

Signed, Sealed...Misdelivered ?
Mastering the Maze of Conveyancing Documents

Scott J. Clifford, Esq.
Law Offices of Lipsey & Clifford, P.C.

Lynne Murphy Breen, Esq.
First American Title Insurance Company



Trusts & Estates

Trustees, Certificates, Fiduciary Powers

Which Trustee Certificate should be used?

Trust is not recorded at the registry of deeds

- Trustee Certificate pursuant to M.G.L. c. 184, Section 35
- REBA Form 35

Trust is recorded at the registry of deeds

- REBA Form 20G (Nominee Trusts)

Forms and Templates should be edited to reflect the terms of the Trust

TRUSTEE CERTIFICATES – 184/35

- Section 35. 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.



TRUST DEEDS: COMMON MISTAKES

COMMON MISTAKES:

- THE BUYER FAMILY TRUST u/d/t December 3, 2020, see Trust recorded in Book 1234, page 567
- Trustee must be named in Grantor and Grantee clauses
- BOB BUYER, TRUSTEE OF THE BUYER FAMILY TRUST u/d/t December 3, 2020
- The Grantee and Grantor clause must contain a reference to recorded trust or Certificate of Trust - M.G.L. ch. 184, section 35.

GRANTOR CLAUSE: DEEDS BY TRUSTEES OF TRUSTS

- **GRANTOR CLAUSE -RECORDED TRUSTS:**

- _____ Trustee of the _____ Trust u/d/t (date of Trust),
see Trust recorded in Book _____, page _____

- _____ Trustee of the _____ Trust u/d/t (date of Trust),
see Trust recorded herewith

- **GRANTOR CLAUSE- UNRECORDED TRUSTS:**

- _____ Trustee of the _____ Trust u/d/t (date of Trust),
see Certificate of Trust pursuant to M.G.L. ch. 184, section 35 recorded in Book
_____, page _____

- _____ Trustee of the _____ Trust u/d/t (date of Trust),
see Certificate of Trust pursuant to M.G.L. ch. 184, section 35 recorded herewith

- **GRANTOR CLAUSE TESTAMENTARY TRUST:**

- _____, Trustee of the Jane Doe Testamentary Trust, u/d/t contained in the
probated will of the Estate of Jane Doe, *Probate and Family Court, Docket*
No.#####, by power conferred under the Trust,

GRANTEE CLAUSE: DEEDS To TRUSTEES of TRUSTS

GRANTEE CLAUSE -RECORDED TRUSTS:

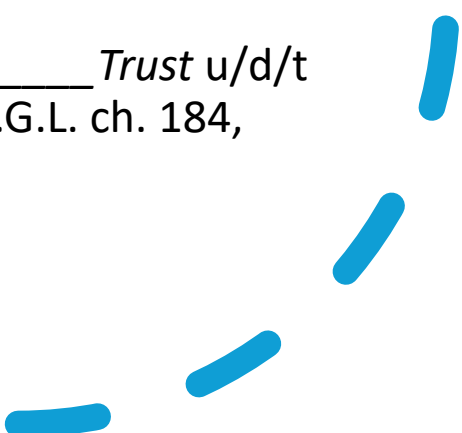
_____ Trustee of the _____ Trust u/d/t
(date of Trust), see Trust recorded in Book _____, page _____

_____ Trustee of the _____ Trust u/d/t
(date of Trust), see Trust recorded herewith

GRANTEE CLAUSE- UNRECORDED TRUSTS:

_____ Trustee of the _____ Trust u/d/t
(date of Trust), see Certificate of Trust pursuant to M.G.L. ch. 184,
section 35 recorded in Book _____, page _____

_____ Trustee of the _____ Trust u/d/t
(date of Trust), see Certificate of Trust pursuant to M.G.L. ch. 184,
section 35 recorded herewith





