Top Pros and Cons of Using Land Trusts for Real Estate Investing
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WHAT IS A LAND TRUST?

The land trust is one of the most talked about, but least understood, entity utilized by real estate investors. The reason for this is simple, most attorneys or CPAs have never come across the entity in their professional practice. How can this be? You might be asking yourself if the land trust is a legitimate entity used by real estate investors all over the country shouldn’t my local attorney know something about it. Unfortunately the answer is no, he most likely wouldn’t have a clue and this is because only a handful of states actually recognize a land trust via statute. Unless you are speaking to an attorney in Hawaii, Illinois, Indiana, Florida, Georgia, Montana, South Dakota, or Virginia, where there is a statue on the books recognizing this form of trust, it is probably an area of law your local attorney has never been exposed to, unless of course he is also an informed real estate investor.

Due to a gap in knowledge on the part of many professionals, beginning and seasoned investors alike are either oblivious to this important tool or set it up incorrectly. In either case, this knowledge deficit will generally not make itself known until much later. Consider a real estate attorney friend who helped his clients in Washington State protect their rental property in Florida:

Tim, a beginning real estate investor, asked Scott, his real estate attorney, if he could protect a recent property he acquired in Florida. Experienced in the use of LLCs for real estate investments, Scott created a Florida LLC to hold Tim’s rental property. After the LLC was established, Scott prepared and recorded a deed transferring Tim’s property into his newly formed LLC. Both Tim and Scott were happy with the structure until the following year when Tim received a tax bill for over $2,000 from the county recorder offices in Florida. Tim’s transfer of his rental into the LLC triggered a transfer tax because his property was encumbered by a mortgage.
Scott’s mistake was not being familiar with the use of land trusts and the nuances of Florida. These two mistakes cost his client several thousand dollars. In Florida if you transfer encumbered property (this is property with a mortgage) into a business entity, i.e., a LLC, the county taxes the transfer. An attorney familiar with Florida law and the use of land trusts could have easily avoided this tax by creating a land trust to hold title to the property then assigning the beneficial interest to a LLC for asset protection. Had Scott called me before proceeding with transferring the property I could have instructed him accordingly and saved his client $2,000.

Transfer taxes are not the only concern for investors who transfer property directly into a LLC; lenders can create problems as well. Recently a client, Sandy, contacted me over a letter she received from her lender informing her of the lender’s intention to call her note due and payable in 30 days. Sandy was told to come up with $432,000 or the lender would initiate a foreclosure action. Sandy’s lender was accelerating her note. Why? It is quite simple, her lender discovered, as did I, that Sandy transferred her mortgaged rental property into a LLC without obtaining approval from her lender. The lender was not happy with Sandy’s actions.

Sandy had set up her own LLC and attempted to play attorney not fully understanding all of the legal ramifications of transferring encumbered property into a LLC. Because her property was encumbered by a mortgage, the lender reserved the right to accelerate the note if Sandy
transferred title to the property. This is commonly referred to as a violation of the “due on sale clause” which is included in most mortgages. Unfortunately for Sandy, the market is operating under a new set of rules and Sandy thought she could continue to operate the way she did in the mid 2000s. Direct transfers of mortgaged property into LLCs are now scrutinized and prior strategies must be re-evaluated.

With the implosion of the housing market, the use of land trusts has risen dramatically. Prior to 2009, many investors held little fear of transferring their mortgaged real estate directly into a LLC. If you recall, between 2003 and 2008, banks gave out loans like your local ice cream parlor hands out samples, all you had to do is ask. How you held title after the loan closed was of no consequence to the lender or the subsequent purchaser of your mortgage. To the lenders, the game was about loaning money then securitizing to fully monetize the investment. After an investor acquired a house he could turn around and sell it subject to the existing loan the very next day with relative confidence the original lender, or even a subsequent purchaser of the mortgage, would never check title. The same can be said for investors seeking asset protection. Set up your LLC and deed your mortgaged property to the LLC for asset protection and move on to your next deal.

