

"The financial institutions have committed fraud against the American people"

"The similarities between a trustee of an express trust and a trustee under a deed of trust end with the name."

The financial institution at no time ever explained to the borrower that the trust was in fact neither a mortgage, or a trust agreement, nor that the trustee is only in name and not in actuality a fiduciary.

Although the trust agreement has a grantor, a beneficiary any trustee, and the duties of the trustee or those of what an actual trustee would be in a trust agreement, it appears that this is an intentional deception on the part of the financial institution for they have at no time explained to the borrower that a deed of trust, is neither a trust agreement under the common understanding, nor is it evidence of a secured loan:

1.

Aca Fin. Guaranty Corp. v. City of Buena Vista
· 298 F. Supp. 3d 834 (W.D. Va. 2018) Cited 1 times
by three-fourths (or 75%) vote: Only four of seven members affirmatively voted for the proposal with three members absent, resulting in a four-sevenths, or 57%, vote. Therefore, the document is void. The City's argument comes up short at the second step. A deed of trust is an encumbrance on real property akin to a mortgage; it is not a sale. Black's Law Dictionary (10th ed. 2014) (explaining that deed of trust "resembles a mortgage"); Maryland Nat. Mortg. Corp. v. Albanese , 26 Va. Cir. 362, 1992 WL 12033445, at *1–2 (Arlington Cnty. Cir. Ct. 1992) (rejecting argument that deed of trust is a

· · In re Suzanne
136 Wn. App. 1024 (Wash. Ct. App. 2006)

This statute is irrelevant. Title 62A RCW applies to commercial transactions. The deed of trust is not such a transaction. Mr. Goe further claims the deed of trust signed by the commissioner was invalid because

he failed to take an oath as required by RCW 2.24.020:

• • Morgan v. U.S. Bank Nat'l Ass'n

No. C 12-03827 CRB (N.D. Cal. Feb. 25, 2013) Cited 10 times of its conventional role as a mere lender of money." Lopez v. GMAC Mortg., No. CV F 11-1795 LJO JLT, 2011 WL 6029875, at *12 (E.D. Cal. Dec. 5, 2011) (quoting Nymark v. Heart Fed. Sav. & Loan Assn., 231 Cal. App. 3d 1089, 1096 (Ct. App. 1991). Furthermore, "[a] trustee under a deed of trust is not a true trustee that owes fiduciary duties to the trustor." In re Cedano, 470 B.R. 522, 534 (B.A.P. 9th Cir. 2012).

In addition, "loan servicers do not owe a duty to the borrowers of the loans they service." Bascos v.

Fed. Home Loan Mortg. Corp., No. CV 11-3968-JFW JCX, 2011 WL 3157063, at *7 (C.D.

• • **McCain v. JP Morgan Mortg. Acquisition Corp.**

CIVIL ACTION NO. 20-987 SECTION: "E" (3) (E.D. La. May. 19, 2021) to gratify a nonpecuniary interest means a contract made "to satisfy an interest of a spiritual order," and includes contracts to make works of art, contracts to conduct scientific research, and other contracts pertaining to sentimental matters. As noted above, "a mortgage or loan contract does not by its nature satisfy a nonpecuniary interest." Further, Plaintiff failed to allege that Defendants intended to aggrieve Plaintiff's feelings, despite that being the outcome of the alleged breach of contract. Accordingly, Plaintiff has not stated a claim that supports the award of nonpecuniary

• • **BLACKMORE/CANNON DEVELOPMENT COMPANY, LLC v. U.S. BANCORP**

Case No. 2:08-cv-370 CW (D. Utah Apr. 30, 2010) that duty; and (3) the breach damaged the Development Company. See Roderick v. Ricks, 54 P.3d 1119, 1125 (Utah 2002) (citing elements for breach of fiduciary duty in a legal malpractice case). The Development Company fails on the first element of this test. As general matter, a holder of a trust deed has no fiduciary duty to the trustor. See Russell v. Lundberg, 120 P.3d 541, 545 (Utah Ct. App. 2005) ("[A]

fiduciary duty arises not from the mere existence of the trustor-trustee relationship, but rather from facts evidencing a confidential relationship above and beyond that ordinarily found

• • **Hodges v. Cnty. of Placer**

41 Cal.App.5th 537 (Cal. Ct. App. 2019) Cited 9 times
and unlawfully invested for its own account. While the distribution statutes did create a trust relationship, they did not establish the County as a trustee of a strict trust that owed the fiduciary duties plaintiff alleges. "Courts have aptly noted in the context of deeds of trust that, ' "Just as a panda is not a true bear, a trustee of a deed of trust is not a true trustee." [Citation.]' (Monterey S.P. Partnership v. W.L. Bangham, Inc. (1989) 49 Cal.3d 454, 462 [261 Cal.Rptr. 587, 777 P.2d 623].) The same can be said here," (McCann v. Lucky Money, Inc. (2005) 129 Cal.App.4th 1382,

• • **Sipe v. Countrywide Bank**

690 F. Supp. 2d 1141 (E.D. Cal. 2010) Cited 59 times
First, "[t]he law is clear that foreclosing on a deed of trust does not invoke the statutory protections of the RFDCPA." Collins v. Power Default Servs., Inc., No. 09-4838 SC, 2010 WL 234902, at *3 (N.D.Cal. Jan. 14, 2010) (collecting numerous cases). "[F]oreclosure pursuant to a deed of trust does not constitute debt collection under the RFDCPA." Castaneda v. Saxon Mortgage Servs., Inc., 687 F.Supp.2d 1191, 1197, 2009 WL 4640673, at *3 (E.D.Cal. 2009); see also Gonzalez v. First Franklin Loan Servs., No. 1:09-CV-00941 AWI-GSA, 2010 WL 144862, at *7 (E.D.Cal. Jan. 11, 2010)...
• • Jensen v. Quality Loan Service Corp.
702 F. Supp. 2d 1183 (N.D. Cal. 2010) Cited 254 times
The "law is clear that foreclosing on a deed of trust does not invoke the statutory protections of the RFDCPA." Collins v. Power Default Serv's., Inc., No. 09-4838 SC, 2010 WL 234902, at *3 (N.D.Cal. Jan. 14, 2010) (collecting numerous cases). "[F]oreclosure pursuant to a deed of trust does not constitute debt collection under the RFDCPA." Castaneda v. Saxon Mortgage

Servs., Inc., 687 F.Supp.2d 1191, 1197 (E.D.Cal. 2009); see also Gonzalez v. First Franklin Loan Servs., No. 1:09-CV-00941 AWI-GSA, 2010 WL 144862, at *7 (E.D.Cal. Jan. 11, 2010) ("[F]oreclosure related actions . . . do

· · Monterey S. Partnership v. W. L. Bangham, Inc. 49 Cal.3d 454 (Cal. 1989) Cited 84 times

that Western, as trustee under the deed of trust, was not in any event a "trustee of an express trust"

within the meaning of former section 369 The similarities between a trustee of an express trust and a

trustee under a deed of trust end with the name. "Just as a panda is not a true bear, a trustee of a

deed of trust is not a true trustee." (Stephens, Partain Cunningham v. Hollis (1987) 196 Cal.App.3d 948,

955 [242 Cal.Rptr. 251].) Thus, the trustee of an express trust must consent to serve as trustee (see

Prob. Code, § 15600); must not "use or deal with trust property for the trustee's

· · Padilla v. Carson Redevelopment Agency B191034 (Cal. Ct. App. May. 31, 2007)

A deed of trust cannot exist in a vacuum. Once the underlying obligation is satisfied, the deed of trust

is automatically extinguished by operation of law. (See, e.g., Alliance Mortgage Co. v. Rothwell, supra,

10 Cal.4th at p. 1235 ["A security interest cannot exist without an underlying obligation, and therefore a .

· · Vergara v. Heritage Community Credit Union C051544 (Cal. Ct. App. Sep. 18, 2007)

liable for breach of fiduciary duties. For the reasons stated elsewhere, we conclude Vergara has not

pleaded any actionable irregularities in the sale. Further, Melmet, although nominally a "trustee," was

not a trustee with fiduciary duties to Vergara. "Just as a panda is not an ordinary bear, a trustee of a

deed of trust is not an ordinary trustee." (Stephens, Partain & Cunningham v. Hollis (1987) 196

Cal.App.3d 948, 955.) The duties of a trustee under a deed of trust are "strictly limited and defined by

the contract of the parties and the statutes." (I. E. Associates v. Safeco Title Ins. Co

· · Woodworth v. Redwood Empire Sav. Loan Assn

22 Cal.App.3d 347 (Cal. Ct. App. 1971) Cited 14 times

title company respondents owed any duty of care to Woodworth or that they breached any duty.

Woodworth, citing Ruth v. Lytton Sav. Loan Assn., 266 Cal.App.2d 831 [72 Cal.Rptr. 521], further argues

that the title company respondents were "trustees." (4) It is well established, however, that a trustee

under a deed of trust is not a trustee in the technical sense. Rather, he is the agent of all the parties to

the escrow at all times prior to performance of the conditions of the escrow and bears a fiduciary

relationship to each of them. His obligation to each is measured by an application of the

· · Colon v. OneWest Bank, FSB

2:12-CV-1356 JCM (PAL) (D. Nev. Dec. 5, 2012)

its only involvement in this case was as the original trustee on the deed of trust. (Doc. # 1, 2:11-12). Land

Title points to NRS 107.028(5) which clearly states that a trustee does not have a fiduciary duty under a

deed of trust. (Id., 6:5-7). Land Title also argues that it has long been held that a trustee under a deed

of trust does not owe fiduciary obligations. (Doc. # 52, 5:24-27). The court, however, does not find that

Land Title has satisfied its burden of establishing fraudulent joinder by clear and convincing evidence.

See Hamilton Materials, 494 F.3d at 1206. Thus, Land Title has not

· · Mtg. Elec. Regis. v. Southwest Homes

2009 Ark. 152 (Ark. 2009) Cited 13 times title to passing title ck to the

grantor/borrower in the case of payment, or to the lender in the event of foreclosure. See Foreman v. Holloway, 122 Ark. 341, 183 S.W. 763

(1916). The lender holds the

indebtedness and is the beneficiary of the deed of trust. House, supra.

A trustee under a deed of trust is

not a true trustee. Heritage Oaks Partners v. First Am. Title, Ins. Co., 66 Cal. Rptr.3d 510 (Cal.Ct.App.

2007). Under a deed of trust, the trustee's duties are limited to (1) upon

default undertaking

foreclosure and (2) upon satisfaction of the debt to reconvey the deed of trust. *Id.* In the

· · Lancaster Security Inv. Corp. v. Kessler

159 Cal.App.2d 649 (Cal. Ct. App. 1958) Cited 26 times

the debt. Appellant argues that the trustee was under a duty to give notice of the sale to the appellant

on the basis of the trustee's relationship with appellant's predecessors in interest under general

principles of trust law. The argument misconceives the legal incidents of a trust deed. [7] An ordinary

trust deed is little more than a mortgage with power to convey. (*Bank of Italy v. Bentley*, 217 Cal. 644,

654 [20 P.2d 940].) [8] "A trustee under a deed of trust does not

assume the important obligations

which in some instances are cast upon a trustee by operation of law."

(*Ainsa v*

· · Mottahedeh v. Bank of Am. Home Loans Servicing LP

Case No. EDCV 12-00165 VAP (OPx) (C.D. Cal. Jan. 31, 2013)

and trustee (see Am. Opp'n at 9), Plaintiff misapprehends the difference between a deed of trust and an

express trust. Plaintiff argues that a trust must include three separate parties as beneficiary, trustor,

and trustee. (See *id.* (citing *Black's Law Dictionary* (4th ed.)).) A deed of trust is not actually a trust,

however. "The similarities between a trustee of an express trust and a trustee under a deed of trust

end with the name." *Monterey S. P. P'ship v. W. L. Bangham, Inc.*, 49 Cal. 3d 454, 462 (1989) (en banc).

"The 'trustee' of a deed of trust is not a trustee at all in a technical or

· *Aca Fin. Guaranty Corp. v. City of Buena Vista*

· 298 F. Supp. 3d 834 (W.D. Va. 2018) Cited 1 times

of a deed of trust" creates a debtor-creditor relationship); *High Knob Assocs. v. Douglas* , 249 Va. 478,

484 n.4, 457 S.E.2d 349 (Va. 1995) ("A deed of trust merely creates a lien on property to secure a debt.").

And Virginia courts have consistently held in the statutory context that the holder of a deed of trust is

not an "owner," as one would expect if a deed of trust were a sale.

Williams v. Fairfax Cty.

Redevelopment & Hous. Auth. , 227 Va. 309, 314, 315 S.E.2d 202 (Va. 1984) ; Loyola Fed. Sav. & Loan

Ass'n v. Herndon Lumber & Millwork, Inc. , 218 Va. 803, 805, 241 S.E.2d 752 (Va. 1978)

· · Onyekwere v. Bank of Am., N.A.

CIVIL ACTION NO. 3:13-CV-2557-B (N.D. Tex. Mar. 18, 2014) Cited 1 times

A plaintiff may be able to make out a viable claim for wrongful foreclosure or to quiet title by challenging the validity of the chain of title by which a defendant purportedly attained its authority to foreclose.

Miller, 881 F. Supp. 2d at 829. A deed of trust, however, is not required to be recorded as a matter of

Texas law, nor is its assignment. Dallas County v. MERSCORP, Inc., No. 3:11-CV-2733-O, 2013 WL

5903300, at *4 (N.D. Tex. Nov. 4, 2013); Preston, 931 F. Supp. 2d at 755-56; Millet, 2012 WL 1029497, at

*3; Bitteringer v. Wells Fargo Bank, N.A., 744 F. Supp. 2d 619, 625 (S.D. Tex

· · Baumgard v. Bowman, Trustee 167 N.E. 166 (Ohio Ct. App. 1928) Cited 3 times

as trustee for every one who has an interest in the property, and account as a trustee to all. The

difference between a mortgage and a trust deed is clear enough. 3

Jones on Mortgages (8th Ed.),

Section 2292; 2 Perry on Trusts (6th Ed.), Section 749. A trustee under a trust deed has duties not at all

comparable to those of a simple mortgagee. We do not find, however, that the instrument in question

here was anything but a simple mortgage. The confusion appears to have arisen from the fact that

Bowman, as a mortgagee, was a trustee, but the fact that he was a trustee, as well as a mortgagee,

· · Asfaw v. Woldberhan

147 Cal.App.4th 1407 (Cal. Ct. App. 2007) Cited 24 times

50 percent of the Vineland property in 2003; the gross income from the apartments was \$384,000 in

2003, and the expenses were \$357,000 that year. The evidence does

not support the trial court's finding that father owned only 50 percent of Vineland. A trust deed is essentially a lien and does not convey any ownership interest in property to the trustee. Witkin explains: "The trustee takes the legal title for security only, leaving a legal estate and the ordinary rights of ownership in the trustor." (4 Witkin, Summary of Cal. Law (10th ed. 2005) Secured Transactions in Real Property, § 6, p

· · Lane Title and Trust Company v. Brannan 440 P.2d 105 (Ariz. 1968) Cited 31 times then taken over by the bankruptcy court. The principal issue raised on this appeal is whether the duties and liabilities of Lane, as a subdivision trustee, are the same as that of a common law trustee. Lane contends that its fiduciary duty is not as strict as that of a common law trustee because a subdivision trust is more in the nature of a deed in trust, or mortgage, rather than a common law trust. This is a case of first impression in this jurisdiction, and therefore in order to analyze this proposition it is necessary to examine the nature and purposes of a subdivision trust. In Arizona a

· · Young v. 1st American Financial Services 992 F. Supp. 440 (D.D.C. 1998) Cited 11 times 3) Breach of fiduciary duty Cohn and Goldberg move for summary judgment on the ground that they cannot be liable merely for acting as fiduciaries to both the grantor and the beneficiary of a deed of trust. They argue that this dual role of the trustee under a deed of trust is sanctioned by long tradition and does not in itself create a breach of fiduciary obligations. Plaintiffs respond to that argument with specific allegations of misconduct. They allege that the trustees acted as attorneys for Option One rather than fiduciaries of both parties; that they proceeded with the sale · Fin. Freedom v. Horrocks 294 S.W.3d 749 (Tex. App. 2009) Cited 26 times deed of a trust. The purpose of a deed of trust is to secure to a lender

the repayment of a borrower's debt. *Sonny Arnold, Inc. v. Sentry Sav. Assoc.*, 615 S.W.2d 333, 339 (Tex.Civ.App.-Amarillo, 1981) aff'd 633 S.W.2d 811 (Tex. 1982). To accomplish this purpose, a deed of trust creates only a lien on property and does not constitute a conveyance of the property. *Sandel v. Burney*, 714 S.W.2d 40, 41 (Tex.App.-San Antonio 1986, no writ). We hold that, as a matter of law, the Deeds of Trust did not create a life estate in Johansen. Therefore, we turn to the summary judgment evidence submitted by The American government ensures mortgage agreements:

1.

