

HAWAII REVISED STATUTE [CHAPTER 558]

LAND TRUSTS--BENEFICIARY CONTROLLED

Section

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Law Journals and Reviews

Tax Consequences of Land Trusts. 16 HBJ 3.

[\$558-1] Title. This chapter shall be known and may be cited as the Land Trust Act. [L 1978, c 151, pt of §1]

[\$558-2] Purpose. The purpose of this chapter is to authorize those trusts which incorporate it by reference to convey legal and equitable title to real estate in trust to a qualified trustee; to define the nature and extent of the beneficiaries' interest in the trust property; to define the obligations of persons dealing with the trustee to inquire into the trustee's authority; and to provide for disclosure of the identity and interest of the trust beneficiaries. [L 1978, c 151, pt of §1]

[\$558-3] Definitions. As used in this chapter, unless the context otherwise requires:

"Recorded instrument" means any conveyance, deed, mortgage, lease assignment, or other instrument relating to this chapter and duly executed and recorded with the bureau of conveyances or the land court of the State. [L 1978, c 151, pt of §1]

§558-4 Creation of trust, powers of trustee. Any recorded instrument transferring any interest in real property in this State, including but not limited to, leasehold and mortgagee's interests, to any person, corporation, bank, or trust company, qualified to act as a trustee in this State, whether or not reference is made in such recorded instrument to any separate unrecorded collateral declarations or agreements, shall be effective to vest in the trustee legal and equitable title over the real property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the property or interest therein or any part thereof. Any trust authorized pursuant to this chapter shall be valid notwithstanding the fact that the recorded instrument fails to state the duties imposed upon the trustee. [L 1978, c 151, pt of §1; am L 1982, c 127, §1]

[§558-5] Inquiry into authority of trustee. Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfaction, releases, or otherwise in any way dealing with the trustee with respect to the real property held in trust under the recorded instrument, may but shall not be obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument whether referred to in the recorded instrument or not, nor to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under the recorded instrument, nor to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to the trustee in connection with any interest so acquired from the trustee, nor to inquire into any of the provisions of any of the unrecorded declarations or agreements. [L 1978, c 151, pt of §1]

§558-6 Conveyance by trustee. Any person dealing with the trustee under the recorded instrument shall take any interest transferred by the trustee free and clear of the claims of all the beneficiaries of the trust, and of any unrecorded separate declarations or agreements collateral to the recorded instrument whether referred to in the recorded instrument or not, and of anyone claiming by, through or under such beneficiaries including, and without limiting the foregoing to, any claim arising out of any dower or curtesy interest of the spouse of any beneficiary thereof; provided that nothing herein contained shall prevent the beneficiary of any unrecorded collateral declarations or agreements from enforcing the terms of the unrecorded collateral declarations or agreements against the trustee. [L 1978, c 151, pt of §1; am L 1980, c 232, §26]

[§558-7] Personal property. In all cases where the recorded instrument contains a provision defining and declaring the interest of beneficiaries to be personal property only, the provision shall be controlling for all purposes where the determination shall become an issue under the laws or in the courts of this State. [L 1978, c 151, pt of §1]

§558-8 Disclosure of beneficiaries. (a) Any trust created hereunder shall be invalid unless the recorded conveyance document transferring title to the trustee discloses the name and pro rata interest of each beneficiary of such trust.

(b) Upon service of a complaint, or similar pleading, in federal or state court to which the trustee is required to respond, the trustee shall disclose in the response the name of every beneficiary with a present interest in trust property which is a subject of the action. This subsection shall be liberally construed to require identification of the actual parties to the controversy.

(c) Upon receipt of a notice of violation of any ordinance, rule, regulation, or law relating to real property held in trust, the trustee shall disclose to the State, political subdivision, or agency giving notice or which is primarily responsible for enforcement of such ordinance, rule, regulation, or law, the identity of every beneficiary who has an interest in the trust property. This subsection shall be liberally construed to require identification of the actual parties who are being notified of the violation.

(d) As part of any contract relating to the ownership or use of real property which is the subject of a land trust and is entered into by and between the State or any local governmental unit or any agency of either and a trustee under a land trust, the trustee shall disclose the identity of every beneficiary of the land trust. This subsection shall be liberally construed to require identification of the actual parties benefiting from a transaction with a governmental unit or agency.

(e) Whenever any trustee or beneficiary of a land trust applies or supports an application to the State or any local governmental unit or any agency of either for any benefit, authorization, license, land use or permit relating to the land which is the subject of the land trust, such application shall identify every beneficiary of the land trust. This subsection shall be liberally construed to require identification of the actual parties benefiting from the actions of governmental units and agencies.

(f) A trustee who discloses the identity of a beneficiary pursuant to law shall not be liable in any civil action as a result of the disclosure. [L 1978, c 151, pt of §1; am L 1982, c 127, §2]