

<del>Utah Recording and Processing Standards</del>	<b>Number:</b>	Processing - 1
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	<b>Effective:</b>	04/30/2023
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## 1. Title

Title to Real Property Held in Trust.

## 2. Standard Procedure

**2.1 Real Property Conveyed into a Trust:** When real property is conveyed into a trust the document presented for recording must include the name of the trustee(s), the mailing address of the trustee(s), and the name and date of the trust, to be eligible for recording.

When a document is recorded, conveying real property into a trust, legal title is conveyed to the trustee(s) to be held in trust. The County Recorder's Office will reflect record title in the named trustee(s) identified in the originating document as trustee(s) of the named trust. Because of limitations in computer software and limited space on ownership maps, for the convenience of the county and those involved in the trust, the County Recorder's Office ownership plats may reflect the name of the trust only as a visual representation, in lieu of the name of the trustee or co-trustees, for the "owner" of the property that is held in trust. Likewise, the tax roll and index of the recorder's office may also reflect the name of the trust in first place, with a zero percent interest in the property.

**2.1.1 Power of Attorney for Trustee:** Generally, a trustee may not appoint an attorney-in-fact. However, in rare circumstances where the trust agreement specifically allows for the practice, and the appointment is specifically executed for the person as trustee, the power of attorney may sign out as the power of attorney agent for the trustee. A reference to the specific provision of the terms of the trust concerning the allowance of a power of attorney for the trustee must be cited in the Power of Attorney instrument.

**2.2 Real Property Conveyed Out of a Trust:** All trustees of record are required to sign out in accordance with subsection 2.2.1, vacate the trusteeship in accordance with subsection 2.2.2 or 2.2.3, or designate their authority in accordance with subsection 2.2.4, to fully convey title to the property held in trust. If the originating document conveying title to be held in trust did not identify the name of the trustee(s), a note with a reference to the specific provision of the trust agreement naming the person as trustee(s) must be included in the affidavit of successor trustee which replaces the original unknown trustee or the transfer document conveying title from that trustee(s).

**2.2.1 Trustee(s) Directly Signing Out:** When a trustee proceeds to directly sign out title to real property held in trust, they must identify themselves as a trustee of the trust and sign the document in their capacity as trustee of the trust. For example, if John C. Doe is a trustee, of the John C. Doe Living Trust dated December 12, 2012, then, when proceeding to sign out directly, he would have to identify himself as "*John C. Doe, trustee of the John C. Doe Living Trust dated December 12, 2012.*" This identification as trustee of the trust must appear in the grantor or declarant section of the document and in the signature block section of the document (See attached Exhibit A). The notary public must, unless it is not required by the law(s) of their state, acknowledge that the person signing the document did say that the

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signatory is a trustee of the trust and that the signatory was authorized to sign by the terms of the trust.

**2.2.2 Vacancy in Trusteeship Without Appointment of Successor:** When a vacancy in trusteeship occurs, as defined in Utah Code 75-7-704, and the title held by that trustee is not directly signed out by that trustee, the title held by that trustee is divested from that trustee by the terms of the trust agreement. When this situation occurs, the County Recorder's Office will require an affidavit, containing a declaration of the vacancy and of the fulfillment of the terms of the trust agreement, to be recorded in order to remove that trustee from record title. An affidavit evidencing the vacancy of a trustee must include:

- The full name of the trust and full date of the trust.
- The legal description of the real property affected.
- The name of the original trustee who is to be removed from record title.
- A declaration of the reason for their vacancy in trusteeship.
- A declaration that the terms of the trust agreement with regard to the vacancy have been satisfied. A reference to the specific provision of the trust agreement that governs the vacancy may be cited, but is not required.
- In the case when a vacancy in a trusteeship occurs because the trustee has passed away, a copy of the death certificate, or other document issued by a government agency as described in Utah Code 75-1-107, will be required to be recorded with the affidavit.

If one or more co-trustees remain in office, a vacancy in a trusteeship may not be required to be filled (75-7-703(2)). A vacancy in a trusteeship must be filled, under subsection 2.2.3 or by a court appointment, if the trust has no remaining trustees 75-7-704(2).