• **United States v. McNinch**

356 U.S. 595 (1958) Cited 180 times

be made, or presents or causes to be presented, for payment or approval . . . any claim" against the United States. No claim has been tendered against the United States for "payment." But a claim has been presented for "approval" in the meaning of the Act. For the United States has been induced by fraudulent representations to insure these loans. One who has the endorsement of the United States on his paper has acquired property of substantial value. It is a property right of value because it represents a claim against the United States. It is of course contingent until a default occurs. But

• • *United States ex rel. Friddle v. Taylor, Bean & Whitaker Mortg. Corp.* CIVIL ACTION NO. 1:06-cv-3023-JEC (N.D. Ga. Mar. 27, 2012) Cited 4 times

the United States. They sue both the corporate defendants and three individuals affiliated with the latter for violations of the False Claims Act, 31 U.S.C. §§ 3729-3733. Relators allege that the defendants engaged in massive mortgage fraud against the United State Government ["the Government"] by duping the latter into guaranteeing fraudulent, high-risk loans through application materials that contained false information. When the borrowers eventually defaulted, defendants presented claims for repayment

to the Government; relators allege that defendants' claims of entitlement to repayment

• • **Martin v. Bank of Am., N.A.**

13 Civ. 02350 (ILG) (SMG) (E.D.N.Y. Mar. 12, 2014) Cited 3 times
Plaintiffs challenge a number of Defendants' lending and servicing practices, beginning with the origination of Plaintiffs' mortgages. Plaintiffs allege that Defendants engaged in "deceptive and predatory lending practices" by misrepresenting the risks of Plaintiffs' mortgages. These misrepresentations include statements that the housing market was stable and exaggerations of the expected increase in housing prices; failures to meaningfully discuss the "individual implications" of their loans' terms,

• • **People v. Valverde**

H034263 (Cal. Ct. App. Jul. 25, 2012)

I. Prosecution Case In the early 2000's, defendants owned Summit Mortgage One, a mortgage brokerage firm. They committed mortgage loan fraud against a number of borrowers and lenders, misrepresenting loan terms and costs to borrowers, deceiving lenders with regard to borrowers' financial standing, and forging loan documents. The original and corrected iterations of the first amended indictment alleged that one or more of the two defendants in this appeal committed these crimes between July 1, 2002, and July 31,

• • **First Magnus Financial Corporation v. Star Equity Funding** Case No. 06-2426-JWL (D. Kan. Feb. 2, 2007)

In this lawsuit plaintiff First Magnus Financial Corporation (FMFC) alleges defendants entered into a mortgage fraud scheme to induce FMFC into funding fraudulent loans. FMFC asserts a claim against the defendants involved in the alleged scheme for a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(c) and (d), as well as eleven other

• • **First Magnus Financial Corporation v. Star Equity Funding**

Case No. 06-2426-JWL (D. Kan. Feb. 27, 2007) Cited 6 times
In this lawsuit plaintiff First Magnus Financial Corporation (FMFC) alleges that the defendants were involved in a mortgage fraud scheme to induce FMFC into funding fraudulent loans. On February 7, 2007, United States Magistrate Judge David J. Waxse issued two orders directing FMFC to show cause why this action should not be dismissed as to certain defendants (docs. #78 #79). This matter

· · State v. Prat

813 N.W.2d 868 (Minn. 2012) Cited 129 times
closed. Testimony at trial indicated that payments to the construction company were made ostensibly for construction work performed on the properties, but there was no evidence that any such work had been done. The complaint further alleges that, in reliance on these false and misleading purchase agreements and loan applications, the mortgage lenders involved were swindled out of loan funds. Under Minn.Stat. § 609.52, subd. 2(4), a person is guilty of theft by swindle if the person, "whether by artifice, trick, device, or any other means, obtains property or services from another person."

· · Isaacs v. Royal Bank of Can.

Case No. 14-cv-1036 (C.D. Ill. Apr. 8, 2014) Cited 1 times
Amended Complaint, Anna Isaacs and Jody Kimbrell are suing the Royal Bank of Canada, a Canadian chartered bank, RBC Capital Markets Corporation, Anthony Giannini, Steven Smith and Todd Rhoades for their involvement in extending them mortgages. Plaintiffs allege these Defendants used false and fraudulent mortgage documents to underwrite the Plaintiffs' loans. The Amended Complaint alleges five causes of action: Fraudulent Conveyance of Real Property, Fraudulent Mortgage Documents, Deceptive Business Practices, Breach of Fiduciary Duty, and Gross Negligence. Plaintiffs unambiguously state the

· · Crofton v. Bank of America Home Loans

Case No. 11-10124 (E.D. Mich. Mar. 31, 2011) Cited 9 times

Plaintiffs allege that Countrywide and MERS violated Michigan's Mortgage Brokers, Lenders and Servicers Licensing Act ("MBLSLA") by engaging in fraud, deceit, and/or material misrepresentations in connection with their mortgage transaction. Specifically, Plaintiffs' allege that Defendants charged them excessive fees and induced them to enter into a transaction that provided them little or no benefit.

(Compl. ¶¶ 25,

· · Johnson v. Trott & Trot

Case No. 12-10513 (E.D. Mich. Aug. 2, 2012) Cited 2 times Plaintiff alleges that Chase committed fraud in connection with the mortgage lending process. See Am.

Compl. at 4. Fraud must be pleaded with particularity. Fed. R. Civ. P.

9(b). "The Sixth Circuit interprets

Rule 9(b) as requiring plaintiffs to 'allege the time, place, and content of the alleged misrepresentation

on which he or she relied; the

· · Tomlinson v. Deutsche Bank Nat'l Trust Co.

CV 13-00554 SOM-BMK (D. Haw. Jan. 29, 2014) Cited 2 times

On September 11, 2013, Plaintiffs filed suit in the Circuit Court of the First Circuit for the State of Hawaii

against Deutsche Bank and US Bank. (Doc. 11.) The Complaint alleges that Deutsche Bank and US Bank

knowingly participated in a false and deceptive scheme involving the fraudulent assignment of

mortgages and mortgage notes. (Doc. 1-1 at 12-13.) This alleged scheme entailed the Defendants

knowingly accepting the assignment of these instruments from New Century Mortgage Corp. ("New

Century"), where New Century purportedly lacked an

· · Dimitrakis v. Citibank, F.S.B.

Civil Action No.: 12-7599 (JLL) (D.N.J. Feb. 7, 2013) Cited 2 times

that representation." Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd., 181 F.3d

410, 426 (3d Cir. 1999). Plaintiffs' Complaint alleges, in pertinent part, that "Defendants...engaged in

unconscionable commercial practices, deception, fraud, false pretense, false promise and/or

misrepresentations with regard to the subject mortgage by never disclosing the terms of the loan prior to closing and falsifying signatures on loan closing documents." (Compl., Count One, ¶ 14). The closing took place on September 1, 2006. (Compl., Count One, ¶ 11). Although Plaintiffs also

· · Levine v. JPMorgan Chase Bank, N.A.

Case No. RWT 13-cv-2639 (D. Md. Sep. 11, 2014) Cited 2 times in original). Second, Plaintiffs allege that Defendant "violated numerous sections" of the National Bank

Act, 12 U.S.C. § 1, et seq, but actually recite only one violation.

According to the Complaint, the National

Bank Act prohibits financial institutions from "enter[ing] into mortgage agreements for real estate

beyond a 5-year period," rendering Defendant's 30-year mortgage with Plaintiffs "by operation of

law...fraudulent." Id. Third, Plaintiffs, citing U.C.C. § 3-308, "deny the validity of any signature on any

photocopy of a Promissory Note." Id. Finally, Plaintiffs, citing the Fair Debt

· · Zurich Am. Ins. Co. v. Diamond Title of Sarasota, Inc.

Case No. 8:10-cv-383-T-30AEP (M.D. Fla. Dec. 4, 2013) Cited 3 times and lasted until the Spring of 2008. During the conspiracy, Rotolo made materially false statements and

representations on various mortgage documents including sale and purchase contracts, loan

applications, and HUD-1Settlement Statements. The purpose of the fraud was to obtain loans secured by

mortgages from FDIC-Insured banks and mortgage lending businesses.

Examples of the false statements

Rotolo made include: the sellers and purchasers in the transactions; the familial relationships between

and among the parties to the transactions; the properties' actual purchase prices; the borrowers'

· · United States v. McNinch

138 F. Supp. 711 (E.D.S.C. 1956) Cited 2 timesAt various times during the period from November, 1951, through January, 1953, the defendants submitted to the South Carolina National Bank, an institution approved by the Federal Housing

Administration for insurance against losses sustained from the lending of money for home improvements, fraudulent FHA loan applications and credit reports pertaining to the financial condition of customers of the Home Comfort Company, and conspired thereby among themselves and their customers to defraud the United States by obtaining the approval of false and fictitious applications for loans insured by the...

· · Marshall v. J.P. Morgan Chase & Co.

Civil Action No. DKC 14-3339 (D. Md. Jul. 20, 2015) Cited 1 times

Second, Plaintiff alleges that Defendant "violated numerous sections" of the National Bank Act, 12 U.S.C.

§ 1, et seq, but then only asserts one such violation. (Id.). According to Plaintiff, the National Bank Act

prohibits financial institutions from "enter[ing] into mortgage agreements for real estate beyond [a] 5—

year period[,] " which purportedly renders Defendant's 30-year mortgage with Plaintiff fraudulent "by

operation of law." (Id.). Third, citing U.C.C. § 3—308, Plaintiff "denies the validity of signature on any

photocopy of a Promissory Note" and requests the issuance of a subpoena

· · Simmons v. Reich

19-CV-3316(EK)(ST) (E.D.N.Y. Nov. 30, 2020) Cited 1 times

of the fraud will be imputed to a plaintiff if there are circumstances sufficient to alert a reasonable

person to the probability that he or she has been defrauded." Id. (citing Curi, 978 F. Supp. at 444). Here,

Plaintiffs allege that Defendants made fraudulent misrepresentations in connection with their loan

agreements, causing them to take out loans with illegally high interest rates. Assuming their allegations

are true, Plaintiffs sustained an injury when they assumed these loan obligations. See Chainani v. Dime

Sav. Bank FSB, No. 94-CV-7549, 1996 WL 622031, at *4 (S.D.N.Y. Oct. 28,

· · Boyd Cnty. v. Merscorp, Inc.

CIVIL ACTION NO. 12-33-HRW (E.D. Ky. Nov. 25, 2013)

County, Logan County, Menifee County, Monroe County, Montgomery County, Nelson County, Nicholas County, Ohio County, Oldham County, Perry County, Rockcastle County, Spencer County, Trimble County and Wolfe County. Plaintiffs allege that the financial institutions and mortgage / title companies

Defendants devised and executed a scheme to avoid paying recording fees for mortgage assignments.

Specifically, Plaintiffs allege that the Defendants, shareholders of Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") established the MERS system in the mid-1990s to act as an electronic

· · Cabrera v. Countrywide Fin.

No. C 11-4869 SI (N.D. Cal. Oct. 30, 2012) Cited 7 times

D. "Fraudulent" Mortgage Loan Scheme Finally, plaintiffs allege that defendants engaged in "fraudulent"

business acts through a fraudulent mortgage loan scheme that misled the Cabrerias and other borrowers

into accepting loans that they could not afford. But plaintiffs fail to allege specific acts of fraud or

misstatement that induced other homeowners into accepting loans they could not afford. Regarding

their own mortgage, plaintiffs allege

· · Premium Capital Funding, LLC v. AR Home Loans, Inc. NO. CIV.

S-07-1185 LKK/EFB (E.D. Cal. Oct. 22, 2008)

Plaintiff, Premium Capital Funding ("PCF") alleges fraudulent real estate and mortgage loan transaction

that induced it to fund mortgage loans based on materially false information and documentation and the

omission of material information. The defendants are AR Home Loans ("AR") and Timothy Barron.

Pending before the court is AR's motion for summary judgment on plaintiff's claims for breach of

contract, negligence,

· · Mitchell v. Citizens Bank

No. 3:10-cv-569 (M.D. Tenn. Oct. 22, 2010)

on June 16, 2010 (Docket No. 3). The Plaintiff alleges that Citizens Bank discriminated against him and his

business due to his race in the terms and conditions of loans provided to

the Plaintiff by Citizens Bank in Hartsville, Tennessee. Plaintiff also alleges that Citizens Bank engaged in fraudulent business practices with regard to loan and property transactions. The Plaintiff further alleges that Citizens Bank engaged in a conspiracy to shut down the Plaintiff's business, which led to the Plaintiff being unable to make timely payments on the loans provided to him by Citizens Bank and,

- • Marketing Products Management v. Healthandbeautydirect.com 333 F. Supp. 2d 418 (D. Md. 2004) Cited 16 times

activity" here. Plaintiffs' reliance on Superior Bank v. Tandem National Mortgage, Inc., 197 F. Supp.2d 298 (D. Md. 2000), is similarly misplaced. In Superior Bank, numerous defendants involved in the real estate industry (including mortgage brokers, title companies, and property appraisers) allegedly engaged in a scheme to induce the plaintiff to purchase 23 mortgage loans at fraudulently inflated prices on the secondary market. Id. at 307. In denying motions to dismiss, Judge Garbis reasoned that the "relatedness" requirement was satisfied because, drawing all inferences in favor

- • United States v. Raza 876 F.3d 604 (4th Cir. 2017) Cited 16 times
- By submitting false loan applications and false documents to SunTrust, the defendants caused SunTrust to make mortgage loans to the borrowers. The defendants thereby caused SunTrust to fund fraudulent mortgage loans on at least thirteen properties in eastern Virginia.
- • United States v. Suggs No. 12-3592 (6th Cir. Aug. 6, 2013) Cited 14 times

the mortgage until the bank took possession of the property through a foreclosure action or he sold the home to a co-conspirator at an inflated price—obtaining a second fraudulent mortgage loan from a different lender in the process—taking the "equity" in cash. The scheme defrauded federally insured banks and mortgage lending companies. Using false documentation supplied by Suggs, Carlos Crespo

purchased a multi-family property. After taking possession of the property, Crespo and his grandmother, Aida Cardona-Cruz, who is now deceased, lived in downstairs apartments, while Suggs inhabited an

· National Bank of Commerce v. King County

280 P. 16 (Wash. 1929) Cited 6 times From the amount of purchases and sales made by these companies, the trial court was warranted in finding that the companies employed a substantial amount of capital in the conduct and operation of the

local business. Mortgage loan companies, domestic corporations doing business in Seattle, engaged in

soliciting loans and lending money upon mortgages upon improved real estate. In many instances, they

issued and sold bonds secured by such mortgages. The capital, surplus and undivided profits of such

companies, on March 1, 1925, were \$1,800,000, and on March 1, 1926, \$1,950,000. On March 1,

"The trustee is the agent for both parties to the deed of trust and occupies a fiduciary relationship as to both."

· O'Neal v. Ketchum

141 So. 3d 45 (Miss. Ct. App. 2014) Cited 2 times

no sale took place. Therefore, Ketchum and O'Neal remain cotenants of the property in question. In

Mississippi Real Estate Foreclosure Law, it is stated that "a mortgagee can purchase property at the

foreclosure sale under Mississippi law. However, ... the trustee is the agent for both parties to the deed of

trust and occupies a fiduciary relationship as to both." K.F. Boackle, Mississippi Real Estate Foreclosure

Law § 4–8, at 43 (2d ed.2002). ¶ 24. It is further recommended that,

"[i]n the event the mortgagee is not

present, [the trustee should] accept [mortgagee's] bid as specified in his

· · Lee v. Lee

109 So. 2d 870 (Miss. 1959) Cited 9 times

(Hn 1) The appellant admits that it is the general rule that a trustee cannot himself buy land at a

foreclosure sale when he is the trustee making the sale. Such is generally recognized by the authorities.

The trustee in a deed of trust is the agent of both parties, and he therefore occupies a fiduciary relationship to both parties. *Rawlings v. Anderson, et al.*, 149 Miss. 632, 115 So. 714. The rule is founded upon public policy. In 37 Am. Jur., *Mortgages*, page 96, it is said: "A person who stands in the relation of attorney in fact to both debtor and creditor is estopped from purchasing the

· · *Wilson v. Irwin*

H039985 (Cal. Ct. App. Dec. 7, 2017)

law, and the statutes applicable to trustees of express trusts do not apply to deeds of trust. The trustee of a deed of trust does not possess the personal confidence for the benefit of another required for a true trust relationship.' [Citations.] A trustee therefore, while an agent for both the beneficiary and the trustor, does not stand in a fiduciary relationship to either. [Citation.]" (Id. at pp. 1111-1112.) "It is

true . . . that a trustee has a general duty to conduct the sale 'fairly, openly, reasonably, and with due diligence,' exercising sound discretion to protect the rights of the

· · *Baron v. Colonial Mortgage Service Co.*

111 Cal.App.3d 316 (Cal. Ct. App. 1980) Cited 11 times

the best possible price. The exercise of reasonable business prudence on the part of the trustee in acceptance of cash equivalents would protect all parties under the statutory scheme, as the statute now expressly recognizes. (3b) It is conceded by the parties that the trustee under a deed of trust, while not a

fiduciary, is the agent of both the beneficiary and the trustor. (*Lupertino v. Carbahal* (1973) 35

Cal.App.3d 742, 747 [111 Cal.Rptr. 112].) Courts have also enunciated a duty in the trustee in the conduct of a sale itself. "A sale under a power in a mortgage or trust deed must be

· · *Hatch v. Collins*

225 Cal.App.3d 1104 (Cal. Ct. App. 1990) Cited 69 times

trust relationship." (4 *Miller Starr*, op. cit. supra, § 9.3, at pp. 13-14, italics added; see also *Hollis*, supra,

196 Cal.App.3d at pp. 955-956, holding that trustee may acquire the property at a foreclosure sale for his own benefit.) A trustee therefore, while an agent for both the beneficiary and the trustor, does not stand in a fiduciary relationship to either. (*Baron v. Colonial Mortgage Service Co.* (1980) 111 Cal.App.3d 316, 323 [168 Cal.Rptr. 450].) (1d) It is true, as the Hatches repeatedly point out, that a trustee has a general duty to conduct the sale "fairly, openly, reasonably,

· · *Yvanova v. New Century Mortgage Corp.* 62 Cal.4th 919 (Cal. 2016) Cited 679 times

The trustee of a deed of trust is not a true trustee with fiduciary obligations, but acts merely as an agent for the borrower-trustor and lender-beneficiary. (*Biancalana v. T.D. Service Co.*, *supra*, 56 Cal.4th at p. 819, 156 Cal.Rptr.3d 437, 300 P.3d 518; *Vournas v. Fidelity Nat. Tit. Ins. Co.* (1999) 73 Cal.App.4th 668, 677, 86 Cal.Rptr.2d 490.) While it is the trustee who

