When a Trust Owns Real Estate:
Common Issues That Cause Problems With Title And How To Avoid Them

October 22, 2015, BBA Trusts & Estates – Estate Planning Committee

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[All Text of sections applicable as provided by 2012, 140, Sec. 66, except as otherwise specifically noted.]

Section 102. Scope
This chapter applies to express trusts, charitable or non-charitable, of a donative nature and trusts created pursuant to a judgment or decree that requires the trust to be administered in the manner of an express trust.

Section 103. Definitions
In this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Action”, with respect to an act of a trustee, includes a failure to act.

“Ascertainable standard”, a standard relating to an individual’s health, education, support or maintenance.

“Beneficiary”, a person who has a present or future beneficial interest in a trust, vested or contingent.

“Charitable trust”, a trust, or portion of a trust, created for a charitable purpose described in subsection (a) of section 405.

“Environmental law”, a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

“Interests of the beneficiaries”, the beneficial interests provided in the terms of the trust.

“Jurisdiction”, a geographic area, including a state or country.

“Person”, an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental
subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

“Property”, anything that may be the subject of ownership, whether real, personal, legal, equitable or any interest therein.

“Qualified beneficiary”, a beneficiary who, on the date the beneficiary’s qualification is determined:

(i) is a distributee or permissible distributee of trust income or principal; or

(ii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

“Revocable”, a trust that is revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

“Settlor”, a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

“Spendthrift provision”, a term of a trust which restrains transfer of a beneficiary’s interest.

“State”, a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States, including an Indian tribe or band recognized by federal law or formally acknowledged by a state.

“Terms of a trust”, the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

“Trust instrument”, an instrument that contains terms of the trust, including any amendments thereto.

“Trustee”, an original, additional or successor trustee or a co-trustee.

Section 105. Default and mandatory rules

(a) Except as otherwise provided in the terms of the trust, this chapter shall govern the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

(b) The terms of a trust shall prevail over any provision of this chapter except:

(1) the requirements for creating a trust;
(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust have a purpose that is lawful and not contrary to public policy;

(4) the power of the court to modify or terminate a trust under sections 410 to 416, inclusive;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust, as provided in article 5;

(6) the power of the court under section 702 to require, dispense with or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 708 to adjust a trustee’s compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under section 1008;

(9) the rights under sections 1010 to 1013, inclusive, of a person other than a trustee or beneficiary; and

(10) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

Section 106. Common law of trusts; principles of equity

The common law of trusts and principles of equity shall supplement this chapter, except to the extent modified by this chapter or any other general or special law.

Section 112. Rules of construction

The rules of construction that apply in the commonwealth to the interpretation of and disposition of property by will shall also apply, as appropriate, to the interpretation of the terms of a revocable trust and the disposition of the trust property. For the purposes of this section, a “revocable trust” shall mean a trust that is: (1) revocable by the settlor until the time of the settlor’s death; (2) created or amended by the settlor after the effective date of this chapter; and (3) was intended to dispose of the settlor’s property at death, whether under will or otherwise and whether the trust was funded at the time of the settlor’s death.

Section 401. Methods of creating trust

A trust may be created by:
(1) transfer of property to another person as trustee during the settlor’s lifetime or by will or other disposition taking effect upon the settlor’s death;
(2) declaration by the owner of property that the owner holds identifiable property as trustee; or
(3) exercise of a power of appointment in favor of a trustee.

Section 402. Requirements for creation
(a) A trust shall be created only if:
   (1) the settlor has capacity to create a trust;
   (2) the settlor indicates an intention to create the trust;
   (3) the trust has a definite beneficiary or is:
       (A) a charitable trust;
       (B) a trust for the care of an animal, as provided in section 408; or
       (C) a trust for a non-charitable purpose, as provided in section 409;
   (4) the trustee has duties to perform; and
   (5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary shall be definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class shall be valid. If the power is not exercised within a reasonable time, the power shall fail and the property subject to the power shall pass to the persons who would have taken the property had the power not been conferred.

Section 407. Evidence of oral trust
Except as required by statute, a trust need not be evidenced by a trust instrument. The creation of an oral trust and its terms shall be established by clear and convincing evidence.

Section 410. Modification or termination of trust; proceedings for approval or disapproval
(a) In addition to the methods of termination prescribed by sections 411 to 414, inclusive, a trust shall terminate if it is revoked or expires under its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful, contrary to public policy or impossible to achieve.
(b) A proceeding to approve or disapprove a proposed modification or termination under sections 411 to 416, inclusive, or a trust combination or division under section 417, may be commenced by a trustee or beneficiary and a proceeding to approve or disapprove a proposed modification or termination under section 411 may be commenced by the settlor.

Section 411. Modification or termination of non-charitable irrevocable trust by consent

(a) If, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a non-charitable irrevocable trust, the court may approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust.

(b) A non-charitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A non-charitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

2) the interests of a beneficiary who does not consent will be adequately protected.

Section 412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor’s probable intent.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust’s administration.

Section 414. Modification or termination of uneconomic trust
(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value of less than $200,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) **Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.**

(d) This section shall not apply to an easement for conservation or preservation.

(e) **Action may be taken under this section regardless of any spendthrift or similar protective provision.**

**Section 417. Combination and division of trusts**

After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trusts.

**Section 501. Rights of beneficiary’s creditor or assignee**

To the extent a beneficiary’s interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary’s interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

**Section 502. Spendthrift provision**

*[Subsection (a) applicable as provided by 2012, 140, Sec. 63.]*

(a) A spendthrift provision shall be valid only if it restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a “spendthrift trust”, or words of similar import, shall be sufficient to restrain both voluntary and involuntary transfer of the beneficiary’s interest.
(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Section 505. Creditor’s claim against settlor

(a) Whether or not a trust contains a spendthrift provision, the following rules shall apply:

(1) During the lifetime of the settlor, the property of a revocable trust shall be subject to claims of the settlor’s creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor’s benefit and, if a trust has more than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor’s interest in the portion of the trust attributable to that settlor’s contribution. Trust property shall not be considered distributable to or for the settlor’s benefit solely because the trustee has the discretion under the terms of the trust to reimburse the settlor for any tax on trust income or capital gain that is payable by the settlor under the law imposing such tax; no creditor or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based on the discretionary authority described in this sentence.

(3) After the death of a settlor, and subject to the settlor’s right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor’s death shall be subject to claims of the settlor’s creditors, the expenses of the settlor’s funeral and disposal of remains and statutory allowances to a surviving spouse and children to the extent the settlor’s probate estate is inadequate to satisfy those claims, expenses and allowances.

[There is no subsection (b).]

Section 506. Overdue distribution

(a) In this section, “mandatory distribution” shall mean a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. “Mandatory distribution” shall not include a distribution subject to the exercise of the trustee’s discretion even if: (1) the discretion is expressed in the form of a standard of distribution; or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.
(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

Section 507. Personal obligations of trustee

Trust property shall not be subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Section 602. Revocation or amendment of revocable trust

[Subsection (a) applicable as provided by 2012, 140, Sec. 64.]

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

(b) If a revocable trust is created or funded by more than 1 settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor’s contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust:

(1) by complying with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor’s intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor’s powers with respect to revocation, amendment or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust and the power.

(f) A trustee who does not know that a trust has been revoked or amended shall not be liable to the settlor or settlor’s successors in interest for distributions made
and other actions taken on the assumption that the trust had not been amended or revoked.

Section 603. Settlor’s powers; powers of withdrawal
(a) **While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries shall be subject to the control of the settlor and the duties of the trustee shall be owed exclusively to the settlor.**

(b) During the period the power may be exercised, the holder of a non-lapsing power of withdrawal shall be treated, for purposes of this section, as if the holder of the non-lapsing power of withdrawal were the settlor of a revocable trust to the extent of the property subject to the power.

Section 604. Limitation on action contesting validity of revocable trust; distribution of trust property
(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor’s death within the earlier of:

   (1) 1 year after the settlor’s death; or
   (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust’s existence, the trustee’s name and address and the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor’s death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee shall not be subject to liability for doing so unless:

   (1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or
   (2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid shall be liable to return any distribution received.

Section 701. Accepting or declining trusteeship
(a) Except as otherwise provided in subsection (c), a person designated as trustee shall accept the trusteeship:
(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation shall be deemed to have rejected the trusteeship.

