

REBA Form No. 35

This form is a sample of a Trustee's Certificate pursuant to M.G.L. c. 184, § 35 and is applicable to non-testamentary and un-recorded trusts only. The purpose of this statutory certificate is to set forth relevant provisions of a legally existing trust without disclosing sensitive and/or immaterial provisions. This form includes blanks, bracketed and capitalized information that should be completed, edited or deleted as appropriate. This form also includes italicized Notes intended for informational purposes only. The Notes should not appear in the final Trustee's Certificate, and practitioners should ensure all are deleted prior to execution and recording.

Prior to drafting this form, practitioners are advised to read the Trust and any amendments thereto upon which the Trustee's Certificate is based. Only those provisions contained in the Trust should be included in the Trustee's Certificate. The Trustee's Certificate is signed by the Trustee(s) of Record as defined in REBA Title Standard 68 under penalties of perjury, which is a statutory requirement. Accordingly, any statement made in the Certificate that contradicts or expands upon the terms of the Trust may be perjurious.

These are suggestions only and the form is not intended as a mandated or required form of Trustee's Certificate pursuant to M.G.L. c. 184, § 35, nor is this form intended to be used as a trustee's certification regarding a Trustee's authority to act under a recorded nominee trust (see REBA Form 20G).

Trustee's Certificate Pursuant to M.G.L. c. 184, § 35

[INSERT NAME OF TRUST]

dated [INSERT DATE OF TRUST]

I, [INSERT NAME OF TRUSTEE OF RECORD SIGNING THE CERTIFICATE], Trustee of [INSERT NAME OF TRUST] under Declaration of Trust dated [INSERT DATE OF TRUST], [as amended] (the "Trust") between [INSERT NAME OF SETTLOR] as Settlor, and [INSERT NAME(S) OF TRUSTEES OF RECORD] as the [ORIGINAL/SUCCESSOR] trustees, certify as follows:

- a) [INSERT NAME(S) OF TRUSTEE(S) OF RECORD] [is/are] the current trustee(s) of the Trust. If either one of us shall fail or cease to serve, [INSERT NAME OF SUCCESSOR TRUSTEE] shall serve as successor Trustee;

NOTE: While the name of the successor trustee(s) is not required by the statute, best practice would be to complete the name of the successor trustee(s) as named in the trust. DELETE THIS NOTE PRIOR TO EXECUTION AND RECORDING.

NOTE: While not required by statute, best practice would be to include the address of the Successor Trustee(s) in the certificate. DELETE THIS NOTE PRIOR TO EXECUTION AND RECORDING.

NOTE: A Trustee's Certificate under M.G.L. c. 184, § 35 may be used by the Trustee of Record to identify the beneficiaries. This may be a helpful practice in the event action by the beneficiaries is necessary in order to remove or appoint Trustees, or the identity of beneficiaries is necessary in order to distribute the assets of the Trust. In those instances, practitioners may want to add a paragraph similar to (a), above, identifying the beneficiaries. DELETE THIS NOTE PRIOR TO EXECUTION AND RECORDING.

- b) In the event there are two (2) Trustees, all Trustees must execute any and all instruments and certificates necessary to carry out the provisions of the Trust. In the event there are more than two (2) Trustees, [INSERT ANY/ALL/NUMBER OF TRUSTEES REQUIRED TO ACT] Trustees must execute such instruments and certificates necessary to carry out the provisions of the Trust;

*NOTE: The number of trustees required to act must be the same as stated in the Trust.
DELETE THIS NOTE PRIOR TO EXECUTION AND RECORDING.*

- c) The trustees of the Trust have authority to act with respect to real estate owned by the Trust, and have full and absolute power under said Trust to convey any interest in real estate and improvements thereon held in said Trust. Every agreement, lease, deed, mortgage, note or other instrument or document executed or action taken by the person or persons appearing from the records of the Registry of Deeds to be Trustees shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect, and that the execution and delivery thereof or taking of such action was duly authorized.

NOTE: If this Certificate is being used for an un-recorded nominee trust requiring direction of the beneficiaries for a Trustee to act (see REBA Form 20), a Trustee does not then have full and absolute authority or power to convey. The need for such direction would be considered a condition precedent to the acts of the Trustee. In that event, practitioners may want to use the following alternate paragraph (c) instead of the above:

- c) *When specifically directed by the requisite number of Beneficiaries, the Trustees of the Trust have authority to act with respect to real estate owned by the Trust, and have full and absolute power under said direction to convey any interest in real estate and improvements thereon held in said Trust. Every agreement, lease, deed, mortgage, note or other instrument or document executed or action taken by the person or persons appearing from the records of the Registry of Deeds to be Trustees shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect, and that the execution and delivery thereof or taking of such action was duly authorized.*

DELETE THIS NOTE PRIOR TO EXECUTION AND RECORDING.

NOTE: If the trust contains provisions regarding self-dealing or gifting, specific language from the trust should be added. DELETE THIS NOTE PRIOR TO EXECUTION AND RECORDING.

- d) There are no other facts which constitute conditions precedent to acts by the trustees or which are in any other manner germane to affairs of the Trust.
- e) Any party interested in title to the real property held by the Trustee(s) may rely on the continuing existence of the trust until the recording of a certificate or document establishing the termination of the trust.

NOTE: While a Trustee's Certificate pursuant to M.G.L. c. 184, § 35 is not meant to be used in transaction specific situations, practitioners may find that they have been recorded for such purposes. In that event, Land Court Guideline 52 states that the earlier transaction specific Trustee's Certificate may not be used for subsequent transactions at a later date unless specific language stating that the termination of the trust has not yet occurred as of the date of the later transaction, or unless the earlier certificate contains language such as is included in e) above. Practitioners may want to include such language in the event the real property held by the Trust is registered land. DELETE THIS NOTE PRIOR TO EXECUTION AND RECORDING.

Executed as a sealed instrument under the penalties of perjury on _____, 20_____.

[INSERT NAME OF TRUSTEE]
Trustee

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____, 20____, before me, the undersigned notary public, [INSERT NAME OF SIGNER], as Trustee of [INSERT NAME OF TRUST] personally appeared, proved to me through satisfactory evidence of identification, which were [INSERT METHOD OF IDENTIFICATION], 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 their knowledge and belief.

[affix or imprint official seal]

[INSERT NAME OF NOTARY PUBLIC], Notary Public
My commission expires:

Comments

1. *With respect to the necessity for having a written trust concerning land, see G.L. c. 203, § 1.*
2. *Because the certificate is signed under the penalties of perjury, an acknowledgment may be used as an alternative to a jurat.*
3. *As to registered land, see also Land Court Guideline 52.*
4. *See REBA Title Standard No. 68.*
5. *For a sample nominee trust, see REBA Form 20.*

Adopted November 3, 2003

Amended November 14, 2011 (Amended to make reference to jurat certificate form in the Note and to add the Comment)

Amended May 6, 2024 (Amended to add notes and optional provisions)