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The Illinois Land Trust and Nebraska Law

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THE ILLINOIS LAND TRUST AND NEBRASKA LAW

The legal device known as an "Illinois Land Trust" (hereinafter referred to as "land trust") appears to be virtually unknown and unrecognized in Nebraska. The popularity this device has gained in Illinois since its inception and the fact that other states have been experimetning with it may show somewhat of a trend toward its general utility and acceptance. As such a device may be of help not only to real estate investors but also to lawyers, bankers and trust companies, this article seeks to explore and explain the land trust, its uses and advantages, and also whether it could readily be adopted in Nebraska.

I. INTRODUCTION

The land trust apparently originated in Illinois sometime in the nineteenth century but the first mention of it in the courts appears to be in the case of *Jennings v. Kotz*[1] where the court approved the device and lent strength to its general provisions. Virginia, only recently, has cleared the way for the use of land trusts by enacting a statute,[2] and it also appears that Florida is experimenting with this device.[3]

The parties to a land trust transaction are the settlor, the trustee and the beneficiary. In the most common instance, the settlor and the beneficiary will probably be the same person since settlor is the "original" owner of the property and in order to secure the benefits of a trust he will have to transfer the property to the trustee, designating himself as the beneficiary. As used throughout this article, the term "trust" means merely that land is being held by one party for the benefit of another. As far as the mechanics of a land trust are concerned, the settlor transfers the property to the trustee by means of a trust deed. By the terms of this deed the trustee holds full title, both legal and equitable interests, with "full power and authority" to sell and convey.[4] When this trust deed is recorded, it gives constructive notice to the world that the trustee has the power and authority to convey the title with full legal and equitable rights vesting in the bona fide purchaser regardless of and notwithstanding any adverse claims by the beneficiary or his creditors.

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1 299 Ill. 465, 132 N.E. 625 (1921).

2 VA. CODE ANN. § 55-17.1 (Supp. 1966).

3 *See* McKillop, *The Illinois Land Trust in Florida*, 13 FLA. L. REV. 173 (1960).

4 *See* Deed in Trust, appendix, *infra*

To protect the beneficiary, a separate trust *agreement* is executed between the settlor and the trustee prior to or concurrent with the execution of the deed of trust. By the terms of this instrument most of the broad powers granted the trustee in the trust deed are either limited or entirely taken away.[5] The beneficiaries are usually entitled, by the terms of the trust instrument, to the full incidents of "ownership"—encompassing the right to possession and the right to collect all rents and profits. The trustee can only deal with the property when authorized to do so, in writing, by the beneficiaries; this includes conveyance of title.[6] Even though the trust instrument leaves very little power or authority in the trustee, this instrument is *not recorded* and thus, it in no way limits, encumbers or affects the title a purchaser can or does receive from the trustee.[7] For this reason it would seem obvious that only a financially stable trust company should be named as trustee and never a relative, friend, or other individual.

Because of possible legal liability, the trustee normally acts only in accord with the trust instrument and the beneficiaries thereby retain the sole right to exercise the normal incidents of ownership.[8] The beneficiary's interest is considered to be personal property by the terms of the trust instrument,[9] and as it has been argued, by the doctrine of equitable conversion,[10] thus the bene-

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5 *See* Trust Instrument, appendix, *infra.*

6 The trustee does though, have certain affirmative duties which will be discussed below.

7 This particular aspect of the land trust is unquestioned in Illinois. *See* Garrett, *Land Trusts*, 1955 U. of ILL. L.F. 655 (1955). But in Florida, Resnick v. Goldman, 133 So. 2d 770 (Fla. Dist. Ct. App 1961), held that a marketable title could not be tendered by the trustee unless the trust instrument (as distinguished from the trust deed) was produced for examination when the property was held in a land trust. There appears to be little if any authority in Nebraska on this proposition. In an 1895 case, the Nebraska Supreme Court stated in its syllabus to the case that: "Where a trustee is invested with the apparent title to property, persons dealing with him are not chargeable with undisclosed limitations upon his power with respect to the subject of the trust. But where his powers are clearly defined by deed or other instrument creating the trust, duly filed or recorded in conformity with the registration laws, persons dealing with him in respect to the trust property must, at their peril, take notice of the extent of such power." Stark v. Olsen, 44 Neb. 646, 648, 63 N.W. 37, 38 (1895).

8 The beneficiary executes and delivers a form to the trustee ordering him to do the various acts which concern the trust property.

