

ACTEC

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VALIDITY OF ILLINOIS LAND TRUSTS

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The summary of each state's law reflected in this Study has been based on an opinion received from a reporter for that state. With rare exceptions, reporters are Fellows of the College from that state. Following the reporter's name is the date as of which that state's material was most recently reviewed. Neither the College nor the individual reporters and editors (who have volunteered their time and experience in the preparation of the Studies) assume any responsibility for the accuracy of the information contained in any Study.

ILLINOIS LAND TRUSTS

In the Illinois Land Trust, the trustee holds both legal and equitable title to real property in accordance with the trust agreement. The beneficiary or beneficiaries of the trust have no legal or equitable interest in the real property, but do have the right of possession, management, and control of the real property, as well as a right to the rents, profits, and proceeds therefrom. The interest of the trust beneficiary is specifically characterized as being personal property rather than real property.

The real estate is conveyed to a trustee under an agreement reserving to the designated beneficiary or beneficiaries the full management and control of the property. The trustee executes deeds and mortgages and otherwise deals with the property at the written direction of the beneficiaries. The beneficiaries collect any rents, improve and operate the property, and exercise all rights of ownership other than holding or dealing with the legal and equitable titles. The trustee agrees to deal with the "res" of the trust only upon the written direction of the beneficiaries or the persons named as having power of direction and is not required to inquire into the propriety of any direction received from such persons. A land trust may offer these advantages: (1) limited liability under mortgages and other contracts, (2) simple succession of ownership (*e.g.*, potential avoidance of probate), (3) protection against risks involved in joint ownership, (4) simplicity in conveyance of title, (5) protection against partition suits, (6) ease of creation of partial interests, and (7) avoidance of liens upon the title of the trust property.

As noted, the trustee acts only at the direction of the beneficiary or other authorized person except that, in the absence of a contrary direction, the trustee is to sell any property remaining in the trust twenty years after

the date of the agreement, and distribute the proceeds to the then beneficiaries (thereby terminating the trust). As a practical matter, this duty is never expected to be performed (contrary directions are invariably delivered to the trustee); however, it is this duty that makes the trust "active" under Illinois Supreme Court decisions. The major difference between an Illinois Land Trust and the usual trust situation (whether in Illinois or in another state) is the nominal amount of trustee activity that is necessary to make the trust valid and not affected by the Statute of Uses.

This study deals with land trusts in the various states, whether characterized as "Illinois" or otherwise, and ascertains the minimum duties of the trustee for a valid trust under the statutes and decisions of the various states.

The following chart shows what duties (other than holding legal title to the trust property) the trustee must have in order to create a valid trust in the state involved. Where an "X" appears in the first column of the chart, it means that state law requires no active duties on the part of the trustee. Where an "X" appears in the second column of the chart, it means that the trustee must hold the equitable title to the property, as well as the legal title. Where an "X" appears in the other columns of the chart, it signifies that the duty described in the column heading is required of the trustee in order for the trust to be valid.

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In addition to holding legal title to property, the trustee must have the following duties in order to create a valid trust in the state involved:

State and Name of Person(s) Reporting	No Other Duties Required	Hold Equitable Title as well as Legal Title	Duty to Convey Property at Request of Beneficiary	Duty to Sell Property at Expiration of Trust	Duty to Exercise Discretion in Management of Property	Duty to Collect Rents and Profits from Property	Duty to Take Possession of Trust Property	Citations/Comments
ALABAMA¹ Paul O. Woodall Birmingham, Alabama December 15, 1992					X	X	X	Alabama Code Sections 35-4-250 through 35-4-251 (1991)
ALASKA² George E. Goerig Anchorage, Alaska August 10, 1992								No cases deal directly with the Illinois Land Trusts nor do any of the Alaska Statutes address it
ARIZONA^{1, 2} Gordon G. Waterfall Tucson, Arizona August 17, 1992								Lane Title and Trust Co. v. Brannan, 103 Ariz. 272, 440 P.2d 105 (1968)
ARKANSAS¹ Robert H. Holmes Russellville, Arkansas September 7, 1992					X			Randolph v. Read, 129 Ark. 485 (1917) and Murry v. Hale, 203 F. Supp. 583 (E.D. Ark. W.D., 1962)
CALIFORNIA John O'Halloran Pasadena, California August 14, 1992			X	X	X	X		In re Tuttle's Estate, 204 Cal. App. 2d 481, 22 Cal. Rptr. 427 (1962) ⁴
COLORADO² William S. Hershberger Denver, Colorado August 11, 1992								O'Reilly v. Balkwill, 133 Colo. 474, 297 P.2d 263 (1956); Ritter v. Empire Savings, 29 Colo. App. 124, 478 P.2d 685 (1970)
CONNECTICUT Martin Wolman Hartford, Connecticut August 17, 1992								All Connecticut trusts must be active due to the Statute of Uses
DELAWARE^{1, 2} Thomas P. Sweeney Wilmington, Delaware August 26, 1992				X	X	X		Doe v. Lank, 9 Del. (4 Houst.) 649 (1874); Marvel v. Wilmington Trust Co., 37 A. 1014 (1913); Houston v. Houston, 20 Del. Ch. 1, 175 A. 51 (1922)
DISTRICT OF COLUMBIA Doris D. Blazek Washington, D.C. September 3, 1992			X ⁵		X			D.C. Code Ann. § 45-1101 (While this Code suggests that "some power of actual disposition" should be enough, two cases indicate that the power to convey alone is not sufficient. Bettker v. Nalley, 140 F.2d 171 (D.C. Cir. 1944); Liberty National Bank of Washington v. Smoot, 135 F.Supp. 654 (D.D.C. 1955))
FLORIDA¹ James D. Camp, Jr. Fort Lauderdale, Florida February 16, 1993								Fla. Stat. 689.07, 689.071; will not qualify for homestead ad valorem tax exemption
GEORGIA¹ Albert P. Reichert Macon, Georgia August 19, 1992					X			Official Code of Georgia Annotated Sections 53-12-50 through 53-12-59

FOOTNOTES

1. Any of the active duties indicated will be sufficient to sustain the trust.
2. Law of state unsettled.
3. The trustee has certain statutorily imposed duties, not required for the validity of the trust, which the trustor, by language in the trust document, may relieve the trustee from performing.
4. Case involves trust created in Illinois to hold Illinois real property.
5. There is also a duty to preserve the trust property.
6. Trustee has duty to do something else in addition to holding legal title and taking possession of trust property.

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HAWAII Mervyn S. Gerson Honolulu, Hawaii August 12, 1992		X						Hawaii Rev. Stat. Sec. 558-4, 1985
IDAHO Gerald W. Olson Pocatello, Idaho November 10, 1992					X	X	X	IC 68-1301 through 68-1322; IC 68-104, 105, 106; Garner v. Andreason, 96 Idaho 306, 527 P.2d 1264
ILLINOIS Daniel M. Schuyler Chicago, Illinois August 11, 1992		X	X	X				Ill. Rev. Stat., Ch. 110, § 15-1205; Ill. Rev. Stat. Ch. 148, §§ 60-62, 70-73, 80-84
INDIANA Philip S. Cooper Anderson, Indiana August 11, 1992			X					Indiana Code Sections 30-4-2-7, 30-4-2-9, 30-4-2-13 and 30-4-2-14
IOWA Byron G. Riley, Jr. Cedar Rapids, Iowa December 31, 1992								Illinois Land Trusts would not be valid in Iowa without enabling legislation
KANSAS Joseph S. Davis, Jr. Olathe, Kansas August 11, 1992				X	X			Kansas Statutes Ann. Section 58-2413
KENTUCKY Frank Gofton Ware Florence, Kentucky August 10, 1992					X	X	X	Comm. v. Louisville Public Library, 151 Ky 420, 152 S.W. 262 (1913); Kentucky does not appear to recognize Illinois Land Trusts
LOUISIANA² Patrick K. Reso New Orleans, Louisiana September 22, 1992					X	X	X	Louisiana Trust Code, 9-1721-2252; 1731; 9-2061-66; 9-2091; 9-2118; St. Charles Land Trust v. St. Amant, 253 La. 243, 217 So.2d 385 (1968)
MAINE² Merrill R. Bradford Bangor, Maine November 9, 1992								33 M.R.S.A. Section 851; 18A M.R.S.A. 1 201(45) 7-101
MARYLAND² Mannes F. Greenberg Baltimore, Maryland November 11, 1992					X			Maryland Ann. Code title "Real Property" Section 2-116 (Statute requires at least "express power" of disposition or management)
MASSACHUSETTS Nicholas U. Sommerfeld Boston, Massachusetts August 12, 1992			X					M.G.L.A. ch. 183, Section 14 (1991); Rothwell v. Rothwell, 283 Mass. 563 (1933); 60 Mass L Quarterly 364; New England Mut. Life Ins. Co. v. Grant, 56 F.Supp. 192 (D. Mass 1944)

