



Settled Land Act 1925

1925 CHAPTER 18 15 and 16 Geo 5

PART I

GENERAL PRELIMINARY PROVISIONS

Enforcement of Equitable Interests and Powers against Estate Owner and discharge on termination of Settlement

16 Enforcement of equitable interests and powers against estate owner.

- (1) All equitable interests and powers in or over settled land (whether created before or after the date of any vesting instrument affecting the legal estate) shall be enforceable against the estate owner in whom the settled land is vested (but in the case of personal representatives without prejudice to their rights and powers for purposes of administration) in manner following (that is to say):—
- (i) The estate owner shall stand possessed of the settled land and the income thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or the income thereof of which he has notice according to their respective priorities;
 - (ii) Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;
 - (iii) Where—
 - (a) any principal sum is required to be raised on the security of the settled land, by virtue of any trust, or by reason of the exercise of an equitable power affecting the settled land, or by any person or persons who under the settlement is or are entitled or together entitled to or has or have a general power of appointment over the settled land, whether

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subject to any equitable charges or powers of charging subsisting under the settlement or not; or

- (b) the settled land is subject to any equitable charge for securing money actually raised and affecting the whole estate the subject of the settlement;

the estate owner shall be bound, if so requested in writing, to create such legal estate or charge by way of legal mortgage as may be required for raising the money or giving legal effect to the equitable charge:

Provided that, so long as the settlement remains subsisting, any legal estate or charge by way of legal mortgage so created shall take effect and shall be expressed to take effect subject to any equitable charges or powers of charging subsisting under the settlement which have priority to the interests or powers of the person or persons by or on behalf of whom the money is required to be raised or legal effect is required to be given to the equitable charge, unless the persons entitled to the prior charges or entitled to exercise the powers consent in writing to the same being postponed, but it shall not be necessary for such consent to be expressed in the instrument creating such legal estate or charge by way of legal mortgage.

- (2) Where a mortgage or charge is expressed to be made by an estate owner pursuant to this section, then, in favour of the mortgagee or chargee and persons deriving title under him, the same shall take effect in priority to all the trusts of the settlement and all equitable interests and powers subsisting or to arise under the settlement except those to which it is expressly made subject, and shall so take effect, whether the mortgagee or chargee has notice of any such trusts, interests, or powers, or not, and the mortgagee or chargee shall not be concerned to see that a case had arisen to authorise the mortgage or charge, or that no more money than was wanted was raised.
- (3) Nothing contained in paragraph (iii) of subsection (1) of this section affects the power conferred by this Act on a tenant for life of raising money by mortgage or of directing capital money to be applied in discharge of incumbrances.
- (4) Effect may be given by means of a legal mortgage to an agreement for a mortgage, or a charge or lien, whether or not arising by operation of law, if the agreement charge or lien ought to have priority over the settlement.
- (5) Save as hereinbefore expressly provided, no legal estate shall, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.
- (6) If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the court for directions as hereinafter provided.
- (7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.
- (8) This section does not affect a purchaser of a legal estate taking free from any equitable interest or power.

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17 Deed of discharge on termination of settlement.

- (1) Where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, the persons who in the last or only principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as hereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land:

Provided that, if the trustees have notice of any derivative settlement, [^{F1}trust of land] or equitable charge affecting such land, they shall not execute a deed of discharge until—

- (a) in the case of a derivative settlement, or [^{F1}trust of land], a vesting instrument or a conveyance has been executed or made for giving effect thereto; and
- (b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge.

Where the land is affected by a derivative settlement or [^{F1}trust of land], the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is [^{F2}subject to a trust of land] by virtue of such conveyance as aforesaid, as the case may require.

- (2) If, in the circumstances mentioned in subsection (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—
- (a) by the estate owner; or
 - (b) by a person interested under, or by the trustees of, a derivative settlement; or
 - (c) by the trustees of [^{F3}land];

refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the court for an order discharging the first mentioned trustees as respects the whole or any part of the settled land, and the court may make such order as it may think fit.

- (3) Where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed or order relates shall be entitled to assume that the land has ceased to be settled land, and is not subject to [^{F4}a trust of land].

Textual Amendments

- F1** Words in s. 17(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(a)(i)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**
- F2** Words in s. 17(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(a)(ii)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**
- F3** Words in s. 17(2)(c) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(b)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art. 2**
- F4** Words in s. 17(3) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(c)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

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