(c) A person designated as trustee without accepting the trusteeship may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Section 702. Duty to provide bond

In the case of a testamentary trust, a trustee shall furnish a bond for the performance of the trustee’s fiduciary duties and a surety shall be required unless waived by the terms of the trust or found by the probate and family court department of the trial court to be not necessary to protect the interests of the beneficiaries. On petition of the trustee or other interested person the probate court may excuse a requirement of bond, reduce the amount of the bond, release the surety or permit the substitution of another bond with the same or different sureties. If the instrument creating the trust exempts the trustee from furnishing a bond or limits the amount thereof, or the probate court determines that the bond is insufficient, the probate court may, if it concludes that a bond is necessary or that a bond of a larger amount is necessary, require the furnishing of such bond. The terms and conditions of the bond shall be as set forth in section 3-606 of chapter 190B.

Section 703. Co-trustees

[Subsection (a) applicable as provided by 2012, 140, Sec. 65.]

(a) Co-trustees who are unable to reach a unanimous decision may act by majority decision.
(b) **If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust.**

(c) A co-trustee shall participate in the performance of a trustee’s function unless the co-trustee is unavailable to perform the function because of absence, illness, disqualification under other laws or other temporary incapacity or the co-trustee has properly delegated the performance of the function to another trustee.

(d) **If a co-trustee is unavailable** to perform duties because of absence, illness, disqualification under other laws or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

(e) Except as otherwise provided in subsection (f), a trustee who does not join in an action of another trustee shall not be liable for the action.

(f) Each trustee shall exercise reasonable care to:

1. prevent a co-trustee from committing a breach of trust; and
2. compel a co-trustee to redress a breach of trust.

### Section 709. Reimbursement of expenses

(a) A trustee shall be entitled to be reimbursed out of the trust property, with interest as appropriate, for:

1. expenses that were properly incurred in the administration of the trust; and
2. expenses that were not properly incurred in the administration of the trust, to the extent necessary to prevent unjust enrichment of the trust.

(b) **An advance by the trustee of money for the protection of the trust shall give rise to a lien against trust property** to secure reimbursement with reasonable interest.

### Section 802. Duty of loyalty

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) **Subject to the rights of persons dealing with or assisting the trustee, as provided in section 1012**, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee’s own personal account or which is otherwise affected by a conflict between the trustee’s fiduciary and personal interests shall be voidable by a beneficiary affected by the transaction unless:
(1) the transaction was authorized by the terms of the trust;
(2) the transaction was approved by the court;
(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 1005;
(4) the beneficiary consented to the trustee’s conduct, ratified the transaction or released the trustee in compliance with section 1009; or
(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became a trustee.

(c) A sale, encumbrance or other transaction involving the investment or management of trust property shall be presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee’s spouse;
(2) the trustee’s descendants, siblings, parents or their spouses;
(3) an agent or attorney of the trustee; or
(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

(d) A transaction not concerning trust property, in which the trustee engages in the trustee’s individual capacity, shall be a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(e) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee shall not be presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of chapter 203C. In addition to compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under section 813 to receive a copy of the trustee’s annual report of the rate and method by which that compensation was determined.

(f) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries.
(g) **This section shall not preclude the following transactions, if fair to the beneficiaries:**

1. an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
2. payment of reasonable compensation to the trustee;
3. a transaction between a trust and another trust, decedent’s estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;
4. a deposit of trust money in a regulated financial service institution operated by the trustee; or
5. an advance or loan by the trustee of money to the trust for a proper trust purpose.

**Section 807. Delegation by trustee**

(a) **A trustee may delegate duties and powers if it is prudent to do so.** The trustee shall exercise reasonable care, skill and caution in:

1. selecting an agent;
2. establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
3. periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent shall owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) shall not be liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the laws of the commonwealth, an agent shall submit to the jurisdiction of the courts of the commonwealth.

**Section 808. Powers to direct**

(a) **While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.**

(b) **If the terms of a trust confer upon a person, other than the settlor of a revocable trust, power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power, unless the attempted**
exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) A person who holds a power to direct is presumptively a fiduciary who is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct shall be liable for any loss that results from a breach of a fiduciary duty.

Section 814. Discretionary powers; tax savings

(a) Notwithstanding the broad discretion granted to a trustee in the terms of the trust, including the use of such terms as “absolute”, “sole” or “uncontrolled”, the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a rule in this subsection shall not apply, the following rules shall apply:

(1) **A person other than a settlor, who is a beneficiary and trustee of a trust, that confers on the trustee a power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard;** and

(2) A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power that is limited or prohibited by subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) shall not apply to:

(1) a power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction was previously allowed; or

(2) any trust during any period that the trust may be revoked or amended by its settlor.

Section 815. General powers of trustee

(a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; or
(2) except as limited by the terms of the trust:

(i) all powers over the trust property which an unmarried competent owner has over individually owned property;

(ii) any other powers appropriate to achieve the proper investment, management and distribution of the trust property; and

(iii) any other powers conferred by this chapter.

(b) The exercise of a power shall be subject to the fiduciary duties prescribed by this article.

Section 816. Specific powers of trustee

Without limiting the authority conferred by section 815, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial service institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members or property owners, including merging, dissolving or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

   (i) vote, or give proxies to vote, with or without power of substitution or enter into or continue a voting trust agreement;

   (ii) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
(iii) pay calls, assessments and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights; and

(iv) deposit the securities with a depositary or other regulated financial service institution;

(8) with respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee’s agents and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(i) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(ii) take action to prevent, abate or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(iii) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
(iv) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(v) pay the expense of any inspection, review, abatement or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary’s benefit, or by:

(i) paying it to the beneficiary’s conservator or, if the beneficiary does not have a conservator, the beneficiary’s guardian;

(ii) paying it to the beneficiary’s custodian under chapter 201A or custodial trustee under part 5 of Article VII of chapter 190B and, for that purpose, creating a custodianship or custodial trust;

(iii) if the trustee does not know of a conservator, guardian, custodian or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary’s behalf; or
(iv) managing it as a separate fund on the beneficiary’s behalf, subject to the beneficiary’s continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee’s duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee’s powers;

(26) establish or continue title-holding entities, including so-called “nominee trusts”, for the purposes of holding legal title to any portion or all of the trust property without the need to record or make public the terms of the trust; and

(27) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Section 817. Distribution upon termination

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution shall terminate if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent, but only if the proposal: (i) informed the beneficiary of the right to object and of the time allowed for objection; and (ii) provided the beneficiary with sufficient material facts to enable the beneficiary to evaluate the proposal.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses and taxes.

Section 1001. Remedies for breach of trust
(a) A violation by a trustee of a duty the trustee owes to a beneficiary shall be a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

1. compel the trustee to perform the trustee’s duties;
2. enjoin the trustee from committing a breach of trust;
3. compel the trustee to redress a breach of trust by paying money, restoring property or other means;
4. order a trustee to account;
5. appoint a special fiduciary to take possession of the trust property and administer the trust;
6. suspend the trustee;
7. remove the trustee;
8. reduce or deny compensation to the trustee;
9. subject to section 1012, void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or
10. order any other appropriate relief.

Section 1012. Protection of person dealing with trustee

(a) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee’s powers shall be protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee shall not be required to inquire into the extent of the trustee’s powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated shall be protected from liability as if the former trustee were still a trustee.
(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries shall prevail over the protection provided by this section.

Section 1013. Certification of trust

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(1) that the trust exists and the date the trust instrument was executed;
(2) the identity of the settlor;
(3) the identity and address of the currently acting trustee;
(4) the powers of the trustee;
(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
(6) the authority of co-trustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
(7) the trust’s taxpayer identification number; and
(8) the manner of taking title to trust property.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

(c) A certification of trust shall state that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect shall not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.
(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument, in addition to a certification of trust or excerpts, shall be liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) This section shall not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

**Special Sections at the end of Ch. 140 of the Acts of 2012.**

**SECTION 57.** Section 7 of chapter 210 of the General Laws is hereby repealed.

**SECTION 58.** Section 8 of said chapter 210 is hereby repealed.

**SECTION 59.** Section 21 of chapter 246 of the General Laws is hereby repealed.

**SECTION 60** (dealing with various fees) Omitted.

**SECTION 61.** Subsection (c) of section 5-504 of chapter 190B of the General Laws [as added by Section 50 of this Act] shall apply to transactions under powers of attorney occurring before, on or after the effective date of this act, except with respect to a transaction that has been invalidated by a final decision of a court of competent jurisdiction prior to such effective date.

**SECTION 62.** Subsection (h) of section 408 of chapter 203E of the General Laws shall not apply to a trust created under an instrument executed before the effective date of this act.

**SECTION 63.** Subsection (a) of section 502 of chapter 203E of the General Laws shall not apply to spendthrift provisions in a trust created under an instrument executed before the effective date of this act.

