

# MASON'S MINNESOTA STATUTES

1927

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THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-  
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT  
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  
BY THE SUBSEQUENT LEGISLATION OF 1925  
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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leasing and investing of all property and its proceeds in the possession of the receiver. If any of said property consists of live animals or is perishable or cannot be kept without a great or disproportionate expense, the court may, after the return of the warrant, order such property to be sold at public or private sale. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of said property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by this chapter or for reinvestment approved by the court. ('25, c. 262, § 9)

**8080-10. Same—Use of proceeds of sale to support family and pay debts**—The court may order said property or its proceeds acquired by mortgages, lease or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's wife and minor children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. ('25, c. 262, § 10)

**8080-11. Same—Claims—Adjustment by receiver**—The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of such absentee. ('25, c. 262, § 11)

**8080-12. Same—Compensation of receiver—Title of absentee lost after ten years**—The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of said property or proceeds. If within ten years after the date of the disappearance and absconding as found and recorded by

the court, such absentee appears, or an administrator, executor, assignee in insolvency or trustee in bankruptcy of said absentee is appointed, such receiver shall account for, deliver and pay over to him the remainder of said property. If said absentee does not appear and claim said property within said ten years, all his right, title and interest in said property, real or personal, or the proceeds thereof shall cease, and no action shall be brought by him on account thereof. ('25, c. 262, § 12)

**8080-13. Same—Distribution of balance of property**—If at the expiration of said ten years said property has not been accounted for, delivered or paid over under the preceding section, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if said absentee had died intestate within the state on the day ten years after the date of the disappearance or absconding as found and recorded by the court.

If such receiver is not appointed within nine years after the date found by the court under Section five, the time limited for accounting for, or fixed for distributing, said property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the ten years provided in the two preceding sections.

The provisions of this act shall not be construed as exclusive, but as providing additional and cumulative remedies. ('25, c. 262, § 13)

**Explanatory note**—For section 5 see § 8080-5, herein.

CHAPTER 60

USES AND TRUSTS

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**8081. Uses and trusts abolished—Exception**—Uses and trusts, except as authorized and modified in this chapter, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided by statute. (3240) [6701]

All express trusts in both real and personal property, including charitable trusts are abolished, except as authorized by this chapter (69-141, 71+1031; 81-7, 83+460; 88-202, 92+948; 88-318, 92+1122; 93-210, 100+1104; 95-220, 103+882). Chapter cited generally (37-447, 452, 35+260; 52-208, 53+1145; 68-260, 71+22; 88-202, 212, 92+948; 88-318, 323, 92+1122; 93-210, 221, 100+1104). 128-99, 150+233, 163-35, 203+439.

It is further held, that the finding of the jury defeats the contention of appellants that there was a constructive trust, and consequently a legal fraud. 159-149, 198+412.

The common law, as to trusts in real or personal property, or both, prevailed in our territory from our beginning up to the enactment of chapter 43 and chapter 44. R. S. 1851. 160-343, 200+76.

Chapter 53, Laws 1875, being subdivision 5 of section 6710, G. S. 1913, abolished personal property trusts, except as authorized by statute. 160-343, 200+76.

**8082. Executed trusts confirmed**—Every estate which is now held as a use executed under laws as

they formerly existed is confirmed as a legal estate. (3241) [6702]

**8083. Who deemed to have legal estate in lands—Limitations—**Every person who, by virtue of any grant, assignment, or devise, is entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein of the same quality and duration, and subject to the same conditions, as his beneficial interests. But this shall not divest the estate of any trustee in any existing trust where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust. (3242) [6703]

37-447, 452, 35+260; 42-543, 44+1030; 52-208, 53+1145; 60-313, 62+110; 95-343, 104+137.

Termination of express trust same having vested in entirety in cestui que trust (136-357, 162+450)

**8084. Trustee takes no interest—Exception—**Every disposition of lands, whether by deed or devise, except as otherwise provided in this chapter, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other to the use of, or in trust for, such person; and, if made to one or more persons in trust for or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee. (3243) [6704]

6-358, 241; 30-165, 14+805; 52-208, 53+1145; 55-338, 56+1118; 81-7, 83+460.

**8085. Limitation of preceding sections—**Sections 8081-8084 shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined. (3244) [6705]

6-358, 241, 21-127; 37-469, 35+276; 66-371, 69+39; 95-220, 103+882.

Joint adventurers (121-192, 141+108).

The trustee of a constructive trust is entitled to reimbursement for what has been lawfully paid in securing and protecting the estate for the beneficiary, and the conclusion of law that the bank is entitled to a lien for the items specified is sustained 165-396, 206+723.

