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Land Trusts in New York

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NOTES

LAND TRUSTS IN NEW YORK

New York, at present, does not recognize the legal mechanism known as a land trust. This trust concept has, however, been sanctioned by Illinois case law for many years.[1] More recently Florida has attempted to reap its benefits.[2] Its growing national recognition is evidenced by an enactment earlier this year of Virginia's General Assembly whereby use of the land trust device was expressly authorized.[3] In view of its increasing popularity, the possibility of employing this type of trust in New York or of adopting legislation expressly enabling its existence, becomes significant to lawyers, bankers and real estate investors.[4]

A land trust is a trust of real estate wherein the settlor grants the realty to a trustee to have and to hold in fee simple. The trustee has full record title and under the terms of the deed in trust is entitled to all the rights, privileges and powers of record ownership.[5] The deed in trust specifically states that a potential purchaser, lessee, mortgagee, or pledgee shall not be obliged to

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[1] Gordon v. Gordon, 6 Ill. 2d 572, 129 N.E.2d 706 (1955); Chicago Title & Trust Co. v. Mercantile Trust & Sav. Bank, 300 Ill. App. 329, 20 N.E.2d 992 (1939); Kerr v. Kotz, 218 Ill. App. 654 (1920) (abst. dec.), *aff'd*, 299 Ill. 465, 132 N.E. 625 (1921).

[2] McKillop II, *The Illinois Land Trust In Florida*, 13 U. FLA. L. REV. 173 (1960).

[3] VA. CODE ANN. § 55-17.1 (Supp. 1962). Virginia by enactment of this statute became the first state enabling land trusts by legislation. The statute became effective June 29, 1962.

[4] See Schwind, *Land Trusts: A Real Estate Syndication Device*, 101 TRUSTS & ESTATES 650, 652 (1962).

[5] The following is a clause from a standard Illinois deed in trust enumerating the precise powers, rights and privileges of this trustee:

"Full power and authority is hereby granted to the Trustee and its successors to protect and conserve the Property; to sell, contract to sell and grant options to purchase the Property and any right, title or interest therein on any terms; to exchange the Property or any part thereof for any other real or personal property upon any terms; to convey the Property by deed or other conveyance to any grantee, with or without consideration; to mortgage, pledge or otherwise encumber the Property or any part thereof; to lease, renew, extend, amend and otherwise modify leases on the Property; and to release, convey or assign any other right, title or interest whatsoever in the Property or any part thereof."

inquire into the authority of the trustee's acts.[6] This deed in trust is subject to a second document known as a land trust agreement which enumerates the beneficiary's rights in relation to the trustee. It is important to remember, for purposes of marketability of title, that only the deed in trust is recorded.[7] The unrecorded trust agreement lists the beneficiary's rights with respect to the property which are: 1) the power to direct the trustee to convey or otherwise deal with the title to the property, 2) the right to manage and control the property and 3) the right to receive the proceeds and avails from the rental, sale, mortgage or other disposition of the property.[8] The important distinguishing factor between a land trust and the so-called real estate investment trust (more commonly referred to as a business or Massachusetts trust) is that in the latter, the trustee actually manages the business by making the decisions and investing accordingly.[9] In a land trust the duties of the trustee are severely restricted by the land trust agreement to acts affecting the title to the property and those acts can only be performed at the direction of the beneficiaries.

The basic structure of a land trust having been delineated, the next concern is: what are the potential advantages of its use? The most significant benefits are: 1) those flowing from the conversion of realty into personalty, 2) those resulting from full record title being in the trustee and 3) the possibility that an investment group may avoid corporate taxation by the establishment of such a trust.[10] An explanation of these benefits will be helpful before the legal roadblocks which exist under present New York law will be considered.

