

CHAPTER 231.

USES AND TRUSTS.

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231.01 Abolished in part. 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 in these statutes.

Although a transfer of the property to a trustee may be the surest way to create a trust, the same result will be accomplished if the owner declares that he himself holds the property in trust for the person designated. Evidence, consisting in part of letters written by a second wife to her attorney and to the mother of the children of her deceased husband by a former marriage, and disclosing that the second wife had segregated and set apart the sum of \$5,000 as a trust fund for the education and maintenance of such children, warranted a determination that the second wife had created a binding and enforceable, self-declared trust in and to such sum with herself as trustee, so that on her death such trust sum was not to be withheld by her executors as an asset of her estate. *Wyse v. Puchner*, 260 W 365, 51 NW (2d) 33.

A trust is created when the title to the subject matter thereof passes to the intended

trustee by delivery thereof or of a deed of conveyance to him or to a third person; but if the third person is an agent of the transferor and in receiving delivery acts only as his agent, no trust is created since the property is still within the dominion of the donor. In order to constitute an effectual delivery, the donor must not only have parted with the possession of the property, but he must also have relinquished to the donee all present and future dominion and control over it, beyond any power on his part to recall. *Wuesthoff v. Dept. of Taxation*, 261 W98, 52 NW (2d) 131.

In construing statutory provisions relating to trusts adopted from another state, the Wisconsin supreme court may turn to decisions of courts of such other state construing the same or similar statutory provisions. *Janura v. Fencl*, 261 W 179, 52 NW (2d) 144.

231.02 Executed uses confirmed. Every estate which is now held as an use, executed under the laws of this state as they formerly existed, is confirmed as a legal estate.

231.03 Right of possession and profits a legal estate. Every person who, by virtue of any grant, assignment or devise, now is or hereafter shall be entitled to the actual possession of lands and the receipt of the rents and profits thereof, in law or in 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 interest.

231.04 Active trusts not affected. Section 231.03 shall not divest the estate of any trustees in any existing trust where the title of such trustees 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.

231.05 Passive trusts abolished. Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in these statutes, shall be directly to the person in whom the right to the possession and the profits shall be 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.

A provision in the trust instrument, that the interests of the beneficiaries should be deemed an interest in personal property and not in real estate, did not operate to prevent

the trust from being a passive trust relating to real estate and vesting legal title in fee simple in the premises in the beneficiaries. If the trust instrument had contained

a provision that the beneficiaries were not to sell the premises during the 20-year period unless as a result of the mutual consent of all, it would not have converted the otherwise passive trust into an active trust, since such a provision in itself would confer no active duties on the trustee. *Janura v. Fencel*, 261 W 179, 52 NW (2d) 144. See notes to 231.14, citing *Janura v. Fencel*, 261 W 179, 52 NW (2d) 144.

231.06 Implied trusts, etc. The preceding sections of this chapter 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.

231.07 Resulting trusts. When a grant for a valuable consideration shall be made to one person and the consideration therefor shall be 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 section 231.08.

It is only the common-law trust for the benefit of an individual from whom the consideration for a grant issues, and resulting from the fact of payment of the consideration, and having no other foundation, that is abolished by this section; and the statute has no effect on trusts constructively imposed as a consequence not of payment alone, but of payment in combination with other or extrinsic equities. A resulting trust, as distinguished from a constructive trust, can arise only in favor of the payor by reason of his payment, and cannot arise in favor of a third-party beneficiary. *Masino v. Sechrest*, 268 W 101, 66 NW (2d) 740. A purchase-money resulting trust is abolished by this section. *Masino v. Sechrest*, 268 W 112, 66 NW (2d) 745.

231.08 Fraud against creditors. Every such conveyance shall be presumed fraudulent as against the creditors 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.

231.09 Section 231.07 not to apply, when. Section 231.07 shall not extend to cases where the alienee named in the conveyance shall have 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, shall have purchased the lands so conveyed with moneys belonging to another person.

