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SALE OF LAND TRUST CERTIFICATES REPRESENTING PART OF  
EQUITABLE OWNERSHIP IN BUILDING IN CHICAGO, IS SALE OF  
FOREIGN REAL ESTATE—SECTION 6373-15 G. C. CONSTRUED.

*SYLLABUS:*

*The sale of land trust certificates representing part of the equitable ownership in the premises to be occupied by the Bankers Building at Chicago, is a sale of foreign real estate and subject to the provisions of section 6373-15 of the General Code.*

COLUMBUS, OHIO, December 8, 1926.

HON. NORMAN E. BECK, *Chief of Division of Securities, Department of Commerce, Columbus, Ohio.*

DEAR SIR:—Your recent communication in which you ask for an opinion is as follows:

“There appears to be a diversity of opinion relative to whether land trust certificates should be qualified as a security, under the general provisions of the Securities Law of Ohio, sections 6373-9-14-16 or whether same when predicated upon an issue of real estate located in a state other than Ohio, should be qualified as foreign real estate under section 6373-15.

I am enclosing temporary land trust certificate representing part of equitable ownership in the premises to be occupied by the Bankers' Building, Chicago, Illinois, together with complete description of land trust certificates.

Kindly advise whether these certificates in order to be disposed of in Ohio, may be qualified under section 6373-15 as foreign real estate or qualified as a security under sections 6373-9-14-16.”

The questions involved in your request for an opinion require the construction of the sections of law mentioned therein for the purpose of determining whether said land trust certificate may be qualified as a security or as an interest in the ownership of real estate.

Sections 6373-9 and 6373-14 of the General Code make provisions for the qualifications of the issuers and for the sale of securities.

Section 6373-15 of the General Code provides:

“No person or company, unless licensed in the manner and under the conditions applicable thereto hereinbefore provided for dealers, shall, within this state deal in real estate not located in Ohio of which he is not the actual and bona fide owner and unless the ‘commissioner’ shall issue his certificate as provided in the following section, and prior to such issuance there shall, together with a filing fee of five dollars, be filed with the ‘commissioner’ an application for such certificate, and a written statement of the applicant containing a pertinent description of the real estate the sale of all or a part of which is sought to be made, the nature and source of the title of the owner thereto, and the amount or value and the nature of the consideration paid or allowed by him therefor, it shall, within this state, be unlawful:

(a) For any corporation, association or copartnership doing business under any name other than the name or names of such persons or of all the members of such association or co-partnership to sell any real estate not located in Ohio;

(b) For any person or company engaged in the business of dealing in real estate, to sell or offer for sale any such real estate, the title to which is or is represented to be in the name of a corporation or unincorporated company, or of a person doing business under a fictitious name.

This section shall apply where the title to such property it held in the name of a trustee for any corporation or for any such described person or company; but it shall not be deemed to prohibit the disposal by an owner of his own property, in good faith and not for the purpose of avoiding the provisions of this act, where the transaction is not one of repeated transactions of a similar nature, performed as a part of the business of dealing in real estate; nor shall it be deemed to prohibit a railroad company having an immigration bureau or department from advertising either directly or through its accredited representatives, the fact that there are along its route lands for colonization or sale; provided that such advertising be not of specific tracts of real estate, and not for the purpose of avoiding the provisions of this act."

Section 6373-16 of the General Code is in part as follows:

"Said commissioner shall have power to make such examination of the issuer of the securities, or of the property named in the two next preceding sections, at any time, both before and after the issuance of the certificate herein-after provided for, as he may deem advisable."

Section 6373-15 prescribes the method of qualification for a specific purpose, to-wit, that of a sale of described real estate outside of the state, either all or a part thereof.

The question you have submitted will be answered by a determination as to whether or not the land trust certificate which you forwarded is a conveyance or a sale of an interest in real estate outside of the State of Ohio. Said land trust certificate contains the following grant of ownership and declarations concerning the same:

"UNITED STATES OF AMERICA  
State of Illinois  
Temporary Land Trust Certificate  
Representing Part of Equitable Ownership in the Premises  
to be Occupied by the  
Bankers' Building,  
Chicago, Illinois.

No.----- Interest -----/5,000ths.

"This certifies that-----is on the books of the undersigned Trustee registered as the owner of----- five thousandths (-----/5,000ths) of the equitable ownership and beneficial interest in certain property located at the southwest corner of Clark and Adams streets in the city of Chicago, Illinois, title to which as conveyed to the undersigned trustee by deed dated as of June 1, 1926, and filed for record in the office of the Recorder of Cook county, Illinois, on the ----- day of June, 1926, as Document No.-----, is held by the undersigned, as trustee (hereinafter sometimes referred to as the 'trustee') for the benefit of the holder of this certificate, and holders of similar certificates,

issued and to be issued by the trustee pursuant to the terms and provisions of a certain Agreement and Declaration of Trust, dated as of June 1, 1926, in accordance with which Agreement and Declaration of Trust the undersigned holds title to said property. Said Agreement and Declaration of Trust is of record in the office of the recorder of Cook county, Illinois, and reference is hereby made thereto for a statement of the rights of the holder of this certificate and of other certificates issued thereunder in said property and the proceeds, rents and avails thereof and the terms and conditions of said trust, including the duties and immunities of the undersigned as trustee, to all of which terms and conditions the holder of this certificate by the acceptance hereof assents, and to which Agreement and Declaration of Trust by such acceptance such holder becomes a party as fully to all intents and purposes as if such holder had signed the same.

