

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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CAPACITY TO CONVEY AND BUY PROPERTY

Previously, we discussed the capacity of individuals to buy and sell real property. Now we turn to specific entities and their capacities.

BANKS

The capacity of banks and trust companies to buy and sell property is discussed in New York Banking Law section 98. Banks may purchase or sell real property which they use for their banking business purposes. In general, a building used for banking business must be located on the property. Said property may provide revenue other than from the banking business, such as from a parking lot or from a rental, but the bulk of the property must be used for banking. Banks may also convey property that has been acquired in satisfaction of a debt or purchased at a sale under a judgment, decree or mortgage. The State's banking board may also authorize banks and trust companies to buy property and sell property when those entities obtain special permission to do so (i.e. – with approval by three fifths of all banking board members).

Banks and trust companies may also purchase, lease and convey an interest in a so-called "project" under the New York Urban Development Corporation Act. However, there are financial limits on how much of an interest in such a project any bank or trust company may own, as seen in section 98(1)(e) of the Banking Law.

Savings and loan associations have the same general capacity as banks and trust companies to own and sell property, but the statutory limitations on the dollar amount of such holdings is different, as seen in section 381 of the Banking Law.

Savings banks have the same general rights to purchase and to sell real property as commercial banks do, except that, again, the dollar amount of such holdings is different, per Banking Law section 234. Further, savings banks may not be authorized by the banking board to purchase or sell real property.

Credit unions also have the right to purchase and sell real property on which a building exists for the operations of its business, but unless a credit union gets the approval of the superintendent of banks, its holdings in real estate cannot exceed 50 percent of the surplus account of such credit union. Other than for business operations, a credit union may not buy or sell real property.

A private banker may purchase real estate with funds held as a private banker only if the land is used to transact banking business. Plus, if a private banker acquires land in satisfaction or reduction of a loan, said land must be sold within five years of its acquisition unless the superintendent of banks grants an extension of time. (This applies to real estate acquired after June 29, 1938.)

PARTNERSHIPS

A partnership is an association of two or more people who co-own a business for profit. A registered limited liability partnership is also a partnership under the New York Partnership Law. Unlike corporations or limited liability companies, partnerships may exist without any written agreement. The act of single partner, further, may legally bind the partnership.

A partnership may buy or sell any interest in real property, and any partner may buy or sell property on behalf of the partnership, but any property acquired in the name of the partnership can only be sold in the name of the partnership.

Such land never belongs to any one partner. If a partner attempts to convey title to property owned by the partnership by signing in an individual capacity (not as a partner), the deed conveys only equitable title to the property – that is, if the partner was authorized by the partnership to make the conveyance to begin with and was carrying on the business of the partnership in the usual way. Partnership Law section 21.

Partnerships are not terminated when they are dissolved. Termination does not occur until the “winding-up” of the partnership’s affairs (i.e. – the debts of the partnership are settled and the assets distributed to the partners). Until the affairs are wound up, each partner retains his or her interest in the partnership’s real property. If, however, the partnership was dissolved because a partner breached a written partnership agreement, the breaching partner may forfeit his or her interest in the partnership’s real property by violating the agreement; plus he or she may be liable to the other partner(s) for damages.

Limited liability partnerships must file with the Department of State. They are general partnerships, but are not as popular as limited liability companies these days. They generally can convey and buy property as common partnerships can.

Limited partnerships consist of a general partner(s) who manages the business and limited partners who may vote on certain issues but do not manage the business. There are state filing requirements for limited partnerships, as well as a

publishing requirement. Further, these requirements apply to both domestic and foreign limited partnerships doing business in New York State. (Merely selling or buying property does not qualify as “doing business” in New York State.)

A general partner in a domestic limited partnership may convey or buy property the same as a partner in an ordinary partnership. However, the general partner may not violate the limited partnership agreement as to buying or selling, and if the general partner is conveying all the assets of the partnership, he or she must acquire enough of the votes of all the partners before doing so. If the partnership agreement gives special powers to the general partner to buy or sell property, however, the agreement applies and the general partner may buy or sell per the agreement. The same general rules apply to a foreign limited partnership, but until the foreign limited partnership files with the state, it may not file a lawsuit in New York State.

FIDUCIARIES

Fiduciaries include administrators, executors, and trustees, among others. Fiduciaries have no authority in themselves to buy or sell property. No statute gives any particular fiduciary such authority. However, a court order, will or trust may authorize a given fiduciary to buy or sell property. Commonly, a specific fiduciary’s capacity to convey or buy real property depends on the particular wording of a will or trust.

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