

GETTING TITLE OUT OF TRUSTS

COMPENDIUM OF TRUST-RELATED STATUTES

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M.G.L. 183. Alienation of Land

§ 32. Letters of attorney; applicability of law

The law relative to the acknowledgment and recording of deeds shall apply to letters of attorney for the conveyance of real estate.

Source

St.1849, c. 205; G.S.1860, c. 89, § 29; St.1879, c. 86; St.1879, c. 120, § 14; R.L.1902, c. 127, § 17.

M.G.L. 183, Appendix.

Form (3)

(3) *Deed of Executor, Administrator, Trustee, Guardian, Conservator, Receiver or Commissioner.*

[I, _____,] executor of the will of administrator of the estate
of trustee under guardian of conservator of receiver of the estate of
commissioner by the power conferred by , and every other power, for dollars paid,
grant to
the land in

(description)

Witness hand and seal this day of

(Here add acknowledgment.) (Seal.)

Source

St.1912, c. 502, § 4.

M.G.L. c. 184. General Provisions Relative to Real Property

§ 25. Indefinite references; effect; application

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.

Source

Added by St.1959, c. 294, § 1.

NOTE: See also, M.G.L. c. 203, § 3 (Purchasers Without Notice), *infra*.

§ 34. Good faith purchasers of interests in real estate from trustees; binding effect on trust; recording conditions

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.

[Formatting changed make reading easier.]

Source

Added by St.1973, c. 199.

§ 35. Trustee's certificate; requirements; effect

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**. [NOTE: Formatting changed to make reading easier.]

Source

Added by St. 2002, c. 508, § 1, an emergency act, which was approved Jan. 1, 2003, eff. Jan. 1, 2003.

M.G.L. c. 184B – Short Form Terms for Wills and Trusts

§ 1. Terms; incorporation by reference; copy of section defining term

The terms defined in this chapter may be used in any will or trust and, except as otherwise provided in the instrument, shall have the full force, meaning and effect of the words by which they are so defined. Adoption or employment in substance of a defined term in such instrument shall be a sufficient incorporation by reference of the applicable section of this chapter in effect at the date of the execution of the instrument, but this provision shall not preclude other methods or incorporation of any section in part only or subject to such modification as the incorporating instrument may provide. An attorney at law preparing a will or trust who uses a term defined in this chapter shall furnish to the testator or settlor a copy of the section of this chapter by which the term is defined; provided, however, that failure to do so shall not affect the validity of the incorporation by reference.

Source

Added by St.1981, c. 688, § 1.

§ 2. Statutory optional fiduciary powers; limitation of powers

The following powers shall be known as the “**Statutory Optional Fiduciary Powers**” [emphasis added] 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. Powers conferred on the fiduciary shall be exercised only in accordance with a reasonable discretion. 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.

Source

Added by St.1981, c. 688, § 1.

M.G.L. c. 185 – The Land Court and Registration of Title to Land

§ 72. Trusts in registered land

If a deed or other instrument is filed in order to transfer registered land in trust, or upon any equitable condition or limitation expressed therein, or to create or declare a trust or other equitable interest in such land without transfer, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate; but a memorandum thereof shall be entered by the words “in trust”, or “upon condition”, or other apt words, and by a reference by number to the instrument authorizing or creating the same. The assistant recorder shall note upon the original instrument creating or declaring the trust or other equitable interest a reference by number to the certificate of title to which it relates, and to the volume and page in the registration book in which it is registered. **If the instrument creating or declaring a trust or other equitable interest is already recorded in the registry of deeds or of probate, a certified copy may be filed by the assistant recorder and registered.**

Source

St.1898, c. 562, § 65; R.L.1902, c. 128, § 64; Amended by [St.1996, c. 481, § 11](#).

§ 73. Trusts with powers of sale, mortgage, etc.

If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words “with power to sell”, or “power to mortgage”, and by apt words of description in case of other powers. No instrument which transfers, mortgages or in any way deals with registered land held in trust shall be registered, unless the power thereto enabling is expressly conferred in the trust instrument, or unless the decree of a court of competent jurisdiction on a bill for instructions or other proceeding has construed the

instrument in favor of the power. In such case a certified copy of such decree may be filed with the assistant recorder, and he shall make registration in accordance therewith.

Source

St.1898, c. 562, § 66; R.L.1902, c. 128, § 65. Note that this statute has not been updated to accommodate for the MUTC, particularly that statutory powers under M.G.L. c. 203E, §§ 815 and 816.

§ 74. Appointment of new trustee; proceedings

If a new trustee of registered land is appointed by the supreme judicial court, the superior court or the probate court, a new certificate shall be entered to him upon presentation to the assistant recorder of a certified copy of the decree.

