



# Trustee Act 1925

1925 CHAPTER 19 15 and 16 Geo 5

## PART III

### APPOINTMENT AND DISCHARGE OF TRUSTEES

#### **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 [F<sup>1</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.

*Status: Point in time view as at 01/01/1997.*

*Changes to legislation: There are currently no known outstanding effects for the Trustee Act 1925, Section 40. (See end of Document for details)*

- (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 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.

#### Textual Amendments

- F1** 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**

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

- C1** S. 40 extended by Charities Act 1960 (c. 58), s. 35(2) and Covent Garden Market Act 1961 (c. 49), s. 14(2)(3)
- C2** Ss. 39, 40, modified by Trade Union and Labour Relations Act 1974 (c. 52, SIF 43:5), s. 4(1)
- C3** S. 40 modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 13(2)(b)(4), 302.
- C4** S. 40 applied (1.8.1993) by 1993 c. 10, ss. 83(2), 99(1)
- C5** S. 40(1)(b) applied by Incumbents and Churchwardens (Trusts) Measure 1964 (No. 2), s. 3(3)

**Status:**

Point in time view as at 01/01/1997.

**Changes to legislation:**

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