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MICHIGAN² James A. Kendall Midland, Michigan August 10, 1992		X	X		X	X	X	MCLA Section 555.3
MINNESOTA Lehan J. Ryan St. Paul, Minnesota August 18, 1992								Active express trust can be cleared for any lawful purpose, MN Stat. 501B.01, passive trusts abolished, MN Stat. 501B.02 ¹ (need only fall within the definition of active trust); Trustee and beneficiary can be same person, MN 501B.13
MISSISSIPPI Jay A. Travis III Jackson, Mississippi August 19, 1992					X	X	X	Miss. Code Annotated Sec. 91-9-1, 89-1-43
MISSOURI Donald H. Chisholm Kansas City, Missouri August 20, 1992	X							Mo. Rev. Stat. § 456.020 (1983)
MONTANA^{2, 4} George D. Goodrich Missoula, Montana August 20, 1992								M.C.A. Section 72-34-10
NEBRASKA¹ James I. Shamburg Grand Island, Nebraska August 17, 1992					X			Jones v. Shrigley, 33 N.W.2d 510 (1948); O'Connor v. Burns-Potter & Co., 151 Neb. 9, 36 N.W.2d 507 (1949); Cahill v. Armatys, 185 Neb. 539, 177 N.W.2d 277
NEVADA² Prince A. Hawkins Reno, Nevada August 19, 1992								Illinois Land Trusts are unknown in Nevada
NEW HAMPSHIRE Joseph S. Ransmeier Concord, New Hampshire October 27, 1992	X							R.S.A. 447:25, effective May 26, 1986; 7 N.H. Prac. (1992 Cum. Supp.) at § 624
NEW JERSEY Rodney N. Houghton Newark, New Jersey August 10, 1992				X				Skovborg v. Smith, 8 NJ Super. 424 (Ch. Div. 1950); Speth v. Speth, 8 NJ Super. 587 (Ch. Div. 1950); NJSA 46:3-9
NEW MEXICO Robert P. Worcester Santa Fe, New Mexico August 24, 1992					X			NMSA § 47-2-1 <i>et seq.</i> 1978
NEW YORK⁶ Henry A. Lowet New York, New York John E. Fitzgerald Glens Falls, New York August 17, 1992					X	X	X	EPTL Sections 7-1.1, 7-1.2, 7-2.1, 7-2.2, 7-2.3, 11-1.1(a)(2) and 11-1.1(b)(5)(A)