9 *See* Trust Deed and Instrument of Trust prototypes in appendix, *infra.* The Illinois courts have upheld this type of provision. *See* Duncanson v. Lill, 322 Ill. 528, 153 N.E. 618 (1926).

10 "There is an equitable conversion where the trustee is directed to sell the land, even though it is not his duty to sell it immediately.

ficial interest is as readily transferable as a stock certificate. This "conversion" also has other distinct advantages which will be discussed below.

II. ADVANTAGES INHERENT IN THE LAND TRUST

A. Advantages to Beneficiaries

As was stated above, the beneficiaries retain the sole right to exercise the normal incidents which accompany ownership of real property, and are also accorded the advantages resulting from joint ownership of personal property as opposed to joint ownership of real property. Being considered as personal property, joint "owners" have no right of partition,[11] and the handling of their fractional interests becomes as easy as dividing up the shares of stock in a corporation. Another inherent utility of the land trust is that the beneficial interest is assignable and as easily transferable as a stock certificate (thus able to be pledged as collateral security), so the beneficiary will thus be able to sell an "interest" in real property without the accompanying legal formalities. Also, being considered as personal property, the interest may thus be transferred without the signature of the spouse.[12]

Another consideration which may be advantageous in the case of a beneficiary who is not a resident of the state in which the land is located is that, since the beneficiary holds only personal property, only this would pass through his estate and there would be no effect upon the real property which would necessitate an ancillary probate proceeding in the state where the land is located.[13] This *may* also render certain inheritance tax advantages, since there could be no such tax levied by the state in which the land was situated.[14]

It is sufficient that there is imposed upon him by the trust instrument an absolute duty to sell at some time." A. Scott, Abridgement of the Law of Trusts § 131, at 265 (1960). "Even though the trust property is real estate, however, the interest of the beneficiary is regarded as personal property where the doctrine of equitable conversion is applicable." *Id.* § 142, at 273.

11 Breen v. Breen, 411 Ill. 206, 103 N.E.2d 625 (1952).

12 The signature of the transferor's spouse is usually considered as a requirement when transferring real property. *See* Zvacek v. Posvar, 118 Neb. 163, 223 N.W. 792 (1929).

13 In order for this statement to be valid the following must be true: even though the land itself is located in State A, that state will recognize the characterization of the land as personal property in State B. The authority for this proposition seems to be non-existent but if both states in the above statement were to recognize the land trust device, the controversy would probably never arise.

14 This is assuming that Neb. Rev. Stat. § 77-2001 (Reissue 1966), the Nebraska inheritance tax provision, would be interpreted in such a

A point which some may consider as an advantage is that of the possibility of privacy of ownership. The deed of trust does not name the beneficiary and the trustee, by the terms of the trust instrument,[15] is not to disclose this information except by express consent of the beneficiary or court order.[16]

By providing in the trust instrument for direct succession of the beneficial interest (subject to the rule against perpetuities), the settlor may even be able to avoid probate of that interest. Any advantage, which may be sought through the use of such a provision, will probably be offset by the added legal complexity and possible conflicts with the Statute of Wills,[17] both being problems which are not unique to the land trust, but which plague trust creations in general.

B. ADVANTAGES OF TRANSFERABILITY

Within this classification, the main advantage is that a purchaser can get marketable title from the trustee,[18] thus one signature, the trustee's, is capable of conveying title. This can be especially advantageous where several of the "owners" may be inaccessable or scattered all over the country or perhaps throughout the world.

Another advantage in this area arises from the fact that chaos in the personal affairs (i.e., divorce) of the beneficiaries cannot affect or in any way encumber the *title*. As a judgment against the beneficiaries is not a lien on the land in trust,[19] judgments would not cloud title although the beneficial interest may be subject to judicial sale.[20] Also, the placing of land in such a trust may have the indirect effect of "cleaning up title" by eliminating various and numerous entries which, in the absence of such a device, would appear on the abstract.

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manner that an out-of-state transfer, by will or intestate laws, of the beneficial interest would not be considered a transfer of property within this state.

15 *See* appendix, *infra*.

16 This privacy may be illusory, at least for the initial period after the land is placed in trust by the owner who became beneficiary. The astute title-searcher will, of course, be able to see who put the land into the trust, and who is presumably still the owner.

17 A conflict could arise out of the attempt to utilize the trust to pass property at the death of the settlor-beneficiary (assuming that in this particular instance they are the same person) without complying with the formalities of the statute of wills.