· · *In re Vogler Realty, Inc.* 722 S.E.2d 459 (N.C. 2012) Cited 23 times

of attorney's fees. Moreover, the aggrieved creditor is not left without a remedy, as it may, in appropriate circumstances, bring an action for breach of fiduciary duty against the trustee. See *id.* at 665-66, 6 S.E.2d at 549-50. This Court long has recognized that the trustee of a deed of trust stands in a fiduciary relationship with both the debtor and creditor. See, e.g., *id.* at 669-70, 6 S.E.2d at 552-53; *Gregg v. Williamson*, 246 N.C. 356, 360, 98 S.E.2d 481, 485 (1957) (recognizing that "[t]he trustee must be impartial in the performance of his duties" and cannot "give an unfair

· · *The Cadillac Lounge v. McAteer, PC* C.A. No. PC 03-3131 (R.I. Super. Sep. 27, 2007) confidence.'" *A. Teixeira Co. v. Teixeira*, 699 A.2d 1383, 1387 (R.I. 1997) (citing *Francis X. Conway, The New York Fiduciary Concept in Incorporated Partnerships and Joint Ventures*, 30 *Fordham L. Rev.* 297, 312 (1961)). An escrow agent has a fiduciary duty to hold the funds pursuant to the terms of the escrow

agreement; he is not an agent to either party, but a fiduciary to both of them. *Kaarela v. Birkhead*, 33

Mass. App. Ct. 410, 412, 600 N.E.2d 608 (citing Restatement (Second) of Agency § 14D app., reporters note at 60 (1958)). The relevant inquiry thus becomes McAteer's status as an escrow

· · *Murray v. Wells Fargo Home Mortgage*

953 A.2d 308 (D.C. 2008) Cited 75 times

on a residential mortgage. "[A] trustee under a deed of trust owes fiduciary duties both to the

noteholder and to the borrower." *Perry v. Virginia Mortgage and Investment Co., Inc.*, 412 A.2d 1194, 1197 (D.C. 1980) (internal citation omitted). "Substitute trustees under a deed of trust have, of course, a fiduciary relationship with both the lender and the borrower." *Basiliko v.*

Pargo Corp., 532 A.2d 1346,

1349 n. 3 (D.C. 1987). "[A]s a general proposition, trustees of deeds have only those powers and duties

imposed by the trust instrument itself, coupled with the applicable statute governing

· · *Brueggemann v. Hodges*

156 Wn. App. 1003 (Wash. Ct. App. 2010)

The complaint as amended also asserts a claim for relief against RPW for an alleged breach of a fiduciary

duty related to the nonjudicial foreclosure of Brueggemann's condominium. A trustee on a deed of trust

acts as a fiduciary for both the debtor and the creditor. *Meyers Way Dev. Ltd. P'ship v. Univ. Sav. Bank*, 80

Wn. App. 655, 665, 910 P.2d 1308 (1996) (citing *Cox v. Helenius*, 103 Wn.2d 383, 389, 693 P.2d 683

(1985)). One objective of the deed of trust act is to "provide an adequate opportunity for interested

· · *Basiliko v. Pargo Corp.*

532 A.2d 1346 (D.C. 1987) Cited 11 times

Substitute trustees under a deed of trust have, of course, a fiduciary relationship with both the lender

and the borrower. *Perry v. Virginia Mortgage and Investment Co.*, 412 A.2d 1194, 1197 (D.C. 1980);

National Life Insurance Co. v. Silverman, 147 U.S.App.D.C. 56, 72, 454 F.2d 899, 915 (1971); *Sheridan v.*

Perpetual Building Association, 112 U.S.App.D.C. 82,
 · · Ainsa v. Mercantile Trust Company of San Francisco
 174 Cal. 504 (Cal. 1917) Cited 25 times
 4 Cal.App. 131-135, [87 P. 343]; Hollywood Lumber Co. v. Love, 155 Cal.
 270-273, [100 P. 698]; MacLeod
 v. Moran, 153 Cal. 97-99, [94 P. 604]; Tyler v. Currier, 147 Cal. 31-36,
 [81 P. 319]; Weber v. McCleverty,
 149 Cal. 316-321, [86 P. 706].) A trustee under an ordinary deed of
 trust is the common agent of both
 parties and is required to act impartially. (Cook on Corporations, 7th ed.,
 p. 3050; Jones on Mortgages,
 6th ed., sec. 1771.) Some authorities hold that he is not a trustee at all in
 a technical sense. (28 Am. Eng.
 Ency. of Law, 2d ed., p. 765.) Appellant cites authorities to the
 · · Pacific S. & L. Co. v. N. American Etc. Co.
 37 Cal.App.2d 307 (Cal. Ct. App. 1940) Cited 15 times
 510 [163 P. 898], "A trustee under a deed of trust does not assume the
 important obligations which are
 in some instances cast upon a trustee by operation of law. An ordinary
 trust deed is little more than a
 mortgage with power to convey. . . . A trustee under an ordinary deed of
 trust is the common agent of
 both parties and is required to act impartially. . . . Some authorities hold
 that he is not a trustee at all in a
 technical sense." With respect to foreclosure, it has been held that no
 constitutional right of the parties
 is violated by the application of a statute, subsequently enacted,
 · · Cox v. Helenius
 103 Wn. 2d 383 (Wash. 1985) Cited 173 times
 Lovejoy v. Americus, 111 Wn. 571, 574, 191 P. 790 (1920); Miebach v.
 Colasurdo, 102 Wn.2d 170, 685
 P.2d 1074 (1984). Because the deed of trust foreclosure process is
 conducted without review or
 confirmation by a court, the fiduciary duty imposed upon the trustee is
 exceedingly high. [4] Washington courts do not require a trustee to make
 sure that a grantor is protecting his or her own interest.
 However, a trustee of a deed of trust is a fiduciary for both the
 mortgagee and mortgagor and must act
 impartially between them. G. Osborne, G. Nelson D. Whitman, Real

Estate Finance Law § 7.21 (1979)

· · Alpha Imperial v. Schnitzer Family Invest.

126 Wn. App. 1031 (Wash. Ct. App. 2005)

have no relationship with each other. The sale is pursuant to a contract between the grantor, the

beneficiary and the trustee. The junior lienholder is not a party to that contract. The case law indicates

only that the trustee owes a fiduciary duty to the debtor and beneficiary:

`a trustee of a deed of trust is a

fiduciary for both the mortgagee and mortgagor and must act impartially between them.' Cox, 103

Wn.2d at 389. The fact that a sale in accordance with that contract can extinguish the junior lienholder's

interest further shows that the grantor's and beneficiary's interest in

· · Landberg v. Equity Trust Co.

No. 29140-5-III (Wash. Ct. App. Mar. 29, 2012)

A trustee of a deed of trust is nonetheless a fiduciary for both the mortgagee and mortgagor and must

act impartially between them. Cox v. Helenius, 103 Wn.2d 383, 389, 693 P.2d 683 (1985). The trustee

must present every possible advantage to the debtor as well as the creditor. Id. In doing so, the trustee

must use good faith and "every requisite degree of

· · Meyers Way v. University Savings

80 Wn. App. 655 (Wash. Ct. App. 1996) Cited 42 times

that the indemnity agreement was a breach of Jones's fiduciary duty, per se, as a matter of law, because

the effect was to allow Jones to violate the grantors' rights with impunity, knowing he would be

indemnified by the Bank. [2, 3] A trustee of a deed of trust acts as the fiduciary for both the creditor and

debtor on a deed of trust, so must act impartially between them. Cox v. Helenius, 103 Wn.2d 383, 389,

693 P.2d 683 (1985). Because a deed of trust foreclosure is a nonjudicial proceeding, the trustee's

fiduciary duty to the debtor is "exceedingly high." Cox, 103 Wn.2d at 388-89. Despite

· · In re Foreclosure of Real Property

156 N.C. App. 477 (N.C. Ct. App. 2003) Cited 23 times

to authorize foreclosure, namely (1) a valid debt, (2) default, (3) right to foreclose under the instrument, and (4) notice to all parties so entitled. N.C. Gen. Stat. § 45-21.16(d) (2001). We find no merit in respondents' argument. "In deed of trust relationships, the trustee is a disinterested third party acting as the agent of both the debtor and the creditor." *In re Proposed Foreclosure of McDuffie*, 114 N.C. App. 86, 88, 440 S.E.2d 865, 866 (1994). In a foreclosure proceeding, the trustee is charged with the duty to effect service of the notice of hearing. N.C. Gen. Stat. § 45-21.16(a)

· · *Whitlow v. Mountain Trust Bank* 207 S.E.2d 837 (Va. 1974) Cited 17 times

aside and declared void. Because the trustee plays such a crucial role in a foreclosure sale, the controlling question is whether Trustee Willis acted properly with respect to the sale involved in this case. The general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for both debtor and creditor and must act impartially between them. *Rohrer v. Strickland*, 116 Va. 755, 759, 82 S.E. 711, 712 (1914); *Linney v. Normoyle*, 145 Va. 589, 593, 134 S.E. 554, 555 (1926). Implicit in this rule is the proposition that a trustee must refrain from placing

· *Smith v. Credico Industrial Loan Co.* 362 S.E.2d 735 (Va. 1987) Cited 9 times

the acting trustee at a foreclosure sale notified an official in a company in which he owned stock that the sale was to take place. The trustee's company was the successful bidder. The owners of the property sued to set aside the sale. In holding that the sale should have been set aside, we stated the following pertinent principles: 1. A trustee under a deed of trust is a fiduciary for both debtor and creditor and must act impartially between them; 2. A trustee must not place himself in a position where his personal interest conflicts with the interests of those for whom he acts as fiduciary;

The loan from the bank constituted a personal loan and not a home

mortgage:

" It is axiomatic that plaintiff has standing to sue if it was the lawful holder of the note and mortgage when the action was commenced. Mortgage Electronic Registration Systems, Inc. v Coakley , 41 AD3d 674 (2nd Dept 2007). The crucial issue then is whether the written assignment, dated after the commencement of the action but stated to be effective on a date before the commencement, was effective to give plaintiff the requisite interest in the mortgage and thus standing to commence an action to foreclose it. Recently, finding such post-commencement dated assignments ineffective, several trial level courts have said "no". Countrywide Home Loans, Inc. v Taylor , 17 Misc 3d 595 (Sup Ct, Suffolk County 2007) [Foreclosure action commenced by filing February 6, 2007 — assignment of mortgage executed March 6, 2007]; Countrywide Home Loans, Inc. v Hovanec, 15 Misc 3d 1115 (A) (Sup Ct, Suffolk County 2007) [Foreclosure action commenced by filing July 5, 2006 — assignment of mortgage dated August 4, 2006]. In response, plaintiff relies on Bankers Trust Co. v Hoovis, 262 AD2d 937 (3rd Dept 1999) which held that a post-commencement assignment had retroactive effect. The facts of Bankers Trust Co. are similar but not identical to the facts here. 'Again, here, plaintiff offers no evidence that it took physical delivery of the note and mortgage before commencing this action, and again, the written assignment was signed after defendant was served. The assignment's language purporting to give it retroactive effect, absent a prior or contemporary delivery of the note and mortgage, is insufficient to grant it standing. Deutsche Bank Trust Co. Americas v. Peabody, 2008 N.Y. Slip Op. 51286, 3 (N.Y. Sup. Ct. 2008)

"A trustee is a trustee of a trust, the deed of trust!

'THE BORROWER IS A DEBTOR AND THE LENDER IS THE CREDITOR
DESPITE THE

CONTRADICTIONS OF THE COURTS"

• **Chistoni v. HSBC Bank USA, N.A.**

Case No. 1:17-cv-00315 (GBL/JFA) (E.D. Va. May. 11, 2017) Cited 1 times breach of that duty, and a showing that such breach was the proximate cause of injury, resulting in damage to the plaintiff." Blue Ridge Serv. Corp. of Virginia v. Saxon Shoes, Inc., 624 S.E.2d 55, 62 (Va. 2006). ***"The general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for both debtor and creditor and must act impartially between them."*** Whitlow v. Mountain Trust Bank, 207 S.E.2d 837, 840 (Va. 1974). "Implicit in this rule is the proposition that a trustee must refrain from placing himself in a position where his personal interest conflicts

• • **Payne v. Bank of America, N.A.**

CASE No. 3:09-cv-00080 (W.D. Va. Feb. 11, 2010) Cited 18 times and duties of SIWPC, as substitute trustee, "are limited and defined by the instrument under which [it] acts," meaning the Deed of Trust to the Property. Powell v. Adams, 18 S.E.2d 261, 262-63 (Va. 1942). ***"The general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for both debtor and creditor and must act impartially between them."*** Whitlow v. Mountain Trust Bank, 207 S.E.2d 837, 840 (Va. 1974); see also Preston v. Johnson, 53 S.E. 1 (Va. 1906) ("It is well-settled doctrine in this jurisdiction that a trustee for sale is the agent of both

• • **Moore v. Law Offices of Shapiro, Brown & Alt, LLP**

Civil No. 3:14cv832 (DJN) (E.D. Va. Aug. 13, 2015) Cited 4 times ***[t]he general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for both debtor and creditor and must act impartially between them.*** Rohrer v. Strickland, 116 Va. 755, 759, 82 S.E. 711, 712 (1914); Linney v. Normoyle, 145 Va. 589, 593, 134 S.E. 554, 555 (1926). Implicit in this rule is the proposition that a trustee must refrain from placing himself in a position where his personal interest conflicts with the interests of those for whom he acts a fiduciary.

• • **Whitlow v. Mountain Trust Bank**

207 S.E.2d 837 (Va. 1974) Cited 17 times
aside and declared void. Because the trustee plays such a crucial role in a foreclosure sale, the controlling question is whether Trustee Willis acted properly with respect to the sale involved in this case. ***The general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for both debtor and creditor and must act impartially between them.*** Rohrer v. Strickland, 116 Va. 755, 759, 82 S.E. 711, 712 (1914); Linney v. Normoyle, 145 Va. 589, 593, 134 S.E. 554, 555 (1926). Implicit in this rule is the proposition that a trustee must refrain from placing

• • **Alpha Imperial v. Schnitzer Family Invest.**

126 Wn. App. 1031 (Wash. Ct. App. 2005)
have no relationship with each other. The sale is pursuant to a contract between the grantor, the beneficiary and the trustee. The junior lienholder is not a party to that contract. ***The case law indicates only that the trustee owes a fiduciary duty to the debtor and beneficiary: 'a trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them.'*** Cox, 103 Wn.2d at 389. The fact that a sale in accordance with that contract can extinguish the junior lienholder's interest further shows that the grantor's and beneficiary's interest in

• • **Smith v. Credico Industrial Loan Co.**

362 S.E.2d 735 (Va. 1987) Cited 9 times
the acting trustee at a foreclosure sale notified an official in a company in which he owned stock that the sale was to take place. ***The trustee's company was the successful bidder. The owners of the property sued to set aside the sale. In holding that the sale should have been set aside, we stated the following pertinent principles: 1. A trustee under a deed of trust is a fiduciary for both debtor and creditor and must act impartially between them; 2. A trustee must not place himself in a position where his personal interest conflicts with the interests of those for whom he acts as fiduciary;***

• • **BAIN v. ONEWEST BANK, F.S.B**

Case No. C09-0149-JCC (W.D. Wash. Mar. 15, 2011) Cited 2 times
a trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them. The trustee is bound by his office to present the sale under every possible advantage to the debtor aswell as to the creditor. He is bound to use not only good faith but also every requisite degree of diligence in conducting the sale and to attend equally to the interest of the debtor and creditor alike.

• • **Moore v. Law Offices of Shapiro, Brown & Alt, LLP**

Civil No. 3:14cv832 (DJN) (E.D. Va. Aug. 13, 2015) Cited 4 times
of **action lies for a breach of fiduciary duty where the alleged fiduciary duty existed solely from a contractual relationship.** Augusta Mut. Ins. Co. v. Mason, 274 Va. 199, 207-08, 645 S.E.2d 290, 295 (2007). ***The Virginia Supreme Court, however, has also indicated that a trustee under a deed of trust acts as "a fiduciary for both debtor and creditor and must act impartially between them."***

Whitlow v. Mountain Trust Bank, 215 Va. 149, 152, 207 S.E.2d 837, 840 (1974) (citing linney v. Normoyle, 145 Va. 589, 593, 134 S.E. 554, 555 (1926); Rohrer v. Strickland, 116 Va. 755, 759, 82 S.E. 711, 712

• • **Cox v. Helenius**

103 Wn. 2d 383 (Wash. 1985) Cited 173 times
Lovejoy v. Americus, 111 Wn. 571, 574, 191 P. 790 (1920); Miebach v. Colasurdo, 102 Wn.2d 170, 685 P.2d 1074 (1984). Because the deed of trust foreclosure process is conducted without review or confirmation by a court, the fiduciary duty imposed upon the trustee is exceedingly high. [4]
Washington courts do not require a trustee to make sure that a grantor is protecting his or her own interest. *However, a trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them.*
G. Osborne, G. Nelson D. Whitman, Real Estate Finance Law § 7.21 (1979)

• • **Mayo v. Wells Fargo Bank, N.A.**

30 F. Supp. 3d 485 (E.D. Va. 2014) Cited 10 times
sale must be set aside because the trustee did not "refrain from placing himself in a position where his personal

interest conflicts with the interests of those for whom he acts as a fiduciary." 207 S.E.2d at 840 ; *id.* ("The general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for both the debtor and creditor and must act impartially between them."). The Amended Complaint does allege that the White firm violated a common law duty of impartiality. However, that allegation is conclusory and fails to meet the requisite pleading standards. By

• • **Meyers Way v. University Savings**

80 Wn. App. 655 (Wash. Ct. App. 1996) Cited 42 times that the indemnity agreement was a breach of Jones's fiduciary duty, per se, as a matter of law, because the effect was to allow Jones to violate the grantors' rights with impunity, knowing he would be indemnified by the Bank. [2, 3] *A trustee of a deed of trust acts as the fiduciary for both the creditor and debtor on a deed of trust, so must act impartially between them.* Cox v. Helenius, 103 Wn.2d 383, 389, 693 P.2d 683 (1985). Because a deed of trust foreclosure is a nonjudicial proceeding, the trustee's fiduciary duty to the debtor is "exceedingly high." Cox, 103 Wn.2d at 388-89. Despite

