

Pathfinder on Charitable Bequeaths of Land with Right of Entry or Possibility of Reverter
Resources for Those Interested in the Lyon County (KS) Fairgrounds

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Preface

The idea for this project came from recent discussion regarding the Lyon County Fairgrounds, located at the northeast corner of Industrial Road and U.S. Highway 50 in Emporia, Kansas. In 1946, a ranching couple deeded the land to a local bank acting as trustee to the primary beneficiary, the Lyon County Fair Association, Inc. The deed was issued with the understanding that the property would be used to hold the county fair. If the fair board failed to hold a fair in years 1947, 1948 or 1949, or was unable to raise \$75,000 by January 1, 1950, the property would be transferred to Bethany College at Lindsborg, Kansas.

When the fair association accepted the deed, the land was located outside of the Emporia city limits. Nearly sixty years later, the fairground is surrounded by city property, much of which is zoned for retail business. More than one informal proposal has been made to move the fairgrounds to property outside the city limits and develop the current fairgrounds for retail use.

Emporia is the county seat of a predominantly agricultural community and emotions run high when the future of the fairgrounds is discussed. It is hoped that this document will provide interested parties a starting point for researching this issue to their own satisfaction.

The resources consulted were limited to what is available through the Lyon County Law Library, although a few entries from the Washburn Law Library holdings are presented as potentially good resources. The goal was to highlight resources readily accessible to the citizens of Lyon County should they want to research this topic on their own.

Primary Sources

Originating Documents

Trust deed From E.T. Anderson & wife to Citizens National Bank, a corporation. Filed December 31, 1946 with the Lyon County Register of Deeds.

Trustee's deed from Citizens National Bank to Lyon County Fair Association, Inc.. Filed January 26, 1950 with the Lyon County Register of Deeds.

Both documents are available from the Lyon County Register of Deeds, (620) 341-3241. Copy fees are 50 cents per page.

Kansas Statutes

County Fairs and Agricultural Societies KAN. STAT. ANN. § 2-126 through 2-145a (<http://www.kslegislature.org/cgi-bin/statutes/index.cgi>)

Most of the statutes in this section were updated in 2004; details are found in the Kansas 2004 Session Laws, Ch. 101 (S. B. 524). These statutes make provision for the establishment, governance and tax support of county fairs.

Agriculture, S.B. 524, 2004 Kansas Session Laws Regular Session; Ch. 101

(<http://www.kslegislature.org/cgi-bin/sessionlaws/sessionsearch.cgi>)

Amends 2-127, 2-128, 2-129, 2-129i, 2-131b, 2-131d, 2-131e, 2-132, 2-137, 2-144d

Definitions. KAN. STAT. ANN. § 58a-103 (<http://www.kslegislature.org/cgi-bin/statutes/index.cgi/58a-103.html>)

Definitions for terms pertaining to trusts.

Modification or termination of trust; proceedings for approval or disapproval. KAN. STAT. ANN. § 58a-410 (<http://www.kslegislature.org/cgi-bin/statutes/index.cgi/58a-410.html>)

State requirements on modifying or terminating a trust.

Cy pres KAN. STAT. ANN. § 58a-413 (<http://www.kslegislature.org/cgi-bin/statutes/index.cgi/58a-413.html>)

Conditions under which a charitable trust may be modified or terminated.

Order for administration in accordance with intent; order of change to qualify for federal estate tax deduction KAN. STAT. ANN. § 59-22a01. (<http://www.kslegislature.org/cgi-bin/statutes/index.cgi/59-22a01.html>)

Explains the principle of cy pres (see Definitions at the end of this document). This statute applies to wills and trusts construed after the act's inception in 1988.

Case Law

In the Matter of the Estate of Coleman, 2 Kan.App.2d 567, 584 P.2d 1255. (1978)
Trial court was correct, in construing residuary clause granting bequest to liberal arts college which had closed prior to testator's death, in dividing lapsed gift proportionately between remaining members of residuary class rather than ordering that lapsed gift should pass by intestacy to testator's sole surviving heir. The doctrine of cy pres applies.

In the Matter of the Trust Estate of Woods, 181 Kan. 271, 311 P.2d 359 (1957)
Based on point of law that states in trust matters, court retains jurisdiction to control the trustees, court held that the intent of the testator was communicated in the will and required the court's interpretation to carry it out.

Note: while there is considerable case law pertaining to trusts in general, few pertain to the authorized sale of a charitable gift. The reader is directed to comments in the secondary sources for general points of law.

Secondary Resources

Articles

W. W. Allen. (1957) *Validity And Effect of Transfer of Possibility of Reverter or Right of Re-Entry, Following Conveyance of Determinable Fee or Fee Subject to Condition Subsequent* 53 A.L.R.2D 224
Provides explanation of the various ways property may be transferred and for how long. The differences between contingencies; e.g., condition v. limitation are covered. Long article but worth the read.