Source

St.1898, c. 562, § 67; R.L.1902, c. 128, § 66; Amended by [St.1996, c. 481, § 12](#).

M.G.L. c. 188 - Homesteads

§ 1. Definitions

“Automatic homestead exemption”, an exemption in the amount of \$125,000 pursuant to section 4; provided, however, that: (1) with respect to a home owned as joint tenants or as tenants by the entirety, the automatic homestead exemption shall remain whole and unallocated between the owners, provided that the owners together shall not be entitled to an automatic homestead exemption in excess of \$125,000; and (2) with respect to a home owned by multiple owners as tenants in common or as trust beneficiaries, the automatic homestead exemption shall be allocated among all owners in proportion to their respective ownership interests.

“Declared homestead exemption”, an exemption in the amount of \$500,000 created by a written declaration, executed and recorded pursuant to section 5; provided, however, [hereafter are provisos as to how the \$500,000 exemption will be allocated among multiple owners depending on the nature and extent of their interests].

...

“Owner”, a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant in common, life estate holder, remainderman or holder of a present, vested and non-contingent beneficial interest in a trust, including any of the foregoing who is a lessee-shareholder of a residential cooperative housing unit.

Source

Added by St.2010, c. 395, § 1, eff. Mar. 16, 2011. Amended by St.2022, c. 175, §§ 30A, 30B, eff. Nov. 8, 2022.

§ 2. Homestead protection for elderly or disabled persons

[Text omitted]

§ 3. Acquisition and creation of estate of homestead; exemptions

[Text omitted]

§ 4. Automatic homestead exemption in absence of a valid recorded declaration of homestead; subordination of automatic exemption to subsequent new loan or line of credit

[Text omitted]

§ 5. Declaration of homestead; contents; recording

(a) A declaration of homestead shall be in writing, signed and acknowledged under penalty of perjury by each owner to be benefited by the homestead, except as provided in clause (4), shall be recorded and shall comply with the following:

(1) each owner to be benefited by the homestead, and the owner's non-titled spouse, if any, shall be identified;

(2) the declaration shall state that each person named therein occupies or intends to occupy the home as their principal residence;

(3) if the home is co-owned by a married couple, whether in their names only or as co-tenants with others, and the home is the principal residence or is intended to be the principal residence of both spouses, a declaration under section 3 shall be executed by both spouses; and

(4) if the home is owned in trust, only the trustee shall execute the declaration.

(b) A declaration of homestead under [section 2](#) shall, in addition to the requirements of subsection (a), include the following:

(1) a statement that the owner to be benefited is an elderly person or a disabled person; and

(2) with respect to a declaration of homestead benefiting a disabled person: (i) an original or certified copy of a disability award letter issued to the person by the United States Social Security Administration; or (ii) a letter signed by a physician registered with the board of registration in medicine certifying that the person meets the disability requirements stated in [42 U.S.C. 1382c\(a\)\(3\)\(A\)](#) and [42 U.S.C. 1382c\(a\)\(3\)\(C\)](#) as in effect at the time of recording; provided, however, that the award letter or physician's letter shall be recorded with the declaration.

(c) A declaration of homestead shall not be created within a deed or other instrument vesting title in the owner.

(d) The statement of principal residence required in clause (2) of subsection (a) shall be binding upon an identified owner, including an owner who is a beneficiary of a trust, but may be overcome by an interested third party upon presentation of clear and convincing evidence to the contrary. In the event that spouses occupy or intend to occupy separate homes and valid declarations are recorded with respect to each, then both estates of homestead together shall not exceed the declared homestead exemption.

The estate of homestead of an individual who records a declaration of homestead under section 3 and who subsequently marries shall automatically be deemed to benefit that individual's spouse. Any subsequent recording of a declaration of homestead benefiting: (i) a family member identified on a prior declaration on the same home; or (ii) the spouse of that person, without an intervening release, shall relate back to the filing date of the earliest recorded declaration, but the provisions of this chapter pursuant to which the later recorded declaration was made shall control the rights of a person identified in the later declaration.

(e) The declaration of homestead shall recite whether the owner, the owner's spouse or other family member to be benefitted is a servicemember who may be subject to protection under the Servicemembers Civil Relief Act, [50 U.S.C. app. § 533](#), should that owner, spouse or family member be called to active duty. A failure to include a recital as to servicemember status shall not affect the validity or enforceability of the declaration and the rights created thereunder.

Source

Added by St.2010, c. 395, § 1, eff. Mar. 16, 2011. Amended by St.2012, c. 108, § 15, eff. May 31, 2012.

§ 10. Termination of estate of homestead

[Subsections (a) and (b) applicable as provided by 2022, 175, Sec. 30G.]

