



Investment of Public Trust Money: Section 35 of The Maharashtra Public Trusts Act, 1950

Section 35 of The Maharashtra Public Trusts Act, 1950 provides comprehensive guidelines for trustees regarding the investment of public trust money. This presentation explores the scope, permissible investment modes, procedural requirements, and important distinctions that trustees must understand to fulfill their fiduciary responsibilities.

We'll examine the legal framework governing trust investments, the role of the Charity Commissioner, and the consequences of non-compliance with statutory provisions. Understanding these regulations is essential for proper trust administration and protection of trust assets.



CA Madhav (Abhay) Mate
+91 9822351901
abhaymrmca@gmail.com



Scope and Object of Section 35



Trust Property as Money

Applies when trust property consists of money that cannot be applied immediately or at an early date to the purposes of the public trust.



Mandatory Investment

Trustees are bound to invest such money in approved securities rather than keeping cash in hand.



Protection of Assets

Ensures trust funds are safeguarded while generating returns until they can be utilized for trust purposes.

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Permissible Modes of Investment

Banking Institutions

- Scheduled Banks under RBI Act, 1934
- Postal Savings Bank
- Co-operative banks approved by State Government

Securities

- Public Securities (Section 2(12))
- Units issued by Unit Trust of India

Property Investment

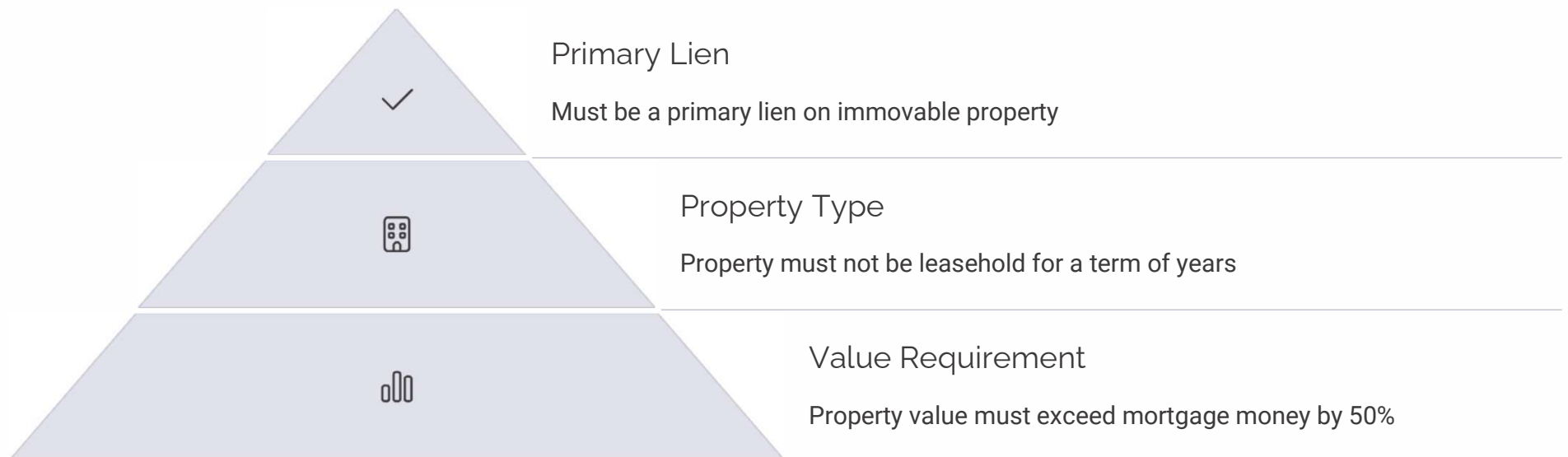
- First mortgage of immovable property in India
- Property must not be leasehold for a term of years
- Property value must exceed mortgage money by one-half

Other Investments

- Any other investments permitted by Charity Commissioner
- Through special or general order