Signatures

- All grantors must sign.
 - Trustees -governed by trust as to number of trustees required to sign.
 - LLC Deeds- by the Manager or Person Authorized to sign real estate documents as listed on the Secretary of the Commonwealth certificate of registration or by delegation as provided for by Manager Certificate certifying to vote authorizing the signatory. The Manager's Certificate to be recorded along with deed. M.G.L. c. 156C, § 24(c)(d), M.G.L. c. 156C, §66
 - Deeds by corporations may be signed by The President or Vice President AND Treasurer or Assistant Treasurer or by delegation to any other corporate officer with a Corporate Secretary Certificate of action taken at a Board of Director's meeting in which it was voted to authorize the signatory (by name or office) to so act. The Secretary Certificate to be recorded along with the deed. See M.G.L. c. 156B, § 115 and M.G.L. c. 156D, §8.46

ACKNOWLEDGEMENTS:
TRUSTEES OF TRUSTS

COMMONWEALTH OF MASSACHUSETTS

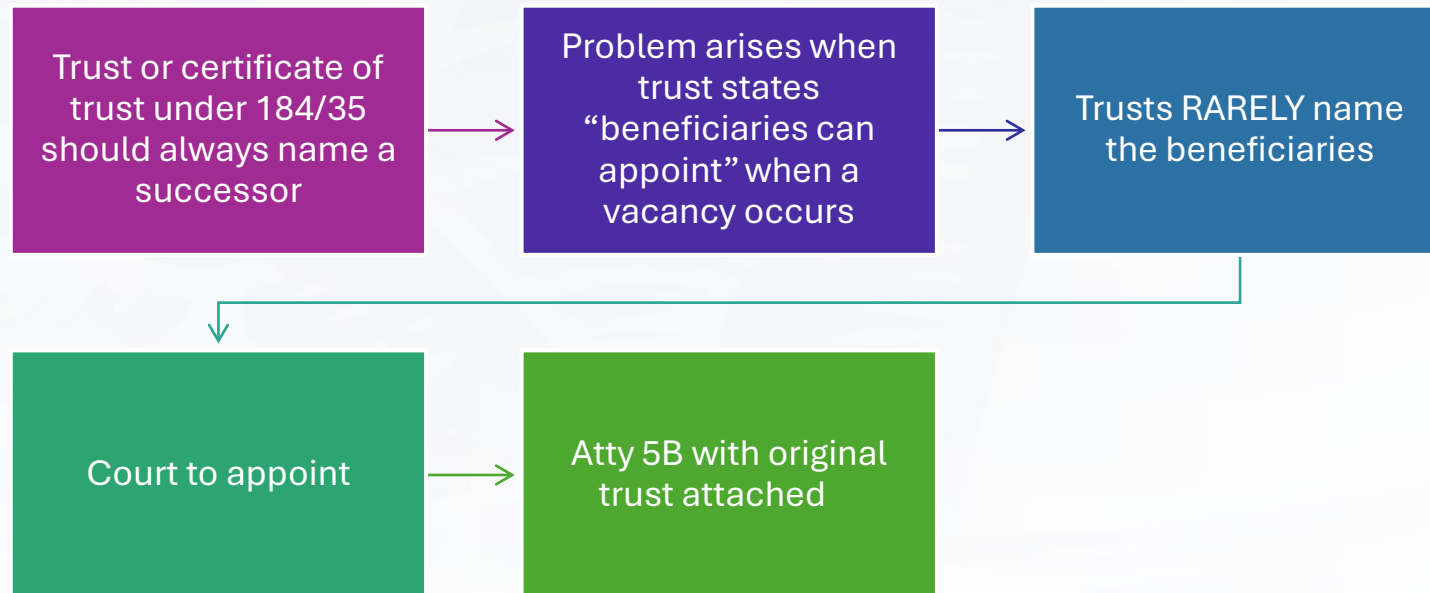
_____, ss.

On this _____ day of _____, 20____, before me, the undersigned notary public, Jane Doe (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose as Trustee of the ABC Trust.

[affix or imprint official seal]

, Notary Public
My commission expires

SUCCESSOR TRUSTEES



GRANTOR CLAUSE OF DEEDS FROM PERSONAL REPRESENTATIVES

Fred Flintstone, as Personal Representative under the Will of Wilma Flintstone, see Essex Probate Court Docket No. ES20P1220EA, under Power of Sale in the Will and every other power.