18 *See* note 6 *supra*.

19 Chicago Title & Trust Co. v. Mercantile Trust & Savings Bank, 300 Ill. App. 329, 20 N.E.2d 992 (1939).

20 Regas v. Danigeles, 54 Ill. App. 2d 271, 203 N.E.2d 730 (1964).

C. ADVANTAGES OVER OTHER "SYNDICATION" DEVICES

The land trust also has distinct benefits over other forms of land syndication devices.[21] 1) It avoids the "double taxation" situation incurred by a corporation which is taxed once on corporate income, and then the shareholders are taxed on the distributed dividends (under the federal or a state income tax). The same tax problem is incurred in the use of a "Massachusetts Business Trust" as is in the case of an ordinary corporation. 2) The joint tenancy problems which may arise out of a joint venture are eliminated by using the land trust. 3) A land trust is not dissolved by death, retirement or insanity of one of the beneficiaries as a partnership would be in such cases. Also a land trust is not subject to the mutual agency problems which may arise in a partnership. 4) The limited partners in a limited partnership may be in somewhat of an advantageous position as to liability but this is offset by a lack of any voice in the affairs of the partnership and the fact that a limited partnership is susceptible to the same problems as a general partnership. 5) The land trust also has distinct advantages over a "Real Estate Investment Trust" which is created exclusively by statute.[22] By statutory requirement to have a real estate investment trust, there must be at least one hundred participants, it cannot be used to develop real state as can a land trust, and the trustee usually has to be divorced from the operation and management of the property.

D. ADVANTAGES IN THE AREA OF FINANCING

Aside from the benefit of being able to borrow money and pledge the beneficial interest as collateral security, it is possible through the use of a land trust to limit the liability of the beneficiaries in financing expensive property. Many lending institutions are willing to look only to the trust res for security, so the end result is that the land is its own sole security with no personal liability required.[23]

III. DISADVANTAGES

There are very few disadvantages inherent in the use of the land trust which are worthy of discussion other than the strictly legal problems which will be discussed in the next section.

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[21] For a more complete discussion of the advantages over other forms of syndication, *see* Schwind, *Land Trusts—A Real Estate Syndication Device*, 101 TRUSTS & ESTATES 650, 652 (1962).

[22] NEB. REV. STAT. §§ 24-632 and 24-633 (Reissue 1964).

[23] The advantages in the financing area are not as limited as is this section. An imaginative attorney may well be able to use this device for numerous other types of transactions dealing with financing. Garrett, *Land Trusts*, 1955 U. OF ILL. L.F. 655 (1955).

One disadvantage which might be presented is that land trusts *could* be put to anti-social uses. A classic example that is often used is that they may become a tool of "slum lords" who are trying to hide their identity for the purpose of avoiding or trying to avoid civil and legal responsibilities. This poses no significant problem as numerous legal doctrines and/or devices (*e.g.* corporations—limited liability) may be put to "anti-social" uses; so this should not, for obvious reasons, be the sole criterion for a decision whether or not to scrap a particular device.

A disadvantage which may be most significant to the person desiring to use the land trust is the fees involved, though they would probably not be prohibitive. The fees would consist of charges made by the attorney(s), the trust company, etc. The fee in most instances, if not all, would probably exceed that of a holding and transfer of property by warranty deed, but this disregards any savings one would incur due to the advantages of this particular device.

IV. LEGAL PROBLEMS WHICH MAY ARISE

A. Statute of Uses or Similar Doctrines

The problem presented here is that the statute of uses type of doctrine *may* be held to execute the use or trust and place full title in the beneficiary, thus defeating the trust and its objectives. Such execution is based on the doctrine that where the trustee has no duties or functions to perform, the trust is said to become "dry" or "passive." When this occurs the statute of uses type doctrine comes into play and vests the title in the beneficiary.

By the terms of the usual land trust agreement, the trustee has two distinct duties to perform: 1) to perform and to execute such agreements and instruments as the beneficiary may command and 2) to transfer the property after a period of years, usually twenty, after the trust's inception.[24] The courts of Illinois have held these duties to be sufficient to alleviate any such problem with the statute of uses.[25] But Florida, in attempting to utilize this device without interference from their "statute of uses" has added a third duty; namely that of certain administrative duties consisting of "the duty to pay over all income and proceeds, to pay ad valorem taxes with

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[24] *See* the trust instrument, appendix, *infra*. The reason for the later duty will be discussed, *infra*, in connection with the rule against perpetuities.