Equitable Conversion and Record Title in Trustee

The first potential advantage results from the legal significance of converting realty into personalty. This transformation is a

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[6] The purchaser is protected under the typical Illinois deed in trust by the following clause:

"No party dealing with the Trustee in relation to the Property in any manner whatsoever, and no party to whom the Property or any part thereof or any interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Trustee, shall be obliged (a) to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the Property, (b) to see that the terms of this trust have been complied with, (c) to inquire into the authority, necessity or expedience of any act of the Trustee, or (d) be privileged to inquire into any of the terms of the Trust Agreement."

[7] See Garrett, *Land Trusts,* U. ILL. L.F. 655 (1955); Schwind, *supra* note 4, at 650.

[8] Garrett, *supra* note 7, at 662 (1955); Comment, 8 DE PAUL L. REV. 385 (1959).

[9] Schwind, *supra* note 4, at 652.

[10] *Id.* at 650.

consequence of the doctrine of equitable conversion.[11] Since under the trust agreement, the beneficiaries have directed that the trustee must sell the real estate within a period of time,[12] such a mandatory direction to sell causes an immediate conversion.[13] Under this concept of equitable conversion, the beneficiary's interest is deemed personalty.[14] One benefit of this conversion is the preservation of the entity of jointly-owned real estate since partition will not lie with respect to the property held in trust because it is regarded as personalty.[15] A second practical advantage of this equitable principle is that a personal judgment against a beneficiary cannot operate as a lien against the trust real estate nor can it act as a cloud on the title because of the personal nature of the beneficiary's interest.[16] A third useful application of this trust form lies in the fact that the settlor may make any disposition of the beneficial interest which he might have made in the usual inter vivos trust, yet still maintain complete control over the trust res.[17] Retention of such control by the settlor of the usual trust arrangement would render that trust executed.[18] There are also those benefits which result from record title being in the trustee. The first advantage of such an arrangement is that the complexity involved in the conveyancing of jointly-owned property may be eliminated completely by having the trustee alone execute the deed.[19] Under such a disposition, the problems of transferring multiply-owned realty resultant from out-of-state owners, the death, bankruptcy or incompetency of one of the owners or a judgment being obtained against one of them are all avoided.[20] A second benefit of full record title residing in the trustee is the preservation of the anonymity of ownership.[21] There are instances when the negotiations for the purchase of land can better be handled if the true

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[11] BOGERT, TRUSTS § 37, at 163 (3d ed. 1952).

[12] This "within a stated period of time" prerequisite is essential in order that the Rule Against Perpetuities of the particular state will not be violated.

[13] Duncanson v. Lill, 322 Ill. 528, 153 N.E. 618 (1926).

[14] 2 SCOTT, TRUSTS § 131, at 975-77. "The direction to sell the land causes what is called an 'equitable conversion' of the real estate into personalty . . . . The cases are numerous in which it is held that a mandatory direction to trustees to sell land which they hold in trust causes an equitable conversion . . . . There is an equitable conversion where the trustee is directed to sell the land, even though it is not his duty to sell it immediately." *Ibid.*

[15] Aronson v. Olsen, 348 Ill. 26, 180 N.E. 565 (1932). See Breen v. Breen, 411 Ill. 206, 103 N.E.2d 625 (1952).

[16] Chicago Title & Trust Co. v. Mercantile Trust & Sav. Bank, 300 Ill. App. 329, 20 N.E.2d 992 (1939); Turner, *Some Legal Aspects of Beneficial Interests Under Illinois Land Trusts,* 39 ILL. L. REV. 216, 219 (1945).

[17] See, *e.g.,* Garrett, *supra* note 8, at 661.

[18] See BOGERT, TRUSTS § 46, at 201 (3d ed. 1952).

[19] Garrett, *Land Trusts,* U. ILL. L.F. 655, 660 (1955).

[20] *Ibid.*

[21] Garrett, *Legal Aspects of Land Trusts,* 35 CHI. B. REC. 445, 454 (1954).

purchaser remains unknown.[22] The owner of a building may wish to avoid personal complaints from tenants or a landowner may simply, for any number of reasons, desire that his wealth be a secret hidden from his associates. These are but some of the practical considerations involved in veiling true ownership.

