

Newhall's
SETTLEMENT OF ESTATES
AND
FIDUCIARY LAW
IN MASSACHUSETTS
By
Thomas H. Belknap, Esq.
Fifth Edition
1998 (with 2014 Supplement)

Section 36:33 – Termination of Trusts

And

Section 36:34 – Powers of Trustees after Termination

justice or to carry into effect the intention of the donor. (Citing *Hunt v. Hunt*, 31 Mass. (14 Pick.) 374 (1833).) If the intent of a settlor is that a trust continue or that a successor trustee be appointed, courts will prevent the termination of the trust. (Citing *In re Phipps' Will*, 2 N.Y.2d 105, 157 N.Y.S.2d 14, 138 N.E.2d 341 (1956).) The court also noted that 2 Scott &

Fratcher, *Trusts* § 112 at 157 and § 122 at 222 (4th ed. 1987) suggests and Restatement (Third) of *Trusts* § 46(2) and Comment f (2003) states that although a trust will not arise where a person declares himself trustee for such persons as the declarant may select, the disposition can be perfected by the later selection of those who are to benefit.

§ 36:35 Keeping and rendering accounts

n. 83.

Probate judges have broad statutory authority to supervise trustees. Fuller, *In re Trust Under Will of*, 418 Mass. 466, 636 N.E.2d 1333 (1994). This includes the full authority to require a trustee to provide a sworn written statement (statement of services) to include (1) a dated itemized record of all time spent for which compensation was paid; (2) a dated itemized record of all time spent for which reimbursement was paid; (3) the total payment made to the trustee;

and (4) a certification that the services listed were provided and that the services and time spent were necessary and within the scope of services which the trustee was appointed to perform. *In re Will of Crabtree*, 440 Mass. 177, 795 N.E.2d 1157 (2003). The judge may examine the trustees under oath as to such matters. G.L. c. 206, § 3. The judge also has an affirmative duty to decline to approve compensation beyond the fair value of services rendered. S.J.C. Rule 3:09, Canon 3(B) (4), 382 Mass. 809 (1981).

§ 36:38 Rights of the beneficiary

n. 33.

The actions of a trustee, executor or administrator in executing fiduciary responsibilities do not constitute trade or commerce or involve the requisite commercial marketplace transactions to bring them within G.L. c. 93A. In *Steele v. Kelley*, 46 Mass.App.Ct. 712, 710 N.E.2d 973 (1999), review denied 430 Mass. 1103, 714 N.E.2d 354 (1999), the entirety of the plaintiff's allegations constituted disputes between a beneficiary and the trustee over the administration of a trust, and the trial judge's failure to dismiss the c. 93A count at the beginning of the proceeding effectively limited the entire case against the trustee by focusing the jury's attention on the fairness or unfairness of his actions rather than on measuring his discretionary acts against the appropriate standard of duty and performance under the particular trust instrument, in light of the settlor's expressed intentions, the scope of the trustee's powers and the circumstances attending the creation of the trust, as well as under generally applicable trust principles.

A complaint against an agent of a trust that arose from interaction among parties involved in the same venture was private and therefore outside the scope of G.L. c. 93A. *Lattuca v. Robsham*, 442 Mass. 205, 812 N.E.2d 877 (2004).

n. 34.

The Massachusetts Principal and Income Act addresses payment of interest on pecuniary legacies, but does not change the measure of interest or the time interest starts to accrue. See G.L. c. 203D, § 6(3).

n. 47.

In *Foster v. Hurley*, 61 Mass.App.Ct. 414, 810 N.E.2d 1266 (2004), review granted 442 Mass. 1112, 816 N.E.2d 1223 (2004) the decedent violated her separation agreement by removing her former husband as beneficiary of the insurance policy that was in force at the time the agreement was signed, and by failing to name him as beneficiary of an after-acquired policy. A constructive trust was found because the second husband, having furnished

§ 36:34. Powers of Trustee After Termination—Legal or Equitable Remainders

When a life tenant dies and the estate is to be distributed among the remainder beneficiaries, several questions arise. Does the legal title vest automatically in the remaindermen or must the trustee convey it to them; and in the latter event does the trustee retain her power of sale? No particular question arises as to personal property, since the legal title is always in the trustee. The problem is as to real estate, since the legal title may or may not be in the trustee.

