Spring 1969

"Illinois" Land Trusts in Indiana

Follow this and additional works at: https://scholar.valpo.edu/vulr

Part of the Law Commons

Recommended Citation
Available at: https://scholar.valpo.edu/vulr/vol3/iss2/9

This Notes is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.
"ILLINOIS" LAND TRUSTS IN INDIANA

INTRODUCTION

An "Illinois" land trust is the product of two instruments, a trust agreement and a deed in trust.\(^1\) Having found a willing vendor, the settlor\(^2\) executes a trust agreement, reserving in his power as a beneficiary, the right to possess, manage and control the property constituting the corpus of the trust.\(^3\) The settlor delivers the purchase price directly to the vendor or to the trustee\(^4\) for subsequent transfer. The vendor then executes a deed in trust which vests both legal and equitable title in the trustee granting him all the rights, privileges and powers of record ownership.

While the deed in trust gives the trustee broad powers, the trust agreement limits them by defining the trustee's duties and enumerating the rights and powers of the beneficiary. As a result, the trustee's duties are limited to acts concerning the title and sale of the land remaining in the trust at the end of twenty years. The beneficiary, whose interest in the trust is clearly personal property,\(^5\) nevertheless has the right to possess the property, the power to direct its sale and the right to the

---

1. See Appendix A for examples of the instruments used in establishing a land trust.
2. The land trust usually has multiple settlors and beneficiaries.
3. The pertinent provisions of the typical land trust are:
   1) The trustee shall have full power and authority to sell or contract to sell, on any terms, with or without consideration, and to mortgage, pledge or otherwise encumber the trust property.
   2) No party dealing with the trustee in any manner whatsoever shall be obliged to inquire into the authority, necessity or expediency of any act of the trustee, and every deed, mortgage, lease or other instrument executed by the trustee shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder.
   3) The beneficiary shall have: a) the right to direct the trustee to convey or otherwise deal with the title to the trust property; b) the right to possess, manage and control said property; and c) the right to receive the proceeds and avails from the sale, rental, mortgage or other disposition of said property.
   4) The rights of the beneficiary shall be deemed to be personal property and no beneficiary shall have any legal or equitable right, title or interest—as realty—in or to any real estate held in the trust.
   5) The duties of the trustee shall be: a) to execute instruments dealing with the title—when and as directed by the beneficiary and b) to sell the trust property and distribute the proceeds if any shall remain in the trust at the end of the twenty years.

See Appendix A.

4. The trustee of a land trust is usually a large bank. Due to the powers of sale reposed in the trustee, its financial strength is the beneficiary's only protection.
5. See Appendix A.
rents, profits and proceeds from the sale, mortgage or other disposition of the property.

The land trust, an outgrowth of the Massachusetts business trust,\(^6\) has been used in Illinois for more than eighty years and has enjoyed the recognition and encouragement of that state's courts.\(^7\) In the last ten years, the land trust has become known and increasingly used in other states, and has been specifically authorized by statute in Virginia\(^8\) and Florida.\(^9\) Examples of this type of trust are also found in California, Colorado and Minnesota; but in these states there appears to be no case law supporting them.\(^10\) Likewise, the land trust is found in Indiana, but to date has received no official recognition.\(^11\)

Although used primarily in the larger Indiana cities which border Illinois, this device has sparked interest throughout the state.\(^12\) The land trust is used extensively in Lake County where over a thousand are currently in use.\(^13\) Although many large banks make use of this device, they are unsure of its validity in Indiana. These banks presume that the Indiana courts will take note of its widespread use in both Illinois and Indiana and look favorably upon it.\(^14\) Some conflicts have arisen concerning land trusts in Indiana, but no cases have proceeded to the higher courts.\(^15\)

The purpose of this note is to briefly review some of the many facets of the land trust as typically used in Indiana and to analyze the Indiana case law in relation to a determination of its validity.

