



# Trustee Act (Northern Ireland) 1958

## 1958 CHAPTER 23

### PART II

#### GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

##### GENERAL POWERS

#### **12 Power of trustees for sale to sell by auction, etc.**

- (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.
- (2) Where a trust for sale or a power of sale of land held in fee farm or on lease is vested in a trustee, he may make, on such terms and conditions as he may think proper, a sub fee farm grant of the land or any part thereof, or a sub-lease of the land or any part thereof with a nominal reversion, where such sub fee farm grant or sub-lease amounts in substance to a sale and the trustees have satisfied themselves that it is the most appropriate method of disposing of the land.
- (3) Where trustees grant or lease any land pursuant to any power conferred on them by sub-section (2) they may sell any rent reserved on such grant or any reversion expectant upon the determination of such lease.
- (4) Where any grant (including a sub fee farm grant) or sub-lease purports to have been made in exercise of a power conferred by this section, that power shall, until the contrary is proved, be assumed to have been properly exercised and—
  - (a) the grantee, sub-grantee or sub-lessee (as the case may be) shall not, either before or on the execution of the grant or sub-lease, be concerned to see or

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- inquire whether a case has arisen to authorise the execution of that grant or sub-lease; and
- (b) neither the grantee, sub-grantee, sub-lessee nor any of their successors in title shall be concerned to see to the application of any moneys paid on foot of the grant or lease.
- (5) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof whether the division is horizontal, vertical, or made in any other way.
- (6) This section does not enable—
- (a) a trust or direction to sell land which is deemed to be settled land by virtue of section sixty-three of the Settled Land Act, 1882, to be exercised unless the consents (if any) which are required by the instrument creating the settlement are first obtained; or
- (b) an express power to sell settled land to be exercised unless any consents which are required by virtue of sub-section (2) of section fifty-six of the Settled Land Act, 1882, as amended by sub-section (2) of section six of the Settled Land Act, 1884, are first obtained.

### **13 Power to sell subject to depreciatory conditions and under.**

- (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.
- (2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.
- (3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.
- (4) A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section two of the Vendor and Purchaser Act, 1874.
- (5) This section applies to sales and purchases made before or after the commencement of this Act.

### **14 Power of trustees to give receipts.**

- (1) The receipt in writing of a trustee for any money, securities<sup>[F1]</sup> investments], or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof, but, except where—
- (a) the sole trustee is a trust corporation; or
- (b) the settlement authorises the receipt of capital money by a sole trustee;
- a receipt given by a sole trustee for—
- (i) the proceeds of sale or other capital money arising under a trust for sale of land; or
- (ii) capital money arising under the Settled Land Acts, 1882 to 1890;

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shall not discharge the payer of such proceeds or capital money.

*Subs. (2) amends s. 39 of 1882 c. 38 (NI)*

**F1** 2001 c. 14 (NI)

## 15 Power to compound liabilities.

(1) A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them<sup>F2</sup> if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001].

(2) Sub-section (1) shall have effect without prejudice to sub-section (9) of section forty of the Administration of Estates Act (Northern Ireland), 1955 .

**F2** 2001 c. 14 (NI)

## 16 Power to raise money by sale, mortgage, etc.

(1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the Settled Land Acts, 1882 to 1890, not being also trustees exercising the powers of a tenant for life under section sixty of the Settled Land Act, 1882 .

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**17 Protection to purchasers and mortgagees dealing with trustees.**

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

**18 Devolution of powers or trusts.**

- (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.
- (4) In this section “personal representative” does not include an executor who has renounced or has not proved.

**[<sup>F3</sup>19 Power to insure**

A trustee may—

- (a) insure any property which is subject to the trust against risks of loss or damage due to any event, and
- (b) pay the premiums out of any income or capital funds of the trust]

<b>F3</b> 2001 c. 14 (NI)
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**20 Application of insurance money where policy kept up under any trust, power or obligation.**

- (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Acts, 1882 to 1890,<sup>F4</sup> . . . , shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.
- (2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.
- (3) Any such money—

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- (a) if it was receivable in respect of settled land within the meaning of the Settled Land Acts, 1882 to 1890, or any building or works thereon, shall be deemed to be capital money arising under those Acts from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;
  - (b) if it was receivable in respect of personal chattels settled in accordance with section thirty-seven of the Settled Land Act, 1882, shall be deemed to be capital money arising under that Act and shall be applicable by the trustees or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as aforesaid;
  - (c) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
  - (d) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
- (4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the Settled Land Acts, 1882 to 1890, be subject to the provisions of those Acts with respect to the application of capital money by the trustees of the settlement.
- (5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.
- (6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

F4 2001 c. 14 (NI)

## 21 Power of trustees of renewable leaseholds to renew and raise money for the purpose.

- (1) Subject to sub-section (2), a trustee of any leaseholds for lives or years which are renewable from time to time either under any covenant or contract, or by custom or usual practice may, if he thinks fit, and shall, if so required by any person having any beneficial interest, present or future, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed or other reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting and do all such other acts as are requisite.
- (2) Where by the terms of the instrument, if any, creating the trust the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.
- (3) If money is required to pay for the renewal, the trustee may—

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- (a) pay the money out of any funds then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease; and
- (b) if he has not in his hands sufficient funds for the purpose, raise the money required—
  - (i) by mortgage of the hereditaments to be comprised in the renewed lease; or
  - (ii) by mortgage of any other hereditaments subject to the trusts to which the hereditaments referred to in sub-paragraph (i) are subject.

*S. 22 rep. by 2001 c. 14 (NI)*

### **23 Reversionary interests, valuations, and audit.**

- (1) Where trust property includes any share, estate or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—
- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
  - (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
  - (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
  - (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them<sup>F5</sup> if they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001].

- (2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—
- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share, estate or interest or other thing in action as aforesaid is derived, payable or charged; or
  - (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken so, however, that nothing in this sub-section shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share, estate or interest or other thing in action on the same falling into possession.

- (3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by suitably qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made<sup>F5</sup> . . . shall be binding upon all persons

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interested under the trust<sup>F5</sup> if the trustees have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001].

- (4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

<b>F5</b> 2001 c. 14 (NI)
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*S. 24 rep. by 2001 c. 14 (NI)*

## **25 Power to concur with others.**

Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to any trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

## **[F6]26 Power to delegate trusts etc. by power of attorney.**

- (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.
- (2) The persons who may be donees of a power of attorney under this section include a trust corporation but not (unless a trust corporation) the only other co-trustee of the donor of the power.
- (3) An instrument creating a power of attorney under this section shall be attested by at least one witness.
- (4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—
  - (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
  - (b) each of the other trustees, if any;

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but failure to comply with this sub-section shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.

- (5) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.
- (6) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer such stock but not including the power of delegation conferred by this section.
- (7) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.
- (8) This section applies to a personal representative, a tenant for life and a trustee or other person exercising the powers of a tenant for life under section 60 of the Settled Land Act 1882 as it applies to a trustee except that sub-section (4) shall apply as if it required the notice therein mentioned to be given—
  - (a) in the case of a personal representative, to each of the other personal representatives, if any, except any executor who has renounced probate;
  - (b) in the case of a tenant for life, to the trustees of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life;
  - (c) in the case of a person (other than a trustee) exercising the powers of a tenant for life under section 60 of the Settled Land Act 1882, to each of the persons, if any, who together with the person giving the notice have, by virtue of an order of the court, power to exercise the powers of a tenant for life under the said section 60.
- (9) This section applies whenever the trusts, powers or discretions in question arose.]



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