Fred Flintstone, as Personal Representative of the Estate of Wilma Flintstone, see Essex Probate Court Docket No. ES20P1220EA, pursuant to a Decree of License to Sell (Note: your consideration cannot be any less than amount stated in license to sell)

GRANTOR CLAUSE OF DEEDS FROM PERSONAL REPRESENTATIVES

The deed is to be signed and acknowledged by the Personal Representative in their representative capacity.

Land Court Example Grantor Clause(s):

“I, _____ as Personal Representative of the Estate of _____, pursuant to the power of sale conferred under the probated will, Probate and Family Court, Docket No. #####.”

“I, _____ as Personal Representative of the Estate of _____ holder of a Decree of the Probate and Family Court of _____ dated, _____ Docket No. #####, by power conferred by said Decree. . .”

PERSONAL REPRESENTATIVE NOTARY CLAUSE

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

On this _____ day of _____, 20____, before me, the undersigned notary public, _____ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, and as Personal Representative of the Estate of Wilma Flintstone.

[affix or imprint official seal]

, Notary Public

My commission expires:

133942

WE, Maureen Maher, Dianne MacKenzie, Elizabeth Sacco, Richard Maher (deceased) and Frank Maher

of 977 Sea Street, Quincy, Norfolk County, Massachusetts

in consideration of One Dollar(\$1.00)

grant to Maureen Maher, Dianne MacKenzie & Elizabeth Sacco as tenants in common

of 977 Sea Street, Quincy, MA. 02169 with quitclaim covenants

A certain parcel of land with the building thereon, situated in Quincy, Norfolk County, Massachusetts, being Lot 258 on a plan by Warren D. Nichols, Surveyor, Dated October 31, 1953, recorded with Norfolk Registry of Deeds, Plan Book 182, filed as Plan, as 57 of 1954, and bounded and described, according to said plan, as follows:

NORTHWESTERLY by Sea Street, Fifty (50) feet;

SOUTHEASTERLY by Lot D and part E, one hundred twenty (120) feet;

SOUTHWESTERLY by land of Commonwealth of Massachusetts, fifty (50) feet; and

NORTHWESTERLY by Lot 259, one hundred twenty (120) feet.

Area 6,000 square feet, according to plan.

For title see deed of Margaret Zenker, Maureen Maher, Dianne MacKenzie, Elizabeth Sacco, Richard Maher and Frank Maher, dated Aug. 11, 1992 and recorded with Norfolk County Registry of Deeds, Book 9456, Page 715.

Executed as a sealed instrument this 2 day of October 1997

Elizabeth Sacco Frank Maher
Dianne MacKenzie
Maureen Maher
Richard Maher (deceased)

The Commonwealth of Massachusetts

Norfolk ss. October 2, 1997
Then personally appeared Maureen Maher, Dianne MacKenzie, Elizabeth Sacco, Frank Maher and Richard Maher (deceased) acknowledged the foregoing to be their free act and deed before me.

My commission expires

Linda J. Jean
NOTARY PUBLIC
My Commission Expires 10/1/98

RECORDED
NORFOLK COUNTY REGISTRY OF DEEDS
QUINCY, MA

CERTIFY

Barry T. Hannon
BARRY T. HANNON, REGISTER

97 DEC -9 AM 10:22

POWER OF SALE & SELF DEALING



- Power of sale found in wills, trusts and powers of attorney
- The power to sell is not the power to give away, nor is it the power to self-deal
- A fiduciary's deed to herself is voidable by the heirs or devisees (or beneficiaries) (even if for more than FMV), unless the document specifically allows or a court has authorized a purchase by the fiduciary
- Typically, trustees cannot convey property in and out of a trust for \$1.00 absent very specific language in the trust
 - Gifting language + Self Dealing
 - Trustee has the right to amend/terminate then okay with self dealing
 - Trustee has power as if “absolute owner”