In a leading case a testator created a trust to last during the lives of his two sons and one year thereafter. At the end of that time the estate was to be divided into as many equal parts as there were living children of the sons and issue of deceased children, and if at that time any of the children had reached 45 the trustees were to convey each of the parts to the persons entitled, free of all trusts. On the death of the surviving son there were five living grandchildren, some of whom had reached 45. After the end of the year the trustees were still holding the property. Several points were decided.⁷⁰

First, that the remainders did not vest in the grandchildren automatically, but must be conveyed to them. The court held that the trust was not self-executing but that the trustees had active duties to perform in the matter of conveying to the remaindermen. This prevented the statute of uses from operating.

Second, that their powers and duties after the date for termination were only those related to conveyance and distribution, including the liquidation of indebtedness and the conservation of the property.⁷¹ It was not proper for them to continue to add 10 per cent of the income to principal, as provided by the will.

Third, that the court could license the trustees to sell part of the real estate to pay debts and expenses which had been properly incurred, and further, that since there were mortgages which the trustees had been forced to protect from foreclosure by adding security of their own, they were justified in refusing to convey to the remaindermen until they had straightened out the mortgages and also until their accounts were settled.

70. In re Rothwell's Estate (1933) 283 Mass. 563, 186 N.E. 662.

71. See Hodge v. Mackintosh (1924) 248 Mass. 181, 143 N.E. 43, for another interesting case on this point.

A special protection to the trustee contained in a will in the matter of investments would continue until the estate is closed, provided the trustee acts within a reasonable time. North Adams Nat. Bank v. Curtiss (1932) 278 Mass. 471, 180 N.E. 217, 83 A.L.R. 607. This does not mean, however, that the trustee should keep on making new investments. Hodge v. Mackintosh (1924) 248 Mass. 181, 143 N.E. 43.

The section raises some important questions about a complete termination among remaindermen.

It is a question with her life tenant, the life tenant, and others the life of use. The result is that trusts the trustee take.

In the life tenant part to give death as to vested first with the life of the trustee, the trustee has already received to the trustee on the date.

The trustee has received the property and the trustee has received the property.

The trustee has received the property and the trustee has received the property.

The trustee has received the property and the trustee has received the property.

The trustee has received the property and the trustee has received the property.

The trustee has received the property and the trustee has received the property.

The trustee has received the property and the trustee has received the property.

—Legal or Equitable

distributed among the trustees the legal title vest in them; and if of sale? No particular title is always in the trustee may or may not

the lives of his two children the estate was to be divided among the children had reached the persons entitled, free there were five living the end of the year the shares were decided.⁷²

children automatically, the trust was not self-terminating in the matter of the statute of uses from

for termination were pending the liquidation of the trust. It was not proper for the trustee, as provided

part of the real estate was encumbered, and further, the trustee was forced to protect the trust were justified in re-stricting the trustee straightened out the

for another interesting

order of investments would be a reasonable time. North v. ... 83 A.L.R. 607. This does not apply to investments. Hodge v.

The second and third points decided in the case are interesting and important, but do not call for much discussion. It is the first point which raises some difficult questions. Does the trustee in a particular case take such a complete title to the real estate that she must make conveyance or distribution among the remaindermen, or does the legal title vest directly in the remaindermen on the death of the life tenant?

It is a well-established rule that a trustee takes a legal title commensurate with her duties. In some cases the trustee takes only an estate for the life of the life tenant, followed by a legal remainder in fee to the remaindermen. In others the trustee may take a fee, but on the death of the life tenant the statute of uses executes the use and the remaindermen get a legal fee.⁷² The result is the same in both these cases. The important point is that in some trusts the trustee's title ends with the life tenant's death, and the remaindermen take legal estates in remainder without any conveyance to them.

In the leading case on the point the trust provided that on the death of the life tenant the trust property should "be divided into two equal parts," one part to go to A and the other to the testator's heirs. The court held that on the death of the life tenant the trustee's power of sale ceased and the real estate vested directly in the devisees.⁷³ In a subsequent case arising out of the same will, the court further decided that the probate court could not license a sale of the real estate for the purpose of making distribution, since the legal title had already vested in the remaindermen.⁷⁴ It is all a question of wording whether the legal remainder vests directly in the remaindermen or whether the trustee must convey the estate to them, and as in all matters of construction the decisions are not always consistent.