**Practical Uses of the Land Trust\(^16\)**

Normally where there is multiple ownership of land, the signature of each owner and spouse must be obtained before a purchaser receives title. Dealings become more difficult if some of the owners are non-

---

6. In business trusts, investors agree to the creation of a group of governing trustees, vest title of property in them and grant them control of the trust business. A beneficiary's interest is evidenced by transferable trust certificates. See Annot., 156 A.L.R. 23 (1942). Indiana has specifically rejected the Massachusetts business trust when used for mercantile purposes. McClaren v. Dawes, 86 Ind. App. 196, 156 N.E. 584 (1927).


11. See note 17 infra and accompanying text.

12. Interview with Walter Fischer, President of the Lake County Title and Trust Company, in Crown Point, Indiana, October 15, 1968.

13. Id.

14. Id.

15. Id.

16. See Appendix A.
residents, and become even more complex if any of the owners die, become incompetent, go bankrupt or become liable on a judgment. If the property is held in a land trust, the title is immune from such chaos since both legal and equitable ownership is vested solely in the trustee, and the beneficiary’s interest is limited to the proceeds flowing from the property.

Since the beneficiary’s interest is personal property, it is also possible to avoid the double expense and delay of probating an estate in several states.

The typical land trust agreement specifically provides that the beneficiary of the trust is to remain anonymous and that the trust agreement is not to be recorded. This privacy of ownership may be advantageous when a person desires to purchase a large tract of land consisting of separate parcels since negotiations for purchase can often be handled more economically if the identity of the real purchaser is not known. Anonymity also allows a land owner to remain aloof from negotiations with tenants. The land trust has been criticized because this facet has allowed slumlords to anonymously use the property for antisocial purposes. In response to such criticism, Illinois has passed legislation which requires the disclosure of the names of the beneficiaries of any trust when there exists on the property involved some violation of a building code or municipal ordinance. It is interesting to note that the Indiana legislature in 1967 passed similar legislation. This may denote a tacit recognition of the land trust by the legislature.

Where it is agreeable to the lender, liability on standard mortgages may be limited to the land itself and the personal liability of the landowner is not needed. Likewise, under a land trust, the trustee, at the direction of the beneficiary, may execute both the note and the mortgage with a clause excusing himself and the beneficiary. The interest of the beneficiary in the income produced by the property may also be pledged as security for a personal loan.

**Validation in Indiana**

The validity and number of legal advantages which may be gained from the land trust in Indiana depend upon the answers to the following questions: 1) Can the land trust be held valid as a resulting trust? 2) Are the duties placed upon the trustee sufficient to withstand an attack

18. ILL. REV. STAT. ch. 80, § 61 (1965).
under the Indiana statute of uses? 21 3) Is the interest of the beneficiary personal property? The first two deal with the validity of the trust itself, the latter with the number of advantages which may be gained by its use.

As a Resulting Trust

In the formation of a land trust, the creator furnishes the purchase price and the property is deeded to another. As a result of this procedure, the transaction comes within the purview of Indiana statutes dealing with resulting trusts. The relevant sections are 56-606 22 and 56-608. 23 Section 56-606 extinguished a preexisting presumption that a party who furnishes the purchase money for land, taken in the name of another, intended to acquire title for himself. 24 Section 56-608 enumerates exceptions to section 56-606.

To establish a resulting trust, it is necessary that the deed to the second person be absolute on its face. 25 This is not the case in the standard land trust situation where the land is conveyed under a deed in trust. If the property in a land trust is conveyed under a deed appearing absolute on its face, it is possible to uphold the land trust as a resulting trust. Due to the fact that the beneficiary is not named in the conveyance, the trust could not be executed by the Indiana statute of uses. 26 But, as a resulting trust, there is some doubt as to whether the trust agreement would have any effect. 27 Also, the beneficiary's interest would

