

Trusts of Land and Appointment of Trustees Act 1996

Chapter 47

Part I

Trusts of Land

Introductory

1 Meaning of “trust of land”

- (1) In this Act—
 - (a) “trust of land” means (subject to subsection (3)) any trust of property which consists of or includes land; and
 - (b) “trustees of land” means trustees of a trust of land.
- (2) The reference in subsection (1)(a) to a trust is to any description of trust (whether express, implied, resulting or constructive), including a trust for sale and a bare trust.

Settlements and trusts for sale as trusts of land

3 Abolition of doctrine of conversion

- (1) Where land is held by trustees subject to a trust for sale, the land is not to be regarded as personal property; and where personal property is subject to a trust for sale in order that the trustees may acquire land, the personal property is not to be regarded as land.

4 Express trusts for sale as trusts of land

- (1) In the case of every trust for sale of land created by a disposition there is to be implied, despite any provision to the contrary made by the disposition, a power for the trustees to postpone sale of the land; and the trustees are not liable in any way for postponing sale of the land, in the exercise of their discretion, for an indefinite period.

Functions of trustees of land

6 General powers of trustees

- (1) For the purpose of exercising their functions as trustees, the trustees of land have in relation to the land subject to the trust all the powers of an absolute owner.
- (2) Where in the case of any land subject to a trust of land each of the beneficiaries interested in the land is a person of full age and capacity who is absolutely entitled to the land, the powers conferred on the trustees by subsection (1) include the power

to convey the land to the beneficiaries even though they have not required the trustees to do so; and where land is conveyed by virtue of this subsection—

- (a) the beneficiaries shall do whatever is necessary to secure that it vests in them; and
 - (b) if they fail to do so, the court may make an order requiring them to do so.
- (3) The trustees of land have power to acquire land under the power conferred by section 8 of the Trustee Act 2000.
 - (5) In exercising the powers conferred by this section trustees shall have regard to the rights of the beneficiaries.
 - (6) The powers conferred by this section shall not be exercised in contravention of, or of any order made in pursuance of, any other enactment or any rule of law or equity.
 - (7) The reference in subsection (6) to an order includes an order of any court.
 - (8) Where any enactment other than this section confers on trustees authority to act subject to any restriction, limitation or condition, trustees of land may not exercise the powers conferred by this section to do any act which they are prevented from doing under the other enactment by reason of the restriction, limitation or condition.
 - (9) The duty of care under section 1 of the Trustee Act 2000 applies to trustees of land when exercising the powers conferred by this section.

7 Partition by trustees

- (1) The trustees of land may, where beneficiaries of full age are absolutely entitled in undivided shares to land subject to the trust, partition the land, or any part of it, and provide (by way of mortgage or otherwise) for the payment of any equality money.
- (2) The trustees shall give effect to any such partition by conveying the partitioned land in severalty (whether or not subject to any legal mortgage created for raising equality money), either absolutely or in trust, in accordance with the rights of those beneficiaries.
- (3) Before exercising their powers under subsection (2) the trustees shall obtain the consent of each of those beneficiaries.
- (4) Where a share in the land is affected by an incumbrance, the trustees may either give effect to it or provide for its discharge from the property allotted to that share as they think fit.
- (5) If a share in the land is absolutely vested in a minor, subsections (1) to (4) apply as if he were of full age, except that the trustees may act on his behalf and retain land or other property representing his share in trust for him.

8 Exclusion and restriction of powers

- (1) Sections 6 and 7 do not apply in the case of a trust of land created by a disposition in so far as provision to the effect that they do not apply is made by the disposition.

- (2) If the disposition creating such a trust makes provision requiring any consent to be obtained to the exercise of any power conferred by section 6 or 7, the power may not be exercised without that consent.
- (3) Subsection (1) does not apply in the case of charitable trusts.
- (4) Subsections (1) and (2) have effect subject to any enactment which prohibits or restricts the effect of provision of the description mentioned in them.

9 Delegation by trustees

- (1) The trustees of land may, by power of attorney, delegate to any beneficiary or beneficiaries of full age and beneficially entitled to an interest in possession in land subject to the trust any of their functions as trustees which relate to the land.
- (2) Where trustees purport to delegate to a person by a power of attorney under subsection (1) functions relating to any land and another person in good faith deals with him in relation to the land, he shall be presumed in favour of that other person to have been a person to whom the functions could be delegated unless that other person has knowledge at the time of the transaction that he was not such a person.