231.10 Bona fide purchase. 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.

231.11 For what express trusts may be created. Express trusts may be created for any or either 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 land 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 the last preceding chapter.
- (4) To receive the rents and profits of lands and to accumulate the same for the benefit of any married woman or for any of the purposes and within the limits prescribed in the preceding chapter.
- (5) For the beneficial interests of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time and the exceptions thereto relating to literary and charitable corporations prescribed in this title.
- (6) For perpetually keeping in repair and preserving any tomb, monument or gravestone, or any cemetery; and any cemetery company, association or corporation is authorized to receive money or property in trust for the purpose aforesaid and to apply the income thereof to the purposes of the trust.
- (7) (a) No trust for charitable or public purposes, whether in real or personal property, shall be invalid for indefiniteness or uncertainty where power to designate the particular charitable or public purpose or purposes to be promoted thereby is given by the instrument creating the same to the trustees, or to any other person or persons.
 (b) No trust or other gift for charitable or public purposes whether in real or personal property shall be invalid because of failure by the donor to indicate the method by which the purpose of the trust or gift is to be accomplished.
 (c) In the absence of a clearly expressed intention to the contrary, no trust or other gift for charitable or public purposes whether in real or personal property shall be invalid because the specific method provided by the donor for the accomplishment of the general purpose indicated by him is or becomes for any reason impracticable, impossible or unlawful.

(d) Where the fulfillment of the special purpose expressed in a trust or other gift for charitable or public purposes is or becomes impracticable, impossible or unlawful, it shall

be the duty of the courts by a liberal construction of the trust or gift to ascertain the general purpose of the donor and to carry it into effect in the nearest practicable manner to the expressed special purpose; provided, however, that the right of visitation of a living donor shall not be held to be impaired by anything contained in this subsection.

(8) It shall be unlawful to limit or restrict in any manner whatsoever the use of real or personal property or the rent or income thereof, owned, possessed or enjoyed by any person to the extent of depriving the state department of public welfare or county of legal settlement of its right to recover the actual per capita cost of maintenance furnished an inmate of any state institution, or any county institution, in which the state or county of legal settlement is chargeable with all or a part of the inmate's maintenance.

All trusts are abolished by 231.01, except those created for purposes enumerated in 231.11; and 231.11 refers only to active trusts and, specifically, is not applicable to passive trusts relating to land since the provisions of 231.05 pass title directly to the beneficiary or beneficiaries in the case of the creation of a passive trust relating to land. *Janura v. Fencel*, 261 W 179, 52 NW (2d) 144.

231.12 Devises as powers. A devise of land to executors or other trustees to be sold or mortgaged, where 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 the heirs or pass to the devisees of the testator subject to the execution of the power.

231.13 Profits of land liable to creditors. 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 that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity to the claims of the creditors of such person in the same manner as other personal property which cannot be reached by an execution at law.

231.14 Express trusts; powers in trust. When an express trust shall be created for any purpose not enumerated in the preceding sections of this chapter no estate shall vest in the trustees; 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 the next succeeding chapter.

A deed of real estate to a trustee, together with a trust instrument providing that the beneficiaries should have the management and control of the property, and the selling, renting and handling thereof, and that the trustee should have no duties to perform for 20 years, but that, if any property remained in the trust at the expiration of 20 years, the trustee should then sell it and divide the proceeds among the beneficiaries, was a passive trust in its entirety, and not merely for 20 years, but the contingent power of sale granted to the trustee was a valid power in trust under 231.14. Legal title in fee simple to the premises conveyed to the trustee vested immediately in the beneficiaries pursuant to 231.05, subject only to the contingent power of sale in the trustee to sell the premises at the end of 20 years and divide the proceeds among the beneficiaries if in the meantime they had not sold and disposed of the property. Any beneficiary, or the heir of an intestate beneficiary, as a successor in interest, would be entitled to maintain an action for partition during such 20-year period. *Janura v. Fencel*, 261 W 179, 52 NW (2d) 144.

One of the purposes of 231.14 was to treat an unauthorized trust as but a passive trust with the creation of a power in the trustee to perform the designated act if the vesting of legal title in the trustee is not requisite for its accomplishment; but legal title to the premises passes at once to the beneficiary or beneficiaries pursuant to 231.05, subject to such power in the trustee. *Janura v. Fencel*, 261 W 179, 52 NW (2d) 144.

231.15 Legal title in beneficiary. In every case where the trust shall be valid as a power the lands 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.

231.16 Trustees take estate, when. Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, 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.

231.17 Section 231.16 qualified. Section 231.16 shall not prevent any person creating a trust from declaring to whom the lands to which the trusts relates shall belong in the event of the failure or determination 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.

231.18 Reversion in grantor. Whenever 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.

See note to 235.04, citing *Flynn v. Palmer*, 270 W 43, 70 NW (2d) 231.