22. When a conveyance for valuable consideration is made to one person, and the consideration therefore paid by another, no use or trust shall result in favor of the latter; but shall vest in the former, subject to the provisions of the next two (2) sections.
23. The provisions of § 56-606 shall not extend to cases where the alienee shall have taken: an absolute conveyance in his own name, without the consent of the person with whose money the consideration was paid; or where such alienee, in violation of some trust, shall have purchased the lands with monies not his own; or where it shall be made to appear that, by agreement, and without any fraudulent intent, the party to whom the title shall vest, was to hold the land or some interest therein in trust for the party paying the purchase-money or some part thereof.
25. [T]he words “absolute conveyance” refer not to the taking of a fee simple absolute, but to the taking of a conveyance absolute in the benefit of the alienee.
26. See Sinclair v. Gunzenhauser, 179 Ind. 78, 98 N.E. 37 (1912), modified on other grounds and rehearing denied, 179 Ind. 78, 100 N.E. 376 (1912); Gaylord v. Dodge, 31 Ind. 41 (1869).
27. As we have seen, where a testator devises real property in trust and directs that the property be sold and the proceeds held in trust or distributed, the interest of the beneficiaries, being a right to receive money rather than to receive land, is treated as personal property. In such a case there is said to
probably be deemed an equitable estate or interest in the land itself. Such a determination would destroy many of the advantages gained by the land trust.

As an Active Trust in Realty

Indiana Annotated Statutes, section 56-609,\(^5\) is the Indiana version of the Statute of Uses. By virtue of this statute, a dry, naked or passive trust is executed, vesting legal title in the beneficiary.\(^9\) The statute does not operate when active duties are placed on the trustee\(^8\) or where the beneficiary is not named in the deed.\(^8\) To preclude the execution of the trust, the statute states that the trustee must have active duties; but it fails to define what duties would be considered sufficient. Thus, a review and analysis of the Indiana cases dealing with this point becomes necessary.

The provisions of a land trust relevant to a discussion of the Statute of Uses are as follows: 1) the trustee shall have the duty to sell the trust property when directed to do so by the beneficiary; and 2) the trustee shall sell all the property remaining in the trust at the end of twenty years and shall divide the proceeds among the beneficiaries.\(^2\)

Where No Duties Are Enumerated

Where property is devised to a person in trust and the conveyance fails to enumerate any duties in the trustee, the trust will be executed and title will vest in the beneficiary. Dealing with such a situation, the court in *Allen v. Craft\(^8\)* said:

> The designation of John Allen as trustee is ineffective, inas-

---

\(^5\) A. Scott, *Trusts* § 411.3 (2d ed. 1967).

\(^2\) A conveyance or devise of lands to a trustee whose title is nominal only, and who has no power of disposition or management of such lands, is void as to the trustee, and shall be deemed a direct conveyance or devise to the beneficiary.


\(^9\) Nelson v. Davis, 35 Ind. 474 (1871); see Gaylord v. Dodge, 31 Ind. 41 (1869). Under a passive or dry trust, the whole legal and equitable estate is merged and is immediately vested in the beneficiary. Allen v. Craft, 109 Ind. 476, 9 N.E. 919 (1887).

\(^8\) Nelson v. Davis, 35 Ind. 474 (1871).

\(^5\) Sinclair v. Gunzenhauser, 179 Ind. 78, 98 N.E. 37 (1912); Gaylord v. Dodge, 31 Ind. 41 (1869).

\(^9\) See Appendix A.

\(^3\) 109 Ind. 476, 9 N.E. 919 (1887).
"ILLINOIS" LAND TRUSTS IN INDIANA

much as no power of control or disposition is vested in him. The estate, whatever its character, devised to Matilda Allen vests directly in her. This is the effect of the statute, as the trust is a mere naked one.  

Agreement to Reconvey—The Straw Man

Where the sole purpose of the trust is to vest legal title in the trustee with direction to pass it to specified beneficiaries, without any discretion concerning the type of conveyance or shares of the conveyees, Indiana cases have held that a mere nominal title is vested in the trustee. In Myers v. Jackson, Myers and his wife joined in conveying a one-third interest of certain lands to a trustee who took title for the sole purpose of reconveying it to the wife. The court held that the facts presented a naked or nominal trust. The court stated that since the trustee had no right of possession or control, except to reconvey, the statute executed the trust.

Although overruled in part by Sinclair v. Gunzenhauser, which required that the beneficiary be named in the conveyance before the statute would operate, Myers is still valid in determining whether a duty to reconvey is sufficient.