And it shall be conclusively presumed in favour of any purchaser whose interest depends on the validity of that transaction that that other person dealt in good faith and did not have such knowledge if that other person makes a declaration, in a form prescribed in rules made by the Board, to that effect before or within three months after the completion of the purchase.

- (3) A power of attorney under subsection (1) shall be given by all the trustees jointly and (unless expressed to be irrevocable and to be given by way of security) may be revoked by any one or more of them; and such a power is revoked by the appointment as a trustee of a person other than those by whom it is given (though not by any of those persons dying or otherwise ceasing to be a trustee).
- (4) Where a beneficiary to whom functions are delegated by a power of attorney under subsection (1) ceases to be a person beneficially entitled to an interest in possession in land subject to the trust—
 - (a) if the functions are delegated to him alone, the power is revoked;
 - (b) if the functions are delegated to him and to other beneficiaries to be exercised by them jointly (but not separately), the power is revoked if each of the other beneficiaries ceases to be so entitled (but otherwise functions exercisable in accordance with the power are so exercisable by the remaining beneficiary or beneficiaries); and
 - (c) if the functions are delegated to him and to other beneficiaries to be exercised by them separately (or either separately or jointly), the power is revoked in so far as it relates to him.
- (5) A delegation under subsection (1) may be for any period or indefinite.
- (7) Beneficiaries to whom functions have been delegated under subsection (1) are, in relation to the exercise of the functions, in the same position as trustees (with the

same duties and liabilities); but such beneficiaries shall not be regarded as trustees for any other purposes (including, in particular, the purposes of any enactment permitting the delegation of functions by trustees or imposing requirements relating to the payment of capital money).

9A Duties of trustees in connection with delegation etc

- (1) The duty of care under section 1 of the Trustee Act 2000 applies to trustees of land in deciding whether to delegate any of their functions under section 9.
- (2) Subsection (3) applies if the trustees of land—
 - (a) delegate any of their functions under section 9; and
 - (b) the delegation is not irrevocable.
- (3) While the delegation continues, the trustees—
 - (a) must keep the delegation under review;
 - (b) if circumstances make it appropriate to do so, must consider whether there is a need to exercise any power of intervention that they have; and
 - (c) if they consider that there is a need to exercise such a power, must do so.
- (4) “Power of intervention” includes—
 - (a) a power to give directions to the beneficiary;
 - (b) a power to revoke the delegation.
- (5) The duty of care under section 1 of the 2000 Act applies to trustees in carrying out any duty under subsection (3).
- (6) A trustee of land is not liable for any act or default of the beneficiary, or beneficiaries, unless the trustee fails to comply with the duty of care in deciding to delegate any of the trustees’ functions under section 9 or in carrying out any duty under subsection (3).

Consents and consultation

10 Consents

- (1) If a disposition creating a trust of land requires the consent of more than two persons to the exercise by the trustees of any function relating to the land, the consent of any two of them to the exercise of the function is sufficient in favour of a purchaser.
- (2) Subsection (1) does not apply to the exercise of a function by trustees of land held on charitable trusts.
- (3) Where at any time a person whose consent is expressed by a disposition creating a trust of land to be required to the exercise by the trustees of any function relating to the land is not of full age—
 - (a) his consent is not, in favour of a purchaser, required to the exercise of the

function; but

- (b) the trustees shall obtain the consent of a parent who has parental responsibility for him or of a guardian of his.

11 Consultation with beneficiaries

- (1) The trustees of land shall in the exercise of any function relating to land subject to the trust—
 - (a) so far as practicable, consult the beneficiaries of full age and beneficially entitled to an interest in possession in the land; and
 - (b) so far as consistent with the general interest of the trust, give effect to the wishes of those beneficiaries, or (in case of dispute) of the majority (according to the value of their combined interests).
- (2) Subsection (1) does not apply—
 - (a) in relation to a trust created by a disposition in so far as provision that it does not apply is made by the disposition;
 - (c) in relation to the exercise of the power mentioned in section 6(2).