• • **Stricklin v. Litton Loan Servicing, L.P.**

Case No. 4:13-CV-1354 (CEJ) (E.D. Mo. Jun. 13, 2014) Cited 1 times held valid title as successor trustee prior to foreclosure. Defendant argues that plaintiffs failed to allege any facts to show that it had a duty to protect plaintiff, or that a breach of that duty resulted in damages. "A trustee in a deed of trust acts in a fiduciary capacity and he must act with complete integrity, fairness, and impartiality toward both the debtor and the creditor. The duties and powers of a trustee are fixed by the terms of the contract, namely, the deed of trust." Spires v. Edgar, 513 S.W.2d 372, 378 (Mo. 1974) (en banc). Accordingly, the deed of trust must set forth any

• • **Landberg v. Equity Trust Co.**

No. 29140-5-III (Wash. Ct. App. Mar. 29, 2012) *A trustee of a deed of trust is nonetheless a fiduciary for both the mortgagee and mortgagor and must act impartially between them.* Cox v. Helenius, 103 Wn.2d 383, 389, 693

P.2d 683 (1985). The trustee must present every possible advantage to the debtor as well as the creditor. Id. In doing so, the trustee must use good faith and "every requisite degree of

• • **Wivell v. Wells Fargo Bank, N.A.**

Case No. 12-3457-CV-S-DGK (W.D. Mo. Jul. 9, 2013) Cited 1 times following: (1) the existence of a fiduciary relationship between the parties; (2) breach of that duty; (3) causation; and (4) harm. *Zakibe v. Ahrens & McCarron, Inc.*, 28 S.W.3d 373, 381 (Mo. Ct. App. 2000). *A fiduciary relationship exists between the trustee of a deed of trust and both the debtor and creditor, and the trustee should "perform the duties of the trust with impartiality and integrity."* *Killion v Bank Midwest, N.A.*, 987 S.W.2d 801, 813 (Mo. Ct. App. 1998). When requested by the creditor to foreclose, "the trustee may proceed without making any affirmative investigation unless the

• • **Caranchini v. Bank of America, N.A.**

Case No. 4:10-CV-00672-DGK (W.D. Mo. May. 18, 2012) that because the deed of trust does not contain any provision directing it to investigate the property's title, or clear title if it becomes clouded, it owed no duty to Plaintiff which it could have breached. *Under Missouri law, "[a] trustee in a deed of trust acts in a fiduciary capacity and he must act with complete integrity, fairness, and impartiality toward both the debtor and the creditor."* *Spires v. Edgar*, 513 S.W.2d 372, 378 (Mo. 1974). "The duties and powers of a trustee are fixed by the terms of the contract, namely, the deed of trust." Id. Where the deed of trust does not contain a

• • **Spires v. Edgar**

513 S.W.2d 372 (Mo. 1974) Cited 58 times knowledge. There is nothing alleged here which shows that the trustee actually knew of anything which should legally prevent the foreclosure when he was directed to act. He did not receive any payments on the note. ***A trustee in a deed of trust acts in a fiduciary capacity and he must act with complete integrity, fairness, and impartiality toward both the debtor and the creditor.*** *Edwards v. Smith*, 322

S.W.2d 770 (Mo. 1959); West v. Axtell, 322 Mo. 401, 17 S.W.2d 328 (1929). The duties and powers of a trustee are fixed by the terms of the contract, namely, the deed of trust. Adams v. Boyd, 332

• • **Lick Creek Sewer Systems, Inc. v. Bank of Bourbon**

747 S.W.2d 317 (Mo. Ct. App. 1988) Cited 31 times
after receiving said amount at a foreclosure sale, thus breaching his contractual and fiduciary responsibility. The duties and powers of a trustee are fixed by the terms of the contract, namely, the deed of trust. ***A trustee in a deed of trust acts in a fiduciary capacity and he must act with complete integrity, fairness, and impartiality toward both the debtor and the creditor.*** Spires v. Edgar, 513 S.W.2d 372, 378 (Mo. banc 1974). Treating as true the allegations that Woodward failed to pay over the excess proceeds from the foreclosure sale as required by the deed of trust, Count I states a

• • **Hallquist v. United Home Loans, Inc.**

Case No. 11-04265-CV-C-NKL (W.D. Mo. Jun. 1, 2012) Cited 4 times
B. Count II *A trustee for a deed of trust acts in a fiduciary capacity and is required to act with "complete integrity, fairness, and impartiality toward both the debtor and the creditor."* Spires v. Edgar, 513 S.W.2d 372, 378 (Mo. banc 1974). The Hallquists allege that Millsap & Singer:

• • **Washington v. Metropolitan Life Insurance Co.**

330 A.2d 525 (D.C. 1974) Cited 2 times
The grantors and beneficiary under the deed of trust were the real parties in interest and as such were named defendants in the tax lien suit. See 26 U.S.C. § 7403(b) (1970). *A trustee under a deed of trust is, of course, the agent of both grantor and beneficiary, of debtor and creditor, and as such "is bound to stand neutral and impartial between them."* Stull v. Harvey, 112 Va. 816, 824, 72 S.E. 701, 704 (1911). Thus as a mere holder of legal title, the trustee was not required to be present so long as both grantor and beneficiary were sui juris and were before the court. Cf. id.

• • **Ainsa v. Mercantile Trust Company of San Francisco**

174 Cal. 504 (Cal. 1917) Cited 25 times

4 Cal.App. 131-135, [87 P. 343]; Hollywood Lumber Co. v. Love, 155 Cal. 270-273, [100 P. 698]; MacLeod v.

Moran, 153 Cal. 97-99, [94 P. 604]; Tyler v. Currier, 147 Cal. 31-36, [81 P. 319]; Weber v. McCleverty, 149 Cal.

316-321, [86 P. 706].) *A trustee under an ordinary deed of trust is the common agent of both parties and is required to act impartially.* (Cook on Corporations, 7th ed., p. 3050; Jones on Mortgages, 6th ed., sec. 1771.) Some authorities hold that he is not a trustee at all in a technical sense. (28 Am. Eng. Ency. of Law, 2d ed., p. 765.)

Appellant cites authorities to the

• • **Gossen v. JPMorgan Chase Bank**

819 F. Supp. 2d 1162 (W.D. Wash. 2011) Cited 31 times

The Gossens' causes of action for violation of the provisions of the Deed of Trust Act (Wrongful Foreclosure,

Separation of Note and Deed of Trust, No Holder in Due Course) are subject to dismissal. The Gossens allege a

breach of a fiduciary duty. *A trustee on a deed of trust acts as a fiduciary for both the debtor and the creditor.*

Meyers Way Dev. Ltd. P'ship v. Univ. Sav. Bank, 80 Wash.App. 655, 665, 910 P.2d 1308 (1996); Cox v. Helenius,

103 Wash.2d 383, 389, 693 P.2d 683 (1985). The Gossens have failed to plead any facts that would support a finding

of a breach of the trustee's

• **Brueggemann v. Hodges**

156 Wn. App. 1003 (Wash. Ct. App. 2010)

The complaint as amended also asserts a claim for relief against RPW for an alleged breach of a fiduciary duty

related to the nonjudicial foreclosure of Brueggemann's condominium. *A trustee on a deed of trust acts as a*

fiduciary for both the debtor and the creditor. Meyers Way Dev. Ltd.

P'ship v. Univ. Sav. Bank, 80 Wn. App. 655,

665, 910 P.2d 1308 (1996) (citing Cox v. Helenius, 103 Wn.2d 383, 389, 693 P.2d 683 (1985)). One objective of the

deed of trust act is to "provide an adequate opportunity for interested

• Whitlow v. Mountain Trust Bank

207 S.E.2d 837 (Va. 1974) Cited 17 times

aside and declared void. Because the trustee plays such a crucial role in a foreclosure sale, the

controlling question is whether Trustee Willis acted properly with respect to the sale involved in this case. The general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for both debtor and creditor and must act impartially between them. *Rohrer v. Strickland*, 116 Va. 755, 759, 82 S.E. 711, 712 (1914); *Linney v. Normoyle*, 145 Va. 589, 593, 134 S.E. 554, 555 (1926).

Implicit in this rule is the proposition that a trustee must refrain from placing

· · *Parrish v. Fed. Nat'l Mortg. Ass'n*
292 Va. 44 (Va. 2016) Cited 18 times

The general rule concerning the position of a trustee under a deed of trust is that the trustee is a fiduciary for

· · *In re Vogler Realty, Inc.*
722 S.E.2d 459 (N.C. 2012) Cited 23 times

of attorney's fees. Moreover, the aggrieved creditor is not left without a remedy, as it may, in appropriate circumstances, bring an action for breach of fiduciary duty against the trustee. See *id.* at 665–66, 6 S.E.2d at 549–50. This Court long has recognized that the trustee of a deed of trust stands in a fiduciary relationship with both the debtor and creditor. See, e.g., *id.* at 669–70, 6 S.E.2d at 552–53; *Gregg v.*

Williamson, 246 N.C. 356, 360, 98 S.E.2d 481, 485 (1957) (recognizing that “[t]he trustee must be

impartial in the performance of his duties” and cannot “give an unfair

· · *Brueggemann v. Hodges*
156 Wn. App. 1003 (Wash. Ct. App. 2010)

The complaint as amended also asserts a claim for relief against RPW for an alleged breach of a fiduciary duty related to the nonjudicial foreclosure of Brueggemann's condominium. A trustee on a deed of trust acts as a fiduciary for both the debtor and the creditor. *Meyers Way Dev. Ltd. P'ship v. Univ. Sav. Bank*, 80

Wn. App. 655, 665, 910 P.2d 1308 (1996) (citing *Cox v. Helenius*, 103 Wn.2d 383, 389, 693 P.2d 683 (1985)). One objective of the deed of trust act is to “provide an

adequate opportunity for interested

· · In re Deed of Tr. from Menendez
259 N.C. App. 460 (N.C. Ct. App. 2018)

deposit on the bid. In fact, there is no contract, and the high bidder has no contractual right for delivery

of the subject property, until the high bidder tenders the full purchase price. Id. at 316, 344 S.E.2d at

560. A deed of trust creates the trustee's rights and duties, and a trustee to a deed of trust only stands in

a fiduciary relationship with the creditor and debtor. If there is a high bidder at a foreclosure proceeding,

the trustee's only obligation to that bidder is to tender the deed upon payment of the purchase price.

Sprouse at 316, 344 S.E.2d at 559. Respondent has not cited

· · Jefferson Federal S L v. Berks Title
472 A.2d 893 (D.C. 1984) Cited 4 times

"Deeds of trust are viewed as generally equivalent to common law mortgages, a mortgage being by definition an interest in property given as security for a debt." Yasuna v. Miller, 399 A.2d 68, 71-72

(D.C.App. 1979) (citation and footnote omitted). The trustee under a deed of trust owes fiduciary duties

to both the debtor-mortgagor and the creditor-mortgagee. Perry v. Virginia Mortgage Investment Co.,

412 A.2d 1194, 1197 (D.C.App. 1980); National Life Insurance Co. v. Silverman, 147 U.S.App.D.C. 56, 72,

454 F.2d 899, 915 (1971); Holman v. Ryon, 61 App.D.C. 10, 13, 56 F.2d 307, 310 (1932). When

· · Killion v. Bank Midwest N.A.

987 S.W.2d 801 (Mo. Ct. App. 1999) Cited 35 times

provision; (2) the Killions could not pay off the promissory note through refinancing until the contingent

interest dispute was decided; and (3) the Killions would lose their property and equity in the property if

a foreclosure sale was held. A fiduciary relationship does exist between the trustee of a deed of trust and

the debtor and creditor. Spires v. Edgar, 513 S.W.2d 372, 378 (Mo. banc 1974). The trustee is considered

to be the agent of both the debtor and creditor and should perform the

duties of the trust with impartiality and integrity. *Edwards v. Smith*, 322 S.W.2d 770, 777 (Mo. • • *Wiemer v. Havana National Bank* 385 N.E.2d 340 (Ill. App. Ct. 1978) Cited 4 times the trust agreement without exposing itself to liability. • 1, 2 In both the trust deed and the trust agreement, the parties expressly provided for the creation of a trust relationship, and the provisions of the trust instruments must be given effect. The fact that a trustee under a trust deed is a fiduciary has been repeatedly recognized. (E.g., *White v. Macqueen* (1935), 360 Ill. 236, 195 N.E. 832, 98 ALR 1115; *Meyer v. Kenmore-Granville Hotel Co.* (1st Dist. 1941), 308 Ill. App. 78, 31 N.E.2d 330.) It has also been said that the trustee of a trust deed is required by the fundamental law • • *Smith v. Credico Industrial Loan Co.* 362 S.E.2d 735 (Va. 1987) Cited 9 times the acting trustee at a foreclosure sale notified an official in a company in which he owned stock that the sale was to take place. The trustee's company was the successful bidder. The owners of the property sued to set aside the sale. In holding that the sale should have been set aside, we stated the following pertinent principles: 1. A trustee under a deed of trust is a fiduciary for both debtor and creditor and must act impartially between them; 2. A trustee must not place himself in a position where his personal interest conflicts with the interests of those for whom he acts as fiduciary; • • *Alpha Imperial v. Schnitzer Family Invest.* 126 Wn. App. 1031 (Wash. Ct. App. 2005) have no relationship with each other. The sale is pursuant to a contract between the grantor, the beneficiary and the trustee. The junior lienholder is not a party to that contract. The case law indicates only that the trustee owes a fiduciary duty to the debtor and beneficiary: 'a trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them.' Cox, 103

Wn.2d at 389. The fact that a sale in accordance with that contract can extinguish the junior lienholder's

interest further shows that the grantor's and beneficiary's interest in

· · Meyers Way v. University Savings

80 Wn. App. 655 (Wash. Ct. App. 1996) Cited 42 times

that the indemnity agreement was a breach of Jones's fiduciary duty, per se, as a matter of law, because

the effect was to allow Jones to violate the grantors' rights with impunity, knowing he would be

indemnified by the Bank. [2, 3] A trustee of a deed of trust acts as the fiduciary for both the creditor and

debtor on a deed of trust, so must act impartially between them. Cox v. Helenius, 103 Wn.2d 383, 389,

693 P.2d 683 (1985). Because a deed of trust foreclosure is a nonjudicial proceeding, the trustee's

fiduciary duty to the debtor is "exceedingly high." Cox, 103 Wn.2d at 388-89. Despite

· · Wycalis v. Guardian Title of Utah

780 P.2d 821 (Utah Ct. App. 1989) Cited 35 times

Our emphasis on "negligence" analysis should not be taken as an implicit rejection of Wycalis's

contention that a trust deed trustee is a fiduciary held to a standard higher than one of ordinary care. On

the contrary, courts have recognized that a trust deed trustee is a fiduciary. See, e.g., McIntyre v. Ticor

Title Ins. Co., 658 F. Supp. 944, 950 (D.Alaska 1986); Hoffman v. First Bond Mort. Co., 116 Conn. 320, 164

A. 656, 658 (1933). See also Spruill v. Ballard, 58 F.2d 517, 519 (D.C.App. 1932) ("trustee named in a deed

of trust to

· · McHugh v. Church

583 P.2d 210 (Alaska 1978) Cited 17 times

While this California case may tend to slightly underemphasize the fiduciary nature of the obligation of

trustees under deeds of trust in the District of Columbia, it does point out the limited nature of the

powers and duties conferred on trustees by a deed of trust. However, it is well recognized in this

jurisdiction that a trustee under a deed of trust owes fiduciary duties

both to the noteholder and to the borrower.

· · Murray v. Wells Fargo Home Mortgage 953 A.2d 308 (D.C. 2008)
Cited 75 times

the relevant facts; the claimed breach of fiduciary duty; and the requested relief. D.C. Code § 42-815 (2001) governs mortgage foreclosure sales and § 42-815.01 sets forth the procedure for a mortgagor to cure a default on a residential mortgage. "[A] trustee under a deed of trust owes fiduciary duties both to the noteholder and to the borrower." Perry v. Virginia Mortgage and Investment Co., Inc., 412 A.2d 1194, 1197 (D.C. 1980) (internal citation omitted). "Substitute trustees under a deed of trust have, of course, a fiduciary relationship with both the lender and the borrower." Basiliko · · Perry v. Virginia Mortg. and Inv. Co., Inc. 412 A.2d 1194 (D.C. 1980) Cited 16 times

A. In this jurisdiction "a trustee under a deed of trust owes fiduciary duties both to the noteholder and to the borrower." S G Investment Inc. v. Home Federal Savings and Loan Association, 164 U.S.App.D.C. 263, 270 n. 21, 505 F.2d 370, 377 n. 21 (1974) (citing National Life Insurance Co. v. Silverman, 147 U.S.App.D.C. 56, 454 F.2d 899 (1971); Maynard v · · O'Neal v. Ketchum

141 So. 3d 45 (Miss. Ct. App. 2014) Cited 2 times
no sale took place. Therefore, Ketchum and O'Neal remain cotenants of the property in question. In

Mississippi Real Estate Foreclosure Law, it is stated that "a mortgagee can purchase property at the foreclosure sale under Mississippi law. However, ... the trustee is the agent for both parties to the deed of trust and occupies a fiduciary relationship as to both." K.F. Boackle, Mississippi Real Estate Foreclosure Law § 4-8, at 43 (2d ed.2002). ¶ 24. It is further recommended that, "[i]n the event the mortgagee is not present, [the trustee should] accept [mortgagee's] bid as specified in his · · Basiliko v. Fargo Corp. 532 A.2d 1346 (D.C. 1987) Cited 11 times

Substitute trustees under a deed of trust have, of course, a fiduciary relationship with both the lender and the borrower. *Perry v. Virginia Mortgage and Investment Co.*, 412 A.2d 1194, 1197 (D.C. 1980); *National Life Insurance Co. v. Silverman*, 147 U.S.App.D.C. 56, 72, 454 F.2d 899, 915 (1971); *Sheridan v. Perpetual Building Association*, 112 U.S.App.D.C. 82, · · Cox v. Helenius 103 Wn. 2d 383 (Wash. 1985) Cited 173 times *Lovejoy v. Americus*, 111 Wn. 571, 574, 191 P. 790 (1920); *Miebach v. Colasurdo*, 102 Wn.2d 170, 685 P.2d 1074 (1984). Because the deed of trust foreclosure process is conducted without review or confirmation by a court, the fiduciary duty imposed upon the trustee is exceedingly high. [4] Washington courts do not require a trustee to make sure that a grantor is protecting his or her own interest. However, a trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them. G. Osborne, G. Nelson D. Whitman, *Real Estate Finance Law* § 7.21 (1979) · · *Murray v. Wells Fargo Home Mortgage* 953 A.2d 308 (D.C. 2008) Cited 75 times on a residential mortgage. "[A] trustee under a deed of trust owes fiduciary duties both to the noteholder and to the borrower." *Perry v. Virginia Mortgage and Investment Co., Inc.*, 412 A.2d 1194, 1197 (D.C. 1980) (internal citation omitted). "Substitute trustees under a deed of trust have, of course, a fiduciary relationship with both the lender and the borrower." *Basiliko v. Pargo Corp.*, 532 A.2d 1346, 1349 n. 3 (D.C. 1987). "[A]s a general proposition, trustees of deeds have only those powers and duties imposed by the trust instrument itself, coupled with the applicable statute governing · · *Johnson v. Nadel* 217 Md. App. 455 (Md. Ct. Spec. App. 2014) Cited 13 times have "discretion to outline the manner and terms of the sale, provided their actions are consistent with the deed of trust and the goal of securing the best obtainable price." *Fagnani v.*

Fisher, 418 Md. at 384–85, 15 A.3d 282 (citations omitted). In short, there is no dispute that a trustee on a deed of trust is a fiduciary for all parties. The question becomes whether the submission of the final offer of \$650,000 should have compelled the trustees to halt the sale or reopen it once they learned of the existence of the latest offer. On this record, we are not persuaded that the trustees

- **Landberg v. Equity Trust Co.**

No. 29140-5-III (Wash. Ct. App. Mar. 29, 2012)

A trustee of a deed of trust is nonetheless a fiduciary for both the mortgagee and mortgagor and must act impartially between them. *Cox v. Helenius*, 103 Wn.2d 383, 389, 693 P.2d 683 (1985). The trustee must present every possible advantage to the debtor as well as the creditor. *Id.* In doing so, the trustee must use good faith and "every requisite degree of

- **Lambrecht v. Lee**

249 N.W. 490 (Mich. 1933) Cited 1 times

"It was designed for the benefit of holders of obligations under trust mortgages, usually the general public who rely on others for financial guidance, and is to be given effect to that end."