When the wheels fell off in 2009 many cavalier investors eventually received calls from their lender or note holder inquiring about ownership. More than a few of these inquires were precipitated by mortgage insurers who were trying to evaluate their overall risk on a pool of mortgages. During the insurers inspection of random mortgages they would often find that the borrower did not match the title holder. The property was held by a LLC or had been transferred to another individual. The mortgage insurers placed pressure upon the lenders to get their loans in order and the lenders jumped on the borrowers. So what did the savvy investor learn from this mess? If your property is encumbered you’d better find a way to move your mortgaged property under the protection of a LLC without alerting the lender to the transfer. The solution is to construct a land trust.

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Why Investors Use Land Trusts

Investors, attorneys, or CPAs unfamiliar with the use of land trusts often ask me “why would someone consider using a land trust?” My general response is “why not?” When it comes to entity structuring many people prefer to being with the complex rather than the simple. The land trust, contrary to the multiple internet gurus or guest REIA speakers that sing the vestibule of virtues offered by this rudimentary of tools, is simply and nothing more than a title holding vehicle with some interesting attributes. From a legal standpoint, the land trust is a type of “grantor trust” (this is the phrase you should use in states that don’t formally recognize land trusts via statute). There are many types of grantor trusts, including living trusts and personal property trusts, all with generally the same purpose: to shift the title of property out of your name and into the care of a trustee.

How does a land trust work? There are three basic parties involved:

- **The Grantor:** This person sets up the trust and transfers assets into the trust.
- **The Trustee:** The person who manages the trust. The trustee should have actual duties so the trust isn’t a passive trust. However, the grantor can name himself trustee if he wants to, but I recommend using another person. Of course you must trust that person. I will cover this later.
- **The Beneficiary:** The beneficiary is usually the grantor—he gets the “beneficial interest”, i.e. ownership, of the trust. Think of this like stock in a corporation. It is personal property and has all of the ownership rights associated therewith. This will also be covered later.
From a practical standpoint think of the land trust like a box with its sole purpose to hold real estate. The box comes with a set of instructions for the trustee and the beneficiary. These instructions detail who has the power to lease, sell, or encumber the property. The instructions can also specify how distributions of income will be managed. In short, the land trust’s appeal is in its simplicity and functionality.

Here is an example of how a trust can be structured for a joint venture:

Kevin, a property rehabber, took a serious hit to his credit and financial net worth when the real estate market crashed in 2009. Despite his setback, Kevin is aware of the new opportunities presented by the crash but he lacks the cash and credit worthiness to purchase a house. Kevin approaches his good friend James and suggests they purchase a house together. James will use his excellent credit to purchase a house and Kevin will use his builder skills to rehab the house so they can sell it for a nice profit.

After the sale closes, Kevin asks James to deed him 50% of the house. Kevin is thinking ahead and wants to protect his 50% interest in the house before he begins the rehab work. James is uncomfortable deeding 50% of the house to Kevin for fear the bank will discover the transfer and call the loan due. James is also concerned that if he makes Kevin a 50% owner he will only receive back half of the $35,000 he put down to purchase the house. Kevin and James are at an impasse and the project stalls.
Kevin and James’s problem is not knowing how to structure this deal to address each party’s concerns. Most attorneys would likely recommend a LLC but this would not address James’s issue with the due on sale clause because a transfer of encumbered property into a LLC is not exempt from a lender accelerating the note. The solution for Kevin and James is a properly drafted land trust wherein Kevin and James will each own 50% of the trust i.e., trust beneficial interests. The trust could be drafted so the first $35,000 received from the sale of the house will be allocated to James and all remaining proceeds will be split equally between the parties. The bank will not discover James transferred 50% of his ownership to Kevin via the trust because only the deed transferring the property into the trust is recorded. Thus, both Kevin and James are able to move forward with their investing having solved their initial impediments to making money in real estate.

Kevin and James are just one possible benefit from using land trusts. I have found the use of land trusts are only limited by the real estate investor’s creativity. A land trust can be used in just about any real estate transaction; but for most real estate investors, it is commonly used for the following purposes:

- Avoiding the due on sale clause when encumbered property is transferred
- Providing privacy of ownership
- Avoiding county transfer taxes
- Wholesaling property or purchasing property subject to an existing loan

I will now address each of these common uses and explain in detail how the land trust will help you.