231.19 Alienation restrained. No person beneficially interested in a trust for the receipt of the rents and profits of lands can assign or in any manner dispose of such in-

terest; but the rights and interests of every person for whose benefit a trust for the payment of a sum in gross is created are assignable.

231.20 Instruments creating trusts to be recorded. 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. On and after July 1, 1921, a grantee from a trustee shall be charged with notice of only such terms of the trust as are contained in a duly recorded written instrument. Every writing creating or expressing the terms of a trust relating to real estate or the proceeds thereof executed prior to July 1, 1921, may be recorded with like effect as if it were duly executed, witnessed and acknowledged.

231.201 Trustee's powers presumed where not recorded. Where a person designated as a trustee has obtained an estate or interest in real property by a conveyance as defined in s. 235.50, but his authority and powers are not set forth in a recorded instrument, it shall be conclusively presumed that such person is a trustee of a valid express trust and has full power of conveyance as so defined.

History: 1953 c. 530; 1955 c. 660.

231.205 Life use by settlor of trusts; eligibility for bequests and devises; powers.

(1) Any instrument declaring or creating a trust, when otherwise valid, shall not be held an invalid trust, or an attempted testamentary disposition, because it contains any of the following powers, whether exercisable by the settlor or another or both:

- (a) To revoke, alter, amend or modify any or all provisions of the trust.
- (b) To exercise any power or option over any property transferred to or held in the trust.
- (c) To add to or withdraw from the trust all or any part thereof at one time or at different times.

(d) To direct during the lifetime of the settlor or another, the persons and organizations to whom or on behalf of whom the income shall be paid or principal distributed.

(2) A trust otherwise valid, created by a written instrument, whether or not it contains any or all of the powers specified in sub. (1), shall have existence independent of any will and be eligible to receive property bequeathed, devised or appointed by the settlor and others, whatever the size or character of its corpus or the terms of the instrument, unless the instrument specifically states otherwise. No reference to any such trust in any will shall cause the trust assets to be included in the property administered as part of the testator's estate.

(3) Any or all of the powers listed in sub. (1) may be exercised without affecting the validity of the trust, its nontestamentary character and its independent existence and eligibility for the receipt of property bequeathed, devised and appointed to it, except that the exercise of a power, under sub. (1) (a) to amend, alter or modify the provisions of the instrument shall be effective to change such provisions as to property devised, bequeathed or appointed by will to the trust only if the settlor's will is executed or republished after the exercise of such power.

(4) Nothing in this section shall be construed as altering or changing in any way the existing law or rules of law relating to the rights of widows, the taxation of transfers of property in trust, or trusts and wills other than those specified in this section.

(5) This section shall be applicable to trusts created and wills executed both before and after May 14, 1955 by persons who are living on or after May 14, 1955.

History: 1955 c. 85.

231.21 Trust estates. (1) **CONTRAVENTION VOID.** When the trust shall be 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.

(2) **SUPPORT OF WARD.** Provided, however, in case a beneficiary is an infant whose maintenance and education is not sufficiently provided for by the trust, and said infant has no other property and no parents able to provide him suitable maintenance or education, or in case a beneficiary is an adult whose maintenance is not sufficiently provided for by the trust, who has become, or is unable to take care of himself the court having jurisdiction over the trust estate, may, if in his judgment the rights and interests of others in said trust, will not be thereby prejudiced, authorize and adjudge the appropriation and application of so much of the trust fund, or the income thereof, or the proceeds of the trust property, or the principal of such loans as are hereinafter provided for, as he may deem necessary or proper for the care, maintenance or education of such beneficiary, to be used for said purpose, and may require the trustee to pay the same to the guardian of said infant, or to said adult, or to the guardian of said adult, if he be incompetent or insane.

(3) **SALE.** To accomplish such purpose, said court may authorize, direct and compel the sale and conveyance of part, or all the property which is the subject of the trust, discharged thereof, if the rights and interest in said property, owned by others, will not in the judgment of the court, be thereby injured or impaired. In case such property be real estate, or an interest therein, the proceedings for the sale thereof, shall be the same as are provided for in chapter 296.

