sup>M2</sup>Settled Land Act, 1925, not being also the statutory owners.

### **Marginal Citations**

**M2** 1925 c. 18.

## **17 Protection to purchasers and mortgagees dealing with trustees.**

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

## **18 Devolution of powers or trusts.**

- (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

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- (4) In this section “personal representative” does not include an executor who has renounced or has not proved.

## 19 Power to insure.

- (1) A trustee may insure [<sup>F4</sup>any personal property against loss or damage] to any amount, including the amount of any insurance already on foot, not exceeding three fourth parts of the full value of the <sup>F5</sup>. . . property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.
- (2) This section does not apply to any [<sup>F6</sup>personal]property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

### Textual Amendments

- F4** Words in s. 19(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(4)(a)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F5** Words in s. 19(1) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch.4** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F6** Words in s. 19(2) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(4)(b)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

## 20 Application of insurance money where policy kept up under any trust, power or obligation.

- (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the <sup>M3</sup>Settled Land Act, 1925, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.
- (2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.
- (3) Any such money—
- (a) if it was receivable in respect of settled land within the meaning of the Settled Land Act, 1925, or any building or works thereon, shall be deemed to be capital money arising under that Act from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;
  - (b) if it was receivable in respect of personal chattels settled as heirlooms within the meaning of the Settled Land Act, 1925, shall be deemed to be capital money arising under that Act, and shall be applicable by the trustees, or, if in court, under the direction of the court, in like manner as provided by that

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- Act with respect to money arising by a sale of chattels settled as heirlooms as aforesaid;
- (c) if it was receivable in respect of [F7]land subject to a trust of land or personal property held on trust for sale], shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
- (d) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
- (4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the M4Settled Land Act, 1925, be subject to the provisions of that Act with respect to the application of capital money by the trustees of the settlement.
- (5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.
- (6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

#### Textual Amendments

- F7 Words in s. 20(3)(c) substituted (1.1.1997) by 1996 c. 47, s. 25(1), Sch. 3 para. 3(5) (with ss. 24(2), 25(4)); S.I. 1996/2974, art.2

#### Marginal Citations

- M3 1925 c. 18.  
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## 21 Deposit of documents for safe custody.

Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

## 22 Reversionary interests, valuations and audit.

- (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—
- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;

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- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

- (2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—
  - (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
  - (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken: Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

- (3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.
- (4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

## 23 Power to employ agents.

- (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.
- (2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating, or otherwise administering

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any property, real or personal, moveable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the United Kingdom or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

- (3) Without prejudice to such general power of appointing agents as aforesaid—
- (a) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
  - (b) A trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee;
  - (c) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Act and any enactment replaced by this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee.

This subsection applies whether the money or valuable consideration or property was or is received before or after the commencement of this Act.

**Modifications etc. (not altering text)**

C1 S. 23(1)(3)(a)(b)(c) amended (1.1.1992) by S.I. 1991/2684, arts. 1, 2(1), 4, Sch. 1

## 24 Power to concur with others.

Where an undivided share in [<sup>F8</sup>any] property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the [<sup>F9</sup>trust] affecting the entirety of the land and the powers of the [<sup>F10</sup>trustees] in reference thereto) execute or exercise any [<sup>F11</sup>duty or] power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one

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or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

#### Textual Amendments

- F8** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(a)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F9** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(b)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F10** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(c)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F11** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(d)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

#### [<sup>F12</sup>25] **Delegation of trustee's functions by power of attorney.**

- (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.
- (2) A delegation under this section—
  - (a) commences as provided by the instrument creating the power or, if the instrument makes no provision as to the commencement of the delegation, with the date of the execution of the instrument by the donor; and
  - (b) continues for a period of twelve months or any shorter period provided by the instrument creating the power.
- (3) The persons who may be donees of a power of attorney under this section include a trust corporation.
- (4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice of it (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—
  - (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
  - (b) each of the other trustees, if any;
 but failure to comply with this subsection shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.
- (5) A power of attorney given under this section by a single donor—
  - (a) in the form set out in subsection (6) of this section; or
  - (b) in a form to the like effect but expressed to be made under this subsection, shall operate to delegate to the person identified in the form as the single donee of the power the execution and exercise of all the trusts, powers and discretions vested in the donor as trustee (either alone or jointly with any other person or persons) under the single trust so identified.
- (6) The form referred to in subsection (5) of this section is as follows—

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THIS GENERAL TRUSTEE POWER OF ATTORNEY is made on [date] by [name of one donor] of [address of donor] as trustee of [name or details of one trust].

I appoint [name of one donee] of [address of donee] to be my attorney [if desired, the date on which the delegation commences or the period for which it continues (or both)] in accordance with section 25(5) of the <sup>M5</sup>Trustee Act 1925.

[To be executed as a deed]”.

- (7) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.
- (8) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer, but not including the power of delegation conferred by this section.
- (9) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.
- (10) This section applies to a personal representative, tenant for life and statutory owner as it applies to a trustee except that subsection (4) shall apply as if it required the notice there mentioned to be given—
  - (a) in the case of a personal representative, to each of the other personal representatives, if any, except any executor who has renounced probate;
  - (b) in the case of a tenant for life, to the trustees of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life; and
  - (c) in the case of a statutory owner, to each of the persons, if any, who together with the person giving the notice constitute the statutory owner and, in the case of a statutory owner by virtue of section 23(1)(a) of the <sup>M6</sup>Settled Land Act 1925, to the trustees of the settlement.]

#### Textual Amendments

**F12** S. 25 substituted (1.3.2000) by 1999 c. 15, s. 5(1)(2); S.I. 2000/216, art. 2

#### Modifications etc. (not altering text)

**C2** S. 25(6) amended (1.3.2000) by S.I. 2000/215, art. 2, Sch. Pt. I

#### Marginal Citations

**M5** 1925 c.19.

**M6** 1925 c.18.

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