

*Status: Point in time view as at 25/07/1991.*

*Changes to legislation: Law of Property Act 1925, FIRST SCHEDULE is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### FIRST SCHEDULE

Section 39.

#### TRANSITIONAL PROVISIONS

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

- C1** Sch. 1 amended by S.I. 1990/776, **art. 4(1)(b)**; and (1.1.1997) by 1996 c. 47, s. 5(1), **Sch. 2 para.7** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

#### PART I

##### CONVERSION OF CERTAIN EXISTING LEGAL ESTATES INTO EQUITABLE INTERESTS

All estates, interests and charges in or over land, including fees determinable whether by limitation or condition, which immediately before the commencement of this Act were estates, interests or charges, subsisting at law, or capable of taking effect as such, but which by virtue of Part I. of this Act are not capable of taking effect as legal estates, shall as from the commencement of this Act be converted into equitable interests, and shall not fail by reason of being so converted into equitable interests either in the land or in the proceeds of sale thereof, nor shall the priority of any such estate, charge or interest over other equitable interests be affected.

#### PART II

##### VESTING OF LEGAL ESTATES

- 1 Where the purposes of a term of years, created or limited out of leasehold land, are satisfied at the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly; but where the term was vested in the owner of the reversion, the merger and cesser shall take effect without prejudice to any protection which would have been afforded to the owner for the time being of that reversion had the term remained subsisting.

Where the purposes are satisfied only as respects part of the land comprised in a term, this provision has effect as if a separate term had been created in regard to that part of the land.

- 2 Where immediately after the commencement of this Act any owner of a legal estate is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any other legal estate in the same land to be surrendered, released or conveyed to him so as to merge or be extinguished, the last-mentioned estate shall by virtue of this Part of this Schedule be extinguished, but without prejudice to any protection which would have been afforded to him had that estate remained subsisting.

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- 3 Where immediately after the commencement of this Act any person is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any legal estate (not vested in trustees for sale) to be conveyed to or otherwise vested in him, such legal estate shall, by virtue of this Part of this Schedule, vest in manner hereinafter provided.

[<sup>F1</sup>The divesting of a legal estate by virtue of this paragraph shall not, where the person from whom the estate is so divested was a trustee, operate to prevent the legal estate being conveyed, or a legal estate being created, by him in favour of a purchaser for money or money's worth, if the purchaser has no notice of the trust and if the documents of title relating to the estate divested are produced by the trustee or by persons deriving title under him.]

This paragraph shall (without prejudice to any claim, in respect of fines, fees, and other customary payments) apply to a person who, under a surrender or any disposition having the effect of a surrender, or under a covenant to surrender or otherwise, was, immediately before the commencement of this Act, entitled to require a legal customary estate of inheritance to be vested in him, or who, immediately after such commencement becomes entitled to enfranchised land.

#### Textual Amendments

**F1** Proviso inserted by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

- 4 Any person who, immediately after the commencement of this Act, is entitled to an equitable interest capable of subsisting as a legal estate which has priority over any legal estate in the same land, shall be deemed to be entitled for the foregoing purposes to require a legal estate to be vested in him for an interest of a like nature not exceeding in extent or duration the equitable interest:

Provided that this paragraph shall not—

- (a) apply where the equitable interest is capable of being over-reached by virtue of a subsisting trust for sale or a settlement;
- (b) operate to prevent such person from acquiring any other legal estate under this Part of this Schedule to which he may be entitled.

- 5 For the purposes of this Part of this Schedule, a tenant for life, statutory owner or personal representative, shall be deemed to be entitled to require to be vested in him any legal estate in settled land (whether or not vested in the Crown) which he is, by the <sup>M1</sup>Settled Land Act, 1925, given power to convey.