**SECTION 64.** Subsection (a) of section 602 of chapter 203E of the General Laws shall not apply to trust instruments executed before the effective date of this act.
SECTION 65. Subsection (a) of section 703 of chapter 203E of the General Laws shall not apply to trust instruments executed before the effective date of this act.

SECTION 66. (a) Except as otherwise provided in this act:

(1) this act shall apply to all trusts created before, on or after the effective date of this act;
(2) this act shall apply to all judicial proceedings concerning trusts commenced on or after the effective date;
(3) an action taken before the effective date of this act shall not be affected by this act.

(b) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this act, that statute shall continue to apply to the right even if it has been superseded.

Approved, July 8, 2012.
Other Relevant Statutes

M.G.L. Ch. 203, Sec. 1 – Trusts in Realty; Necessity of Writing

Section 1. No trust concerning land, except such as may arise or result by implication of law, shall be created or declared unless by a written instrument signed by the party creating or declaring the trust or by his attorney.

M.G.L. Ch. 184, Sec. 25 – Indefinite References

Section 25. No indefinite reference in a recorded instrument shall subject any person not an immediate party thereto to any interest in real estate, legal or equitable, nor put any such person on inquiry with respect to such interest, nor be a cloud on or otherwise adversely affect the title of any such person acquiring the real estate under such recorded instrument if he is not otherwise subject to it or on notice of it.

An indefinite reference means

(1) a recital indicating directly or by implication that real estate may be subject to restrictions, easements, mortgages, encumbrances or other interests not created by instruments recorded in due course,

(2) a recital or indication affecting a description of real estate which by excluding generally real estate previously conveyed or by being in general terms of a person’s right, title or interest, or for any other reason, can be construed to refer in a manner limiting the real estate described to any interest not created by instruments recorded in due course,

(3) a description of a person as trustee or an indication that a person is acting as trustee, unless the instrument containing the description or indication either sets forth the terms of the trust or specifies a recorded instrument which sets forth its terms and the place in the public records where such instrument is recorded, and

(4) any other reference to any interest in real estate, unless the instrument containing the reference either creates the interest referred to or specifies a recorded instrument by which the interest is created and the place in the public records where such instrument is recorded.
No instrument shall be deemed recorded in due course unless so recorded in the registry of deeds for the county or district in which the real estate affected lies as to be indexed in the grantor index under the name of the owner of record of the real estate affected at the time of the recording.

This section shall not apply to a reference to an instrument in a notice or statement permitted by law to be recorded instead of such instrument, nor to a reference to the secured obligation in a mortgage or other instrument appearing of record to be given as security, nor in any proceeding for enforcement of any warranty of title.

**M.G.L. Ch. 184, Sec. 34 - Good faith purchasers of interests in real estate from trustees; binding effect on trust; recording conditions**

Section 34. Any recordable instrument purporting to affect an interest in real estate executed by any person or persons who, in the records of the registry of deeds for the county or district in which the real estate lies, are or appear to be the trustees of a trust shall be binding on the trust in favor of a purchaser or other person relying in good faith on such instrument, notwithstanding

(a) inconsistent provisions of the trust, unless said trust is recorded in said registry of deeds, with the place of recording referred to in some instrument in the chain of title to the real estate affected,

(b) any amendment, revocation, removal or resignation of trustee, appointment of additional trustee, or other matter affecting the trust, unless the same is recorded in said registry of deeds and noted on the margin of said trust in said registry, or

(c) any inadequacy in the consideration recited. As used in this section the term “trust” shall not include a trust under a will.

**M.G.L. Ch. 184, Sec. 35 – Trustee’s Certificates; Requirements; Effect**

Section 35. Notwithstanding section 25 to the contrary, a certificate sworn to or stated to be executed under the penalties of perjury, and in either case signed by a person who from the records of the registry of deeds or of the registry district of the land court, for the county or district in which real estate owned by a nontestamentary trust lies, appears to be a trustee thereunder and which certifies as to: (a) the identity of the trustees or the beneficiaries thereunder; (b) the authority of the trustees to act with respect to real estate owned by the trust; or (c) the existence or nonexistence of a fact which constitutes a condition precedent to acts by the trustees or which are in any other manner
germane to affairs of the trust, **shall be binding on all trustees and the trust estate in favor of a purchaser or other person relying in good faith on the certificate.** The certificate most recently recorded in the registry of deeds for the county or district in which the real estate lies shall control.

**M.G.L. Ch. 184B, Sec. 2 – Statutory Optional Fiduciary Powers; Limitation of Powers**

Section 2. The following powers shall be known as the **“Statutory Optional Fiduciary Powers”** and may be given to the fiduciary in a will or trust by specific reference thereto in said will or trust in addition to all common law and other statutory powers:

(1) Said fiduciary shall have the power without approval of any court:

   (a) to retain any property in the form in which it is received and, while a trust is revocable by the settlor, to purchase or retain any property the purchase or retention of which is requested by the settlor;

   (b) to accept additional property in any trust hereunder from any source and upon any special terms;

   (c) with respect to any tangible personal property, to repair, store, insure or otherwise care for such property and to pay such shipping or other expense relating to such property as the fiduciary deems advisable;

   (d) to abandon any property which the fiduciary determines to be worthless;

   (e) to invest principal and income in such property as the fiduciary may determine, and, without limiting the generality of the foregoing, to invest in investment company shares or in shares or undivided portions of any common trust fund established by any fiduciary without notice to any beneficiary;

   (f) **to sell, exchange or otherwise dispose of the property at public or private sale on such terms as he may determine, no purchaser being bound to see to the application of any proceeds;**

   (g) **to lease the property on such terms as he may determine although the term may extend beyond the time when it becomes distributable;**

   (h) to decide all questions between principal and income according to law;

   (i) to keep registered securities in the name of a nominee;

   (j) to pay, compromise or contest claims or controversies, including claims for estate or inheritance taxes, in such manner as he may determine;

   (k) to participate in such manner as he may determine in any reorganization, merger or consolidation of any entity the securities of which constitute part of
the property held, and to deposit such securities with voting trustees or committees of security holders even though under the terms of deposit such securities may remain deposited beyond the time when they become distributable, to vote upon any securities in person or by special, limited or general proxy, with or without power of substitution, and otherwise to exercise all the rights that may be exercised by any security holder in his individual capacity;

(l) **to borrow such amounts as he may consider necessary** to obtain cash for any purposes for which funds are required in administering the estate or trust, and in connection therewith, to mortgage or otherwise encumber any property on such conditions as he may determine although the term of the loan may extend beyond the time that would otherwise be needed for completing the administration of the estate or beyond the term of the trust;

(m) to allot in or towards satisfaction of any payment, distribution or division, in such manner as he may determine, any property held at then current fair market values determined by him;

(n) to hold trusts and shares undivided or at any time to hold the same or any of them set apart one from another;

(o) **to lend, borrow, buy or sell on commercially reasonable terms to or from any fiduciary acting under another instrument made by the testator or settlor**; and

(p) to combine all or part of the property for investment with property held by a fiduciary acting under another instrument upon substantially similar terms made by the testator or settlor or by his or her spouse, except that property qualifying for a marital, orphan or charitable deduction for federal tax purposes may not be so combined.

(2) Such powers shall be subject to such exceptions, limitations and conditions as to property otherwise qualifying for marital, orphan or charitable deductions allowable under federal tax laws as are contained in all special provisions relating thereto in the instrument or as may be necessary to conform to the requirements of federal tax laws at any time applicable for qualification of such property for such deduction, including consent of the surviving spouse or child, if any, of the testator or settlor, if so required. Such powers, except as expressly limited in the instrument, may be exercised by the person or persons for the time being serving as such fiduciary, whether or not named therein. **No power conferred upon the fiduciary in this section shall be exercised in favor of any person then serving as fiduciary nor in favor of his estate or his creditors, or the creditors of his estate.**
Declaration of Trust Establishing
____________________________, Nominee Trust

________________________________________  of ______________________________   and
________________________________________  of ______________________________ , (the
“Trustees”), hereby declare that Ten (10) Dollars is held in trust hereunder and any and all
additional property and interest in property, real and personal, that may be acquired hereunder (the
“Trust Estate”) shall be held in trust, solely as nominee, for the sole benefit of the individuals or
entities listed in the Schedule of Beneficiaries in the proportions stated in said Schedule, which
Schedule has this day been executed by the Beneficiaries and filed with the Trustees with receipt
acknowledged by at least one Trustee (hereafter, as it may be amended, “Schedule of
Beneficiaries”).

SECTION ONE
Name and Purpose

1.1 This Trust shall be known as the ______________________________ Nominee Trust and is intended to be a nominee trust, so-called, for federal and state income tax purposes and to hold the record legal title to the Trust Estate and perform such functions as are necessarily incidental thereto.

