

Business Trusts in Virginia: An Overview for Title Insurers

Description

While corporations and limited liability companies are the most common business entities, Virginia also allows for the formation of another type of unincorporated association known as a business trust. These trusts can hold title to real estate and other property just like any other business entity.

A business trust is a legal arrangement where the ownership and management of a business is transferred to trustees who hold and manage it for the benefit of the beneficiaries. A Virginia business trust is created by a trust instrument that must be filed with the State Corporation Commission (SCC), similar to how a corporation is created by articles of incorporation. The trust instrument establishes the governance structure and terms for the trust's operation. Business trusts have trustees who are vested with legal title and control over trust property, much like a corporation's board of directors. The trustees have fiduciary duties to the trust's beneficiaries, who hold beneficial title akin to shareholders. Additionally, a business trust usually has a governing instrument which sets forth provisions relating to the business and affairs of the business trust. If this governing instrument fails to address something, the Virginia Business Trust Act (Chapter 14 of the Virginia Code) will govern. A business trust may own real estate.

One key advantage of business trusts is their flexibility compared to other entities. The trust instrument can tailor the trust's provisions as needed for its intended purpose. However, business trusts are a form of unincorporated association, meaning they lack some of the liability protections of corporations and LLCs. The trustees can be held personally liable in certain circumstances.

When insuring title for property owned by a business trust, title insurers need to carefully review the trust instrument. This governing document establishes things like the trustees' authority to convey trust property, any restrictions on that authority, the trust's term, and the procedures for trustee succession. Underwriters should confirm the identity and powers of the current trustees and that any conveyance complies with the trust terms.

From a title insurance perspective, when a business trust is involved in the transaction, a certification of trust is not appropriate, as these are for estate planning trusts. Despite their advantages, business trusts are not as widely used in Virginia as other entity types like corporations and LLCs. This may be due to their complex structure, lack of statutory provisions governing them, and the potential personal liability exposure for trustees. However, they can provide a useful alternative in certain situations, such as when enhanced flexibility is required. Title professionals who understand the nature of these trusts can ensure proper underwriting for any real estate they hold.



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