Real Estate Syndication With No Corporate Taxation?

In addition to the benefits accruing from the equitable conversion theory and those resulting from full record title vesting in a trustee, the land trust may be effectively used as a real estate syndication device.[23] An important advantage of this mechanism over the corporate form is the possibility that an investment group may avoid taxation at the corporate rate.[24] Whereas the Internal Revenue Service taxes the corporate income[25] and also the dividend of the shareholder,[26] the trust income is not subject to such double taxation. Under the trust form, the trustee may deduct from the trust income the amount distributed to the beneficiaries.[27] Since in the land trust the beneficiaries receive all the income, there can be no tax on the trust itself because the trust realizes no economic gain. One of the areas in which this potential tax advantage can be realized is real estate syndication: the purchasing of large, expensive tracts of land and selling low-priced shares in them to the investing public. The prime factor spurring Florida's innovation of the land trust is the hope of developing its thousands of acres of virgin land.[28] Such syndication need not be restricted to the development of untouched lands but can be advantageously used for the development of slum areas,[29] a type of urban renewal which can be afforded by private investors due to the multitude of low-cost fractional interests. Since the beneficiary's interest is assignable and transferrable,[30] the investor may be more willing to speculate.

A difficult question to answer is whether such an investment syndicate could successfully avoid corporate taxation. Since the federal tax code has included the concept of "association" within

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[22] *Ibid.*

[23] See McKillop II, *The Illinois Land Trust In Florida,* 13 U. FLA. L. REV. 173 (1960).

[24] Schwind, *Land Trusts: A Real Estate Syndication Device,* 101 TRUSTS & ESTATES 650, 651-52 (1962); See Taubman, *The Land Trust Taxable as Association,* 8 TAX L. REV. 103 (1952).

[25] INT. REV. CODE OF 1954, § 11.

[26] INT. REV. CODE OF 1954, § 63(a).

[27] INT. REV. CODE OF 1954, § 661.

[28] McKillop II, *supra* note 23, at 173.

[29] Garrett, *supra* note 21, at 453.

[30] Comment, 8 DE PAUL L. REV. 385 (1959).

the term "corporation" for revenue purposes,[31] the ultimate question determinative of corporate taxability is whether a land trust possesses sufficient corporate attributes to qualify as an association.[32] The Supreme Court found no difficulty in determining in *Hecht v. Malley*[33] that a business trust is included in the word "association."[34] In 1935, the Supreme Court in *Morrissey v. Commissioner*[35] explicitly enumerated the criteria for distinguishing between an entity taxable as a corporation and a nontaxable trust by concluding that the five salient features of a corporation for tax purposes are: title to property held by an entity, centralized management, continuity uninterrupted by death, transfer of interest without affecting the continuity of the enterprise and limited liability.[36] It is safe to state that the taxable status of a land trust is somewhat equivocal[37] and indeed it would seem that the very flexibility of the land trust agreement makes difficult the establishment of an objective standard as to its classification. As a practical matter, such classification is an *ad hoc* judgment determined by the facts of each individual land trust agreement. However, we are guided by the Treasury Regulations which, in effect, minimize the tax risk involved by setting forth six characteristics as a guideline in resolving the question of whether a group should be treated as an "association" for tax purposes. The six indicia are: 1) the presence of associates, 2) an objective to carry on a business and divide the gains therefrom, 3) continuity of life, 4) centralization of management, 5) liability for corporate debts limited to corporate property and 6) free transferability of interests.[38] Furthermore, the Regulations state that an "unincorporated organization shall not be classified as an association unless such organization has *more* corporate characteristics than noncorporate characteristics."[39] It is clear then that the absence of a single corporate characteristic will not prevent the land trust from being taxed as a corporation if there are sufficient corporate attributes to bring it within the test of the Regulations.[40] As was said in one case which dealt

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[31] INT. REV. CODE OF 1954, § 7701(a)(3) "Corporation.—The term 'corporation' includes associations, joint-stock companies, and insurance companies."

