



Ohio Revised Code

Section 5815.37 Temporary conveyances.

Effective: March 27, 2013

Legislation: House Bill 479 - 129th General Assembly

(A) If any interest in real property held by any trustee of an express trust that is wholly or partially governed by a law of this state or any interest in real property located in this state that is held by the trustee of a trust wholly governed by the law of one or more jurisdictions other than this state is temporarily conveyed to any beneficiary of that trust and reconveyed back to any trustee of that trust, the interest in the real property shall be subject to divisions (B) and (C) of this section if all of the following apply:

(1) That temporary conveyance is for the principal purpose of enabling some or all of that interest in the real property to be used as collateral in a loan transaction.

(2) The loan proceeds will be delivered to the trustee of the trust or will otherwise be principally used for the benefit of one or more beneficiaries of the trust.

(3) The interest in the real property is reconveyed back to one or more trustees of the trust within a reasonable time after the reconveying beneficiary acquired actual notice that the lender has perfected the lender's collateral rights in and to the interest in the real property.

(4) The lender in question is any of the following:

(a) A bank, thrift, savings bank, savings and loan association, credit union, or any other similar financial institution if the activities of the other similar financial institution are subject to supervision by the Ohio superintendent of financial institutions, the federal deposit insurance corporation, the comptroller of the currency, the office of thrift supervision, any other comparable state or federal regulatory agency or entity, or a successor of any of them;

(b) An insurance company subject to supervision by the Ohio department of insurance or any comparable agency established by the law of any other jurisdiction;



(c) Any other corporation, limited liability company, partnership, or other similar or comparable entity the routine and regular business activities of which commonly include the making of commercial or residential loans that are wholly or partially secured by real property.

(B) If a temporary conveyance and reconveyance of an interest in real property is made for the principal purpose of allowing a lender to acquire, perfect, foreclose on, or exercise collateral rights in and to the real property interest in question, the temporary conveyance to a beneficiary shall be disregarded for all other purposes, and the reconveyance back to a trustee shall relate back to the date immediately preceding that reconveyance on which the interest in the real property was transferred to any trustee of the trust in a transaction other than a loan transaction described in division (A)(1) of this section.

(C) In connection with any temporary conveyance and reconveyance of an interest in real property pursuant to division (A) of this section, the following shall survive unimpaired after any reconveyance back to a trustee made pursuant to division (A)(3) of this section:

(1) The rights, duties, and obligations of a lender under the documents governing the loan transaction, including, but not limited to, any of the following to the extent they are provided for in those documents:

(a) A lender's collateral rights in and to any interest in real property that is reconveyed to a trustee;

(b) The lender's rights under any mortgage, deed of trust, lien, encumbrance, or any other similar or comparable instrument or arrangement used to give the lender collateral rights in and to the interest being reconveyed, including, but not limited to, a lender's right to foreclose on that interest in real property;

(c) The lender's obligations to make loans or advances or to provide any person with any notice called for by the documents governing the loan transaction.

(2) The rights, duties, and obligations of any debtor under any documents governing the loan transaction, including, but not limited to, the following to the extent they are provided for in those documents:



(a) The duty to repay the lender or any other person who is entitled to receive payments under the documents governing the loan transaction;

(b) The duty to honor any agreements or covenants made by the debtor in the documents governing the loan transaction;

(c) The right to receive any advances, loans, notices, or other benefits called for by the documents governing the loan transaction.

(D) The following apply for purposes of division (A)(1) of this section:

(1) A court shall liberally construe the temporary conveyance to a beneficiary of the trust in question in determining whether the principal purpose of the temporary conveyance is to enable some or all of the interest in the real property to be used as collateral in a loan transaction.

(2) An interest in real property shall be considered to be used as collateral if, as part of a lending transaction, that interest is wholly or partially made subject to a mortgage, deed of trust, lien, encumbrance, or any other similar or comparable instrument or arrangement used to give the lender collateral rights in and to that interest.

(E) A court shall liberally construe division (A)(2) of this section in determining whether the loan proceeds referred to in that division will be principally used for the benefit of one or more beneficiaries of the trust in question.

(F) For purposes of division (A)(3) of this section, any reconveyance to a trustee shall be considered to have occurred within a reasonable time if it is made within one hundred twenty days of the date on which the reconveying beneficiary acquired actual notice that the lender has perfected the lender's collateral rights in and to the interest in the real property. In all other cases, a court shall consider all relevant facts and circumstances in determining whether a beneficiary has reconveyed the interest in the real property back to a trustee within a reasonable time after the reconveying beneficiary acquired that actual notice.



(G)(1) A court shall liberally construe division (A)(4) of this section in determining whether a corporation, limited liability company, partnership, or other similar or comparable entity qualifies as a lender within the meaning of that division.

(2) Subject to the rule of liberal interpretation set forth in division (G)(1) of this section, the Ohio superintendent of financial institutions may from time to time issue regulations setting forth a nonexhaustive list of entities that qualify as a lender within the meaning of division (A)(4) of this section and also may from time to time issue regulations setting forth specific entities or classes of entities that do not qualify as a lender within the meaning of that division.

(H) An interest in real property may be subject to or involved in more than one loan transaction undertaken pursuant to this section.