Power to Sell and Convey

It is obvious that in the above cases the beneficiaries were certain and that the transfer of title involved a mere mechanical act. The trustees were no more than agents to deliver title and were not vested with the ownership for the use of another. While authorities state that such trusts are passive, they consider a trust active when there is uncertainty as to the conveyees, discretion in the trustee to determine the eventual beneficiaries or where the trustee has the power to sell the property.

34. Id. at 478, 9 N.E. at 920.
35. G. Bogert, Trusts & Trustees § 206 (2d ed. 1964).
37. 135 Ind. 136, 34 N.E. 810 (1893).
38. 179 Ind. 78, 98 N.E. 37 (1912).
39. In Myers and Roberts, the name of the beneficiary was not mentioned in the conveyance and therefore the trusts should not have been held to be executed by the Statutes of Uses.
40. G. Bogert, Trusts & Trustees § 209 (2d ed. 1964); 1 A. Scott, Trusts § 69.1 (2d ed. 1967).
41. G. Bogert, Trusts & Trustees § 209 (2d ed. 1964). Bogert resolves the question of whether a duty to convey is active in the answers to two questions: Are the conveyees fixed and certain, or are they contingent and unidentified? Is the act of preparing, executing and delivering a deed a formal and mechanical act which involves no substantial amount of discretion, or does it require affirmative acts of considerable
Bogert states that when the sole duty of the trustees is to place a beneficiary in the possession and control of property, the trust is clearly passive. He further states that if the trustee is to have a power of sale over the property, the trust is deemed active.

Concerning situations in which there is a life beneficiary and another is to take at the death of the former, Scott states:

Where the trustee is directed to pay over the rents and profits to one beneficiary for life and subject thereto to hold the property in trust for another beneficiary, the latter beneficiary immediately has a legal estate in remainder and the trustee holds only an estate for the life of the former beneficiary.

Scott, however, goes on to indicate that where the trustee, upon the death of the life tenant, is to sell the land and divide the proceeds, the trustee holds the remainder interest upon an active trust. Both authors recognize the distinction between merely conveying directly to specified beneficiaries and the duty or power of the trustee to sell the trust corpus. In the examples cited by Bogert and Scott, the power of sale in the trustee was the determining factor which made the trusts active.

The Restatement of Trusts adopts the position that a duty on the part of the trustee to convey at the direction of the beneficiary makes a trust active. Indiana cases directly support this proposition.

Thus, where a trust agreement required the trustee, upon advice

---

42. G. Bogert, Trusts & Trustees § 208 (2d ed. 1964).
43. Id.
44. 1 A. Scott, Trusts § 69.2 (2d ed. 1967).
45. Id. at 662-63.
46. Prior to the enactment of the Statute of Uses a person who held land to the use of another had, in addition to his negative duties, the following two affirmative duties: (1) to protect the property against other persons than the beneficiary; (2) to convey the property to the beneficiary or in accordance with his directions. If there was a manifestation of an intention to impose additional affirmative duties, he held upon an active trust.

After the enactment of the Statute of Uses if the Statute vests the legal title in the beneficiary it is no longer necessary to impose upon the trustee affirmative duties, since the beneficiary having the legal title can protect the property himself and since no conveyance to him is necessary. If a passive trust is not executed by the Statute of Uses, as in the case of a trust of a leasehold interest or a use, the trustee is under a duty to protect the property and convey it to the beneficiary or in accordance with his directions. If, however, after the enactment of the Statute of Uses either or both of these duties is by the terms of the trust specifically imposed upon the trustee, the trust is not executed by the Statute of Uses.

Restatement (Second) of Trusts § 69 (1959).
and consent of the beneficiary, to sell the corpus of the trust and reinvest the proceeds, it was held that a duty was imposed upon the trustee which he could not discharge without retaining the legal title; and that in such a case, the statute never executed the trust. The fact that the trustees could not sell without the consent of the beneficiaries did not destroy their power of distribution:

Whenever any agency, duty or power is imposed upon the trustee in relation to the land conveyed the trust is said to be an active one. . . . There was a limitation on the trustee’s power, but notwithstanding such limitation, a power of disposition was given.