[32] See Lassers, *Land Trusts, Federal Income Taxes and Contentious Beneficiaries — A Tale With A Moral,* 40 CHI. B. REC. 127, 129-30 (1958); See Taubman, *supra* note 24.

[33] 265 U.S. 144 (1924).

[34] *Id.* at 161.

[35] 296 U.S. 344 (1935).

[36] *Id.* at 359.

[37] Taubman, *The Land Trust Taxable as Association,* 8 TAX L. REV. 103, 115 (1952). "The judicial borderline has remained indistinct and shadowy, an invitation to litigation and confusion." *Ibid.*

[38] Treas. Reg. § 301.7701-2(a)(1) (1960).

[39] Treas. Reg. § 301.7701-2(a)(3) (1960) (emphasis added).

[40] 7 MERTENS, LAW OF FEDERAL INCOME TAXATION 38A.10 (Cumm. Supp. 1962).

with this precise problem prior to the promulgation of the 1960 regulations:

> [W]here the entity or enterprise in question which it is sought to tax as an association under the corporation statute, resembles a corporation in some respects and a pure trust in others, the features of similarity should be compared and the marks of dissimilarity contrasted and the two balanced, and from this the true taxable entity determined.[41]

The risk borne by such an attempted evasion of the burdensome corporate tax is quite evident. An unfavorable decision in the Tax Court might destroy one's venture, especially in light of the possibility of a twenty-five percent penalty for failure to file a corporate return.[42] It would seem then that the taxation advantages of the land trust may depend in large measure upon the legal draftsmanship and skill exercised in preparing the land trust agreement.[43]

Feasibility in New York

Could an attorney at the present time attempt to utilize the land trust mechanism in New York? The answer to this query hinges on an analysis of New York law regarding certain property and trust concepts which are intrinsically interwoven into the land trust device. Among these must be discussed the present status of New York law concerning the nature of the beneficiary's interest in the trust res, the Rule Against Perpetuities, the Statute of Uses, the marketability of title and the problems raised by Section 96 of the New York Real Property Law.

1. *Beneficiary's Interest is Personalty*

Section 100 of the New York Real Property Law states that in an express trust, the legal estate shall vest in the trustee and the beneficiary retains no legal estate or interest but only a chose in action.[44] It is fundamental that a chose in action is deemed personalty.[45] This being so, it would seem that in New York there is a statutory establishment of the beneficiary's interest as personalty. Thus, New York avoids the problem

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[41] Commissioner v. Gibbs-Preyer Trusts Nos. 1 & 2, 117 F.2d 619, 623 (6th Cir. 1941).

[42] Taubman, *supra* note 37, at 115. "[T]he very creation of a land trust is perilous. The corporate tax may be unexpected and its impact disastrous."

[43] *Id.* at 113.

[44] N.Y. REAL PROP. LAW § 100; Bacorn v. People, 195 Misc. 917, 88 N.Y.S. 2d 628 (Ct. Cl. 1949); See BOGERT, TRUSTS § 37, at 160 & n.89 (3d ed. 1952).