David M. English (February 2003) *The Kansas Uniform Trust Code* 51 U. KAN. L. REV. 311
Explanation of Kansas' adoption of the Uniform Trust Code and its embodiment in chapter 58a of the Kansas Statutes Annotated. This article covers the most significant changes to Kansas law, including sections 410-417, Trust Modification and Termination.

C.T. Foster (1955) *Constitutionality, Construction, and Effect of Legislation Authorizing Sale of Charitable Trust Property* 40 A.L.R.2D 556.

Another long read, but worthwhile in that it tells us under what conditions property may be sold "contrary to provisions of the trust." The article states, "it may be assumed to be a general underlying principle that where the charitable trust instrument does not expressly or by implication confer a power of sale, the trustee cannot make a valid sale of any of the trust property unless the sale is duly authorized or confirmed by a court having jurisdiction of the matter, or the trustee has statutory authority to sell and has proceeded in accordance with the requirements of the statute."

V. Woerner. (1951) *Devisability of Possibility of Reverter, or of Right of Re-Entry for Breach of Condition Subsequent* 16 A.L.R.2D 1246

Discussion under §1 makes the distinction between “possibility of reverter” and “right of re-entry for breach of condition subsequent.” The finer points of property law are frequently what spell the difference in legal interpretations and court decisions.

Books

Roger Bernhardt and Ann M. Burkhardt. (2000) *Real property in a nutshell*. St. Paul, Minn.:West
Library: Lyon County Law Library

Call number: KF570.Z9 B47 2000

Chapter two describes common law estates, including “estate subject to condition subsequent.” Under “future interests” we find coverage of “reversion,” “possibility of reverter and power of termination,” and “reversion following remainder.”

The In a Nutshell series by West is a relatively easy way to learn legal concepts.

John A. Borron (2002) *The law of future interests*. St. Paul, Minn.:West

Library: [Washburn University Law Library](#)

Call number: KF605 .S53.

Linda Holdeman Edwards (2002) *Estates in land and future interests: a step-by-step guide*. New York:Aspen Law & Business

Library: [Washburn University Law Library](#)

Call number: KF577 .E39 2002.

Robert J. Lynn and Grayson M. P. McCough. (2004) *Introduction to estate planning in a nutshell*.

St. Paul, Minn.:West

Library: Lyon County Law Library

Call number: KF750.L9 2004

Chapter 9 (Future Interests – An Introduction), Chapter 10 (Charitable Trusts) and Chapter 11 (The Rule Against Perpetuities and Related Doctrines) comprise an easy-to-read introduction to the finer points of trusts.

John Makdisi (1999) *Estates in land and future interest: problems and answers*. Gaithersburg, Md.:Aspen Law & Business

Library: [Washburn University Law Library](#)

Call number: KF577.Z9 M35 1999

Robert L. Mennell (1994) *Wills and trusts in a nutshell*. St. Paul, Minn.: West

Library: Lyon County Law Library

Call number: KF755.Z9 M38 1994

Chapters 10 and 11 cover charitable trusts and trusts administration, specifically, the powers and duties of trustees.

Lawrence W. Waggoner (1993) *Estates in land and future interests in a nutshell*. St. Paul, Minn.:West

Library: [Washburn University Law Library](#)

Call number: KF605 .W33 1993.

Encyclopedia Articles

15 Am. Jur. 2d *Charities* § 57 – Gifts to, or for Benefit of, Community or Governmental Unit
This article establishes that a gift (of land) is a charitable one if the recipients are “the inhabitants of a city or state...; the retention and use of the donated property for the purposes indicated in the deed of conveyance under the state or municipality’s trusteeship is a charitable trust.”

15 Am. Jur. 2d *Charities* § 95 – Sale of Property

Under what circumstances charitable property may be sold: “In the absence of express authorization or prohibition by the donor of the trust, the power to sell depends upon circumstances.”

15 Am. Jur. 2d *Charities* § 96 - Effect of Express Provision Against Alienation

This article covers the circumstances under which trustees may ask the court to order the sale of trust property despite provision against alienation. The sale of trust property may be allowed “where to do so would be desirable and necessary to carry out the basic purpose of the gift or where conditions have so changed that a sale of the property is reasonably required.”

15 Am. Jur. 2d *Charities* § 131 – Proceedings by or Against Trustees to Construe Trust

This article states “the public interest in enforcement and administration of charitable trusts precludes most litigation by or between private persons...” while also stating that the courts may be involved in such actions by and against trustees. Trustees are directed to consult the court in which the trust is administered for determination of administrative matters.

15 Am. Jur. 2d *Charities* § 145 – Breach of Terms or Conditions; Forfeitures and Reversions

A donor’s restrictions on the use of the charitable gift are “valid and will be enforced at the instance of the donor, his heirs or successors in interest.”

AmJur2d is available in the Lyon County Law Library online through Westlaw or in print (noncirculating)

Restatements

RESTATEMENT (THIRD) TRUSTS: § 40 - ANY PROPERTY MAY BE TRUST PROPERTY

Library: Lyon County Law Library

Of particular interest is section d, which pertains to nontransferable property.