On its face this instrument contains all of the elements of a trust mortgage. "No particular form of words, however, is required to create a trust, and whether one exists is to be ascertained from the intention of the parties as manifested by the words used and the circumstances of the particular case." 26 R. C. L. p. 1180.

- • **Taylor v. First Mariner**

191 Md. App. 482 (Md. Ct. Spec. App. 2010) Cited 12 times

(omitted) (emphasis added). The deed of trust, executed on May 24, 2006, contains the names of the grantor and grantee, the interest or estate intended to be granted, and it was executed and acknowledged on that date. R.P. § 4-101(a). Thus, it contains all of the requisite attributes of a valid deed of trust, with the exception of a description of the property. The parties clearly intended Exhibit A to provide the legal description of the property. The deed of trust defines "land" as "all that lot of ground situated in Prince George's

County, Maryland, as more particularly described on

• • **Leyva v. Natl. Default Serv., 125 Nev. Adv. Op. No. 40, 55216 (2011)**

255 P.3d 1275 (Nev. 2011) Cited 167 times

assignment, it claims that because it provided a certified copy of the deed of trust and a notarized statement from its employee claiming that it was the rightful owner of the deed of trust, no written assignment was necessary. We disagree. A deed of trust is an instrument that "secure [s] the performance of an obligation or the payment of any debt." NRS 107.020. This court has previously held that a deed of trust "constitutes a conveyance of land as defined by NRS 111.010." Ray v. Hawkins, 76 Nev. 164, 166, 350 P.2d 998, 999 (1960). The statute of frauds governs when a conveyance creates

• • **Anchor Pipe Co. v. Sweeney-Bronze Dev., LLC**

No. M2011-02248-COA-R3-CV (Tenn. Ct. App. Aug. 2, 2012) Cited 4 times

deed of trust in June 2007. At that time, the property in question was owned by SBD. Yet, the bank's deed of trust lists SB Holdings as the grantor of the deed of trust. Anchor asserts that, as a result of this defect, the 2007 deed of trust was void. We agree. A deed of trust is "a conveyance of an interest in real property to secure a debt." Levine v. March, 266 S.W.3d 426, 438 (Tenn. Ct. App. 2007). It stands to reason that a person or entity cannot effectively convey an interest it does not possess. Pursuant to Tenn. Code Ann. § 66-4-201, part of the champerty statutes, "[n]o person shall

• • **Paunescu v. Eckert**

No. 47265-1-II (Wash. Ct. App. May. 10, 2016)

business assets for the trust, uses the trust's general assets for the purpose of the trust, and can guarantee "on behalf of the trust" any loan to the business or secure a loan with "any other property of the trust." RCW 11.98.070(21)(e).

Thus, a trust can be a legal beneficiary of a deed of trust when it holds the promissory note secured by the deed of trust. The Paunescus point to inconsistencies in how the trust name is

described, arguing that the deed of trust is invalid because the loan proceeds came from "the Eckert Family Trust" but the quit claim deed granted the property from "The

• • **Smith v. Credico Industrial Loan Co.**

362 S.E.2d 735 (Va. 1987) Cited 9 times

See e.g., Franklin Plant Farm, Inc. v. Nash, 118 Va. 98, 111, 86 S.E. 836, 840 (1915). We have construed deeds of trust as mere liens, and permitted a grantor, as the holder of legal title, to maintain an action in ejectment.

Providence Properties, Inc. v. United Virginia Bank, 219 Va. 735, 748, 251 S.E.2d 474, 482(1979). The essence of a

deed of trust is that it creates a lien on property to secure a debt.

Interstate Railroad Co. v. Roberts, 127 Va. 688,

692, 105 S.E. 463, 464 (1920). G. Glenn, Mortgages, Deeds of Trust and Other Security Devices as to Land Sec. 20

(1943) points out:

• • **R.L.D.S. v. Thomas**

758 S.W.2d 726 (Mo. Ct. App. 1988) Cited 5 times

religious documents do so in secular terms, rather than relying on religious precepts or concepts. Jones v. Wolf, 443

U.S. 595, 602-604, 99 S.Ct. 3020, 3024-3026, 61 L.Ed.2d 775 (1979);

Presbytery of Elijah Parish Lovejoy v. Jaeggi,

supra at 473-474. A deed which simultaneously creates a trust and conveys land to a trustee is a valid trust

instrument. Restatement (Second) of Trusts § 17(b) (1959); Penrod v.

Henry, 706 S.W.2d 537, 540-541 (Mo.App.

1986); Sanford v. Van Pelt, 314 Mo. 175, 282 S.W. 1022, 1028 (1926). In resolving latent ambiguities in deeds, the

trial court must determine the

• • **Nash v. Duncan Park Comm'n Nash**

304 Mich. App. 599 (Mich. Ct. App. 2014) Cited 16 times

§ 351, p. 2574.] In concluding that no trust existed, the circuit court emphasized that plaintiff had not identified a

separate document naming a "Duncan Park Trust." The circuit court failed to consider that the trust deed itself

qualified as the trust document. ***The trust deed's language fulfills all the criteria necessary to create a trust.***

Starting from the end, the document refers to itself as a "Trust Deed."

Our caselaw recognizes that a trust may be created by a deed, with a document called a trust deed. In re Sweetser's Estate, 109 Mich. 198, 204, 67 N.W. 130 (1896). See also Thatcher v

• **Kagan v. Moody**

309 S.W.2d 515 (Tex. Civ. App. 1958) Cited 3 times
trust, disclose the names of the beneficiary, or beneficiaries, and recite not only the subject and object of the trust, but also the functions and duties of the trustee. See 89 C.J.S. Trusts Sec. 42, pages 771-772, where it is stated: *'The declaration must contain sufficient words to create the trust, and it must embody all the essential elements of a trust.*

It must express the intention to create a trust * * * and state with certainty the terms, subject, persons, and object of the trust; and it has been stated that the trustee must be authorized and directed to perform certain duties and

• • **In re Certified Question**

447 Mich. 765 (Mich. 1994) Cited 28 times
Such trusts are generally created by an instrument or instruments pointing out directly and expressly the property, persons, and purpose of the trust, or by an agreement or contract between the parties expressing the intended trust.
The declaration must contain sufficient words to create the trust, and it must embody all the essential elements of a trust. It must express the intention to create a trust . . . and state with certainty the terms, subject, persons, and object of the trust; and it has been stated that the trustee must be authorized and directed to perform certain duties and

• • **Chebatoris v. Moyer**

757 N.W.2d 212 (Neb. 2008) Cited 4 times
real estate may be affected in law or equity." Neb. Rev. Stat. § 76-211 (Reissue 2003) lists the minimal requirements for an instrument to qualify as a deed, including that it be signed by the grantor or grantors, and be acknowledged or proved and recorded. *Moyer's trust document satisfies each of the statutory requirements for a deed of real property.*

Moyer signed the trust agreement as the settlor of the trust, thus satisfying the requirement of signature by the grantor of the property. Moyer and Ron also signed the agreement as

cotrustees, indicating their acceptance of the trusteeship. The

• • **Smehyl v. Hammond**

44 So. 2d 678 (Fla. 1950) Cited 3 times

the holding by the Chancellor below, confirming the report of the General Master, to the effect that a conveyance from X to Y, as trustee for A, B, and C, in and of itself created a valid express trust. A trust may be created by the execution of a conveyance in trust. *The conveyance, however, must contain the essential elements of a trust.* One of these so-called essentials is an intention of the settlor specifically to create a trust and not to do something else. Vol. 1, Bogert on Trusts and Trustees, § 45, et seq. With respect to the instrument before us, the only intent, as shown by all the

• • **Chebatoris v. Moyer**

757 N.W.2d 212 (Neb. 2008) Cited 4 times

The district court did not err in granting summary judgment for Brad, Dan, and db Ag Land. *The trust agreement executed by Moyer fulfills the statutory requirements for a deed in land, and the language is unambiguous.*

Similarly, the trust document operated to transfer Moyer's personal property to the trust. We therefore affirm the decision of the Otoe County District Court.

• • **Taylor v. First Mariner**

191 Md. App. 482 (Md. Ct. Spec. App. 2010) Cited 12 times

omitted) (emphasis added). The deed of trust, executed on May 24, 2006, contains the names of the grantor and grantee, the interest or estate intended to be granted, and it was executed and acknowledged on that date. R.P. § 4-101(a). *Thus, it contains all of the requisite attributes of a valid deed of trust, with the exception of a description of the property.* The parties clearly intended Exhibit A to provide the legal description of the property. The deed of trust defines "land" as "all that lot of ground situated in Prince George's County, Maryland, as more particularly described on

• • **Adamson v. Black Rock Power & Irr. Co.**

297 F. 905 (9th Cir. 1924)

no set phrases, and require only that they be in praesenti, expressed in unequivocal language, admit of but one reasonable interpretation; and that settlor, intent, property, object, consideration, and beneficiaries appear with reasonable certainty. *This trust deed satisfies every requirement of equity to constitute a declaration of the trust as aforesaid.* In so far as terms are concerned, they might be proven by parol, and are found in the deeds of the lands to the vendees for whose benefit the trust was created. Adverting to the circumstances, the settlor was promoting an irrigated lands

• • **Cole v. GMAC Mortg. LLC** Civil Action No. 01:10-cv-848 (E.D. Va. Sep. 7, 2011) Cited 4 times
an essential purpose of the contract." Horton v. Horton, 254 Va. Ill, 115 (Va. 1997). GMACM states in its letter that Plaintiffs "have the right to assert or defend the non-existence of a default and you may have other rights under state law" *This language materially complies with the deed of trust and is sufficient under Virginia law.* It provides Plaintiffs with reasonable notice regarding the right to assert a legal defense despite the absence of the words "to bring a court action." Although Plaintiffs argue that GMACM's failure to include this exact language is of consequence, any

• • **Nash v. Duncan Park Comm'n Nash**
304 Mich. App. 599 (Mich. Ct. App. 2014) Cited 16 times
We evaluate the trust deed against this legal backdrop. To survive the statute of uses the writing had to create an active trust. *The trust deed fulfills this requirement.* Moreover, the language of the document is quintessentially that of a trust designed to place fee ownership of the land in the trustees rather than in the beneficiary.

• • **Hogg v. Clemmons**
126 S.C. 469 (S.C. 1923) Cited 1 times
and the children of Judson Briggs. That a trust was intended to be created by Sarah Hogg sufficiently appears from the preamble of the deed, from the conveyance to Judson Briggs as Trustee, and from the statement of the terms of the trust. *Even if the deed does not in terms create a trust, it is*

sufficient evidence in writing of the creation of the trust. It is not essential that the trust be created in writing under the Statute, Civil Code 1922, § 5453; it is sufficient if it be "manifested and proved" thereby. *Elliott v. Mackorell*, 19 S.C. 238. *Rutledge v. Smith*, 1 McCord, Eq., 119.

Brown

• • **United States v. Morales**

36 F. Supp. 3d 1276 (M.D. Fla. 2014) Cited 3 times
estate, including homestead, may create a tenancy by the entirety by conveying a deed to both spouses as joint holders of title. Fla. Stat. § 689.11(1). The Florida Constitution expressly permits homestead property to be conveyed in this manner. See Fla. Const., art. X, § 4 (c). *The 2007 Deed satisfies these requirements.* It is in writing, it is signed by Linda Morales and it is subscribed to by two witnesses. Nevertheless, Linda Morales argues that the 2007 Deed is invalid because (1) there are discrepancies in the names used to transfer title to the Property; and, (2) she did not intend to

• • **Reagh v. Kelley**

10 Cal.App.3d 1082 (Cal. Ct. App. 1970) Cited 30 times
and discretion vested in the trustee regarding the administration, management, and investment of the trust res and the distribution and payment of the trust income to Muller. *In view of the foregoing we conclude that the Declaration suffices to create a trust which binds the trustee since it contains with reasonable certainty all the elements required by section 2222 and the requirements of certainty as to its material terms.* We thus have the creation of a trust with Kelley as trustee to hold in trust for the purposes therein and stated for the benefit of the beneficiaries therein designated,

• • **Reagh v. Kelley**

10 Cal.App.3d 1082 (Cal. Ct. App. 1970) Cited 30 times
In holding that a valid trust was created we are in essence determining that the Declaration, in conjunction with the Deed as a conveyancing instrument, satisfies the essentials of a valid express trust. In making this determination our consideration has been limited to the matters herein discussed having to

do with the creation of a valid trust. We observe, in this regard, that the trial court

• • **Se. Baseball & Softball Ass'n v. Deerfield Twp., Bd. of Trs.**

2020-P-0079 (Ohio Ct. App. Aug. 23, 2021)

{¶105} Our construction of the warranty deed is not altered by the terms of the general agreement or the memo of

understanding. {¶106} *The Supreme Court of Ohio has held that "[i]n order to engraft a trust upon an absolute*

deed, the declaration of such trust must be contemporaneous with the deed, and the evidence relied upon must be

clear, certain and conclusive and must establish the existence of the trust beyond a reasonable doubt." Gammarino

v. Hamilton Cty. Bd. of Revision, 84 Ohio St.3d 155, 158, 702 N.E.2d 415 (1998), quoting Hill v. Irons, 160 Ohio

St. 21, 113 N.E.2d • • **Berry v. McCourt**

204 N.E.2d 235 (Ohio Ct. App. 1965) Cited 6 times

There have been numerous comments to the effect that the trust instrument here created something which resembles

a corporation. It is not a corporation, and it is not helpful to analogize it to corporate law or to use corporate terms.

The plain fact is that the instrument meets all the obvious prerequisites of a valid private trust. See 54 American

Jurisprudence, 43, Trusts, Section 30, and 89 *Corpus Juris Secundum* 775, Trusts, Section 43. There was a person

competent to create a trust. The instrument shows an unequivocal intent to do so. There is a corpus and a complete

• • **Lambrecht v. Lee**

249 N.W. 490 (Mich. 1933) Cited 1 times

"It was designed for the benefit of holders of obligations under trust mortgages, usually the general public who rely

on others for financial guidance, and is to be given effect to that end."

On its face this instrument contains all of the

elements of a trust mortgage. "No particular form of words, however, is required to create a trust, and whether one

exists is to be ascertained from the intention of the parties as manifested by the words used and the circumstances of

the particular case." 26 R. C. L. p. 1180.

• • **Poag v. Winston**

195 Cal.App.3d 1161 (Cal. Ct. App. 1987) Cited 24 times

"Summary of Terms of Laura Winston Irrevocable Charitable Remainder Unitrust" was duly executed by Mr.

Weingart on October 21, 1974. He evidenced a clear intent to create a binding written agreement and his signature was witnessed by William S. Kroger and Luta King. *That document contains all essential elements of a valid declaration of trust.* It identifies the trustor, the trustees, the beneficiary (respondent for the remainder of her lifetime and an existing charitable trust thereafter), the corpus (\$2 million in tax-free municipal bonds), the benefits to be enjoyed and the manner of their

• • **Hahn v. United States**

123 F. Supp. 767 (S.D. Ohio 1954) Cited 1 times

The most recent pronouncement of the Supreme Court of Ohio upon this subject is in the case of Hill v. Irons, 160

Ohio St. 21, 113 N.E.2d 243, 245. The first syllabus of this case reads as follows: "*In order to engraft a trust upon*

an absolute deed, the declaration of such trust must be contemporaneous with the deed, and the evidence relied upon must be clear, certain and conclusive and must establish the existence of the trust beyond a reasonable doubt."

