

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 615
Committee Substitute Favorable 5/5/09
Committee Substitute #2 Favorable 5/11/09

Short Title: Business Trusts.

(Public)

Sponsors:

Referred to:

March 17, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 39-44 reads as rewritten:

5 "**§ 39-44. Definition.**

6 The term "business trust" whenever used or referred to in this Article shall mean any
7 unincorporated association, including ~~but not limited to an Illinois land trust, a Delaware~~
8 statutory trust, or a Massachusetts business trust, engaged in any business or trade under a
9 written instrument or declaration of trust under which the beneficial interest therein is divided
10 into shares represented by certificates or shares of beneficial interest."

11 **SECTION 2.** G.S. 39-46 reads as rewritten:

12 "**§ 39-46. Title vested; conveyance; probate.**

13 (a) Where real estate has been or may be hereafter conveyed to a business trust in its
14 trust name or in the names of its trustees in their capacity as trustees of such business trust, the
15 said title shall vest in said business trust, and the said real estate and interests therein may be
16 conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an
17 instrument signed by at least one of its trustees, its president, a vice-president or other duly
18 authorized officer, ~~and attested or countersigned by its secretary, assistant secretary or such~~
19 ~~other officer as is the custodian of its common seal, not acting in dual capacity, with its official~~
20 ~~seal affixed,~~ the said conveyance to be proven and probated in the same manner as provided by
21 law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus
22 made by any such business trust shall convey good and sufficient title to said real estate and
23 interests therein in accordance with the provisions of said conveyance; provided, however, that
24 with respect to any such conveyance, encumbrance or other disposition effected after June 28,
25 1977, there must be recorded in the county where the land lies a memorandum of the written
26 instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum
27 shall set forth the name, date and place of filing, if any, of such written instrument or
28 declaration of trust, and the place where the written instrument or declaration of trust, and all
29 amendments thereto, is kept and may be examined upon reasonable notice, which place need
30 not be a public office. Such memorandum may include designation of trustees and duly
31 authorized officers and the authority granted to them with regard to real estate matters, pursuant
32 to subsection (b) of this section.

33 (b) Any business trust may convey or encumber an interest in real property that is
34 transferable by either (i) an instrument duly executed by either an officer of the business trust
35 other than one of its trustees, its president, a vice president, or other authorized agent identified
36 in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this



1 section, if the conveyance has attached to it a signed resolution adopted by the board of
2 trustees, as certified by an officer authorized to make such certifications of the business trust,
3 authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other
4 instruments. This section is deemed to have been complied with if a resolution required by this
5 subsection is recorded separately in the office of the register of deeds in the county where the
6 land lies. Such a resolution shall be applicable to all instruments executed subsequently to the
7 recording of the resolution and pursuant to its authority.

8 Notwithstanding the foregoing, this section does not require a signed resolution adopted by
9 the board of directors, as certified by an officer authorized to make such certifications, to be
10 attached to an instrument or separately recorded in the case of an instrument duly executed by
11 one of its trustees, its president, or a vice president of the business trust. All deeds,
12 conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall
13 have the effect to pass the title to the real or personal property described in the instrument.
14 Notwithstanding anything to the contrary in the trust agreement, and absent any provision
15 otherwise in the recorded memorandum or declaration of trust required under subsection (a) of
16 this section, when it appears on the face of an instrument registered in the office of the register
17 of deeds that the instrument was signed in the ordinary course of business on behalf of a
18 business trust by at least one of its trustees, its president, a vice president, or an assistant vice
19 president, such an instrument shall be as valid with respect to the rights of innocent third parties
20 for value without notice of a defect or breach of fiduciary duty as if executed pursuant to
21 authorization from the board of trustees, unless the instrument reveals on its face a breach of
22 fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual
23 knowledge of lack of authority or of a breach of fiduciary obligation.

24 (c) Nothing in this section shall be deemed to exclude the power of any representatives
25 of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent
26 authority, ratification, estoppel, or otherwise.

27 (d) Nothing in this section shall relieve trustees or officers of a business trust from
28 liability to the business trust or from any other liability that they may have incurred from any
29 violation of their actual authority."

30 **SECTION 3.** This act becomes effective October 1, 2009, and applies to all
31 instruments recorded on or after that date.