[25] *See* Breen v. Breen, 411 Ill. 206, 103 N.E.2d 625 (1952); Chicago Title & Trust Co. v. Mercantile Trust & Savings Bank, 300 Ill. App. 329, 20 N.E.2d 992 (1939); Crow v. Crow, 348 Ill. 241, 180 N.E. 877 (1932). *But* c.f., Masters v. Smythe, 342 Ill. App. 185, 95 N.E.2d 719 (1950).

funds from sources other than the trust, and other ministerial duties."[26]

Excepting the Illinois decisions there is very scant authority in this area. The only other case which seems to pertain to a similar instrument is a Wisconsin decision which declares the trust to be passive (or "dry") where the trustee's only duty is to sell the trust res after a period of twenty years.[27]

Turning to Nebraska law; one can only predict how the courts of the state would resolve this issue due to the fact that there appears to be no case directly on point. Although Nebraska has not adopted the statute of uses into its common law,[28] the Nebraska Supreme Court has held that the Nebraska courts have the power to require the trustee to deliver the estate to the beneficiaries where he has no duties to perform and the trust is merely passive.[29] Unlike the statute of uses, the Nebraska doctrine as to the execution of passive trusts, seems to apply equally to trusts of personal property;[30] thus any argument to the effect that since the beneficiary's interest is personal property it is unaffected by the statute of uses or similar doctrine, would not be applicable in Nebraska to "cure" an otherwise passive trust.[31]

Since Nebraska does have a doctrine comparable to the statute of uses, the distinction between active and passive uses (trusts) would be of relevance to determine how a particular trust with a res of real property should be disposed of, and thus should be explored. The test that the Nebraska court seems to have approved is that which is set forth in the Restatement of Trusts,[32] which relates to the test employed before the enactment of the English statute of uses.

> A trust is not active unless the trustee has by the terms of the trust instrument affirmative duties to perform. If his sole duties

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26 McKillop, *The Illinois Land Trust in Florida*, 13 U. OF FLA. L. REV. 173, 176 (1960).

27 Janura v. Fencl, 261 Wis. 179, 52 N.W.2d 144 (1952).

28 *See* Hill v. Hill, 90 Neb. 43, 132 N.W. 738 (1911); Farmers' & Merchants' Ins. Co. v. Jensen, 58 Neb. 522, 78 N.W. 1054 (1899), *affirming* 56 Neb. 284, 76 N.W. 577 (1898).

29 Jones v. Shrigley, 150 Neb. 137, 33 N.W.2d 510 (1948); Hill v. Hill, 90 Neb. 43, 132 N.W. 738 (1911).

30 Hill v. Hill, 90 Neb. 43, 132 N.W. 738 (1911).

31 Even in the absence of a doctrine which applies the statute of uses limitations to personal property, such an argument would still seem to be untenable as the statute of uses and other similar doctrines are usually thought to apply to the trust res and not to the type of interest held by he beneficiary.

32 Lancaster County Bank v. Marshel, 130 Neb. 141, 148, 264 N.W. 470, 474 (1936).

> are negative, that is not to interfere with the beneficiary in his enjoyment of the property, the trust is passive. Prior to the Statute of Uses a person who held land to the use of another had, in addition to his negative duties, the following two affirmative duties: (1) to protect the property against other persons than the beneficiary; (2) to convey the property to the beneficiary in accordance with his directions. If there was a manifestation of an intention to impose additional affirmative duties, he held upon an active trust.[33]

Using this test the court decided that a trust involving a sale and distribution of the proceeds among certain persons as shall "then be my next of kin," would be active and thus should not be terminated by the court. In their decision the court concluded that:

> So long as the trustee, either expressly or by implication has imposed upon him some affirmative and substantial duty to perform or useful purpose to subserve, or discretion to exercise with respect to the control, protection, management, or disposition of the trust property, or to protect the estate for a given time or until the death of some person, in the state (in the absence of a statute of uses) the trust remains an active trust.[34]

It appears that where there are *no* duties, either implied or expressed, the trust will be considered passive.[35]

Thus, it would seem that by virtue of the fact that the trustee in a land trust does have affirmative duties to perform and does have a useful purpose, a land trust would (or should) be declared to be an active trust and thus would not be subject to execution in Nebraska. If the courts were to decide to the contrary, which would seem unlikely since to do so they would have to delimit past precedent, or if the attorneys of the state fear the *possibility* that such a problem may arise, it may be necessary to follow the lead of Virginia and enact a statute so as to eliminate any such uncertainty.[36]

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[33] RESTATEMENT OF TRUSTS § 69, comment *a* at 211-12 (1935).