[45] Castle v. Castle, 267 Fed. 521, 522-23 (9th Cir. 1920).

encountered in those states which consider the beneficiary as having a right in rem in the trust res and who, consequently, must utilize the doctrine of equitable conversion to transform this right in rem into personalty.[46]

2. Rule Against Perpetuities

Another problem which must be explored is whether such a trust in New York would violate Section 42 of the Real Property Law which is the New York statute against perpetuities. The historical objective of this rule which limits the time during which a res may be held in trust is the preservation of the alienability of property.[47] Until quite recently, the time limit in New York was a period "of not more than two lives." [48] But in 1958, the New York Legislature amended this harsh restriction to extend the limit for a period not to exceed the "continuance of lives in being at the creation of the estate and a term of not more than twenty-one years." [49] This more liberal rule would seem to minimize any problem for the settlor in a land trust since he could designate the lives of a reasonable number of persons and add twenty-one years which should be a sufficient time for the land trust to accomplish the objective for which it may have been created. It is interesting to note that New York's recent legislation permitting the use of a real estate investment trust [50] skirted the potential problem of violation of the Rule Against Perpetuities by amending section 42 to expressly exclude a real estate investment trust from the prohibition of this rule.[51] This legislation indicates New York's favorable attitude toward the development of real estate,[52] a use for which a land trust may be employed. Assuming that New York is desirous of introducing land trusts and that the present Rule Against Perpetuities would restrict the full usefulness of such trusts, the above legislation illustrates the ease with which the land trust could be exempted from the rule.

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[46] See BOGERT, TRUSTS § 37 (3d ed. 1952).
[47] Coster v. Lorillard, 14 Wend. 265, 292-93 (N.Y. 1835).
[48] N.Y. REAL PROP. LAW § 42.
[49] N.Y. REAL PROP. LAW § 42, as amended 1958.
[50] N.Y. REAL PROP. LAW § 96(7) (1961).
[51] N.Y. REAL PROP. LAW § 42-d (1961). This section in reference to real estate investment trusts declares that they "shall not be deemed to be invalid as violating any existing laws against perpetuities or suspension of the power of alienation . . . ." *Ibid.*
[52] 1961 N.Y. Sess. Laws 2100, Governor's Messages to the Legislature, Real Property 96(7): "These measures are of considerable importance to the business climate of the State in that without the authority they provide funds now available for investment in such enterprises in New York may well flow to qualified trusts created under the more liberal provisions of law in some of our sister states. It is appropriate and desirable that this opportunity be made available in New York."

3. *Statute of Uses*

Perhaps the greatest obstacle to be hurdled in New York is compliance with the New York interpretation of what constitutes an active trust. The New York statutes dealing with active and passive trusts are Sections 92 and 93 of the Real Property Law. They provide that the title of a trustee may not be merely nominal but such title must be connected with some power of actual disposition or management in relation to the realty which is the subject of the trust.[53] If no such duties are entailed, the trust res is deemed "dry" or "passive," full title passes directly to the intended beneficiary and the trustee takes nothing.[54] Illinois has bypassed this problem by expressly holding that a land trust is not executed by the Statute of Uses.[55] The reasoning employed is that if active duties are imposed, it matters not that they are merely formal or ministerial.[56] Virginia has employed statutory enactment to avoid the possibility of an executed trust by declaring that "no trust relating to real estate shall fail . . . because no duties are imposed upon the trustee." [57] Florida is presently experiencing difficulty with its courts' interpretation of the Florida Statute of Uses. It is attempting to resolve the problem by conferring upon the trustee certain administrative duties, such as preparing fiduciary reports and submitting a terminal accounting, in an attempt to take the land trust without the Florida interpretation of the statute.[58] Whether Florida's imposition of such ministerial functions on the trustee will constitute the trust active has not yet been determined by litigation in its courts.

Whether the land trust will be deemed executed in New York depends on how strictly our courts apply sections 92 and 93. It is well settled that a disposition to one person for the use of another with the trustee having no active duties is a "dry" trust.[59] It has been held that if the sole duty of the trustee is to hold the bequest for a specified period and distribute it in accordance with the provisions of a will, this is not a sufficient

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[53] N.Y. REAL PROP. LAW § 92.

[54] 1A BOGERT, TRUSTS & TRUSTEES § 206 (1951).

[55] Breen v. Breen, 411 Ill. 206, 103 N.E.2d 625 (1952); Crow v. Crow, 348 Ill. 241, 180 N.E. 877 (1932).