#### Marginal Citations

**M1** [1925 c. 18.](#)

- 6 Under the provisions of this Part of this Schedule, the legal estate affected (namely, any estate which a person is entitled to require to be vested in him as aforesaid) shall vest as follows:—
- (a) Where at the commencement of this Act land is subject to a mortgage (not being an equitable charge unsecured by any estate), the legal estate affected shall vest in accordance with the provisions relating to mortgages contained in this Schedule;

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- (b) Where the land is at the commencement or by virtue of this Act or any Act coming into operation at the same time subject or is by virtue of any statute made subject to a trust for sale, the legal estate affected shall vest in the trustees for sale (including personal representatives holding land on trust for sale) but subject to any mortgage term subsisting or created by this Act;
- (c) Where at the commencement of this Act or by virtue of any statute coming into operation at the same time the land is settled land, the legal estate affected shall vest in the tenant for life or statutory owner entitled under the <sup>M2</sup>Settled Land Act, 1925, to require a vesting deed to be executed in his favour, or in the personal representative, if any, in whom the land may be vested or the Public Trustee, as the case may require but subject to any mortgage term subsisting or created by this Act;
- (d) In any case to which the foregoing sub-paragraphs do not apply the legal estate affected shall vest in the person of full age who, immediately after the commencement of this Act, is entitled (subject or not to the payment of costs and any customary payments) to require the legal estate to be vested in him, but subject to any mortgage term subsisting or created by this Act.

#### Marginal Citations

M2 1925 c. 18.

- 7 Nothing in this Part of this Schedule shall operate—
- (a) To vest in a mortgage of a term of years absolute any nominal leasehold reversion which is held in trust for him subject to redemption; or
  - (b) To vest in a mortgagee any legal estate except a term of years absolute; or
  - (c) To vest in a person entitled to a leasehold interest, as respects such interest, any legal estate except a term of years absolute; or
  - (d) To vest in a person entitled to a rentcharge (either perpetual or held for a term of years absolute) as respects such rentcharge, any legal estate except a legal estate in the rentcharge; or
  - (e) To vest in a person entitled to an easement, right or privilege with reference thereto, any legal estate except a legal estate in the easement, right or privilege; or
  - (f) To vest any legal estate in a person for an undivided share; or
  - (g) To vest any legal estate in an infant; or
  - (h) To affect prejudicially the priority of any mortgage or other incumbrance or interest subsisting at the commencement of this Act; or
  - (i) To render invalid any limitation or trust which would have been capable of taking effect as an equitable limitation or trust; or
  - (j) To vest in a purchaser or his personal representatives any legal estate which he has contracted to acquire and in regard to which a contract, including an agreement to create a legal mortgage, is pending at the commencement of this Act, although the consideration may have been paid or satisfied and the title accepted, or to render unnecessary the conveyance of such estate; or
  - (k) To vest in the managing trustees or committee of management of a charity any legal estate vested in the Official Trustee of Charity Lands; or
  - (l) To vest in any person any legal estate which failed to pass to him by reason of his omission to be registered as proprietor under the <sup>M3</sup>Land Transfer

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Acts, 1875 and <sup>M4</sup>1897, until brought into operation by virtue of the <sup>M5</sup>Land Registration Act, 1925.

[<sup>F2</sup>(m) To vest in any person any legal estate affected by any rent covenants or conditions if, before any proceedings are commenced in respect of the rent covenants or conditions, and before any conveyance of the legal estate or dealing therewith inter vivos is effected, he or his personal representatives disclaim it in writing signed by him or them.]

#### Textual Amendments

**F2** Para. 7(m) added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

#### Marginal Citations

**M3** [1875 c. 87.](#)

**M4** [1897 c. 65.](#)

**M5** [1925 c. 21.](#)

8 Any legal estate acquired by virtue of this Part of this Schedule shall be held upon the trusts and subject to the powers, provisions, rents, covenants, conditions, rights of redemption (as respects terms of years absolute) and other rights, burdens and obligations, if any, upon or subject to which the estate acquired ought to be held.