RESTATEMENT (THIRD) TRUSTS: § 67 - FAILURE OF DESIGNATED CHARITABLE PURPOSE:
THE DOCTRINE OF CY PRES

Note this section:

“The mere fact that the terms of the trust provide that property shall be devoted ‘forever’ to a particular charitable purpose, or that it shall be devoted ‘only’ to that purpose, or that the property is given ‘upon condition’ that it be applied to that purpose, does not necessarily indicate the absence of a more general charitable commitment on part of the settlor. Such language may merely emphasize the intention of the settlor that the property should not be applied to other charitable purposes as long as it is practicable to apply it to the specific purpose. Thus, such language alone does not sufficiently express an intention that cy pres should not apply and that the trust is to terminate if it should be come illegal, impossible, or impracticable to carry out the particular purpose.”

Restatements are available at the Lyon County Law Library through Westlaw. Additional fees apply.

Internet Resources

Findlaw - <http://www.findlaw.com/11stategov/ks/index.html>

A broad array of legal resources are found on this site, including cases and statutes by state, other jurisdictions and practice areas. The section on Wills and Trusts (<http://findlaw.com/01topics/31probate/index.html>) has a variety of good, general information.

www.lawspirit.com/legalenglish/handbook/prop05.htm - site recommended by my instructor. It provides a background on estates and the possibility of reverter. Legal dictionary required for interpretation.

LexisNexis - <http://www.lexisnexis.com/> (password required)

The Lyon County Law Library has an account available to the public that allows access to all 50 states’ and national administrative rules and case law. Public access is available Monday and Thursday mornings, 9 am to 12 noon.

Westlaw – <http://www.thomsonwest.com/store/default.asp> (password required)

The Lyon County Law Library has an account available to the public that allows access to all 50 states’ and national administrative rules and case law, American Law Reports (ALR) and other law reviews. Public access is available Monday and Thursday mornings, 9 am to 12 noon.

Appendix

Definitions

“Charitable bequeaths of land” is a complex issue that requires definitions of key legal terms in order to effectively use this pathfinder’s resources. [Black’s Law Dictionary, 8th edition](#), was consulted for the definitions that follow.

alienation – to transfer property to another person.

cy pres – the principle that when a charity bequest is illegal or becomes impossible or impracticable, a court may substitute another charitable object that is believed to be close to the original intent of the testator. From the French “*cy pres comme possible*” or “as near as possible.”

fee simple – an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs. The term is derived from 14th century English feudal law (‘fee’ and ‘feudal’ are closely related); also relates to the feudal principle of tenure.

fee simple absolute – a heritable interest in land

fee simple conditional – an estate restricted to some specified heirs, exclusive of others. The fee simple conditional is obsolete except in Iowa, Oregon and South Carolina.

fee simple determinable – an estate that will automatically end and revert to the grantor if some specified event occurs; an estate in fee simple subject to a special limitation. The future interest retained by the grantor is called a possibility of reverter. Also termed determinable fee; qualified fee; fee simple subject to common-law limitation; fee simple subject to special limitation; fee simple subject to special interest; base fee; estate on limitation.

fee simple subject to an executory limitation – a fee simple defeasible that is subject to divestment in favor of someone other than the grantor if a specified event happens. Also termed fee simple subject to an executory interest.

fee simple subject to a power of termination – see fee simple subject to a condition subsequent.

fee simple subject to common-law limitation – see fee simple determinable

fee simple subject to special interest – see fee simple determinable

fee simple subject to special limitation – see fee simple determinable

fee simple upon condition – see fee simple subject to a condition subsequent

future interest – an interest in property that will commence in use, possession or enjoyment in the future.

possibility of reverter – a reversionary interest that is subject to a condition precedent; specifically, a future interest retained by a grantor after conveying a fee simple determinable, so that the grantee's estate terminates automatically and reverts to the grantor if the terminating event occurs. In this type of interest, the grantor transfers an estate whose maximum optional duration equals that of the grantor's own estate and attaches a special limitation that operates in the grantor's favor.

perpetuity – the state of continuing forever; an unbarrable entail; an inalienable interest; an interest that does not take effect or vest within the period prescribed by law.

rule against perpetuities – the common-law rule prohibiting a grant of an estate unless the interest must vest, if at all, no later than 21 years (plus a period of gestation to cover a posthumous birth) after the death of some person alive when the interest was created. The purpose of the rule was to limit the time that title to property could be suspended out of commerce because there was no owner who had title to the property and who could sell it or exercise other aspects of ownership.

vest – to confer ownership of (property) upon a person; to invest (a person) with the full title to property; to give (a person) an immediate, fixed right of present or future enjoyment; to put (a person) into possession of land by the ceremony of investiture.

Suggested Search Terms for Further Research

Charitable Bequest

Future Interests

Probate/Trusts/Estates/Wills

Property Law

Reversionary Interest