[56] Chicago Title & Trust Co. v. Mercantile Trust & Sav. Bank, 300 Ill. App. 329, 338, 20 N.E.2d 992, 996 (1939). The court declared: "If active duties are imposed it does not matter that they are merely formal or ministerial."

[57] VA. CODE ANN. § 55-17.1 (Supp. 1962).

[58] McKillop II, *The Illinois Land Trust In Florida*, 13 U. FLA. REV. 173, 176 (1960).

[59] In the Matter of Lang, 23 Misc. 2d 328, 197 N.Y.S.2d 52 (Surr. Ct. 1960); In the Matter of Kuehnle, 4 Misc. 2d 540, 158 N.Y.S.2d 692 (Surr. Ct. 1956).

obligation to make the trust active.[60] It appears then that in New York, contrary to the majority rule, a direction to the trustee to convey or distribute is not sufficient to create an active trust.[61] But if the trustee is authorized to collect the rents and profits of the real estate [62] or is authorized to accumulate the income from the realty,[63] these duties are sufficient to declare the trust active. However, there seems to be no objective standard which the New York courts apply to distinguish between the active and passive trust. Some courts have indicated the existence of what might be termed a "discretionary rule" whereby if a trustee has some discretion to exercise in relation to his control over the trust res, this discretion would constitute the trust active.[64] It would seem then that under New York's strict interpretation of its Statute of Uses, the duties imposed upon the trustee in a standard land trust which would consist of holding record title and exercising the rights, privileges and powers incident thereto, not as a matter of discretion, but only at the direction of the beneficiary would fall short of the active duties required as defined by the New York courts. If New York desires to circumvent this problem it has an option of abolishing its Statute of Uses as has been done in Virginia, of becoming more liberal in its interpretation as has been done in Illinois or of imposing sufficient active duties upon the trustee as has been attempted in Florida.

4. *Marketability of Title*

Under the land trust arrangement, the trust agreement is not recorded. As has been heretofore pointed out, the recorded deed in trust relieves the purchaser from any responsibilities regarding the trustee's authority to act. Illinois has had no problem in upholding the marketability of title of the trust realty. In Virginia, the recently enacted statute assures marketability [65] and the title insurance companies are issuing policies on land trust titles. Florida has encountered a problem as illustrated by *Resnick v. Goldman* [66] wherein the purchaser was permitted to regard the title as un-

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[60] *In re* Donohue's Estate, 143 N.Y.S.2d 405 (Surr. Ct. 1955); In the Matter of Estate of Spruce, 188 Misc. 776, 67 N.Y.S.2d 545 (Surr. Ct. 1947).

[61] *In re* Schaefer's Estate, 121 N.Y.S.2d 233 (Surr. Ct. 1953).

[62] In the Matter of Fischer, 307 N.Y. 149, 120 N.E.2d 688 (1954); see Monypeny v. Monypeny, 202 N.Y. 90, 95 N.E. 1 (1911).

[63] In the Matter of Estate of Corin, 22 Misc. 2d 699, 200 N.Y.S.2d 770 (Surr. Ct. 1960); In the Matter of Bolton, 195 Misc. 224, 90 N.Y.S.2d 295 (Surr. Ct. 1949) (dictum).

[64] Verdin v. Slocum, 71 N.Y. 345 (1877); see In the Matter of Bolton, *supra* note 63; BOGERT, TRUSTS § 46, at 201 (3d ed. 1952).

[65] VA. CODE ANN. § 55-17.1 (Supp. 1962).