Right of beneficiaries to occupy trust land

12 The right to occupy

- (1) A beneficiary who is beneficially entitled to an interest in possession in land subject to a trust of land is entitled by reason of his interest to occupy the land at any time if at that time—
 - (a) the purposes of the trust include making the land available for his occupation (or for the occupation of beneficiaries of a class of which he is a member or of beneficiaries in general); or
 - (b) the land is held by the trustees so as to be so available.
- (2) Subsection (1) does not confer on a beneficiary a right to occupy land if it is either unavailable or unsuitable for occupation by him.
- (3) This section is subject to section 13.

13 Exclusion and restriction of right to occupy

- (1) Where two or more beneficiaries are (or apart from this subsection would be) entitled under section 12 to occupy land, the trustees of land may exclude or restrict the entitlement of any one or more (but not all) of them.
- (2) Trustees may not under subsection (1)—
 - (a) unreasonably exclude any beneficiary's entitlement to occupy land; or
 - (b) restrict any such entitlement to an unreasonable extent.

- (3) The trustees of land may from time to time impose reasonable conditions on any beneficiary in relation to his occupation of land by reason of his entitlement under section 12.
- (4) The matters to which trustees are to have regard in exercising the powers conferred by this section include—
 - (a) the intentions of the person or persons (if any) who created the trust;
 - (b) the purposes for which the land is held; and
 - (c) the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.
- (5) The conditions which may be imposed on a beneficiary under subsection (3) include, in particular, conditions requiring him—
 - (a) to pay any outgoings or expenses in respect of the land; or
 - (b) to assume any other obligation in relation to the land or to any activity which is or is proposed to be conducted there.
- (6) Where the entitlement of any beneficiary to occupy land under section 12 has been excluded or restricted, the conditions which may be imposed on any other beneficiary under subsection (3) include, in particular, conditions requiring him to—
 - (a) make payments by way of compensation to the beneficiary whose entitlement has been excluded or restricted; or
 - (b) forgo any payment or other benefit to which he would otherwise be entitled under the trust so as to benefit that beneficiary.
- (7) The powers conferred on trustees by this section may not be exercised—
 - (a) so as prevent any person who is in occupation of land (whether or not by reason of an entitlement under section 12) from continuing to occupy the land; or
 - (b) in a manner likely to result in any such person ceasing to occupy the land, unless he consents or the court has given approval.
- (8) The matters to which the court is to have regard in determining whether to give approval under subsection (7) include the matters mentioned in subsection (4)(a) to (c).

Powers of court

14 Applications for order

- (1) Any person who is a trustee of land or has an interest in a property subject to a trust of land may make an application to the court for an order under this section.
- (2) On an application for an order under this section the court may make any such

order—

- (a) relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions); or
- (b) declaring the nature or extent of a person's interest in property subject to the trust,

as the court thinks fit.

- (3) The court may not under this section make any order as to the appointment or removal of trustees.

15 Matters relevant in determining applications

- (1) The matters to which the court is to have regard in determining an application for an order under section 14 include—
 - (a) the intentions of the person or persons (if any) who created the trust;
 - (b) the purposes for which the property subject to the trust is held;
 - (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home; and
 - (d) the interests of any secured creditor of any beneficiary.
- (2) In the case of an application relating to the exercise in relation to any land of the powers conferred on the trustees by section 13, the matters to which the court is to have regard also include the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.
- (3) In the case of any other application, other than one relating to the exercise of the power mentioned in section 6(2), the matters to which the court is to have regard also include the circumstances and wishes of any beneficiaries of full age and entitled to an interest in possession in property subject to the trust or (in case of dispute) of the majority (according to the value of their combined interests).

Supplementary

17 Application of provisions to trusts of proceeds of sale

- (2) Section 14 applies in relation to a trust of proceeds of sale of land and trustees of such a trust as in relation to a trust of land and trustees of land.
- (3) In this section “trust of proceeds of sale of land” means (subject to subsection (5)) any trust of property (other than a trust of land) which consists of or includes—
 - (a) any proceeds of a disposition of land held in trust; or
 - (b) any property representing any such proceeds.

- (4) The references in subsection (3) to a trust are to any description of trust (whether express, implied, resulting or constructive), including a trust for sale and a bare trust.