(4) **LOANS.** If such sale, conveyance or appropriation cannot be made without injury to the rights of others, or if the court deems it advisable, he may authorize the guardian of such infant, such adult or the guardian of such adult, to negotiate and contract for a loan or loans of such sum or sums, as he may deem necessary or proper to be used for the maintenance or education of such infant or adult, payable when such beneficiary shall become entitled to his share of the trust property, with interest not exceeding the legal rate, and by his order, said court may charge the share of such beneficiary in the trust property with full and complete liability for the payment of such loan, and may authorize and require the trustee to execute and deliver to the payee of the same a certificate or other writing evidencing said contract and liability, and may authorize and require him as such trustee, to secure the sums borrowed as aforesaid by executing and delivering to such payee, a pledge of the trust property or a mortgage thereon. Such obligation shall be paid when due, out of said share of the trust property, and such pledge or mortgage shall be valid as a lien upon the share of said beneficiary in the trust property, and may be enforced in the usual manner.

(5) **JUDGMENTS.** Said trust may be contravened in the manner aforesaid, in whole or in part, and the orders and judgments of said court shall be binding upon all parties, but the remaining property, proceeds or funds not appropriated as aforesaid, shall be protected, preserved, managed and disposed of as nearly as practical, in accordance with the provisions of the trust.

The settlor of a trust cannot, except power. *American Nat. Red Cross v. Banks*, under circumstances not here existing, re- 265 W 66, 60 NW (2d) 733.
voke the trust unless it has reserved such

231.22 Misapplication of payment to trustee. No person who shall actually and in good faith make any payment to a trustee, which the trustee, as such, is authorized to receive, shall be responsible for the 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.

231.23 Trustees' estate, termination of. When the purposes for which an express trust shall have been created shall have ceased the estate of the trustee shall also cease.

Under a will creating a trust and providing for the payment of certain income to the testator's widow for life, and to the testator's mother for life, and for the support and education of any surviving issue of the testator, and further that the trust should terminate on the widow's death, and that the trust estate should then go to any surviving issue of the testator but, if the testator died without issue surviving him, to go to the testator's surviving brothers and sisters, the purposes of the trust had ceased and there was no object in continuing it until the widow's death, after the widow's election not to take under the will, and the death of the testator's mother, and where there was a surviving son of the testator so that any contingent claim of the testator's brothers and sisters was thereby defeated, and the son was of full age and competent; and in such circumstances the son, as sole remaining beneficiary, should now enter directly into the enjoyment of the remainder, and the trust should be terminated. *Will of Borchert*, 259 W 361, 48 NW (2d) 496.

No express provision for the termination of the trust was required where the general scheme of the trust was evident, and the subject of the same and the persons to be benefited were sufficiently clear so that a court of equity could judicially determine the same and superintend the execution of the trust. *Wyse v. Puchner*, 260 W 365, 51 NW (2d) 38.

231.24 Court to execute trust, when. Upon the death of the surviving trustee of an express trust the trust shall not descend to his heirs nor pass to his personal representatives, but the trust, if then unexecuted, shall vest in the circuit 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.

231.25 Trustee's resignation. Upon the petition of any trustee of an express trust the circuit court may accept his resignation and discharge him from the trust under such regulations as shall be established by the court for that purpose and upon such terms as the rights and interests of the persons interested in the execution of the trust may require.

231.26 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, the circuit court may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who for any other cause shall be deemed an unsuitable person to execute the trust.

A petition for the removal of a trustee is addressed to the discretion of the court, and its action may not be reversed in the absence of an abuse of discretion. The trial court did not abuse its discretion in removing a testamentary trustee who had sold his individual property to himself as trustee, and had retained a portion of the interest paid on mortgages held by him as trustee, although the will creating the trust granted broad powers to him. Will of Gabel, 267 W 208, 64 NW (2d) 853.

231.27 Appointment of new trustee. The circuit court shall have power to appoint a new trustee in the place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee the court in its discretion may appoint new trustees or cause the trust to be executed by one of its officers under its direction.

231.28 Appointment when trustee declines to act. Whenever any trustee appointed by the party creating the trust shall decline to act as such the circuit court may appoint a new trustee in his place and vest in such new trustee all the powers and all the title to the property, within the jurisdiction of such court, which would have been possessed by or vested in the original trustee if he had accepted the trust. Such appointment may be made upon the petition of any person interested in the execution of the trust; notice of the time and place when such petition will be presented shall be served at least 20 days before such presentation upon all known parties interested in the subject of the trust who reside in this state and upon every living trustee, unless such trustee shall in writing waive such notice or consent to such order without notice, service to be made in the same manner as the service of a summons of said court; but if any of the parties interested are unknown or nonresidents of the state and such fact shall be made to appear by the verified petition or by affidavit the court or judge shall, upon the filing of the petition, order a notice thereof and the time and place for hearing the same to be published once in each week for at least 3 weeks prior to the time of hearing in a newspaper published in the county where the petition is filed, and such notice shall be so published before the order appointing such trustee shall be made.