**8086. Grant to one for money paid by another—**When a grant for a valuable consideration is made to one person, and the consideration therefor is paid by another, no use or trust shall result in favor of the person by whom such payment is made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of § 8087 (3245) [6706]

Except as provided in §§ 8087, 8088, this statute abolishes the common law rule of a resulting trust where a conveyance of land is made to one person for a valuable consideration paid by another (8-309, 272; 41-18, 42+595; 53-39, 54+933; 60-313, 62+110; 81-329, 84+112; 96-27, 104+561). It is immaterial whether the conveyance is made for the benefit of the person paying the money or for another (41-18, 42+595); or that there has been a part performance of the trust agreement (81-329, 84+112); or that the grantee was ignorant of the conveyance (60-313, 62+110). A mere verbal declaration of trust in realty is void under this section (41-18, 42+595; 44-159, 46+295; 53-39, 54+933; 54-56, 55+825; 63-5, 65+91; 92-506, 100+380. See cases under § 7002 note 3). Inapplicable to executory contracts for sale of land (25-117; 60-313, 62+110; 91-45, 97+452), or where title is taken as security for a loan (96-27, 104+561; 96-230, 104+966). See 139+944. Held not to abolish doctrine of resulting trusts as to personality (75-153, 77+793. See 88-202, 92+948). A certificate of sale of school lands held a "conveyance" (60-313, 62+110). Real estate acquired in partnership business by partnership formed by parol to deal in real estate is partnership assets, though legal title be taken in name of one of partners (98-52, 107+824).

Cited (2-277, 238; 5-422, 342; 7-286, 216; 8-309, 272; 8-351, 310; 10-401, 320; 13-462, 430; 14-424, 319; 16-512, 462; 20-234, 212; 22-132; 22-384; 26-97, 1+804; 28-86, 9+590; 28+509; 36-15, 35, 29+352; 36-276, 30+880; 46-1, 48+413; 48+372, 51+121; 51-296, 53+637; 60-313, 62+110; 74-122, 76+1126; 77-282, 79+1010, 80+363; 100-189, 110+968; 101-152, 112+65).

See 108-76, 121+214, 133.

141-181, 170+703.

Where a husband pays the consideration and causes the title to be vested in his wife, no trust results (149-286, 183+354). Wife absolute owner of land bought in her name with husband's earnings (149-286, 183+354). Title vests in husband, although paid for by bigamous wife (149-329, 183+822).

See 150-292, 185+254.

167-489, 209+636.

The deed executed by defendants being a nullity, the absolute title remains in the grantee named in the first-mentioned deed, and, no trust could result in favor of the husband or those claiming under him. 157-418, 196+488.

Since no intent to defraud plaintiff of her marital rights in the land was alleged, proved, or found against the husband and the parties to the deed, no relief could be granted plaintiff in this case, there having been such a delivery as to pass title. 157-418, 196+488.

A husband who could not read or write intrusted his wife with the purchase of a home. The husband furnished \$2,000 to be used in the purchase. The price was \$3,400. She took title in her own name.

Equity will impress a constructive trust in favor of the husband. 202+742, 162-322.

The rule is that a trust exists pro tanto the amount of the fund used when the amount thereof is definite or constitutes and aliquot part of the whole consideration. 202+742, 162-322.

The presumption, arising from conveyance running to the wife of the person paying the money, that the conveyance was a gift, settlement, or advancement, is rebuttable. 202+742, 162-322.

The defendant obtained from the plaintiff money which was to be and was used in paying a portion of the purchase price of land which he was buying of another, and gave him his note therefor. It is held that the plaintiff acquired no equitable vendor's lien. 163-365, 204+35.

When land is purchased with the money of the wife, and the title is taken in the name of herself and her husband as tenants in common, there is no resulting trust in favor of the wife, and the interest of the husband is subject to the claims of his creditors. 166-435, 208+194.

The evidence sustains the finding that a deed of land purchased by the plaintiff's husband, now deceased, in the name of his niece, was delivered, and vested title in her. There was no resulting trust in the husband, and a deed executed by the niece, the name of the grantee blank, and never filled in, was inoperative. 166-464, 208+193.

**8087. Such conveyance fraudulent—Trust for creditors—**Every such conveyance shall be presumed fraudulent as against the creditors, at that time, of the person paying the consideration; and when a fraudulent intent is not disproved a trust shall result in favor of such creditors to the extent that may be necessary to satisfy their just demands. (3246) [6707]

**1. Application—**Applicable only to realty (8-195, 165. See 88-202, 92+948). Trust arises only on a conveyance or deed (14-424, 319). Does not arise where consideration is paid to discharge a moral obligation (47-95, 49+528). Trust arises, if at all, at the time of the purchase and conveyance and the statute does not apply to the case of improvements made by one person on the land of another (46-1, 48+413). Inapplicable to subsequent creditors (9-303, 287; 22-132; 28-86, 9+590; 36-15, 35, 29+352; 48-490, 51+475). Trust arises whether debtor is solvent or insolvent (44-159, 46+295; 47-95, 49+528). Effect on trust of discharge of debtor in bankruptcy (88-253, 92+951). Effect on trust of payment of mortgage assumed as part of purchase price (34-137, 24+915). Grantee with knowledge of the fraud selling to third party may be charged as for conversion (46-80, 48+447). Presumption of fraud is rebuttable (26-97, 1+804; 51-296, 53+637). Where a debtor pays for a conveyance to his wife the fact that they use it as a homestead will not prevent a trust from arising (8-309, 272; 22-384). Cited (5-422, 342; 9-183, 160; 13-462, 430; 22-132; 28-86, 9+590; 36-15, 35, 29+352; 41-18, 42+595; 43-7, 44+667; 46-1, 48+413; 62-429, 64+920; 86-255, 90+387; 88-253, 92+951; 96-66; 104+763; 100-180, 110+968).