PERSONAL REPRESENTATIVE DEEDS TO RELATED PARTIES OR FOR LESS THAN FULL CONSIDERATION

- The consideration for a deed from a Personal Representative cannot be for nominal consideration.
- The grantee in a deed from a Personal Representative must be to an arm's length third party:
- (231/2) sell, lease or encumber to an arm's length third party any real estate of the estate, or an interest in that real estate, for cash, credit or for part cash and part credit, with or without security for unpaid balances and whether the personal representative has been appointed formally or informally; the sale, lease or encumbrance shall be conclusive notwithstanding section 3-302 or any contest of the informal probate proceeding, provided that: (i) if the decedent died without a will, a license has been issued under chapter 202; or (ii) if the decedent died with a will, either: (a) the will, probated formally or informally, empowered the personal representative to sell, lease or encumber that real estate or an interest in that real estate, or (b) a license has been issued under chapter 202.

PERSONAL REPRESENTATIVE DEEDS

DEEDS OF DISTRIBUTION:

Does not divest a devisee or heir at law from their inheritance

Does not provide protection from claims of creditors or legatees

Deeds of Distribution

- All required probate work must be filed and allowed by the Court.
 - Deeds by Personal Representative pursuant to License to sell
 - Deeds by Personal Representative under power of sale in Will
- Deed by all heirs at law
- Deed by devisees
- Does Estate need to be closed





HOW TO SOLVE DRAFTING ERRORS

What if there is a problem with the Trustee Certificate Pursuant to M.G.L. c. 184, § 35 that is already on record?

- Record a new section 35 certificate executed by the trustee of record.
- What if the trustee of record is dead and there are no successor trustees named in the record certificate?
 - Review the Trust and determine who the named successor trustee is or how one is appointed.
 - Establish the successor trustee of record, *See REBA Title Standard 68*, by recording:
 - the whole Trust
 - A trustee certificate executed by the successor trustee or affidavit along with a M.G.L.c. 183 § 5B Affidavit by an attorney or independent person familiar with the affairs of the Trust certifying to appointment of the successor trustee.
 - A trustee certificate pursuant to M.G. L. c. 203E, § 1013 executed by the person established to be the successor trustee. The 203E, § 1013 must contain the excerpts of the trust establishing the trusteeship and any required documents must be recorded either attached to or along with the certificate.
 - Have the Court appoint a successor trustee

What if there is no Trust or 184/35 Trustee Certificate?

-
- Indefinite Reference
 - Section 25. 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.

How to Establish Successor Trustee of Record



“Trustee of Record”

REBA TITLE STANDARD No. 68

[This Photo](#) by Unknown Author
is licensed under [CC BY-SA-NC](#)

"Trustee of record" shall mean a person who, at the time of the execution of a Trustee's Certificate pursuant to M.G.L. c. 184, § 35, *already appears of record to be the trustee of the subject trust as a result of being:*

1. Named as a trustee in a deed of distribution
2. Named as a Trustee (successor/additional/contingent) in a recorded trust or proper trustee's certificate under M.G.L. c. 184 § 35
3. 183 5b affidavit from an **attorney with knowledge** with substantiating documentation
4. Appointment by decree of probate court.

Indefinite Reference

Indefinite Reference:

A grantor or grantee clause in a deed or instrument to a person as Trustee or an indication that a person acting in a trustee capacity with no reference to a recorded trust or Trustee's Certificate under M.G.L. c. 184, § 35.

M.G.L.c. 184, §25

- A reference to a trust which is not recorded is *not necessarily* a cloud on title. In other words, title is not necessarily defective based upon a deed conveying property to a trustee when the trust or trustee's certificate is not on record.
- It does not necessarily mean that a deed to a person as trustee without reference to the trust or a simultaneously recorded trustee's certificate vests title in the trustee individually.



