

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-201382

**DATE:** July 7, 1983

**MATTER OF:** Alexander D. Bell - Relocation Expenses -  
Title Requirements - Land Trust

**DIGEST:**

A transferred employee purchased a new residence by way of an installment agreement for the assignment of beneficial interest in an Illinois land trust. Upon execution of that agreement, the equitable beneficial interest in the land trust was transferred to the employee. Under Illinois law, the assignment of beneficial interest in a land trust amounts to a sale or conveyance of the property, and the purchaser is treated as the owner for most purposes. The assignment of beneficial interest in an Illinois land trust through an installment agreement effected a "purchase" under 5 U.S.C. § 5724a(a)(4) (Supp. IV 1980). The employee as purchaser acquired "title" under para. 2-6.1c of the Federal Travel Regulations and is entitled to be reimbursed for the payment of his purchase expenses.

This decision is in response to a request from Mr. Claude F. Pickelsimer, Jr., Director, Financial Management Office, Centers for Disease Control, Department of Health and Human Services. Mr. Pickelsimer submitted a travel voucher and supporting documents with his letter, seeking advice as to whether an employee who purchased a residence via an installment agreement for the assignment of beneficial interest in a land trust holds sufficient title under 5 U.S.C. § 5724a(a)(4) (Supp. IV 1980), and implementing regulations to allow reimbursement for attorneys' fees paid in conjunction with the purchase.

We hold that, for purposes of reimbursement under section 5724a(a)(4), the installment agreement for the assignment of the beneficial interest in the land trust effected the transfer of an equitable ownership of the property which created sufficient "title" in the employee-purchaser to allow reimbursement of his purchase expenses.

In connection with a permanent change of station effective November 1, 1981, from Anchorage, Alaska, to Chicago,

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Illinois, employee Alexander D. Bell, with his wife, entered into a sales contract dated November 8, 1981, for the purchase of a residence held under a land trust in Glendale Heights, Illinois. The closing on the residential sales contract was held on December 5, 1981. At that time, Mr. Bell and his wife paid approximately one-third of the purchase price in cash and agreed to pay the balance in installments over a specified period of time. This financing arrangement between the seller and the purchaser was formalized in an installment agreement for the assignment of beneficial interest in the land trust on the residential property involved. Possession of the premises was delivered to the purchaser upon execution of the installment agreement, but no deed was conveyed. Instead the seller agreed to convey to the purchaser an "Assignment of Beneficial Interest" in the land trust upon payment of the full purchase price.

After the purchase transaction was completed, Mr. Bell submitted a travel voucher in the amount of \$175 for his purchase expenses consisting of \$175 which he paid to his attorney for the preparation of documents. The issue presented by the Financial Management Office is whether Mr. Bell meets the title requirements of paragraph 2-6.1c of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR) for reimbursement purposes.

As a preliminary matter, it is clear that attorneys' fees, such as those charged in this case, are reimbursable. Under 5 U.S.C. § 5724a(a)(4), an employee who qualifies under section 5724(a) may be reimbursed for the required expenses of purchasing a home at the new official station, as long as the expenses do not exceed those customarily charged in the locality where the residence is located. Paragraph 2-6.2c of the FTR makes broad provision for the payment of legal fees which have not been included in another expense category, if they are within the customary range and not related to litigation. We interpreted that provision in George W. Lay, 56 Comp. Gen. 561 (1977). Drawing on congressional recognition of the complexity of real estate transactions and of the variation in legal services required in different communities, we concluded in that case that attorneys' fees for advisory and representational services, as well as fees for document preparation, are among those allowable under that regulation. Therefore, the fees in this case are reimbursable if the other requirements are satisfied.

Paragraph 2-6.1c of the FTR permits reimbursement of purchase expenses if the title to the residence is held "in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family \*\*\*."

Our decisions regarding "land sales contracts" or "contracts for deed" are applicable here since the contract arrangement typically involves transfer of the deed only after full payment of the purchase price by installments over a period of time. Drawing on the common law notion of equitable conversion, we have held that the transfer of equitable ownership of property which is effected through a valid land sale installment contract amounts to a "purchase" for purpose of reimbursement under section 5724a(a)(4). Larry W. Day, 57 Comp. Gen. 770 (1978), citing Larry J. Light, B-188300, August 29, 1977; Marion B. Gamble, B-185095, August 13, 1976; B-165146, September 16, 1968; 46 Comp. Gen. 677 (1967). In the Day case, we noted that, although the purchaser does not obtain legal title to the premises until the contract is fully paid, he obtains equitable title upon execution of the contract for deed. 57 Comp. Gen. at 771.

The only question that remains is whether the purchase by installments of an equitable "beneficial interest in a land trust" is sufficiently similar to the installment purchase arrangements described above so as to permit reimbursement under FTR 2-6.1c.

In general, a land trust is an arrangement similar to a mortgage. See G. Bogert, The Law of Trusts and Trustees 2d. ed. § 250 (1964). It involves, "a conveyance to a person (who is usually a third person but may be the creditor) on trust to hold the property as security for the payment of a debt to the lender." IV American Law of Property § 16.17 (A. Casner, ed. 1952). The trust deed mortgage device varies from state to state, id., and in Illinois, it is governed by statute, although its origin is rooted in case law. People v. Chicago Title & Trust Co., 389 N.E.2d 540 (Ill. Sup. Ct. 1979).