[34] Lancaster Co. Bank v. Marshel, 130 Neb. 141, 142, 264 N.W. 470, 471 (1936). The Nebraska court approved of this statement and considered it as authority in Beals v. Croughwell, 140 Neb. 320, 326, 299 N.W. 638, 641 (1941).

[35] Flanagan v. Olderog, 118 Neb. 745, 746, 226 N.W. 316, 316 (1929); "I give and bequeath unto my beloved daughter Ann L. Flanagan, to be held in trust by her for my beloved son Bernard W. Flanagan, his heirs and assigns, one-fourth (¼) of all the residue of my estate subject only to the bequests and devises above set forth...." *Held*, passive.

Hill v. Hill, 90 Neb. 43, 44, 132 N.W. 738, 739 (1911): "I will and bequeath to my nephew, John W. Hill, Jr., in trust for my lawful heirs, all my estate, both real and personal, of every kind and nature, to be held by said trustee for the term of five years, and to be distributed among my lawful heirs at the end of such period." *Held*, passive.

[36] *See* VA. CODE ANN. § 55-17.1 (Supp. 1966).

B. RULE AGAINST PERPETUITIES

The second major problem which the land trust may encounter is the rule against perpetuities. This rule provides that the longest possible period for vesting an executory estate is the life or lives in being and twenty-one years thereafter, to which may be added the ordinary period of gestation.[37]

To alleviate this problem, the users of this device in Illinois limit the duration of the land trust to twenty years, thus avoiding all possible conflict whatever with this well known rule.[38] With careful drafting, there would be no reason why the trust could not be for a longer period of duration, but then its existence would have to be based upon a life or lives of persons in being plus the twenty years. The probable reason this is not utilized rather than the twenty year limitation, is because of the uncertain length of duration of the trust which is inherent in the use of lives of persons in being as opposed to a definite period of time.

C. CONFLICTS WITH NEBRASKA TRUST LAW

Unlike many other states, Nebraska has no statute for determining the purposes for which a trust may be created.[39] It does appear, however, by case law that a trust may be created in Nebraska for just about any purpose. The Nebraska Supreme Court in *Applegate v. Brown*[40] approves of and quotes from Scott's treatise on trusts to the effect that:

> A trust can be created for any purpose which is not against public policy or otherwise illegal. In order to uphold the trust, it is not necessary affirmatively to show that the purpose is one of the purposes for which a disposition of legal interests can be made; a trust can be created for any purpose unless it appears that the purpose is one which is illegal. So too any provision in the terms of the trust is valid, unless it appears that such provision is illegal.[41]

Since the land trust is neither per se illegal nor does it appear from prior discussion that it would be contrary to public policy,

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37 Hauschild v. Hauschild, 176 Neb. 319, 126 N.W.2d 192 (1964); Tiehen v. Hebenstreit, 152 Neb. 753, 42 N.W.2d 802 (1950); Hill v. Hill, 106 Neb. 17, 182 N.W. 578 (1921); Bunting v. Hromas, 104 Neb. 383, 177 N.W.190 (1920); Gillan v. Wilson, 124 Neb. 893, 248 N.W. 646 (1933).

38 *See* trust instrument, appendix, *infra.*

39 *E.g.*, N.Y. REAL PROP. LAW § 96; (McKinney 1945) which sets forth eight purposes for which a trust may be created thus pre-empting the field as to establishment of other types of trusts for different purposes. *See* Note, *Land Trusts in New York*, 37 ST. JOHN'S L. REV. 123, 132 (1962).

40 168 Neb. 190, 200, 95 N.W.2d 341, 348 (1959).

41 1 A. SCOTT, THE LAW OF TRUSTS § 59 (2d ed. 1956).

the only remaining hurdle in this area would seem to be that it not have a fraudulent purpose. This limitation would be significant only like in any other trust, where the trust was established for a fraudulent purpose such as in fraud of creditors. But this is merely a limitation which is generally applicable to *all* trusts. So any further discussion appears unnecessary and without the scope of this article.[42]

D. Other Problems and Issues

There are various other legal problems which might be considered in connection with the use of the land trust. None of these however, are unique to this particular device. This class of problems includes those such as whether the trustee is agent of the beneficiary, vice versa, or even neither is agent for the other;[43] whether the beneficiary would be entitled to the same homestead exemptions as set forth in the Nebraska statutes[44] for the interest he holds in the land trust as he would if he held the fee;[45] whether the trustee, the beneficiary, neither or both would be liable for negligence in maintaining the trust property;[46] and the problems incurred in the taxation of the property and/or its proceeds.[47]

The above listing is by no means meant to be exhaustive. It is conceivable that one may think of various other problems or issues which may be worthy of consideration as to this general area of discussion. But due to the limited scope of a comment such as this, they will not be further explored.