How to fix an indefinite reference:

REBA TITLE STANDARD No. 53

Indefinite reference not a problem if:

- (1) A trustee's certificate conforming to the requirements of M.G.L. c. 184, §35, executed by at least one trustee appearing of record to hold title as such, is recorded or registered in the registry where the land lies, either contemporaneously with the acquisition of record title by such trustee or at a later time;
- (2) Trust is already recorded where the land lies and can be sufficiently identified as the trust instrument referred to in the conveyance by the identity of the parties to the trust instrument and either the name of the trust or the date of execution and an affidavit is recorded identifying the place of recording and the affidavit's place of recording is marginally referenced to the conveyance.
- (3) Trust instrument and any amendments, appointments or resignations are subsequently recorded and marginally referenced to the conveyance;
- (4) The title or an interest therein is held by a purchaser, transferee, or other person relying in good faith on a conveyance by such trustee conforming to the provisions of Title Standard 33

Trustee Powers, Nominal consideration transfers



- Typically, trustees cannot convey property in and out of a trust for \$1.00 absent very specific language in the trust
 - Gifting language + Self Dealing
 - Trustee has the right to amend/terminate without direction
 - Trustee has power to act as the “absolute owner” and 3rd party reliance language
 - Beneficial Direction, Trustee Certificate certifying to the direction
- ** To determine if the conveyance is allowable, the trust must be carefully reviewed

SELF DEALING

MUTC -CHAPTER 203E

M.G.L. ch. 203E, Section 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



SELF DEALING MUTC – CHAPTER 203E

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.

SELF DEALING MUTC – CHAPTER 203E

- (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.

AFFIDAVITS

AFFIANTS, PERSONAL
KNOWLEDGE, DRAFTING
AND JURATS



Affidavits: Pursuant to M.G.L. c. 183, § 5A: Recording of statements relating to title; use as evidence

- Section 5A. A statement of a person's married or unmarried status, kinship or lack of kinship, or of the date of his birth or death, which relates or purports to relate to the title to land and is sworn to before any officer authorized by law to administer oaths may be filed for record and shall be recorded in the registry of deeds for the county where the land or any part thereof lies. Any such statement, if so recorded, or a certified copy of the record thereof, in so far as the facts stated therein bear on the title to land, shall be admissible in evidence in support of such title in any court in the commonwealth in proceedings relating to such title.



M.G.L. ch. 183, § 5B: Affidavits relating to title; recording

Section 5B. Subject to section 15 of chapter 184, an affidavit made by a person claiming to have personal knowledge of the facts therein stated and containing a certificate by an attorney at law that the facts stated in the affidavit are relevant to the title to certain land and will be of benefit and assistance in clarifying the chain of title may be filed for record and shall be recorded in the registry of deeds where the land or any part thereof lies.

Affidavits: JURATS

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

On _____, 2024, before me, the undersigned notary public, personally appeared, _____, proved to me through satisfactory evidence of identification, which was _____, to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/they knowledge and belief.

, Notary Public

My Commission Expires:

Affidavits: To Cure Title Issues

Affidavit Pursuant to M.G.L. c. 183, § 5B

Property Address: _____

Recording Information : Book: _____ Page: _____

I, _____ of _____, _____ County,
_____ having personal knowledge of the facts herein stated, under oath
depone and say as follows:

1. I am _____

Signed under the penalties and perjury this _____ day of _____.

Certificate

I, _____, hereby certify that I am an attorney at law
with offices at _____,
Massachusetts, and that the facts stated in the foregoing affidavit are relevant to the title
to the premises therein described and will be of benefit and assistance in clarifying the
chain of title thereto.

Attorney

INSERT JURAT

Deeds Grantors, Grantees, Descriptions, Notary Clauses



Anatomy of a Deed

- Type of Deed
- Grantor Clause
- Grantee Clause
- Consideration
- GRANT
- Covenants
- Property Description
- Title Reference
- Special Language and Property Address
- Signatures
- Acknowledgement

PROPERTY
DESCRIPTIONS:
ALL DEEDS

- Adequate descriptions:
 - Reference to a lot on a plan.
 - Specific description that describes the whole parcel or land to be conveyed. It cannot be described as part of land without specific description of the location.