Under Illinois law, "'Land Trust' means any arrangement under which the title, both legal and equitable, to real property is held by a trustee and the interest of the

beneficiary is personal property \* \* \*." Ill. Ann. Stat. ch. 29, 8.31 (Smith-Hurd 1969 & Supp. 1982) (hereinafter Ill. Stat.). The beneficiary of an Illinois land trust enjoys most of the benefits of ownership. In general, the beneficiary has, "the exclusive power to direct or control the trustee in dealing with the title \* \* \*." Id.

Additionally,

"\* \* \* the exclusive control of the management, operation, renting and selling of the trust property together with the exclusive right to the earnings, avails and proceeds of said property is in the beneficiary of the trust." Id.

The installment agreement in this case effected an equitable assignment of the beneficial interest in a land trust. Although the Appellate Court of Illinois has questioned whether an assignment is a transfer of title per se, it has followed the rule of the Fourth Circuit that such an assignment does amount to, "a sale, conveyance or transfer" of the real estate for certain purposes, at least when the assignee is entitled to occupancy of the premises. Wachta v. First Federal Savings & Loan, 430 N.E.2d 708 (Ill. App. 1981), discussing Williams v. First Federal Savings & Loan Ass'n, 651 F.2d 910 (4th Cir. 1981). An assignee of the beneficial interest is said to acquire all of the interest of his assignor, Montgomery Ward & Co. v. Wetzel, 423 N.E.2d 1170, 1175 (Ill. App. 1981), citing H. Kenoe, Kenoe on Land Trusts § 5.7 at 49-50 (1976).

Assignees of beneficial interests who actually occupy the realty and who enjoy other indicia of ownership have been treated as having all the rights and liabilities of an owner of the property. In People v. Chicago Title & Trust Co., 389 N.E.2d 540 (Ill. Sup. Ct. 1979), the Illinois Supreme Court held that a land trust beneficiary is personally liable for unpaid real estate taxes since the beneficiary qualifies as "owner" of the land under the tax statute. In describing the true nature of the relationships under an Illinois land trust, the court emphasized the ownership rights of the beneficiary:

"[I]t is apparent that true ownership lies with the beneficiaries though title lies with the trustee. The trustee derives all of his

power from the beneficiary and acts solely on the beneficiary's behalf. \* \* \* Indeed, there is not a single attribute of ownership, except title, which does not rest in the beneficiary. The rights of creation, modification, management, income and termination all belong to the beneficiary. [citation omitted] In reality the transfer to the trustee is a formality involving a shifting of legal documents. The land trust is, in fact, a fiction which has become entrenched in the law of this State and accepted as a useful instrument in the handling of real estate transactions. Outside of relationships based on legal title, the trustees' title has little significance." Id. at 545 (emphasis added).

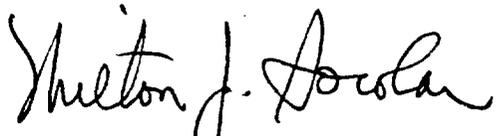
Applying the rule which emerges from the Illinois case law on land trusts and in keeping with our prior decisions, we hold that Mr. Bell's equitable beneficial interest in the land trust is a sufficient interest for purposes of reimbursement of real estate expenses under 5 U.S.C. § 5724a and FTR para. 2-6.1c. As was observed by the Illinois court, "[t]he word 'title' is susceptible of different meanings," Wachta, 430 N.E.2d at 714, and the purpose of the law to be applied is relevant in determining the sufficiency of a beneficial land trust interest in a particular case. See Chicago Title & Trust, 389 N.E.2d at 544.

The "title" requirement of FTR para. 2-6.1c is also subject to interpretation to carry out the congressional intent to provide reimbursement to Federal employees for the purchase and sale of residences incident to transfers. Thus, since Mr. Bell's interest in the property under Illinois law carries with it all the indicia of ownership, other than strict legal title, his interest is sufficient for purposes of reimbursement under section 5724a.

This case is distinguishable from Carl A. Gidlund, 60 Comp. Gen. 141 (1980); affirmed, B-197781, September 8, 1982, involving the reimbursement of expenses for the sale and purchase of property held in trust. There, we found that the transferred employee had not actually incurred the expenses in question and, therefore, was not entitled to reimbursement. In contrast to this case, the

property involved in the Gidlund case was held in the name of a pre-existing testamentary trust. The trust which held title in Gidlund and which paid the expenses in question had been established by the last will and testament of the employee's mother-in-law; it was not a financing device entered into contemporaneously with the real estate purchase, nor did the properties bought and sold comprise the entire corpus of the trust, as is the case with an Illinois land trust. Given the differences between the trusts employed in the two cases, the findings and reasoning of the Gidlund case are not applicable to determinations of title involving completely different types of trusts, such as the land trust device used in Illinois.

The word "purchase" in 5 U.S.C. § 5724a(a)(4) and "title" in FTR para. 2-6.1c should not be strictly construed, but should be read in light of the congressional intent. See Senate Report No. 1357, 89th Cong. 2d Sess. at 2 (1966), which makes it clear that the purpose of the legislation was to reimburse employees for actual financial losses incurred because of a transfer at the request of the Government. Since the attorneys' fees in this case were actually incurred by Mr. Bell in purchasing an equitable beneficial interest in a land trust, and since he is considered the owner of the property under state law for all purposes, except those requiring legal title, we hold that the expenses in question are reimbursable. The voucher in question may be paid, assuming that the attorneys' fees charged are otherwise customary and reasonable.

*for*   
Comptroller General  
of the United States