SECTION TWO
Trustees

2.1 In the event that there are two Trustees, ANY ONE TRUSTEE may execute any and all instruments and certificates necessary to carry out the provisions of the Trust. In the event there are more than two Trustees, ANY TWO TRUSTEES, except as otherwise provided in Paragraph 7.2, may execute such instruments and certificates necessary to carry out the provisions of the Trust.

2.2 No Trustee shall be required to furnish bond. No Trustee hereunder shall be liable for any action taken at the direction of the Beneficiaries, nor for any error of judgment nor for any loss arising out of any act or omission in the execution of the Trust so long as acting in good faith, but shall be responsible only for his or her own willful breach of trust. No license of court shall be requisite to the validity of any transaction entered into by the Trustees. No purchaser, transferee, pledgee, mortgagee or other lender shall be under any liability to see to the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, lease, deed, mortgage, note or other instrument or document executed or action taken by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required by paragraph 2.1, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect, that the execution and delivery thereof or the taking of such action was duly authorized, empowered and directed by the Beneficiaries.

REBA Form No 20
2.3 Any person dealing with the Trust Estate or the Trustees may always rely without further inquiry on a certificate signed by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required by Paragraph 2.1, as to who are the Trustees or the Beneficiaries hereunder or as to the authority of the Trustees to act or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to action by the Trustees or which are in any other manner germane to the affairs of the Trust. Execution, delivery or recording of such certificate shall not be a condition precedent to the validity of any transaction of the Trust.

SECTION THREE
Beneficiaries

3.1 The term “Beneficiaries” shall mean the persons and entities listed as Beneficiaries in the Schedule of Beneficiaries and in such revised Schedules of Beneficiaries, from time to time hereafter executed and delivered as provided above and the respective interests of the Beneficiaries shall be as therein stated.

3.2 Decisions made and actions taken hereunder (including without limitation, amendment of this Trust; appointment and removal of Trustees; directions and notices to Trustees; and, execution of documents) shall be made or taken, as the case may be, by all of the Beneficiaries.

3.3 Any Trustee may without impropriety become a Beneficiary hereunder and exercise all rights of a Beneficiary with the same effect as though he or she or it were not a Trustee. The parties hereunder recognize that if a sole Trustee and a sole Beneficiary are one and the same person, legal and equitable title hereunder shall merge as a matter of law.

SECTION FOUR
Powers of Trustees

4.1 The Trustees shall hold the principal of this Trust and receive the income there from for the benefit of the Beneficiaries, and shall pay over the principal and income pursuant to the direction of all of the Beneficiaries and without such direction shall pay the income to the Beneficiaries in proportion to their respective interests.

4.2 Except as hereinafter provided in case of the termination of this Trust, the Trustees shall have no power to deal in or with the Trust Estate except as directed by all of the Beneficiaries. When, as, if and to the extent specifically directed by all of the Beneficiaries, the Trustees shall have the following powers:

4.2.1 to buy, sell, convey, assign, mortgage or otherwise dispose of all or any part of the Trust Estate and as landlord or tenant execute and deliver leases and subleases;

4.2.2 to execute and deliver notes for borrowing for the Beneficiaries;

4.2.3 to grant easements or acquire rights or easements and enter into agreements and arrangements with respect to the Trust Estate;
4.2.4 to endorse and deposit checks in an account for the benefit of the Beneficiaries;

4.2.5 but the Trustees shall have no authority to maintain bank accounts in the name of the Trust or Trustees but they may maintain bank accounts in the name of the Beneficiaries. In the event of a violation of this subparagraph, the Trustees shall indemnify and save harmless the Beneficiaries from any liability resulting there from, including taxes and accounting expenses.

Any and all instruments executed pursuant to such direction may create obligations extending over any periods of time, including periods extending beyond the date of any possible termination of the Trust. A direction to the Trustees by the Beneficiaries may be by a Durable Power of Attorney.

4.3 Notwithstanding any provisions contained herein, no Trustee shall be required to take any action which will, in the opinion of such Trustee, involve the Trustee in any personal liability unless first satisfactorily indemnified.

4.4 Any persons extending credit to, contracting with or having any claim against the Trustees shall look only to the funds and property of this Trust for payment of any contract, or claim, or for the payment of any debt, damage, judgment, or decree, or for any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the Beneficiaries shall be personally liable therefore. If any Trustee shall at any time for any reason (other than for willful breach of trust) be held to be under any personal liability as such Trustee, then such Trustee shall be held harmless and indemnified by the Beneficiaries, jointly and severally, against all loss, costs, damage, or expense by reason of such liability.

SECTION FIVE

Termination

5.1 This Trust may be terminated at any time by notice in writing from any Beneficiary, provided that such termination shall be effective only when a certificate thereof signed by the Trustees, shall be recorded with the Registry of Deeds. Notwithstanding any other provision of this Declaration of Trust, this Trust shall terminate in any event ninety (90) years from the date hereof, if not earlier terminated by action of a Beneficiary.

5.2 In the case of any termination of the Trust, the Trustees shall transfer and convey the specific assets constituting the Trust Estate, subject to any leases, mortgages, contracts or other encumbrances on the Trust Estate, to the Beneficiaries as tenants in common in proportion to their respective interests hereunder, or as otherwise directed by all of the Beneficiaries, provided, however, the Trustees may retain such portion thereof as is in their opinion necessary to discharge any expense or liability, determined or contingent, of the Trust.
SECTION SIX

Amendments

6.1 This Declaration of Trust may be amended from time to time by an instrument in writing signed by all of the Beneficiaries and delivered to the Trustees, provided in each case that the amendment shall not become effective until the instrument of amendment or a certificate setting forth the terms of such amendment, signed by the Trustees, is recorded with the Registry of Deeds.

SECTION SEVEN

Resignation and Successor Trustee

7.1 Any Trustee hereunder may resign at any time by an instrument in writing signed and acknowledged by such Trustee and delivered to all remaining Trustees and to each Beneficiary. Such resignation shall take effect on the later of the date specified therein or the date of the recording of such instrument with the Registry of Deeds.

7.2 Succeeding or additional Trustees may be appointed or any Trustee may be removed by an instrument or instruments in writing signed by all of the Beneficiaries, provided in each case that a certificate signed by any Trustee naming the Trustee or Trustees appointed or removed and, in the case of an appointment, the acceptance in writing by the Trustee or Trustees appointed, shall be recorded in the Registry of Deeds. Upon the recording of such instrument, the legal title to the Trust Estate shall, without the necessity of any conveyance, be vested in said succeeding or additional Trustee or Trustees, with all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

7.3 In the event that there is no Trustee, either through the death or resignation of a sole Trustee without prior appointment of a successor Trustee or for any other cause, a person purporting to be a successor Trustee hereunder may record in the Registry of Deeds an affidavit, under pains and penalties of perjury, stating that he or she has been appointed by all of the Beneficiaries a successor Trustee. Such affidavit when recorded together with an attorney’s certificate under M.G.L. c. 183, § 5B, stating that such attorney has knowledge of the affairs of the Trust and that the person signing the affidavit has been appointed a Trustee by all of the Beneficiaries, shall have the same force and effect as if the certificate of a Trustee or Trustees required or permitted hereunder had been recorded and persons dealing with the Trust or Trust Estate may always rely without further inquiry upon such an affidavit as so executed and recorded as to the matters stated herein.

SECTION EIGHT

Governing Law

8.1 This Declaration of Trust shall be construed in accordance with the laws of the Commonwealth of Massachusetts
SECTION NINE
Registry of Deeds

9.1 The term “Registry of Deeds” shall mean the Registry of Deeds or Registry District of the Land Court for the district in the Commonwealth of Massachusetts in which the real estate which is the subject of this Trust is located, and in which this Declaration of Trust is recorded or registered.

SECTION TEN
Other Provisions

(If Any)

 Executed as a sealed instrument this __________ day of __________________, 20_____

[Attach appropriate acknowledgement certificate here]
Nominee Trust
Schedule of Beneficiaries
(Not to be recorded)

The undersigned hereby certifies that it is (the sole) Beneficiary of the Nominee Trust established under Declaration of Trust dated ________________, 20______, and that the following is its beneficial interest thereunder:

<table>
<thead>
<tr>
<th>Beneficiary</th>
<th>Percentage of Beneficial Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(100%)</td>
</tr>
</tbody>
</table>

(pursuant to written agreement dated ________________, 20______).