In an earlier case, where lots were conveyed to a trustee who was then under a duty to convey the lots to various parties after they had paid one-half the purchase price of land under a subscription contract, he was held not to be a mere nominal trustee. The power vested in him to convey to subscribers made the trust active.

It has also been held that the power or duty to sell need not be mandatory but may lie in the discretion of the trustee. In Crist v. Schank, a testator devised land to his wife under instructions that if a named person married and had issue, the wife might convey to such “issue or children.” The court held that the trust was active and that the interest of the “issue or children,” if any, was totally dependent upon the actions of the wife.

From the foregoing discussion, it appears that the duty of the trustee under a land trust to convey the trust corpus at the direction of the beneficiary is sufficient to make the trust active within the meaning of the Indiana version of the Statute of Uses. The fact that the trustee also has the duty to sell the corpus of the trust at the end of twenty years reinforces this conclusion. In neither case can the trustee effectuate the purpose of the trust without retention of the fee and in neither case is his title only nominal.

Beneficiary’s Interest as Personal Property

The most salient feature of the land trust is that by application of the doctrine of equitable conversion, the interest of the beneficiary is converted from a legal interest or equitable title in real estate to a beneficial interest in the rents, profits and avails of the land. This

48. McCoy v. Monte, 90 Ind. 441 (1883).
49. Id. at 444-45.
51. 146 Ind. 277, 45 N.E. 190 (1896).
beneficial interest, as declared in the deed of trust, is considered for all purposes to be personal property.\textsuperscript{52}

Scott\textsuperscript{58} and the Restatement\textsuperscript{54} take the position that the mandatory direction to the trustee to sell causes the equitable conversion. However, there is some question as to when the equitable conversion takes place: at the date the instrument becomes effective or at the time of the actual conversion.

In Indiana, the bulk of cases\textsuperscript{55} concerned with equitable conversion deal with testamentary trusts. The typical situation arises when a testator provides for a life estate in trust in one person and directs that at the death of the life beneficiary, the land shall be sold and the proceeds distributed to the remainderman. This is analogous to an inter vivos land trust in which the settlor creates the trust, with the reservation of the right to possess, manage and control the property, and directs that at the end of twenty years, the property remaining in the trust shall be sold and the proceeds divided among the beneficiaries or those designated to receive such proceeds. For convenience,\textsuperscript{56} the Indiana cases dealing with equitable conversion may be classified as follows: 1) those involving a declaration that the beneficiary's interest was personal property; 2) those in which the trustee was given the power to sell the property; and 3) those where the trustee was explicitly directed to sell the land.

\textit{Declaration}

In \textit{Comer v. Light},\textsuperscript{57} the court stated that a testator could not change realty into personalty, or vice versa, by a mere declaration that it shall be one or the other.\textsuperscript{58} Although the court decided a point not actually before it,\textsuperscript{59} this case appears conclusive on the point that a mere declaration in the land trust would not be sufficient to bring the doctrine

\begin{itemize}
\item \textsuperscript{52} See Appendix A.
\item \textsuperscript{53} 2 A. Scott, TRUSTS § 131 (2d ed. 1967).
\item \textsuperscript{54} Restatement (Second) of Trusts § 131 (1959).
\item \textsuperscript{55} Lantz v. Caraway, 180 Ind. 484, 103 N.E. 335 (1913); Comer v. Light, 175 Ind. 367, 93 N.E. 660 (1911); Rumsey v. Durham, 5 Ind. 71 (1854); Walling v. Scott, 50 Ind. App. 23, 96 N.E. 481 (1912); Nelson v. Nelson, 36 Ind. App. 331, 75 N.E. 679 (1905).
\item \textsuperscript{56} The provisions of a typical land trust relevant to the discussion here are: 1) the express declaration that the beneficiary's interest in the trust is for all purposes to be considered personal property; 2) the trustee is to deal with and convey title at the direction of the beneficiary; and 3) the explicit direction to sell the property remaining in the trust at the end of twenty years.
\item \textsuperscript{57} 175 Ind. 367, 93 N.E. 660 (1911); see Lantz v. Caraway, 180 Ind. 484, 103 N.E. 335 (1913).
\item \textsuperscript{58} Quoting from the early New York case, Matter of Hunter, 3 Redf. Sur. (N.Y.) 176 (c. 1874).
\item \textsuperscript{59} The testamentary trust involved in \textit{Comer} did not specifically declare that the beneficiary's interest was to be considered personal property.
\end{itemize}
into play and would only be evidence of the intent of the settlor.\textsuperscript{60}