157-418, 196+488, note under § 8086.

**2. Action to enforce trust—**The trust can only be enforced by action and not by mere seizure and sale (35-301, 28+509; 36-15, 35, 29+352). Except as against a non-resident debtor (48-372, 51+121), an action will not lie by a creditor until he has recovered judgment on his claim (12-145, 83), and exhausted his legal remedies (35-301, 28+509). Action by receiver or assignee in insolvency will lie although claims of the creditors are not in judgment and not liens (46-80, 48+447). Limitation of actions (39-330, 40+161). The judgment debtor is a proper but not a necessary party. The

husband of a wife sought to be charged is not a necessary party (34-137, 24+915). A complaint held sufficient (88-253, 92+951). Joinder of causes of action (9-183, 189). Effect of complaint alleging that transfer was made to defraud creditors (34-137, 24+915). Competency of husband and wife as witnesses (30-496, 16+399; 77-282, 79+1016, 80+363; 88-253, 92+951). Burden of proof as to payment of consideration (46-1, 48+413). Burden of rebutting presumption (36-15, 29+352; 44-159, 46+295; 46-1, 48+413; 51-296, 53+637). Evidence as to fraudulent intent (44-159, 46+295; 47-95, 49+528). Finding as to fraudulent intent (44-159, 46+295). See (149-316, 183+823).

**8088. Limitation**—Section 8086 shall not extend to cases where the alienee named in the conveyance has taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, has purchased the lands so conveyed with moneys belonging to another person. (3247) [6708]

5-422, 342; 20-234, 212; 33-329, 336, 23+530; 37-469, 35+276; 41-18, 42+595; 53-39, 54+933; 74-122, 76+1126; 95-220, 103+882; 149-316, 183+515; 149-329, 185+290.

157-418, 196+488, note under § 8086.  
Resulting and constructive trusts distinguished. 162-322, 202+742.

Under the facts found there was a "violation of some trust." 162-322; 202+742.

**8089. Bona fide purchasers protected**—No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration, and without notice of such trust. (3248) [6709]

4-65, 34; 6-358, 241; 30-537, 16+449; 71-489, 74+133; 74-122, 76+1126.

**8090. Purposes of express trusts**—Duration—Express trusts may be created for any of the following purposes:

1. To sell lands for the benefit of creditors.
2. To sell, mortgage, or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon.
3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in chapter 59.
4. To receive the rents and profits of lands, and to accumulate the same, for either of the purposes, and within the limits prescribed in chapter 59.
5. To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind and to invest and loan the same for the benefit of the beneficiaries of such express trust; and the district courts of the state shall, upon petition and hearing have power to appoint a trustee for the purpose herein set forth, requiring such trustee to give such bond for the faithful execution of such express trust as to the court may seem right and proper; and express trusts created under the provisions of this paragraph shall be administered under the direction of the court.
6. For the beneficial interests of any person or persons, whether such trust embraces real or personal property or both, when the trust is fully expressed and clearly defined on the face of the instrument creating it: Provided, that the trust shall not continue for a period longer than the life or lives of specified persons in being at the time of its creation, and for twenty-one years after the death of the survivor of them, and that the free alienation of the legal estate by the trustee is not suspended for a period exceeding the limit prescribed in chapter 59.

7. Any city or village may receive, by grant, gift, devise, or bequest, and take charge of, invest, and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both,

for the benefit of any public library, or any public cemetery, or any public park, located in, or within ten miles of, such city or village, or for the purpose of establishing or maintaining a kindergarten or other school or institution of learning therein.

Provided, however, that each city in the State of Minnesota which now has or hereafter may have 20,000 and not more than 50,000 inhabitants, in addition to the foregoing, may receive by grant, gift, devise, or bequest, and take charge of, convert, invest and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both, of any kind or nature whatsoever, and wherever located, for any public or charitable purpose, or to provide, enlarge, improve, lease and maintain for the use and benefit of the inhabitants of such city, animal, bird, fish, game and hunting preserves, public parks, public grounds, public waterways, public bath houses and grounds used in connection therewith and public play grounds within or without the limits of such city, whether within or without this state, or for the support, medical treatment and nursing of the worthy poor residing in such city. (R. L. '05, § 3249; G. S. '13, § 6710; subd. 7 amended '15, c. 98, § 1; '25, c. 133)

**Explanatory note**—Subd. 7 only is amended by Laws 1925, c. 133.

#### In General.

The provisions of R. L. 1905 c. 59 are included in chapter 59 hereof.

