

# Land Trusts

A land trust is essentially a private agreement, whereby one party, the *trustee*, agrees to hold title to property for the benefit of another party or parties, the *beneficiary(ies)*. The creator of the trust is often called the *settlor* or *trustor*. This is usually the titleholder to the property before transfer into the trust. The settlor often remains the beneficiary of the trust for his/her lifetime. In essence, the trustee holds the title to the property and must follow the instructions of the beneficiary. The beneficiary typically has the absolute right to direct and control the trustee and receive all income from the trust. The trust agreement, at the creation of the trust, governs the relationship between the trustee and beneficiary. Thus, the trustee often has no more power than the settlor gives him. Plus he or she has no function other than to do as the trust deed instructs.

Land trusts are most often revocable. Therefore, the trustor may change, modify, or terminate them while he is or she is still alive. The beneficiaries may remove an uncooperative trustee. Since the trustee holds title as a fiduciary, they incur no personal liability for merely being on the title. Nor can the trustee lose the property to his or her personal creditors.

## How Land Trusts Protect Privacy

The land trust is comprised of two legal documents:

There is a trust agreement between the trustor and the trustee. This document establishes the rights, powers, duties, and obligations of the parties; and

A deed from the trustor to the trustee.

First, you execute the trust agreement. Then, you record the trustee deed. Once completed, the land titles office will no longer reveal to the world that you are owner of the property. In addition, the trust agreement remains private (in your file cabinet at home). Thus, no one need ever know that you retain an interest in the property. That is, the public records will not reveal this information.

Litigators are generally not interested in suing people who have no assets. One of the easiest ways to determine whether or not someone has *deep pockets* is to search the public records for real estate holdings. For the successful real estate

investor, the results of this search could paint a big fat bull's eye on their backs. Whereas a land trust is not a true **asset protection trust**, it is a powerful privacy tool to ensure that a litigator's search for deep pockets comes up empty.

## LLC + Land Trust for Asset Protection

First, remember, a land trust is a privacy device, and not a corporate entity. Accordingly, land trusts do not enjoy the liability protections that corporations or limited liability companies may enjoy. If someone slips and falls on the property, the beneficiary can be held liable. That is why we establish a corporation, LLC or limited partnership to stand in as beneficiary.

Second, the transfer of property into a land trust can often be accomplished tax-free. The internal revenue code addresses this. The federal government will treat the property as if it was owned outright by the beneficiary. See I.R.C. §§ 671- 678. In addition, in many states, the transfer of property by a beneficiary to a revocable trust does not require the payment of any transfer or recording taxes.

Finally, many investors may ask around and find that the attorneys and accountants with whom they come in contact have no idea what a land trust is, or how it works. While this can certainly be frustrating, there is an upside. Think about it. This means that many of the litigators in your community will be unfamiliar with land trusts. A significant number will stop their search for deep pockets at the end of the public records trail – the county recorder's office.

## Benefits of a Land Trust

There are many advantages to owning real estate through a Land Trust:

**Privacy of Ownership** – Under a Land Trust arrangement, your identity as the legal owner of the real estate is not disclosed to the public or to any third party, except in cases of subpoena or court order.

**Ease of Transferability** – The beneficiary (or “owner”) of a land trust may be changed without recording a change in the public records.

**Avoids Probate** – Probate is usually necessary regardless of whether or not one has a will. A Land Trust arrangement, however, allows you to designate succession of

ownership. You can do this exactly as you wish, thereby avoiding probate and costly, time-consuming proceedings relating to the property.

- Facilitates Multiple Ownership – Where there are multiple owners of a parcel of real estate, a Land Trust can be structured to provide for clear and easy legal division.
- You Retain Tax Advantage – You are still eligible for the homeowner's and senior citizen's real estate tax exemptions.