In the opinion, Middleton, J., quoted from Russell v. Bruer, 64 Ohio St. 1, 59 N.E. 740, as follows:

• • **Andrusiak v. Buyle**

C079412 (Cal. Ct. App. Jan. 31, 2017)

trust, "the Trustee shall deliver to the Settlor all or the designated portion of the trust assets." This delivery was

accomplished by the 2007 trust and the concurrently executed assignment of property because they were sufficient to transfer and deliver the property. (See *ibid.* [*holding trust satisfied elements of a valid deed, including delivery*].)

John seeks to support these arguments with testimony from the attorney who prepared the 2004 trust: "And this states if the trust is revoked, the trustee—this is standard language, the trustee would deliver back to the settlor any trust property

• • **In re Estate of Brown**

Case No. CL-2013-0007298 (Va. Cir. Ct. Dec. 20, 2013)

64.2-729(A)(1). "A trust is created only if: 1. [t]he settlor has capacity to

create a trust . . . ; 2. [t]he settlor . . .

indicates an intention to create the trust; 3. [t]he trust has a definite beneficiary or is: a. A charitable trust . . ." Va.

Code § 64.2-720. *The Brown Trust meets all the requisite elements of a valid trust.* Broadus v. Gresham, 181 Va.

725, 731 (1942) ("Any words 'which unequivocally show an intention that the legal estate was vested in one person, to be held in some manner or for some purpose on behalf of another, if certain as to all other requisites, are sufficient'

• • **Chandler v. Fab Associates**

H033123 (Cal. Ct. App. Jun. 12, 2009)

trust turns on compliance with certain minimum requirements: A deed of trust may be created, renewed or extended

only by a writing "executed with the formalities required in the case of a grant of real property." (Civ. Code, § 2922.) *Thus, in accordance with this general rule, delivery to the beneficiary is requisite to the validity and operation of a*

trust deed. Whether a deed of trust has been delivered depends on the intention of the parties. Nevertheless, here, we are concerned not with the creation, renewal or extension of a deed of trust. While it is common for the payoff and discharge

• • **Southern Pac. R. Co. v. Doyle**

11 F. 253 (9th Cir. 1882)

the principle that mortgages may be made in various forms. Wherein, then, does the instrument in question fall short

of being a mortgage within the definitions and various descriptions given in the several provisions of the statute

cited? *But it may also contain the elements of a trust deed, as described in the statute, and fall within the definition*

of or embrace a trust. But is it any the less a mortgage? If the mortgage contains a power of sale to 'any other person' than the mortgagee, and the Code says it may, it necessarily embraces a trust; but it does not necessarily carry the right of

• • **Giblin v. Detroit Trust Co.**

258 N.W. 635 (Mich. 1935) Cited 7 times

In trusts not charitable it is not always necessary that the cestui que

trust should be in existence at the time of the creation of the trust. 1 Perry on Trusts (7th Ed.), § 66. *We think the mortgage contains the necessary elements of a trust mortgage.* The conveyance was made to the Federal Bond Mortgage Company, "but in trust nevertheless for the benefit and security of any and all persons and parties and their respective successors, executors, administrators, and assigns who may at any time hold any of the

• **Milbank v. Jones**

28 N.E. 31 (N.Y. 1891) Cited 32 times

provide that Jones should pay to Milbank five thousand dollars, but that "the said money (the receipt of which had been acknowledged), to be returned to said Milbank in case the resolution shall not be passed and take effect before the tenth of July next." *Clearly such a transaction contains every element essential to the creation of a valid trust.*

(Day v. Roth, 18 N.Y. 448 -453.) It is the tendency of judicial decision to discountenance all attempts to influence the deliberations and determinations of public bodies and officers other than by arguments which, being openly made, bear directly

• • **People v. Holder**

165 Cal.App.3d 998 (Cal. Ct. App. 1985)

v. Davenport (1939) 13 Cal.2d 681, 690, 91 P.2d 892.) As defendant correctly points out, the investor's transaction involved a loan of money to CFC with the expectation only of interest paid on the investment and repayment of the initial investment. The transaction, however, includes the other elements of a deed of trust and a promissory note.

Because of these additional elements in the transaction, People v. Davenport is not controlling. The transactions in question are undoubtedly securities under People v. [212 Cal.Rptr. 210] Schock, supra, 152 Cal.App.3d 379, 199 Cal.Rptr. 327. That

• • **Giblin v. Detroit Trust Co.**

258 N.W. 635 (Mich. 1935) Cited 7 times

In trusts not charitable it is not always necessary that the cestui que trust should be in existence at the time of the creation of the trust. 1 Perry on Trusts (7th Ed.), § 66. We think the

mortgage contains the necessary elements of a trust mortgage. The conveyance was made to the Federal Bond Mortgage Company, "but in trust nevertheless for the benefit and security of any and all persons and parties and their respective successors, executors, administrators, and assigns who may at any time hold any of the

• • **Astan v. R & D Dev. (In re Molayem)**

B244691 (Cal. Ct. App. Aug. 14, 2013)

A deed of trust is security "for the performance of an act" and constitutes a lien on real property. (Civ. Code, § 2920, subd. (a); see Monterey S.P. Partnership v. W. L. Bangham, Inc. (1989) 49 Cal.3d 454, 460; Dieckmeyer v. Redevelopment Agency of Huntington Beach (2005) 127 Cal.App.4th 248, 258.) A deed of trust often secures the

obligation to

• • **Bart v. Sribnik**

117 S.C. 298 (S.C. 1921) Cited 2 times

a decree holding that the title is good, and the defendant ordered to comply. From this decree this appeal is taken.

The plaintiff claims that the agreement between Casper Bart and his wife, though informal, is in effect a trust deed, and words of inheritance are unnecessary. The agreement has no element of a trust deed. Casper Bart had a legal obligation to support his wife, and she had a legal right to inchoate dower. It was agreed that all of the wife's claim against her husband should be met by the use of the property turned over to her for her use during her life. No title passed, nor is

• • **Chicago Title Trust Co. v. Wallace**

250 Ill. App. 293 (Ill. App. Ct. 1928) Cited 1 times

appellants here, in their reply brief attempt to distinguish this case from Creighton v. Roe, supra, on the theory that the deed in the Creighton case was a warranty deed and not a trust deed, as in the case before us. In legal effect there is no difference between a warranty deed and a trust deed so far as delivery is concerned. A trust deed is a warranty deed with a condition of defeasance on payment of the debt secured by the trust deed. The decree in the record is amply supported by the probative force of the evidence, and

consequently the decree of the circuit court is affirmed

• • **Eardley v. Greenberg**

164 Ariz. 261 (Ariz. 1990) Cited 7 times

intent from the absence of express permission for an agent to execute a notice of substitution of trustee. Our conclusion is also consistent with the nature and purpose of deeds of trust and the role of the trustee in the statutory scheme. A deed of trust is simply an instrument that conveys property to a trustee "to secure the performance of a contract." A.R.S. § 33-801(5). "In practical effect, a deed of trust is little more than a mortgage with a power to convey upon default." *In re Bisbee*, 157 Ariz. 31, 34, 754 P.2d 1135, 1138 (1988). "[T]he trustee is generally held to have bare legal

• • **Mtg. Elec. Regis. v. Southwest Homes**

2009 Ark. 152 (Ark. 2009) Cited 13 times

However, MERS also argues that it holds a property interest through holding legal title. Specifically, it purports to hold legal title with respect to the rights conveyed by the borrower to the lender. We disagree. "A deed of trust is `a deed conveying title to real property to a trustee as security until the grantor repays a loan.'" *First United Bank v. Phase II, Edgewater Addition*, 347 Ark. 879, 894, 69 S.W.3d 33, 44 (2001) (quoting *Black's Law Dictionary* 773 (7th ed. 1999)); see also *House v. Long*, 244 Ark. 718, 426 S.W.2d 814 (1968). The encumbrance created by the

• • **Andrusiak v. Buyle**

C079412 (Cal. Ct. App. Jan. 31, 2017)

trust, "the Trustee shall deliver to the Settlor all or the designated portion of the trust assets." This delivery was accomplished by the 2007 trust and the concurrently executed assignment of property because they were sufficient to transfer and deliver the property. (See *ibid.* [holding trust satisfied elements of a valid deed, including delivery].) John seeks to support these arguments with testimony from the attorney who prepared the 2004 trust: "And this states if the trust is revoked, the trustee—this is standard language, the trustee would deliver back to the settlor any trust property

• • **Brown v. Copp**

105 Cal.App.2d 1 (Cal. Ct. App. 1951) Cited 22 times

of which such grantee had actual or constructive notice, or are reserved by the deed. (Callahan v. Martin, 3 Cal.2d

110, 113, 114 [43 P.2d 788, 101 A.L.R. 871]; Standard Oil Co. v. J.P. Mills Organization, 3 Cal.2d 128, 132 [43

P.2d 797].) Generally, a valid deed of trust vests the whole estate in the trustee, subject to the execution of the trust.(Civ. Code, § 863)

However, every estate not embraced in an express trust, and not otherwise disposed of, is left in

the author of the trust or his successors. (Civ. Code, § 866) [4] A trustee's deed conveys the absolute legal title to the

• • **Defendant a v. Idaho State Bar**

978 P.2d 222 (Idaho 1999) Cited 10 times

A deed of trust is a conveyance of real property. I.C. § 45-1513. To be valid, a conveyance of property requires

delivery of the instrument. McLaws v. Casey, 88 Idaho 348, 353, 400 P.2d 386, 389 (1965); see also Walter E.

Wilhite Revocable Living Trust v. Northwest Yearly Meeting Pension Fund, 128 Idaho 539, 547, 916 P.2d

• • **Capital Fund II LLC v. Sakthiveil**

No. 1 CA-CV 17-0228 (Ariz. Ct. App. Feb. 22, 2018) Cited 1 times

also argues the court erred by denying his motion to "reverse" the trustee's sales of the properties. ¶13 "The deed of

trust scheme is a creature of statutes." BT Capital, LLC v. TD Serv. Co. of Ariz., 229 Ariz. 299, 300, ¶ 9 (2012)

(quotation omitted). A deed of trust conveys property to a trustee "to secure the performance of a contract." A.R.S.

§ 33-801(8) (2018); see also Steinberger v. McVey ex rel. County of Maricopa, 234 Ariz. 125, 132, ¶ 25 (App.

2014). The borrower, or trustor, retains possession and enjoys the benefits of the property, but transfers "bare legal title" to the

• • **Hansen v. Bank of N.Y. Mellon**

303 P.3d 1025 (Utah Ct. App. 2013) Cited 4 times

Bank in its capacity as the beneficiary under the trust deed in the federal suit. ¶ 8 In arguing whether Bates and the

Bank are privies, the parties rely on the statutory definitions of a trust deed, trustee, and beneficiary. A trust deed is a

"deed ... conveying real property to a trustee in trust to secure the performance of an obligation of the trustor ... to a beneficiary." Utah Code Ann. § 57-1-19(3) (LexisNexis 2010). The beneficiary is "the person ... designated in a trust deed as the person for whose benefit a trust deed is given," while the trustee is "a person to whom title to real

• • **Chebatoris v. Moyer**

757 N.W.2d 212 (Neb. 2008) Cited 4 times
real estate may be affected in law or equity." Neb. Rev. Stat. § 76-211 (Reissue 2003) lists the minimal requirements for an instrument to qualify as a deed, including that it be signed by the grantor or grantors, and be acknowledged or proved and recorded. Moyer's trust document satisfies each of the statutory requirements for a deed of real property. Moyer signed the trust agreement as the settlor of the trust, thus satisfying the requirement of signature by the grantor of the property. Moyer and Ron also signed the agreement as cotrustees, indicating their acceptance of the trusteeship. The

• • **Bitzenburg v. Bitzenburg**

226 S.W.2d 1017 (Mo. 1950) Cited 16 times
the purchase price of the property, that the house was not worth this amount, and that she had no "figures to go by" in inserting this amount in the note and deed of trust. A deed of trust is not valid unless it is founded upon a sufficient consideration. The existence of an obligation is an essential element of a valid deed of trust or mortgage. Munday v. Austin, 358 Mo. 959, 218 S.W.2d 624 (en Banc); Cobble v. Garrison, 219 S.W.2d 393, 394 (Mo. Sup.) and authorities cited therein. A note secured by a deed of trust prima facie imports a consideration, and respondent, in her attack upon the

• • **Brandrup v. Recontrust Co. N.A.**

353 Or. 668 (Or. 2013) Cited 79 times
see also Sam Paulsen Masonry v. Higley, 276 Or. 1071, 1075, 557 P.2d 676 (1976) (mortgage or trust deed creates only lien on real property). Indeed, a trust deed creates two distinct interests—a legal interest and a beneficial interest. First, a trust deed "conveys an interest in real property to a

trustee in trust to secure the performance of an obligation." ORS 86.705(7). That legal interest includes the power to sell the obligated property in the manner prescribed in the statute on the grantor's default. ORS 86.710. However, if the trustee utilizes its power of sale, the proceeds of the

- • **MTC Fin. Inc. v. Cal. Dep't of Tax & Fee Admin.**

41 Cal.App.5th 742 (Cal. Ct. App. 2019) Cited 2 times are implicated. This state observes a "first in time, first in right" system of lien priorities where, generally, competing enforceable interests have priority among themselves "according to the time of their creation." (§ 2897.) As to determining the enforceability of such interests, a trust deed must sufficiently describe the property securing it to be enforceable. (Saterstrom v. Glick Bros. Sash, Door & Mill Co. (1931) 118 Cal.App. 379, 5 P.2d 21.) "To be sufficient the description must be such that the land can be identified or located on the ground by use of the same."

(Edwards v

- **Shipp v. State**

292 S.W.3d 267 (Tex. App. 2009) Cited 2 times

- A deed of trust is "[a] deed conveying title to real property to a trustee as security until the grantor repays a loan."

Id. at 445.

"It has been authoritatively stated that the intent and purpose

of the settlor of the trust is the law of the trust"

AL - Ct. Civ. App.AL - Ct. Crim. App.AK - Supr. Ct.AK - Ct. App.AZ - Supr. Ct.AZ - Ct. App.

1.

- Edmonson v. First Nat. Bank of Birmingham

55 So. 2d 338 (Ala. 1951) Cited 9 times

is unique in its provisions, scope and purpose, partaking of the nature of the grantor's last will and

testament. Respecting the law in the interpretation of wills, in Thurlow v. Berry, 249 Ala. 597 (604), 32

So.2d 526, 532, this court said: "It has been authoritatively stated that the intent and purpose of the

settlor of the trust is the law of the trust. Lovelace v. Marion Institute, et

al., 215 Ala. 271, 272, 110 So.

381. And, again, ' "The fundamental and cardinal rule in the interpretation of wills is that the intention of the testator, if not inconsistent with some established rule of

· · Farlow v. Adams

474 So. 2d 53 (Ala. 1985) Cited 12 times

"It has been authoritatively stated that the intent and purpose of the settlor of the trust is the law of the trust. Lovelace v. Marion Institute, et al., 215 Ala. 271, 272, 110 So. 381.

And, again, `The fundamental and cardinal rule in the interpretation of wills is that the intention of the testator, if not inconsistent with some established rule of law

· · In re Duroske Marital Trust

862 A.2d 914 (D.C. 2004) Cited 3 times"The intent and purpose of the settlor is the law of the trust." Albright v. United States, 308 F.2d 739, 743

(5th Cir. 1962). In determining the settlor's intent, consideration must be given to the language of the instrument as a whole, rather than to isolated passages. Id. (construing inter vivos trust agreement);

Estate of

· · Thurlow v. Berry

249 Ala. 597 (Ala. 1947) Cited 20 times

without a deviation therefrom, and whether or not such deviation would foreshadow the ultimate

destruction of the trust, is a question of law and fact to be determined by the court in the light of the

evidence adduced on the trial. It has been authoritatively stated that the intent and purpose of the

settlor of the trust is the law of the trust. Lovelace v. Marion Institute et al., 215 Ala. 271, 272, 110 So.

381. And, again, " 'The fundamental and cardinal rule in the interpretation of wills is that the intention of

the testator, if not inconsistent with some established rule of law

· · Hirsh's Trust Estate

5 A.2d 160 (Pa. 1939) Cited 19 times

wills, is the intention of the maker. As Chief Justice FULLER said in Y. W. C. H. v. French, 187 U.S. 401, "the

intention of a testator expressed in his will, or clearly deducible therefrom, must prevail if consistent with the rules of law." The intention of a settlor of a deed of trust must likewise prevail if consistent with the rules of law. It is clear that the testator had no intention of discriminating against any of his children.

It remains only to say that appellants' suggestion that the disputed deduction ought not in any event to exceed the present value of a remainder interest

· · McPherson v. McPherson

307 Ga. App. 548 (Ga. Ct. App. 2011) Cited 17 times

concerning Howard's intended treatment of them. And the result of this exercise of discretionary power

was equal per stirpes distributions, keeping in reserve their capacity (as they later testified) to meet any

"extraordinary need" on "a case-by-case basis." "In trust law, the cardinal rule is that the trustor-settlor's

intention be followed." Griffith v. First Nat. Bank Trust Co., 249 Ga. 143, 146 (1) (287 SE2d 526) (1982).

As the Revised Trust Code and the common law agree, moreover, a court may interfere with an exercise

of discretion by a trustee only if that discretion is "infected with

· · Reliance Trust Co. v. Candler

A11A1807 (Ga. Ct. App. Mar. 26, 2012) Cited 1 times

you, reflects the meaning intended by Claire Clement Candler is a matter solely for your determination

based upon the evidence before you. Notwithstanding Reliance's argument otherwise, we cannot say

that the foregoing jury instruction was legally erroneous. "In trust law, the cardinal rule is that the

trustor-settlor's intention be followed." (Citation omitted.) McPherson, supra, 307 Ga. App. at 552 (1) (b);

see also Smith v. Hallum, 286 Ga. 834 (691 SE2d 848) (2010) ("The cardinal rule in construing a trust

instrument is to discern the intent of the settlor and to effectuate that intent

· · Head v. Wachovia Bank of Georgia, N.A.

