

Status: Point in time view as at 01/10/2011.

Changes to legislation: Law of Property Act 1925, Paragraph 1 is up to date with all changes known to be in force on or before 13 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

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 IV

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

Modifications etc. (not altering text)

- C1 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

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not secured by a legal [^{F1}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 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.

[^{F2}(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 [^{F3}£30,000] in capital value ^{F4} . . .]

- (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 [^{F1}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

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- 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.
- [^{F5}(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 [^{F3}£30,000] in capital value ^{F4}]
- (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

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an order for a partition or sale is subsequently made in such action [^{F6}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 [^{F1}one half or upwards] of the land to which the proceedings relate, may apply to the court for an order staying such proceedings;
 - (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 [^{F7}a legal rentcharge affecting the entirety,] land tax, tithe rentcharge, or any similar charge on the land not created by an instrument.

Textual Amendments

- F1** Words substituted by Law of Property (Amendment) Act 1926 (c. 11), **Sch.**
- F2** 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)**
- F3** 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)
- F4** 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)
- F5** 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)**
- F6** Words added by Law of Property (Amendment) Act 1926 (c. 11), **Sch.**
- F7** Words inserted by Law of Property (Amendment) Act 1926 (c. 11), **Sch.**

Modifications etc. (not altering text)

- C1** Sch. 1, Pt. IV, para. 1(3) proviso (v) extended (1.7.1991) by S.I. 1991/724, **art. 2(3)(c)**
- C2** Sch. 1 Pt. IV para. 1(3A) modified by County Courts Act 1984 (c. 28, SIF 34), **s. 24(2)(c)**
- C3** Sch. 1, Pt. IV, para. 1(4) provisos (iii), (iv) extended (1.7.1991) by S.I. 1991/724, **art. 2(3)(d)**
- C4** Sch. 1 Pt. IV para. 1(4A) modified by County Courts Act 1984 (c. 28, SIF 34), **s. 24(2)(c)**

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