

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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## Part II. Property Rights and Domestic Relations

### CHAPTER 59

#### Estates in Real Property

**8032. How divided.**

Life tenant of property subject to mortgage must keep down the interest, and on redemption after foreclosure holds for the joint benefit of himself and the remainderman, the latter being required to contribute his share of amount necessary to redeem. 171M182, 213NW736.

Amount remainderman must contribute on redemption by life tenant after mortgage foreclosure. 171M182, 213NW736.

Where remainderman participated in transaction which wrongfully disabled life tenant from redeeming from mechanic's lien foreclosure, redemption by one to whom they had given a sham mortgage was in effect redemption by remainderman and an annulment of the foreclosure. 173M128, 216NW798.

Equity will not take jurisdiction at instance of life tenant and sell property merely because reinvested proceeds would produce a larger net income. 175M531, 221NW906.

**8033. Estates in fee simple.**

Royalty tax on lease of mineral lands. 172M263, 271, 273, 215NW71, 180, 181.

**8036. Freeholds—Chattels real—Chattel interests.**

Royalty tax on lease of mineral lands. 172M263, 271, 273, 215NW71, 180, 181.

**8041. Remainders defined.**

Liability for improvements made by life tenant. 180M151, 230NW634.

**8044. Suspension of power of alienation.**

Power of alienation was not unlawfully suspended by a provision in a contract for sale of land that no assignment should be valid unless approved in writing by vendors. 175M502, 221NW871.

**8062. Expectant estates protected.**

Where a mortgagee takes the legal title to the mortgaged land a merger will not be held to take place if such was not the intent and would manifestly be against his interest. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d) 950. See Dun. Dig. 6273.

**8074. Estates in common.**

Deed to two persons "or the survivor of either," held to create joint tenancy, and survivor became sole owner in fee. 181M8, 231NW401.

Purchase of bonds by husband and wife, held to create an estate in joint tenancy. 181M128, 231NW794.

### CHAPTER 59A

#### Property of Absentees

**8080-1. Management and disposition of property.**

This act provides a cumulative proceeding and is not a bar to administration by probate court upon the estate of one absent for seven years. 175M493, 221NW876.

**8080-13. Same—Distribution of balance.**

175M493, 221NW876; note under §8080-1.

### CHAPTER 60

#### Uses and Trusts

**8081. Uses and trusts abolished.**

Trusts in both real and personal property are abolished except as authorized by statute. 171M237, 213NW893.

Where the trust instrument vests title in the trustee and appropriates the property to the purpose of the trust and nothing remains to be done by the grantor, an "executed trust" is created. 171M237, 213NW893.

An executory trust requires a consideration; an executed trust does not. 171M237, 213NW893.

The beneficiaries of a trust must be certain or capable of being made certain. Where they are limited to those who furnished uncompensated financial aid to the grantor for a specified purpose, they are capable of being made certain. 171M237, 213NW893.

A beneficiary must comply with the conditions precedent prescribed by the trust instrument to acquire any rights under it. 171M237, 213NW893.

Certain persons held not beneficiaries of trust created for persons aiding a corporation. 171M237, 213NW893.

Property held in trust may be attached, and stockholder's liability may be enforced against it. 172M83, 214NW771.

Taxes on unproductive property held in trust for a life beneficiary may be charged to the corpus of the estate where the trustee under discretionary power holds such property for a more advantageous market. *Moore's Will*, 185M342, 241NW63. See Dun. Dig. 3170(50).

**8083. Who deemed to have legal estate in lands.**

The interest of a daughter under a testamentary trust devising real and personal property to a trustee with power to sell or mortgage and to pay the income to the daughter for life, and for a shorter period under certain contingencies, held, not reachable by the daughter's creditors. 181M289, 232NW337. See Dun. Dig. 9928.

**8085. Limitation of preceding sections.**

One may contract with another to give him his property at his death, and if he fails to do so, and the circumstances are such that compensation cannot be made justly in money, an action in the nature of one of specific performance may be maintained and the property

vested in the promisee or charged in his favor with a trust. *Simonson v. M.*, 183M525, 237NW413. See Dun. Dig. 8789a(21).