Subd. 1. (2-264, 226; 25-509; 112-83, 127+441).  
Subd. 2. (50-367, 52+560). Subd. 3. (30-165, 144+805; 49-371, 52+27; 93-210, 228, 100+1104); Subd. 5. (49-57, 86, 51+629; 52+26; 88-202, 92+948; 140-455, 168+355). Trust not invalid because it may suspend the power of alienation beyond the period fixed by statute, personal property only being the subject of the trust (147-63, 179+650).  
Subd. 6. (88-202, 92+948; 109-191, 123+806; 116-142, 133+561, 139+805; 135-413, 161+158). Subd. 7. (88-202, 92+948; 88-318, 92+1122; 93-210, 100+1104). Generally (49-57, 66, 51+629; 52+26; 62-67, 53+1130; 80-232, 94+988; 135-425, 161+163).

Section 2 of '15 c. 98 declares that the last census shall govern in determining the population of cities. 165-446, 206+723.

It is the duty of the trustees to preserve the corpus of the trust for the remainderman, and to secure the usual rate of income upon safe investments for the life tenant, and to use a sound discretion in reference to each of these objects. 160-343, 200+76.

It is the duty of the trustees to consult the interests of both life tenants and remainderman impartially, so as not to give either an advantage at the expense or to the prejudice of the other. 160-343, 200+76.

A lease which attempts to put the leasehold estate in the lessees in trust for others is void where the term is fixed at 25 years without reference to a life or lives in being. 211+325.

#### To Receive Rents and Profits of Land.

160-343, 200+76, notes under subd. 6.

#### To Receive Money, Stocks, etc.

The common law, as to trusts in real or personal property, or both, prevailed in our territory from our beginning up to the enactment of chapter 43 and chapter 44, R. S. 1851.

Chapter 53, Laws 1875, subdivision 5, of section 6710, G. S. 1913, abolished personal property trusts, except as authorized by statute. 160-343, 200+76.

#### Duration of Trusts.

Specifies a period of duration of trusts in real and personal property in harmony with the common law, and resort may be had, in the interpretation and administration of such trusts in personalty, to the rules of the common law. 160-343, 200+76.

Covers the trust in question, but this statute does not prohibit accumulations of income from personal property within the period therein specified, and in absence of a statute on that question we must look to the rules of common law applicable to trusts in personal property for guidance, and the rules of common law permit such accumulations. 160-343, 200+76.

At common law the rule against perpetuities permitted a period within life or lives in being and 21 years. 160-343, 200+76.

The rule against accumulations of income is of purely statutory origin, unlike the common-law rule against perpetuities, which is the outgrowth of judicial expression of public policy. 160-343, 200+76.

By our statute the period of duration of an express trust in personal property is determined. 160-343, 200+76.

Section 6687, G. S. 1913, has no application to trusts in personal property. The common law, at the birth of our state, was in full force until 1875. Our original statutes on uses and trusts related exclusively to real estate. As to personal property, the common-law trusts prevailed, unmodified by statute, until 1875. The enactments of subdivisions 5 and 6, § 6710, Gen. St. 1913, authorizing the creation of trusts in personalty, though attached as amendments to the chapter pertaining exclusively to real estate, abolished the common-law trusts, except as authorized by statute. 160-343, 200+76.

Where a donor, owning stock in mining corporations owning ore lands being operated on leases, places the same in trust in good faith, dividends and income from such stock are not rents or profits from lands, but constitute income from personal property, and must be treated as such. 160-343, 200+76.

St. 39 & 40 Geo. III. c. 98, which materially changed the common law, was enacted subsequent to the Revolutionary War and the treaty of peace following that war, and does not affect the common law which became our law. 160-343, 200+76.

**8090-1. Express trusts for charitable, benevolent, educational, religious or other public use**—Express trusts of real or personal property, or both, may be created to receive by grant, devise, gift, or bequest, and to take charge of, invest and administer in accordance with the terms of the trust, upon and for any charitable, benevolent, educational, religious or other public use or trust. ('27, c. 180, § 1)

**8090-2. Same—Validity and construction**—No such trust shall be invalid because of indefiniteness or uncertainty of the object of such trust or of the beneficiaries thereof designated in the instrument creating the same nor by reason of the same contravening any statute or rule against perpetuities, but no such trust shall be construed so as to prevent or limit the free alienation of the title to any of the trust estate by the trustee in the administration of said trust, except as may be permitted under existing or subsequent statutes. ('27, c. 180, § 2)