The terms of said Trust are hereby approved and the undersigned Beneficiary agrees with the Trustees of said Trust: (a) to be bound by said Trust; and, (b) to save the Trustees harmless from any personal liability for any action taken at the direction of the Beneficiaries, or for any error of judgment, or for any loss arising out of any act or omission in the execution of the Trust so long as the Trustees act in good faith; and, (c) that the Trustees may withhold from any distribution, transfer or conveyance such amounts as they from time to time reasonably deem necessary to protect themselves from such liability; and (d) that each Trustee shall be responsible only for such Trustee’s own willful breach of trust; and, (e) to reimburse the Trustees for any expenses incurred in the performance of their duties.

Executed as a sealed instrument this _____ day of ____________________, 20 _______.

---

[Attach appropriate acknowledgement certificate here]

(See reverse for Trustees Receipt and Caveats in using this form.)
Affidavit Under M.G.L. c. 183, § 5B
(by Attorney)

Property Address: __________________________

___________________________

Book: __________________

Page:___________________

I _______________________, of ____________________________, _______________ County, Massachusetts, having personal knowledge of the facts herein stated, under oath depose and say as follows:

Executed under the penalties of perjury this ________day of___________, 20__________.

_________________________

[Attach appropriate acknowledgement certificate here]

Certificate

I, ____________________________, hereby certify that I am an attorney at law with offices at _______________________________, _________________, Massachusetts, and that the facts stated in the foregoing affidavit are relevant to the title to the premises therein described and will be of benefit and assistance in clarifying the chain of title thereto.

__________________________

Attorney

(05-21-84)
[Name of Trust]

Trustee Certificate

The undersigned hereby certifies as follows:

1. The undersigned, ___________________________________________________________, is/are all of the Trustee(s) of ____________________________________________________ u/d/t dated ______________________ and recorded with the ____________________________ County District Registry of Deeds [Land Court Records) at Book _____________, Page _______________, [or registered as Document Number _______________ as noted on [Transfer] Certificate of Title No. ___________________________, dated and recorded with the ____________________________ County District Registry of Deeds [Land Court Records] at Book _____________, Page ________________, [or registered as Document Number _______________ as noted on [Transfer] Certificate of Title No. ___________________________] (“Trust”).

2. The Trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.

3. The undersigned has [have] full power and authority and has [have] been directed by the beneficiaries of the Trust to enter into a sale/purchase/mortgage loan transaction with respect to certain premises situated at _________________________________________________, ________________________________, __________________________ County, Massachusetts (“Premises”), and in connection therewith to execute and deliver, on behalf of the Trust, any and all documents with respect to said transaction, including, but not limited to, a deed by the undersigned conveying the Premises to ___________________________________________ in full consideration of the sum of $ ___________________________ [a promissory note of the undersigned in the amount of $ ___________________________ payable to ___________________________, and as security therefore, a mortgage of the Premises to said lender], together with any other agreements, assignments, certificates, affidavits, settlement statements and documents as may be necessary or desirable in effectuating said transaction.

Executed as a sealed instrument under the penalties of perjury this ____________ day of ______________________, 20________

______________________________________
Trustee

______________________________________
Trustee

REBA Form 20G
Note: 1. This form is designed for use with nominee trusts.
2. The circumstances of a particular transaction may require additional information or documents and reliance solely on a trustee certificate in this form may not be sufficient.
Trustee’s Certificate Pursuant to M.G.L. c. 184, § 35

Name of Trust: _________________________________________________________________

Dated:________________________________________________________________________

I, ___________________________________________________ [Name of Trustee], Trustee of
___________________________________________________________ [name of trust] under
__________________________ [indenture] __________________ [agreement declaration] of
Trust dated _____________________________ [date], [as amended] (the “Trust”) between
_______________________________________________________ [name of settler/donor] as
______________________________________________________________ [settler/donor] and
________________________________________________________ [name of original trustees]
as the original [and current] trustees, certify as follows:

(a). ________________________________________________ Name of Trustee(s) is/are the
current trustee(s) of the Trust. If either one of us shall fail or cease to serve,
________________________________________________Successor Trustee shall serve
as successor Trustee;

(b). The trustees of the Trust have authority to act with respect to real estate owned by the
Trust, and have full and absolute power under said Trust to convey any interest in real
estate and improvements thereon held in said Trust and no purchaser or third party shall
be bound to inquire whether the trustee has said power or is properly exercising said
power or to see to the application of any trust asset paid to the trustee for a conveyance
thereof; and,

(c). There are no facts which constitute conditions precedent to acts by the trustees or which
are in any other manner germane to affairs of the Trust.

Executed as a sealed instrument under the pains and penalties of perjury on
____________________, 20_____.

____________________________________
NAME OF TRUSTEE
Trustee

See REBA Title Standard No. 68

REBA Form No. 35
Note

The Trustees Certificate may need to be amended in certain circumstances, for example, where there are conditions precedent to the acts by the trustees.

[Attach appropriate acknowledgement or jurat certificate form]

Comment

As to registered land, see also Land Court Guideline 52.

(11-03-03)
Amended November 14, 2011 (Amended to make reference to jurat certificate form in the Note and to add the Comment)
REBA Title Standard No. 23
Self-Dealing By Trustee

A title based upon a deed from a trustee of record to himself free of trusts is not on that account defective if:

(1) The instrument establishing the trust expressly authorizes self-dealing on the part of the trustee;

or

(2) A court of competent jurisdiction has rendered a judgment authorizing or ratifying the deed;

or

(3) A period of at least 30 years has elapsed since the recording of the deed and the record does not disclose any adverse claim based thereon;

or

(4) The trust does not contain spendthrift provisions and (i) all beneficiaries are legally competent and assent to or ratify the conveyance by the Trustee; or (ii) barring a prohibition against self-dealing, the recorded declaration recites that third parties may rely without iniquity.

Comment

Regardless of the fairness of the price paid, if the trustee is the purchaser of the property the beneficiaries may insist upon a reconveyance of the property from the trustee, or from any person who purchased from the trustee with notice or knowledge that the trustee had purchased the property through self-dealing, upon the payment of the purchase price where there has been no actual fraud; or, the beneficiaries may hold the trustee liable for the actual value of the property at the time of sale; or, if the trustee has sold the property for an amount in excess of the price paid by such trustee, the beneficiaries may recover such excess. See Vinal v. Gove, 275 Mass. 235, 175 N.E. 464.

Adopted May 3, 1977
Amended May 11, 1998 (Changes 'fiduciary' to 'trustee' throughout the Standard)
REBA Title Standard No. 33  
Transfers By Trustee(s)

A title derived from a conveyance of an interest in real estate by the trustee or trustees of record of a non-testamentary trust is binding on the trustee(s) and the trust in favor of a purchaser, transferee or other person relying in good faith thereon irrespective of whether:

(1) Said trustee or trustees have authority to transfer, including whether any required conditions have been satisfied,

or

(2) There are any unrecorded trust amendments,

or

(3) The trust is in existence,

provided that

(A) a trustee’s certificate conforming to the requirements of M.G.L. c. 184, §35, executed by at least one trustee appearing of record to hold title as such, is recorded or registered in the registry district where the land lies, either contemporaneously with the acquisition of record title by such trustee(s) or at a later time;

or

(B) the conveyance is by all persons appearing of record to be the trustees and

   (i) neither a trustee’s certificate conforming to the requirements of M.G.L. c. 184, §35, nor the declaration of trust is recorded or registered in the registry district where the land lies

   or

   (ii) if so recorded or registered, there is no reference to the place of recording or registration of such trust or such trustee’s certificate in any instrument in the chain of title and neither such trust nor such trustee’s certificate is recorded contemporaneously with a conveyance to or from the trustee(s);

or

(C) the declaration of trust, if recorded or registered in the registry district where the land lies, recites that third parties may rely without inquiry on the acts of said trustee(s).
Comments

1. This standard is applicable to all non-testamentary trusts, including nominee trusts. This standard is not applicable to Massachusetts Business Trusts created pursuant to M.G.L. c. 182, § 1, et seq.

2. See M.G.L. c. 184, §§ 25, 34 and 35.

3. See also, REBA Title Standards No. 53 as to Indefinite Reference situations not addressed by this title standard and REBA Title Standard No. 68 for a more detailed discussion of titles involving the use of Trustee’s Certificates Under M.G.L. c. 184, § 35.

4. The absence of a recorded trustee’s certificate, whether conforming to the requirements of M.G.L. c. 184, §35 or in other customary forms, in connection with a conveyance from the record trustee(s) does not render the title derived from such conveyance defective if the conveyance otherwise conforms to this Title Standard.

5. M.G.L. c. 184, § 35, expressly provides that “[t]he certificate most recently recorded in the registry of deeds for the county or district in which the real estate lies shall control.”

6. For a sample form of Trustee’s Certificate that conforms to M.G.L. c. 184, § 35 and adds a provision for naming successor trustees, see REBA Form No. 35.