> Due On Sale Clause - Bank Protection

Now you may be asking—how is the land trust going to help me with my lender? The answer lies in why the land trust was created, and why it’s perfectly legal. It’s basically a compromise between two opposing forces. On one side is the bank which is interested in generating income from loans and at the same time protecting itself through a security interest in real property—on the other side is the borrower (real property owner) who desires to transfer
title to his property without fear of foreclosure or forced refinancing. The bank acts as the protagonist by incorporating a “due-on-sale clause” into most, if not all, mortgages it writes.

The due-on-sale clause means essentially that the bank can decide to “call in” or “accelerate” its loan if the title of the property is ever transferred to another person or entity. This is important to real estate investors who desire asset protection or freedom of contract. If an investor wants to purchase property from a distressed seller subject to an existing mortgage, or to transfer his three properties into a limited liability company for asset protection, he does so at the risk that the lender discovers the transfers and subsequently accelerates the loans on the properties. Many investors are troubled by this potential outcome and, thus, elect not to protect their encumbered investment real estate.

Now in reality, I’ve met thousands of investors at my workshops, and in all the years I’ve done them I’ve only heard of one or two instances where the bank used the due-on-sale clause to force a person to refinance their loan. In these instances, the problem was simply that the owner was behind on his payments. But the due-on-sale clause has more ramifications than refinancing.

The bank’s decisions are influenced primarily by economic forces, so it doesn’t matter to them whether they are forcing you to refinance or not. Furthermore, the bank is probably not going to hold on to your mortgage. In the typical scenario, the bank will sell and resell mortgages to other banks as they need to. Of course, they won’t allow homeowners to buy residences in entities or agree to the sale of real estate subject to an existing mortgage without first paying the mortgage in full. Why? Because if the bank attempts to sell the mortgage, a purchaser is not going to be willing to pay top dollar if they have to investigate who owns the property or the owners’ credit rating. If the homeowner is forced to use his own name, then the bank and the potential purchaser of the mortgage have no problem doing business, since all the information is right there.

But from the homeowner’s perspective, this is horrifying—and rightfully so. Not only is the homeowner forced to borrow money from a faceless lending corporation, but he has no control over whom they sell the deed to, and who might enforce that due-on-sale clause. Even worse than that, he can’t protect himself in terms of liability by purchasing his real estate investment with a limited liability entity, because most commercial lending institutions refuse to do business with entities unless the buyer agrees to pay commercial interest rates.
This nightmarish scenario is averted with the Garn St. Germain Act. This 1982 legislation had many goals, including making home mortgages available to a large number of people. The Garn St. Germain Act addresses the basic conflict between homeowners looking to protect their assets, and the bank’s insistence that the homeowner buy the property in their own name. The Garn St. Germain Act prevents lenders from enforcing the due-on-sale clause when residential properties are transferred into a revocable trust and there is no change to the rights of occupancy. The key word here is revocable. Remember that a land trust is a revocable grantor trust that, as such, is covered under the Act.

The Garn St. Germain Act of 1982 prevents lenders from enforcing the due-on-sale clause when residential properties are transferred into a revocable trust and there is no change to the rights of occupancy.

Thus, under the Garn St. Germain Act an investor can create a land trust to hold title to his rental real estate without fear of his lender calling the mortgage due and payable. Once the property is held by the land trust, an investor has the flexibility to assign his beneficial interest to a limited liability company or another purchaser without alerting any third parties to the fact there has been a transfer. There are limits to the Garn St. Germain Act. If you have a property with more than four housing units, or have a loan that is not federally backed, then the Garn St. Germain Act does not apply.

The second most important benefit provided by a land trust after the “due on sale” clause protection is privacy. Unfortunately, many real estate investors do not stop at “GO” when creating their land trust and subsequently deeding their property into the trust. Well over 60% of the land trusts I have reviewed are oblivious to the importance of privacy. In the typical land trust scenario the real estate investor creates his trust with himself as the grantor, trustee, and beneficiary. The trust agreement will typically require title to trust assets be taken in the name of the trustee of the trust. Of course, if the real estate investor is the trustee then the possibility
for anonymity is gone. So one solution is for the trustee to be someone other than the grantor. Here’s why:

Marco sets up the 675 Evergreen Trust, dated November 1, 2013, with himself as the trustee. When Marco deeds his property out of his name and into his trust, Marco will remain on public record because the property is titled in his trust as follows: Marco as Trustee of the 675 Evergreen Trust, dated November 1, 2013.