9 No stamp duty shall become payable by reason only of any vesting surrender or release effected by this Schedule.

### PART III

#### PROVISIONS AS TO LEGAL ESTATE VESTED IN INFANT

1 Where immediately before the commencement of this Act a legal estate in land is vested in one or more infants beneficially, or where immediately after the commencement of this Act a legal estate in land would by virtue of this Act have become vested in one or more infants beneficially if he or they had been of full age, the legal estate shall vest in the manner provided by the <sup>M6</sup>Settled Land Act, 1925.

#### Marginal Citations

**M6** [1925 c. 18.](#)

2 Where immediately before the commencement of this Act a legal estate in land is vested in an infant jointly with one or more other persons of full age beneficially, the legal estate shall by virtue of this Act vest in that other person or those other persons on the statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale:

Provided that, if by virtue of this paragraph the legal estate becomes vested in one person as trustee, then, if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant, if respectively able and willing to act, (in the order named) may, and at the request of any person interested shall (subject to the costs being provided for) by writing appoint an additional trustee and thereupon by virtue of this Act the legal estate shall vest in the additional trustee and existing trustee as joint tenants.

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- 3 Where, immediately before the commencement of this Act, a legal estate in land is vested solely in an infant as a personal representative, or a trustee of a settlement, or on trust for sale or on any other trust, or by way of mortgage, or where immediately after the commencement of this Act a legal estate in land would by virtue of any provision of this Act or otherwise have been so vested if the infant were of full age, the legal estate and the mortgage debt (if any) and interest thereon shall, by virtue of this Act, vest in the Public Trustee, pending the appointment of trustees as hereinafter provided—
- (a) as to the land, upon the trusts, and subject to the equities affecting the same (but in the case of a mortgage estate for a term of years absolute in accordance with this Act); and
  - (b) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein:

Provided that—

- (i) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in the land or the income thereof, or in the mortgage debt or interest thereon (as the case may be), which request may be made on behalf of the infant by his parents or parent, or testamentary or other guardian (in the order named), and those persons may, in the order aforesaid (if no other person is able and willing to do so) appoint new trustees in the place of the Public Trustee, and thereupon by virtue of this Act the land or term and mortgage money shall vest in the trustees so appointed upon the trusts and subject to the equities aforesaid: Provided that the Public Trustee may, before he accepts the trust, but subject to the payment of his costs, convey to a person of full age who becomes entitled;
- (ii) After the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in his place without his consent;
- (iii) Any person interested in the land or the income thereof, or in the mortgage debt or in the interest thereon (as the case may be), may, at any time during the minority, apply to the court for the appointment of trustees of the trust, and the court may make such order as it thinks fit, and if thereby new trustees are appointed the legal estate (but in the case of a mortgage estate only for a term of years absolute as aforesaid) and the mortgage debt (if any) and interest shall, by virtue of this Act, vest in the trustees as joint tenants upon the trusts and subject to the equities aforesaid;
- (iv) Neither a purchaser of the land nor a transferee for money or money's worth of the mortgage shall be concerned in any way with the trusts affecting the legal estate or the mortgage debt and interest thereon;
- (v) The vesting in the Public Trustee of a legal estate or a mortgage debt by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

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

C2 Sch. 1, Pt. III, para. 3 proviso (iii) extended (1.7.1991) by S.I. 1991/724, art. 2(3)(b)

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[<sup>F3</sup>3A The county court has jurisdiction under proviso (iii) to paragraph 3 of this Part where the land which is to be dealt with in the court does not exceed [<sup>F4</sup>£30,000] in capital value <sup>F5</sup> . . .

#### Textual Amendments

- F3** Sch. 1 Pt. III para. 3A inserted by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 Pt. II para. 10(a)**
- F4** Words in Sch. 1, Pt. III, para. 3A substituted (1.7.1991) by S.I. 1991/724, art. 2(8), **Sch. Pt. I** (with art. 12)
- F5** Words in Sch. 1, Pt. III, para. 3A omitted (1.7.1991) by virtue of S.I. 1991/724, art. 2(8), **Sch. Pt. I** (with art. 12)

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

- C3** Sch. 1 Pt. III para. 3A modified by County Courts Act 1984 (c. 28, SIF 34), s. 24(2)(c)