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NORTH CAROLINA ^{1,2} Karen M. Wilson Winston-Salem, N.C. August 14, 1992	X							
NORTH DAKOTA Walfrid B. Hankla Minot, North Dakota August 13, 1992	X	X						NDCC 59-03-02
OHIO Jon Hoffheimer Cincinnati, Ohio August 13, 1992	X							Ohio Rev. Code §§ 5301.03, 1335.01 and 1335.04
OKLAHOMA ^{2,3} W. Thomas Coffman Tulsa, Oklahoma October 1, 1992	X							Oklahoma Trust Act, Title 60, O.S., Sections 175.1-175.55
OREGON ^{1,2} Campbell Richardson Portland, Oregon August 17, 1992			X	X	X	X	X	Lee v. Malone, 10 Or. App. 30 527 P.2d 414 (1974); Closset v. Burtchaell, 112 Or. 585, 230 P. 554 (1924); Lent v. Title and Trust Co. of Portland, 137 Or. 511, 3 P.2d 755 (1931)
PENNSYLVANIA ¹ Robert P. Oberly Philadelphia, Pennsylvania August 20, 1992					X	and deduct expenses X		Hemphill's Estate, 180 Pa. 95, 36 A. 409 (1897); Sheasley Trust, 366 Pa. 316, 77 A.2d 448 (1951)
RHODE ISLAND Andrew H. Davis, Jr. Providence, Rhode Island August 17, 1992			X					Read v. Power, 12 R.I. 16 (1878); Koehne v. Beattie, 36 R.I. 316, 90 A.211 (1914); and Matteson v. Brown, 33 R.I. 339, 80 A. 113 (1911)
SOUTH CAROLINA Julian J. Nexsen Columbia, South Carolina August 14, 1992			X					Ramage v. Ramage, 283 S.C. 239, 322 S.E.2d 22 (Ct. App. 1984)
SOUTH DAKOTA ^{1,2} Thomas H. Foye Rapid City, South Dakota August 10, 1992		X	X	X	X	X	X	SDCL Sections 43-10-2 through 43-10-23
TENNESSEE ¹ S. Shepherd Tate Memphis, Tennessee September 11, 1992			X	X	X	X	X	Linder v. Officer, 175 Tenn. 402, 135 S.W. 2d 445 (1940); Tennessee does not recognize Illinois Land Trusts. Kelly v. Schwartz, 740 S.W. 2d 719 (1987)
TEXAS ¹ J. Chrys Dougherty Austin, Texas August 11, 1992			X		X			VTCA Trust Code Secs. 101.001, 112.001, 112.004, 112.032, 112.033, 113.056, 114.081, 114.082 and 114.0821; 10 Houston L. Rev. 692 (1973)

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UTAH ² David E. Salisbury Salt Lake City, Utah December 28, 1992								Utah Probate Code 75-7-101 <i>et seq.</i> and 75-7-401
VERMONT ^{1, 2} Eugene V. Clark Bennington, Vermont August 17, 1992			X	X	X	X	X	Gorham v. Daniels, 23 Vt. 600 (1851); Blair v. Blair, 111 Vt. 53 (1939); Noyes v. Noyes, 110 Vt. 511 (1939)
VIRGINIA Charles C. Webb Richmond, Virginia August 14, 1992	X							Virginia Code Section 55-17.1
WASHINGTON Bruce P. Flynn Spokane, Washington February 4, 1993				X	X	X	X	Weich v. Northern Bank & Tr. Co., 100 Wash 340, 170 P. 1029 (1918); Teitzel v. Valley, 1 Wash. App. 863, 466 P.2d 169(1970); and Townsend v Rainier Nat'l Bank, 51 Wash. App. 19, 751 P.2d 1214 (1988)
WEST VIRGINIA George C. Leslie Charleston, West Virginia November 18, 1992					X			West Virginia Code Section 36-1-17; Rogerson v. Wheeling Dollar Savings & Trust Co., 222 S.E.2d 816, 159 W. Va. 376 (1976)
WISCONSIN ¹ James R. Cripe Janesville, Wisconsin January 19, 1993	X							Wisconsin Statutes Section 701.03; Kinzer v. Bidwell, 55 Wis 2d 749, 201 N.W.2d 9
WYOMING ⁶ Frederick G. Loomis Cheyenne, Wyoming August 14, 1992					X	X	X	Wyoming Statutes Sections 2-3-301 to 2-3-304 and 4-8-101 to 4-8-109

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