



# Trustee Act 1925

1925 CHAPTER 19 15 and 16 Geo 5

## PART III

### APPOINTMENT AND DISCHARGE OF TRUSTEES

#### 34 Limitation of the number of trustees.

- (1) Where, at the commencement of this Act, there are more than four trustees of a settlement of land, or more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.
- (2) In the case of settlements and dispositions [<sup>F1</sup>creating trusts of land] made or coming into operation after the commencement of this Act—
  - (a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;
  - (b) the number of the trustees shall not be increased beyond four.
- (3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply—
  - (a) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or
  - (b) where the net proceeds of the sale of the land are held for like purposes; or
  - (c) to the trustees of a term of years absolute limited by a settlement on trusts for raising money, or of a like term created under the statutory remedies relating to annual sums charged on land.

#### Textual Amendments

- F1** Words in s. 34(2) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(9)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

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

C1 S. 34 applied by [Land Registration Act 1925 \(c. 21\)](#), s. 95

**35 Appointments of trustees of settlements and [<sup>F2</sup>and trustees of land].**

- [<sup>F3</sup>(1) Appointments of new trustees of land and of new trustees of any trust of the proceeds of sale of the land shall, subject to any order of the court, be effected by separate instruments, but in such manner as to secure that the same persons become trustees of land and trustees of the trust of the proceeds of sale.]
- (2) Where new trustees of a settlement are appointed, a memorandum of the names and addresses of the persons who are for the time being the trustees thereof for the purposes of the <sup>M1</sup>Settled Land Act, 1925, shall be endorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and such vesting instrument shall, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required.
- [<sup>F4</sup>(3) Where new trustees of land are appointed, a memorandum of the persons who are for the time being the trustees of the land shall be endorsed on or annexed to the conveyance by which the land was vested in trustees of land; and that conveyance shall be produced to the persons who are for the time being the trustees of the land by the person in possession of it in order for that to be done when the trustees require its production.]
- (4) This section applies only to settlements and dispositions of land.

**Textual Amendments**

- F2** Words "and trustees of land" substituted for "dispositions on trust for sale of land" (1.1.1997) by 1996 c. 47, s. 25(1), [Sch. 3 para. 10\(10\)\(c\)](#) (with ss. 24(2), 25(4)); S.I. 1996/2974, [art.2](#)
- F3** S. 35(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), [Sch. 3 para. 3\(10\)\(a\)](#) (with ss. 24(2), 25(4)); S.I. 1996/2974, [art.2](#)
- F4** S. 35(3) substituted (1.1.1997) by 1996 c. 47, s. 25(1), [Sch. 3 para. 3\(10\)\(b\)](#) (with ss. 24(2), 25(4)); S.I. 1996/2974, [art.2](#)

**Marginal Citations**

**M1** 1925 c. 18.

**36 Power of appointing new or additional trustees.**

- (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Act on the number of trustees,—
- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
  - (b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee;

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may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

- (2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Act on the number of trustees.
- (3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, then, for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.
- (4) The power of appointment given by subsection (1) of this section or any similar previous enactment to the personal representatives of last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.
- (5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

<sup>F5</sup>[<sup>F6</sup>(6) Where, in the case of any trust, there are not more than three trustees—]

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being;

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any statutory enactment provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

[<sup>F6</sup>(6A) A person who is either—

- (a) both a trustee and attorney for the other trustee (if one other), or for both of the other trustees (if two others), under a registered power; or
- (b) attorney under a registered power for the trustee (if one) or for both or each of the trustees (if two or three),

may, if subsection (6B) of this section is satisfied in relation to him, make an appointment under subsection (6)(b) of this section on behalf of the trustee or trustees.

