

Model Land Trust Act

Short Title Construction, Application and Subject Matter of Act

Section 1-101 Short Title

This Act shall be known and may be cited as the Model Land Trust Act.

Section 1-102

(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Act are:

- (a) to simplify, clarify and modernize the law governing land trusts;
- (b) to permit the expansion of the use of land trusts through custom, usage and agreement of the parties;
- (c) to make uniform the law of land trusts among the various jurisdictions;
- (d) to codify the same law as it relates to the existence, custom and usage of land trusts.

(3) The effect of the provisions of this Act may be varied by agreement, except as otherwise provided in this Act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Act of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Act unless the context otherwise requires

- (a) words in the singular number include the plural, and in the plural include the singular;
- (b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

Section 1-201 Definitions

As used in this Act:

“Beneficial interest” means any interest, regardless of how small or minimal such interest may be, in a land trust, held by a trustee for the benefit of beneficiaries of such land trust.

“Beneficiary” means any person, body politic, corporate or other entity having a beneficial interest in a land trust. A trustee may be a beneficiary of the trust in which such trustee serves as trustee.

“Land trust” means any express agreement or arrangement whereof a use, confidence or trust is declared of any land, or of any charge upon land, for the use or benefit of any beneficiary, under which the title to real property, both legal and equitable, is held by a trustee, subject only to the execution of the trust, which may be enforced by the beneficiaries who have the exclusive right to manage and control the real estate, to have the possession thereof, to receive the net proceeds from the rental, sale, hypothecation or other disposition thereof, and under which the interest of the beneficiary is personal property only.

“Residential property” means any single family residence or multiple dwelling structure containing 6 or less single dwelling units for 6 or less family units, living independently of each other.

“Real estate installment contract” means any agreement or contract for a trustee’s or warranty deed, or otherwise, under which the purchase price of real property is to be paid in installments over a period in excess of 5 years with title to the property to be conveyed to the buyer upon his payment of the purchase price or a specified portion thereof.

“Holders of the Power of Direction”; definition. “Holders of the power of direction” means the persons or entities having the authority to direct the trustee to convey, execute a mortgage, distribute proceeds of sale or financing, and execute documents incidental to the execution of a land trust.

Section 2-101 Title to Property and Creation of a Land Trust

(1) Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as “the recorded instrument,” transferring any interest in real property in this state, including but not limited to a leasehold or mortgagee interest, to any person, corporation, bank, trust company, or other entity, duly formed under the laws of this state, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated “trustee,” or “as trustee,” without therein naming the beneficiaries of such trust, whether or not reference is made in the recorded instrument to any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee full rights of ownership over the real property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the property or interest therein or any part thereof; provided, the recorded instrument confers on the trustee the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.

(2) Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the trustee with respect to the real properties held in trust under the recorded instrument, as hereinabove provided, is not obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument, whether or not such declarations or agreements are referred to therein; or to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under the recorded instrument; or to inquire into the adequacy or disposition of any consideration, if any is

paid or delivered to such trustee in connection with any interest so acquired from such trustee; or to inquire into any of the provisions of any such unrecorded declarations or agreements.

(3) All persons dealing with the trustee under the recorded instrument as hereinabove provided take any interest transferred by the trustee there under, within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in the recorded instrument or not, and of anyone claiming by, through, or under such beneficiaries including, and without limiting the foregoing to, any claim arising out of any dower or courtesy interest of the spouse of any beneficiary thereof; provided, nothing herein contained prevents a beneficiary of any such unrecorded collateral declarations or agreements from enforcing the terms thereof against the trustee.

(4) In all cases in which the recorded instrument, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries there under to be personal property only, such provision shall be controlling for all purposes when such determination becomes an issue under the laws or in the courts of this state.

(5) In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the following provisions shall apply to the trustee of a land trust.