Thus in one case where the wording was similar to that in the will just discussed the court decided the same way,⁷⁵ while in another case where the language was "then the capital of such deceased child's share shall be equally divided among such issue," the court held that a conveyance by the trustee to the remaindermen was necessary.⁷⁶

72. See *Powers v. Rafferty* (1903) 184 Mass. 85, 67 N.E. 1028.

73. *Heard v. Read* (1898) 171 Mass. 374, 50 N.E. 638.

For other cases where the title vested in the remainderman without conveyance, see *Williams v. Young Men's Christian Ass'n* (1919) 232 Mass. 472, 122 N.E. 370; *Barley v. Smith* (1916) 222 Mass. 600, 111 N.E. 684.

In *Rolland v. Hamilton* (1943) 314 Mass. 56, 49 N.E.2d 436, the court held that the interests in the real estate were not equitable.

74. *Heard v. Trull* (1899) 175 Mass. 239, 54 N.E. 875.

75. *Stowell v. Ranlett* (1921) 238 Mass. 599, 131 N.E. 451.

76. *Sanger v. Bourke* (1911) 209 Mass. 481, 488, 95 N.E. 894.

On the other hand, where the language of the trust is that on the death of the life tenant the trustee shall convey to the remaindermen (as in the Rothwell Case) or any other similar language implying an active duty on the part of the trustee, such as "to convey in fee simple, transfer and pay over the same in equal shares" to the remaindermen,⁷⁷ then the legal title remains in the trustee, and she must convey. Whether the trustee can sell and distribute the proceeds or whether her only power is to make partition by a conveyance depends on the exact wording of the clause. The trustee's power of sale is not absolute. It is commensurate with her duties and limited by them.⁷⁸

The foregoing discussion applies only to real estate. As to personal property the legal title is in the trustee and ordinarily she must convert it into cash and distribute the proceeds, unless she can arrange for distribution in kind. However, the trustee has no primary duty to convert the personal property into cash.⁷⁹ In any event the legal title would not vest in the remaindermen as tenants in common as in the case of real estate.⁸⁰

§ 36:35. Keeping and Rendering Accounts

The general principles relating to probate accounts have been discussed at

77. *Tift v. Ireland* (1930) 273 Mass. 56, 172 N.E. 865.

For a similar case see *Hendrick v. Mitchell* (1946) 320 Mass. 155, 161, 69 N.E.2d 466.

78. *Allen v. Dean* (1889) 148 Mass. 594, 20 N.E. 314.

See also *Cronan v. Cronan* (1934) 286 Mass. 497, 190 N.E. 721, where the will authorized the trustees to sell the real estate at the end of 10 years if they could do so advantageously, and directed them to divide the property into twelfths.

79. In *Phelan v. McCabe* (1962) 343 Mass. 585, 179 N.E.2d 887 it had been argued that a public administrator had a primary duty to liquidate the estate and if she had done so a substantial loss in the value of securities would have been avoided. The court held there was no such primary duty.

Since the duties of a trustee after the termination of a trust are comparable to the duties of an administrator, it would follow that such a trustee has no primary duty to liquidate.

Of course, the distribution of the trust property should be accomplished in a way which is most advantageous to the beneficiaries. For example, the trustees should take into account the tax consequences of the sale of the trust assets and if such taxes could be avoided by a distribution in kind, the latter procedure should be followed if it is otherwise feasible.

See generally, *Scott on Trusts*, § 347.3; *Restatement of Trusts* 2d, § 347, comment e.

See also *Gleason v. Hastings* (1932) 278 Mass. 409, 180 N.E. 129; *Heard v. Reed* (1897) 169 Mass. 216, 47 N.E. 778.

80. *Heard v. Trull* (1899) 175 Mass. 239, 54 N.E. 875.

As to final distribution, see § 36:37.

some length in
to trustees are
which a trustee
to keep account
of the beneficia

If the trust is
probate court at
the probate and
which has gen
probate trustees
the trust property

81. Chapter 201, § 2
this section, as they

See particularly § 201
estate in a trustee's

82. *Markus v. ...*
194 Mass. 327, 115

83. In other cases
the her accounts of

In *Matter of ...*
held that the trustee
ment and administration
though the assets were
technically non-trust
tions were the same
trust led the trustee
value from \$4,500 to
trustees. To the same
held that superior
by G.L. c. 11, § 8, the

Fox v. ...
N.E.2d 1311, affirm
eliminate the trustee
conduct.