(6B) This subsection is satisfied in relation to an attorney under a registered power for one or more trustees if (as attorney under the power)—

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- (a) he intends to exercise any function of the trustee or trustees by virtue of section 1(1) of the Trustee Delegation Act 1999; or
  - (b) he intends to exercise any function of the trustee or trustees in relation to any land, capital proceeds of a conveyance of land or income from land by virtue of its delegation to him under section 25 of this Act or the instrument (if any) creating the trust.
- (6C) In subsections (6A) and (6B) of this section “ registered power ” means [<sup>F7</sup> an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005]
- (6D) Subsection (6A) of this section—
- (a) applies only if and so far as a contrary intention is not expressed in the instrument creating the power of attorney (or, where more than one, any of them) or the instrument (if any) creating the trust; and
  - (b) has effect subject to the terms of those instruments.]
- (7) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.
- (8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.
- [<sup>F8</sup>(9) Where a trustee [<sup>F9</sup>lacks capacity to exercise] his functions as trustee and is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by virtue of paragraph ( b ) of subsection (1) of this section unless leave to make the appointment has been given by [<sup>F10</sup>the Court of Protection ] . ]

#### Textual Amendments

- F5** Words before s. 36(6)(a) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(11)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**
- F6** S. 36(6A)-(6D) inserted (1.3.2000) by 1999 c. 15, s. 8(1)(2); S.I. 2000/216, **art. 2**
- F7** Words in s. 36(6C) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(2)(a)** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F8** S. 36(9) substituted by Mental Health Act 1959 (c. 72), **Sch. 7 Pt. I**
- F9** Words in s. 36(9) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(2)(b)(i)** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F10** Words in s. 36(9) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(2)(b)(ii)** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)

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

- C2** S. 36(6) excluded by National Theatre Act 1949 (c. 16), s. 2(2)  
S. 36(7) extended (1.1.1997) by 1996 c. 47, s. 21(3) (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**
- C3** S.36(9) restricted by S.I. 1984/2035, **art. 15**

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### **37 Supplemental provisions as to appointment of trustees.**

- (1) On the appointment of a trustee for the whole or any part of trust property—
  - (a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased; and
  - (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed; and
  - (c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two [<sup>F11</sup>persons] to act as trustees to perform the trust; and
  - (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.
- (2) Nothing in this Act shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

#### **Textual Amendments**

**F11** Word in s. 37(1)(c) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(12)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

### **38 Evidence as to a vacancy in a trust.**

- (1) A statement, contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the United Kingdom for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.
- (2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

### **39 Retirement of trustee without a new appointment.**

- (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two [<sup>F12</sup>persons] to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous

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of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

- (2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

#### Textual Amendments

**F12** Word in s. 39(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(13)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

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

**C4** Ss. 39, 40, modified by Trade Union and Labour Relations Act 1974 (c. 52, SIF 43:5), **s. 4(1)**

**C5** S. 39 modified (16. 10. 1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 13(2)(a), 302.**

## 40 Vesting of trust property in new or continuing trustees.

- (1) Where by a deed a new trustee is appointed to perform any trust, then—
- (a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate interest or right to which the declaration relates; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates interests and rights with respect to which a declaration could have been made.
- (2) Where by a deed a retiring trustee is discharged under <sup>F13</sup>section 39 of this Act or section 19 of the Trusts of Land and Appointment of Trustees Act 1996] without a new trustee being appointed, then—
- (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.
- (3) An express vesting declaration, whether made before or after the commencement of this Act, shall, notwithstanding that the estate, interest or right to be vested is not

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expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2) of this section, as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

- (4) This section does not extend—
- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
  - (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;
  - (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act of Parliament.

In this subsection “lease” includes an underlease and an agreement for a lease or underlease.

- (5) For purposes of registration of the deed in any registry, the person or persons making the declaration expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.
- (6) This section applies to deeds of appointment or discharge executed on or after the first day of January, eighteen hundred and eighty-two.

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#### **Textual Amendments**

**F13** Words in s. 40(2) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(14)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

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

- C6** S. 40 extended by **Charities Act 1960 (c. 58), s. 35(2)** and **Covent Garden Market Act 1961 (c. 49), s. 14(2)(3)**
- C7** Ss. 39, 40, modified by **Trade Union and Labour Relations Act 1974 (c. 52, SIF 43:5), s. 4(1)**
- C8** S. 40 modified (16.10.1992) by **Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 13(2)(b)(4), 302.**
- C9** S. 40 applied (1.8.1993) by 1993 c. 10, **ss. 83(2), 99(1)**
- C10** S. 40(1)(b) applied by **Incumbents and Churchwardens (Trusts) Measure 1964 (No. 2), s. 3(3)**

**Changes to legislation:**

There are currently no known outstanding effects for the Trustee Act 1925, Part III.