[66] 133 So. 2d 770 (Fla. Dist. Ct. App. 1961).

marketable and was consequently excused from performance. The basis for the court's decision was that there existed the possibility that the unrecorded trust agreement could conflict with the terms of the deed in trust and hence there was a potential cloud on the title.[67] Attorneys in Florida have avoided the effect of that case by altering the form of deed in trust to eliminate all reference to an unrecorded trust agreement. The general rule is that when the trustee holds the trust res for the purpose of sale and conversion into money or with a power of sale and conversion, a good faith purchaser for adequate consideration will acquire a valid title.[68] The important factor regarding protection of the purchaser is whether the trustee has the power of sale which he, of course, does in a land trust mechanism. New York is one of a number of states which has a statute expressly relieving the purchaser from the necessity of seeing to the application of the purchase price by the trustee.[69] Since the New York statute[70] expressly protects the bona fide purchaser for value, it would seem that under the land trust device in New York, there would be no problem concerning the marketability of the trust realty.

5. *Real Property Law* § 96

A further legal obstacle is presented by Section 96 of the Real Property Law which lists eight purposes for which express trusts may be created.[71] These eight classifications pre-empt the establishment of other express trusts. It is apparent that a land trust could not be classified within the first seven categories. The eighth category, which is a recent amendment, is "to effect and carry out any purpose for which a contract may lawfully be made."[72] This amendment became effective in September of 1962 and there is as yet no indication of its interpretation.[73] If it be liberally interpreted, perhaps it will permit the establishment of a land trust but it is too soon to conjecture. If the land trust cannot be included within this recent amendment, express legislation will be necessary.

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[67] *Id.* at 771.
[68] 3 REDFIELD, LAW OF WILLS 620 (3d ed.).
[69] 4 BOGERT, TRUSTS & TRUSTEES § 901 n.4 (1948).
[70] N.Y. REAL PROP. LAW § 108.
[71] N.Y. REAL PROP. LAW § 96.
[72] N.Y. REAL PROP. LAW § 96(8) (Supp. 1962).
[73] 1962 LEG. DOC. No. 65(K), N.Y. LAW REVISION COMM'N REP. states that "the New York statute defining purposes for which trusts of real property may be created should be broadened to include any purpose for which a contract may lawfully be made."

Conclusion

There seems to be no doubt that the land trust can be a valuable legal device in New York. The flexibility of its organization and the number of purposes for which it can be used render it particularly useful to the creative attorney. Since the beneficiary's interest is deemed personalty, partition will not lie and a judgment against the beneficiary will not act as a lien on the realty. Record title being in the trustee, the sale of jointly-owned realty is greatly facilitated and the anonymity of the beneficiaries may be preserved.

From the taxation standpoint, there is the consideration that a skilled lawyer can so establish the land trust that it will have fewer corporate than noncorporate characteristics and thus, burdensome corporate taxation may be bypassed. The relative freedom of organization when contrasted to the rigid compliance with statutory norms demanded of corporations seems to be another advantage over the corporate form.

The most serious legal roadblock to introduction of the land trust in New York is the consideration that the duties imposed on the trustee would seem to be insufficient to qualify it as an active trust and, consequently, the trust would be deemed executed. It appears that statutory exemption from sections 92 and 93 is the most practicable solution to the problem of "dry" trusts. Section 96 of the Real Property Law, as already indicated, may also require legislative amendment although there is a possibility that the courts may be able to bring the land trust under subdivision eight of that section.

In any event, the practical utility of the land trust as a legal tool is beyond question. It would appear to be merely a matter of time before its legal feasibility under New York law will be put to the test.

FUNCTIONAL DISCOUNTS — A THREAT TO COMPETITION?

The Robinson-Patman Act was established to insure competitive equality by strengthening antitrust laws and by protecting the businessman against unfair trade practices and unlawful price discrimination.[1] To accomplish this result, section 2(a) of the

[1] H.R. REP. No. 2287, 74th Cong., 2d Sess. 3 (1936). For a general survey of the origin and legal impact of the Robinson-Patman Act, see AUSTIN, PRICE DISCRIMINATION AND RELATED PROBLEMS UNDER THE ROBIN-