7. Notwithstanding G.L. c. 184, §25 (the indefinite reference statute), a conveyance from the record trustees qualifying under this title standard need not recite that the grantors are conveying individually as well. See Kaufman v. Federal Nat. Bank, 287 Mass. 97, 191 N.E.422 (1934)(Grantor’s assignment of mortgage as trustee deemed to convey grantor’s interest as an individual by estoppel where recorded trust failed because of merger of legal and equitable title in Grantor).

Caveats

1. As to registered land, see Land Court Guideline No. 52.

2. Prior to a transfer qualifying under this title standard or the recording of the pertinent trust or G.L. c. 184, §35 trustee’s certificate to cure an indefinite reference under Title Standard No. 53, third parties, including intervening lienors, may have relied upon M.G.L. c. 184, § 25, and treated the title as though the grantee-trustee(s) held title individually. See, Eno & Hovey, 28 Mass.Prac. §2.19 (4th ed., 2004) and M.G.L. c. 203, §3.

Adopted November 6, 1978
Amended May 11, 1998 (Amended to make 'trustees' singular in section (1))
Amended November 14, 2011 (Amended to add back a reference to “trustees,” change the opening paragraph, add paragraph (A), reformat paragraphs (A), (B) and (C), revise the Comments and add the Caveats.)
REBA Title Standard No. 38
Attachments Of Trust Property

1. An attachment in a suit against A does not impose a lien upon real estate, record title to which is in A as a trustee, unless the attachment includes a brief description of the real estate which has been attached and also identifies A as such trustee.

2. An attachment in a suit against A does not impose a lien upon real estate, record title to which is in B as a trustee for A, unless the attachment includes a brief description of the real estate which has been attached, and also identifies B as such trustee.

3. An attachment in a suit against A as a trustee does not impose a lien upon real estate, record title to which is in A in another capacity or individually.

Comment

See M.G.L. c. 223, § 67.

Adopted May 7, 1979
(9-1-82)
Title derived from a conveyance or a devise of real estate to a named trust by an instrument in which the trustees are not named as grantees or devisees is not on that account defective if the instrument unambiguously identifies the trust by reference to (1) a recorded trust (including a Massachusetts business trust with transferable shares filed with the Secretary of the Commonwealth under M.G.L. c. 182, § 2), (2) a recorded Trustee’s Certificate complying with the requirements of Title Standard No. 68 , or (3) a testamentary trust established in a will duly probated in Massachusetts, even if the trust instrument, the Trustee’s Certificate or the will does not expressly provide for conveyances or devises to be made to the named trust, rather than to the trustees thereof.

Comment


2. This title standard is not intended to affect situations subject to M.G.L. c. 184, § 25, concerning indefinite references.

Adopted November 12, 1980
Amended November 3, 2014 (to include testamentary transfers to trusts)
REBA Title Standard No. 53
Indefinite References - Trusts

A title is not defective by reason of a deed or other conveyance to a person or persons as trustee or trustees of a named trust without specific reference to the recording reference for the trust or without reference to the trust as being "recorded or filed herewith", if

A. a trustee’s certificate conforming to the requirements of M.G.L. c. 184, §35, executed by at least one trustee appearing of record to hold title as such, is recorded or registered in the registry district where the land lies, either contemporaneously with the acquisition of record title by such trustee(s) or at a later time;

or

B. the trust is in existence at the time of conveyance and

   (1) the trust instrument is recorded or registered contemporaneously with the conveyance;

   or

   (2) (a) the trust instrument is already recorded or registered in the registry district where the land lies and can be sufficiently identified as the trust instrument referred to in the conveyance by the identity of the parties to the trust instrument and either the name of the trust or the date of execution,

   and

   (b) an affidavit is recorded or registered identifying the place of recording or registration, and the affidavit's place of recording or registration is marginally referenced to the conveyance;

   or

   (3) (a) the trust instrument and any amendments, appointments or resignations are subsequently recorded or registered in the registry district where the land lies,

   and

   (b) an affidavit is recorded or registered identifying the trust instrument as the one referred to in the conveyance, and the affidavit's place of recording or registration is marginally referenced to the conveyance;

or
C. the title or an interest therein is held by a purchaser, transferee, or other person relying in good faith on a conveyance by such trustee(s) conforming to the provisions of REBA Title Standard No. 33.

Comments

1. In the case of Paragraph B(1) or in the cases of Paragraphs A, B(2) and B(3) subsequent to the recording of the M.G.L. c. 184, §35 Trustee’s Certificate or the affidavit, title is not vested in the trustees individually and in the event of the death, resignation, or removal of the original trustees, title will vest in the successor or such other person as provided in the trust instrument or in the M.G.L. c. 184, §35 Trustee’s Certificate.

2. See M.G.L. c. 184, §§ 25, 34 and 35, and M.G.L. c. 183, § 5(b).

3. See also, REBA Title Standard No. 33 regarding titles derived from conveyances by trustees notwithstanding the absence of a recorded and referenced trust or trustee’s certificate as prescribed in this title standard.

4. For a form of Trustee’s Certificate under c. 184, §35, that includes a provision for naming successor trustees, see REBA Form No. 35.

Caveat

In the cases of Paragraphs A, B(2) or B(3) prior to the recording of the M.G.L. c. 184, §35 Trustee’s Certificate or the affidavit, third parties, including intervening lienors, may have relied upon M.G.L. c. 184, § 25 and treated the title as though the grantee-trustee(s) held title individually. See, Eno & Hovey, 28 Mass.Prac. §2.19 (4th ed., 2004) and M.G.L. c. 203, § 3.

Adopted May 27, 1986
Amended November 14, 2011 (Amended to add Paragraphs A and C, rearrange Paragraph B and revise the Comments and the Caveat.)
REBA Title Standard No. 68
Trustee's Certificates Under M.G.L. c. 184, § 35

Title is not defective by reason of the failure to record a non-testamentary trust, or any amendments thereto, provided that there has been recorded in the registry of deeds or district within which the affected property lies, a trustee's certificate, sworn to or stated to be executed under the penalties of perjury, by a trustee of record of such trust which certifies as to:

(a)  the identity of the trustees of such trust;
(b)  the authority of the trustee(s) to act with respect to the real estate owned by such trust;

and

(c)  the existence or non-existence of any fact which is a condition precedent to the actions of the trustee(s) or which is, in any manner, germane to the affairs of the trust.

The most recently recorded trustee's certificate shall be binding on all trustees and the trust estate in favor of a purchaser or other person relying in good faith on the trustee's certificate.

For purposes of this standard the following words shall have the following meanings:

"Trustee of record" shall mean a person who is:

(i)  Named as a trustee in a recorded conveyance of the subject real estate owned by such trust;
(ii)  Named as a trustee, successor, additional or contingent trustee in a trust instrument previously recorded in said registry of deeds or district;
(iii)  Named as a trustee, successor, additional or contingent trustee of a non-testamentary trust to which real estate is devised in a will duly probated in the Commonwealth of Massachusetts;

or

(iv)  Named as a successor, additional or contingent trustee in a recorded certificate by a person who satisfies the conditions of (I), (ii) or (iii) above.
"Real estate owned" shall mean any right, title or interest in real property, including without limitation, fee title, leasehold interests, easements, mortgages or any other interest.

"Relying in good faith" shall mean reliance without actual knowledge to the contrary. A person shall not be deemed to have actual knowledge when relying upon such a certificate notwithstanding the existence on the record of the trust agreement, which may have provisions that are contrary to or in conflict with the facts stated in the certificate provided that such inconsistencies are adequately addressed in the certificate.

"Most recently recorded" shall mean most recently recorded in the registry of deeds or district within which the affected property lies as of the date on which the certificate is relied upon, notwithstanding the later recording of an inconsistent certificate.

Caveat

If a trustee's certificate is not recorded simultaneously with the acquisition of the real property interest, third parties, including intervening lienors, may have relied upon M.G.L. c. 184, § 25.

Comment

Under certain fact determinative circumstances it may be acceptable to properly establish a person as a "trustee of record" where a gap in succession of trustees exist by recording an affidavit by a party, independent of the trustee, with actual knowledge of the facts set forth therein pursuant to M.G.L. c.183, § 5B.

See M.G.L. c. 184, §§ 25, 34 and 35 and M.G.L. c. 183, § 5B.

Adopted: May 12, 2003
51. Trusts: Conveyances to Trustees
(May 1, 2000, Revised February 27, 2009)

Deeds, mortgages and other instruments that convey title to a trustee or trustees may be accepted for registration only when accompanied by the trust instrument or a certificate pursuant to G.L. c. 184 §35, except:

(a) if the trust instrument or certificate is recorded or filed for registration in another registry district or registration district in the Commonwealth, an attested copy of the trust instrument or certificate may be presented as an alternative to the original trust instrument, together with a certificate by an attorney, or given under oath by the trustee, certifying that the instrument or certificate of which the attested copy is provided is current, in force, and not the subject of any recorded amendment; or

(b) if the trust instrument or certificate is recorded or filed for registration in the same registry district, the filed document (or the recorded land record of it) may be shown as an alternative to the original trust instrument.