84. *Schneider v. ...*
Mass. 419, 102 N.E.

Only probate court
Green v. ...

See also § 201, 202.

The trustee of a
probate court. For

85. *Markus v. ...*

Although the trustee
trustee to do so. See

**SAMPLE OF CORRECTIVE INSTRUMENTS
USED TO CORRECT A CONVEYANCE INTO A NAMED TRUST
RATHER THAN INTO THE TRUSTEE OF THE TRUST
WHEN THE TRUST IS NOT ON RECORD
AND TRUSTEE'S CERTIFICATES ARE BEING RECORDED
IN LIEU OF RECORDING THE TRUST**

31

QUITCLAIM DEED



2010 00180202
Bk: 55581 Pg: 504 Doc: DEED
Page: 1 of 3 10/08/2010 09:20 PM

Property Address: 46 Converse Avenue, Newton, MA 02458

Grantor: Harriot Ripley Ross, of Newton, Middlesex County, Massachusetts,

Consideration: Nominal Consideration, less than \$100.00,

Grantee: Sam Johnson Memorial Real Estate Trust, under a declaration of trust dated , 2010 and recorded with Middlesex South District Registry of Deeds, with an address of c/o Wendy Carothers, Trustee 2548 N. Ridgeview Road Arlington, VA 22207.

With QUITCLAIM COVENANTS

The land at 46 Converse Avenue, Newton, Middlesex County, Massachusetts, together with any improvements thereon, described in Exhibit "A", attached hereto and made a part hereof.

The premises are conveyed subject to and with the benefit of all easements, restrictions, rights of way, takings, reservations, exceptions and covenants contained in the deed to the grantors herein and in all other instruments of record, to the extent restrictions, reservations, exceptions and covenants have not previously terminated or expired.

Being the same premises conveyed to the Grantor hereof by deed dated April 20, 2010 and recorded with the Middlesex South District Registry of Deeds in Book 54621, Page 163

Deed to the land
Book 54621, Page 163
Middlesex County
Notary Public

*R.T.

32

The post office address of the property is: 46 Converse Avenue, Newton, MA 02458.

WITNESS my hand and seal this 24th day of September, 2010:

Harriot Ripley Ross
Harriot Ripley Ross

STATE OF CONNECTICUT

County of Hartford

On this 24 day of September, 2010, before me, the undersigned notary public, personally appeared Harriot Ripley Ross; proved to me through satisfactory evidence which was a driver's license to be the person whose name is signed on the preceding document; and acknowledged to me that she signed it voluntarily for its stated purpose.

Nancy J. Whitehead
Notary Public
My Commission Expires: 5/31/2012
Nancy J. Whitehead

34

**TRUSTEE'S CERTIFICATE
PURSUANT TO M.G.L. ch. 184 §35
SAM JOHNSON MEMORIAL REAL ESTATE TRUST**

I, Wendy Carothers, of Arlington, VA, do hereby state that I am the sole trustee of SAM JOHNSON MEMORIAL REAL ESTATE TRUST u/d/t dated 9/24/10, (hereinafter referred to as the "Trust") and certify further as follows:

1. The Trust is a non-testamentary trust.
2. I have not been removed from office as of the date hereof. In the event there is no other Trustee serving, the outgoing Trustee or all of the beneficiaries may appoint a successor by a written instrument, provided however, that if no such appointment is made, a certification by any person named as a current or as a successor Trustee, that such person or any other person is properly serving as Trustee shall be conclusive on all persons.
3. Pursuant to the provisions of the Trust, the Trustee shall have the absolute power to sell at public auction, or private sale, and to assign, transfer, pledge, barter or exchange for real or personal property, all or any part of the real or personal property, including mortgages now or hereafter held under the trust, at such time and prices and upon such terms and conditions as the Trustee deems proper without order or license of the court and to execute any and all deeds and other instruments necessary or appropriate to accomplish such sale, and no persona need make any inquiry concerning the propriety of any of the Trustee's actions, and all such actions shall conclusively be presumed to be proper.
4. No fact exists which constitutes a condition precedent to acts by the Trustee or which are in any manner germane to affairs of the Trust.
5. Unless sooner terminated, the Trust shall terminate twenty (20) years after the death of the original trustee and all of the original beneficiaries.