As more fully set forth in said Agreement and Declaration of Trust and in the lease hereinafter mentioned, said property is under lease to Adams Clark Building Corporation for a term of ninety-nine (99) years commencing June 1, 1926, under an indenture of lease, which by its terms requires the lessee thereunder to pay a rental of two hundred seventy-five thousand dollars (\$275,000) per year, plus taxes and assessments, plus an amount sufficient to pay the charges of the trustee for its services in respect to the collection and distribution of the rents and the general management of the trust estate, and which also grants to the lessee an option to purchase said property, reference being hereby made to said lease for a more specific statement of its terms and conditions.

The undersigned agrees that it will on the first days of each of the months of March, June, September and December of each year pay over to the holder of this certificate registered as such on the trustee's transfer books on the twentieth (20th) day of the month preceding the month of each such payment such holder's proportionate share as represented by this certificate of the net proceeds, rents and avails which may have been by the undersigned received from the property described in said Agreement and Declaration of Trust, all as therein provided.

Subject to the terms and conditions of said Agreement and Declaration of Trust above mentioned, the interest represented hereby or parts thereof in full fractional parts of one five thousandth ( $1/5,000$ th) each of the full beneficial interest in said property, or multiples thereof, may be granted, sold and conveyed, and this certificate transferred upon the books of the undersigned by the holder hereof in person or by attorney duly authorized in writing, upon surrender of this certificate, the appropriate forms provided on the reverse hereof having been duly executed, and payment of any stamp and other taxes payable upon such transfer, and the transferee shall by accepting this certificate, or any certificate which may hereafter be issued in place hereof, become forthwith a party to said Agreement and Declaration of Trust and be bound thereby and entitled to all rights of a beneficiary thereunder. Until such transfer shall have been made upon the books of the undersigned, the registered holder hereof may be treated as sole owner of the fractional parts of beneficial interest represented hereby and the undersigned shall be fully protected and under no liability whatsoever in recognizing such registered holder as such owner.

IN WITNESS WHEREOF, The National Bank of the Republic of Chicago, as trustee under said Agreement and Declaration of Trust, has caused these presents to be signed in its corporate name by its president or vice president and its corporate seal to be hereunto affixed and attested by

its trust officer or assistant trust officer this -----  
 THE NATIONAL BANK OF THE REPUBLIC OF CHICAGO,  
 As Trustee as Aforesaid.  
 Attest: \_\_\_\_\_ By-----  
 \_\_\_\_\_ Vice President.”  
 Trust Officer.

On September 22, 1926, Opinion No. 3640 of the Attorney General of Ohio was rendered to the Tax Commission of Ohio, and contained the following statement :

“It will be noted that the trustee, The Cleveland Trust Company, makes declaration that it holds said trust real estate in trust for the holders of the certificates issued under and in conformity to said declaration ; and that each certificate represents at least 1/2800 of the value of the entire issue of the certificates, and that each of said certificates represents an equitable interest in said land. The land, of course, is taxable to the trustee who holds the legal title. Said land is, therefore, not exempt from taxation and in this particular case the taxes are paid by the lessee, and the question, therefore, seems to be as to whether or not the holders of the aforesaid land trust certificates should list them for taxation.

The land trust certificate is exactly what its name implies—a certificate evidencing an interest in the equitable ownership of land held in trust, and is, therefore, a real estate investment. It is not in any sense a mortgage, a leasehold bond or note, but is an evidence of actual ownership in whatever property may be trusteeed as a basis for the issuance of any particular series or designation of certificates. The certificate is merely an evidence of the holder’s simple individual share in the ownership of large parcels of property.

As these certificates are merely an evidence of ownership they have, of course, no par value or other fixed nominal value, nothing but custom and convenience govern the price at which the certificates are sold and the interest which accrues thereupon. As the land trust certificate is merely an evidence of ownership, there is, of course, no such thing as maturity ; and as it is merely evidence of equitable ownership of real estate.”  
 Section 6373-15 of the General Code contains this statement :

“This section shall apply where the title to such property is held in the name of a trustee for any corporation or for any such described person or company ; \* \* \* ”

The land trust certificate prescribes that it represents part of the equitable ownership of the premises as described. Following the foregoing quoted opinion of this department as to the status of a similar certificate, it is concluded that the land trust certificate furnished in this case must necessarily be construed to represent the conveyance of at least an equitable interest in certain described real estate of the city of Chicago.

The sale of said land trust certificates is a sale and conveyance for such equitable interest in said real estate as may be represented by the certificate. Having arrived at this conclusion, it must be held that these certificates in order to be disposed of in Ohio shall be qualified as the sale of foreign real estate under the provisions of section 6373-15 of the General Code.

Respectfully,  
 C. C. CRABBE,  
 Attorney General.