**8090-3. Same—Construction to effect intent—Administration**—Such trust shall be liberally construed by the courts so that the intentions of the donor thereof shall be carried out whenever possible, and no such trust shall fail solely because the donor has imperfectly outlined the purpose and object of such charity or the method of administration. Whenever it shall appear to the District court of the proper county that the purpose and object of such charity is imperfectly expressed, or the method of administration is incomplete or imperfect, or that the circumstances have so changed since the execution of the instrument creating the trust as to render impracticable, inexpedient, or impossible a literal compliance with the terms of such instrument, such court may upon the application and with the consent of the trustee, and upon such notice as said court may direct, make an order directing that such trust shall be administered or expended in such manner as in the judgment of said court will, as nearly as can be, accomplished the general purposes of the instrument and the object and intention of the donor without regard to, and free from any, specific restriction, limitation or direction contained therein, provided, however, that no such order shall be made without the consent of the donor of said trust if he is then living and mentally competent. The attorney general shall represent the beneficiaries in all cases arising under this act, and it shall be his duty to enforce such trusts by proper proceedings in the courts. ('27, c. 180, § 3)

**8090-4. Same—Laws not affected**—Nothing in this

act contained shall in any manner impair, limit, or abridge the operation and efficacy of the whole or any part of any existing statute authorizing the creation of corporations for charitable purposes or permitting municipal corporations to act as trustee for any public or charitable purpose under any existing statute. Nothing in this act shall apply to any gift, bequest, devise, or trust, made, created, or arising by or under the provisions of the will of any person whose decease occurred before this act takes effect. ('27, c. 180, § 4)

**8091. Devise of lands, when it creates only a power**—A devise of lands to executors or other trustees, to be sold or mortgaged, when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs, or pass to the devisees of the testator, subject to the execution of the power. (3250) [6711]

**8092. Profits of lands held in trust—Liable to creditors, when**—When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the person for whose benefit the trust is created, shall be subject in equity to the claims of his creditors, in the same manner as other personal property which cannot be reached by an execution at law. (3251) [6712]

**8093. Express trust a power in trust, when**—Whenever an express trust is created for any purpose not heretofore in this chapter enumerated, no estate shall vest in the trustee; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in chapter 61. (3252) [6713]

The provisions of R. L. 1905 c. 61, are included in chapter 61 hereof.

33-329, 23+530; 52-67, 53+1130; 109-191, 123+471; 146-163, 178+599.

The trust cannot be saved and enforced as a power in trust under section 8090, G. S. 1923, because the latter applies only where the purpose is not one of those enumerated in section 8090. 211+325.

**8094. Title to such land shall descend, how**—Whenever the trust is valid as a power, the land to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power. (3253) [6714]

**8095. Trustees of express trust to possess estate**—Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustee, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands but may enforce the performance of the trust in equity. (3254) [6715]

25-509.

**8096. Limitation**—Section 8095 shall not prevent any person creating a trust from declaring to whom the lands to which the trust relates shall belong in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust; and every such grantee shall have a legal estate in the lands as against all persons, except the trustees and those lawfully claiming under them. (3255) [6716]

**8097. Interest not disposed of**—When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of,

shall remain in or revert to the person creating the trust, or his heirs, as a legal estate. (3256) [6717]  
146-163, 178+599.

**8098. Trust interest—Assignable, when—**No person beneficially interested in a trust for the receipt of rents and profits of the lands can assign, or in any manner dispose of, such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created are assignable. (3257) [6718]

49-371, 380, 52+27.  
135-361, 162+450; 136-361, 162+451.

**8099. Effect of omitting trust in conveyance—**When an express trust is created, but is not contained or declared in the conveyance, the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration. (3258) [6719]

123-367, 143+917.

**8100. Powers of district court—Sale, mortgage and lease—Payment to trustee—**When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustee, in contravention of the trust, shall be absolutely void. But the district court of the district wherein such property held in trust is situate, may by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether he be beneficially interested in such trust property or not, to mortgage or sell such real property or any part thereof whenever it appears to the satisfaction of the court that it is for the best interest of such estate, or that it is necessary or for the benefit of the said estate or of the person or persons beneficially interested therein holding the first and present estate, interest or use, and that it will do no substantial injury to the heirs in tail, or others in expectancy, succession, reversion or remainder. A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The district court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewal term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term. The district court shall not grant an order to mortgage or sell such real property or lease the same for a term exceeding five years, unless it appears to the satisfaction of such court that a written notice, stating the time and place of the application therefor, and the object thereof, has been served upon the beneficiary of such trust, and every other person in being having an estate vested or contingent in reversion or remainder in said real property at least eight days before the making thereof, if such beneficiary or other person is an adult within the state, or if a minor, lunatic, person of unsound mind, habitual drunkard, or absentee, until proof of the service, on such beneficiary or other person, of such notice as the court or a judge thereof prescribes. The court shall appoint

