

**CHAPTER 13  
USES AND TRUSTS**

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**§ 13101. Trust Must be in Writing.**

No trust in relation to real property is valid unless created or declared.

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;
  2. By the instrument under which the trustee claims the estate affected;
- or
3. By operation of law.

**SOURCE:** CC §852.

**§ 13102. Transfer to One of Money of Another.**

When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

**SOURCE:** CC §853.

**§ 13103. Purchasers Protected.**

No implied or resulting trust can prejudice the rights of a purchaser or encumbrancer of real property for value and without notice of the trust.

**SOURCE:** CC §856.

**§ 13104. Mortgage Powers Vested.**

Whenever any conveyance or deed of trust relating to real property or any interest therein is given as security for money loaned, and such conveyance contains a power of sale, or a right in the vendor to repurchase, such conveyance or deed of trust shall be held and considered a mortgage, and subjects the parties or their assignees or successors to the same rights and obligation as that of parties to a mortgage.

SOURCE: CC §858.

**§ 13105. Land Profits Liable to Creditors.**

Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

SOURCE: CC §859.

**§ 13106. Trust Powers Vested, Survivors.**

Where a power is vested in several persons, all must unite in its execution; but in case any one (1) or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

SOURCE: CC §860.

**§ 13107. Trustees of Express Trust, Whole Estate.**

Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

SOURCE: CC §863.

**§ 13108. Author of Trust May Devise, Etc.**

Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

SOURCE: CC §864.

**§ 13109. Grant, Conveys, Except Trust Interest.**

The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

SOURCE: CC §865.

**§ 13110. Interest Remaining in Grantor, Express Trust.**

Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors.

SOURCE: CC §866.

**§ 13111. Disposition of Trust, Limitation of Beneficiary.**

The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust.

SOURCE: CC §867.

**§ 13112. Effect of Omitting Trust in Conveyance.**

Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration.

SOURCE: CC §869.

**§ 13113. Conveyance in Trust Not Naming Beneficiary.**

Whenever a conveyance of real estate, or any interest therein, has been or hereafter is made to a person or persons in trust, or (a) where such person is designated trustee or as trustee, or (b) where such persons are designated trustees or as trustees, and regardless of whether a joint tenancy or right of survivorship as between such persons is expressed or not, then, if no beneficiary be indicated or named in said conveyance, it shall be presumed that the grantee or grantees, as the case may be, holds or hold, the title to the estate, or interest therein, absolutely in his or their own individual right and free from any trust, and a conveyance executed by such grantee or grantees, whether purporting to be the act of such grantee or grantees in his or their individual right, or in his or their capacity as trustee or trustees, shall prima

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facie convey such title or interest to his or their grantee or grantees. As to such conveyance last mentioned, such presumption shall be and become conclusive as to such undisclosed beneficiary, and the original grantor or trustor and any one claiming under them in favor of a purchaser or encumbrancer in good faith and for a valuable consideration upon the filing of such conveyance last mentioned for record in the Department of Land Management; provided, however, that as to such conveyance so filed for record prior to the taking effect of this Code, such presumption shall not become conclusive except in favor of a purchaser or encumbrancer in good faith and for a valuable consideration until one year after the taking effect of this Code when it shall become conclusive without any qualification whatsoever and no action to avoid or impugn any such conveyance last mentioned shall be commenced after the time when such presumption becomes conclusive as hereinbefore provided: and provided further, that nothing herein contained shall be construed as depriving such original grantor or trustor or undisclosed beneficiary, or any one claiming under them, from commencing and maintaining actions other than actions affecting the land the subject of such conveyances.

**SOURCE:** CC §869a.

**§ 13114. Trustees' Sale Void.**

Where a trust in relation to real property is expressed in the instrument creating the estate every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

**SOURCE:** CC §870.

**§ 13115. Trustee's Estate, Ceases.**

When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

**SOURCE:** CC §871.

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