4 Where, immediately before the commencement of this Act, a legal estate in land is vested in two or more persons jointly as personal representatives, trustees, or mortgagees, and anyone of them is an infant, or where immediately after the commencement of this Act a legal estate in land would, by virtue of this Act, or otherwise have been so vested if the infant were of full age, the legal estate in the land with the mortgage debt (if any) and the interest thereon shall, by virtue of this Act, vest in the other person or persons of full age—

- (a) as to the legal estate, upon the trusts and subject to the equities affecting the same (but in the case of a mortgage estate only for a term of years absolute as aforesaid); and
- (b) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein;

but neither a purchaser of the land nor a transferee for money or money's worth of the mortgage shall be concerned in any way with the trusts affecting the legal estate or the mortgage debt and interest thereon:

Provided that, if, by virtue of this paragraph, the legal estate and mortgage debt, if any, become vested in a sole trustee, then, if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant (in the order named) may, and at the request of any person interested shall, (subject to the costs being provided for) by writing appoint a new trustee in place of the infant, and thereupon by virtue of this Act the legal estate and mortgage money shall vest in the new and continuing trustees upon the trusts and subject to the equities aforesaid.

#### Textual Amendments

- F3** Sch. 1 Pt. III para. 3A inserted by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 Pt. II para. 10(a)**

5 This Part of this Schedule does not affect the estate or powers of an administrator durante minore ætate, nor, where there is a tenant for life or statutory owner of settled land, operate to vest the legal estate therein in the Public Trustee.]

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### Textual Amendments

- F3** Sch. 1 Pt. III para. 3A inserted by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 Pt. II para. 10(a)**

## PART IV

### PROVISIONS SUBJECTING LAND HELD IN UNDIVIDED SHARES TO A TRUST FOR SALE

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

- C4** Pt. IV explained by Crown Estate Act 1961 (c. 55), s. 8(2)

1 Where, immediately before the commencement of this Act, land is held at law or in equity in undivided shares vested in possession, the following provisions shall have effect:—

- (1) If the entirety of the land is vested in trustees or personal representatives (whether subject or not to incumbrances affecting the entirety or an undivided share) in trust for persons entitled in undivided shares, then—
  - (a) if the land is subject to incumbrances affecting undivided shares or to incumbrances affecting the entirety which under this Act or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them upon the statutory trusts; and
  - (b) in any other case, the land shall be held by such trustees or personal representatives upon the statutory trusts;subject in the case of personal representatives, to their rights and powers for the purposes of administration.
- (2) If the entirety of the land (not being settled land) is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares, but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Act, vest in them as joint tenants upon the statutory trusts.
- (3) If the entirety of the land is settled land (whether subject or not to incumbrances affecting the entirety or an undivided share) held under one and the same settlement, it shall, by virtue of this Act, vest, free from incumbrances affecting undivided shares, and from incumbrances affecting the entirety, which under this Act or otherwise are not secured by a legal [<sup>F6</sup>mortgage, and free from any interests, powers, and charges subsisting under the settlement, which have priority to the interests of the persons entitled to the undivided shares.] in the trustees (if any) of the settlement as joint tenants upon the statutory trusts.

Provided that if there are no such trustees, then—

- (i) pending their appointment, the land shall, by virtue of this Act, vest (free as aforesaid) in the Public Trustee upon the statutory trusts;
- (ii) the Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on

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behalf of persons interested in more than an undivided half of the land or the income thereof;

- (iii) after the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;
- (iv) if, before the Public Trustee has accepted the trust, trustees of the settlement are appointed, the land shall, by virtue of this Act, vest (free as aforesaid) in them as joint tenants upon the statutory trusts;
- (v) if, before the Public Trustee has accepted the trust, the persons having power to appoint new trustees are unable or unwilling to make an appointment, or if the tenant for life having power to apply to the court for the appointment of trustees of the settlement neglects to make the application for at least three months after being requested by any person interested in writing so to do, or if the tenants for life of the undivided shares are unable to agree, any person interested under the settlement may apply to the court for the appointment of such trustees.