a guardian ad litem for any minor and for any lunatic, person of unsound mind, or habitual drunkard who shall not be represented by a committee or guardian duly appointed. The application must be by petition duly verified, which shall set forth the condition of the trust estate and the particular facts which make it necessary or proper that the application be granted. Such petition shall contain a description of the estate to be sold, mortgaged, or leased, a clear statement of the interest of the petitioner therein, and a copy of the will, deed, or other instrument in writing by which the estate is created; all persons in being who are interested in the estate, or who may, by the terms of the will, deed or other instrument creating the estate, thereafter become interested therein as heir, reversioner or otherwise shall be made parties to the petition; and if the names of any persons who ought to be made parties are unknown to the petitioner, or if the residence of any such person is unknown to the petitioner, the facts shall be verified by the affidavit of the petitioner then such notice shall be served upon such unknown person or persons whose residence is unknown, by publication for six successive weeks, once in each week in some newspaper published in the county in which said property is held in trust. After taking proof of the facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted the final order must authorize the real property affected by the trust or some portion thereof, to be mortgaged, sold or leased, upon such terms and conditions as the court may prescribe. In case a mortgage or sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such mortgage or sale and must require the trustee to give bond in such amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting for all moneys received by him pursuant to said order. If the trustee elects not to give such bond, the final order must require the proceeds of such mortgage or sale to be paid into court to be disposed of or invested as the court shall specially direct. Before a mortgage sale, or lease can be made pursuant to the final order, the trustee must enter into an agreement therefor, subject to the approval of the court and must report the agreement to the court under oath. Upon the confirmation thereof, by order of the court he must execute as directed by the court a mortgage, deed or lease. A mortgage, deed or lease made pursuant to a final order granted as provided in this and the last two preceding sections shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being interested in the trust or having estates vested or contingent in reversion or remainder in said real property and against all other persons so interested or having such estates who shall consent to such order, or who having been made parties to such proceeding as herein provided, shall not appear therein and object to the granting of such order. All parties in interest may appear voluntarily and consent in writing to such sale, mortgaging or leasing of such real property; and testamentary guardians and guardians appointed by the probate court, may assent thereto in the place of their wards. A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by

him from the trustee in consideration of the payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid. (G. S. 1878 c. 43 § 21, amended '05 c. 339 § 1) [6720]

128-99, 150+233.  
A court of equity has power to direct the execution of an express trust upon request from the trustees for guidance in the performance of their duties. 160-343, 200+76.

**8100-1. Sale, mortgage, pledge, lease, etc., of property held in trust created by written instrument—Sales, etc., void, when—Authority of district court to order sale, etc.—**When any trust is expressed in the instrument creating the trust estate, every sale, conveyance or other act of the trustee in contravention of the trust shall be absolutely void, except as in this act provided. The district court of the county wherein the property, whether real or personal, or any part thereof, held in trust is situate may, by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether he be beneficially interested in such trust property or not, to sell or otherwise dispose of, mortgage or pledge all or any part of such trust property, whether real or personal, whenever it appears to the satisfaction of the court that it is necessary, or for the best interest, or for the benefit of the trust estate, or of the person or persons beneficially interested therein holding the first and present estate, interest or use, and that it will do no substantial injury to the heirs or next of kin, or others in succession, expectancy, reversion or remainder, in respect of such property. ('25, c. 360, § 1)

**Explanatory note—**Laws 1925, c. 360, § 11 repeals all inconsistent laws and parts of laws.

**8100-2. Same—Leases—Authority of trustee—Order of court for lease—**The trustee appointed to hold real property in trust during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to or for the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five (5) years, without application to the court. The district court may, by order, on such terms and conditions as seem to it just and proper, authorize such trustee to lease such property for a term exceeding five (5) years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay, at the end of the term or any renewal term, to the lessee, the then fair and reasonable value of any buildings and improvements which may have been erected or placed on the leased premises during such term or renewal term. ('25, c. 360, § 2)

**8100-3. Same—Applications for order for sale, etc.—Petition—Notice of hearing on—Filing—Order for hearing—**Application to the court for such order to sell or otherwise dispose of, mortgage or pledge such trust property, real or personal, or any part thereof, or to lease such trust property, real, or any part thereof, shall be by petition, duly verified, made by such trustee, or any person beneficially interested in such property. Such petition shall set forth the nature of the trust estate, the particular facts making it necessary or proper for the application to be granted, a description of the trust property to be sold or otherwise disposed of, mortgaged, pledged or leased, and the interest of the petitioner therein. Such petition and the notice of hearing thereof shall set out, so far as appears of record or as known to the petitioner, the names, and in addition such petition shall set out the

places of residence, of all persons, who have any right, title, interest, estate or lien, and the nature thereof, in or upon the trust property, or who, by the terms of the instrument creating the trust, may, at any time thereafter, have any such right, title, interest, estate or lien, and the nature thereof. If there be persons having, or claiming to have, or who, at any time thereafter, may have any interest in the trust property, whose names are unknown, it shall be lawful to include such persons in such petition and the notice of hearing thereof, by the name and description of unknown persons interested in the trust property, and, to that end, such petition and notice, in addition to setting out the names of the persons aforesaid, may contain the following: "Also all other persons unknown, having, or claiming to have, or who at any time may have any right, title, or interest, estate or lien in or upon the trust property." Such petition, together with a copy, annexed thereto, of the deed, will or other written instrument creating the trust estate, shall be filed in the office of the clerk of the district court of the county wherein such property, or some part thereof, is situate. Upon the filing of any such petition, the district court shall, by order, fix a time and place of hearing the same. Such hearing may be at chambers, or at a general or special term of the court wherein the proceedings are pending. ('25, c. 360, § 3)