**8086. Grant to one for money paid by another.**

Even if money used by son to complete purchase of property was a gift from the father, still title vested in the father where property was conveyed to him at the son's request. 175M549, 221NW908.

The evidence compels a finding that a thirty-year lease and a subsequent modification thereof, taken by the promoter of a bank to be organized, was not adopted by the bank occupying the premises leased, improving the same, and paying the rent; for the covenants contained in the lease to be performed by the lessee were such that the bank could not lawfully assume them. *Veigel v. O'T.*, 183M407, 236NW710. See Dun. Dig. 2114, 2114a, 2116.

That a pastor may have paid the consideration for land conveyed to the trustees of a church and their successors in office does not create a trust in his favor. *Board of Christian Service v. T.*, 183M485, 237NW181. See Dun. Dig. 9896.

**8090. Purposes of express trust.— \* \* \* \* \***

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. (As amended Mar. 28, 1929, c. 110; Mar. 18, 1931, c. 65, §1.)

\* \* \* \* \*

Sec. 2 of Laws 1931, c. 65, provides that act shall be effective from its passage.

An irrevocable trust creating a fund with which to pay premiums on policies on life of creator, with provision that proceeds of policies should be distributed to children of creator after his death, held not invalid as creating a perpetuity. *Wells v. C.*, (CCA8), 63F(2d) 425, reviewing 19BTA1213. Certiorari granted 53SCR528. Rev'd 289US670, 53SCR761.

**1. In general.**

In determining power of trustee, not only language but purpose of trust and situation of parties in interest, are to be considered. *Warner Hardware Co. v. S.*, 186M 229, 242NW718. See Dun. Dig. 9888a.

**2. Implied or constructive trusts.**

Attorney redeeming from mortgage foreclosure sale as trustee of mortgagors. *Slagle v. S.*, 187M1, 244NW79. See Dun. Dig. 9598, 9607.

There was no constructive trust in favor of son's wife in proceeds of policy where father furnished entire consideration for life insurance on son payable to estate, but forthwith assigned to father. *Wunder v. W.*, 187M 108, 244NW682. See Dun. Dig. 4812, 4813, 9916.

**Subd. 3.**

Testamentary trust conferring title on trustee to real and personal property, with authority in the trustee to sell and mortgage the land and invest the proceeds, and directing that the income be paid annually to testator's daughter during her life, but, in certain contingencies, for a shorter period, held valid, and creditors of the daughter cannot reach the property or the income while in the hands of the trustee. 181M289, 232NW337. See Dun. Dig. 3854.

**Subd. 5.**

181M289, 232NW337.  
A testamentary trustee failing to faithfully discharge its duties could not properly charge fees for services, expenses and attorneys' fees. *Rosenfeldt's Will*, 185M 425, 241NW573. See Dun. Dig. 9944.

**Subd. 6.**

See also notes under §8081, supra.  
The provisions of a trust created under subdivision 6 cannot be changed by parol. 171M237, 213NW893.

**8091. Devise of lands, when it creates only a power.**

*Wells v. C.*, (CCA8), 63F(2d)425, reviewing 19BTA1213; note under §8090. Certiorari granted 53SCR528. Rev'd 289US670, 53SCR761.

**8092. Profits of lands held in trust, etc.**

*Wells v. C.*, (CCA8), 63F(2d)425, reviewing 19BTA1213; note under §8090. Certiorari granted 53SCR528. Rev'd 289US670, 53SCR761.

**8093. Express trust a power in trust, when.**

*Wells v. C.*, (CCA8), 63F(2d)425, reviewing 19BTA1213; note under §8090. Certiorari granted 53SCR528. Rev'd 289US670, 53SCR761.

**8095. Trustees of express trust to possess estate.**

Any recovery in an action to have the purposes of a trust carried out must be for the benefit of the trust estate as such and not for the benefit of plaintiff personally. *Whitcomb v. W.*, 176M280, 223NW296.

A beneficiary has no legal or equitable interest in specific property held by a trustee to be sold at the discretion of the trustee with the approval of the district court, the proceeds to be reinvested in case of sale and the income therefrom to be distributed to various beneficiaries. *McWhinney v. G.*, 183M141, 235NW676. See Dun. Dig. 9928(95).