Exhibit "A"

This property is a Ranch Raised
Style. The foundation Type is concrete.
This property consist of wood frame.
This property has 8 Rooms of those
8 Rooms 4 of those are 4 Bedrooms
2 Full bathrooms and 1 $3/4$ bathrooms
Heating system is Gas, 50%
Air condition, interior walls are plaster
flooring Type is carpet, Siding is
vinyl, Condition is Very good
finished area is 2,484 Square feet
This property is a two family
dwelling, Land area is 0.111 Acres

TITLE REFERENCES: ALL DEEDS

- Required for recording.
- Title references allow errors in descriptions to be cured by reference to a previously recorded deed with correct description.
- Title reference clauses include:
 - “Being the same premises conveyed by...”
 - “For grantor’s title see....”

CONVEYANCES BY CORPORATIONS

Corporation itself is entity.

Grant clause always corporation (not officer)

President/vice president and treasurer/assistant treasurer must sign (G.L.c. 155, § 8)

- If not, then need Vote or Clerk's Certificate giving authority to individual who is signing the deed

No Land Court guideline on corporations

Must include corporate excise release language or need to have waiver from DOR (T.S. 17)



Other Things to Consider when Drafting Documents Related to Corporate Entities

- REBA Title Standard 11 (Corporate Transfers)
- G.L.c. 184, § 24 – Curative Statute dealing with defects, irregularities or omissions in deeds (10 year period)
- G.L.c. 181, § 9 – foreign corporation can act without registering in Massachusetts, does not affect validity of conveyance but may result in penalties or prohibition from using courts in Mass; also see REBA Title Standard 12
- REBA Title Standard 75 – corporate transfers after dissolution not defective if effective date of dissolution after 6/30/2004
- G.L.c. 155, § 51 – prior to 6/30/2004, permitted for three years post dissolution to convey property
- REBA Title Standard 59 (LLC Transfers)
- G.L.c. 156C, § 45 – winding up the affairs of dissolved LLC (NOTE – no provision providing for winding up of foreign LLC).
- Beware of Authority and Self Dealing

TRANSFERS BY LIMITED LIABILITY COMPANIES



- Grant clause is the LLC **not** the manager
- Any Manager or LLC can designate authorized person to sign documents related to real property (G.L.c. 156C, § 12)
- If Registered Land, **must** record a Certificate of Good Standing (dated within 60 days of closing)
- LLC may be subject to corporate excise tax (G.L.c. 156D, § 1.40 and also see T.S. 17)
- Beware of Authority and Self Dealing

CORPORATE EXCISE RELEASE LANGUAGE



Language to be included in transfer:

- the grantor is not classified for the current tax year as a corporation for federal income tax purposes; or
- the conveyance does not constitute the sale or transfer all of substantially all of the grantor's assets within the Commonwealth of Massachusetts; or
- the conveyance does constitute a sale or transfer in the ordinary course of the grantor's business.

Without this language a waiver of lien is required from DOR (otherwise land is not free of automatic corporate excise tax lien imposed in Massachusetts for 3 years – see G.L.c. 63, §30)

POWERS OF ATTORNEYS

- DRAFTING –GRANTOR AND GRANTEE CLAUSES
- SIGNATORY LINES AND HOW TO SIGN AS AN ATTORNEY IN FACT
- ACKNOWLEDGEMENT CLAUSES
- WHO CAN ACT AS AN ATTORNEY IN FACT
- LIMITATIONS OF POWER UNDER A POA

FORMS OF GRANT AND ACKNOWLEDGEMENT

THE PRINCIPAL IS THE GRANTOR NOT THE AGENT

Deeds:

Owner of the property is Scott J. Clifford.

Scott J. Clifford grants a Power of Attorney to Lynne Murphy Breen

Scott J. Clifford is the Principal and Lynne Murphy Breen is the Agent or Attorney in Fact

Grantor clause should read:

Scott J. Clifford (no mention of Lynne Murphy Breen)

Grantor clause should NOT read:

Lynne Murphy Breen as Attorney in fact for Scott J. Clifford.

If Scott owns the property this grant clause in a deed would render the deed challengeable or void(able).



