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LEGISLATIVE ASSEMBLY,

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CHAPTER 44.

OF USES AND TRUSTS.

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Certain uses and trusts abolished.

SEC. 1. 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.

Executed uses confirmed.

SEC. 2. Every estate which is now held as a use, executed under the laws of this territory, as they formerly existed, is confirmed as a legal estate.

Right to possession of lands creates legal ownership.

SEC. 3. 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 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.

Active trusts not affected by last section.

SEC. 4. The last preceding section 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.

Trustees of estate for use of another, take no interest.

SEC. 5. Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in this chapter, shall be directly to the person in whom the right to the possession and 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.

Preceding sections qualified.

SEC. 6. The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law; nor to be construed to prevent, or effect, the creation of such express trusts as are hereinafter authorized and defined.

Grant to one for

SEC. 7. 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 shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

money paid by another, no trust to result.

SEC. 8. 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.

Except for benefit of creditors, &c.

SEC. 9. The preceding section 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.

Section eight qualified.

SEC. 10. 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.

Purchasers protected.

SEC. 11. Express trusts may be created for any, or either, of the following purposes:

For what purposes express trusts may be created.

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 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 either of the purposes, and within the limits prescribed in the preceding chapter.

5. For the beneficial interest 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, prescribed in this title.

SEC. 12. 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.

Certain devises in trust, to be deemed powers.

SEC. 13. 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.

Profits of land liable to creditors in certain cases.

SEC. 14. 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.

Other express trusts to be powers in trust.

SEC. 15. In every case where the trust shall be 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.

Land to descend, &c., to the persons entitled.

SEC. 16. Every express trust valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees,

Trustees of express trusts to have whole estate.

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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.

Last section qualified.

SEC. 17. The preceding section 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.

Interest remaining in grantor of express trust.

SEC. 18. 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.

No person beneficially interested can assign, &c.

SEC. 19. No person beneficially interested in a trust for the receipt of the rents and profits of the lands, can assign or in any manner dispose of such interests; 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.

Effect of omitting trust in conveyance.

SEC. 20. 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 of such trustees, without notice and for a valuable consideration.

Certain sales, &c., by trustees void.

SEC. 21. 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.

Other persons not to be affected by misconduct of trustees.

SEC. 22. No person who shall actually, and in good faith make any payment to the 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.

When estate of trustees to cease.

SEC. 23. When the purposes for which an express trust shall have been created, shall have ceased, the estate of the trustee shall also cease.

On death of surviving trustee, trust to be executed under direction of the court of chancery.

SEC. 24. 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 court of chancery, 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.

When and how trustees may resign.

SEC. 25. Upon the petition of any trustee of one express trust, the court of chancery 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 person interested in the execution of the trust may require.

When and how trustees may be removed.

SEC. 26. Upon the petition or bill 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 court of chancery 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.

Places of trustees resigning or removed, how supplied.

SEC. 27. The court of chancery shall have full powers 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.