(a) An estate of homestead created under [section 3](#) or [4](#) may be terminated by any of the following methods:

(1) a deed to a non-family member conveying the home, signed by the owner and, if any, a non-owner spouse or former spouse who resides in the home as a principal residence as of the date of the deed, provided however, that a deed to a trustee of a trust for the benefit of a grantor shall not terminate that grantor's existing homestead, which shall continue as to the interest of that grantor as trust beneficiary;

(2) a recorded release of the estate of homestead, duly signed and acknowledged by the owner and, if any, a non-owner spouse or former spouse who resides in the home as a principal residence as of the date of the release, which release may be executed by those persons either separately or jointly;

(3) the abandonment of the home as the principal residence by the owner, the owner's spouse, former spouse or minor children, except that such abandonment shall terminate only the rights of the persons who have abandoned the home; provided, however, that no person in military service as defined in 50 U.S.C. appendix, section 511 shall be deemed to have abandoned the home due to such military service;

(4) in the case of a home the title to which is held in trust, by either: (i) the execution of a deed or a release of homestead by the trustee; or (ii) action of a beneficial owner identified in the declaration, who is not a minor child, taken in the same manner as provided in clauses (2) and (3);

(5) the subsequent recorded declaration of an estate of homestead under [section 3](#) on other property, except that such declaration shall terminate only the rights of the owner making such subsequent declaration and the rights of that owner's spouse and minor children who reside or intend to reside in the other property as their principal residence;

(6) a deed setting forth (i) that the grantor is unmarried or (ii) that the property is either not a home or not the grantor's home;

(7) a deed that includes a statement certified under the penalties of perjury that (i) there is no spouse or former spouse entitled to an estate of homestead or (ii) the property is not the home of the grantor's spouse or former spouse;

(8) a recorded affidavit pursuant to [section 5B of chapter 183](#) setting forth that, at the time of delivery of a deed, mortgage or other instrument of conveyance to a non-family member, (i) the grantor was unmarried, or (ii) the grantor had no spouse or former spouse entitled to claim the benefit of an existing estate of homestead, or (iii) the property was not a home, or (iv) the property was not the home of the grantor or the grantor's spouse or former spouse; provided, however, that the affidavit may be recorded simultaneously or subsequent to the deed, mortgage or other instrument of conveyance;

(9) a divorce judgment or decree of a court of competent jurisdiction shall release the homestead of a spouse who (a) is required therein to convey title to the home to the other spouse, or (b) was not an owner of the home and was not awarded therein either title or possessory rights in the home.

(b) No deed between spouses or former spouses or co-owners who individually or jointly hold an estate of homestead under [section 3](#) or [section 4](#) and no deed between a trustee and a trust beneficiary or between a life tenant and a remainderman shall terminate the homestead unless each co-owner, spouse, former spouse, trust beneficiary or remainderman entitled to the benefit of the homestead has executed an express release thereof pursuant to clause (2) or clause (4) of subsection (a).

(c) If a subsequent declaration on other property which terminates a homestead under clause (5) of subsection (a) is later invalidated, the prior declaration shall not be reinstated; provided, however, that the owner shall have the benefit of the provisions of [section 4](#).

(d) Except for the subordination provided in [section 9](#), nothing contained in a mortgage or any document executed in connection therewith shall terminate or otherwise affect a homestead estate.

(e) A deed reserving an estate of homestead shall convey, according to its terms, any title or interest in the property beyond the estate of homestead.

Source

Added by [St.2010, c. 395, § 1, eff. Mar. 16, 2011](#). Amended by [St.2022, c. 175, § 30D, eff. Nov. 8, 2022](#).

§ 13. Effect of deed, release, mortgage, affidavit or other instrument of conveyance containing statement of any facts set forth in Section 10(a)(6) to (8); effect of subsequent residency or renewal residency on priority

[Text of section applicable as provided by 2022, 175, Sec. 30G.]

A recorded deed, release, mortgage, affidavit or other instrument of conveyance containing a statement of any facts set forth in [clauses \(6\), \(7\) or \(8\) of subsection \(a\) of section 10](#) may be relied upon by a good faith purchaser for value and shall be conclusive proof of the parties, if any, then entitled to claim an estate of homestead. An affidavit pursuant to [clause \(7\) of subsection \(a\) of section 10](#) shall be accepted in the appropriate registry of deeds or registration district of the land court. The subsequent residency or renewal of residency in the home by a grantor or spouse of the grantor, releaser or mortgagor shall not defeat the priority of a mortgage, release or conveyance accepted in reliance on such recorded deed, release, mortgage, affidavit or other instrument of conveyance.

Source

Added by [St.2010, c. 395, § 1, eff. Mar. 16, 2011](#). Amended by [St.2022, c. 175, § 30F, eff. Nov. 8, 2022](#).

