

How Land Trusts Can Benefit You

By Dyches Boddiford

The land trust is an agreement that allows real property to be held privately for a beneficiary. That way, the beneficiary, whether it be you or your entity, does not show up on the title in the public records.

Follow me here. Say you have \$1 million insurance coverage for liability. You hit an attorney in the cross-walk with your car. Will he settle for the insurance limits or will he sue for more? Or what if your insurance company denies your claim for some reason? How much will the suit be? Well, that usually depends on how deep he thinks your pockets are. If you own property in your own name, the lawyer suing you will easily find your house and any other properties you own in the public records. This could easily become a \$3 million suit.

Before you even know you will be sued, the opposing attorney could have the sheriff park in front of your house, knock on your door while you are eating dinner and hand you your lawsuit in front of all your family and the neighbors!

But, if you have your property in a land trust, beneficial ownership is hidden. Your land trust is not filed in the public records. Your ownership stays private. No one knows who the beneficiary is but you.

Elements of a Land Trust

The land trust has four elements:

1. Settlor – This is the person, usually you, who creates the trust.
2. Trustee – The Trustee's control is limited by the terms of the trust. This can be a trusted friend, sister, an in-law or other family member. It is best to choose someone without your last name to increase your privacy.
3. Beneficiary – This is who receives the benefits of the trust. This could be you or someone else. One of your companies would make an excellent beneficiary. There can even be more than one beneficiary if desired. The beneficiary has all of the control. The beneficiary can direct when property is bought and sold. The beneficiary is the one who can refinance the property or can collect the rental income from investment properties.
4. Trust corpus – This is the real property held by the trust.

Taxation

Properly structured, the trust is transparent for tax reporting. So there is no loss of benefits or additional accounting. What you have achieved is privacy of ownership.

What Will your Lender Say?

Again, properly structured, the Garn-St Germain Depository Institutions Act of 1982 specifically provides that you can place your property in a land trust without triggering the

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due-on-sale clause. That means you can transfer mortgaged property to a land trust without interference from the bank. This is the case as long as you as borrower remains the beneficiary, the property consists of four or fewer dwelling units, and the trust is revocable and does not convey rights of occupancy to others.

Where Can Land Trusts Be Used?

Land trusts have been used in all 50 states. Where state statutes do not specifically provide for a land trust (most states), the land trust is treated as a contract between the settlor, beneficiary and trustee. Be aware that a few states require additional duties of the trustee.

A Good Example

An attorney, Lee Horner, tells a story of a law suit where a person was bit by a dog that was not even supposed to be on the rental property. The person hired an attorney to sue. Since the property was in a land trust, they were required to serve papers on the trustee. But the trustee could not be found since they were out of state. Of course, with no trustee to depose, they could not discover that the beneficiary was an LLC in a third state.

The plaintiff could still possibly use service by publication to get a judgment and then get the property.

But there was a loan on it by a company in a fourth state. After a while the frustrated attorney told their client to forget it and the suit was dropped.

This is just to show what can be done and your land trust does not need to be this involved...

On August 26 & 27, 2017, Dyches Boddiford will present a 2 day Seminar in Greenville on Using Trusts in Your Real Estate Business. **Read More an register for this event at:**
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