SIGNED under the pains and penalties of perjury this 24th day of September, 2010:

Wendy P. Carothers
Wendy Carothers, TRUSTEE

[Signature]
WITNESS

[Signature]
WITNESS



85

STATE OF VIRGINIA

County of

On this 24th day of September, 2010, before me, the undersigned notary public, personally appeared Wendy Carothers; proved to me through satisfactory evidence which was her driver's license; to be the person whose name is signed on the preceding or attached document; and acknowledged to me that she signed it voluntarily for its stated purpose.

David Kaumeier

Notary Public
My Commission Expires:



2

SAM JOHNSON MEMORIAL REAL ESTATE TRUST

39

CERTIFICATE OF TRUSTEE

I, Wendy Carothers, Trustee of the Sam Johnson Memorial Real Estate Trust (the "Trust"), hereby certify:

1. That I am the sole Trustee of the Trust which Trust is established under Declaration of Trust dated 9/24/10, and is registered with the Middlesex County South District Registry of Deeds Book 55561 Page 508.
2. That said Trust is in full force and effect as originally executed and has not been terminated, revoked, amended, expired or modified in any manner.
3. That the undersigned Wendy Carothers, Trustee, has been duly authorized and directed by the beneficiaries of said Trust (who are over the age of majority and are free of any legal incapacities and none are corporations selling all or substantially all of their assets to deliver to Harriot G. Rockefeller, a Quitclaim Deed to that certain parcel of land with improvements thereon known and numbered as 46 Converse Avenue Newton, Massachusetts ("the Premises") in conformance with the terms of the purchase and sale agreement; and to deliver any and all further instruments and documents and to take any and all further action necessary in the Trustee's sole discretion to effectuate the transfer of the Premises as aforesaid.
4. The execution and delivery of the above-referenced documents and compliance by the Trust with the terms and provisions thereof do not conflict with or constitute a breach of or default under any terms, conditions or provisions of any order, writ, injunction, judgment or decree of any governmental authority or of any existing agreement or instrument to which the Trust is a party or to which it is bound.
5. There is no litigation pending or threatened against the Premises.



2012 00130354
Bk: 59388 Pg: 540 Doc: CERT
Page: 1 of 2 08/27/2012 11:50 AM

SIGNATURE BLOCK IS ON THE NEXT PAGE.

Shapiro & Greene, PC
P.O. Box 986
Hull, MA 02045

48

EXECUTED as a sealed instrument this 12 day of December, 2011.

Sam Johnson Memorial Real Estate Trust

Wendy R Carothers

Wendy Carothers, Trustee

COMMONWEALTH OF VIRGINIA

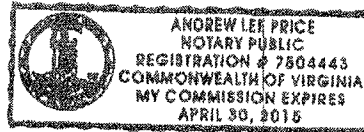
County of *Arlington*

On this 12 day of December, 2011, before me, the undersigned notary public, personally appeared Wendy Carothers Trustee of the Sam Johnson Memorial Real Estate Trust, proved to me through satisfactory evidence of identification, which was her driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Andrew Lee Price

Notary Public

My Commission expires:



3



Bk: 59388 Pg: 542 Doc: CONFDEED
Page: 1 of 3 06/27/2012 11:50 AM

36

CONFIRMATORY
Quitclaim Deed

GRANTOR: Harriot Ripley Ross now of Newton, MA

GRANTEE: Wendy Carothers, Trustee of Sam Johnson Memorial Real Estate Trust
udt dated 9/24/10 See Trustee's Certificate recorded at Book 55561
Page 506

CONSIDERATION PAID: Nominal (less than \$100.00)

ADDRESS OF PREMISES: 46 Converse Avenue Newton, MA

With QUITCLAIM COVENANTS

The land at 46 Converse Avenue Newton, Middlesex County Massachusetts, together
with any improvements thereon, described as follows:

A certain parcel of land with the buildings thereon situated on Converse Avenue,
Newton, Middlesex County, Massachusetts, being shown as Lot 1-A and 2 - B on a plan
of land entitled "Plan of Land in Newton Mass." dated June 3, 1941, Everett M. Brooks,
Civil Engineer, duly recorded with Middlesex South District Deeds, Book 6519 Page 43,
to which plan reference is hereby made for a more particular description, and containing
8384 square feet of land according to said plan.