**8100-4. Same—Notice of hearing—Service—**Notice of such hearing stating the time and place thereof and the objects of the petition shall be served upon all persons named in the petition as having any right, title, interest, estate or lien in or upon the trust property, or who, by the terms of the instrument creating such trust, may, at any time thereafter, have any such right, title, interest, estate or lien. Such notice shall be served, except as provided in Section Five (5) of this act, in the same manner as a summons in a civil action, at least ten (10) days before such time of hearing. If any such person, whose name is set out in the petition, be no a resident of the state, or if his place of residence be unknown to the petitioner, then, upon the filing in said court of an affidavit of the petitioner, his agent or attorney, alleging that he believes that such person is not a resident of the state, and that he has mailed a copy of such notice to him at his last-known place of residence, or that his place of residence is not known and cannot be ascertained by the affiant, the service of such notice upon such person may be made by publication thereof for two (2) successive weeks in a qualified newspaper, as defined in the statutes of the State of Minnesota. Service of such notice may be had upon all persons named and described in such petition and notice, as unknown persons interested in the trust property, by publication of such notice in the same manner and for the same time, as in the case of non-residents whose names are set out in the petition upon the filing in said court of an affidavit by the petitioner, his agent or attorney, stating that there are, or that affiant is informed or believes there are, certain persons, in addition to those whose names are set out in such petition, who have, or claim to have, or may have some right, title, interest, estate or lien in or upon the trust property, the nature of which is, as well as the names and places of residence of whom are, to affiant unknown. ('25, c. 360, § 4)

**8100-5. Same—Notice of hearing—Service on incompetents—**In case any person, whose name is set out in such petition, is a minor, lunatic, idiot, or person of unsound mind, or an habitual drunkard or spendthrift, such notice of hearing shall be served upon the duly

appointed guardian, conservator, committee or other legal representative, of such person, if any. If there be none, then the district court in which such proceedings are pending shall appoint a guardian, ad litem, to such person and may compel the person so appointed to act. In such case, service of such notice of hearing shall be had by service on such guardian, ad litem. ('25, c. 360, § 5)

**8100-6. Same—Hearing—Conduct of—Final order—Report of sale, etc.—Conveyance, etc., by trustee—Proceeds of sale, etc.—Disposition of—Bonds of trustees**—Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for and against the granting of such petition, regulating the order of proof as it may deem best, and shall make and enter a final order upon the application. If the application is granted, the final order shall authorize the sale or other disposition, or the mortgaging, pledging or leasing, as the case may be, of such trust property, or any part thereof, in manner and upon such terms as the court may prescribe. Any such sale or other disposition, mortgaging, pledging or leasing of such trust property, by such trustee, shall be reported to the court for confirmation and confirmed by the court, before the same shall become effective and valid. Upon such confirmation, such trustee shall make, execute and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, good and sufficient instruments of conveyance, assignment and transfer, or mortgage, pledge or lease, as the case may be. On receipt by such trustee of the money, or other proceeds derived from any such sale or other disposition, or mortgaging, pledging or leasing of such trust property, such money or other proceeds shall be held, administered, distributed or otherwise dealt with by such trustee under and pursuant to the terms of the deed, will or other written instrument creating the trust estate, but subject, at all times, to the direction and order of the court. The court, in its discretion, may require such trustee to give bond in such amount and with such sureties as the court shall direct, conditioned for accounting for all such money, or other proceeds, so received by such trustee, and for the faithful discharge of his trust. ('25, c. 360, § 6)

**8100-7. Same—Final order—Effect of—Objections—Time for**—The final order of the court in such proceedings, made or had with respect to such unknown persons, shall have the same effect and be as binding and conclusive upon them, as though they had been named and described in such petition and notice by their proper names; provided, that, if any such unknown persons be minors without guardian, ad litem, or other guardian, or legal representative duly appointed when such order is made, they may be allowed to appear and object to such order and the granting thereof, at any time within one (1) year after becoming of age. ('25, c. 360, § 7)

