

REBA Title Standard No. 68

Trustee's Certificates Under G.L. c. 184, § 35

Title derived from a deed, mortgage or other instrument of conveyance by the trustee(s) of a non-testamentary trust holding record title to real property is not defective by reason of the failure to record the non-testamentary trust or any amendments thereto or by reason of the failure to recite the recording information for the recorded trust in the instrument by which the trustee(s) or named trust acquired title, provided that there has been recorded in the registry of deeds or district within which the affected property lies, a trustee's certificate, sworn to or stated to be executed under the penalties of perjury, by a trustee of record of such trust which certifies as to:

- (a) the identity of the trustees of such trust;
- (b) the authority of the trustee(s) to act with respect to the real estate owned by such trust;
- and
- (c) the existence or non-existence of any fact which is a condition precedent to the actions of the trustee(s) or which is, in any other manner, germane to the affairs of the trust.

The most recently recorded trustee's certificate shall be binding on all trustees and the trust estate in favor of a purchaser or other person relying in good faith on the trustee's certificate, provided, however, that, as to matters addressed in an earlier recorded trustee's certificate that are not also addressed in the most recently recorded trustee's certificate, such matters shall remain so binding on the trustees and the trust estate.

For purposes of this standard, the following words shall have the following meanings:

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

- (i) Named as a trustee in a recorded conveyance of the subject real estate to such trustee (alone or together with other trustees) or to the trust with the trustee also named in the instrument of conveyance, including a distribution deed pursuant to G.L. c. 190B (MUPC), § 3-907;
- (ii) Named as a trustee, successor, additional or contingent trustee in:

- (a) the trust instrument or a duly authorized and recorded amendment thereto recorded after the acquisition of title by the trust pursuant to REBA Title Standard No. 53;
- (b) a trustee's certificate expressly authorized by and conforming to the third-party conclusive reliance provision(s) set forth in the recorded trust or set forth in a previously recorded Trustee's Certificate conforming to this title standard¹; and,
- (c) a successor trustee's certificate or affidavit together with an attorney's G.L. c. 183, § 5B affidavit as expressly authorized by and conforming to a successor trustee appointment provision(s) set forth in the recorded trust or set forth in a previously recorded Trustee's Certificate conforming to this title standard.²
- (iii) Named in a will duly probated in the Commonwealth of Massachusetts as a trustee, successor, additional or contingent trustee of a non-testamentary trust to which real estate is devised in the will;
- (iv) Named as a current, successor, additional or contingent trustee in a recorded trustee's certificate pursuant to G.L. c. 203E, § 1013, executed by a person established to be the current trustee of the trust by the excerpts of the trust and any documents required thereby to be recorded for that purpose, such excerpts and documents to be attached to the certificate in accordance with subsection (e) of § 1013, or to an affidavit executed by such person pursuant to G.L. c. 183, § 5B to be recorded simultaneously with said certificate³;
- (v) If not named in a will as trustee of a non-testamentary trust to which real property is devised in the will, named as trustee in the final Decree and Order of Complete Settlement (MPC Form 790) or in the listing of Devisees in MPC Form 163⁴ filed with the Probate Court as confirmed by the final Decree and Order of Complete Settlement in either a formal or an informal probate or the Decree and Order on Petition for Formal Adjudication admitting the will in the case of a formal probate, including a Late and Limited probate;
- (vi) Appointed as or determined to be a trustee of the subject trust by a decree or order issued by a Probate Court or other court of competent jurisdiction;
- (vii) Named as a trustee, successor, additional or contingent trustee in a trust instrument or a trustee's certificate conforming to this title standard previously recorded in a different registry of deeds or district if the recording or filing reference is included in a document in the chain of title or a certified copy of said trust instrument or trustee's certificate is recorded with the registry of deeds or registry district where the property lies;

¹ See Comment No. 5.

² See Comment No. 5.

³ See Comment No. 6

⁴ See Comment No. 3.

or

(viii) Named as a successor, additional or contingent trustee in a recorded trustee's certificate by a person who appears to be a trustee of record at the Registry of Deeds or Registered Land District under any of the circumstances in paragraphs (i) through (vii) above.

"Real estate owned" shall mean any right, title or interest in real property, including without limitation, fee title, leasehold interests, easements, mortgages or any other interest.

"Relying in good faith" shall mean reliance without actual knowledge to the contrary. A person shall not be deemed to have actual knowledge when relying upon a trustee's certificate complying with this title standard notwithstanding the existence on the record of the trust agreement or a prior trustee's certificate, which may have provisions that are contrary to or in conflict with the facts stated in the certificate being relied upon provided that such inconsistencies are adequately explained in the certificate. But see REBA Title Standard No. 23 regarding self-dealing by Trustees.

"Most recently recorded" shall mean most recently recorded in the registry of deeds or district within which the affected property lies as of the date on which the certificate is relied upon, notwithstanding (i) the interim recording of a certificate that does not alter or derogate from the provisions that are being relied upon in the instant transaction or (ii) the later recording of an inconsistent certificate.

Caveat

If a trustee's certificate is not recorded simultaneously with the acquisition of the real property interest, third parties, including intervening lienors, may have relied upon G.L. c. 184, § 25 (the "Indefinite Reference Statute"). See REBA Title Standard No. 53.

Comments and Notes

1. Under certain circumstances it may be acceptable to properly establish a person as a "trustee of record" where a gap in succession of trustees exists by recording an affidavit pursuant to G.L. c.183, § 5B by an attorney or by a person independent of the successor trustee, which recites specific facts regarding the basis of the affiant's knowledge of the trust, the affairs of the trust and the process by which the successor trustee was appointed in conformance with the terms of the trust. Any copies of documents attached as an exhibit to such affidavit shall be certified therein to be true and accurate.

2. See G.L. c. 184, §§ 25, 34 and 35, G.L. c. 203E, § 1013 and G.L. c. 183, § 5B.

3. *The MPC form titles and numbers recited are current as of the date of adoption of the first amendment to this title standard and should be construed as referring to such forms as they may be amended or replaced in the future.*

4. *Because of the difficulty of retrieving probate files for review in advance of closings due to files being lost, misplaced, archived and unavailable due to court closures and limitations on access, attorneys should give serious consideration to recording any document from a probate file to which reference is made in any of the affidavits or trustee's certificates described in this Standard.*

5. *For an example of a "third-party reliance provision" of a trust as referred to in paragraph (ii)(b), see Section 2.3 of the REBA Form Nominee Trust (Form 20). For an example of a successor trustee appointment provision allowing for reliance on a successor trustee's certificate together with an attorney's G.L. c. 183, § 5B affidavit as referred to in paragraph (ii)(c), see Section 7.4 of the REBA Form of Nominee Trust (Form 20).*

6. *In lieu of attaching excerpts of the trust to a Trustee's Certificate pursuant to G.L. c. 203E, § 1013, practitioners may use an affidavit pursuant to G.L. c. 183, § 5B when multiple exhibits are required. Some registries of deeds prefer a Trustee's Certificate pursuant to G.L. 203E, § 1013 to include a maximum of one or two exhibits. Practitioners are encouraged to contact the applicable Registry of Deeds for their specific requirements.*

Adopted May 12, 2003

Amended November 1, 2021, to amend the first paragraph, to add the proviso to the second paragraph, to amend the section defining "Trustee of Record," to amend the definition of "Relying in Good Faith," and to amend the Caveat and Comments.

Amended May 11, 2026 to amend subsection (iv), to revise Comment 6, and to make technical corrections.