[<sup>F7</sup>(3A) The county court has jurisdiction under proviso (v) to sub-paragraph (3) of this paragraph where the land to be dealt with in the court does not exceed [<sup>F8</sup>£30,000] in capital value <sup>F9</sup> . . .]

- (4) In any case to which the foregoing provisions of this Part of this Schedule do not apply, the entirety of the land shall vest (free as aforesaid) in the Public Trustee upon the statutory trusts:

Provided that—

- (i) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in more than an undivided half of the land or the income thereof;
- (ii) After the Public Trustee had been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;
- (iii) Subject as aforesaid, any persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancers of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and [<sup>F6</sup>thereupon the land shall by virtue of this Act vest] in the persons so appointed (free as aforesaid) upon the statutory trusts; or such persons may (without such consent as aforesaid), at any time, whether or not the Public Trustee has accepted the trust, apply to the court for the appointment of trustees of the land, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed, the same shall by virtue of this Act, vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;
- (iv) If the persons interested in more than an undivided half of the land or the income thereof do not either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do, then and in any such case, any person interested may apply to the court for the appointment of trustees in the place of the Public Trustee, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed the same shall by virtue of this Act, vest (free as aforesaid) in the trustees upon the statutory trusts.



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- [<sup>F10</sup>(4A) The county court has jurisdiction under provisos (iii) and (iv) to sub-paragraph (4) of this paragraph where the land which is to be dealt with in the court does not exceed [<sup>F8</sup>£30,000] in capital value [<sup>F9</sup> . . . .]
- (5) The vesting in the Public Trustee of land by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.
- (6) The court or the Public Trustee may act on evidence given by affidavit or by statutory declaration as respects the undivided shares without investigating the title to the land.
- (7) Where all the undivided shares in the land are vested in the same mortgagees for securing the same mortgage money and the rights of redemption affecting the land are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the land shall, by virtue of this Act, vest in the mortgagees as joint tenants for a legal term of years absolute (in accordance with this Act) subject to cesser on redemption by the trustees for sale in whom the right of redemption is vested by this Act, and for the purposes of this Part of this Schedule the mortgage shall be deemed an incumbrance affecting the entirety.
- (8) This Part of this Schedule does not (except where otherwise expressly provided) prejudice incumbrancers whose incumbrances affect the entirety of the land at the commencement of this Act, but (if the nature of the incumbrance admits) the land shall vest in them for legal terms of years absolute in accordance with this Act but not so as to affect subsisting priorities.
- (9) The trust for sale and powers of management vested in persons who hold the entirety of the land on trust for sale shall, save as hereinafter mentioned, not be exercisable without the consent of any incumbrancer, being of full age, affected whose incumbrance is divested by this Part of this Schedule, but a purchaser shall not be concerned to see or inquire whether any such consent has been given, nor, where the incumbrancer is not in possession, shall any such consent be required if, independently of this Part of this Schedule or any enactment replaced thereby the transaction would have been binding on him, had the same been effected by the mortgagor.
- (10) This Part of this Schedule does not apply to land in respect of which a subsisting contract for sale (whether made under an order in a partition action or by or on behalf of all the tenants in common or coparceners) is in force at the commencement of this Act if the contract is completed in due course (in which case title may be made in like manner as if this Act, and any enactment thereby replaced, had not been passed), nor to the land in respect of which a partition action is pending at such commencement if an order for a partition or sale is subsequently made in such action [<sup>F11</sup>within eighteen months from the commencement of this Act.]
- (11) The repeal of the enactments relating to partition shall operate without prejudice to any proceedings thereunder commenced before the commencement of this Act, and to the jurisdiction of the court to make any orders in reference thereto, and subject to the following provisions, namely:—
- (i) In any such proceedings, and at any state thereof, any person or persons interested individually or collectively in [<sup>F6</sup>one half or upwards] of the land to which the proceedings relate, may apply to the court for an order staying such proceedings;