18 Application of Part to personal representatives

- (1) The provisions of this Part relating to trustees, other than sections 10, 11 and 14, apply to personal representatives, but with appropriate modifications and without prejudice to the functions of personal representatives for the purposes of administration.
- (2) The appropriate modifications include—
 - (a) the substitution of references to persons interested in the due administration of the estate for references to beneficiaries; and
 - (b) the substitution of references to the will for references to the disposition creating the trust.

Part II

Appointment and Retirement of Trustees

19 Appointment and retirement of trustee at instance of beneficiaries

- (1) This section applies in the case of a trust where—
 - (a) there is no person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; and
 - (b) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give a direction or directions of either or both of the following descriptions—
 - (a) a written direction to a trustee or trustees to retire from the trust; and
 - (b) a written direction to the trustees or trustee for the time being (or, if there are none, to the personal representative of the last person who was a trustee) to appoint by writing to be a trustee or trustees the person or persons specified in the direction.
- (3) Where—
 - (a) a trustee has been given a direction under subsection (2)(a);
 - (b) reasonable arrangements have been made for the protection of any rights of his in connection with the trust;
 - (c) after he has retired there will be either a trust corporation or at least one person to act as trustee to perform the trust; and

- (d) either another person is to be appointed to be a new trustee on his retirement (whether in compliance with a direction under subsection (2)(b) or otherwise) or the continuing trustees by deed consent to his retirement,

he shall make a deed declaring his retirement and shall be deemed to have retired and be discharged from the trust.

- (4) Where a trustee retires under subsection (3) he and the continuing trustees (together with any new trustee) shall (subject to any arrangements for the protection of his rights) do anything necessary to vest the trust property in the continuing trustees (or the continuing and new trustees).

20 Appointment of substitute for trustee who lacks capacity

- (1) This section applies where—

- (a) a trustee lacks capacity to exercise his functions as trustee;
- (b) there is no person who is both entitled and willing and able to appoint a trustee in place of him under section 36(1) of the Trustee Act 1925; and
- (c) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.

- (2) The beneficiaries may give to—

- (a) a deputy appointed for the trustee by the Court;
- (c) a person authorised for the purpose by the Court;

a written direction to appoint by writing the person or persons specified in the direction to be a trustee or trustees in place of the incapable trustee.

21 Supplementary

- (1) For the purposes of section 19 or 20 a direction is given by beneficiaries if—

- (a) a single direction is jointly given by all of them; or
- (b) (subject to subsection (2)) a direction is given by each of them (whether solely or jointly with one or more, but not all, of the others),

and none of them by writing withdraws the direction given by him before it has been complied with.

- (2) Where more than one direction is given each must specify for appointment or retirement the same person or persons.
- (3) Subsection (7) of section 36 of the Trustee Act 1925 (powers of trustees appointed under that section) applies to a trustee appointed under section 19 as if he were appointed under that section.
- (5) Sections 19 and 20 do not apply in relation to a trust created by a disposition in so far as provision that they do not apply is made by the disposition.

Part III

Supplementary

22 Meaning of “beneficiary”

- (1) In this Act “beneficiary”, in relation to a trust, means any person who under the trust has an interest in property subject to the trust (including a person who has such an interest as a trustee or a personal representative).
- (2) In this Act references to a beneficiary who is beneficially entitled do not include a beneficiary who has an interest in property subject to the trust only by reason of being a trustee or personal representative.
- (3) For the purposes of this Act a person who is a beneficiary only by reason of being an annuitant is not to be regarded as entitled to an interest in possession in land subject to the trust.

23 Other interpretation provisions

- (1) In this Act—
 - (a) “purchaser” means a purchaser in good faith for money or money’s worth and includes a lessee, mortgagee or other person who for money or money’s worth acquires an interest in property;
 - (b) where the context so requires “purchaser” includes an intending purchaser; and
 - (c) “purchase” has a meaning corresponding with that of “purchaser”.

26 Power to make consequential provision

- (1) The Board may make rules to make any such supplementary, transitional or incidental provision as appears to it to be appropriate for any of the purposes of this Act or in consequence of any of the provisions of this Act.

27 Short title, commencement and extent

- (1) This Act may be cited as the Trusts of Land and Appointment of Trustees Act 1996.