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[42] For a more complete discussion of the issues of illegality, public policy and fraudulent purposes as pertaining to trusts generally, *see* 1 A. Scott, The Law of Trusts §§ 60-65 (2d ed. 1956).

[43] Garrett, *Land Trusts,* 1955 U. of Ill. L.F. 655, 666 (1955).

[44] Neb. Rev. Stat. § 40-101 (Reissue 1960).

[45] "It is not essential to a homestead that it shall be free from incumbrances, nor that the occupant shall possess the legal title." State v. Townsend, 17 Neb. 530, 532 23 N.W. 509, 510 (1885). *See generally* H. Foster, *The Nebraska Homestead,* 3 Neb. L. Bull. 109 (1924) & 3 Neb. L. Bull. 353 (1925), and the cases cited therein. It would seem that the land trust would qualify for the homestead exemption if in the particular case the tests of the statute as to possession, value, etc. were met.

[46] *See* 3 A. Scott, The Law of Trusts § 247 (2d ed. 1956); Comment, *Some Aspects of Illinois Land Trusts,* 8 DePaul L. Rev. 385, 389-91 (1959); Garrett, *supra* note 41, at 664-66.

[47] As to federal income taxation, *see* Note, *Internal Revenue Rule* 63-16—*Effect on Nondisclosure of Land Trusts,* 59 Nw. U.L. Rev. 98 (1964); Note, *Land Trusts in New York,* 37 St. John's L. Rev. 123, 126-88 (1962).

V. CONCLUSION

There can be but little doubt that the land trust would be a valuable addition and contribution to Nebraska law. Its advantages outweigh, by far, its disadvantages and any possible legal problems which the preceding discussion may have raised.

Furthermore the legal problems posed as to the use of the land trust would not seem to be prohibitive. If a prediction may be ventured, based upon the past decisions of the Nebraska courts, it would seem that the Illinois land trust would be favorably accepted. But, as with any prediction, no one can be entirely sure or say with any certainty how the courts would react in any one particular situation. Thus it must be urged that in the outset any attempted use of this device must be done with great care so as to withstand the close scrutiny which accompanies anything new or different.

Jarret C. Oeltjen, '68

APPENDIX

DEED IN TRUST

THIS INDENTURE WITNESSETH, That the Grantor

of the County of and State of for and in consideration of Dollars, and other good and valuable considerations in hand paid, Convey and Quit Claim unto the CHICAGO TITLE AND TRUST COMPANY, a corporation of Illinois, as Trustee under the provisions of a trust agreement dated the day of 19 . known as Trust Number , the following described real estate in the County of and State of Illinois, to-wit:

TO HAVE AND TO HOLD the said premises with the appurtenances upon the trusts and for the uses and purposes herein and in said trust agreement set forth.

Full power and authority is hereby granted to said trustee to improve, manage, protect and subdivide said premises or any part thereof, to dedicate parks, streets, highways or alleys and to vacate any subdivision or part thereof, and to resubdivide said property as often as desired, to contract to sell, to grant options to purchase, to sell on any terms, to convey either with or without consideration, to convey said premises or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said property, or any part thereof, to lease said property, or any part thereof, from time to time, in possession or reversion, by leases to commence in praesenti or futuro, and upon any terms and for any period or periods of time, not exceeding in the case of any single demise the term of 198 years, and to renew or extend leases upon any terms and for any period or periods of time and to amend, change or modify leases and the terms and provisions thereof at any time or times hereafter, to contract to make leases and to grant options to lease and options to renew leases and options to purchase the whole or any part of the reversion and to contract respecting the manner of fixing the amount of present or future rentals, to partition or to exchange said property, or any part thereof, for other real or personal property, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said premises or any part thereof, and to deal with said property and every part thereof in all other ways and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with said trustee in relation to said premises, or to whom said premises or any part thereof shall be conveyed, contracted to be sold, leased or mortgaged by said trustee, be obliged to see to the application of any purchase money, rent, or money borrowed or advanced on said premises, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of said trustee, or be obliged or privileged to inquire into any of the terms of said trust agreement; and every deed, trust deed, mortgage, lease or other instrument executed by said trustee in relation to said real estate shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument, (a) that at the time of the delivery thereof the trust created by this indenture and by said trust agreement was in full force and effect, (b) that such conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this indenture and in said trust agreement or in some amendment thereof and binding upon all beneficiaries thereunder, (c) that said trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument and (d) if the conveyance is made to a successor or successors in trust, that such successor or successors in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessor in trust.

