

# REVISED LAWS

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## CHAPTER 60

## USES AND TRUSTS

**3240. 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. (4274)

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; 103+882). Chapter cited generally (68-260, 71+22; 52-208, 53+1145; 37-447, 452, 35+260; 88-202, 212, 92+948; 88-318, 323, 92+1122; 93-210, 221, 100+1104).

**3241. 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. (4275)

**3242. 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. (4276, 4277)

37-447, 452, 35+260; 42-548, 44+1030; 52-208, 53+1145; 60-313, 62+110; 104+137.

**3243. 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. (4278)

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

**3244. Limitation of preceding sections—**Sections 3240-3243 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. (4279)

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

**3245. 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 § 3246. (4280)

Except as provided in §§ 3246, 3247, 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; 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 (92-506, 100+380; 63-5, 65+91; 54-56, 55+825; 41-18, 42+595; 44-159, 46+295; 53-39, 54+933. See cases under § 3487 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 (104+561; 104+966). Held not to abolish doctrine of resulting trusts as to personalty (75-153, 77+793. See 88-202, 92+948). A certificate of sale of school lands held a "conveyance" (60-313, 62+110). Cited (2-277, 238; 5-422, 342; 8-309, 272; 8-351, 310; 7-286, 216; 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; 35-301, 28+509; 36-15, 35, 29+

352; 36-276, 30+880; 46-1, 48+413; 48-372, 51+121; 51-296, 53+637; 74-122, 76+1126; 77-282, 79+1016, 80+363; 60-313, 62+110).

**3246. 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. (4281)

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 home-stead will not prevent a trust from arising (8-309, 272; 22-384). Cited (5-422, 342; 9-183, 169; 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; 104+763).

2. **Action to enforce trust—**The trust can only be enforced by action and not by mere seizure and sale (36-15, 35, 29+352; 35-301, 28+509). 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, 169). 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).

**3247. Limitation—**Section 3245 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. (4282)

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; 103+882.

**3248. 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. (4283)

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

**3249. 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 of any public cemetery 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. (4284; '97 c. 80; '01 c. 95)

Subd. 1 (2-264, 226; 25-509). Subd. 2 (50-367, 52+960). Subd. 3 (30-165, 14+805; 49-371, 52+27; 93-210, 228, 100+1104). Subd. 5 (49-57, 86, 51+629, 52+26; 88-202, 92+948). Subd. 6 (88-202, 92+948). Subd. 7 (88-202, 92+948; 88-318, 92+1122; 93-210, 100+1104). Generally (49-57, 66, 51+629, 52+26; 52-67, 53+1130; 89-232, 94+688).

**3250. 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. (4285)

**3251. 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 execution at law. (4286)

**3252. 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. (4287)

33-329, 23+530; 52-67, 53+1130.

**3253. 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. (4288)

**3254. 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. (4289)

25-509.

**3255. Same—Limitation**—Section 3254 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. (4290)

**3256. 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. (4291)

**3257. 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. (4292)

49-371, 380, 52+27.

**3258. Effect of omitting trust in conveyance**—When an express trust is created, but is not contained or declared in the conveyance to 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. (4293)

**3259. Sales by trustees, when void**—When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustees in contravention of the trust shall be absolutely void. (4294)

See 1905 c. 339

**3260. 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. (4295)

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**3261. Termination of trust estate**—When the purposes for which an express trust is created cease, the estate of the trustee shall also cease. (4296)

**3262. 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. (4297)

71-374, 74+152.

**3263. 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. (4298)

**3264. 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. (4299)

4-13, 1; 24-232, 244.

**3265. 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. (4300)

24-232, 244; 85-498, 517, 89+872.