The way in which Marco created his trust and subsequently transferred his property into the trust will provide him protection from his lender accelerating the mortgage but Marco eviscerated on the principal benefits of using a land trust – anonymity. Even though Marco recorded his property under the 675 Evergreen Trust, his name still appears on the property’s title as a trustee. Many people would assume Marco created a trust for his own benefit, most likely, a personal living trust. However, Marco’s name does not need to be listed as the trustee on the property’s title to maintain this illusion. To maintain a shield of privacy Marco has three options available to him; all three of which I have used successfully in my practice to shield my client’s identity.

1. Marco could chose to use a nominee trustee as his initial trustee;

2. Marco could serve as his trust’s initial trustee but omit his name from the deed e.g., 675 Evergreen Trust, dated November 1, 2014; or

3. When recoding the deed choose an extremely long name for your trust to keep your name as trustee from appearing on the county recorder’s website.

Each of these strategies work as follows:
> Nominee Trustee

The nominee trustee is a person, whom you trust, to serve as trustee for recording purposes only. After your property has been deeded from your personal name to that of the trust, which as I indicated includes the name of the trustee, your nominee trustee will resign and you will take control as the undisclosed successor trustee and the public will be left with the impression, because your name is no longer on the title, that you no longer own the property.

By way of reference, this is how the land trust is similar to a Nevada corporation with nominee officer and director protections. When I create a Nevada corporation, an attorney in my office assumes the initial director and officer position of the client’s corporation. As the initial officer and director, the attorney’s information is provided to the Nevada Secretary of State to be made public to anyone with a computer. After the initial filings are complete, control of the corporation is passed to my client with the nominee’s resignation and my client’s subsequent assumption of these positions. From the public’s perspective, John Q attorney is listed as the nominee officer and director, and my client’s involvement is hidden. This process can be repeated on a yearly basis to keep your involvement private.

When the trustee resigns, does this imply that your trust will be without a trustee? Absolutely not! When you create your trust, you will be sure to nominate a successor trustee to assume control when the initial trustee is no longer serving. Who will be the successor trustee? You.

The beneficiaries are the ones with the real power under a land trust, which is why you should always be the beneficiary of any trust that holds title to your property.

The question you might be asking of yourself at this point is what happens if your nominee trustee will not resign, or, even worse, he sells your property? For me to answer these questions satisfactorily, you must understand the legal relationship between the trustee and the trust beneficiaries. How can the beneficiary fire the trustee who presumably has control? Most financial planners and attorneys you speak to about land trusts typically get this wrong. They do not understand this very important dynamic that distinguishes the land trust from a living trust. The trustee in a land trust holds title to trust property for the benefit of the trust beneficiaries.
beneficiaries. A trustee’s powers are limited to the specific powers conferred to him under the trust agreement. All other powers are specifically reserved to the trust beneficiaries. In a good land trust agreement, your trustee should have the power to deal with tenants, make repairs, and expedite other limited expenditures, but all other matters concerning title, i.e. sale, loans, encumbrances, change in trustee, etc., require the consent of the trust beneficiaries. In other words, the beneficiaries are the ones with the real power under a land trust, which is why you should always be the beneficiary of any trust that holds title to your property.

What happens in the event your trustee turns out to be a rogue and sells the trust property without your consent? A client’s wife put this exact question to me after she learned that her husband, the trustee of their land trust, sold the trust property without her involvement. Let me put that a different way: The wife knew the husband was going to sell the property but believed she would need to sign some paperwork to effectuate the sale.