A) Trustee shall not be personally liable for monetary damages to the Land Trust, its beneficiaries, or any other person for any statement, or failure to act regarding requirements of the Trust Agreement, unless:

i) The Trustee breached or failed to perform the duties of a Trustee; and
ii) The Trustee breach of, or failure to perform, those duties constitutes any of the following:

a) A violation of the criminal law, unless the Trustee had a reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe such conduct was unlawful. A judgment or other final adjudication against Trustee in any criminal proceeding for a violation of the criminal law estops that Trustee from contesting the fact that such breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the manager or managing member from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that such conduct was unlawful.

b) A transaction from which the Trustee derived an improper personal benefit, either directly or indirectly.

c) In a proceeding by or in the right of the Land Trust to procure a judgment in its favor or by or in the right of a beneficiary, conscious disregard of the best interest of the Land Trust, or willful misconduct.

d) In a proceeding by or in the right of someone other than the Trustee or a beneficiary, recklessness or an act or omission which was

committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

e) For the purposes of this section, the term “recklessness” means acting, or failing to act, in conscious disregard of a risk known, or so obvious that it should have been known, to the Trustee, and also known to the beneficiary, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or failure to act.

f) A Trustee is deemed not to have derived an improper personal benefit from any transaction if the transaction and the nature of any personal benefit derived by the Trustee are not prohibited by state or federal law or the articles or organization or operating agreement and, without further limitation, the transaction and the nature of any personal benefit derived by a Trustee are disclosed or known to the beneficiary, and the transaction was authorized, approved, or ratified by the vote of a majority-in-interest of the beneficiary, or the transaction was fair and reasonable to the Trustee at the time it was authorized by the Trustee, notwithstanding that a Trustee received a personal benefit.

(6) This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

Section 2-102 Naming of Beneficiaries: Trusts not to fail because no beneficiaries are specified by name and no duties laid on trustee; when interest of beneficiaries deemed personal property.

Sec. 1. No trust relating to real estate shall fail nor shall any use relating to real estate be defeated because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee or because no duties are imposed upon the trustee. The power conferred by any such instrument on a trustee to sell, lease, encumber or otherwise dispose of property therein described shall be effective and no person dealing with such a trustee shall be required to make further inquiry as to the right of such trustee to act nor shall he be required to inquire as to the disposition of any proceeds.

Sec. 2. In any case under this section, where there is a recorded deed of conveyance to a trustee, the interest of the beneficiaries there under shall be deemed to be personal property.

Section 2-103 Liens

Sec. 1. Judgments against a beneficiary and consensual liens against real property of a beneficiary do not attach to real property that is the subject of such a deed of conveyance unless the judgment is docketed or the lien recorded in the city or county where the property is located (i) before recordation of the deed creating the land trust and (ii) while the beneficiary has record title to the real property.

Sec. 2. Nothing in this section shall be construed to (i) affect any right which a creditor may otherwise have against a trustee or beneficiary except as provided above, (ii) enlarge upon

the power of a corporation to act as trustee under § 6.1.5 or (iii) affect the rule against perpetuities.

Section 3-101 Beneficiaries

Sec. 1. Whenever any trustee of a land trust, or any beneficiary or beneficiaries of a land trust, make application to the State or to any of its agencies or political subdivisions for any benefit, authorization, license or permit, relating to the land which is the subject of such trust, any interest therein, improvements thereto, or use thereof, such application shall identify each beneficiary of such land trust by name and address and define his interest therein. Each beneficiary shall be identified, regardless of the size of the beneficiary's interest in the land trust. During the term of the lease, the trustee shall file supplements to the application identifying (by name, address, and interest) each beneficiary added or deleted. A beneficiary identified in an application or supplement shall not be a nominee for another individual or entity. The application also shall specify whether the land trust currently owns the property that is the subject of the lease.

(1) All such applications and supplements shall be verified by the applicant in this capacity as trustee, or by the beneficiary as a beneficial owner of an interest in such land trust. If such application or supplement is filed by a body politic or other corporate entity it shall be verified by a duly authorized officer of such body politic or other corporate entity for whom the application is made.

(2) If an application or supplement is with respect to a lease of property to the State, the application or supplement shall be filed with the head of the appropriate State agency at least 30 days before the lease is executed.

Sec. 2. (a) No grant funds shall be paid to any trustee of a land trust, or any beneficiary or beneficiaries of a land trust, for any purpose relating to the land which is the subject of such trust, any interest in such land, improvements to such land or use of such land unless the grant agreement authorizes the grantee to enter into such agreement and a statement is first filed which identifies each beneficiary of such land trust by name and address and defines his interest therein. The statement shall be verified by the trustee, or by the beneficiary as a beneficial owner of an interest in such land trust. If the statement is filed by a body politic or other corporate entity it shall be verified by a duly authorized officer of the body politic or other corporate entity for which the statement is made. The statement shall be filed with the grantor agency.

(b) As used in this Section, "grant funds" and "grantor agency" have the same meanings ascribed to such terms in the _____, as amended.

