

TRUSTEES AND MORTGAGEES ACT

CHAPTER 9:52

Act
L.I. 10 of 1877
Amended by
19 of 1939

Current Authorised Pages

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**Note
on
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

CHAPTER 9:52**TRUSTEES AND MORTGAGEES ACT****ARRANGEMENT OF SECTIONS**

SECTION

1. Short title.

PART I**POWERS OF TRUSTEES FOR SALE, ETC., AND
TRUSTEES OF RENEWABLE LEASEHOLDS.**

2. Trustees, empowered to sell, may sell in lots, and either by auction or private contract.
3. Sale may be made under special conditions, and trustees may buy in, etc.
4. Trustees, exercising power of sale, etc., may convey.
5. Money arising from sale, etc., to be laid out in other lands.
6. Money arising from sale may be laid out in payment of incumbrances.
7. Until purchase of lands, etc., money to be invested at interest.
8. Trustees of renewable leaseholds may renew.
9. Money for equality of exchange, and for renewal of leases, may be raised by mortgage, etc.
10. No sale, etc., to be made without consent of tenant for life, etc.

PART II**POWERS OF MORTGAGEES**

11. Powers incident to mortgages.
12. Receipts for purchase money sufficient discharge.
13. Notice to be given before sale but purchaser relieved from inquiry as to circumstances of sale.
14. Application of purchase money.
15. Conveyance to the purchaser.
16. Owner of charge may call for title deeds and conveyance of legal estate.
17. Appointment of receiver.
18. Receiver deemed to be the agent of the mortgagor.
19. Powers of receiver.

SECTION

- 20. Receiver may be removed.
- 21. Receiver to receive a commission not exceeding five per cent.
- 22. Receiver to insure if required.
- 23. Application of moneys received by him.
- 24. This Part to relate to charges by way of mortgage only.

PART III

INVESTMENT OF TRUST FUNDS, APPOINTMENT AND
POWERS OF TRUSTEES AND EXECUTORS, ETC.

- 25. On what securities trust funds may be invested.
- 26. Trustees may apply income of property of infants, etc., for their maintenance.
- 27. Provisions for appointment of new trustees on death, etc.
- 28. Appointment of new trustees, in cases herein named.
- 29. Trustees' receipts to be discharged.
- 30. Executors may compound, etc.

PART IV

GENERAL PROVISIONS

- 31. Tenants for life, etc., may execute powers notwithstanding incumbrances.
 - 32. Powers, etc., hereby given may be negated by express declaration.
 - 33. No persons, other than those entitled under the settlement to be affected.
 - 34. Commencement of Act.
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CHAPTER 9:52

TRUSTEES AND MORTGAGEES ACT

AN ACT respecting the powers of trustees and mortgagees.

1961 Ed.
Cap. 338.
L.I. 10 of 1877.

[27th December 1877]

Commencement.

1. This Act may be cited as the –

Short title.

TRUSTEES AND MORTGAGEES ACT.

PART I

POWERS OF TRUSTEES FOR SALE, ETC., AND
TRUSTEES OF RENEWABLE LEASEHOLDS.

2. In all cases where by any will, deed or other instrument of settlement it is expressly declared that trustees or other persons, therein named or indicated, shall have a power of sale, either generally or in any particular event, over any hereditaments named or referred to in, or from time to time subject to, the uses or trusts of such will, deed or other instrument, it shall be lawful for the trustees or other persons, whether the hereditaments are vested in them or not, to exercise the power of sale by selling the hereditaments, either together or in lots, and either by auction or private contract, and either at one time or at several times, and (in case the power expressly authorises an exchange) to exchange any hereditaments which, for the time being, are subject to the uses or trusts aforesaid for any other hereditaments in the State (as the case may be) and, upon any such exchange, to give or receive any money for equality of exchange.

Trustees,
empowered to
sell, may sell in
lots, and either by
auction or private
contract.

3. It shall be lawful for the persons making the sale or exchange as mentioned in section 2 to insert any special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale or exchange, as they think fit, and also to buy in the hereditaments or any part thereof at any sale by auction, and to rescind or vary any contract for sale or exchange and to re-sell the hereditaments which are bought in, or as to which the contract is so rescinded without being responsible for any loss which may be occasioned thereby, and no purchaser under any such sale shall be bound to

Sale may be
made under
special condi-
tions, and trustees
may buy in, etc.

enquire whether the persons making the same may, or may not, have in contemplation any particular re-investment of the purchase money in the purchase of any other hereditaments or otherwise.