\textit{Power of Sale}

In \textit{Porter v. Union Trust},\textsuperscript{61} a testator devised the residue of his estate to a trustee, giving him full and absolute discretionary power to sell all the property and reinvest the proceeds. The court held that the power of sale alone did not bring the doctrine of equitable conversion into play on the date that the instrument became operative, but that the subsequent exercise of the power would effectuate the conversion. \textit{Dillman v. Fulwinder}\textsuperscript{62} dealt with similar facts. There, the court specifically held that a provision authorizing the sale was not of itself sufficient to convert the estate in lands to one in personal property: "To work such an equitable conversion, such a provision must by its terms expressly or impliedly require rather than authorize such a sale."\textsuperscript{63}

From these decisions it may be deduced that when the exercise of the power of sale is predicated upon a contingency, the operation of the doctrine is precluded until the contingency occurs.\textsuperscript{64} Equitable conversion is not a fixed rule of law but proceeds upon equitable principles and "is interposed for the purpose of carrying out the intention of the testator so far as that can be done within the rules of law."\textsuperscript{65} Intent is controlling and unless it is clear that the settlor intended an absolute conversion as evidenced by an explicit direction to sell, the immediate operation of the doctrine cannot be sustained.

\textit{Explicit Direction to Sell}

One of the earliest cases dealing with an explicit direction to sell was \textit{Rumsey v. Durham}.\textsuperscript{66} In that case, the testator's will created a life estate in his widow. In the event of her death or marriage, the executors, under an express power, were to sell all his property and divide the proceeds among his children. The court held that the direction to sell was, in effect, a conversion of the land into personalty.\textsuperscript{67} In considering the question of when the property vested in the children, the court said, "To us it is clear that the actual intention of the testator was that the

\textsuperscript{60} "The doctrine of equitable conversion is a legal fiction invented to protect the beneficiaries and to sustain and carry out the intention of a testator or settlor, never to defeat it." Duckwall v. Lease, 106 Ind. App. 664, 678, 20 N.E. 204, 210 (1939) (emphasis added).

\textsuperscript{61} 182 Ind. 637, 108 N.E. 117 (1915).

\textsuperscript{62} 57 Ind. App. 632, 105 N.E. 124 (1914).

\textsuperscript{63} Id. at 641, 105 N.E. at 127 (emphasis added).

\textsuperscript{64} Lantz v. Caraway, 180 Ind. 484, 103 N.E. 335 (1913).

\textsuperscript{65} Comer v. Light, 175 Ind. 367, 373, 93 N.E. 660, 662 (1911).

\textsuperscript{66} 5 Ind. 71 (1854).

\textsuperscript{67} Id. at 73-74.
right to the distributive shares donated by the will should vest in his children immediately on his decease."

The court went on to say that the distribution under the will should be treated as if the donation had, in the first instance, been money.

In a subsequent decision concerning similar facts and issues, the Indiana appellate court indicated that when a testator had made it obligatory upon his executor, at the death of a life tenant, to convert all his property then remaining into money, "the weight of authority seem[s] to be that an equitable conversion of the testator's real estate took place at the time of his death, and such conversion will not be postponed by the fact that the land is not to be sold until after the death of the life tenant." Furthermore, the court said, "[T]he land must be considered as money, because there is nothing indicating the intention to give his children anything but money."