To make matters worse, the husband had consulted an attorney who assisted with the closing and told the husband that he had full power of conveyance as the trustee of the trust. Wow, that was a huge mistake for an attorney to reach such a conclusion without reviewing the trust agreement. You see, in my trust agreement, it states … Except as otherwise specifically provided in this trust agreement, all powers of the Trustee are subject to the consent of the Beneficiaries,… The trust then goes on to state that the Trustee can convey title to real property but only after he has obtained the beneficiaries’ consent. So how does this alleviate the wife’s concern? Simple, the trust beneficiaries could set the sale aside because they did not give their consent to the sale. The trustee will find himself embroiled in a lawsuit or two, and if an attorney gave the trustee his blessing and advice to move forward with the sale, then he will get the pleasure of experiencing the justice system from the other side of the table as well.

Another question I often receive is: Can my corporation be the trustee of my land trust? Yes, but with some caveats. To my knowledge, only one state, Florida, specifically authorizes a corporation, absent other requirements, to serve as the trustee of a land trust. Other states are silent on the issue, or specifically state that the corporation must be bonded and licensed in the state where the trust property resides. This can be a problem for those hoping to avoid jurisdictional issues. If you decide to proceed anyway, here’s an example of how it can be used against you:
Bob, an inexperienced attorney, establishes a land trust for his rental properties in Washington, with his corporation, NOIDEA, Inc., as the trustee. When a faulty balcony collapses resulting in severe injuries to a tenant, Bob is sued. The tenant’s attorney is quick to point out that NOIDEA, Inc., is not bonded and licensed in Washington, and that Bob is simply thumbing his nose at the law. Bob has given the Court one more reason to not like him—his not knowing the law when he is an attorney. Bob would be wise to settle.

If you choose to use a nominee trustee then choose wisely. A nominee trustee may not have absolute and unfettered control over the trust property but he will be listed on title and this can pose potential problems. I routinely serve as a nominee trustee for my clients. Selecting the wrong nominee trustee can prove disastrous as my client discovered when he selected his good friend:

After attending one of my asset protection workshops, Brian was eager to put his new found knowledge to use and protect his multiple holdings in upstate New York with land trusts and LLCs. Brian engaged me to create a land trust and LLC for him then he planned to use it as a template to create 14 additional structures. When I drafted Brian’s land trust he informed me his friend Noland was willing to serve as his nominee trustee. I carefully explained to Brian the risk in not choosing an attorney but Brian brushed aside my concerns informing me he and Noland “went way back” and he wasn’t concerned. Fast forward four years and Brian was $15,000 in attorney’s fees attempting to remove state tax liens from all of his trust properties. Brian’s choice of a nominee trustee did not work out as planned.

Brian’s problem was trusting his friend to serve as his nominee trustee. As I stated earlier, when you use a nominee trustee the trustee’s name will appear on title along with the trust name, e.g., Noland Taxdodge as Trustee of the 14th Street Trust, Dated March 1, 2014.

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Noland, unbeknownst to Brian, had stopped paying New York taxes and the state, seeking to recover its due, filed tax liens on all of Noland’s property located in New York. The State of New York assumed each of the properties held in trust with Noland’s name as trustee belonged to Noland when in fact, they were owned by Brian.

> Do Not Include the Trustee’s Name on The Deed

When I was in law school I worked for an attorney who held public defense contracts with several municipalities. As an intern it was my job to handle these cases for the firm. I learned two important things during my tenure defending multiple individuals accused of various crimes. The first was most, if not all, were guilty of the crime they were accused of committing or, in the rare case a person was innocent, he was definitely guilty of several other crimes he was never caught on and therefore belonged in jail. (You can probably gather I did not make a very good public defender.) The second was the defendant typically talked too much after he was arrested. (This made my job as a public defender all that harder to plead their case.) Talking too much is not a problem limited to criminals but people in general. We tend to believe if some information is good then more is better. From an asset protection standpoint the reverse is universally true. Never disclose more information than legally required.

We tend to believe if some information is good then more is better. From an asset protection standpoint the reverse is universally true. Never disclose more information than legally required.