Trustees, exercising power of sale, etc., may convey.

4. For the purpose of completing any such sale or exchange as aforesaid, the persons empowered to sell or exchange as aforesaid shall have full power to convey, or otherwise dispose of, the hereditaments in question, either by way of revocation and appointment of the use, or otherwise, as may be necessary.

Money arising from sales, etc., to be laid out in otherlands.

5. The money so received upon any such sale or for equality of exchange as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed or instrument containing the power of sale or exchange or, if no such indication is therein contained as to all or any part of the money, then the same shall with all convenient speed be laid out in the purchase of other hereditaments in fee simple in possession to be situated in the State, or of lands of a leasehold tenure which, in the opinion of the persons making the purchase, are convenient to be held therewith, or with any other hereditaments for the time being subject to the subsisting uses or trusts of the same will, deed or other instrument of settlement in which the power of sale or exchange was contained; and all such hereditaments to be purchased or taken in exchange, as are freeholds of inheritance, shall be settled and assured to the uses upon and for the trusts, intents and purposes, and with, under, and subject to the powers, provisos and declarations to which the hereditaments sold or given in exchange were or would have been subject, or as near thereto as the deaths of parties and other intervening accidents will admit of, but not so as to increase or multiply charges; and all such hereditaments to be purchased or taken in exchange as aforesaid as are of leasehold tenure shall be settled and assured upon and for such trusts, intents and purposes, and with, under, and subject to such powers, provisos, and declarations, as shall, as nearly as may be, correspond with, and and be similar to, the aforesaid uses, trusts, intents and purposes, powers, provisos and declarations, but not so as to increase or multiply charges, and so that, if any of the hereditaments to be purchased are held by lease for years, the same shall not vest absolutely in any tenant in tail by purchase who does not attain the age of eighteen years; and any such purchase as aforesaid may be made subject to any special conditions as to title or otherwise; but no leasehold tenement shall be purchased under the powers hereinbefore contained which is held for a less period than sixty years.

6. It shall be lawful for the persons exercising any such power as aforesaid, if they think fit, to apply any money received upon any sale or for equality of exchange as aforesaid, or any part thereof, in lieu of purchasing lands therewith, in or towards paying off or discharging any mortgage or other charge or incumbrance which affects all or any of the hereditaments which are then subject to the same uses or trusts as those to which the hereditaments sold or given in exchange were subject.

Money arising from sale may be laid out in payment of incumbrances.

7. Until the money to be received upon any sale or for equality of exchange is disposed of in the manner herein mentioned, the same shall be invested at interest for the benefit of the same parties who would be entitled to the hereditaments to be purchased therewith as aforesaid, and the rents and profits thereof, in case such purchase and settlement as aforesaid were then actually made.

Until purchase of lands, etc., money to be invested at interest.

8. It shall be lawful for any trustees of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, if in their discretion they think fit, and it shall be the duty of such trustees, if thereunto required by any person having any beneficial interest present or future or contingent in such leaseholds, to use their best endeavours to obtain, from time to time, a renewed lease of the same hereditaments on the accustomed and reasonable terms, and, for that purpose, it shall be lawful for any such trustees, from time to time, to make or concur in making such surrender of the lease for the time being subsisting and to do all such other acts as are requisite in that behalf; but this section is not to apply to any case where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew the lease or to contribute to the expense of renewing the same.

Trustees of renewable leaseholds may renew.