M.G.L. c. 190B. Massachusetts Uniform Probate Code.

Source

Added by [St.2008, c. 521, § 9, eff. Mar. 31, 2012](#).

§ 2-511. Testamentary additions to trusts

(a) A will may validly devise property to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settler has reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator's death by the testator's devise to the

trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, or concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised to a trust described in subsection (a) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

§ 2-901. Statutory rule against perpetuities

(a) A nonvested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) the interest either vests or terminates within 90 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

UNIFORM PROBATE CODE COMMENT

Section 2-901 codifies the validating side of the common-law Rule and implements the wait-and-see feature of the Uniform Statutory Rule Against Perpetuities. As provided in Section 2-906, this section and the other sections in Subpart 1 of Part 9 supersede the common-law Rule Against Perpetuities (common-law Rule) in jurisdictions previously adhering to it (or repeals any statutory version or variation thereof previously in effect in the jurisdiction). The common-law Rule (or the statutory version or variation thereof) is replaced by the Statutory Rule in Section 2-901 and by the other provisions of Subpart 1 of Part 9.

Section 2-901(a) covers nonvested property interests, and will be the subsection most often applicable. Subsections (b) and (c) cover powers of appointment.

Paragraph (1) of subsections (a), (b), and (c) is a codified version of the validating side of the common-law Rule. In effect, paragraph (1) of these subsections provides that nonvested property interests and powers of appointment that are valid under the common-law Rule Against Perpetuities, including those that are rendered valid because of a perpetuity saving clause, continue to be valid under the Statutory Rule and can be declared so at their inceptions. This means that no new learning is required of competent estate planners: The practice of lawyers who competently draft trusts and other property arrangements for their clients is undisturbed.

Paragraph (2) of subsections (a), (b), and (c) establishes the wait-and-see rule. Paragraph (2) provides that an interest or a power of appointment that is not validated by paragraph (1), and hence would have been invalid under the common-law Rule, is given a second chance: Such an interest is valid if it does not actually remain in existence and nonvested when the 90-year permissible vesting period expires; such a power of appointment is valid if it ceases to be subject to a condition precedent or is no longer exercisable when the permissible 90-year period expires.

[NOTE: The remainder of the extensive Comment has been omitted but if you have any questions about the meaning or application of the remaining subsections of § 2-901, a review of the additional comments will likely prove helpful.]

M.G.L. c. 202. Sales, Mortgages and Leases of Real Estate by Executors, Administrators, Guardians and Conservators

§ 37. Decree upon petition for leave to sell property; scope

The decree of a probate court upon a petition for leave to sell real or personal property shall be sufficient to authorize any action requiring a license by said court by any general or special law. A decree, authority, or order of said court shall contain a description of the real or personal property and the terms of sale.

Source

Added by St.1973, c. 677. Amended by St.1977, c. 466, § 2.

§ 38. Decree; presumptions; highest possible price

After the entry of a decree authorizing or licensing an executor, administrator, guardian, conservator or trustee to sell real estate at a public or private sale, provided: (a) the notice of the petition for license to sell real estate and of the time and place appointed for hearing, the same shall have been given by publication at such times and in such newspapers as the court orders, and (b) there shall have been no appearance entered against such sale prior to the entry of the decree or where such appearance shall have been entered and withdrawn prior to the entry of

the decree, notwithstanding the fact that an appeal may have been taken prior to the expiration of the period allowed for an appeal therefrom, **it shall be conclusively presumed that the amount of the advantageous offer stated in said petition license to sell real estate is the highest possible price obtainable for the real estate described in such petition and that the** executor, administrator, guardian, conservator, or **trustee has fully satisfied his fiduciary duty to obtain the highest possible price for such real estate.**

Source

Added by St.1976, c. 549. Amended by [St.1991, c. 320, § 2](#).

M.G.L. c. 203. Trusts

§ 1. Trusts in realty; necessity of writing

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.

Source

St.1692-3, c. 15, § 5; St.1783, c. 37, § 3; R.S.1836, c. 59, § 30; G.S.1860, c. 100, § 19; P.S.1882, c. 141, § 1; R.L.1902, c. 147, § 1.

§ 2. Record of trust; notice

If a trust concerning land is created or declared by such instrument, the recording of the instrument, or of a certificate conforming to the requirements of section 35 of chapter 184, in the registry of deeds or the registration office of the land court, in either case for the county or district where the land lies, shall be equivalent to actual notice to every person claiming under a conveyance, attachment or execution thereafter made or levied.

Source

Amended by [St.2002, c. 508, § 2](#) (eff. Jan. 1, 2003).

