

New Standard of Title Approved for Trust/Trustee Conveyances

By ELLEN L. SOSTMAN

AT ITS MEETING ON FEBRUARY 20, 2020, the Special Committee on the Standards of Title adopted a proposed new standard, Standard 7.6, to address the changes made to the Connecticut General Statutes that specifically recognize as valid conveyances made to a trust rather than to its trustees. With the codification of the biennial Validating Acts, effective July 1, 2000, Conn. Gen. Stat. Sec. 47-36aa provided that a conveyance to a trust would only be valid to pass full legal title two years after the date on which it was recorded. The adoption of Conn. Gen. Stat. Sec. 47-36bb, effective October 1, 2016 and subsequently revised October 1, 2017, eliminated the two-year validating period by recognizing a conveyance of an interest in land to a trust as a valid, enforceable transfer when made. Further, Sec. 47-36bb provides that such a conveyance made by a trust and executed by a duly authorized trustee shall be treated as though made by the trustee, and, if made and executed by a duly authorized trustee, shall be treated as a transfer by the trust.

Notwithstanding a directive contained in Sec. 47-36bb(c) to town clerks to index any instrument to which a trust is a party in the names of the trust and all named trustees, the committee recognizes that unmarketability of title will occur due to breaks in the chain of title as indexed where such cross-indexing is not done, inadvertently or because the instruments presented for recording do not contain all such names, and some instruments in the chain are to or from trustees while others are to or from the trust. To address this potential problem, the headnotes of Proposed Standard 7.6 read as follows:



CONVEYANCE TO A TRUST

A. Although a trust is not a statutorily recognized entity in Connecticut, nonetheless it is authorized by statute to acquire and convey legal title to an interest in real property either in the name of the trust or in the name(s) of the trustee(s).

B. Title to an interest in real property that is conveyed by one instrument to a trust in its own name and subsequently conveyed in another instrument by the duly authorized trustee(s) of that trust or conversely, conveyed to the trustee(s) of a trust in one instrument and subsequently conveyed in another instrument by the trust in its own name, is marketable provided that in each instance the instrument of transfer is indexed in both the name of the trust and the name(s) of the trustee(s), to avoid a break in the chain of title.

C. Title not so cross-indexed may be made marketable by the recording of appropriate documents that address the break in the chain of title.

Comment 3 of the proposed standard identifies appropriate documents to ad-

dress the break in the chain as an affidavit of facts prepared in accordance with Conn. Gen. Stat. Sec. 47-12a or a certificate of trust. Comment 4 addresses the need for a party accepting an instrument executed by a trustee or trustees to establish that such party or parties are duly authorized and have full power and authority to execute the instrument, but further notes that such an instrument, once recorded, is entitled to the presumption that the signatory did have such power and authority.

Pursuant to the CBA's bylaws, the publication of this article starts a 60-day comment period during which comments on this proposed standard may be addressed to the chair of the Committee, Attorney Ellen L. Sostman, at esostman@catic.com, or to any other member of the committee. A full copy of the proposed standard is also available from the chair or any other committee member. ■

Ellen L. Sostman is a senior title counsel at Connecticut Attorneys Title Insurance Company, a member of the CBA's Real Property Section's Executive Committee and Chair of the Standards of Title Committee. She has been a member of the Connecticut Bar since 1975.