The instrument of conveyance must have as grantees, mortgagees or other beneficial parties one or more trustees who are shown of record by the trust instrument or certificate to be trustees of the trust. If necessary, this showing may be made (a) by appropriate filed or recorded appointments and/or resignations of trustees, (b) by filed or recorded amendments to the trust instruments, or (c) by a certificate given by a trustee of record, provided the trust instrument allows reliance on such a certificate and the requirements for reliance set out in the trust instrument have been met, or the certificate is executed in conformance with the provisions of G.L. c. 184 §35.

The provisions of this guideline do not apply to any trust operating under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares.
A. Nominee Trust Conveyances - Trust in Same Registry District
Conveyances by Trustees of a nominee trust are acceptable if
(1) the instrument of conveyance is authorized by the terms of the registered or
recorded (previously or simultaneously) trust instrument or certificate given
pursuant to G.L. c. 184 §35, and (a) a Trustee’s Certificate in substantially the
form appended hereto as Exhibit A or Exhibit B is submitted, or (b) the
instrument of conveyance itself contains all such matters required to be set forth in
a Trustee’s Certificate;

or

(2) Land Court approval has been obtained.

B. Nominee Trust Conveyances - Trust in Different Registry District or recorded in
Registry of Deeds
Conveyances by Trustees of a nominees trust are acceptable if
(1) the instrument of conveyance is authorized by the terms of the registered or
recorded (previously or simultaneously) trust instrument and (a) attested copies of
the trust declaration, or of a certificate pursuant to G.L. c. 184 §35, and all
amendments thereto and all trustee resignations and appointments are submitted
(as established by a certificate by an attorney, or given under oath by the trustee,
certifying that the instrument or certificate of which the attested copy is provided
is current, in force, and not the subject of any recorded amendment), and (b)(i) a
Trustee’s Certificate in substantially the form attached hereto as Exhibit A or
Exhibit B is submitted, or (ii) the instrument of conveyance itself contains all such
matters required to be set forth in a Trustee’s Certificate, and with respect to a
Trust for which only a Certificate pursuant to G.L. c. 184 §35 has been recorded,
it is subscribed and sworn to under the pains and penalties of perjury

or

(2) Land Court approval has been obtained (this requires the fully executed
instrument and a Land Court Examiners Report on the contents and status of the
trust).

CAVEAT: Certificates pursuant to G.L. c 184 § 35, once recorded or registered in
connection with, and establishing authority for, a particular transaction, may not be used for
subsequent transactions at a later date unless: (a) the earlier certificate establishes that the
termination of the trust has not occurred as of the date of the later transaction, or (b) the earlier
certificate provides that any party interested in title to the locus may rely on the continuing
existence of the trust until the recording of a certificate or document establishing the termination
of the trust.

CAVEAT: A trustee certificate as contained in attached Exhibit A cannot be used alone
to demonstrate authority of a trustee to convey, in cases where the trust instrument is not of
record and a certificate pursuant to G.L. c. 184, § 35 instead has been recorded or registered,
unless the recorded or registered G.L. c. 184, § 35 certificate authorizes any party interested in
title to the locus to rely on such a trustee certificate.

C. Trust Conveyances Other Than Nominee Trusts- Trust in Same Registry District

Trust conveyances are acceptable if the instrument is authorized by the terms of the trust.
In these cases no separate Trustee’s Certificate is required.

D. Trust Conveyances Other Than Nominee Trusts- Trust in Different Registry District or
recorded in Registry of Deeds

Trust conveyances are acceptable if

1. the instrument of conveyance is authorized by the terms of the trust and (a)
attested copies of the trust declaration (or, instead, provided the trust is not a
testamentary one, of a recorded or registered certificate pursuant to G.L. c. 184,
§35) and all amendments thereto and all trustee resignations and appointments are
submitted (as established by a certificate by an attorney, or given under oath by
the trustee, certifying that the instrument or certificate of which the attested copy
is provided is current, in force, and not the subject of any recorded amendment)
and (b)(i) a Trustee’s Certificate in substantially the form attached hereto as
Exhibit C is submitted, or (ii) the instrument itself contains all such matters
required to be set forth in a Trustee’s Certificate

2. Land Court approval has been obtained (this requires the fully executed
instrument and a Land Court Examiners Report on the contents and status of the
trust).
EXHIBIT A

Form of Trustee Certificate for Nominee Trust

[NAME OF TRUST]

TRUSTEE CERTIFICATE

The undersigned hereby certifies as follows:

1. ___________________________ [is/are all of the] Trustee(s) of

_________________________________________ u/d/t dated and recorded with the

[County] District Registry of Deeds [Land Court Registration District] at Book ___, Page ___, [or
registered as Document Number ______________ as noted on [Transfer] Certificate of Title
No. ___], as amended by __________, dated and recorded with the

________________________________________ County District Registry of Deeds [Land Court Records] at Book ___, Page ___, [or registered as
Document Number ______________ as noted on [Transfer] Certificate of Title No. ___] "Trust".

2. The trust is in full force and effect and has not been amended or modified, except as provided
above, and has not been revoked as of the date hereof.

3. The undersigned has [have] full power and authority and has [have] been directed by the
beneficiaries of the Trust to enter into a sale/purchase/mortgage loan transaction with respect to
certain premises situated at __________, County, Massachusetts ("Premises"), and in connection therewith to
eexecute and deliver, on behalf of the Trust, any and all documents with respect to said
transaction, including, but not limited to, a deed by the undersigned conveying the Premises to
_________________________ in full consideration of the sum of $________________________ [a promissory note
of the undersigned in the amount of $________________________ payable to __________, and as security therefor, a
mortgage of the Premises to said lender], together with any other agreements, assignments,
certificates, affidavits, settlement statements and documents as may be necessary or desirable in
effectuating said transaction.

Executed as a sealed instrument this _________ day of ____________, 20___.

_________________________
Trustee and not individually
EXHIBIT B

Form of Certificate where Certificate of Trust has been filed

TRUSTEES’ CERTIFICATE

PURSUANT TO G. L. C. 184, §35

NAME OF TRUST
DATED

I, NAME OF TRUSTEE, Trustee of NAME OF TRUST under
INDENTURE/AGREEMENT/DECLARATION of Trust dated DATE, recorded with the
____________ County District Registry of Deeds [Land Court Records] at Book , Page ,
or registered as Document Number ________________ as noted on [Transfer] Certificate of Title No. ], as amended by , dated and recorded with the ______________ County District Registry of Deeds [Land Registration District] at Book , Page , [or registered as Document Number ________________ as noted on [Transfer] Certificate of Title No. ] (the “Trust”), certify as follows:

1. [NAME OF TRUSTEE(S)] IS/ARE the current trustee(s) of the Trust. The trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.

2. The undersigned has [have] full power and authority [Insert where Trust is a Nominee Trust: and has [have] been directed by the beneficiaries of the Trust] to enter into a sale/purchase/mortgage loan transaction with respect to certain premises situated at__________ County, Massachusetts ("Premises"), and in connection therewith to execute and deliver, on behalf of the Trust, any and all documents with respect to said transaction, including, but not limited to, a deed by the undersigned conveying the Premises to __________ in full consideration of the sum of $______________ [a promissory note of the undersigned in the amount of $________________ payable to , and as security therefor, a mortgage of the Premises to said lender], together with any other agreements, assignments, certificates, affidavits, settlement statements and documents as may be necessary or desirable in effectuating said transaction; and

3. There are no facts which constitute conditions precedent to acts by the trustees or which are in any other manner germane to affairs of the Trust.

[NOTE: for the Certificate to be used for future transactions, there should be added to the above format more general provisions, and either a specific expiration date or formula, or an explicit statement that all interested in title may rely on the continuing existence of the Trust until a further certificate is recorded or registered establishing the expiration or termination of the Trust.

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There should be added to the above, if the trust so provides, a provision that one may, in the
future, rely on a Certificate as set forth in Exhibit A to establish the facts set forth therein.

EXECUTED, as a sealed instrument on ________________, 20__.