§ 3. Purchasers without notice

No trust concerning land, whether implied by law or created or declared by the parties, shall defeat the title of a purchaser for a valuable consideration without notice of the trust, or prevent a creditor who has no notice of the trust from attaching the land or from taking it on execution as if no such trust existed.

Source

R.S.1836, c. 59, § 31; G.S.1860, c. 100, § 20; P.S.1882, c. 141, § 3; R.L.1902, c. 147, § 3.

See also, M.G.L. c. 184, § 25 (Indefinite Reference Statute), *supra*.

NOTE: The following two sections were part of M.G.L. c. 203 up until they were repealed by Ch. 521, § 27 of the Acts of 2008, as part of the enactment of the Massachusetts Uniform Probate Code, M.G.L. c. 190B, Article VII (Trust Administration) of which governed testamentary and *inter vivos* trusts but much of that Article was repealed as part of the enactment of the Massachusetts Uniform Trust Code, M.G.L. c. 203E, including Section 7-201 (Court: Jurisdiction of Trusts), which contained a provision in subsection (a)(3) providing the Probate Court with express power “to authorize the sale of real or personal property” by trustees. Article VII of the MUPC did not contain as elaborate provisions regarding the procedures for a court-ordered sale of property as contained in the following two former sections of c. 203.

§ 16. Order for Sale of Trust Estate; Procedures.

If the sale and conveyance, transfer or exchange of any real or personal property held in trust appears to be necessary or expedient, the supreme judicial court, the superior court or the probate court may, upon petition of a trustee or other person interested, after notice, order such sale and conveyance, transfer or exchange to be made, and the investment, reinvestment and application of the proceeds of such sale in such manner as will best effect the objects of the trust. In the case of a petition to sell real estate, the court, if satisfied that such action will not be prejudicial to the interests of the estate, may authorize the petitioner to become the purchaser of such real estate, either at public or private sale. In the case of personal property the probate court may make such order with or without

notice and without the appointment of a guardian ad litem or next friend as provided in the following section. The fact that the trustee has the necessary authority under the terms of the instrument creating the trust or by law to make such sale and conveyance, transfer or exchange without order of the court shall not bar proceedings under this section, but nothing herein contained shall be deemed to require a license where such authority exists.

Source

1820, 54, § 3; RS 1836, 69, § 11; 1846, 242; GS 1860, 100, §§ 14, 16; 1864, 168, § 1; 1869, 331; PS 1882, 141, § 20; RL 1902, 147, § 15; 1907, 262; 1917, 155; 1917, 279, § 42; 1934, 157, § 2; repealed by Ch. 521, § 27 of the Acts of 2008.

§ 17. Order for Sale; Proceedings in Case of Persons Not Ascertained; Effect.

If the court, upon proceedings under the preceding section, finds that said estate may be held in trust for, or that a remainder or contingent interest therein may be limited over to, persons not ascertained or not in being, notice shall be given in such manner as the court may order to all persons who are or may become interested in such estate, and to all persons whose issue, not then in being, may become so interested; and the court shall of its own motion in every such case appoint a suitable person to appear and act therein as the next friend of all persons not ascertained or not in being, who are or may become interested in such estate, and the provisions of sections thirty-four and thirty-five of chapter two hundred and one consistent herewith shall apply to such appointment. A conveyance or transfer made after such notice and proceedings shall be conclusive upon all persons for whom such guardian ad litem or next friend was appointed.

Source

1863, 25; 1864, 168, § 2; PS 1882, 141, § 21; RL 1902, 147, § 16; repealed by Ch. 521, § 27 of the Acts of 2008.

M.G.L. c. 203E. Massachusetts Uniform Trust Code

§ 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.

Source

Added by St.2012, c. 140, § 56, eff. July 8, 2012.

[NOTE: All sections of the MUTC included in these materials have the same statutory source.]

NOTE: Regarding application of the MUTC to Massachusetts nominee trusts, see

§ 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.

§ 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.

§ 111. Non-judicial settlement agreements

(a) For purposes of this section, “interested persons” shall mean persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c), interested persons may enter into a binding non-judicial settlement agreement with respect to any matter involving a trust.

(c) A non-judicial settlement agreement shall be valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(d) Matters that may be resolved by a non-judicial settlement agreement shall include:

- (1) the interpretation or construction of the terms of a trust;
- (2) the approval of a trustee's report or accounting;
- (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request that the court approve a non-judicial settlement agreement to determine whether the representation, as provided in article 3, was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

Compare, *Matter of Leo Kahn Revocable Trust*, 200 N.E.3d 1004, 102 Mass.App.Ct. 38, (2022), rev. den. 205 N.E.3d 267, 491 Mass. 1104 (2023)(Massachusetts Uniform Trust Code provision stating that trustee may be removed based on the consent of trust beneficiaries could be overridden by terms of family trust, if such trust terms precluded consent of beneficiaries as a basis for removal, as such trust terms would serve a material purpose of trust.)

