



Trustee Act (Northern Ireland) 1958

1958 CHAPTER 23

PART III

APPOINTMENT AND DISCHARGE OF TRUSTEES

35 Power of appointing new or additional trustees.

- (1) Where a trustee, whether original, substituted or additional, 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, then—
 - (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;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, 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.
- (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.

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- (4) The power of appointment given by sub-section (1) or any similar previous enactment to the personal representatives of a 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.
- [^{F1}(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 one or more other persons (whether or not being the persons exercising the power) 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 enactment provides to the contrary.
- (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.
- (9) [^{F2}Where a trustee is incapable, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, of exercising his functions as trustee and], is also entitled in possession to some beneficial estate or interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the [^{F3}High Court or the Master (Care and Protection)] to make the appointment.]

F1 2001 c. 14 (NI)

F2 1986 NI 4

F3 1978 c. 23

36 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 be increased; and
 - (b) a separate set of trustees 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

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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^{F4} 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.

F4 2001 c. 14 (NI)

37 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 bona fide purchaser, 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.

38^{F5} Retirement of trustee without a new appointment.

- (1) Where a trustee is desirous of being discharged from the trust or a severable part of the trust, and after his discharge there will be either a trust corporation or at least two^{F6} persons] to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust or the severable part thereof, 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 or a severable part thereof, 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.

F5 1974 c. 52

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F6 2001 c. 14 (NI)

39^{F7} 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^{F8} section 38 or section 34 of the Trustee Act (Northern Ireland) 2001] 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 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 sub-sections (1) and (2), 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 rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;

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- (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 any enactment.

In this sub-section “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.

F7	1974 c. 52
F8	2001 c. 14 (NI)

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