If Ally set up the Chatty Kathy Trust, Dated July 9, 2014 with Ally as the Trustee, it should be self evident to you by now that when she deeds her property into this trust, assuming she is not using a nominee trustee, Ally will not have any anonymity. If Ally consulted me prior to preparing her deed I would instruct her to call the county recorder’s office where the deed is recorded and ask if the recorder requires the trustee’s name to be listed on the deed. Ally might be surprised to learn the county recorder does not.
If the county does not require the trustee’s name on the deed then you are free to prepare accordingly. In Ally’s situation, she would deed the property from her name individually to the Chatty Kathy Trust, Dated July 9, 2014. If you adopt this approach be sure to draft your trust to allow for someone to take title in this manner. Many of the land trust agreements I have reviewed over the years require title to be taken in the name of the trust and trustee e.g., Ally Johnson as Trustee of the Chatty Kathy Trust, Dated July 9, 2014. Such a requirement limits your ability to adopt the strategy I have outlined above.

One final point, this strategy will not work in every state and in those states wherein it does work; it may only work in select counties. Deeding property is not as simple as preparing a deed and recording it with the county where the property is located. Counties typically have very specific margin requirements and ancillary forms must be filed with the deed. For example, when utilizing this technique in California many of the counties require a copy of the land trust be submitted with the deed. The land trust is not recorded but the county requires it for verification purposes.

> **Long Names Get Truncated**

After preparing a few hundred separate deeds transferring property into land trusts an idea struck me. What if I changed the positioning of the trustee’s name from the beginning to the end and lengthened the name of the trust; would this keep my clients name from appearing on the county recorder’s website? The idea centered on the limitations of most county recorder’s websites. If you have ever experienced the displeasure of searching for information on such a site then you will surely agree these databases are woefully antiquated e.g., many still require the use of function keys to move between searches. Another limitation you will find with these sites is their limited search fields. Many of the form fields limit the number of characters thus, if your trust name exceeds the character limitation and your name, as trustee, falls outside of this limit, this technology, or lack thereof, has provided you with an opportunity for anonymity.

Consider how most attorneys create trusts i.e., they require title be taken in the name of the trustee on behalf of the trust, e.g., Mike Bowman as trustee of the 765 Trust, Dated August 19, 2014. If Mike is seeking anonymity when he created this trust obviously he lost. Mike’s
name appears first in the property’s title and would be discoverable on even the most antiquated of online search engines. To turn this limitation to your advantage you need to do two things, create an exceptionally long name for your land trust and place your name, as trustee, at the end e.g., The Green Tree and Bountiful Plains Trust Agreement Dated the Nineteenth Day of August Two Thousand and Fourteen, Mike Bowman, Trustee.

If you are reading this and thinking to yourself Mike’s name is still on title you are correct. However, Mike’s name will most likely only be discoverable if someone performs a record search in person at the county recorders office versus the quicker online approach. Other than title companies, most people search online and thus, would only find the following “The Green Tree and Bountiful Plains Trust Agreement Dat”…. Due to the length of the trust name, the positioning of Mike’s name at the end, and the limitation of the county recorder’s website, Mike has found a way to mask his affiliation with this property.

Since utilizing this strategy in early 2003 I have come across some self acclaimed land trust Guru’s who either heard me teaching this strategy at one of my numerous workshops or possibly discovered it on their own. Either way, the long trust name is only half of the strategy; the other half involves tax statements.

> Where to Send Tax Statements

When a deed is prepared the county requires the preparer to provide an address for future tax statements. If you are setting up a land trust for anonymity and are willing to utilize one or more of the strategies previously outlined, you can blow it by not hiding your personal address. Seventy percent of my clients when asked where they would like their tax property statements sent will tell me their personal address. Their reasoning is sound. No one wants to miss a tax statement and fall behind on property taxes.

However, you can still maintain timely receipt of your tax records without using your personal address. The simplest method for anyone to keep their personal address out of the public record is not to use it. A PO Box is a great alternative and should be used for all of your business correspondence.
Situations Where an Investor Should Avoid Using a Land Trust

Land trusts do not work for every type of property or situation that might arise during a person’s investing career. Although situations may vary from state to state, here are a few examples you should be aware of before using this tool:

Lisa, a retired teacher, buys a studio apartment in Los Angeles. She sets up an Illinois-type land trust, with herself as the grantor and the beneficiary, and her accountant as the trustee. Because this is an Illinois-type trust, she assigns virtually no duties to her CPA. When she decides to sell her property, she is shocked to find that the Illinois-type land trust isn’t valid in California. In Illinois, it’s possible to assign a trustee with no duties, but in California it’s leaving you wide open to the “Merger Doctrine” which holds that a transfer does not take place when a trustee has no duties under the trust agreement. To remedy her mistake, Lisa assigns an asset protection specialist as her trustee, and assigns him limited but very real duties.