§ 201. Role of court in administration of trust

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust shall not be subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

(d) A proceeding brought under this chapter in the probate and family court department of the trial court to appoint or remove a trustee, to approve the resignation of a trustee, to review and settle accounts of a trustee or concerning any other matter relating to the administration of a trust may be initiated by filing a petition and giving notice to interested parties, as provided in section 109. A decree or judgment shall be valid only to those who are given notice of the proceeding.

§ 205. Petition for transfers of trust property the disposition of which depends upon the death of an absentee

(a) If a trustee holds trust property the disposition of which depends upon the death of an absentee whose death has not been determined, the trustee, or any person who would be interested in the trust property if the absentee were dead may on or

after the day 5 years after the date of the absentee's disappearance petition the court having jurisdiction of the trust for an order that the trust property be disposed of to the persons it would have been distributed to under the trust if the absentee had died on that day.

(b) The court may direct the petitioner to report the results of a reasonably diligent search for the absentee in any manner that may seem advisable, including any or all of the following methods:

(1) by inserting in a periodical of general circulation a notice requesting information from any person having knowledge of the whereabouts of the absentee;

(2) by notifying law enforcement officials, public welfare agencies and registers of deaths in appropriate locations of the disappearance of the absentee; or

(3) by engaging the services of an investigator.

The costs of any search so directed shall be paid from the trust property.

(c) After a search described in subsection (b) has been completed to the satisfaction of the court, notice of the hearing on the petition shall be given as provided in [section 1-401 of chapter 190B](#).

(d) If after the hearing the court finds that the facts warrant a presumption of death, the court shall enter an appropriate order of disposition of the trust property and any undistributed net income.

§ 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.

§ 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.

See *Kaufman v. Federal National Bank*, 287 Mass. 97 (1934)(Creation of trust with transferrable shares requires issuance of shares).

§ 403. Trusts created in other jurisdictions

A trust not created by will shall be validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a place of abode or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

§ 409. Non-charitable trust without ascertainable beneficiary

Except as otherwise provided in [section 408](#), or by another general or special law, the following rules shall apply:

(1) A trust may be created for a non-charitable purpose without a definite or definitely ascertainable beneficiary or for a non-charitable but otherwise valid purpose to be selected by the trustee.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest, unless the terms of the trust provide otherwise.

§ 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.

§ 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.

§ 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.

§ 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.

§ 415. Reformation to correct mistakes

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that the settlor's intent or the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§ 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.

§ 502. Spendthrift provision

- (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.

§ 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).]

§ 602. Revocation or amendment of revocable trust

(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.

§ 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.

§ 704. Vacancy in trusteeship; appointment of successor

(a) A vacancy in a trusteeship shall occur if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

(b) If 1 or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustees.

(c) A vacancy in a trusteeship that is required to be filled shall be filled in the following order of priority:

(1) by a person designated by the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

(d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

§ 706. Removal of trustee

(a) The settlor, a co-trustee or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) there is a lack of cooperation among co-trustees that substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust and a suitable co-trustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under [subsection \(b\) of section 1001](#) as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 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.

§ 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.

§ 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.

§ 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.

§ 816. Specific powers of trustee [relating to disposition of real property]

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;

...

(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;

...

(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;

...

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

...

(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;

...

(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.

§ 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.

§ 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.

§ 1005. Limitation of action against trustee

(a) Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary, unless a proceeding to assert the claim is commenced within 6 months after receipt of the final account or statement. Any claim against a trustee for breach of trust shall be barred in any event and notwithstanding lack of full disclosure, against a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for examination by the beneficiary after 3 years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by the beneficiary personally or if, being a

minor or disabled person, it is received by the beneficiary's representative as described in article 3.

(b) Where a claim is not barred by subsection (a), a beneficiary may not commence a proceeding against a trustee for breach of trust more than **3 years after the date the beneficiary or a representative of the beneficiary knew or reasonably should have known of the existence of a potential claim for breach of trust.**

(c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for breach of trust must be commenced **within 5 years after the first to occur of:**

- (1) the removal, resignation or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.**

[Note that this doesn't say anything about actions against third parties having dealt with the trustee or having later relied in good faith on the prior action of the trustee, but see § 1012, *infra*.]

§ 1006. Reliance on trust instrument

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument shall not be liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

[Note that this doesn't say anything about third party reliance, but see § 1012, *infra*.]