Sec. 3. False verification – Perjury. Whoever, in swearing to, or affirming, an application or statement as required under this Act, makes a false statement as to the identification of beneficiaries of a land trust, or which is material to an issue or point in question in such application or statement, or who, having taken a lawful oath or made affirmation, shall testify willfully and falsely as to any of such matters for the purpose of inducing the approval of any such benefit, authorization, license or permit, or who shall suborn any other person to so swear, affirm or testify, is guilty of perjury or subornation of perjury, as the case may be, and upon conviction thereof, shall be sentenced as provided in Sections _____ of the Criminal Code of _____, as amended, for such offenses.

Section 3-102 Liability of Beneficiaries

- (1) Except as provided in this Act, the beneficiaries of a Land Trust are not liable, solely by reason of being a beneficiary, under a judgment, decree, or order of court or in any other manner, for a debt, obligation, or liability of the Land Trust;
- (2) Any such beneficiary acting under the Trust Agreement of a Land Trust is not liable to the Land Trustee or to any other beneficiary for the beneficiary's good faith reliance on the provisions of the Trust Agreement; and,
- (3) The beneficiary's duties and liabilities may be expanded or restricted in a Trust Agreement or beneficiary agreement.

Section 3-103 Trustees

- (1) Trustee duties.

Sec. 1. Fiduciary duties of holders of the power of direction. The power of direction, unless provided otherwise in the land trust agreement, is conferred upon the holders thereof for the use and benefit of all of the holders of the beneficial interest in the land trust. In exercising the power of direction, the holders are presumed to act in a fiduciary capacity for the benefit of all holders of the beneficial interest in the trust, unless otherwise provided in the land trust agreement. The beneficial interest shall be indefeasible and the power of direction shall not be so exercised to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest.

Sec. 2. Application of Act. This Act is declaratory of existing law and is intended to remove any possible conflicts or ambiguities, thereby confirming the existing law pertinent to land trusts and shall apply to all land trusts in effect before, on, or after the effective date of this Act.

- (2) Successor Trustee

Sec. 1. Unless the land trust agreement specifically provides for an alternate method of the appointing of a successor land trustee, the following provision is applicable to all land trust agreements.

Where the land trust agreement is silent as to the appointment of a successor trustee in the event of the death, resignation or termination due to dissolution, of a land trustee, the beneficiary or beneficiaries having the power of direction of the land trust agreement may appoint a successor or successors to the trust property by filing a declaration of appointment of a successor in trust, in the office of the recorder in the county, in which the trust property is located.

The declaration shall be signed by a beneficiary or beneficiaries of the trust and must contain:

- (1) The legal description of the trust property;
- (2) The name and address of the former trustee;
- (3) The name and address of the successor in trust; and

- (4) The declaration must contain a statement that the successor in trust has been appointed by the requisite percentage of the beneficiaries of the land trust, having the power of direction together with an acceptance of appointment by the successor in trust. The declaration must be acknowledged in the manner provided for acknowledgment of deeds.

Every successor land trustee appointed is fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its, or his predecessor, except that the successor land trustee shall be under no duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee.

Sec. 2. A land trust agreement may provide that the trustee, when directed to do so by the beneficiaries of the trust or their legal representatives, may convey the trust property directly to another trustee on behalf of said beneficiaries, or others named by said beneficiaries.

(3) Trustee as Creditor

Sec. 1. If a debt is secured by a security interest in a beneficial interest in a land trust or by a mortgage on land trust property, neither the validity or enforceability of the debt, security interest or mortgage nor the rights, remedies, powers and duties of the creditor with respect to the debt or the security shall be affected by the fact that the creditor and the trustee are the same person, and the creditor may extend credit, obtain such security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.

Sec. 2. The fact that a trustee of a land trust is or becomes a secured or unsecured creditor of the land trust, the beneficiaries of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust, shall not be a breach or, and shall not be deemed evidence of a breach of, any fiduciary duty owed by said trustee to the beneficiaries.

Sec. 3. This Act applies to all security interests in a beneficial interest in land trusts and all mortgages on land trust property and to all debts secured thereby, whether arising before, on, or after the effective date of this Act.

Section 4-101 Requirements on Land Trusts

Sec. 1. In residential situations. Residential property which is the subject of a land trust may not be sold under a real estate installment contract unless at the time of execution of such a contract a full disclosure of the name of the trustee and the designation of the trust and all of the beneficiaries of the trust is made by the seller to the contract purchaser and the contract is signed by the beneficiaries having the power of direction. Each such "real estate installment contract" shall be deemed to include a provision, whether actually incorporated in the "real estate installment contract" or not, that the beneficiaries undertake to convey or cause to be conveyed the real property which is the subject of the "real estate installment contract" in accordance with the terms of the "real estate installment contract". Any violation of this Act renders such a real estate installment contract voidable at the option of the purchaser.