TRAPS FOR THE UNWARY





SCRUTINIZE ANY FOREIGN NOTARY PROVISIONS



EXAMPLE CALIFORNIA NOTARY

- Massachusetts:

On this 1st day of January, 2020, before me, the undersigned notary public, personally appeared Charles Smith (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and **acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.**

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

- On 1/1/2020 before me, Julianne Jones, personally appeared Charles Smith who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

LAND COURT GUIDELINES AND MEMOS



Land Court Memo Re:
Land Court Guideline 14.
death: the effect upon
registered land titles



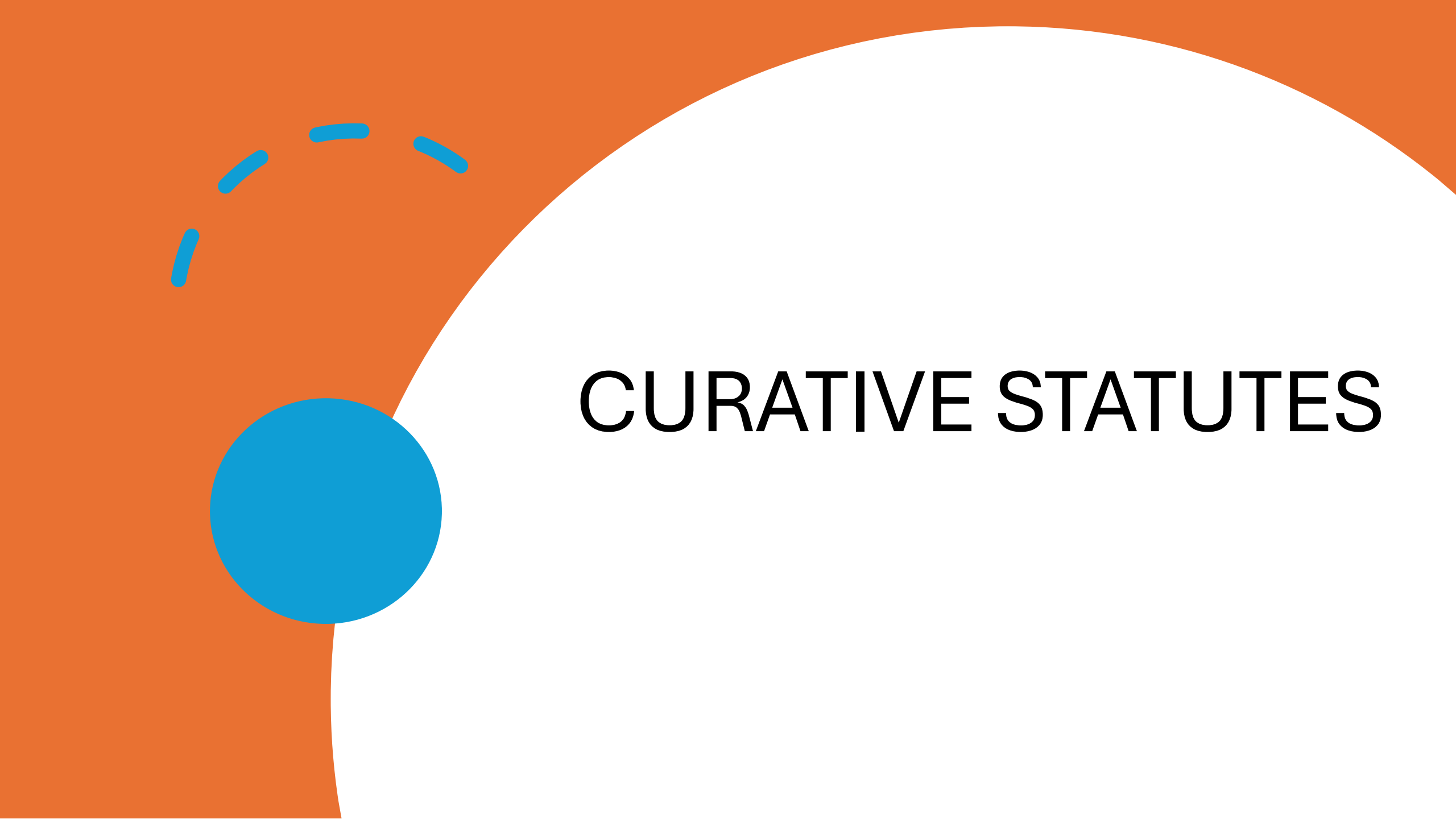
Land Court Guideline on
LLC



Land Court Requirement:
dates



Land Court Memo:
acknowledgments and
powers of attorney

The background features a large orange shape on the left and a white semi-circle on the right. A solid blue circle is positioned on the orange background, partially overlapping the white semi-circle. Above the blue circle, a dashed blue arc is visible.

CURATIVE STATUTES

CONVEYANCES CURATIVE STATUTE



- M.G.L.c 184. § 24

Section 24: Defects, irregularities or omissions in deeds; curative period

 Print Page

< Prev

Next >

Section 24. When any owner of land the title to which is not registered, or of any interest in such land, signs an instrument in writing conveying or purporting to convey his land or interest, or in any manner affecting or purporting to affect his title thereto, and the instrument, whether or not entitled to record, is recorded, and indexed, in the registry of deeds for the district wherein such land is situated, and a period of ten years elapses after the instrument is accepted for record, and the instrument or the record thereof because of defect, irregularity or omission fails to comply in any respect with any requirement of law relating to seals, corporate or individual, to the validity of acknowledgment, to certificate of acknowledgment, witnesses, attestation, proof of execution, or time of execution, to recitals of consideration, residence, address, or date, to the authority of a person signing for a corporation who purports to be the president or treasurer or a principal officer of the corporation, such instrument and the record thereof shall notwithstanding any or all of such defects, irregularities and omissions, be effective for all purposes to the same extent as though the instrument and the record