The interest of each and every beneficiary hereunder and of all persons claiming under them or any of them shall be only in the earnings, avails and proceeds arising from the sale or other disposition of said real estate, and such interest is hereby declared to be personal property, and no beneficiary hereunder shall have any title or interest, legal or equitable, in or to said real estate as such, but only an interest in the earnings, avails and proceeds thereof as aforesaid.

If the title to any of the above lands is now or hereafter registered, the Registrar of Titles is hereby directed not to register or note in the certificate of title or duplicate thereof, or memorial, the words "in trust", or "upon condition", or "with limitations", or words of similar import, in accordance with the statute in such case made and provided.

And the said grantor_____hereby expressly waive_____ and release_____any and all right or benefit under and by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

In Witness Whereof, the grantor_____aforesaid ha_____hereunto set_____

_____hand_____and seal_____this_____day of_____

_____19_____.

_____(Seal) _____(Seal)

THIS TRUST AGREEMENT,

dated this_____day of_____

19_____, and known as Trust Number_____, is to certify that the CHICAGO TITLE AND TRUST COMPANY, a corporation of Illinois as trustee hereunder, is about to take title to the following described real estate in _____ County, Illinois, to-wit:
otherwise known as No._____Street
and that when it has taken the title thereto, or to any other real estate deeded to it as trustee hereunder, it will hold it for the uses and purposes and upon the trusts herein set forth. The following named persons shall be entitled to the earnings, avails and proceeds of said real estate according to the respective interests herein set forth, to-wit:

IT IS UNDERSTOOD AND AGREED between the parties hereto, and by any person or persons who may become entitled to any interest under this trust, that the interest of any beneficiary hereunder shall consist solely of a power of direction to deal with the title to said property and to manage and control said property as hereinafter provided, and the right to receive the proceeds from rentals and from mortgages, sales or other disposition of said premises, and that such right in the avails of said property shall be deemed to be personal property, and may be assigned and transferred as such; that in case of the death of any beneficiary hereunder during the existence of this trust, his or her right and interest hereunder shall, except as herein otherwise specifically provided, pass to his or her executor or administrator, and not to his or her heirs at law; and that no beneficiary now has, and that no beneficiary hereunder at any time shall have any right, title or interest in or to any portion of said real estate as such, either legal or equitable, but only an interest in the earnings, avails and proceeds as aforesaid. The death of any beneficiary hereunder shall not terminate the trust nor in any manner affect the powers of the trustee hereunder. No assignment of any beneficial interest hereunder shall be binding on the trustee until the original or a duplicate of the assignment is lodged with the trustee, and every assignment of any beneficial interest hereunder, the original or duplicate of which shall not have been lodged with the trustee, shall be void as to all subsequent assignees or purchasers without notice.

Nothing contained in this agreement shall be construed as imposing any obligation on the trustee to file any income, profit or other tax reports or schedules, it being expressly understood that the beneficiaries from time to time will individually make all such reports, and pay any and all taxes, required with respect to the earnings, avails and proceeds of said real estate or growing out of their interest under this trust agreement.

In case said trustee shall make any advances of money on account of this trust or shall be made a party to any litigation on account of holding title to said real estate or in connection with this trust, or in case said trustee shall be compelled to pay any sum of money on account of this trust, whether on account of breach of contract, injury to person or property, fines or penalties under any law or otherwise, the beneficiaries hereunder do hereby jointly and severally agree that they will on demand pay to the said trustee, with interest thereon at the rate of 7% per annum, all such disbursements or advances or payments made by said trustee, together with its expenses, including reasonable attorneys' fees, and that the said trustee shall not be called upon to convey or otherwise deal with said property at any time held hereunder until all of said disbursements, payments, advances and expenses made or incurred by said trustee shall have been fully paid, together with interest thereon as

aforesaid. However, nothing herein contained shall be construed as requiring the trustee to advance or pay out any money on account of this trust or to prosecute or defend any legal proceeding involving this trust or any property or interest thereunder unless it shall be furnished with funds sufficient therefor or be satisfactory indemnified in respect thereto.