88 S.W.3d 180 (Tenn. Ct. App. 2002) Cited 1 times of Ms. Frazer. We first examine trust law to determine the trustee's duty in this matter and to

whom this duty was owed. Under Georgia law, as in most jurisdictions, "[a] trust may be created for any lawful purpose." Ga. Code Ann. § 53-12-23 (1997). "In trust law, the cardinal rule is that the trustor-settlor's intention be followed." *Griffith v. First Nat'l Bank Trust Co.*, 287 S.E.2d 526, 529 (Ga. 1982), see also *Perling v. Citizens S. Nat'l Bank*, 300 S.E.2d 649, 651 (Ga. 1983). In discerning the intent of the settlor in an express trust, "we look first and foremost to the language

· · *Reliance Trust Co. v. Candler*
315 Ga. App. 495 (Ga. Ct. App. 2012) Cited 5 times
you, reflects the meaning intended by Claire Clement Candler is a matter solely for your determination based upon the evidence before you. Notwithstanding Reliance's argument otherwise, we cannot say that the foregoing jury instruction was legally erroneous. "In trust law, the cardinal rule is that the trustor-settlor's intention be followed." (Citation and punctuation omitted.) *McPherson*, supra, 307 Ga.App. at 552(1)(b), 705 S.E.2d 314; see also *Smith v. Hallum*, 286 Ga. 834, 691 S.E.2d 848 (2010) ("The cardinal rule in construing a trust instrument is to discern the intent of the settlor and

· · *Hasty v. Castleberry*
293 Ga. 727 (Ga. 2013) Cited 12 times
that the trial court erred in concluding that questions of fact remained as to whether he breached his fiduciary duty by failing to diversify the Trust assets and retaining the Wachovia stock that comprised nearly all of the Trust assets. We disagree. "In trust law, the cardinal rule is that the trustor-settlor's intention be followed." (Citations omitted.) *Griffith v. First Nat. Bank & Trust Co.*, 249 Ga. 143, 146(1), 287 S.E.2d 526 (1982). Here, the Trust language specifies that "any investment made or retained by [the Trustee] in good faith and with reasonable prudence shall be proper."

· · *Griffith v. First Nat. Bank c. Co.*
287 S.E.2d 526 (Ga. 1982) Cited 13 times

argue that the encroachment language gave to First National broad discretion in determining the size and frequency of encroachments against either trust. Consequently, they argue the trustee had the power to charge the encroachments to either trust. We agree. In trust law, the cardinal rule is that the trustor-settlor's intention be followed. *Love v. Fulton Nat. Bank*, 213 Ga. 887, 891 (102 S.E.2d 488)

(1958); *McVay v. Anderson*, 221 Ga. 381, 385 (144 S.E.2d 741) (1965).

By giving First National the discretion (1) to encroach upon either trust for Mrs. Griffith's support, (2) to determine the

· · *Peterson v. Peterson*

811 S.E.2d 309 (Ga. 2018) Cited 4 times

To begin, we note that "the cardinal rule in trust law is that the intention of the settlor is to be followed."

Rollins v. Rollins , 294 Ga. 711, 714, 755 S.E.2d 727 (2014). Moreover,

· · *In re Estate of Warden*

2010 Pa. Super. 121 (Pa. Super. Ct. 2010) Cited 14 times

by whom the title to the property is held to equitable duties to deal with the property for the benefit of

another person. . . ." *In re Trust of Hirt*, 832 A.2d 438, 447-48

(Pa.Super. 2003) (citing Restatement(Second) of Trusts, § 2). The settled law in Pennsylvania is that "the pole star in every trust . . . is the settlor's . . . intent and that intent must prevail." *Estate of Pew*, 440

Pa.Super. 195, 655 A.2d 521, 533

(1994) ("Pew") (quoting *In re Trust Estate of Pew*, 411 Pa. 96, 106, 191 A.2d 399, 405 (1963)). The

settlor's intent may be divined by considering the trust document as a whole

· · *Brozman v. Brozman*

H042283 (Cal. Ct. App. Dec. 8, 2016)

if any meaning, reasonable and consistent with other parts, can be given to it[.]" ' [Citations.]" (Roberts,

supra, at p. 196.) Similarly, under California law, " '[t]he primary rule in construction of trusts is that the

court must, if possible, ascertain and effectuate the intention of the trustor or settlor.' [Citation.] 'The

intention of the transferor as expressed in the [trust] instrument controls

the legal effect of the dispositions made in the instrument.' [Citations.]" (Crook v. Contreras (2002) 95 Cal.App.4th 1194, 1206

(Crook).) Under California law, the following rules of

· · Brozman v. Brozman

H042283 (Cal. Ct. App. Dec. 8, 2016)

B. General Rules Regarding Trust Interpretation Under Florida law, "the intent of the settlor of a trust is

controlling. [Citations.]" (Knauer v. Barnett (Fla. 1978) 360 So.2d 399, 405 (Knauer).) "However, it is the

intention which the testator expresses in the instrument that governs, not that which he might have had

in mind when it was executed. [Citation.]" (Barnett First Nat

· · Perez v. Stafford (In re Estate of Stafford)

B301208 (Cal. Ct. App. Nov. 25, 2020)

1. Interpretation of Trusts "'[T]he primary rule in construction of trusts is that the court must, if possible,

ascertain and effectuate the intention of the trustor or settlor.' [Citation.]

'The intention of the transferor

as expressed in the [trust] instrument controls the legal effect of the dispositions made in the

instrument.'" (Crook v. Contreras (2002) 95 Cal.App.4th 1194, 1206.)

The following rules of construction

"apply where the intention of the transferor is not

· · Ostrosky v. Permann

A158057 (Cal. Ct. App. Sep. 14, 2020)

Permann's wire and cable business. It thus concluded Ostrosky's work for Custom Model Products did

not satisfy the employment condition. We agree. " '[T]he primary rule in construction of trusts is that the

court must, if possible, ascertain and effectuate the intention of the trustor or settlor.' [Citation.] 'The

intention of the transferor as expressed in the [trust] instrument controls the legal effect of the

dispositions made in the instrument.' (Prob. Code, §§ 21101, 21102.)"

(Crook v. Contreras (2002) 95

Cal.App.4th 1194, 1206.) "An ambiguity in a written instrument exists when, in light

· · Scardino v. Riccardi (In re Estate of Morris)

A149398 (Cal. Ct. App. Jul. 11, 2018)

intended by the Settlor, in which Riccardi would be willing and able to pay the fair market value of Jones'

one-half share of the Property's equity." " '[T]he primary rule in construction of trusts is that the court

must, if possible, ascertain and effectuate the intention of the trustor or settlor.' [Citation.] 'The intention of the transferor as expressed in the [trust] instrument controls the legal effect of the dispositions made in the instrument.' (Prob. Code, §§ 21101, 21102.)" (Crook v. Contreras (2002) 95 Cal.App.4th 1194,

1206.) " ' " 'The interpretation of a written instrument,

· · Freuler v. Freuler

H041000 (Cal. Ct. App. Jun. 15, 2016)

trust property, a lawful trust purpose, and an identifiable beneficiary.

[Citations.]" (Chang v. Redding

Bank of Commerce (1994) 29 Cal.App.4th 673, 684.) " '[T]he primary rule in construction of trusts is that

the court must, if possible, ascertain and effectuate the intention of the trustor or settlor.' [Citation.] 'The

intention of the transferor as expressed in the [trust] instrument controls the legal effect of the

dispositions made in the instrument.' (Prob. Code, §§ 21101, 21102.)"

(Crook v. Contreras (2002) 95

Cal.App.4th 1194, 1206.) "The words of an instrument are to receive an

· · Knauer v. Barnet

360 So. 2d 399 (Fla. 1978) Cited 42 times

from Charles, William Barnett did not consider Charles to be his son.

Consequently, William purportedly

did not intend, by use of the term "blood issue," that Charles receive the trust assets should he survive

the death of the former. This Court is cognizant of the well-established principle that the intent of the

settlor of a trust is controlling. West Coast Hospital Ass'n v. Florida National Bank, 100 So.2d 807 (Fla.

1958); Watson v. St. Petersburg Bank Trust Co., 146 So.2d 383 (Fla. 2d DCA 1962). However, unless the

trust instrument is ambiguous the intent of the settlor must be

· · In re Trust Created Dec. 20

765 A.2d 746 (N.J. 2001) Cited 23 times

This Court is cognizant of the well-established principle that the intent of the settlor of a trust is controlling. However, unless the trust instrument is ambiguous the intent of the settlor must be ascertained from that which lies within the four corners of the instrument itself, and no extrinsic evidence of the settlor's intent is admissible. . . . No

Aycock Pontiac, Inc. v. Aycock
 335 Ark. 456 (Ark. 1998) Cited 14 times

trust's terms, it would certainly have been a breach of trust. But Hervey Aycock was also the creator of the trust, as settlor, with fulsome powers to revoke it at any time at his discretion. Hence, he had the power to terminate the trust on his own. It is axiomatic that the intent of the settlor is an important consideration in enforcing a trust. *Richards v. Worthen Bank Trust Co*, 261 Ark. 890, 552 S.W.2d 228 (1977); *Anderson v. Ryland*, 232 Ark. 335, 336 S.W.2d 52 (1960). By not transferring the stock to his children after they were educated and were age twenty-one or older, Aycock as settlor

· 1616 Second Avenue Restaurant, Inc. v. New York State Liquor Authority
 75 N.Y.2d 158 (N.Y. 1990) Cited 53 times

e.g., *Texaco, Inc. v Federal Trade Commn.*, 336 F.2d 754, *supra*; and *Cinderella Career Finishing Schools v Federal Trade Commn.*, 425 F.2d 583, *supra*]). Finally, we do not fault the Chairman for responding as he did to the questions put to him. His agency is accountable to the Legislature and he therefore has an obligation to respond to their inquiries. Having done so, however, especially in terms that pronounced petitioner's guilt, he was obligated to recuse himself from the adjudicatory proceeding. Inasmuch as the findings of the Administrative Law Judge are not compromised by the Chairman's

· · *Limstrom v. Ladenburg*
 989 P.2d 1257 (Wash. Ct. App. 1999) Cited 3 times

A basic policy of RCW 42.17 is to protect the public interest in "free and

open examination of public records." RCW 42.17.340(3). Thus, government agencies have a duty to respond promptly to disclosure requests. RCW 42.17.320. One means of enforcing this duty is the requester's right to bring a motion when that requester believes the agency has not given a reasonable estimate as to when it will respond to the request. RCW 42.17.340(2). Then, the trial court, in its · · Thomas v. Pierce Cnty. Prosecuting Attorney's Office No. 73360-5-I (Wash. Ct. App. Oct. 19, 2015) has been notified that it must engage in an interactive process with the requestor to clarify and respond to the request. Hobbs v. Wash. State Auditor's Office, 183 Wn. App. 925, 941 n.12, 335 P.3d 1004 (2014).

Where an agency has been alerted to the fact that its statutory responsibilities have been triggered, it is reasonable to hold the agency accountable for its responsiveness. By contrast, where an agency has not been so alerted and, moreover, it is within the requestor's power to put the agency on notice, it is unreasonable to hold the agency responsible for its lack of response. The

· · Com. v. Browne 584 A.2d 902 (Pa. 1990) Cited 33 times a properly administered district attorney's office. Here, the District Attorney's Office "blew it" and they did so because a routine diary or docket system was apparently not in place. That constitutes a failure to exercise due diligence. It has been held that "due diligence" imposes the obligation on the government to "read its mail and respond intelligently." United States v. Salzmman, 417 F. Supp. 1139, 1155 (D.C.E.D.N.Y., 1976). We hold that due diligence likewise imposes on the government the duty to employ simple recordkeeping systems in circumstances such as this. Unlike Commonwealth v

· · Com. v. Payton 673 A.2d 361 (Pa. Super. Ct. 1996) Cited 1 times a properly administered district attorney's office. Here, the District

Attorney's Office 'blew it' and they did so because a routine diary or docket system was apparently not in place. That constitutes a failure to exercise due diligence. It has been held that 'due diligence' imposes the obligation on the government to 'read its mail and respond intelligently.' *United States v. Salzmann*, 417 F. Supp. 1139, 1155 (D.C.E.D.N.Y., 1976). We hold that due diligence likewise imposes on the government the duty to employ simple recordkeeping systems in circumstances such as this. Unlike *Commonwealth v*

· · *In re Public Sale of Properties* 841 A.2d 619 (Pa. Cmmw. Ct. 2004) Cited 6 times

The Tax Claim Bureau had a duty to respond to the Taxing Districts' directive. Indeed, once the taxes were paid, at least in part, the factual basis to the Tax Claim Bureau's petition evaporated, creating a responsibility in the Tax Claim Bureau to take some action even without the Taxing District's directive.

· · *Sargent v. Seattle Police Department* 167 Wn. App. 1 (Wash. Ct. App. 2011) Cited 8 times

¶ 18 The statute, however, does not say that. The purpose of the PRA is to provide full public access to existing, nonexempt records. The legislature requires agencies of government to respond to requests in a timely and clear fashion. But it does not require that agencies provide updates to previous responses, or monitor whether documents 167 Wash. App. 11 properly withheld as exempt may later become subject to disclosure.

· · *State v. Hogan*

336 N.J. Super. 319 (N.J. Super. 2001) Cited 55 times

State and as a member of the Executive Branch, is ultimately answerable to the people. That is not to suggest that the Attorney General may denigrate or act in derogation of individual rights to satisfy public opinion or for political considerations. But the Attorney General owes the duty to respond to the legitimate concerns of the citizenry. The judiciary has no power to ordain

that the Attorney General be insensitive to such public concerns. The sad but true fact is that a substantial segment of the public doubts the ability and willingness of the law enforcement community to enforce the

· · City of Dallas v. Abbot

304 S.W.3d 380 (Tex. 2010) Cited 38 times

deadline for the City to request a ruling under section 552.301(b) was merely tolled during the period

the City was waiting for a response from Hill, and did not reset once the City received Hill's clarification.

According to the Attorney General, such a construction is necessary to ensure that governmental bodies

comply with their duty to respond promptly to requests for public information. See TEX. GOV'T CODE §

552.221(a). If the ten-day period were reset rather than tolled by a clarification request, the Attorney

General argues, governmental bodies could extend the deadline to respond to a

· · Moore v. First Security

224 Mich. App. 370 (Mich. Ct. App. 1997) Cited 30 times

response has been allowed or has expired is a jury question. However, where reasonable minds cannot

differ, summary disposition is appropriate. We do not mean to imply by this holding that an insurer may

procrastinate in responding to its insured. Insurers have a duty to respond to correspondence and queries

from their insureds in a reasonably timely manner. However, insureds must also afford the insurance

company a reasonable time to offer a response, particularly before taking any action that conflicts with

the explicit terms of the policy. In the present case, plaintiffs' counsel allowed

· · People v. Bergerud

223 P.3d 686 (Colo. 2010) Cited 61 times

conflicts be used to obstruct the orderly administration of justice. See, e.g., John Doe No. 1, 272 F.3d at

122. Of course, a defendant's conduct is often bridled by an impression that he must engage a court

through his lawyers. As such, a defendant will be held to have discharged his duty where he makes a reasonable effort to bring the matter to the court's attention. During the six months leading up to the trial, the trial court held several hearings on pre-trial motions, with Bergerud present, at which Bergerud's court-appointed attorneys examined potential trial witnesses. In doing so,

· · Doe I v. Washington State Patrol
908 P.2d 914 (Wash. Ct. App. 1996) Cited 11 times
RCW 42.17.340(3). The agency bears the burden of proving that refusing to disclose "is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records".

RCW 42.17.340(1). Agencies have a duty to provide "the fullest assistance to inquirers and the most timely possible action on requests for information". RCW 42.17.290. Finally, agencies "shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request" except under very limited circumstances. RCW

· · American Civ. Lib. Un. v. Blaine Sch. Dist
975 P.2d 536 (Wash. Ct. App. 1999) Cited 31 times
are to take into account the Act's policy "that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others". RCW 42.17.340(3). The agency bears the burden of proving that refusing to disclose "is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records". RCW 42.17.340 (1). Agencies have a duty to provide "the fullest assistance to inquirers and the most timely possible action on requests for information". RCW 42.17.290

· · Progressive Animal Welfare Society v. University of Washington
125 Wn. 2d 243 (Wash. 1994) Cited 218 times
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· · In re A.G.

A132447 (Cal. Ct. App. Apr. 16, 2012)

or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment

numbers; and other identifying data." (In re Francisco (2006) 139

Cal.App.4th 695, 703; In re Mary G.

(2007) 151 Cal.App.4th 189, 209.) To fulfill its responsibility, the Agency has an affirmative and

continuing duty to inquire about, and if possible obtain, this information.

(In re S.M. (2004) 118

Cal.App.4th 1108, 1116; § 224.2, subd. (a)(5)(C); 25 C.F.R. 23.11(d)(3);

rule 5.481(a)(4).) Thus, a social

worker who knows or has reason to know the child is Indian "is required to make further inquiry

· · Humboldt Cnty. Dep't of Health & Human Servs. v. Kate K. (In re Layla O.)A141547 (Cal. Ct. App. Jan. 7, 2015)

birthdates; place of birth and death; current and former addresses;

tribal enrollment numbers; and

other identifying data.' (In re Francisco (2006) 139 Cal.App.4th 695,

703; In re Mary G. (2007) 151

Cal.App.4th 184, 209.) To fulfill its responsibility, the Agency has an affirmative and continuing duty to

inquire about, and if possible obtain, this information. (In re S.M. (2004)

118 Cal.App.4th 1108, 1116;

[Welf. & Inst. Code,] § 224.2, subd. (a)(5)(C); 25 C.F.R. [§] 23.11(d)(3);

[Cal. Rules of Court,] rule 5.481(a)

(4).) Thus, a social worker who knows or has reason to know the child

· · In re A.G.