**2.2.3 Appointment of Successor Trustee After Vacancy in Trusteeship:** Pursuant to the terms of a trust agreement, a successor trustee may replace an original trustee. By the terms of the trust agreement, when a successor trustee is appointed, legal title is vested in that successor trustee equivalent to a trustee or co-trustee identified in the originating document. When this situation occurs, the County Recorder's Office will require an affidavit, containing a declaration of the vacancy, the appointment of successor trustee, and the fulfillment of the terms of the trust agreement, to be recorded in order to remove the previous trustee from, and add that successor trustee to record title. An affidavit evidencing the appointment of a successor trustee must include:

- The full name of the trust and full date of the trust.
- The legal description of the real property affected.
- The name of the original trustee who is being replaced on record title.
- A declaration of the reason for their vacancy in trusteeship.
- A declaration that the terms of the trust agreement with regard to the vacancy and the appointment of the successor trustee have been satisfied. A reference to the specific provision of the trust agreement that governs the vacancy and successor trustee may be cited, but is not required.
- In the case when a vacancy in a trusteeship occurs because the trustee has passed away, a copy of the death certificate, or other document issued by a government

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agency as described in Utah Code 75-1-107, will be required to be recorded with the affidavit.

- An acknowledgement that the successor trustee has assumed their rights and responsibilities under the terms of the trust.
- Filing a single affidavit may fulfill both requirements for 2.2.2 and 2.2.3

**2.2.4 Designation of Signatory:** Generally, co-trustees on record title act together to conduct business regarding title to real property on behalf of the trust. However, in rare circumstances where the trust agreement specifically allows for the practice, a designation for a signatory to act independently may be made by the trust agreement or the trustee(s).

**i. Designated by Trust Agreement:** If the trust agreement allows the trustee(s) to sign independently from one another, then a single trustee may sign in behalf of the trust after an affidavit declaring the designation from the terms of the trust is recorded.

**ii. Designation by Trustee(s):** If the trust agreement allows, the trustee(s) may designate their authority to sign as an authorized signer on behalf of the trust, including with regard to title to real property held in trust. This designation must be executed by all of the co-trustees on record title.

When either of these situations occur, the County Recorder's Office will require an affidavit, containing a declaration of the designation according to the terms of the trust agreement, to be recorded in order to allow the signatory to act with regard to record title. An affidavit evidencing the designation must include:

- The full name of the trust and full date of the trust.
- The legal description of the real property affected.
- The name of the record title trustee(s) who are designating their signatory authority.
- A declaration of the designation of their authority to a signatory.
- A declaration that the terms of the trust agreement with regard to the designation have been satisfied. A reference to the specific provision of the trust agreement that governs the designation may be cited, but is not required.

The designation of their signatory authority to a signatory does not remove any trustee(s) from record title or disqualify the record title trustee(s) from continuing to act together to conduct business regarding title to real property on behalf of the trust.

### 3. Approvals

Group	Approval	Date
Utah Association of County Recorders	96%	04/30/2023
Utah Land Title Association Board	100%	04/10/2023

### 4. Supporting Information

**4.1 Legal Title of Trust Property:** A trust is a fiduciary relationship with respect to property in which property interest is held by one person(s) – the trustee(s), at the request of another – the settlor(s), for the benefit of a third party – the beneficiary(s). Based on those rules, upon creation of a trust, the grantor conveys title to trust property to the trustee and beneficiaries. The trustee holds legal title to the property and the

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beneficiaries hold equitable title. The Utah Supreme Court has stated that “The nature of a trust is such that the legal title of the property is held by the trustee.”

(*Estate of Flake*, 2003 UT 17, ¶ 11, 71 P.3d 589) Black’s Law Dictionary defines a trustee as: “Someone who stands in a fiduciary or confidential relation to another; one who, *having legal title to property*, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.” In addition to powers granted or limited by terms of the trust Utah Code assigns specific powers to the trustee consistent with the definition that a trustee holds title to real property. In section 75-7-814(1)(h) specific powers of a trustee are identified consistent with one who holds title to real property. “a trustee may: with respect to interest in real property...subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries.” Since the trustee holds legal title to the property, the property is always held in the trustee's name as trustee. This point is often confusing because many people believe that property should be held in the name of the trust which is simply a name denoting the legal relationship between a trustee, and a beneficiary. When it is said that property is transferred to a trust, it is meant that property is transferred to the trustee to be held *in trust* according to the intent of the settlor and the agreement between the trustee and the beneficiary.