In this first example, Lisa is worried about the due-on-sale clause and the idea that the bank could accelerate her loan when she tried to sell the property. However, her first mistake was not knowing the land trust laws of the state she lives in. Illinois has very generous land trust provisions, but many other states—especially those without codified land trust statutes—require that the trustee have actual duties and obligations. In Illinois, the trustee can do virtually nothing and the land trust is still protected, but this is not the case in California.
Mark owns three properties in Miami, including a beachfront condominium. One day a fire starts in the heating vent, and a renter decides to sue. Mark, however, is savvy and holds the property in a land trust. He is the beneficiary and his attorney is the trustee. The renter discovers that Mark is the beneficiary, and names him as the defendant and landlord. Mark is confused: Isn’t his land trust supposed to protect him? He consults with an attorney with experience in land trusts, who tells him his mistake: After setting up the land trust, Mark should have created a LLC and made it the beneficiary. That way the LLC, not Mark, would be held liable in the suit, since plaintiffs usually go after the beneficiary. Now, of course, it’s too late as he’s already been named in the suit.

In Mark’s case, he was savvy—he set up the land trust according to the rules of his state, with a trustee he could count on. However, he forgot one thing: While commercial lenders required that Mark buy the property in his own name, and perhaps also that Mark use his own name as beneficiary once he sets up the land trust, Mark is certainly not obliged to remain the beneficiary on paper. If he had transferred his beneficial interest into a LLC (also called an “assignment”), then the renter would not be going after him, but after the LLC. And if the LLC only holds this one asset, then Mark’s money and his other properties are all safe.

Greg purchases an investment house in Houston. He sets up a land trust, naming himself as the grantor, Profit Wise, Inc., as the trustee, and Acme LLC as the beneficiary (both being entities that he owns). A few years later, a tenant in the property is severely burned when the electrical wiring, overloaded by a space heater, ignites the house. His asset protection specialist tells him he should have no problem, because he does not own the land trust but rather it is owned by his LLC, but when the lawsuit fires up, he finds out that Texas does not permit an entity to serve as a Trustee unless it is licensed and bonded. Greg’s corporation is neither. Greg made a critical mistake that could jeopardize his asset protection.
Greg thought he was doing everything by the book, but he forgot one aspect of asset protection: Know your state laws. When he transferred property into his land trust, he was unaware of Texas’ legal requirements regarding an entity that serves as a trustee of a trust. This simple mistake has the potential to dismantle his entire plan.

As you can see, the land trust is a useful, simple tool to protect your property, but there are numerous variations in the protection that a land trust offers. There are many legal implications to consider; thus, you should have someone who knows the ins and outs of land trusts advise you. Otherwise, a land trust can offer no protection at all.

> **Advantages of Land Trusts**

There are numerous other advantages to land trusts. First, the transfer of property is much easier in a land trust than in a LLC or virtually any other corporate entity. With a land trust, if you want to transfer your rights to the property to another person, you simply assign them as beneficiary. It’s as simple as that! The transfer of title doesn’t make the bank or your creditors suspicious because the sale or transfer of your beneficial interest is not a public record. Thus, if no one is alerted to the transfer, then it is unlikely the bank will accelerate the mortgage.

A land trust, in this way, also avoids probate, which is the court proceeding after someone dies. A will is complicated, requires an attorney, witnesses, and a particular format and language. A land trust is simple; instead of a will, the owner can simply name a new beneficiary to the trust, and avoid all the trouble and wasted time of probate. Transferring interests is simple for a land trust, and therefore gives the owner of the property a great deal of control.
A land trust offers privacy in terms of transferring interests. With a land trust, unlike a conventional purchase and sale of property, issues such as the sale price and details of transfer are not on public record. The land trust also allows the beneficiary to report his equity interest in the property on his financial statement—without reporting the mortgage. Why? Because as the beneficiary, you own the equity interest in a property as an asset, but are not required to report the mortgage as a liability, because that is an obligation (liability) of the trust.