__________________________
NAME OF TRUSTEE, Trustee

7. COMMONWEALTH OF MASSACHUSETTS
____________, ss. ____________________________, 20__

Sworn to under the pains and penalties of perjury by the above-named TRUSTEE, as
Trustee, before me,

__________________________
Notary Public
My commission expires:

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EXHIBIT C

Form of Trustee Certificate for Trusts Other than Nominee Trusts

[NAME OF TRUST]
TRUSTEE CERTIFICATE

The undersigned hereby certifies as follows:

1. ___________________________ is/are all of the Trustee(s) of ____________
   County District Registry of Deeds [Land Court Records] at Book __, Page __, [or registered as
   Document Number ___________ as noted on [Transfer] Certificate of Title No. __], as
   amended by __, dated and recorded with the ____________ County District Registry of
   Deeds [Land Court Records] at Book __, Page __, [or registered as Document Number
   ___________ as noted on [Transfer] Certificate of Title No. __] "Trust".

2. The trust is in full force and effect and has not been amended or modified, except as provided
   above, and has not been revoked as of the date hereof.

Executed as a sealed instrument under the pains and penalties of perjury this ___ day of ______, 20__.

____________________
Trustee and not individually
53. Trusts: Trustee’s Deed for Nominal Consideration
(May 1, 2000, Revised February 27, 2009)

A trustee’s deed containing a recitation of nominal consideration may be accepted for registration without prior Land Court approval when accompanied by a trustee’s certificate, if authorized by the trust, or a certificate pursuant to G.L. c. 184 §35, signed by at least one of the trustees, certifying that all the beneficiaries who are natural persons are of full age and are competent and that all of the beneficiaries have assented to the conveyance for nominal consideration (See the attached sample certificate.)

The requirements of this guideline address only the issue of a deed reciting nominal consideration; the requirements of other guidelines relating generally to instruments executed by trustees also must be satisfied.

I, ____________________________________________ Trustee
of __________________________ under a Declaration of
Trust dated __________________________ and registered as __________________________
hereby certify that:

1. Said Trust is in full force and effect.
2. All the beneficiaries of said trust who are natural persons, if any, are of full age.
3. All the beneficiaries of said trust who are natural persons, if any, are competent.
4. All the beneficiaries of said trust have consented to the transfer of the property
to __________________________ for nominal consideration.

Signed under the penalties of perjury.
Signed: __________________________
Dated: __________________________

[Add Oath]
55. Approval by the Chief Title Examiner
(Added February 27, 2009)

In many instances, including many set forth in these Guidelines, the prior approval of the Land Court’s Chief Title Examiner or his or her designee, or an order of the court, will be required before a given document may be accepted by the court’s Land Registration Districts. Listed below are a number, though by no means all, of the types of documents which require prior court approval, and the particulars of the submissions that ought to be made to the Chief Title Examiner to solicit approval.

**ITEMS TO BE SUBMITTED IN CONNECTION WITH ALL APPROVAL REQUESTS:**
An attested copy of the outstanding certificate of title, or a copy of the last prepared certificate and an attested copy of the deed into the current record owner should accompany all documents which are presented for approval. In all instances any applicable appeal period must have passed.

**PARTICULAR TYPES OF DOCUMENTS REQUIRING APPROVAL FOR REGISTRATION:**

[Land Court Guidelines Page 109]
6. **SUCCESSOR TRUSTEES/REMOVAL OF TRUSTEES**

1. In all instances involving a nominee trust and in other cases upon referral from a Registry District, the appointment and acceptance of successor trustees, removal of trustee or any other action by the beneficiaries shall be approved by the Chief Title Examiner prior to registration.

2. In cases involving a nominee trust, where the trust calls for the beneficiaries to appoint a successor, evidence of the identity of the beneficiary will be required along with the certificate of appointment.

3. In cases where the trust allows for a certificate by a trustee to be registered to evidence a change of trustees, the court will determine who is eligible to execute said certificate.

4. Death certificates and acceptances of trustees are required to be registered along with any appointment or certificate.

5. In cases where there is a surviving trustee of record, a certificate pursuant to G.L. ch. 184, §35 may be substituted for the above procedures, along with the appropriate collateral documents.
62. Trusts: Expired

Added February 27, 2009

The term of a trust can end for numerous reasons, including on a specified date certain, after expiration of a term of years, following the death of one or more persons, etc. If it appears that the term of a trust has ended, the districts should not accept documents for filing with respect to that trust and the person desiring to file the documents should be advised that the documents must be approved by the court. Depending on the circumstances, approval may require an order of the court following the filing of a Supplemental Petition; in other cases, an approval by the Chief Title Examiner will suffice. Which will be required will depend on the complexity of the trust and the factual situation.

Even though the term of a trust may have ended, the trustee(s) still may have the power to convey the trust property. For instance, the trust instrument might provide that upon the death of certain persons the trustees are directed to sell the real estate assets in the trust so as to be able to distribute money, rather than tangible property, to the beneficiaries. Or the trust instrument may require the trustee(s) to convey the trust property to the remainder beneficiaries to settle the record title, and the identity of the remainder beneficiaries may be readily apparent. In such circumstances, and similar situations, if less than one year has elapsed since the expiration of the trust, the proponent of the document to be filed should present the facts to the Chief Title Examiner, accompanied by a certificate in accordance with the provisions of G.L. c. 184, § 35, stating that the trustee(s) executing the proffered document are authorized to do so. There will be other circumstances where a Supplemental Petition is not required, because an analysis of the trust instrument and the facts is straightforward.

There are far too many different factual patterns to describe them all in this guideline. Because gaining the approval of the Chief Title Examiner normally is quicker and less expensive than preparing and filing a Supplemental Petition with the Court, the proponent of the document normally should seek Chief Title Examiner approval in the first instance. However, if the trust instrument requires the approval of the beneficiaries of the trust or there is to be a deed of the trust property to the beneficiaries, and in either case the identity of the beneficiaries cannot be determined, a Supplemental Petition to the Court will almost certainly be required.
Registry personnel are not required to inquire as to releases of Massachusetts estate, inheritance and corporate excise tax liens or the possible existence of such liens. Such liens are not to be noted on certificates of title. Likewise, attorneys should not assume that such taxes have been paid simply because there is no notation as to tax liens on the certificate of title. See G.L. c. 185, § 46, which excepts such liens from the coverage of a certificate of title. “Seventh, liens existing in favor of the commonwealth for unpaid taxes arising or existing under the laws of the commonwealth.” Nevertheless, releases or waivers of tax liens should be accepted for filing.
14. Death: The Effect of Death upon Registered Land Titles  
(May 1, 2000, Revised February 27, 2009)

The purpose of this guideline is to assist attorneys in dealing with title to registered land upon the death of a registered owner. Upon such a death, there are three possible avenues of approach.

THE METHODS OUTLINED ARE, GENERALLY SPEAKING, MUTUALLY EXCLUSIVE.

1. BY WAY OF A LICENSE TO SELL.  

This method is usually utilized when the death is fairly recent and when a sale of the real estate is contemplated.

The advantage of this method is that the sale is free of debts of the deceased, costs of administration, legacies and Massachusetts estate taxes.

For details, see Method # 3.

2. BY WAY OF A SALE UNDER THE POWER IN A WILL.  

This method is utilized when a sale is contemplated.

Under this method, the sale is free of debts of the deceased, costs of administration and legacies.

For details, see Method # 4.

3. BY WAY OF PETITION FOR A NEW CERTIFICATE AFTER DEATH OF A REGISTERED OWNER.  

This method is usually utilized when no sale is imminent. The heirs-at-law or the devisees in the will are entitled to a Certificate of Title in their names.

For details, see Method # 1 and Method # 2.

If Land Court form LCP-2 is presented, an Order of Court will issue. If a deed under a license is presented, the deed is approved. No petition is necessary.

This guideline is not intended to be exhaustive and addresses only the most common situations. With any method, an attested copy of the outstanding Certificate of Title must be presented.
NOTE:

**DEBTS**
As to decedents dying before January 1, 1990 the new Certificate of Title will issue subject to debts in the estate of the deceased owner, *unless* one full year has elapsed from the date upon which the bond in the estate was allowed.

As to decedents dying on or after January 1, 1990 claims of creditors are barred at one year from the date of decedent's death.

**TAXES**
Estate and inheritance taxes are not required to be noted on certificates, G.L. c. 185, § 46. See also Guideline 35.

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**LEGACIES**
Unless there is a specific devise of the real property, if a will directs the payment of legacies, the Land Court requires evidence of their payment unless six years have elapsed from the date of death.

**DEVISE TO TRUST**
If property is devised to the trustees of a testamentary trust, attested copies of the trustees' appointment and bond must be included with the probate papers.

If real property is devised to the trustees of an *inter vivos* trust which is not on record, the original trust instrument and any amendment(s) thereto or a certificate pursuant to G. L. ch. 184, § 35 must be presented at the Land Court.

The Court Order will issue to the trustees, and the trust will be registered and noted on the new certificate issued.

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