231.29 Resident trustee to account to a foreign trustee. When the party creating a trust shall have been or be a resident of another state or a foreign country and the subject of the trust shall be mainly within the jurisdiction of such other state or foreign country, and a trustee shall have been appointed by any court in such other state or country, a circuit court appointing a trustee in this state may, in its discretion, authorize such trustee to account for the rents and profits or proceeds of sale derived by him from any part of the trust estate in this state to the trustee appointed in such other state or country, to be by him applied for the purposes of the trust.

231.295 Foreign trustees may sue, make conveyances, etc. When a trustee of any express trust shall have been duly appointed in any other state, territory or country, either as an original or substitute trustee, and no trustee shall have been appointed in this state upon that part of the trust estate situate in this state, such foreign trustee may have recorded in the office of any register of deeds of any county in which any part of such trust estate may be situated his original appointment or a copy thereof duly authenticated, as required to make the same receivable in evidence, and thereafter may exercise any powers over such trust estate, including sales and conveyances and assignments thereof or of any part thereof; and may prosecute or defend any action or proceeding relating thereto and have all the rights, remedies and defenses in regard to the property, real and personal, and interests, legal and equitable, and to collect any demands of such estate which such a trustee could have if he were so appointed within and pursuant to the laws of this state.

History: 1951 c. 247 s. 59.

231.30 Recording order of appointment. A certified copy of any order appointing or removing a trustee, made by any court under the provisions of this chapter, may be recorded in the office of the register of deeds of any county in which any of the trust property is situated, and such record or a certified copy thereof shall be presumptive evidence of such order and that all the proceedings previous to making the same were regular.

231.31 Sale of realty by trustee. The circuit court of any county in which real estate or any interest therein is held in trust may, on the petition of the person holding the same or of any person interested, authorize or require a sale, mortgage or lease thereof whenever the interests of the beneficial owners of such real estate or interest therein will be substantially promoted thereby because the same is exposed to waste or dilapidation or is unproductive, or because the trustee has no money belonging to the trust to pay the taxes or assessments on the property, or for other peculiar reasons or circumstances. The proceedings for the sale of such real estate by the trustee shall be the same as are provided for in chapter 296.

If the property conveyed to the city for the lawful public purpose of being maintained as an historical museum was held by the city in trust, its transfer by the city to the State Historical Society for the same purpose was not controlled by statutory provisions applying to private trusts as distinguished from public trusts. State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

231.33 Special trustees; appointment. If there is necessary delay in appointing a trustee or issuing letters of trust, or if it appears to the court to be necessary, the court may appoint a special trustee to act until the matter causing the delay is disposed of or the necessity therefor ceases to exist. No appeal shall be allowed from the appointment of such special trustee, and the appointment may be made without notice. He may be removed whenever the court so orders. The special trustee, before entering upon the duties of his trust, shall give a bond to the court in such sum and with such sureties as the court designates and approves.

History: 1951 c. 37.

Comment of Advisory Committee, 1951: 231.33 is amended so that it applies to all courts instead of county courts only. (Bill 90-S)

An estate was ready to be closed except for the sale of the home on the happening of the first contingency commanding it, but the coexecutors had not co-operated and probably could not. An order appointing a

trustee to hold the fee subject to the widow's estate for life or less, as the occurrence of the contingencies might determine, and then to sell the premises and administer or distribute the proceeds as in the will and the order provided, was within the discretion permitted the county court. Estate of Audley, 256 W 433, 41 NW (2d) 378.

231.34 Enforcement of public trust. (1) An action may be brought by the attorney-general in the name of the state, upon his own information or upon the complaint of any interested party for the enforcement of a public charitable trust.

(2) Such action may be brought in the name of the state by any 10 or more interested parties on their own complaint, when the attorney-general refuses to act.

(3) The term "interested party" herein shall comprise a donor to the trust or a member or prospective member of the class for the benefit of which the trust was established.