

March 16, 2009

H 615. BUSINESS TRUSTS. Filed 3/16/09. *TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.*

Amends GS 39-44 to add that *business trust* also includes *an Illinois land trust and a Delaware statutory trust* engaged in any business or trade under a written instrument or declaration of trust under which the beneficial interest therein is divided into shares represented by certificates or shares of beneficial interest.

Amends GS 39-46 to remove that an instrument conveying, encumbering, or otherwise disposing of real estate and interests therein by a business trust may be attested to or countersigned by its secretary, assistant secretary, or such other officer as is the custodian of its common seal, not acting in dual capacity, with its official seal affixed. Provides that the memorandum of the written instrument or declaration of trust, required to be recorded in the county where the property conveyed, encumbered, or otherwise disposed of by the business trust is located, may include designation of trustees and duly authorized officers and the authority granted to them in regard to real estate matters.

Enacts new subsection (b) to allow any business trust to convey or encumber an interest in real property by either (1) an instrument executed by an officer *other than* one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum or (2) in a declaration of trust as described in subsection (a), if the conveyance has attached to it a certified, signed resolution adopted by the board of directors authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. Provides that this section is deemed complied with if the resolution is recorded separately in the office of the register of deeds in the county where the property is located. Provides that if it appears on the face of an instrument registered in the register of deeds that the instrument was signed in the ordinary course of business by at least one of the business trust's trustees, its president, a vice president, or an assistant vice president, then the instrument is valid with respect to the rights of innocent third parties for value without notice of defect or breach of fiduciary duty as if duly authorized by the board of trustees, unless the instrument reveals on its face a potential breach of fiduciary obligation. Specifies that this subsection does not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

Provides that this statute does not (1) exclude the power of any business trust representative from binding the corporation pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise or (2) relieve business trust officers or trustees from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority.

Effective for all instruments recorded before, on, or after the date the act becomes law.

Intro. by Martin.

GS 39

May 5, 2009

H 615. BUSINESS TRUSTS. Filed 3/16/09. House committee substitute makes the following changes to 1st edition. Amends the definition of the term *business trust* to be any unincorporated association, including an Illinois land trust, a Delaware statutory trust, or a Massachusetts business trust. Changes the effective date to October 1, 2009 (was, effective when the act becomes law).

May11, 2009

H 615. BUSINESS TRUSTS. Filed 3/16/09. House committee substitute makes the following changes to 2nd edition. Rewrites new GS 39-46(b) to affect the validity of the instrument with respect to rights of innocent third parties only when the instrument reveals on its face a breach (was, potential breach) of fiduciary obligation.

June 29, 2009

SL 2009-174 (H 615). BUSINESS TRUSTS. *AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.* Summarized in *Daily Bulletin* 3/16/09, 5/5/09, and 5/11/09. Enacted June 26, 2009. Effective October 1, 2009, and applies to all instruments recorded on or after that date.