9. In case any money is required for the purpose of paying for equality of exchange or for the renewal of any lease, it shall be lawful for the persons effecting the exchange or renewal to pay the same out of any money which may then be in their hands in trust for the persons beneficially interested in the lands to be taken in exchange or comprised in the renewed lease, whether arising by any of the ways and means hereinbefore mentioned or otherwise, and notwithstanding the provisions for the application of money arising from sales and exchanges hereinbefore contained; and, if they do not have in their hands sufficient money for the purposes aforesaid, it shall be lawful for such persons to raise the money required by mortgage of the hereditaments

Money for equality of exchange, and for renewal of leases, may be raised by mortgage, etc.

to be received in exchange or contained in the renewed lease (as the case may be), or of any other hereditaments for the time being subject to the subsisting uses or trusts to which the hereditaments taken in exchange or comprised in the renewed lease (as the case may be) is subject and, for the purpose of effecting the mortgage, such persons shall have the same powers of conveying or otherwise assuring as are herein contained with reference to a conveyance on sale; and no mortgagee advancing money upon the mortgage purporting to be made under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted, for the purpose aforesaid.

No sale, etc., to be made without consent of tenant for life, etc.

10. No such sale or exchange as aforesaid, and no purchase of hereditaments out of money received on any such sale or exchange as aforesaid, shall be made without the consent of the person appointed to consent by the will, deed or other instrument, or if no such person is appointed, then of the person entitled in possession to the receipt of the rents and profits of the hereditaments, if there is such a person under no disability ; but this section shall not be taken to require the consent of any person where it appears from the will, deed or other instrument to have been intended that such sale, exchange or purchase should be made by the person or persons making the same without the consent of any other person.

PART II

POWERS OF MORTGAGEES

Powers incident to mortgages.

11. Where any principal money is secured or charged by deed on any hereditaments of any tenure, or on any interest therein, the person to whom such money is, for the time being, payable, his executors, administrators and assigns shall, at any time after the expiration of one year from the time when the principal money has become payable according to the terms of the deed, or after any interest on the principal money has been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely –

- (a) a power to sell or concur with any other person in selling the whole or any part of the property by public auction

tions he may think fit to make, and to rescind or vary contracts for sale or buy in and re-sell the property, from time to time, in like manner;

- (b) a power to insure and keep insured from loss or damage by fire the whole or any part of the property (whether affixed to the freehold or not) which is in its nature insurable, and to add the premiums paid for any such insurance to the principal money secured at the same rate of interest;
- (c) a power to appoint, or obtain the appointment of, a receiver of the rent or profits of the whole or any part of the property in the manner hereinafter mentioned.

12. Receipts for purchase money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharge to the purchasers who are not bound to see to the application of the purchase money.

Receipts for purchase money sufficient discharge.

13. No such sale as aforesaid shall be made until after six months notice in writing given to the person or one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property; but, when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorise the exercise of the power or that no such notice as aforesaid had been given; but any person damnified by any such unauthorised exercise of the power shall have his remedy in damages against the person selling.

Notice to be given before sale but purchaser relieved from inquiry as to circumstances of sale.

14. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows: first, in payment of all expenses incident to the sale or incurred in any attempted sale; secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the same was made; and, thirdly, in discharge of all the principal moneys then due in respect of the charge; and the residue of the money shall be paid to the person entitled to the property subject to the charge, his heirs, executors, administrators or assigns, as the case may be.

Application of purchase money.

15. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to, and vest in, the purchaser the property sold for all the estate and interest herein which the person who created the charge had power to dispose of.

Conveyance to the purchaser.

Owner of charge may call for title deeds and conveyance of legal estate.

16. At any time after the power of sale hereby conferred has become exercisable, the person entitled to exercise the same is entitled to demand and recover from the person entitled to the property subject to the charge all the deeds and documents in his possession or power relating to the same property or to the title thereto which he would have been entitled to demand and recover if the same property had been conveyed, appointed, surrendered or assigned to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of, and, where the legal estate is outstanding in a trustee, the person entitled to a charge created by a person equitably entitled or any purchaser from such person shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

Appointment of receiver.

17. Any person entitled to appoint or obtain the appointment of a receiver may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person is so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and, if no such appointment is made within ten days after the requisition, then may in writing appoint any person he thinks fit.

Receiver deemed to be the agent of the mortgagor.

18. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge who shall be solely responsible for his acts or defaults unless otherwise provided for in the charge.

Powers of receiver.

19. Every receiver appointed as aforesaid shall have power to demand and recover, and give effectual receipts for, all the rents, issues and profits of the property of which he is appointed receiver, by action, suit, distress or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which

Receiver may be removed.

20. Every receiver appointed as aforesaid may be removed by the like authority or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.

21. Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges and expenses whatsoever, a commission not exceeding five per cent on the gross amount of all money received as specified in his appointment and if no amount is so specified then five per cent on the gross amount.

Receiver to receive a commission not exceeding five per cent.

22. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire out of the money received by him the whole or any part of the property included in the charge (whether affixed to the freehold or not) which is in its nature insurable.

Receiver to insure if required.

23. Every receiver appointed as aforesaid shall pay and apply all the money received by him, in the first place, in the discharge of all taxes, rates and assessments whatsoever and in payment of his commission, as aforesaid, and of the premiums on the insurances, if any, and, in the next place, in payment of all the interest accruing due in respect of any principal money then charged on the property over which he is receiver or on any part thereof and, subject as aforesaid, shall pay all the residue of the money to the person for the time being entitled to the property subject to the charge, his executors, administrators or assigns.

Application of moneys received by him.

24. The powers and provisions contained in this Part relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

This Part to relate to charges by way of mortgage only.

PART III*

INVESTMENT OF TRUST FUNDS, APPOINTMENT AND POWERS OF TRUSTEES AND EXECUTORS, ETC.

25. Trustees having trust money in their hands which it is their duty to invest at interest shall be at liberty, at their discretion, to invest the same in any of the public funds or in Dominica Government securities, and such trustees shall be also at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid and to invest the same in any such securities as aforesaid, and also, from time to time, at their discretion, to vary any such investments for others of the same nature; but no such original investment and no such change of investment as aforesaid shall be made where there is a person under

On what securities trust funds may be invested.

no disability entitled in possession to receive the income of the trust fund for his life or for a term of years determinable with his life or for any greater estate, without the consent in writing of such person.

Trustees may apply income of property of infants, etc., for their maintenance.

26. In all cases where any property is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of eighteen years, or on the occurrence of any event previously to his attaining that age, the trustees may, at their sole discretion, pay to the guardians, if any, of the infant, or otherwise apply for or towards the maintenance or education of the infant, the whole or any part of the income to which the infant may be entitled in respect of the property, whether there is any other fund applicable to the same purpose or any other person bound by law to provide for the maintenance or education, or not; and the trustees shall accumulate all the residue of the income by way of compound interest by investing the same and the resulting income thereof, from time to time, in proper securities for the benefit of the person who shall ultimately become entitled to the property from which the accumulations have arisen; but the trustees may, at any time, if it appears to them expedient, apply the whole or any part of the accumulations as if the same were part of the income arising in the then current year.

Provisions for appointment of new trustees on death, etc.

27. Whenever any trustee, either original or substituted and whether appointed by the High Court or otherwise, dies, or desires to be discharged from, or refuses or becomes unfit or incapable to act in, the trusts or powers reposed in him before the same have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust, if any, or if there is no such person or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor or administrators or administrator of the last surviving and continuing trustee, or for the last retiring trustee, by writing, to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid; and, so often as any new trustee

which, for the time being, is vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee shall, with all convenient speed, be conveyed, assigned and transferred so that the same may be legally and effectually vested in the new trustee or trustees either solely or jointly with the surviving or

Powers, etc., hereby given may be negatived by express declaration.

32. None of the powers or incidents hereby conferred or annexed to particular offices, estates or circumstances shall take effect or be exercisable if it is declared in the deed, will or other instrument creating the offices, estates or circumstances that they shall not take effect; and where there is no such declaration, then, if any variations of limitations of any of the powers or incidents hereby conferred or annexed are contained in the deed, will or other instrument, the powers or incidents shall be exercisable or shall take effect only subject to the variations or limitations.

No persons, other than those entitled under the settlement to be affected.

33. Nothing contained in this Act shall be deemed to empower any trustee or other person to deal with or affect the estates or rights of any person except to the extent to which they might have dealt with or affected the rights of such persons if the deed, will or other instrument under which the trustees or other persons are empowered to act had contained express powers for the trustees or other persons so to deal with or affect the estates or rights.

Commencement of Act.

34. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil or other instrument executed after the passing of this Act or under a will or codicil confirmed and revived by a codicil executed after that date.

CHAPTERS 9:53 - 9:89
(RESERVED)