§ 1009. Beneficiary's consent, release or ratification

A trustee shall not be liable to a beneficiary for breach of trust **if the beneficiary, while having capacity, in writing, consented** to the conduct constituting the breach, **released** the trustee from liability for the breach or **ratified** the transaction constituting the breach, **unless:**

- (1) the consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release or ratification, the beneficiary did not know of the material facts relating to the breach.

§ 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.

§ 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.

M.G.L. c. 204. General Provisions Relative to Sales, Mortgages, Releases, Compromises, Etc., by Executors, Etc.

§ 8. License to sell; duration

No license to sell by an executor, administrator, guardian, conservator or trustee shall be in force for more than one year after the granting thereof, except as provided in [section eighteen of chapter two hundred and two](#). [Note: the exception is not relevant to the usual situation involving a license to sell by a fiduciary.]

Source

St.1817, c. 190, § 12; R.S.1836, c. 71, § 19; c. 72, § 13; G.S.1860, c. 102, § 43; P.S.1882, c. 142, § 8; R.L.1902, c. 148, § 8; St.1915, c. 23.

§ 24. Doubtful acts or proceedings of fiduciaries or court; ratification

If the authority or validity of an act or proceeding of the probate court or of a person acting as executor, administrator, guardian, conservator, receiver, commissioner or other fiduciary officer appointed by the probate court, or trustee is drawn in question by reason of an alleged irregularity, defective notice or want of authority, any party interested in or affected by such act or proceeding may apply to the probate court having jurisdiction of the subject matter relative to which the act or proceeding has been had, and the court, after notice to all parties interested, and to the persons who may be the parents of such parties not in being, with power to appoint a guardian or next friend to represent the interests of any person unborn or unascertained, may hear and determine the matter and confirm the act or proceeding, in whole or in part, and may authorize and empower the executor, administrator, guardian, conservator, receiver, commissioner or other fiduciary officer appointed by the probate court, or trustee, or any successor or other person who may be legally appointed to act in the same capacity, to ratify and confirm such act or proceeding and to execute and deliver such deeds, releases, conveyances and other instruments as may be found necessary therefor; but no act or proceeding shall be ratified or confirmed which the court might not have passed or authorized in the first instance upon due proceedings.

Source

St.1874, c. 346, §1; P.S.1882, c. 142, § 23; St.1888, c. 420; R.L.1902, c. 148, § 24; St.1915, c. 23; St.1915, c. 63; St.1921, c. 44, § 2.

M.G.L. c. 215 Probate Courts

§ 6. Courts and their jurisdictions; equity jurisdiction

The probate and family court department shall have original and concurrent jurisdiction with the supreme judicial court and the superior court department of all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference thereto, shall be courts of general equity jurisdiction, except that the superior court department shall have exclusive original jurisdiction of all actions in which injunctive relief is sought in any matter growing out of a labor dispute as defined in [section twenty C of chapter one hundred and forty-nine](#).

Probate courts shall also have jurisdiction concurrent with the supreme judicial and superior courts, of all cases and matters in which equitable relief is sought relative to: . . . (iii) trusts created by will or other written instrument;

Source of current version:

St.1973, c. 1114, § 63; St.1975, c. 400, § 55; St.1981, c. 616.

Provides original statutory basis for filing Petitions for Instructions with Probate Court, which are historically considered part of the general equity powers of the Probate Court. See, *Young v. Jackson*, 321 Mass. 1, 7 (1947)(Probate court has jurisdiction over testamentary trustee’s petition for instructions “under G.L. (Ter.Ed.) c. 215, § 6, under the general principles cognizable by general equity jurisprudence.”); *Burroughs v. Wellington*, 211 Mass. 494, 496 (1912)(Petition in probate court under R.L.1902, c. 162, § 5 [predecessor statute], by trustee for instructions regarding trust, is a proceeding “in equity, and are governed by our rules of equity pleading and practice.”). But now, see also, the MUTC, M.G.L. c. 203E, § 201(c), *supra*, which provides: “A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.”

M.G.L. c. 65C. Massachusetts Estate Tax

§ 1. Definitions

When used in this chapter the following words or terms shall have, unless the context clearly indicated otherwise, the following meanings:--

(a) **“Code”**, the Internal Revenue Code of the United States, as amended and in effect on January first, nineteen hundred and seventy-five.1

...

(d) **“Federal gross estate”**, the gross estate as defined under the Code except that, (1) notwithstanding section two thousand and thirty-five of the Code,2 the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, relinquished a power, or exercised or released a general power of appointment, except in case of a bona fide sale for an adequate and full consideration in money or money's worth, by trust or otherwise, during the three year period ending with the date of the decedent's death; provided, however, that the value of such property or interest therein so transferred or subject to the power so relinquished, exercised or released exceeds ten thousand dollars for any person during a calendar year; and (2) notwithstanding section two thousand and forty of the Code,3 one-half of the value of any interest in any property shall be included in the gross estate if such interest is held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

...