As you can see, the land trust offers a great deal of protection for the real estate investor. Given the infinite number of problems that a real estate investor faces, the land trust is a smart solution to keeping control over the property, avoiding the risk of litigation and tax liability, and protecting both rental properties and homesteads.

Below is a list of states with codified land trust statutes—meaning that there are laws that regulate how land trusts work. In other states without codified land trust statutes, land trusts are still legal, but the rules regarding them are interpreted by “common law”—or court rulings and precedent. Virtually every state has some type of law on the books that deals with land trusts in the state. In all cases, you should talk to an asset protection specialist to figure out the ins and outs of your state laws on land trusts.

**States with Land Trust Statutes or Laws on Land Trusts**

- Florida
- Georgia
- Hawaii
- Illinois
- North Carolina
- North Dakota
- Virginia

In those states without land trust laws on the books, transferring your property to a living, revocable trust can provide exactly the same benefits. It’s also important to note that unlike a LLC or other corporate entity, a land trust does not have to be assigned to a particular state or jurisdiction.

When it comes to land trusts, there’s a lot of uncertainty since they’re not formally recognized everywhere. The law changes all the time, and your case might bring brand new issues before the court. I tell my clients that it’s better not to bring any new issues on the table, and to not make themselves more vulnerable than they already are.
Issues with Land Trusts

Having heard so much about the benefits of the land trust, you may be ready to set one up already. That’s fine; land trusts are extremely useful in many ways. However, there are many drawbacks to land trusts as well.

First, there’s the fact that while the land trust offers anonymity and allows transfers to be done easily, it offers little to offset actual litigation or taxes. In the course of litigation, it can be very easy to trace how a land trust was created, thereby eliminating your anonymity, and, if litigation is successful, then you as the trust beneficiary will be personally liable. That’s why it’s important that the beneficiary be a LLC rather than you personally.

Second, because a land trust isn’t recognized by statute in every state, many lenders, insurance brokers, and mortgage specialists are reluctant to get involved with them. It can also be hard to get a full homestead exemption in some states that aren’t equipped to deal with the trust. Since 2011 I have noticed a problem in some states such as Oregon with title companies refusing to issue a policy when property is held in a land trust. This precludes some investors from purchasing property in the name of a land trust and they falsely believe title must be taken in their own name. I have a work around for this issue but it is beyond the scope of this material.

Third, there are some legal issues at stake, specifically the fact that the trustee does not need to perform any duties. This means that the equitable title and the legal title merge. What does this mean without the legalese? Well, it basically means that the title of the person doing the work (the trustee) and the title of the person getting the benefit (the beneficiary) cover essentially the same job. If the trustee has absolutely nothing to do, then it can be difficult to persuade a court that your land trust is a valid entity. However, there are a few states that clearly allow a trustee to have virtually no duties.

Disadvantages of Land Trusts

1) Little protection to offset litigation or taxes
2) Not recognized by statute in many states
3) The trustee does not need to perform any duties
4) Some argue that land trusts enable fraud
Finally, there are some arguments that land trusts enable fraud. Apart from the possibility that masking the ownership of a property will lead to masking criminal behavior, there’s also the issue of the timing of transfers. A court could find that if a land trust was set up with intent to commit fraud, it is invalid, and that the property is therefore available to creditors.

The main advantage of a land trust, and the main reason to set one up, goes back to the title of this chapter: You want to look like you qualify for food stamps. When a creditor or potential litigant looks up your name, he should see that you have virtually no assets, and therefore are not worth pursuing. A land trust takes care of the largest problem in that strategy—real property. By putting your home or rental property in another name, you are defending yourself against potential threats to your assets. The land trust, therefore, is a primary weapon of the real estate investor and the small business owner.

But while a land trust is a valuable tool, it provides no help on your tax returns or in the event of an actual lawsuit. This is where business entities come in—corporations, limited partnerships, and limited liability companies. You don’t have to be a millionaire to set up a business entity, but you do need to know which entity is appropriate for your given business. It will be a relatively painless overview; your asset protection specialist is the one who really needs to know the nitty gritty and the legalese involved.