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- (ii) The court may upon such application make an order staying the proceedings as regards the whole or any part, not being an undivided share, of the land;
  - (iii) As from the date of such order the said enactments shall cease to apply to the land affected by the order and the provisions of this Part of this Schedule shall apply thereto;
  - (iv) The court may by such order appoint trustees of the land and the same shall by virtue of this Act vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;
  - (v) The court may order that the costs of the proceedings and of the application shall be raised by the trustees, by legal mortgage of the land or any part thereof, and paid either wholly or partially into court or to the trustees;
  - (vi) The court may act on such evidence as appears to be sufficient, without investigating the title to the land.
- (12) In this Part of this Schedule “incumbrance” does not include [<sup>F12</sup>a legal rentcharge affecting the entirety,] land tax, tithes, or any similar charge on the land not created by an instrument.

#### Textual Amendments

- F6** Words substituted by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)
- F7** [Sch. 1 Pt. IV para. 1\(3A\)](#) inserted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), [Sch. 2 Pt. II para. 10\(b\)\(i\)](#)
- F8** Words in [Sch. 1, Pt. IV, para. 1\(3A\)\(4A\)](#) substituted (1.7.1991) by S.I. 1991/724, art. 2(8), [Sch. Pt. I](#) (with art. 12)
- F9** Words in [Sch. 1, Pt. IV, para. 1\(3A\)\(4A\)](#) omitted (1.7.1991) by virtue of S.I. 1991/724, art. 2(8), [Sch. Pt. I](#) (with art. 12)
- F10** [Sch. 1 Pt. IV para. 1\(4A\)](#) inserted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), [Sch. 2 Pt. II para. 10\(b\)\(ii\)](#)
- F11** Words added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)
- F12** Words inserted by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

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

- C5** [Sch. 1, Pt. IV, para. 1\(3\)](#) proviso (v) extended (1.7.1991) by S.I. 1991/724, [art. 2\(3\)\(c\)](#)
- C6** [Sch. 1 Pt. IV para. 1\(3A\)](#) modified by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 24(2)(c)
- C7** [Sch. 1, Pt. IV, para. 1\(4\)](#) provisos (iii), (iv) extended (1.7.1991) by S.I. 1991/724, [art. 2\(3\)\(d\)](#)
- C8** [Sch. 1 Pt. IV para. 1\(4A\)](#) modified by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 24(2)(c)

- 2 Where undivided shares in land, created before the commencement of this Act, fall into possession after such commencement, and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested shall, by an assent or a conveyance, give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Act, and in the meantime the land shall be held on the statutory trusts.
- 3 This Part of this Schedule shall not save as hereinafter mentioned apply to party structures and open spaces within the meaning of the next succeeding Part of this Schedule.
- [<sup>F134</sup> Where, immediately before the commencement of this Act, there are two or more tenants for life of full age entitled under the same settlement in undivided shares,

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and, after the cesser of all their interests in the income of the settled land, the entirety of the land is limited so as to devolve together (not in undivided shares), their interests shall, but without prejudice to any beneficial interest, be converted into a joint tenancy, and the joint tenants and the survivor of them shall, until the said cesser occurs, constitute the tenant for life for the purposes of the <sup>M7</sup>Settled Land Act, 1925, and this Act.]

#### Textual Amendments

F13 Para. 4 added by Law of Property (Amendment) Act 1926 (c. 11), Sch.

#### Marginal Citations

M7 1925 c. 18.

## PART V

### PROVISIONS AS TO PARTY STRUCTURES AND OPEN SPACES

- 1 Where, immediately before the commencement of this Act, a party wall or other party structure is held in undivided shares, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights to support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Act.
- 2 Where, immediately before the commencement of this Act, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof shall vest in the Public Trustee on the statutory trusts which shall be executed only with the leave of the court, and, subject to any order of the court to the contrary, each person who would have been a tenant in common shall, until the open space is conveyed to a purchaser, have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting.
- 3 Any person interested may apply to the court for an order declaring the rights and interests under this Part of this Schedule, of the persons interested in any such party structure or open space, or generally may apply in relation to the provisions of this Part of this Schedule, and the court may make such order as it thinks fit.