(f) **“Massachusetts gross estate”**, the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of [section three A](#), or to the extent of any such interest therein of which the decedent has at any time made a transfer, by trust or otherwise, under any circumstances which would require the property to be included in the gross estate under the provisions of this chapter and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not

include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property.

...

(h) "Massachusetts taxable estate", the Massachusetts gross estate less the exemption and deductions allowable under [section three](#).

....

Source

Added by St.1975, c. 684, § 74. Amended by St.1978, c. 514, § 183; St.1985, c. 711, §§ 5, 6; [St.1992, c. 286, § 145](#).

§ 14. Lien for unpaid tax; liability for delinquent tax; release or discharge of lien

(a) Unless the tax imposed by this chapter is sooner paid in full, it shall be a lien for ten years from the date of death upon the Massachusetts gross estate of the decedent, except that such part of the Massachusetts gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by the probate court having jurisdiction thereof, shall be divested of such lien. **For dates of death on or after January 1, 1997, an affidavit of the executor, subscribed to under the pains and penalties of perjury, recorded in the appropriate registry of deeds and stating that the gross estate of the decedent does not necessitate a federal estate tax filing, shall release the gross estate of the lien imposed by this section.**

(b) **If the tax imposed by this chapter is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the real or personal property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, real or personal property included in the Massachusetts gross estate to the extent of the value, at the time of the decedent's death, of such property shall be personally liable for such tax. Any part of such real property, which, prior to the decedent's death, was conveyed by a deed of the decedent not disclosing an**

intention that it take effect in possession or enjoyment at or after his death and such deed was recorded or registered prior to the decedent's death, and any part of such personal property transferred by, or transferred by a transferee of, such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in subsection (a), and a lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money or money's worth.

....

Source

Added by St.1975, c. 684, § 74. Amended by St.1977, c. 466, § 1; St.1985, c. 711, §§ 15, 16; St. 1998, c. 147, § 2.

NOTE: The statute was never revised after Mass eliminated the so-called “Sponge Tax” and decoupled from the Federal Estate Tax procedures effective in 2003. The word “federal” should be considered as being replaced by “Massachusetts.”

NOTE: M.G.L. c. 65C, § 14(b) is based on the similar, but broader, federal statute, 26 U.S. Code § 6324, the relevant portion of which is included at the end of the Federal Gross Estate section below.

Federal Gross Estate

26 U.S. Code § 2031 - Definition of gross estate

(a) General.

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

26 U.S. Code § 2033 - Property in which the decedent had an interest

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

26 U.S. Code § 2036 - Transfers with retained life estate

(a) General rule. The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), **by trust or otherwise**, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the **right to the income** from, the property, or

(2) the right, **either alone or in conjunction with any person**, to designate the persons who shall possess or enjoy the property or the income therefrom.

26 U.S. Code § 2037 - Transfers taking effect at death

(a) General rule.

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), **by trust or otherwise**, if—

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary

interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

(b) Special rules.

For purposes of this section, the term “reversionary interest” includes a possibility that property transferred by the decedent—

- (1) may return to him or his estate, or
- (2) may be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him.

...

26 U.S. Code § 2038 - Revocable transfers

(a) In general. The value of the gross estate shall include the value of all property—

(1) Transfers after June 22, 1936.

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money’s worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3 year period ending on the date of the decedent’s death.

26 U.S. Code § 2040 - Joint interests

NOTE: The text of this section is not included as, generally, this is not so much an issue with regard to titles held by trustees. However, if you have an unusual situation where the title appears to be held jointly as between individuals and the trustee(s) and one of the other provisions of the Code doesn't already apply, you may want to review this provision of the Code to determine applicability to your situation.

26 U.S. Code § 2041 - Powers of appointment

(a) In general. The value of the gross estate shall include the value of all property—

...

(2) Powers created after October 21, 1942.

To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

NOTE: There are many other rules regarding powers of appointment included within the statute. It is recommended that the statute be consulted if there is any question about the inclusion of property subject to a reserved POA in any given case.

26 U.S. Code § 2043 - Transfers for insufficient consideration.

(a) In general.

If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

26 U.S. Code § 6324 - Special liens for estate and gift taxes

(a) Liens for estate tax. Except as otherwise provided in subsection (c)—

(1) Upon gross estate.

Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for **10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.**

(2) Liability of transferees and others.

If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate **under sections 2034 to 2042**, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. **Any part of such property transferred** by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or

beneficiary, ***to a purchaser*** or holder of a security interest ***shall be divested of the lien provided in paragraph (1)*** and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, **except any part transferred to a purchaser or a holder of a security interest.**