204 Cal.App.4th 1390 (Cal. Ct. App. 2012) Cited 115 times
death; current and former addresses; tribal enrollment numbers; and
other identifying data." (In re
Francisco (2006) 139 Cal.App.4th 695, 703, 43 Cal.Rptr.3d 171; In re
Mary G. (2007) 151 Cal.App.4th 184,
209, 59 Cal.Rptr.3d 703.) To fulfill its responsibility, the Agency has an
affirmative and continuing duty to
inquire about, and if possible obtain, this information. (In re S.M. (2004)
118 Cal.App.4th 1108, 1116, 13
Cal.Rptr.3d 606; § 224.2, subd. (a)(5)(C); 25 C.F.R. 23.11(d)(3); rule
5.481(a)(4).) Thus, a social worker
who knows or has reason to know the child is Indian "is required to
· · Servais v. Port of Bellingham
904 P.2d 1124 (Wash. 1995) Cited 19 times
ours.) The public disclosure act requires public agencies to make all
"public records" available for public
inspection. The act requires agencies to "adopt and enforce reasonable
rules and regulations . . . to
provide full public access to public records . . ." and permits agencies to
"impose . . . reasonable
charge[s] for providing copies of public records. . . ." Agencies must
make prompt response to requests
for public records. In addition, if the request for public disclosure is
denied, "[d]enials of requests must
be accompanied by a written statement of the specific reasons" for
denial
· · In re Omar H.
B257871 (Cal. Ct. App. Feb. 18, 2015)
to intervene. (25 U.S.C. § 1912(a); see also § 224.3, subd. (b).) If the
identity or location of the tribe
cannot be determined, the notice must be given to the Bureau of Indian
Affairs (BIA). (25 U.S.C. §
1912(a).) Further, the social services agency has an affirmative and
continuing duty to investigate and
obtain, if possible, the information necessary to give the required
notices. (In re A.G. (2012) 204
Cal.App.4th 1390, 1396; § 224.2, subd. (a)(5)(C); 25 C.F.R. § 23.11(d)(3)
(2015); Cal. Rules of Court, rule
5.481(a)(4).) A "minimal showing" is all that is required to trigger inquiry

and

· · State v. Gonzalez

82 S.W.3d 322 (Tex. 2002) Cited 464 times

S.W.3d at 538. But it held that the State's immunity was waived under section 101.060(a)(2), because the

vandalism was "so severe and pervasive it constitutes a 'condition' of the sign, signal or traffic control

device." 24 S.W.3d at 538. Under these circumstances, the court of appeals concluded, the State "has a

duty to respond to the [vandalism's] frequency." 24 S.W.3d at 538. The court of appeals also held that,

under section 101.060(a)(2), a plaintiff need not show "that the State had actual knowledge that the sign

was down on the day of the accident." 24 S.W.3d at 538. We granted

TxDOT's · L.A. Cnty. Dep't of Children & Family Servs. v. Ashley J. (In re Destiny M.)

(Cal. Ct. App. Aug. 26, 2013)

that "In order to establish tribal identity, it is necessary to provide as much information as is known on

the Indian child's direct lineal ancestors including, but not limited to, the information delineated at

paragraph (d)(1) through (4) of this section." (25 C.F.R. § 23.11(b)

(2012), italics added.) The regulations

require inclusion of specified information, "if known" (25 C.F.R. § 23.11(d)(3) (2012), italics added;

accord, § 224.2, subd. (a)(5)(C).) Thus, the Department's obligation is to provide known and meaningful

information. (In re Francisco W., supra, 139 Cal.App.4th at p. 703.)

· In re Destiny M.

B246944 (Cal. Ct. App. Aug. 26, 2013)

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to provide known and meaningful information. (In re Francisco W., supra, 139 Cal.App.4th at p. 703.)
"WOULD BE TANTAMOUNT TO IMPOSING LIABILITY ON THE STATE BECAUSE THE BREACH OF THAT DUTY WOULD GIVE RISE TO LIABILITY"

· Bonnette v. State

972 So. 2d 340 (La. Ct. App. 2007)

The plaintiffs' EMTALA claim clearly sounds in tort. Thus, the State has waived its immunity. Further, the

Louisiana Supreme Court has found that even though medical malpractice claims and "dumping" claims

may overlap, the federal cause of action arising from EMTALA is separate and distinct from a state

malpractice cause of action. Spradlin, 758 So.2d at 121. Next, MCLNO

· · Lee v. State

815 N.W.2d 731 (Iowa 2012) Cited 25 times

care leave, is not permitted or that employees would have no recourse if they were terminated or

retaliated against for taking self-care leave. Furthermore, the state employees testified they knew it was

illegal to terminate or retaliate against someone for using FMLA leave.

Thus, the State has waived any

immunity through its conduct. The district court entered judgment against the State for the back-pay

damages as determined by the jury, in addition to reinstatement of employment and benefits, front pay,

liquidated damages, attorney fees, and educational training for supervisors.

· · Lee v. State

765 N.W.2d 607 (Iowa Ct. App. 2009) Cited 1 times FMLA is explained in their personnel policies handbook and posted in the Clerk of Court's office.

Employees are aware that they have the right under the FMLA to take leave for their own illnesses.

Nowhere did Defendants indicate that one specific type of leave, self-care leave, is not permitted or that

employees would have no recourse if they were terminated or retaliated against for taking self-care

leave. Furthermore, State employees testified they knew it was illegal to terminate or retaliate against someone for using FMLA leave. Thus, the State has waived any immunity through its conduct.

· · Fraser v. State of New York

112 Misc. 19 (N.Y. Ct. Cl. 1920) Cited 3 times

or not is to be considered, the claimants must establish negligence on the part of the state. Primarily, the

state is not liable for negligence; and this has been recently decided in the case of Smith v. State of New

York, 227 N.Y. 405, and many cases cited therein. And it can only be made liable when the state waives its

immunity. In this case the state has assumed liability and waived its immunity, but with the proviso,

however, in the legislative enactment assuming such liability that the state would only be liable under

the same circumstances and state of facts that individuals would be

· · Graham v. Town of Urbana

235 App. Div. 275 (N.Y. App. Div. 1932) Cited 4 times

present form since long before State highways were thought of, and it clearly refers to town highways,

when, in speaking of the town's liability, it uses the words, "its highways." Who, if anybody, is liable for

injuries caused by reason of defects in State highways? The State is only liable where it waives its

sovereign immunity. By section 176 High. of the Highway Law the State waives immunity from liability for

such injuries occurring between May first and November fifteenth of any year. Section 176 further

provides, in substance, that liability for such injuries occurring between November

· · Jeanne Rivers v. City of New Britain

288 Conn. 1 (Conn. 2008) Cited 62 times

Imposing a duty on the state under § 7-163a would be tantamount to imposing liability on the state

because the breach of that duty would give rise to liability. Indeed, this court expressly has

acknowledged that a statute that imposes a duty on the state represents a waiver of the state's

sovereign immunity from liability with respect to a breach of that duty. See *St. George v. Gordon*, *supra*, 264 Conn. 550-51 (indicating that General Statutes § 5-141d, which imposes duty of indemnification on state, waives state's sovereign immunity from liability);

· · *Texas Department of Human Services v. Benson* 893 S.W.2d 236 (Tex. App. 1995) Cited 13 times treated by Department employees who negligently promised confidentiality and then ignored those promises in disclosing his identity to suspects under investigation. The jury decided that he should be compensated for injuries caused by the Department's negligence. The state, however, is liable only if its governmental immunity has been waived. York holds that "the Legislature has not, by clear and unambiguous language, eliminated governmental immunity for injuries resulting from the misuse of information, even if that information is recorded in writing." *Id.* at 179. However unfairly Benson was

· · *Dewitt v. Director, State Employees Workers' Compensation Division* 897 S.W.2d 448 (Tex. App. 1995) Cited 3 times observes and protests, "[I]t is not the tangible physical file that counts, but the mental informational content, which [the court] concludes is not 'tangible.'" *Id.* at 180. Appellee treated DeWitt poorly in the handling of his worker's compensation claim. However, the state is liable only if its governmental immunity has been waived. York holds that "the Legislature has not, by clear and unambiguous language, eliminated governmental immunity for injuries resulting from the misuse of information, even if that information is recorded in writing." *Id.* at 179. Because DeWitt's cause of action

· · *Fl. House v. Crist* 999 So. 2d 601 (Fla. 2008) Cited 26 times More importantly, a State's "duty to negotiate" under IGRA cannot be enforced. A state may avoid its duty, as Florida has effectively done, by asserting its immunity. *Seminole Tribe*, 517 U.S. at 47, 116 S.Ct.

1114. Therefore, although IGRA requires a state to negotiate, it does not impose any duty on a state's governor. Moreover, IGRA does not prescribe the terms of a compact, see 25 U.S.C. § 2710(d), and it does not

· · Fl. House v. Crist

990 So. 2d 1035 (Fla. 2008) Cited 1 times

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1114. Therefore, although IGRA requires a state to negotiate, it does not, impose any duty on a state's governor. Moreover, IGRA does not prescribe the terms of a compact, see 25 U.S.C. § 2710(d), and it does not

· · Lamar Advantage Outdoor Co. v. Tex. Dep't of Transp.

No. 02-19-00368-CV (Tex. App. Sep. 24, 2020)

If a governmental entity is required to prepare a TIA and fails to do so, sovereign immunity to suit and liability under the Act is waived "to the extent of liability created by [the Act]." Id. § 2007.004(a). A

governmental action requiring a TIA is void if the TIA is not prepared, and a "private real property owner affected by a governmental action taken without the preparation of a [TIA]" may bring suit for a declaration of the invalidity of the governmental action. Id. § 2007.044(a).

· · Federal Sign v. Texas Southern University

951 S.W.2d 401 (Tex. 1997) Cited 623 times

has been granted." 453 S.W.2d at 813. If the State did not waive immunity from liability by executing a contract, then it would have no obligation at all to the contracting party for its breach. The State can waive immunity from liability, thus recognizing its obligation, but retain immunity from suit, thereby requiring that the party present its claim of obligation to the Legislature for its consent to sue. The dissenting opinion may feel that the State ought to waive immunity from

suit by executing a contract,
but there is nothing in the mere execution of a contract that expressly
waives

· · *Giannitti v. City of Stamford*

25 Conn. App. 67 (Conn. App. Ct. 1991) Cited 43 times². The
recognition that this concept should apply to the states has been woven
into the fabric of the

United States constitution and our case law. See, e.g., U.S. Const.,
amend XI; *Bergner v. State*, *supra*.

Today, it is axiomatic that in the absence of a statute specifically waiving
the state's immunity and

granting permission to sue, the state is protected from liability by its
sovereign status. *Struckman v.*

Burns, *supra*, 558; *Murphy v. Ives*, 151 Conn. 259, 262-63, 196 A.2d 596
(1963). Municipal immunity is

generally described as a court made rule and has its origins in the case
of *Russell v*

· · *Manion v. State Highway Commissioner*

303 Mich. 1 (Mich. 1942) Cited 50 times

for judicial determination, it will be bound thereby and cannot escape
the result of its own voluntary act

by invoking the prohibitions of the Eleventh Amendment." *Gunter v.*
Atlantic Coast Line Railroad Co., 200

U.S. 273, 284 (26 Sup. Ct. 252, 50 L.Ed. 477). "The first question is
whether the State has waived the

immunity it now claims. Immunity from suit under the Eleventh
Amendment is a personal privilege

which may be waived." *State of Missouri v. Fiske*, 290 U.S. 18, 24 (54
Sup. Ct. 18, 78 L.Ed. 145). To the

foregoing authorities might be added innumerable others from the
Federal courts

· · *Green Intern. Inc. v. State*

877 S.W.2d 428 (Tex. App. 1994) Cited 52 times

position under the law regarding mutual contractual obligations? There
can be no doubt that if the State

chose to sue Green on the contract, the State would face no impediment
to suit. Why should Green face

such an impediment? Our courts have declared that when the
Legislature creates an agency with the

ability to "sue or be sued," the State waives its immunity from suit. See *Industrial Constr. Management v.*

DeSoto Indep. Sch. Dist., 785 S.W.2d 160 (Tex.App. — Dallas 1989, no writ). This waiver is premised on

the equitable principle that if an agency is entitled to take a private citizen to

· · *Moore v. Bi-State Dev. Agency*

No. ED107143 (Mo. Ct. App. Aug. 27, 2019)

RSMo 1986). Subsequent versions of Section 537.600 through 2005 clarified whether the inclusion of

interstate compact agencies as public entities retroactively applied to prior decisions. See Section

537.600.4-5, Cum. Supp. RSMo 1989. As a sovereignly immune public entity, Bi-State's immunity against

liability is waived only to the extent provided by statute. See Section 537.600.1; *Brancati*, 571 S.W.3d at

636. Missouri allows the waiver of sovereign immunity to the extent that the public entity insures

against judgment—but only to the extent insured. See Sections 537.600, .610; *Brancati*, 571

· · *Townsend v. Wisconsin Desert Horse Ass'n*

167 N.W.2d 425 (Wis. 1969) Cited 30 times

as an "independent going concern." We do not think the department is of such a nature that it may be

sued. The legislature may create an agency with independent proprietary powers or functions and

sufficiently independent of the state to be sued as such. When the state so creates an agency, it waives

its sovereign immunity in that respect. This doctrine and its guidelines were explained in *Majerus v.*

Milwaukee County, *supra*, which was based upon the foundation case of *Sullivan v. Board of Regents of*

Normal Schools (1932), 209 Wis. 242, 244 N.W. 563. See also *Metzger v. Department of Taxation*

· · *Kegonsa Jt. Sanit. Dist. v. City of Stoughton* 274 N.W.2d 598 (Wis. 1979) Cited 28 times

that the DNR is not merely an arm of the state and can consequently be sued as an "independent going

concern." "The legislature may create an agency with independent

proprietary powers or functions and sufficiently independent of the state to be sued as such. when the state so creates an agency, it waives its sovereign immunity in that respect." *Townsend v. Wisconsin Desert Horse Asso.*, 42 Wis.2d 414, 423, 167 N.W.2d 425 (1969). See also *Majerus v. Milwaukee County*, 39 Wis.2d 311, 159 N.W.2d 86 (1968); *Sullivan v. Board of Regents of Normal Schools*, 209 Wis. 242, 244 N.W. 563 (1932); *Metzger v*

· · *Patterson v. N.Y.C. Dep't of Soc. Servs.* 2013 N.Y. Slip Op. 30109 (N.Y. Sup. Ct. 2013) because it is a State administrative agency, an action for monetary damages cannot be maintained against it in Supreme Court, thus necessitating the dismissal of this action based on a lack of subject matter jurisdiction. Additionally, it argues that pursuant to the principle of "sovereign immunity," New York State is wholly immune from suit unless it waives its sovereign immunity. Defendant further argues that to the extent that this litigation seeks review of the March 9, 2012 DAFH, it can only be commenced as a CPLR Art. 78 proceeding, which must be commenced within four months after the

· · *Mitchell v. State* C.A. No. 08C-05-052 JRJ (Del. Super. Ct. Aug. 11, 2008)
6. The General Assembly has waived sovereign immunity in certain areas such as 18 Del. C. § 6511. Under this provision, the State is deemed to have waived sovereign immunity where it has obtained insurance to cover the alleged loss.

· · *Kegonsa Jt. Sanit. Dist. v. City of Stoughton* 274 N.W.2d 598 (Wis. 1979) Cited 28 times N.W.2d 431 (1967). However, there is no merit in Kegonsa's claim that the DNR is of such an independent character that it comes under this traditionally narrow exception. The department, despite its broad powers, is only an administrative body, an arm or agency of the state. The state's immunity therefore extends to it. Plaintiff makes the vague assertion that the DNR might be

amenable to suit on an estoppel theory. Plaintiff's reliance on this doctrine is misplaced. As the court declared in *Lister*, supra, 72 Wis.2d at 294: "As a general rule the legislature is the proper body to authorize . . . Condemarin v. University Hosp 775 P.2d 348 (Utah 1989) Cited 74 times Stanhope, 90 Wis.2d at 842-43, 280 N.W.2d at 719. It is also to be observed that since the state could choose to claim absolute sovereign immunity for torts committed by a governmental entity, it is therefore entitled to waive such immunity and to impose reasonable monetary limits thereon. Since the legislature provided for the right and the remedy when it enacted the Governmental Immunity Act, it is within its judgment to limit the maximum recoverable amount. See . . . Ent v. Wash. State Criminal Justice Training Comm'n 174 Wn. App. 615 (Wash. Ct. App. 2013) Cited 5 timesembezzles funds or commits manslaughter, because RCW 43.101.390 protects it from both civil and criminal liability. But, even if these scenarios are very real, they result from a legislative policy choice. Whether or not we agree with broad immunity for the CJTC as a matter of public policy is irrelevant. Riksem v. City of Seattle, 47 Wash.App. 506, 511, 736 P.2d 275 (1987). The State has authority to determine whether it will be immune from liability for its acts. Const. art. II, § 26. Therefore, any challenge to the wisdom of such broad immunity is an issue to be taken to the legislature . . . Dillard v. Austin I. S. D 806 S.W.2d 589 (Tex. App. 1991) Cited 90 times .107 (1986 Supp. 1991). An important corollary is that the state is generally not liable for the acts of public servants. E.g., *Lowe v. Texas Tech Univ.*, 540 S.W.2d 297, 298 (Tex. 1976); *Whitfield v. City of Paris*, 84 Tex. 431, 19 S.W. 566, 567 (1892) (doctrine of respondeat superior does not apply against the state); *City of Galveston v. Posnainsky*, 62 Tex. 118, 125 (1884); Tex.Civ.Prac. Rem. Code Ann. Secs. 104.001-.008

(1986 Supp. 1991) (state liability for conduct of public servants). A critical exception, however, is that the state waives its immunity from liability when it contracts:

- Royster v. N.J. State Police

227 N.J. 482 (N.J. 2017) Cited 26 times

the LAD failure-to-accommodate claim had he known that defendant would assert sovereign immunity.

Plaintiff urges this Court to reinstate the claim because the ADA and the LAD failure-to-accommodate

claims are identical and implicate the same facts. Defendant emphasizes that only the State may define

the extent of its own sovereign immunity. Defendant also stresses that sovereign immunity is a well-

established defense to ADA claims in federal courts, and that plaintiff could have pursued both the LAD

and ADA claims for failure to provide reasonable accommodations.

Defendant argues that,