## PART VI

### CONVERSION OF TENANCIES BY ENTIRETIES INTO JOINT TENANCIES

Every tenancy by entireties existing immediately before the commencement of this Act shall, but without prejudice to any beneficial interest, as from such commencement be converted into a joint tenancy.

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## PART VII

### CONVERSION OF EXISTING FREEHOLD MORTGAGES INTO MORTGAGES BY DEMISE

- 1        All land, which immediately before the commencement of this Act, was vested in a first or only mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the commencement of this Act, vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.
- 2        All land, which immediately before the commencement of this Act, was vested in a second or subsequent mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee, without impeachment of waste, but subject to the term or terms vested in such first or other prior mortgagee and subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.
- 3        The estate in fee simple which, immediately before the commencement of this Act, was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged at the commencement of this Act, would have been entitled to have the fee simple conveyed to him, but subject to any mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.
- 4        If a sub-mortgage by conveyance of the fee simple is subsisting immediately before the commencement of this Act, the principal mortgagee shall take the principal term created by paragraphs 1 or 2 of this Part of this Schedule (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.
- 5        This Part of this Schedule applies to land enfranchised by statute as well as to land which was freehold before the commencement of this Act, and (save where expressly excepted) whether or not the land is registered under the <sup>M8</sup>Land Registration Act, 1925, or the mortgage is made by way of trust for sale or otherwise.

#### Marginal Citations

M8    1925 c. 21.

- 6        A mortgage affecting a legal estate made before the commencement of this Act which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge, shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

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This paragraph does not apply to mortgages or charges registered or protected under the Land Registration Act, 1925, or to mortgages or charges registered in a local deeds register.

- 7 Nothing in this Part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage.
- 8 This Part of this Schedule does not apply unless a right of redemption is subsisting immediately before the commencement of this Act.

### PART VIII

#### CONVERSION OF EXISTING LEASEHOLD MORTGAGES INTO MORTGAGES BY SUBDEMISE

- 1 All leasehold land, which immediately before the commencement of this Act, was vested in a first or only mortgagee by way of assignment of a term of years absolute shall, from and after the commencement of this Act, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.
- 2 All leasehold land, which immediately before the commencement of this Act, was vested in a second or subsequent mortgagee by way of assignment of a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other prior mortgagee, and subject to a provision for cesser corresponding to the right of redemption which, at the commencement of this Act, was subsisting with respect to the term assigned by the mortgage.
- 3 The term of years absolute which was assigned by any such mortgage shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age who, if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.
- 4 If a sub-mortgage by assignment of a term is subsisting immediately before the commencement of this Act, the principal mortgagee shall take the principal derivative term created by paragraphs 1 or 2 of this Part of this Schedule or the derivative term created by his mortgage (as the case may require), and the sub-mortgagee shall take a derivative term less by one day than the term so vested in the principal mortgagee, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.
- 5 A mortgage affecting a legal estate made before the commencement of this Act which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge shall not, as against a purchaser in good

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faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgages or charges registered or protected under the <sup>M9</sup>Land Registration Act, 1925, or to mortgages or charges registered in a local deeds register.

#### Marginal Citations

**M9** 1925 c. 21.

- 6 This Part of this Schedule applies to perpetually renewable leaseholds, and to leaseholds for lives, which are by statute converted into long terms, with the following variations, namely:—
- (a) The term to be taken by a first or only mortgagee shall be ten days less than the term created by such statute:
  - (b) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term created by such statute:
  - (c) The term created by such statute shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age, who if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.
- 7 This Part of this Schedule applies (save where expressly excepted) whether or not the leasehold land is registered under the Land Registration Act, 1925, or the mortgage is made by way of trust for sale or otherwise.
- 8 Nothing in this Part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage, but this Part of this Schedule does not apply unless a right of redemption is subsisting at the commencement of this Act.

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