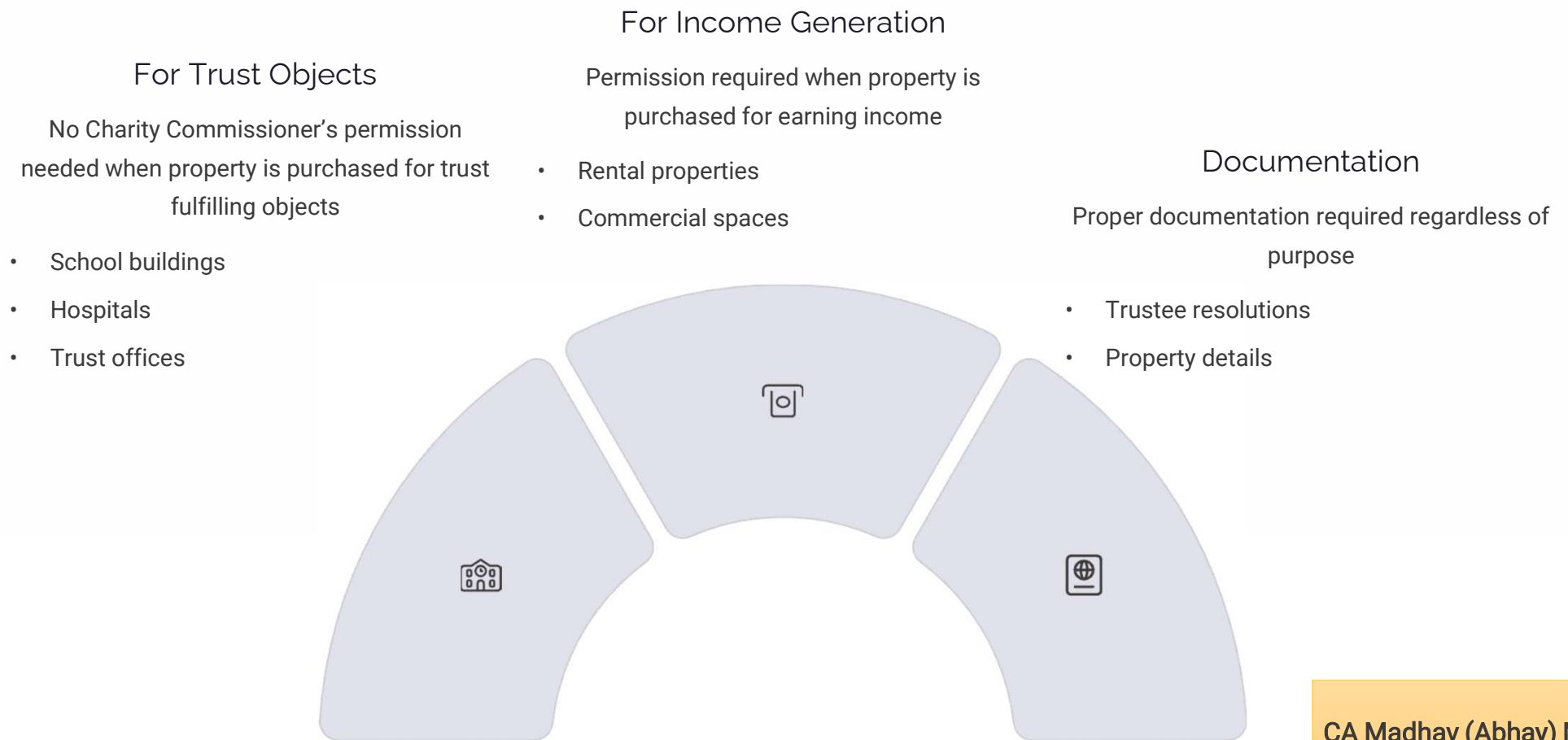
First Mortgage Requirements







A first mortgage represents a primary lien on immovable property that takes priority over all other liens or claims in the event of default. For example, if a property is valued at Rs. 15 lakhs, trustees may invest up to Rs. 7.50 lakhs in the first mortgage, maintaining the required value-to-mortgage ratio.