It shall not be the duty of the purchaser of said premises or of any part thereof to see to the application of the purchase money paid therefor; nor shall any one who may deal with said trustee be required or privileged to inquire into the necessity or expediency of any act of said trustee, or of provisions of this instrument.

This trust agreement shall not be placed on record in the Recorder's Office of the county in which the land is situated, or elsewhere, and the recording of the same shall not be considered as notice of the rights of any person hereunder, derogatory to the title or powers of said trustee.

The Trustee may at any time resign by sending by registered mail a notice of its intention so to do to each of the then beneficiaries hereunder at his or her address last known to the Trustee. Such resignation shall become effective ten days after the mailing of such notices by the Trustee. In the event of such resignation, a successor or successors may be appointed by the person or persons then entitled to direct the Trustee in the disposition of the trust property, and the Trustee shall thereupon convey the trust property to such successor or successors in trust. In the event that no successor in trust is named as above provided within ten days after the mailing of such notices by the Trustee, then the Trustee may convey the trust property to the beneficiaries in accordance with their respective interests hereunder, or the Trustee may, at its option, file a bill for appropriate relief in any court of competent jurisdiction. The Trustee notwithstanding such resignation shall continue to have a first lien on the trust property for its costs, expenses and attorneys' fees and for its reasonable compensation.

Every successor Trustee or Trustees appointed hereunder shall become fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its, his or their predecessor.

It is understood and agreed by the parties hereto and by any person who may hereafter become a party hereto, that said Chicago Title and Trust Company will deal with said real estate only when authorized to do so in writing, and that (notwithstanding any change in the beneficiary or beneficiaries hereunder) it will, unless otherwise directed in writing by any of the beneficiaries, on the written direction

of_____or will on the written direction of such other person or persons as shall be from time to time named in writing by the beneficiary or beneficiaries, or on the written direction of such person or persons as may be beneficiary or beneficiaries at the time, make deeds for, or otherwise deal with the title to said real estate, provided, however, that the trustee shall not be required to enter into any personal obligation or liability in dealing with said land or to make itself liable for any damages, costs, expenses, fines or penalties, or to deal with the title so long as any money is due to it hereunder. Otherwise, the trustee shall not be required to inquire into the propriety of any such direction.

The beneficiary or beneficiaries hereunder, in his, her or their own right shall have the management of said property and control of the selling, renting and handling thereof, and each beneficiary or his or her agent shall collect and handle his or her share of the rents, earnings, avails and proceeds thereof, and said trustee shall have no duty in respect to such management or control, or the collection, handling or application of such rents, earnings, avails or proceeds, or in respect to the payment of taxes or assessments or in respect to insurance, litigation or otherwise, except on written direction as hereinabove provided, and after the payment to it of all money necessary to carry out said instructions. No beneficiary hereunder shall have any authority to contract for or in the name of the trustee or to bind the trustee personally. If any property remains in this trust twenty years from this date it shall be sold at public sale by the trustee on reasonable notice, and the proceeds of the sale shall be divided among those who are entitled thereto under this trust agreement.

The Chicago Title and Trust Company shall receive for its services in accepting

this trust and in taking title hereunder the sum of $_____; also the sum of

$_____per year for holding title after the_____day of_____

_____, 19_____, so long as any property remains in this trust; also its regular schedule fees for making deeds, and it shall receive reasonable compensation for any special services which may be rendered by it hereunder, or for taking and holding any other property which may hereafter be deeded to it hereunder, which fees, charges or other compensation, the beneficiaries hereunder jointly and severally agree to pay.

IN TESTIMONY WHEREOF, the Chicago Title and Trust Company has caused these presents to be signed by its Assistant Vice President and attested by its Assistant Secretary, and has caused its corporate seal to be hereto attached as and for the act and deed of said corporation, the day and date above written.

CHICAGO TITLE AND TRUST COMPANY,

ATTEST: _____ By _____
Assistant Secretary. Vice-President.

And on said day the said beneficiaries have signed this Declaration of Trust Agreement in order to signify their assent to the terms hereof.

_____ (SEAL) Address _____

May the name of any beneficiary be disclosed to the public? _____

To whom shall written inquiries be referred? _____

May oral inquiries be referred directly? _____ To whom? _____

To whom shall bills be mailed? _____