

# Trusts & Estates

The newsletter of the Illinois State Bar Association's Section on Trusts & Estates

## Include trustee's acceptance language in an instrument conveying real property out of a land trust into a living trust

BY COLLEEN L. SAHLAS

Whether you practice real estate law or estate planning or both, you are probably aware of and incorporating into your legal practice the new Illinois Statute at 760 ILCS 5/6.5 which took effect on January 1, 2017, and provides as follows:

Sec. 6.5. Transfer of property to trust. (a) The transfer of real property to a trust requires a transfer of legal title to the trustee evidenced by a written instrument of conveyance and acceptance by the trustee. (b) If the transferor is a trustee of the trust, an interest in real property does not become trust property unless the instrument of conveyance is recorded in the office of the recorder of the county in which the property is located.

(Source: P.A. 99-743, eff. 1-1-17).

*But how does this new Statutory requirement play out when conveying real property from a land trust to a living trust, particularly since the land trust company drafts the deed?* The customary practice is to complete the land trust company's

form, "Direction to Convey," and then the land trust company will prepare the new Trustee's Deed in Trust. You may try to use the Direction to Convey to direct the land trust company to also prepare an acceptance by the trustee of the trust. However, you may be unsuccessful in convincing them to do so, as I discovered. But there's nothing stopping you from drafting and adding the acceptance language to that deed yourself.

I recently assisted a client in conveying ownership of her residence from the land trust to the client as trustee of her revocable, living trust. I prepared a Direction to Convey, instructing the land trust company to draft the Deed to effectuate this transfer to my client as Trustee of her revocable, living trust, and to include the new acceptance language for my client to sign as the trustee of the living trust to accept the trust property pursuant to 760 ILCS 5/6.5.

The land trust company informed me that they would not prepare the Trustee acceptance language because land trust companies are exempt from The Trust and Trustees Act [see 760 ILCS 5/6.3(2)(a)]. However, *in this instance it was irrelevant*

*that land trust companies are exempt from 760 ILCS 5/6.5, because the new statute imposes the duty on the trustee of the living trust who is accepting trust property (the grantee), and not on the land trust company who is conveying the property (the grantor).* The land trust company could have legitimately claimed the statutory exemption had they been receiving trust property as the grantee, but that was not the case here. Moreover, the land trust company's mere preparation of a deed containing trustee acceptance language for the grantee would not have subjected the land trust company to the Trust and Trustees Act.

### Draft the Acceptance Language Yourself and Attach it to the Prepared Instrument

In this situation, I found it easier to simply draft the acceptance language myself than try to convince the land trust company that the statutory exemption issue they were claiming was inapplicable and that they should draft it. Upon receiving the Trustee's Deed in Trust from the land trust company, I simply attached the acceptance language I'd prepared,

obtained the signature of my client who was the Trustee of the living trust, and then sent it for recording to fulfill the new Statute.

Since there are only a handful of land trust companies in the State of Illinois, you are likely to encounter a similar obstacle if this situation arises.

### Summary Practice Tip

When conveying real property out

of a land trust to a living trust, don't rely on the land trust company to prepare an instrument of conveyance that includes a written acceptance by the trustee of a trust to fulfill the new Illinois Statute at 760 ILCS 5/6.5(a). *Instead, you should draft the acceptance to fulfill 760 ILCS 5/6.5(a), obtain the trustee's signature, attach it to the instrument received from the land trust company, and then send for recording in the office of the recorder of the county in*

which the property is located. *Put this on your checklist* for transfers of real estate being conveyed from a land trust to a living trust and then you won't overlook fulfilling the new statute. ■

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