**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; provided, the power to sell and/or sign and/or transfer such beneficial interest shall in no manner be abridged or curtailed, where such beneficial interest in the first instance shall have been acquired by purchase; 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. (R. L. '05, §3257; G. S. '13, §6718; Mar. 18, 1931, c. 66, §1.)

Sec. 2 of Laws 1931, c. 66, provides that act shall take effect on its passage.

**8100. Powers of district court—Sale Mortgage and lease, etc.**

An order accepting the resignation of a trustee, settling his account and directing him to pay over funds in his hands to his successor, is a final order affecting substantial rights in a special proceeding and appealable as such: *Rosenfeldt's Will*, 184M303, 238NW687. See Dun. Dig. 302.

**8100-1. Sale, mortgage, pledge, lease, etc., of property held in trust, etc.**

Beneficiary of trust held estopped from attacking exchange of property by trustee. *Warner Hardware Co. v. S.*, 186M229, 242NW718. See Dun. Dig. 9936.

**8100-11. Appointment of trustee.**—Upon petition of any person appointed as trustee of an express trust by any will or other written instrument, or upon petition of any beneficiary of such trust, the district court of the county where in such trustee resides or has his place of business, shall consider the application to confirm the appointment of the trustee and specify the manner in which he shall qualify. Thereafter such district court shall have jurisdiction of such trust as a proceeding in rem. (Act Apr. 15, 1933, c. 259, §1.)

**8100-12. Trustee to file inventory.**—Any trustee whose appointment has thus been confirmed shall file with the clerk of said district court an inventory containing a true and complete list of all property received by the trustee belonging to the trust estate. Thereafter such trustees shall render to such court at least annually a verified account containing a complete inventory of the trust assets and itemized principal and income accounts. (Act Apr. 15, 1933, c. 259, §2.)

**8100-13. May apply to court for instructions.**—Any trustee whose appointment has thus been confirmed, at any time thereafter may petition the court for instructions in the administration of the trust or for a construction of the trust instrument, or upon or after the filing of any account, for the settlement and allowance thereof. Upon the filing of such petition the court shall make an order fixing a time and place for hearing thereof, unless hearing has been waived in writing by the beneficiaries of such trust. Notice of such hearing shall be given by publishing a copy of such order one time in a legal newspaper of such county at least 20 days before the date of such hearing, and by mailing a copy thereof to each party in interest then in being, at his last known address, at least 10 days before the date of such hearing or in such other manner as the court shall order and if such court shall deem further notice necessary it shall be given in such manner as may be specified in such order. Upon such hearing the court shall make such order as it deems appropriate, which order shall be final and conclusive as to all matters thereby determined, and shall be binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the Supreme Court may be taken from such order within 30 days from the entry thereof, by filing notice of appeal with the clerk of district court, who shall mail a copy of such notice to each adverse party who has appeared of record. (Act Apr. 15, 1933, c. 259, §3.)

**8100-14. Guardian may be appointed.**—If any person upon whom the court has ordered that personal service be made is a minor or otherwise incompetent to act in his own behalf and has no general guardian within the state, or if any party in interest is unascertained or not in being, or unknown to the trustee or outside the State of Minnesota, the court itself shall be deemed to represent such person or persons, but may, upon the application of the trustee or any other person interested therein, appoint a guardian ad litem for any such minor or incompetent person. (Act Apr. 15, 1933, c. 259, §4.)

**8100-15. Application.**—This Act shall not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. The word "person" as used herein shall refer to an artificial as well as to a natural person. (Act Apr. 15, 1933, c. 259, §5.)

**8100-16. Not to limit jurisdiction of court.**—Nothing in this Act contained shall be deemed to limit or abridge the power or jurisdiction of the district court over trusts and trustees. (Act Apr. 15, 1933, c. 259, §6.)

**8101. Effect of misconduct of trustees.**

Trustee held to have power to exchange property for other properties and cash. *Warner Hardware Co. v. S.*, 186M229, 242NW718. See Dun. Dig. 9936.