

1938 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1938)  
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by

WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR.  
R. O. MASON  
J. S. O'BRIEN  
H. STANLEY HANSON  
R. O. MASON, JR. } Assistant Editors

MASON PUBLISHING CO.  
SAINT PAUL, MINNESOTA  
1938

## CHAPTER 59A

## Property of Absentees

**8080-1. Possession, management and disposition of certain property.**—If a person entitled to or having an interest in property within the jurisdiction of the state has disappeared or absconded from the place within or without the state where he was last known to be, and has no agent in the state, and it is not known where he is, or if such persons, having a spouse or minor child or children, dependent to any extent upon him for support, has thus disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the state, any one who would under the law of the state be entitled to administer upon the estate of such absentee if he were deceased, or if no one is known to be so entitled, some person deemed suitable by the court, or such spouse, or some one in such spouse or minors' behalf, may file a petition under oath in the district court for the county where any such property is situated or found, stating the name, age, occupation and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residence of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, whether or not such absentee is a citizen of the United States and if not, of what country he is a citizen or native and con-

taining a schedule of the property, real and personal, so far as known, and its location within the state, and praying that such property may be taken possession of and a receiver thereof appointed under this chapter. Provided that no proceedings shall be commenced under the provisions of this act, until at least 3 months after the date on which it is alleged in such petition that such person so disappeared or absconded. (As amended Feb. 13, 1937, c. 27, §1.)

Sec. 3 of Act Feb. 13, 1937, cited, provides that the Act shall take effect from its passage.

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.

**8080-10. Same—Use of proceeds.**—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 spouse and minor child or children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. (As amended, Feb. 13, 1937, c. 27, §2.)

Sec. 3 of Act Feb. 13, 1937, cited, provides that the Act shall take effect from its passage.

**8080-13. Same—Distribution of balance.** 175M493, 221NW876; note under §8080-1.

## CHAPTER 60

## Uses and Trusts

**8081. Uses and trusts abolished.**

Soper's Estate, 264NW427; note under §8090(6).

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. 172M33, 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).

If one person pays money to another, it depends upon manifested intention of parties whether a trust or a debt is created. If intention is that money shall be kept or used as a separate fund for benefit of payer or a third person, a trust is created. City of Canby v. B., 192M571, 257NW520. See Dun. Dig. 9875.

Charitable trusts were not authorized in view of this statute until passage of Mason's Stats. 1927, §§8090-1 to 8090-4. Lundquist v. F., 193M474, 259NW9. See Dun. Dig. 9878.

Termination and revocation of trusts. 19MinnLawRev 225.

Reservation of control by settlor as rendering trust testamentary. 19MinnLawRev321.

Spendthrift trusts. 21MinnLawRev80.

**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.

Statutory provisions affecting purchase money resulting trusts. 18MinnLawRev575.

**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