This conveyance is made subject to and with the benefit of easements of record so far as
now in force and applicable.

Being the same premises conveyed to the Grantor by deed recorded in said Deeds at
Book 54621, Page 163.

Shapiro & Greene, PC
P.O. Box 980
Hull, MA 02045

This confirmatory deed is recorded to clarify that the original deed recorded at Book 55561 Page 504 to Sam Johnson Memorial Real Estate Trust was to Wendy Carothers as Trustee of said Trust and that the Trustee's Certificate was recorded herewith.

(27)

"THE SAID GRANTOR HEREBY CERTIFIES UNDER PAINS AND PENALTIES OF PERJURY THAT I AM THE ONLY PERSONS WITH HOMESTEAD RIGHTS IN THE PREMISES AND THAT THOSE RIGHTS ARE HEREBY RELEASED."

SEE SIGNATURE BLOCK ON THE NEXT PAGE

38

Executed as a sealed instrument this day of December, 2011.

Harriot Ripley Ross
Harriott Ripley Ross

STATE OF CONNECTICUT

County of Hartford

On this 12th day of December, 2011, before me, the undersigned notary public, personally appeared Harriot Ripley Ross; proved to me through satisfactory evidence which was her driver's license; to be the person whose name is signed on the preceding or attached document; and acknowledged to me that she signed it voluntarily for its stated purpose.

Daniel J. Whitehead
Notary Public
My Commission Expires: 5/31/2012



2012 00130855
Bk: 59388 Pg: 646 Doc: DEED
Page: 1 of 2 08/27/2012 11:50 AM

41

Quitclaim Deed

GRANTOR: Wendy Carothers, Trustee of Sam Johnson Memorial Real Estate Trust
Trust dated 9/24/10 See Trustee's Certificate recorded at Book 55561
Page 506

GRANTEE: Harriot G. Rockefeller of 46 Converse Avenue Newton, MA

CONSIDERATION PAID: Eight Hundred and Twenty Five Thousand Dollars
(\$825,000.00)

ADDRESS OF PREMISES: 46 Converse Avenue Newton, MA

With **QUITCLAIM COVENANTS**

The land at 46 Converse Avenue Newton, Middlesex County Massachusetts, together
with any improvements thereon, described as follows:

A certain parcel of land with the buildings thereon situated on Converse Avenue,
Newton, Middlesex County, Massachusetts, being shown as Lot 1-A and 2 - B on a plan
of land entitled "Plan of Land in Newton Mass." dated June 3, 1941, Everett M. Brooks,
Civil Engineer, duly recorded with Middlesex South District Deeds, Book 6519 Page 43,
to which plan reference is hereby made for a more particular description, and containing
8384 square feet of land according to said plan.

This conveyance is made subject to and with the benefit of easements of record so far as
now in force and applicable.

Being the same premises conveyed to the Grantor by deed recorded in said Deeds at
Book 55561, Page 504. See also Confirmatory Deed recorded herewith.

"THE SAID GRANTOR HEREBY CERTIFIES UNDER PAINS AND PENALTIES OF
PERJURY THAT I AM THE ONLY PERSON WITH HOMESTEAD RIGHTS IN THE
PREMISES AND THAT THOSE RIGHTS ARE HEREBY RELEASED."

MASSACHUSETTS EXCISE TAX
Southern Middlesex District ROD # 001
Date: 08/27/2012 11:50 AM
Ctrl# 170118 21053 Doc# 00130855
Fee: \$3,782.00 Cons: \$825,000.00

42

Executed as a sealed instrument this 12 day of December, 2011.

Wendy R Carothers

Wendy Carothers, Trustee
Sam Johnson Memorial Real Estate Trust

County of *Abington*

State of Virginia

On this 12th day of December, 2011, before me, the undersigned notary public, personally appeared Wendy Carothers, Trustee of Sam Johnson Memorial Real Estate Trust proved to me through satisfactory evidence which was her driver's license; to be the person whose name is signed on the preceding or attached document; and acknowledged to me that she signed it voluntarily for its stated purpose.

Andrew Lee Price

Notary Public

My Commission Expires:

