

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.

Note: In construing a trust the language should be so construed as to give effect to the intention of the testator or settlor, if that intention may be ascertained from the language of the instrument, considered in the light of the surrounding circumstances. Findings of fact made by a trial court, in controversies concerning the administration of a trust estate, are accorded the same effect that findings of fact are accorded in other controversies, and hence will not be disturbed on appeal unless they are against the great weight and clear preponderance of the evidence. *Welch v. Welch*, 235 W 282, 290 NW 758, 293 NW 150.

Many trust questions are decided in a 60-page opinion, including construction of the trust, intention of settlor, language of instrument, management, investments, au-

thority to make nonlegal investments, standard of care required, particular investment transactions, expenses of maintaining business office, other transactions, failure of surviving trustees to appoint successor trustee, failure to pay taxes when due, improvements on trust property, amortization, transactions between trust estate and trustee individually, income or corpus, rights of life tenant and remainderman, corporate dividends declared out of surplus resulting from appreciation of assets, interest accrued at date of trust on securities forming part of trust estate, removal of trustees, discretion of court, action for accounting against trustees, accountants' fees, attorneys' fees, costs. *Welch v. Welch*, 235 W 282, 290 NW 758, 293 NW 150.

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.

Note: When a trust is passive for a period, the use is executed for that period; and in the case of a partially passive trust, only so much of the title is left in the trustee as is necessary to enable him to perform his duties. *Boyle v. Kempkin*, 243 W 86, 9 NW (2d) 589.

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.

Note: The trust which resulted in favor of the wife upon her husband's taking title to property paid for with her funds, but without her knowledge, was not barred by limitations or laches and hence was enforceable. *Hendricks v. McCormick M. Home*, 204 W 277, 234 NW 886.

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.

Note: Where the debtor owns nothing in the land, but the grantee holds the entire title as a trustee in favor of the creditors, the right of such creditors is not against the land, but, at the suit of all or of one for all, to charge the grantee with a trust to the extent necessary to satisfy their just demands. *Dorrington v. Jacobs*, 213 W 521, 252 NW 307.

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. [1933 c. 413; 1935 c. 336; 1943 c. 93]

Note: The operation of (7) (c) (d) is dependent on the discovery of a general charitable purpose in a trust or other gift. *Nelson v. Madison Lutheran Hospital & Sanatorium*, 237 W 518, 297 NW 424.

A testamentary gift in trust for a charitable purpose will not be permitted to fail because the donee to which the will directs the property to be conveyed is not a legal entity capable of taking title thereto, but in such case the general purpose of the donor will be carried into effect in the nearest practical manner. *Estate of Thronson*, 243 W 73, 9 NW (2d) 641.

When it appears that if the main purpose of a will creating a trust cannot be accomplished by continuing the management of the trust according to the directions of the will but may be accomplished by deviating the management from that specified by the will, such deviation should be ordered by the court having supervision of the trust in order to effect the main purpose. *Estate of Robinson*, 248 W 203, 21 NW (2d) 391.

A will giving a fund to a city in trust, to be used by it for the erection and maintenance of an old people's Home where elderly people might enjoy the comforts of life at reasonable rates, was a charitable trust, and where, because of the inadequacy of the fund and the fact that the city already owned and operated a Home for elderly people, it was impossible to erect and maintain another Home in the manner specified in the will, the court, under (7) (d) could change the mode of effectuating the bequest within the general purpose, although the will provided that the fund should be used for no purposes except those outlined therein. In the circumstances, it was the duty of the court to apply the trust property to a purpose which approximates as nearly as possible the purpose to which the testatrix intended the property to be applied. *Fairbanks v. Appleton*, 249 W 476, 24 NW (2d) 893.

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.

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.

Note: Title to trust estate passes under the will creating the trust to the named trustees without any order of court assigning the property to them. *Estate of Trowbridge*, 244 W 519, 13 NW (2d) 66.

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.

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 interest; 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.

Note: Under testamentary trust whereby income was to be devoted to education and support of beneficiary until he should reach age of 25, when principal with unexpended accumulations of income should go to beneficiary, with provisions for gifts over if beneficiary did not reach such age, interest of beneficiary in trust fund was assignable and therefore subject to satisfaction of judgment against beneficiary, whether interest was vested or contingent. *Meyer v. Reif*, 217 W 11, 258 NW 391.

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.

231.205 Life use by creator of trust. Any instrument declaring and creating a trust shall not, when otherwise valid, be held to be an invalid trust or an attempted testamentary disposition of property because the grantor or creator of the trust reserved to himself, to be exercised by him during his lifetime, the right to revoke, amend, alter or modify the trust instrument in whole or in part, or to require that sums from the trust principal be paid to or used for him either at his request or in the discretion of the trustee. Nothing in this section shall be construed as altering or changing in any way the existing law or rules of law relating to the taxation of transfers of property in trust. [1931 c. 216]

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, 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.

Note: Additional funds cannot be granted to a beneficiary of a trust under a will on the basis of social standing or convenience, but only when the beneficiary is unable to take care of himself and if the rights and interests of others in the trust will not be thereby prejudiced. Beneficiaries were not entitled to additional funds under the statute, where they had annual incomes of \$700, and their husbands had incomes substantial in amount. Estate of Adams, 216 W 77, 255 NW 886. Under (2) a judgment extending the five-year period, prescribed in the instant tes-

tamentary trusts, within which to pay the son's notes to the testatrix out of his designated share of the trust income, would be unauthorized, since it would be an invasion of the rights of others in the trust, and since the son had no interest which could be appropriated to him, no interest which could be sold, and nothing which could be used as a security for a loan. Trust Estate of Boyle, 232 W 631, 288 NW 257.

Where the interests of infant grandchildren of the settlor were contingent on, and to take effect on, their reaching the age of 30 years, and no provision was made for the payment of any income to them as such, but one-half of the income was to be paid to the settlor's son, and the other half was to be retained by the trustees and added to the corpus, an appropriation of funds to pay for the education of the infant beneficiaries out of such other half of the income was unauthorized under (2), as contrary to the intent of the settlor, and as prejudicial to the

rights of those beneficiaries who would receive the estate in case the contingent interests should fail to materialize. Boyle v. Marshall & Hsley Bank, 242 W 1, 6 NW (2d) 642.

The remaindermen, having conveyed their interest to the life beneficiary of the trust, could not urge that their rights and interests would be prejudiced by an allowance to the life beneficiary out of corpus. Estate of North, 242 W 72, 7 NW (2d) 705.

A valid trust having been set up as to the remainder in the real estate deeded by the settlor to the trustee, the settlor and the trustee could not by mutual agreement cut off the rights of the beneficiaries which vested on the delivery of the deed, and a subsequent deed which the trustee gave to the settlor was void as being in contravention of the trust, the trust being irrevocable in the absence of reservation of power to revoke. Boyle v. Kempkin, 243 W 86, 9 NW (2d) 589.

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.

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.

Note: In an action brought by a trustee of an inter vivos trust for approval of his account and for discharge from liability as trustee, after his resignation and after the court's appointment of his successor, the allowance to him, out of the trust, of expenses for attorney fees and guardian ad litem fees, was proper, where the trust instrument contemplated that the trustees

might resign and the record warranted the view that the plaintiff's resignation as trustee was justifiable, although the plaintiff did not proceed by petition, in accordance with this section for the court's acceptance of his resignation. [Whether such fees are properly chargeable to corpus or income is not considered.] Uihlein v. Albright, 244 W 650, 12 NW (2d) 909.

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.

Note: The failure of the trial court to remove trustees, whose removal for alleged unsuitability was sought on the ground, among others, that one was past seventy years of age and that another had re-

moved his residence to the state of Michigan, was not an abuse of discretion in the circumstances of the case. Welch v. Welch, 235 W 282, 290 NW 758, 293 NW 150.

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. [1947 c. 506]

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.

231.30 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.

Note: The provisions of 231.31 apply to holders nor to a disposition of the property testamentary and similar express trusts, but acquired by the mortgage trustee at the do not apply to a trust created by a trust foreclosure sale. *Newlander v. Riverview Realty Co.*, 238 W 211, 298 NW 603.

231.32 [Repealed by 1935 c. 363, 520 s. 7]

231.33 Special trustees; appointment. When there shall be delay in appointing a trustee or issuing letters of trust, occasioned by any contest concerning such appointment or by the death, removal or resignation of any trustee, or from any other cause, or when it shall appear to the court to be necessary, the county court may appoint a special trustee to act until the matter causing the delay shall be disposed of or the necessity therefor cease to exist. No appeal shall be allowed from the appointment of such special trustee, and such appointment may be made without notice. Such special trustee may be removed whenever the court may so order. Every such special trustee, before entering upon the duties of his trust, shall give a bond to the judge of the county court in such sum and with such sureties as the court may designate and approve. [1933 c. 318]

231.34 [Renumbered section 320.05 by 1935 c. 363]

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. [1945 c. 458]