thereof had originally not been subject to the defect, irregularity or omission, unless within said period of ten years a proceeding is commenced on account of the defect, irregularity or omission, and notice thereof is duly recorded in said registry of deeds and indexed and noted on the margin thereof under the name of the signer of the instrument and, in the event of such proceeding, unless relief is thereby in due course granted.

CORPORATE CONVEYANCING AUTHORITY – DISCHARGES & FORECLOSURES

M.G.L. Chapter 183, Section 54B

Mortgage discharge, release, assignment, foreclosure, etc.; execution before officer entitled to acknowledge instruments; effect Notwithstanding any law to the contrary, (1) a discharge of mortgage; (2) a release, partial release or assignment of mortgage; (3) an instrument of subordination, non-disturbance, recognition, or attornment by the holder of a mortgage; (4) any instrument for the purpose of foreclosing a mortgage and conveying the title resulting therefrom, including but not limited to notices, deeds, affidavits, certificates, votes, assignments of bids, confirmatory instruments and agreements of sale; or (5) a power of attorney given for that purpose or for the purpose of servicing a mortgage, and in either case, any instrument executed by the attorney-in-fact pursuant to such power, if executed before a notary public, justice of the peace or other officer entitled by law to acknowledge instruments, whether executed within or without the commonwealth, by a person purporting to hold the position of president, vice president, treasurer, clerk, secretary, cashier, loan representative, principal, investment, mortgage or other officer, agent, asset manager, or other similar office or position, including assistant to any such office or position, of the entity holding such mortgage, or otherwise purporting to be an authorized signatory for such entity, or acting under such power of attorney on behalf of such entity, acting in its own capacity or as a general partner or co-venturer of the entity holding such mortgage, shall be binding upon such entity and shall be entitled to be recorded, and no vote of the entity affirming such authority shall be required to permit recording.

CONTACT INFORMATION FOR PRESENTERS

Scott J. Clifford, Esq. Managing Partner
Law Offices of Lipsey & Clifford, P.C.
sclifford@elclaw.com

Lynne Murphy Breen, Esq.
Senior Underwriter Counsel
First American Title Insurance Company
lymurphy@firstam.com