

CHAPTER 17

**VESTING TRUST PROPERTY OUT OF COURT ON
CHANGE OF TRUSTEES**

DELETE § 17–01 AND REPLACE BY:

Obligations to vest trust property*Statutory obligations*

17–01 On the appointment or retirement of a trustee most trust property vests in the new or continuing trustees by virtue of an implied vesting declaration operating under section 40 of the Trustee Act 1925.¹ But that does not mean that the obligation of an outgoing trustee to vest the trust property in the new or continuing trustees is unimportant since section 40 does not cover all kinds of property and applies only to an appointment by deed. Further, an implied vesting declaration will not cover all steps that need to be taken on, or are incidental to, the vesting of the trust property on a change of trusteeship.^{1a} Section 37(1)(d) of the Trustee Act 1925^{1b} provides that:

“(1) On the appointment of a trustee for the whole or any part of trust property—

...

(d) any assurance or thing or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.”

There are two further statutory obligations to vest trust property on the retirement of trustees, namely section 39(2) of the Trustee Act 1925,^{1c} concerned with retirement of trustees under the statutory power in section 39(1) of the 1925 Act, and section 19(4) of the Trusts of Land and Appointment of Trustees Act 1996,^{1d} concerned with compulsory retirement of trustees under section 19(2) of the 1996 Act. Sections 37(1)(d) and 39(2) of the 1925 Act differ from

¹ See §§ 17–02 *et seq.*

^{1a} On which see *Re Essel Trust* [2008] JRC 065; 2008 J.L.R. N.18.

^{1b} Referred to in § 14–36.

^{1c} Referred to in § 13–08.

^{1d} Set out and considered in § 13–42.

VESTING TRUST PROPERTY OUT OF COURT

section 19(4) of the 1996 Act in that no express reference is made to protection of the rights of the outgoing trustee, but we do not consider that that the terms of sections 37(1)(d) prejudice in any way the rights of indemnity to which an outgoing trustee is entitled under the general law.^{1e}

Obligations under general law

17-01A The statutory provision in section 37(1)(d) of the Trustee Act 1925 is not in terms limited to appointments under the statutory power in section 36 of the 1925 Act, and probably covers an appointment under an express power. Section 39(2) appears to be ancillary to section 39(2) and may not cover a retirement under an express power. None of the statutory provisions cover the case of removal without appointment of a new trustee under an express power. It cannot, however, be doubted that, to the extent that the statutory provisions do not apply, an outgoing trustee has an obligation, subject to reasonable protection in respect of liabilities in accordance with his rights of indemnity, to do everything on his part that is needed to vest the trust property in the persons who are the trustees after a change in the trusteeship, that being consequential upon the change of trusteeship.^{1f}

Trust papers and information

17-01B The position as to trust papers and information is considered in §§ 23-97 to 23-100.

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^{1e} As to which see §§ 14-58 to 14-63.

^{1f} *Noble v Meymott* (1851) 14 Beav, 471; *Re Essel Trust*, above.