Equitable mortgages through deposit of title deeds are permitted, but only in notified towns and cities. The requirements include a proper deed, delivery by a debtor or agent, and execution in designated locations.

Purchase of Immovable Property



Application Requirements for Other Investments

-  Documentation
True copy of trustees' resolution, trust deed, property details, agreement for sale/sale deed, and court fee stamps
-  Financial Information
Purchase price/construction cost, source of funds, current investments, expected returns, and three-year income/expenditure figures
-  Expert Reports
Plans and estimates from experts, valuation reports from official valuers for built-up property
-  Disclosure
Whether vendor is related to trustees or interested in the trust, purpose of property utilization, and loan requirements



Distinction Between Sections 35 and 36

Section 35

Governs investment of trust money that cannot be immediately applied to trust purposes.

Non-compliance does not invalidate the transaction but may result in penalties for trustees.

Focuses on ensuring proper investment of trust funds in approved securities or other permitted investments.

Maximum penalty for non-compliance is a fine up to Rs. 10,000.

Section 36

Deals with alienation of immovable property by trustees.

Non-compliance renders the transaction invalid ab initio (from the beginning).

Requires prior permission from Charity Commissioner for sale or transfer of trust property.

Trustees face more severe consequences for violations under this section.



Loans and Money Lenders Act

Legal Definition

Loans advanced by public trusts are not considered loans under the The Maharashtra Money-Lending 7 (Regulation) Act, 2014.

“loan” means an advance at interest whether of money or in kind but does not include,—(b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860 (21 of 1860) or any other enactment relating to a public, religious or charitable object ;

Licensing Exemption

Public trusts are not required to obtain licenses for advancing such loans

Regulatory Framework

Trust loans are governed by the Bombay Public Trusts Act provisions instead

This exemption was clarified through official communications (Vide No. MLA. (D.D.) 1951-2905. C.. 9.2.1952, ADM/278/92 of 1952, di. 26-3-52). However, trustees must still ensure that any loans advanced align with the trust's objectives and comply with all other relevant provisions of the Bombay Public Trusts Act.

CA Madhav (Abhay) Mate



Charity Commissioner's Role in Other Investments

Application Processing

The Charity Commissioner must decide on applications for investing money in other manners within 3 months from receipt, or record reasons for delay.

Investment Limitations

Circular provides that investments made pursuant to Commissioner's order should not exceed 50% of total investments, ensuring diversification.

Detailed Scrutiny

Commissioner reviews trustee resolutions, investment amounts, existing portfolios, trust objects, financial history, and proposed investment details before granting permission.

Applications must include information about the companies or firms where funds will be deposited, including interest rates, deposit terms, dividend history, and whether trustees or directors will provide personal guarantees against potential losses. Latest balance sheets and annual reports of target companies must also be submitted.

CA Madhav (Abhay) Mate

Special Considerations and Compliance



For unused ornaments and other valuables held by trusts, there is no specific statutory provision. However, converting these items to cash and investing the proceeds according to Section 35 guidelines may prove beneficial. Trustees can be encouraged to make such conversions to optimize returns while maintaining compliance.

Compliance with Section 35 requires ongoing vigilance. Trustees must regularly review investment portfolios, ensure proper documentation of all transactions, and maintain transparency in decision-making. While non-compliance with Section 35 doesn't invalidate transactions, trustees may face fines up to Rs. 10,000, making proper adherence to these provisions both a legal necessity and a fiduciary responsibility.

CA Madhav (Abhay) Mate

Thank You!

We appreciate your time and attention.

Contact Information

Feel free to reach out with any questions.

CA Madhav (Abhay) Mate
+91 9822351901
abhaymrmca@gmail.com

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