**8100-8. Same—Persons entitled to object**—In every case where service of such notice is made and had by publication, as in this act provided, any person, so served, shall have the right to appear and oppose the granting of such petition before the making of such final order, and the right to appear and object to such order and the granting thereof, on such terms as may be just, at any time within one (1) year after such order has been made and entered. If the objection be sustained in such case or in the case of a minor without a guardian, as provided in Section Seven (7) of this

act, the direction of the court shall be such as seems to it just and equitable, in the circumstances. ('25, c. 360, § 8)

**Explanatory note**—For section 7, see § 8100-7, herein.

**8100-9. Same—Final orders, conveyances, etc., valid as to persons served with notice**—The final order of the court in such proceedings, and every deed or other instrument of conveyance, assignment, transfer, mortgage, pledge or lease made, executed and delivered by such trustee, pursuant to any such final order, shall be valid and effectual against all persons whose names are set out in such petition, and all persons therein named and described as unknown persons interested in the trust property, served with notice of hearing as in this act provided, or appearing voluntarily in the proceedings and consenting to the granting of such order, whether such persons, or any of them, are in being or not in being, and whatever the nature of their interest and estate in the trust property, whether vested or contingent, in expectancy, in reversion or in remainder, or otherwise, at the time of the granting of such order. ('25, c. 360, § 9)

**8100-10. Same—Liability of persons paying money to trustee**—Any person who shall actually and in good faith pay to any such trustee any money or other proceeds derived from the sale or other disposition, or from the mortgaging, pledging, or leasing of such trust property, or any part thereof, shall not be responsible for the proper application of such money, or other proceeds, in accordance with the terms of the trust; and any right, title, interest or estate derived from such trustee by such person, in consideration of such payment, shall not be impeached or called in question in consequence of any misapplication by such trustee of such money or proceeds so paid. ('25, c. 360, § 10)

**8101. Effect of misconduct of trustees**—No person who actually and in good faith makes any payment to a trustee which the trustee, as such, is authorized to receive, shall be responsible for the proper application thereof according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question in consequence of any misapplication of such payment by the trustee. (3260) [6721]

**8102. Termination of trust estate**—When the purposes for which an express trust is created cease, the estate of the trustee shall also cease. (3261) [6722] 136-357, 162+450.

**8103. Death of trustee—Trust, how executed**—Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the district court with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court. (3262) [6723]

71-374, 74+152.

**8104. Resignation of trustee**—Upon the petition of any trustee of an express trust, the district court may accept his resignation, and discharge him from the trust, under such regulations as it shall establish for that purpose, and upon such terms as the rights and interests of the person interested in the execution of the trust require. (3263) [6724]

**8105. Removal of trustee**—Upon the complaint of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, it may remove

any trustee who has violated or threatened to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause is deemed an unsuitable person to execute the trust. (3264) [6725] 4-13. 1; 24-232, 244.

8106. Powers of court—The district court has full power to appoint a new trustee in place of one deceased, resigned or removed; and when, in consequence

of such death, resignation, removal, or other cause, there is no acting trustee, the court, in its discretion, may appoint a trustee, or cause the trust to be executed by one of its officers under its direction; and when any person other than the trustee originally named, or appointed by a court of this state, has in good faith done any act in execution of the trust, the court may confirm such act. (3265) [6726] 24-232, 244; 85-498, 517, 89+872.

CHAPTER 61

POWERS

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8107. Powers abolished, except, etc.—Powers, except as authorized and provided for in this chapter, are abolished; and the creation, construction, and execution of powers shall be governed by the provisions herein contained. (3266) [6727] 71-255, 265, 73+967; 78-201, 80+963.

8108. Power defined—A power is an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power might himself lawfully perform. (3267) [6728] 52-67, 72, 53+1130; 104-198, 116+739.

8109. Who may grant a power—No person is capable, in law, of granting a power who is not at the same time capable of alienating some interest in the land to which the power relates. (3268) [6729]

8110. Division of powers—Powers, as authorized in this chapter, are general or special, and beneficial or in trust. (3269) [6730]

8111. General power defined—A power is general when it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power, to any alienee whatever. (3270) [6731] 71-255, 265, 73+967.

8112. Special power defined—A power is special:  
1. When the person or class of persons to whom the disposition of the lands under the power is to be made is designated.

2. When the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest, less than a fee. (3271) [6732]

8113. Power is beneficial, when—A general or special power is beneficial when no person other than the grantee has, by the terms of its creation, any interest in its execution. (3272) [6733] 45-424, 48+10; 71-255, 265, 73+967; 104-198, 116+739.

8114. Powers to married women—A general and beneficial power may be given to a married woman, to dispose, during the marriage, and without the concurrence of her husband, of land conveyed or devised to her in fee. (3273) [6734]

8115. Particular estate with power of disposition—When an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estate limited thereon, in case the power is not executed, or the lands sold for the satisfaction of debts. (3274) [6735] 71-255, 265, 73+967; 78-201, 80+963.

8116. Power of disposition creates fee, when—When a like power of disposition is given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estate that may be limited thereon, but absolute in respect to creditors and purchasers. (3275) [6736] 71-255, 259, 73+967.