Sec. 2. Recordation of conveyances of beneficial interests. Every trustee of a land trust who accepts any instrument which transfers the beneficial interest under such trust, other than trust documents when the actual consideration is less than \$100, shall record the instrument or

a facsimile thereof with the Clerk of the Circuit Court or Register of Titles of the county in which the real estate that is the subject of the trust is located. Such document shall be recorded in the same manner as a deed for such real estate would be recorded or registered within 60 days after the trustee accepts the instrument which transfers such beneficial interest. Any document which is to be recorded pursuant to this Section may be altered so as to delete or omit the name of any or all parties named in the instrument and may be modified in any other reasonable manner to prevent the disclosure of the identity of such parties.

Sec. 3. Any trustee who knowingly violates this Act is guilty of a misdemeanor of the third class and shall be liable to the State and any unit of local government for any taxes which would have been payable to the State or the unit of local government had the trustee complied with this Act, plus 20% interest on such amount, accruing from the date the trust document was executed.

Section 4-102 Building Code Violations

Sec. 1. A trustee who pursuant to a trust instrument has title to but no beneficial interest in real property, or a managing agent for real property within 10 days after receipt (by such trustee or a beneficiary empowered or an agent authorized to manage and control such property) from an enforcement agency of the initial written notice or complaint of violation of an ordinance, resolution or regulation of a political subdivision of this State relating to conditions or operations of real property affecting health or safety, shall disclose the identity of every owner and beneficiary with an interest in present use and enjoyment to the department or agency of such political subdivision primarily responsible for enforcement of such ordinance, resolution or regulation.

For residential buildings, if the violation charged has not been corrected within 180 days of notice to the trustee or managing agent, the enforcement agency shall make public the identity of all owners or all beneficiaries disclosed to it by placing such disclosure in a register to be available to the public at reasonable times in the office of the agency. A reasonable charge for the cost of any reproduction requested may be made. Where the violations are subsequently corrected, the agency shall remove the identity of the disclosed owners or beneficiaries from the register.

Sec. 1.1. In any case in which a property has been damaged or destroyed by fire, any fire inspector or other local officer charged with the duty of investigating fires, who has reason to believe that the damage or destruction was caused by other than accidental means, shall have, in addition to all other powers of his office, the following powers:

(a) If title to the damaged or destroyed property is held in a land trust, to require the prompt disclosure, under oath, by the trustee of such land trust of the beneficiaries; and to require the prompt disclosure, under oath, by any named beneficiary of such land trust of the following information:

(i) the identity of all persons who have any direct or indirect interest in the trust or who derive any direct or indirect benefit therefrom; and

(ii) a listing by street address of all properties located within the county of the damaged or destroyed property with respect to which any claim has been made, directly or indirectly, by or for such beneficiary's benefit under any policy of fire insurance for loss or

damage by fire within the previous 5 years, together with the identity of the insurer and the policy number.

(b) If title to the damaged or destroyed property is held in the name of a nominee, to require the prompt disclosure, under oath, by such nominee of the principal; and

(c) If title to the damaged or destroyed property is in a corporation, to require the prompt disclosure, under oath, by such corporation of each person who holds 15% or more of the shares of stock of the corporation.

(d) The fire inspectors or other local officers receiving any information furnished pursuant to this Section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(e) Any person who fails to make a disclosure required by a fire inspector or other local officer pursuant to this Section or any fire inspector or other local officer, who releases any information in violation of subsection (2), has violated this Act.

Sec. 2. Notwithstanding any exculpatory provision in the trust instrument or management agreement, a trustee, managing agent or any other person who violates this Act shall be guilty of a petty offense and fined \$100 for each day of such violation.

Section 5-101 Law Governing Perfection and Priority

Law Governing Perfection and Priority of Collateral Assignments of Beneficial Interests in Land Trusts. The local law of the State governs perfection, the effect of perfection or nonperfection, and the priority of a collateral assignment of, or other security interest in, a beneficial interest in a land trust. This Section implements the important interests of this State in matters associated with the administration of land trusts created for the principal purpose of owning an interest in land in this State and the regulation of restrictions on the transfer of beneficial interests in, and of the power of appointments under, such trusts.