**4.2 Designation of Trustee:** A trust cannot be created without designating one or more persons as trustees of the trust (Utah Code 75-7-401). Per Utah Code 75-1-201(35) a ‘person’ as trustee means an individual or organization. Utah Code 75-1-201(32) further defines ‘organization’ as including a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity. Thus, any of these entities may be named a person as trustee. Utah Code 75-7-816 defines that “when title to real property is granted to a person as trustee, the terms of the trust (the name of the trustee, the address of the trustee, and the name and date of the trust) may be given either in the deed of transfer; or in an instrument signed by the grantor and recorded in the same office as the grant to the trustee.” Since May of 2010 Utah Code has required that “the name of the trustee(s), the address of the trustee(s), and the name and date of the trust, shall be included on all record documents affecting real property to which the trust is a party in interest” (75-7-814(3)).

**4.3 Terms of the Trust:** The terms of a trust govern the administration of the trust. With very few exceptions, the terms of the trust govern over the default rules that are provided in code (75-7-105). The terms of the trust give the trustee their power to act as trustee and defines their administrative responsibilities. With the authority of terms of the trust a person named as trustee is a trustee and not just an individual. Utah Code requires that a trustee “shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries...” (75-7-801) (75-7-105(2)(b)). “A trustee who acts in reasonable reliance on the terms of the trust

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## Exhibit A

as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent that the breach resulted from the reliance.” (75-7-1006) Similarly a county recorder who acts in reasonable reliance on a recorded document which declares that the specific provision of the trust agreement have been satisfied, likely would not be liable for reflecting the associated change in record title, over those who have executed the document and declared that the terms of the trust have been satisfied (75-7-1013(6)). The terms of a trust are private, and the trustee owes a duty of confidentiality to the beneficiaries with respect to the terms of the trust. When terms of a trust are required for recording a document, a reference to the specific provision of the trust agreement is sufficient proof of the terms of the trust. An actual citation of the terms of the trust, or the trust agreement itself, may not be required to be placed on a document recorded into the public record.

**4.4 Definition of Trust:** Consistent with Utah Code 75-1-201(55) "Trust" in this standard “includes... any express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.”

## 5. Related and Example Documents

The attached Exhibit A is an example document which shows a proper signing out by a trustee for title held in trust.

## 6. References

Utah Code 75-7.

Utah Supreme Court Case *Estate of Flake*, 2003 UT 17, ¶ 11, 71 P.3d 589.

Black’ Law Dictionary, Eleventh Edition, pages 1817; 1825.

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Err: 1999999 Bk 5000 Pg 1  
Date: 1-Dec-2019 03:05 PM Fee \$0.00  
SOMEONE - County, UT  
RECORDER, Rec. - Filed By AC  
For SOMEONE

MAIL TAX NOTICE TO:  
John C. Doe  
999 North 9999 West  
Somewhere, Utah 99999

## WARRANTY DEED

JOHN C. DOE, as trustee of the JOHN C. DOE LIVING TRUST, dated the 12<sup>TH</sup> day of December, 2012,  
GRANTOR, of Some County, State of Utah,

HEREBY GRANTS, CONVEYS, AND FOREVER WARRANTS TO

FRANK FOE,

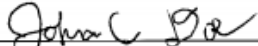
GRANTEE, of Some County, State of Utah,

FOR THE SUM OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, THE FOLLOWING DESCRIBED  
TRACT OF LAND IN SOME COUNTY, STATE OF UTAH:

All of Lot 1, Somewhere Subdivision, according to the official plat of said subdivision recorded November 11,  
2011 as Entry Number 9999999, Book 9999, and Page 9999, on file and of record in the office of the Recorder of Some  
County, Utah.

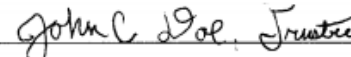
Parcel 99-999-0001

WITNESS, THE HAND OF SAID GRANTOR, THIS 15<sup>TH</sup> DAY OF MARCH, 2023.

  
\_\_\_\_\_  
John C. Doe, Trustee of  
The John C. Doe Living Trust,  
Dated the 12<sup>th</sup> Day of December, 2012.

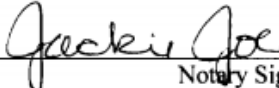
OR

The John C. Doe Living Trust,  
dated December 12, 2012.

  
\_\_\_\_\_  
By: John C. Doe, Trustee

STATE OF UTAH )  
County of SOME ) ss.  
)

On the 15<sup>th</sup> day of March, in the year 2023, before me, Jackie Joe a notary public, personally  
appeared JOHN C. DOE, proved on the basis of satisfactory evidence to be the person whose name is  
subscribed to this instrument, and acknowledged he executed the same.  
Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Signature