In a land trust situation there is a twenty year period which is analogous to the life estate mentioned in the above cases. During this period the trustee has a power of sale but may exercise it only upon direction of the beneficiary. Were this the only provision, an equitable conversion would not take place until the power was exercised. The land trust, however, also provides that the trustee shall sell all property remaining in the trust at the end of the twenty year period. It is this feature of the trust which brings the doctrine into play on the date the instrument becomes operative.

_Life v. Stricler_ is a case in which the agreement was closely analogous to a land trust. The testator had devised all his real estate directly to his executor with full power to sell the same without intervention of a court and without the signature of any of the heirs. The testator specifically intended to grant to the executor "full power to transfer and convey" all the real estate he might own at his death, free and unencumbered by any interests of his children or his widow. The appellate court, in affirming the lower court's determination that there was no interest in the land passing to the heirs, said:

It thus appears that the real estate, the rents and profits of which

---

68. _Id._
69. _Id._
71. _Id._ at 336, 75 N.E. at 681.
72. _Id._
73. Porter v. Union Trust, 182 Ind. 637, 108 N.E. 117 (1915); Lantz v. Caraway, 180 Ind. 484, 103 N.E. 335 (1913); Dillman v. Fulwinder, 57 Ind. App. 632, 105 N.E. 124 (1914).
74. See notes 55-56 _supra_ and accompanying text.
75. 87 Ind. App. 281, 156 N.E. 575 (1927).
are here involved, was devised to the executor with power to sell and dispose of the same, and there was not a devise simply directing that the real estate be sold and the proceeds distributed.  

The court further stated, "The whole estate having been devised to appellee as executor, it is clear that there was no interest passing to the heirs."

In both the Life case situation and in a typical land trust, there is an explicit direction to sell which, under Indiana case law, would cause an equitable conversion of the interest of the beneficiary at the time the instrument became operative. Both also contain an express devise of the real estate to the trustee which vests in him both legal and equitable title to the land.

**Conclusion**

Experience has shown that the land trust performs many commercially useful functions: it obviates the cumbersome nature of real estate transactions where there are multiple owners; it simplifies the management and financing of real properties; and it is especially useful in the financing and marketing of subdivisions, large scale home enterprises and apartment building complexes. Delays and legal complexities resulting from the death, incompetency or disappearance of an owner of a fractional interest in land may be eliminated by the careful use of a land trust.

In Illinois, the land trust has served an important function in regard to titles to real estate, and millions of dollars have been invested on the sole security of the land trust. Indiana has recognized the usefulness of the land trust and is following the lead taken by Illinois.

While a trustee's duties under a land trust are admittedly sparse, they are sufficient under Indiana law to withstand an attack based on the Indiana statute of uses. The duties of the trustee to sell at the direction of the beneficiary, and to sell all property remaining in the trust at the end of twenty years are clearly active duties. It is also clear that the express conveyance of the property and the explicit direction to sell are sufficient to create an equitable conversion of the beneficiary's interest in the trust at the time the trust becomes operative.

---

76. *Id.* at 286, 156 N.E. at 577.
77. *Id.*
et al.: "Illinois" Land Trusts in Indiana

Produced by The Berkeley Electronic Press, 1969
ILLINOIS LAND TRUSTS IN INDIANA

In Witness Whereof, the Grantor -- Hereunto Set His Hand and Seal.

(19)

This instrument was prepared by: ____________________________
under this trust agreement, the estate, remainder, and proceeds of said real estate or growing out of their interest and proceeds of said real estate or growing out of their interest

No thing contained in this agreement shall be construed as impairing any obligation of the trust to the trustor to the extent of the trustor's interest in the trust.


This Trust Agreement, dated this day of

Corporation of Indiana, to wit: corporation of Indiana as trustee hereunder is about to take title to the following described real estate in

Trust Company, a


County, Indiana, to wit:

et al.: "Illinois" Land Trusts in Indiana

Produced by The Berkeley Electronic Press, 1969
IN TESTIMONY WHEREOF the Trust Company has caused these presents to be signed by its Trust Officer and attested By its Assistant Secretary.

The Trust Company shall receive for its services in accordance with this trust and in taking title hereunder:

...